**Due Process and Democracy  
Why Fairness Under the Law is Essential — and Under Threat**

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Abstract

Due process is a cornerstone of American democracy, ensuring fairness, accountability, and restraint in government power. This paper explains why due process is vital and offers a non-partisan analysis of how recent developments in immigration enforcement—especially ICE raids and mass deportations—risk undermining this essential democratic principle.

**What Is Due Process**\*Due process is the constitutional guarantee that no person shall be deprived of ”life, liberty, or property, without due process of law”; (U.S. Constitution, Fifth and Fourteenth Amendments). In practice, this means:

* The right to be notified of charges or actions being taken.
* The opportunity to respond and be heard.
* A fair and impartial decision-making process.

Due process is not just for citizens. The U.S. Supreme Court has consistently held that “all persons” on U.S. soil—regardless of immigration status—are entitled to some level of due process (Zadvydas v. Davis, 2001).

**Why It Matters for Democracy**

A functioning democracy depends on equal protection under the law. When due process is compromised, so is the public’s faith in fair government. Without it:

* Citizens and non-citizens alike are vulnerable to arbitrary state power.
* Minorities and marginalized groups face disproportionate risk.
* Legal standards become politicized, threatening the rule of law.

The erosion of due process anywhere sets a dangerous precedent everywhere.

**Due Process in Immigration Enforcement**

The U.S. immigration system is a civil legal system—not a criminal one—yet the consequences (detention, deportation, family separation) are often far more severe than those in criminal court.

Despite this, immigration courts lack many of the basic protections of criminal courts:

* No guaranteed legal representation.
* No trial by jury.
* Detention without bond or timely hearings.

Immigration and Customs Enforcement (ICE) operations, particularly during high-profile “raid seasons,” often detain individuals based on administrative warrants, not judicial ones (ACLU, 2020). Many are arrested without being informed of their rights or given the chance to seek legal advice before removal proceedings begin.

**Current Threats to Due Process**

1. Rapid Deportation Protocols

Under the “expedited removal” process, agents can deport individuals without a hearing if they are caught within 100 miles of the border and cannot prove they&#39;ve been in the U.S. for more than two weeks. As of 2019, this policy was expanded nationwide, allowing deportations with minimal oversight (DHS, 2019).

2. Migrant Protection Protocols (MPP)

Also known as “Remain in Mexico,” this policy forces asylum seekers to wait in Mexico while their U.S. court dates are pending—sometimes for months or years, often without access to lawyers or basic shelter (Human Rights First, 2021).

3. Use of State and Local Law Enforcement

Programs like 287(g) allow local police to act as immigration agents. Critics argue this blurs the line between civil and criminal law and leads to racial profiling and wrongful detention without clear accountability (Migration Policy Institute, 2020).

**Why This Is a Bipartisan Concern**

The erosion of due process should concern Americans across the political spectrum. History has shown that once exceptions are made—whether in the name of national security, public safety, or immigration control—those exceptions can be used more broadly.

 During World War II, Japanese Americans were interned without trials.

 In the post-9/11 era, Muslims were detained without clear charges.

 Today, immigrants and asylum seekers face fast-track removals without hearings.

Each time, the rationale was urgent. But the cost to democratic integrity has been lasting.

**What Citizens Can Do**

* Support Legal Aid Groups that defend due process rights for immigrants.
* Call for Oversight of ICE and immigration courts.
* Push for Representation: Advocate for government-funded legal counsel in

immigration cases, as a matter of due process and fairness.

**Conclusion**

Due process is not a privilege; it is a principle. The more we carve out exceptions—for certain people, in certain situations—the more we undermine its foundation. Upholding due process, especially in difficult areas like immigration, is not just a legal responsibility. It’s a democratic one.

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