

ICE's Family Expedited Removal Management (FERM) Program Puts Families at Risk

Upon taking office, President Biden encountered a fork in the road regarding his approach to asylum and border policy: continuing the failed practices of his predecessors, or advancing policies that protect the rights of asylum seekers to fair and humane processing. In large part, Biden opted to maintain, resurrect, or emulate inhumane policies, all in the midst of a global refugee crisis. After expelling hundreds of thousands of people seeking asylum under the Title 42 policy, the administration finally terminated the mass expulsions policy in May 2023 only to issue a [final rule that replicates Trump's asylum bans](#). Biden also ushered in other cruel policies in order to further deterrence goals, "enhancing" the use of expedited removal to deport people as quickly as possible while they remained jailed in Customs and Border Protection (CBP) custody with [little to no due process](#).

As families began to seek refuge in larger numbers, the Biden administration considered jailing them — an inhumane practice that had led to the [death](#) of children under prior administrations — before unrolling a new rapid removal policy named the [Family Expedited Removal Management \(FERM\)](#) program run by Immigration and Customs Enforcement (ICE). Like the enhanced expedited removal policy, the FERM program in practice is short-circuiting families' access to attorneys, fairness, and a meaningful opportunity to pursue asylum.

In attempting to represent asylum seeking families in FERM, National Immigrant Justice Center (NIJC) legal staff have encountered many of the same obstacles we confronted when serving asylum seekers trapped in CBP custody. Families are rushed to removal within weeks of their arrival to the United States, without a fair opportunity to present their cases, and often without understanding the proceedings unfolding around them. Parents are placed on ankle monitors and restrictive curfews as they struggle to present their claims while navigating a brand new country, finding shelter, and tending to their own and their children's emergent physical and mental health needs following their arduous journey to find safety. Nevertheless, the Biden administration is rapidly expanding this program, currently in effect in nearly 30 cities nationwide and growing weekly to other parts of the country. In this brief, we discuss:

1. **What is FERM?**
2. **Access to counsel is near impossible under FERM.**
3. **FERM disparately harms Indigenous families.**
4. **FERM is punitive by design.**
5. **The Biden administration should end the FERM program and other "enhanced" expedited removal programs.**

1. What is FERM?

FERM is a program that places parents and children apprehended at the U.S. border into a rapid screening process that purports to identify asylum claims while keeping families under heavy surveillance. Borrowing from the carceral and criminal probation system, ICE requires one parent to wear an ankle monitor and remain confined in their home at nighttime — a new "home curfew" that effectively amounts to house arrest despite the fact that these families are in civil asylum processing.

FERM is expanding weekly. After starting with four cities on May 12 (Baltimore, Newark, Chicago and Washington, D.C.), ICE expanded FERM to 24 more cities at the time of this policy brief release, with five additional cities expected to be added to the program soon. Families can have as little as one day upon their arrival at their destination city (at most, one week) to undergo a pivotal adjudication: their credible fear interview, which is the threshold screening to determine whether they are eligible to apply for asylum. If their interview outcome is negative, they have just one additional week to seek review by an immigration judge. If they fail there (still less than a month since their arrival), they are required to report to an ICE office for deportation, usually within a week. **The Biden administration, which has already [touted its swift deportation of families](#), has set up a system wherein families are destined to fail. Families are being rushed to deportation within 30 days of their arrival. They are almost never able to consult with an attorney, much less retain counsel, before their credible fear interview, placing many families at risk of deportation back to harm or even death.**

Those families who beat the odds and pass their credible fear interview or court review are transitioned out of the FERM program, put in immigration court proceedings and often subjected to another form of surveillance involving a [cell phone app](#).

Far from engaging in an individualized assessment of needs, this program constitutes a blanket imposition of punishment on vulnerable families for the act of seeking asylum. This rapidly expanding program threatens to set a new precedent for the treatment of families, combining dizzying timelines that leave families without legal support while saddling families seeking safety with disproportionate and punitive restraints on liberty.

2. Access to counsel is near impossible under FERM.

FERM has no built-in process for families to find attorneys. Local nonprofits who seek to help families, such as NIJC, have no information about how to find them in time to ensure that these families have lawyers to provide them with guidance. Occasional referrals are the product of serendipity. In some cities, ICE has referred families to Americans for Immigrant Justice, a nonprofit that may refer cases to local legal service providers. In Chicago, an immigration judge pointed families to the [Immigration Court Helpdesk](#) — a separate legal orientation program that exists in only a few of the FERM cities. However, families must compete with other people in deportation proceedings seeking help, as the Helpdesk already is overwhelmed in supporting people facing deportation. Concretely, that has meant that families have no reliable avenue to find an attorney in Chicago in advance of their expedited interviews and hearings. Additionally, Immigration Court Helpdesks are ill-equipped to support families in FERM because the complex FERM process demands full attorney representation and not the limited support permitted through the Helpdesks.

“Every day, we struggle to meet the needs of thousands of unrepresented families facing imminent removal. Adding FERM to our existing docket only adds to the queue of people we are already straining to serve. These families deserve prompt coordination with attorneys to provide timely and quality representation.”

*– JuanCamilo Parrado, NIJC managing attorney,
manager of Chicago's Immigration Court Helpdesk*

NIJC's Asylum Project has represented seven families subject to FERM. We encountered one family before their credible fear interview, five within as little as a day of their immigration court review, and one less than 48 hours before the family's scheduled removal. NIJC attorneys have had as little as one day to meet families, review their credible fear interview records, and prepare for their review before the immigration court. During the court reviews, NIJC attorneys have spent up to seven hours waiting for their client's case to be heard, while

overwhelmed immigration judges struggle to review rushed and poorly developed credible fear interview records. This process deprives families of a meaningful opportunity to be heard, or prepare and consult with counsel.

The FERM process asks the impossible — for families and their lawyers to prepare a full asylum claim in minutes or hours. Asylum law is notoriously complex, and many families are unable to even identify the basis for their legal claims without speaking at length with an attorney. NIJC’s legal experts estimate that it takes approximately 100 hours to provide representation to a person seeking asylum, including complex legal research, fact gathering, and numerous in-person meetings with the client for trauma-informed interviews and case preparation.

For most families enrolled in FERM, even limited legal representation will be simply unattainable. The American Immigration Lawyers Association has [found](#) in a [recent analysis](#) that fast-tracked timelines result in lower representation rates for people seeking asylum. FERM — like other fast-tracked or “enhanced” expedited asylum programs — is unsustainable for legal service providers and private attorneys, who have to suspend other casework to avert the deportation of families, including toddlers, back to harm.

3. FERM disparately harms Indigenous families.

FERM has no restriction on placing Indigenous families in these rushed proceedings. Five of the seven families NIJC has represented have been Indigenous and, in each case, DHS has refused to provide these families with interpretation in their Indigenous languages during their interviews. This has resulted in multiple wrongful negative findings, as parents struggle to present their fear in a language in which they are not competent.

NIJC represents Linda, a mother of two including an infant child, who was placed in FERM with her husband. Linda and her family are Indigenous and do not speak Spanish fluently. When they appeared at their credible fear interview and court hearing, they were unrepresented and forced to proceed in Spanish. Less than 48 hours before their scheduled deportation, a community partner alerted NIJC to their cases. Through urgent notifications to ICE headquarters and interventions from two congressional offices, NIJC was able to secure a temporary suspension of their removal order.*

NIJC Executive Director Mary Meg McCarthy observed the following as she appeared with the family at ICE’s Chicago office to halt their removal: “Left and right, other FERM families approached us to seek help in stopping their removal. They had never had a chance to speak to a lawyer, and many were Indigenous.”

NIJC Attorney Fabiola Villalpando reported: “The ICE officers asserted our clients had agreed to proceed in Spanish, but it was clear after talking to them only briefly that while they could carry on a rudimentary conversation in Spanish, they could not describe the complex and nuanced circumstances of their asylum claims. In the credible fear interview, they didn’t want to rock the boat and feared they would not get to try for asylum at all if they didn’t press forward in Spanish.”

**Pseudonym used to protect client’s confidentiality*

In households where one parent has some Spanish fluency but a second parent does not, this process has outright excluded one of the parents from participating in the interview at all. In one case, DHS prevented a 15-year-old child from attempting to translate from Spanish to the family’s Indigenous language, forcing her

parents to proceed in a language that neither of them spoke fluently. Forcing Indigenous families to proceed in Spanish [compounds](#) harms they suffer on the basis of their indigeneity, and [violates federal civil rights law](#). These interviews also waste valuable time in the immigration court, prolonging judges' review as they attempt to parse out reliable information from a poorly developed record of prior proceedings due to language access barriers.

“Due process allows for all persons to have a voice, and to have their voice be heard. Proper interpretation is key to allow asylum seekers to share their story and have their voices heard. However, under FERM, the U.S. government is forcing Indigenous peoples to conduct interviews in languages they do not understand, creating cascading risks for parents and children who have already survived a horrendous journey to find safety in this country.”

— Matthew McGuire, senior attorney, NIJC Asylum Project

4. FERM is punitive by design.

FERM is premised on (1) restrictive conditions and (2) rushed timeframes, both of which have a punitive impact on families seeking asylum.

- (1) **Families have reported experiencing distinct harms as a result of the ankle monitor and home curfew requirements.** One client reported bursting into tears when, in front her 11-year-old child, she was forced to wear a GPS ankle monitor. Another client reported living in fear that she would be immediately deported if she left her home, due to her ankle monitor combined with her home curfew. These responses are not surprising: requiring people who just survived life-threatening violence and trauma and CBP detention to cope with more surveillance and restriction is punitive and cruel. Asylum seekers frequently fail to disclose the harm they suffered when they are in such restrictive conditions because of the extent of the trauma they have endured. One NIJC client fled violence he and his family survived because they supported rights for their Indigenous community, but feared disclosing this to DHS during his interview because he did not trust that he could confide in the asylum officer.
- (2) **FERM rushes parents to disclose past persecution in front of their children.** Because the children are in removal proceedings with their parents, they are required to attend these appointments. Given the speed of proceedings, parents rarely have the time to arrange for childcare at the asylum office or immigration court. One NIJC client fled a guerrilla group that long targeted her family, and shortly before she fled broke into her home, tied up her partner, and raped her. However, she did not disclose this during her credible fear interview because she felt shame and was fearful of sharing that information in front of her very young children. Consequently, she failed her interview. NIJC was retained right before her court review and advocated for the children to not be present while she testified, which resulted in a positive outcome for the family. However, this client had no option but to have her children wait outside the courtroom without supervision, a stress-inducing situation that also prejudiced her ability to fully articulate her claim.

“I was very nervous when we had our credible fear interview, which was almost two hours long. It was very difficult to explain myself because the officer kept telling me I had to answer questions with only yes or no answers. I wish we had an attorney with us, but I didn't have time to find an attorney because my interview date was so quick. I was able to speak to a couple of lawyers, but they said my interview was so soon, they could not help me.”

— Mother subject to FERM, now represented by NIJC

5. The Biden administration should end FERM.

Study after study has proven that punitive measures such as ankle monitors and curfews are harmful and unnecessary to ensure that people appear for and engage with their court proceedings. In contrast, legal representation and community-based support services are proven to support nearly 100% appearance rates. Rushed deportations risk erasing entire families' — including small children's — right to exist free of persecution or torture. In its haste to remove families as quickly as possible, the Biden administration also wastes precious resources for both courts and asylum officers, who benefit greatly from the presence of an attorney to raise key issues in each case and avert unnecessary denials.

“I was very scared throughout this process. I was so scared the officer or judge might not understand what I was trying to explain and they would order my daughter and me deported. I was terrified that we might be deported any day to face the violence and death threats we fled from.”

— Mother subject to FERM, now represented by NIJC

NIJC recommends that ICE terminate FERM and enhanced expedited removal proceedings in CBP custody to protect asylum seekers' rights to due process. NIJC and partner organizations have presented numerous and varied solutions to the Biden administration to improve asylum access without jailing or punishing asylum seekers, including enhancing funding, support and coordination with non-governmental organizations providing respite and social and legal services to new arrivals.

Read more: immigrantjustice.org/issues/asylum-seekers-and-refugees

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