

Community Explainer: New Rule on Affirmative Asylum Referrals Without Interview



July 30, 2026

What does this new rule do?

On July 28, the administration published an interim final rule (IFR), removing a critical guardrail protecting people going through the affirmative asylum process with U.S. Citizenship and Immigration Services (USCIS). Most egregiously, this new rule will allow USCIS to send asylum applications to immigration court for removal proceedings without first conducting asylum interviews. Although it went into effect on the day it was published, members of the public can submit comments on the rule for 60 days – until September 28, 2026.

Why does this matter?

This new IFR rule acknowledges that the policy could affect over 130,000 asylum applicants per year, and over 400,000 affected applicants who already have pending cases before USCIS. This rule, combined with increasingly hostile immigration court policies and practices, creates a reality where asylum seekers may *never* get to share their stories in their own words to an immigration officer or judge. This puts asylum seekers at even greater risk of detention and then deportation without ever having the opportunity to make a strong case for why they should not be removed to the countries from which they fled. It should also be noted that the rule does not provide exceptions for child applicants or unaccompanied minors.

How does claiming asylum work, and why are these changes so harmful?

Generally, there are two ways for individuals to apply for asylum. The first pathway is to apply affirmatively with the USCIS office. Applicants file their asylum applications (Form I-589), along with required documentation and evidentiary support, before they are scheduled for an interview with an asylum officer. These interviews are usually an applicant's first chance to explain in their own words to a U.S. official about why they fear being returned to their home country. In the process, they can address any gaps or discrepancies in their application. Importantly, [asylum officers](#) have specialized training in country conditions, asylum law, and interviewing survivors of torture and severe trauma. Their supervisors have substantial experience in adjudicating asylum applications. If an asylum officer determines they cannot grant the application themselves, they refer it to the immigration court for a final decision. Although this is not a denial of the application, as part of the referral process, the asylum seeker is formally placed in removal proceedings.

The second avenue to apply for asylum is in immigration court. Once a person is in removal proceedings in immigration court, they cannot apply for asylum at USCIS, and they must submit an application to the immigration judge. Removal proceedings are an adversarial process and fall under the purview of the Executive Office of Immigration Review (EOIR), which sits in the Executive, not the Judicial, branch of the government. Asylum seekers either represent themselves at each hearing, or they may find private counsel, but there is generally no government appointed counsel like in criminal proceedings. The government is also

represented at each hearing by a prosecutor from Immigration and Customs Enforcement's (ICE) Office of Principal Legal Counsel (OPLA).

Asylum applicants face far greater obstacles in immigration court than they do at the asylum office, especially after a wave of anti-asylum policies since January 2025. Forcing asylum seekers directly into the courts makes it less likely for them to receive a fair decision on their application. Over the course of 2025, asylum grant rates in immigration court were cut in [half](#). The situation has become so egregious that the United Nations has raised the unusually high number of immigration judges being fired and consequently questioned the independence of immigration courts. These firings are paired with reports that newly hired judges are being pressured in their training to deny asylum applications. In addition, there has been an increase in judges using “pretermission” in removal proceedings. This is when immigration judges dismiss an asylum application before hearing any testimony from the applicant if they feel there is *any reason the* application is legally insufficient. Reasons for pretermittting applications include errors as small as forgetting to check a box on the I-589 form. Judges almost never grant applicants the ability to fix or resubmit their applications but instead swiftly enter an order of removal. Applicants must either find the resources to appeal the decision or accept their deportation.

Whose applications will be impacted?

Not all asylum applications at USCIS will be impacted. The rule will target applicants who:

- Missed the one-year filing deadline,
- Potentially are barred from receiving asylum,
- May not merit a grant of asylum as a matter of discretion, or
- Are not eligible based on the merits of their claim.

The rule indicates that USCIS will be issuing further guidance about how these guidelines will be interpreted by the asylum office. What is important to note is that each of these determinations is fact-specific and often requires explanation and discussion with the asylum applicant. Prior to this rule, USCIS officers had the latitude to “kick the can down the road” if they suspected that any of the above listed situations apply. The language in the rule recognizes that its implementation will likely result in *grantable* applications being referred to immigration court.