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# Expedited Removal

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# Expedited Removal

By Karen Musalo

**O**n June 10, 2000, Sharon McKnight, a United States citizen of Jamaican ethnicity, arrived at New York's John F. Kennedy Airport on a flight from Jamaica, where she had been visiting her sick grandfather. McKnight is 35 years old and has the mental capacity of a young child; her family members were concerned about her traveling by herself and were awaiting her arrival at the airport. When she did not appear several hours after her flight landed, they became concerned and began to make inquiries. They learned that the Immigration and Naturalization Service (INS) had taken her into custody because they thought her passport was fake and that she was attempting to commit fraud. In an effort to persuade INS that they were mistaken, the family members secured a copy of Ms. McKnight's birth certificate, showing that she had been born in the United States, but INS was not swayed by the evidence. Ms. McKnight remained handcuffed and was left overnight in a room at the airport, with her legs shackled to a chair. She was not fed nor permitted to use the bathroom, and in the morning she was returned to Jamaica. Upon her arrival there, she was able to find her way to the home of a relative after baggage porters at the airport donated her bus fare.

Eight days later, with the assistance of New York Representative Michael Forbes, her status as a U.S. citizen was confirmed in a meeting with the U.S. Consul General in Jamaica and reviewed by State Department officials in Washington, D.C., and McKnight was permitted to return to the U.S. The INS apologized for its error. McKnight, who has stated that

she was treated "like an animal," believes she will have nightmares the rest of her life as a result of what she suffered.

Sharon McKnight was a casualty of expedited removal procedures, enacted as part of the 1996 amendments to the Immigration and Nationality Act (INA). The procedures allow immigration officers at ports of entry (air, land, or sea) to refuse admission to "arriving aliens" suspected of lacking valid travel documents or attempting entry through fraud or misrepresentation. INS officers have the authority to order that such persons be immediately returned to their country of presumed nationality or of last embarkation; such an order of removal carries a five-year bar on returning to the United States.

Expedited removal procedures, which went into effect on April 1, 1997, constitute a radical departure from prior law, giving unprecedented authority to INS inspectors to issue unreviewable orders of removal. Previously, such orders were issued by immigration judges and were subject to administrative and judicial review. Under prior practice, Sharon McKnight could not have been returned to Jamaica based solely on the decision of INS airport inspectors but would have had the right to appear before an immigration judge, to present evidence of her birth and her U.S. citizenship, and to appeal the judge's decision to the Board of Immigration Appeals (BIA) and the federal courts.

Because of the unreviewable nature of the expedited removal process and the individual interests at stake, Congress included additional procedures for two groups of people: asylum seekers and persons claiming lawful U.S. status (i.e.,

citizens, lawful permanent residents, etc.) People who claim lawful U.S. status are entitled to an immigration judge's review of an inspector's removal decision. The immigration judge's decision is final and not subject to administrative or judicial review. Although Ms. McKnight presented a U.S. passport, she was not brought before a judge, as required in cases of claimed status. The INS has justified its action by claiming that during questioning, she told them the passport did not belong to her, a fact that Ms. McKnight denies.

Sharon McKnight's story is one of an increasing number of cases alleging INS misconduct or erroneous decision making in the expedited removal process. Some of these other cases involve persons with lawful status, like McKnight, while a significant number of these cases involve asylum seekers. Prior to the enactment of expedited removal, any person fleeing persecution who arrived in the United States was entitled to apply for political asylum and to have his or her claim heard by an immigration judge and reviewed by administrative and federal tribunals. Using expedited removal laws, asylum seekers are screened, and only those with sufficiently legitimate or "credible" fear of persecution are admitted and permitted to apply for asylum.

Immigration officers at ports of entry constitute the first level of this screening procedure. They are required to ask three questions to determine whether a person fears persecution or intends to apply for asylum; if so, they may not ask any further questions and must refer the person for an interview with a trained

asylum officer, who determines whether the individual has a credible fear of persecution. Those who do are permitted to apply and generally remain in INS detention throughout the process, while those lacking credible fear are ordered removed. At the asylum seeker's request, an immigration judge may review the asylum officer's decision, but there is no further review.

In January 2000, Mr. A, a young Algerian asylum seeker arrived at San Francisco International Airport after suffering years of detention and torture in his home country. He had journeyed through Bulgaria and Southeast Asia before traveling to the United States, using a passport. Mr. A recounted to his lawyers, representatives of the United Nations High Commissioner for Refugees (UNHCR), and journalists, that on his arrival he immediately expressed his desire to apply for asylum, but was not referred to a credible fear interview as required by law. Instead, he was taunted and mocked by immigration officers who told him "Algerians go back to Algeria" and "Tonight you go back to China" (the country he had transited immediately before arriving in the United States). Although Mr. A spoke only limited English, the officers did not call in an interpreter, as is required, but interrogated him in English. When the officer who was questioning him briefly left the room, Mr. A became desperate, grabbed a coffee cup, broke it, and stabbed himself in the abdomen, causing a deep wound. He was taken to the hospital, where he received fifteen stitches. It was only after this, according to Mr. A, that his request for asylum was taken seriously and INS officers referred him to a credible fear interview. He was found to have a credible fear, was permitted to apply for asylum, and was granted asylum in August 2000.

Are the cases of Sharon McKnight and Mr. A, and others that have been reported by researchers and nongovernmental organizations (NGOs), rare occurrences in a system that is otherwise well functioning, or are they common and representative of serious problems in the implementation of expedited removal? Unfortunately, almost four years and 200,000 people-removals later, there is no answer to that question. The expedited removal process is totally closed to the public; there is no opportu-

nity for attorneys, family members, or other interested persons to be present at the "secondary inspection" interrogation between the immigration officer and the individual seeking admission. The INS has consistently denied requests from researchers and concerned NGOs that access be provided for purposes of monitoring or evaluating the process. Consequently, the public has very little information regarding how the law is being applied, or how it impacts people seeking admission. Sharon McKnight's case became public only because she had family members awaiting her, and

decision making to determine whether the unreviewable decisions are consistent with controlling legal standards. Finally, Congress directed GAO to look at issues concerning the detention of asylum seekers, such as the length and conditions of detention. Asylum seekers in the expedited removal process have been detained for many months—sometimes years—while their cases are pending, and there have been numerous allegations of physical and sexual abuse of detainees, as well as complaints about the overall poor conditions in detention facilities. Unfortunately, the GAO's treat-

## The expedited removal process is totally closed to the public.

Mr. A's only because his desperation led him to take extreme actions. The process is also largely insulated from litigation, not only by the elimination of review in individual cases but also by a requirement in the 1996 immigration amendments that any legal challenge to expedited removal must be filed within sixty days of its initial implementation. Three lawsuits that were brought by civil rights and immigrant rights organizations to challenge the implementation of expedited removal were dismissed, principally on the basis of standing. This dismissal on jurisdictional grounds has meant that no court has had the opportunity to reach the merits of any legal challenges to the process.

The only entity with extensive access to the process is the General Accounting Office (GAO), which has conducted studies of expedited removal. In both the GAO's first report, issued in April 1998, and its second, September 2000, the GAO conceived its role quite narrowly and did not focus on aspects of expedited removal that could determine whether the process adequately protects the rights of persons subject to it. For example, neither study utilized on-site observers sufficiently to determine whether INS officer misconduct like that reported by Ms. McKnight and Mr. A is a commonly occurring problem. It did not evaluate essential aspects of the process such as the availability and quality of interpreters for non-English speaking people who were subject to expedited removal. Nor did it examine any aspect of the legal

ment of these issues was superficial and failed to yield much reliable information regarding these issues.

In enacting expedited removal, Congress intended to deter fraudulent claims for admission to the U.S. yet ensure that asylum seekers, persons with lawful U.S. status, and other legitimate visitors did not suffer prejudice of their rights. The superficiality of the GAO's reports, the continued refusal of the INS to open the process to meaningful review and monitoring, and ongoing allegations of serious misconduct and erroneous decision making suggest that expedited removal procedures fail to meet these dual congressional objectives. A number of senators have responded by introducing Senate Bill 1940, which would greatly reduce the use of expedited removal, allowing it only in circumstances deemed by the Attorney General to constitute "extraordinary migration situations." And, even extraordinary migration situations would require additional safeguards.

Expedited removal procedures do not provide room for any margin of error. It is critical that such procedures be subject to rigorous and qualitative review to assess their true impact and to determine whether they should be substantially curtailed to reduce the risk of prejudicing the civil and human rights of those to whom they are applied.

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