



ICE TARGETS NONCITIZENS AT DOMESTIC AIRPORTS EVEN WHEN THEY ARE AUTHORIZED TO REMAIN

*Posted on August 2, 2026 by Cyrus Mehta & Kaitlyn Box**

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In recent weeks, [reports](#) have abounded of increased ICE arrests at domestic airports. Arrests occurred at airports in at least 15 different states, which some of the impacted noncitizens traveling only on domestic flights. Although airport ICE arrests are not a new phenomenon, particularly during the Trump administration, the categories of noncitizens being targeted has broadened dramatically. In the past individuals with a removal order or a criminal history might have been vulnerable to apprehension by ICE at airports, but individuals who were authorized to remain in the U.S., even if they did not have a valid nonimmigrant status, generally faced a low risk of enforcement during domestic travel.

The new wave of arrests at airports, however, has primarily targeted noncitizens whose nonimmigrant status has expired. Many of the noncitizens who were arrested, however, had pending adjustment of status, asylum applications or a request to extend or change nonimmigrant status, which allows them to remain lawfully in the United States. Some of the impacted noncitizens reportedly had no criminal history and were in possession of valid Employment Authorization Documents (EADs) and/or Advance Parole (AP) documents at the time of their detention. There does not appear to be any particular policy or rule change driving this pattern of increased apprehension at airports.

A noncitizen who has a pending adjustment of status or asylum application and is, therefore, in a period of authorized stay is not necessarily exempt from arrest or detention. INA § 287(a)(2) provides ICE the authority to arrest “to arrest any alien who in his presence or view is entering or attempting to enter

the United States in violation of any law or regulation made in pursuance of law regulating the admission, exclusion, expulsion, or removal of aliens, or to arrest any alien in the United States, if he has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest..." INA § 236(a) provides that: "On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." Ordinarily, however, a noncitizen who is in a period of authorized stay is unlikely to be a priority for detention. Individuals who are eligible for a benefit like asylum or adjustment of status may not be removable. Detaining noncitizens cannot be removed only contributes to the already lengthen immigration court backload, and is an inefficient use of government resources.

Likewise, DHS may initiate removal proceedings under INA § 237(a)(1)(B) against a noncitizen whose nonimmigrant status has expired, even if that individual has a pending adjustment of status application. Sure enough, this individual may be able to ultimately rely on the pending adjustment of status application as a defense against removal proceedings before an Immigration Judge. But in the meantime, the noncitizen must endure the burden of being placed into removal proceedings, including the risk of detention, disruption to employment and family life, and the expense and uncertainty of defending against removal despite having a pending application that may ultimately provide a path to lawful permanent residence.

Given the increased risk of arrests in airports, noncitizens who have an expired I-94 are advised to avoid travel domestically, even if they are in a period of authorized stay. An individual who filed an employment-based adjustment of status application which is still pending because his priority date retrogressed might be a target for apprehension by ICE if he did not maintain his underlying H-1B status and his I-94 has now expired. Similarly, those who did not extend their nonimmigrant status, but have a pending marriage-based adjustment of status application or asylum application, may be vulnerable to detention at airports. A noncitizen who has an expired green card and has filed a pending I-751 petition may be unlikely to be targeted, however, if she has a valid I-551 stamp as proof of her conditional LPR status.

Given this recent uptick in ICE arrests at airports, individuals who do not have valid nonimmigrant status but are in a period of authorized stay face a serious

risk of apprehension when they travel, even domestically. Noncitizens traveling within the United States should carry proof of their status or authorization to remain, such as an unexpired Form I-94, green card, I-551 stamp, Employment Authorization Document, Advance Parole document, or receipt notice for a pending application, in the event of an encounter with ICE. But the burden should not fall on noncitizens who are following the rules to avoid routine travel out of fear that they may be detained.

The chilling effect may extend even to U.S. citizens, who may fear being mistaken for noncitizens and questioned about their status. U.S. citizens traveling domestically are required only to present TSA-accepted identification, which can include a state-issued driver's license or ID. They should not feel compelled to carry a U.S. passport or other proof of citizenship to protect themselves from immigration enforcement encounters.

Directing enforcement resources toward people who are authorized to remain in the United States imposes significant costs on employers, families, and the immigration system without any clear corresponding government benefit. More troublingly, it transforms ordinary spaces like airports into sites of immigration surveillance and intimidation, fostering fear and police state-like conditions for noncitizens whose only vulnerability may be an expired I-94 coupled with a pending application. Americans should not tolerate the Trump administration's decision to wield immigration enforcement in this manner against people who have complied with the law and are awaiting adjudication of their applications. A system that detains individuals who are authorized to remain does not promote public safety or the rule of law; it undermines both by using fear as an instrument of governance.

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