




U.S. Immigration
and Customs
Enforcement

APR 5 2011

MEMORANDUM FOR: Field Office Directors
Deputy Field Office Directors

FROM: Gary Mead 
Executive Associate Director

SUBJECT: Strategic Use of Expedited Removal Authority

Expedited removal (ER), authorized by section 235(b) of the Immigration and Nationality Act (INA), is a valuable enforcement tool that enhances the ability of immigration officers to make the best use of limited agency resources. Expedited removal may be used for two categories of aliens, as follows: (1) "arriving aliens," as defined by 8 C.F.R. § 1.1(q), which includes aliens paroled into the United States; and (2) "certain other aliens" designated by the Department of Homeland Security (DHS) who are present without admission or parole and are unable to establish continuous physical presence in the United States for the two years immediately preceding the determination of inadmissibility. To date, DHS has extended that designation to aliens who are present in the United States without having been admitted or paroled and are *encountered within 100 air miles of any international land border and cannot establish that they were present in the United States for more than 14 days prior to the encounter.* See 69 Fed. Reg. 48877 (Aug. 11, 2004) (emphasis added).

Consistent with the agency's enforcement priorities, Field Office Directors and their senior staff are encouraged to identify ways to use ER within their respective areas of responsibility. ERO personnel are reminded that they should not use ER on the following classes of aliens:

- Unaccompanied minors;
- Asylees, refugees, and lawful permanent residents;
- Crewmen or stowaways;
- Members of the class settlement in American Baptist Churches v. Thornburgh, 760 F. Supp. 796 (N.D. Cal. 1991);
- Aliens who may be eligible for cancellation of removal under section 240A of the Act; and
- Natives or citizens of Cuba.

Furthermore, ERO officers must refer aliens who assert to have a credible fear for a credible fear interview. This is true even if the alien initially denied a credible fear and asserts it later in the process.

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ERO officers should screen incarcerated aliens to determine if ER is appropriate. The determination should include whether the incarcerated alien is an “arriving alien” or an alien present without admission or parole who was encountered by an immigration officer within 100 miles of an international land border within 14 days of the date they entered.

Finally, ERO officers should use ER for all arriving aliens paroled into the United States for prosecution, regardless of how long they have been present in the United States. However, ER should be used for an arriving alien paroled for reasons other than prosecution only if the parole has expired or been terminated and the alien has been continuously present in the United States for less than one year.

Questions concerning the scope of expedited removal authority may be directed to the local Office of the Chief Counsel.