



gender and sexual orientation who are living with or otherwise affected by HIV. In calendar year 2018, 20,700 individuals and families received health services from Whitman-Walker.

Since the mid-1980s, Whitman-Walker has had an in-house Legal Services Department. Our attorneys and legal assistants provide information, counseling, and representation to Whitman-Walker patients, and to others in the community who are LGBT or who are living with or affected by HIV, on a wide range of civil legal matters that relate directly or indirectly to health and wellness – including immigration issues. Our Legal Services Department, with the assistance of hundreds of volunteer attorneys throughout the area, has provided a wide range of immigration-related services to foreign-born individuals and families. Many of them come to the U.S. fleeing persecution in their countries of birth because of their sexual orientation or gender identity or their HIV status. In 2018, 52% of our legal clients who provided their sexual orientation identified as lesbian, gay, bisexual or otherwise non-heterosexual; 20% of our legal clients identified as transgender or gender nonconforming.

**THE NEW POLICY WILL HAVE A DISPROPORTIONATELY HARMFUL EFFECT ON SURVIVORS OF DOMESTIC VIOLENCE, LGBT INDIVIDUALS AND FAMILIES, AND PEOPLE LIVING WITH HIV**

The Department's notice dramatically expands the geographic areas within which individuals can be targeted for expedited removal – from within 100 air miles of a U.S. land border to the entire country – if they cannot produce evidence of legal immigration status or continuous residency within the U.S. for at least two years. The notice articulates no procedures for such actions and no safeguards for accuracy and fairness. It is an invitation for individuals and families to be targeted based on race or ethnicity or language overheard (or thought to be overheard) – in sum; an invitation for abuse. The new policy is particularly dangerous for LGBT people, victims of domestic violence, and people living with HIV (PLWH). Many such individuals are eligible for asylum or other relief from removal as members of particular social

groups that have been stigmatized and persecuted. Lack of access to justice and lack of legal protections from discrimination and violence make it particularly important for victims of domestic violence, homophobia, transphobia, and HIV discrimination to have the ability to assert their rights under U.S. immigration laws. Many of them have been traumatized by their experiences, are particularly fearful of government agents, have great difficulty asserting their legal rights, and are, therefore, particularly vulnerable to abuse.

The lack of due process afforded during the expedited removal process, including the well-documented failure of the DHS officers to provide translators and to adequately screen for credible fear of returns, would not only create unreasonable barriers to accessing asylum protections in the U.S., but would unnecessarily put more lives in danger, particularly LGBT-identified individuals who are fleeing violence and PLWH who are seeking access to humane treatment and care.

If they are able to access an asylum hearing subsequent to being subjected to expedited removal, LGBT-identified people and PLWH who are eligible asylum seekers find it much more difficult to effectuate their right to asylum from detention. Asylum seekers find that access to counsel is severely curtailed in detention. Detention also limits access to evidence of credible fear, legal immigration status, or continuous physical presence and cuts off access to supportive communities that help sustain people held in detention. Additionally, the circumstances of detention are often traumatizing and violent for LGBT people and PLWH, who are often subjected to discrimination and improper medical treatment due stigma.

## **THE NEW POLICY EXACERBATES EXISTING SERIOUS PROBLEMS WITH EXPEDITED REMOVAL PROCESS**

The Department has been repeatedly informed by Congressional reports and independent investigations of numerous, well-documented failures to provide adequate procedural safeguards during the expedited removal process. DHS has failed to protect lawful permanent residents, asylum seekers, and others – even, on some occasions, citizens – from the dramatic and oftentimes final consequences of mistakes made during the expedited removal proceedings.<sup>1</sup> The Notice lacks requirements for standards, training, or rules of engagement for asylum officers, and therefore is likely to exacerbate existing problems within the expedited removal process.

### **THE DEPARTMENT HAS NOT ADEQUATELY JUSTIFIED THE NEED FOR THIS DRAMATIC DEPARTURE FROM BASIC PRINCIPLES OF FAIRNESS AND DUE PROCESS**

DHS cited costs as necessitating the new policy. Subjecting many more individuals and families to expedited proceedings that dispense with their rights to full and fair hearings is not a

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<sup>1</sup> U.S. Comm’n on Int’l Religious Freedom, Report on Asylum Seekers in Expedited Removal: Volume I: Findings & Recommendations 4, 10 (2005), available at <https://bit.ly/1GkjQfK> (“2005 USCIRF Study”). (Documenting numerous ‘serious problems’ in the expedited removal process ‘which put some asylum seekers at risk of improper return.’). See also:

- U.S. Comm’n on Int’l Religious Freedom, Barriers to Protection: The Treatment of Asylum Seekers in Expedited Removal 2 (2016), available at <https://bit.ly/2uydMQ8> (“2016 USCIRF Study”). (“[R]eveal[ing] continuing and new concerns about CBP officers’ interviewing practices and the reliability of the records they create, including: flawed Border Patrol internal guidance that conflates CBP’s role with that of USCIS; certain CBP officers’ outright skepticism, if not hostility, toward asylum claims; and inadequate quality assurance procedures.”).
- Hearing before the H. Judiciary Subcomm. on Immigration & Border Sec. at 5 (Feb. 11, 2015) (statement of Eleanor Acer, Dir., Refugee Protection, Human Rights First), <https://bit.ly/2OGFszm>; “[R]egularly learn of reports of legitimate asylum seekers who are denied ‘credible fear’ – and the chance to even file an application for asylum – even though they should meet the standard and may be eligible for asylum.”).
- Letter from Am. Immigration Lawyers Ass’n, et al. to Leon Rodríguez, Dir., U.S. Citizenship & Immigration Servs., and Sarah Saldaña, Dir., U.S. Immigration & Customs Enforcement 2-4 (Dec. 24, 2015) (“AILA Letter”), <https://bit.ly/2Yr3DWF> (“USCIS’ negative fear determinations are often flawed, with numerous substantive problems evident in the transcripts of initial fear interviews.”).

legitimate cost-reduction measure. The Department has many options for controlling the costs of securing the Nation's borders without violating fundamental American values of fairness and equity. Moreover, DHS has failed to account for the many additional costs of the new designation, including litigating erroneous removals, compensating families for the harms of erroneous removals, the economic impact of separating families during proper removals, and the increased cost to public safety from decreased trust in law enforcement.<sup>2</sup> The new policy creates uncertainty which will likely promulgate fear and distress in millions of families across the nation.<sup>3</sup>

#### **THE NOTICE ELIMINATES ESSENTIAL DUE PROCESS PROTECTIONS FOR VULNERABLE POPULATIONS OF AMERICANS**

The expansion of expedited removal is a drastic departure of the historically limited exception to the due process requirements of removal and deportation codified by Congress. The expedited removal process was designed to be used in limited circumstances with advance notice of designated groups of aliens. In contrast, the new policy removes the physical and temporal limitations of previous designations and subjects every American to an expedited deportation process, rife with error and free from necessary procedural safeguards.

The DHS has attempted to publish and initiate enforcement of the policy without the notice and comment opportunities that compose the procedural safeguards of the rulemaking process. The agency is unjustified in subverting the basic principles of fairness and due process

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<sup>2</sup> ACLU, *Freezing Out Justice: How immigration arrests at courthouses are undermining the justice system* (2018), [https://www.aclu.org/sites/default/files/field\\_document/rep18-icecourthouse-combined-rel01.pdf](https://www.aclu.org/sites/default/files/field_document/rep18-icecourthouse-combined-rel01.pdf). (Surveying hundreds of police officers, prosecutors and victims' advocates in each of the 50 states and found repeated reports that undocumented immigrants are now more reluctant to report crimes to the police.).

<sup>3</sup> As previously noted, the DHS has demonstrated an inability to properly effectuate expedited removals. Of the 340 million residents of the United States, approximately 11 million are undocumented immigrants. [Less than 4% of the 11 million arrived less than two years ago without having been admitted or paroled.](#) That means that nearly 99.99871% of the undocumented immigrants that DHS might apprehend cannot properly be removed pursuant to expedited removal. The odds of failure are catastrophic to the families subjected to this policy.

with an arbitrary new policy. Bypassing due process requirements during the rulemaking process is especially egregious in this instance because the designation itself removes procedural protections from millions of people. In so doing, DHS has subverted any opportunity for fulfilling any meaningful procedural requirements.

#### CONCLUSION

Whitman-Walker Health strongly opposes expanding the designation of aliens subject to expedited removal. We recommend that DHS immediately rescind the notice. Thank you for this opportunity to submit comments. We would be happy to provide any additional information that might be helpful.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "CB Brooks". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

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