

# Understanding the Asylum Process in the United States

This guide was prepared by the staff of American Gateways and was written for detained immigrants in Pearsall, Texas who are representing themselves *pro se* in their removal proceedings. American Gateways is a nonprofit legal services organization that provides services to immigrants in Central Texas.

*This guide is not intended to provide legal advice or serve as a substitute for legal counsel.*

If you would like to speak with someone from American Gateways, please call **210-521-4768 ext. 250**

## TABLE OF CONTENTS

Understanding the Asylum Process in the United States .....	1
TABLE OF CONTENTS .....	1
I. WHY ARE YOU BEING DETAINED? .....	1
II. EXPEDITED REMOVAL PROCEEDINGS.....	2
Expedited Removal.....	3
Credible Fear Interview (CFI).....	3
Circumvention of Lawful Pathways (CLP).....	3
Immigration Judge Review .....	3
Bond.....	3
Parole* (Conditional Release).....	3
III. THE CIRCUMVENTION OF LAWFUL PATHWAYS.....	4
What is the Circumvention of Lawful Pathways Rule (CLP)? .....	4
Protection under the Convention Against Torture (CAT).....	5
IV. PREPARING TO TALK ABOUT YOUR ASYLUM CASE .....	5
IV. ASYLUM PROCESSING RULES .....	7
ASYLUM MERITS INTERVIEW (AMI).....	7
Streamlined Immigration Court Proceedings After Denial at Asylum Merits Interview .....	8
***IMPORTANT NOTES*** .....	9

### I. WHY ARE YOU BEING DETAINED?

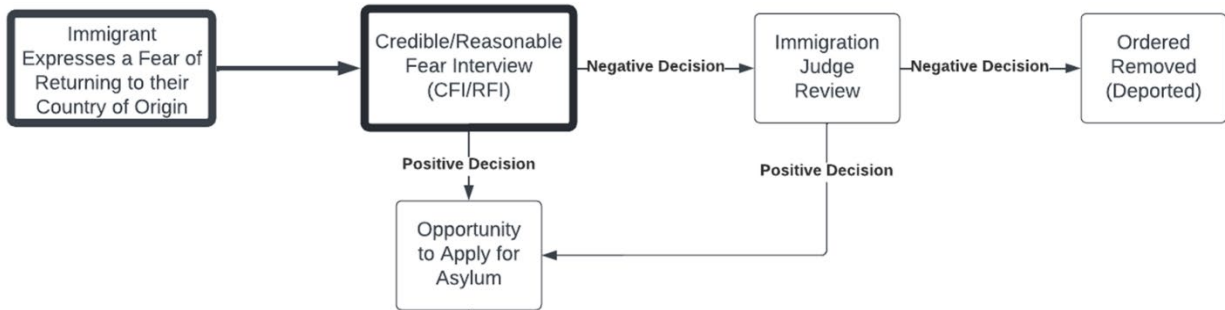
You are being detained by the Immigration and Customs Enforcement (ICE), which is a part of the United States Department of Homeland Security (DHS). Sometimes ICE/DHS are simply referred to as “Immigration.” You are here because the United States government thinks you broke an immigration law – that you came to the United States without permission.

The government is trying to remove you from the United States. This process is also sometimes called “deportation.” If you do not fight your case, you will be ordered to leave the United States and may not be able

to legally return to the United States for many years. If you are still in detention when you receive a final removal order, the United States government will physically send you back to your home country.

You may qualify to stay in this country. Most of you requested asylum when you first entered the country or when you were detained by an immigration official after entering the country without permission.

## II. EXPEDITED REMOVAL PROCEEDINGS



## Requesting Asylum

You are probably in one of the following two situations:

- You are an **Arriving “Alien.”** This means you came to the Port of Entry at the border and told the immigration officer that you have a fear of returning to your country; OR
- You **Entered Without Inspection.** This means you entered the United States without permission and were here for some period of time before you were arrested by an immigration official. When you were arrested, you informed an official that you have a fear of returning to your country.

### Expedited Removal

You were put in “expedited removal” proceedings. This is a type of removal (or deportation) proceeding for people who come to the United States without proper documentation and have been in the United States for a short amount of time. This is generally a quick process to decide if you will be given an opportunity to apply for asylum.

### Credible Fear Interview (CFI)

Because you expressed a fear of returning to your home country, an asylum officer will interview you and decide whether you have a credible fear of persecution if you are returned to your country.

- **What does it mean to have “credible fear of persecution?”** During the interview, the asylum officer will ask you about your fear of returning to your native country. The officer will give you a *positive decision* if they believe that you are afraid to return to your native country because you would be persecuted because of your *race, religion, nationality, political opinion, or membership in a particular social group.*

### Circumvention of Lawful Pathways (CLP)

The Circumvention of Lawful Pathways rule is a new rule about asylum eligibility that can make it more difficult to get asylum. **This rule applies to those who entered the United States between May 11<sup>th</sup>, 2023, and May 11<sup>th</sup>, 2025.** If this rule applies to you, your CFI will have two parts:

- **Part 1** will consist of questions to determine whether the CLP rule applies to you.
- **Part 2** will consist of questions to determine whether you have a credible fear of returning to your home country because you have been or will be persecuted or tortured.

### Immigration Judge Review

If you received a negative decision after your credible fear interview, you will then have the opportunity for an Immigration Judge to decide whether they believe you have a credible fear.

- If they give you a positive decision, you will then have the opportunity to apply for asylum.
- If they give you a negative decision, you will be ordered deported.

### Bond

ICE officers can offer a bond at any time, with a minimum of \$1,500. There is no maximum bond amount. If your deportation officer denies your bond or offers you a bond you cannot pay, **you may\*\*** be able to ask a judge to review that decision.

**\*\* Immigration judges CANNOT consider offering bonds to individuals who have gone through the credible fear process (expedited removal).**

- Any U.S. citizen or legal permanent resident can pay a bond at any ICE office or at this detention center. If you do not pay the bond you are offered, you will remain detained while you fight your case. *If you have committed or been convicted of very serious crimes, you may not qualify to receive a bond.*

### Parole\* (Conditional Release)

Individuals may be considered for parole (or release from detention) throughout the expedited removal process.

- If you are released on parole, that does not mean your case is over. Your case will continue at the Asylum Office and Immigration Court nearest to you.
- Please see the detention center library for additional resources on seeking parole.

\*NOTE: Being released on parole while in expedited removal proceedings only allows you to leave detention, it does NOT make you eligible to apply for work authorization.

### III. THE CIRCUMVENTION OF LAWFUL PATHWAYS

#### What is the Circumvention of Lawful Pathways Rule (CLP)?

The CLP is a new rule about asylum eligibility that applies to those who entered the United States between May 11<sup>th</sup>, 2023, and May 11<sup>th</sup>, 2025. The CLP can make it more difficult for individuals to obtain asylum. Under the CLP, there are two parts to credible fear interviews (CFIs).

**CFI Part 1:** If you entered the United States after May 11<sup>th</sup>, 2023, you will be asked questions to find out whether the new asylum eligibility rule applies to you.

- o You must fall under an exception to the CLP rule to qualify to apply for asylum. If you do not fall under an exception to the rule, you cannot get asylum. See below for exceptions to the CLP rule.
- o However, even if the new rule applies to you, you can still qualify for withholding or removal of protection under the Convention Against Torture (CAT).

**CFI Part 2:** After the asylum officer completes the questions in Part 1, you will be asked questions to find out if you could qualify for asylum under an exception to the CLP rule. If you do not fall under the exception to the new asylum eligibility rule, you will be asked questions to determine whether you could qualify for withholding of removal or protection under the Convention Against Torture (CAT).

#### Exceptions to the Circumvention of Lawful Pathways rule

The new asylum eligibility rule will not apply to you if:

1. **You are a Mexican citizen.**
2. **You entered the United States legally with parole.**
3. **You entered the United States through a port of entry after scheduling an appointment through the CBP One app.**
  - o OR you went to a port of entry WITHOUT a CBP One appointment because it was NOT possible to access or use CBP One due to a language barrier, illiteracy, significant technical failure, or other ongoing serious obstacles.
    - If you cannot read or understand English, Spanish, Haitian Creole, Portuguese, or Russian, you will need to explain why you were unable to find a third person to help you schedule an appointment through CBP One.
4. **You applied for asylum in a third country and that application was fully processed and denied.**
  - o This exception does not apply to you if you left the country where you applied for asylum before you received a final decision on your application.
5. **You show exceptional circumstances, such as:**
  - a. Exceptionally compelling circumstances existed at the time of entry.
  - b. You faced an immediate medical emergency.
  - c. You faced an imminent and extreme threat to life or safety, such as an imminent threat of rape, kidnapping, torture, or murder.
    - i. General fear of violence is not enough for this exception to apply to you.
    - ii. Credible testimony may be enough to show you faced imminent and extreme threat to life.
6. **You are a victim of sex or labor trafficking.**
7. **You were under the age of 18 when you entered the United States between May 11, 2023, to May 11<sup>th</sup>, 2025, and you file for asylum after May 11<sup>th</sup>, 2025.**

### Protection under the Convention Against Torture (CAT)

To obtain protection under the CAT, you must show that there is at least a 51% chance that you will be tortured in the future. It does not matter the reason that you will be tortured. You must show that if the government of your home country knew about the torture, they would do nothing to stop it.

ASYLUM	WITHOLDING OF REMOVAL OR CAT
<p>You CAN:</p> <ul style="list-style-type: none"><li>• Live and work in the United States</li><li>• Become a lawful permanent resident and citizen of the United States</li><li>• Bring your spouse and children to the United States</li><li>• Travel outside of the United States</li></ul>	<p>You CAN:</p> <ul style="list-style-type: none"><li>• Live and work in the United States</li></ul>
<p>You CANNOT:</p> <ul style="list-style-type: none"><li>• Return to the Country you sought asylum from</li></ul>	<p>You CANNOT:</p> <ul style="list-style-type: none"><li>• Become a lawful permanent resident or a citizen of the United States</li><li>• Bring your spouse and children to the United States*</li><li>• Leave the United States</li></ul>

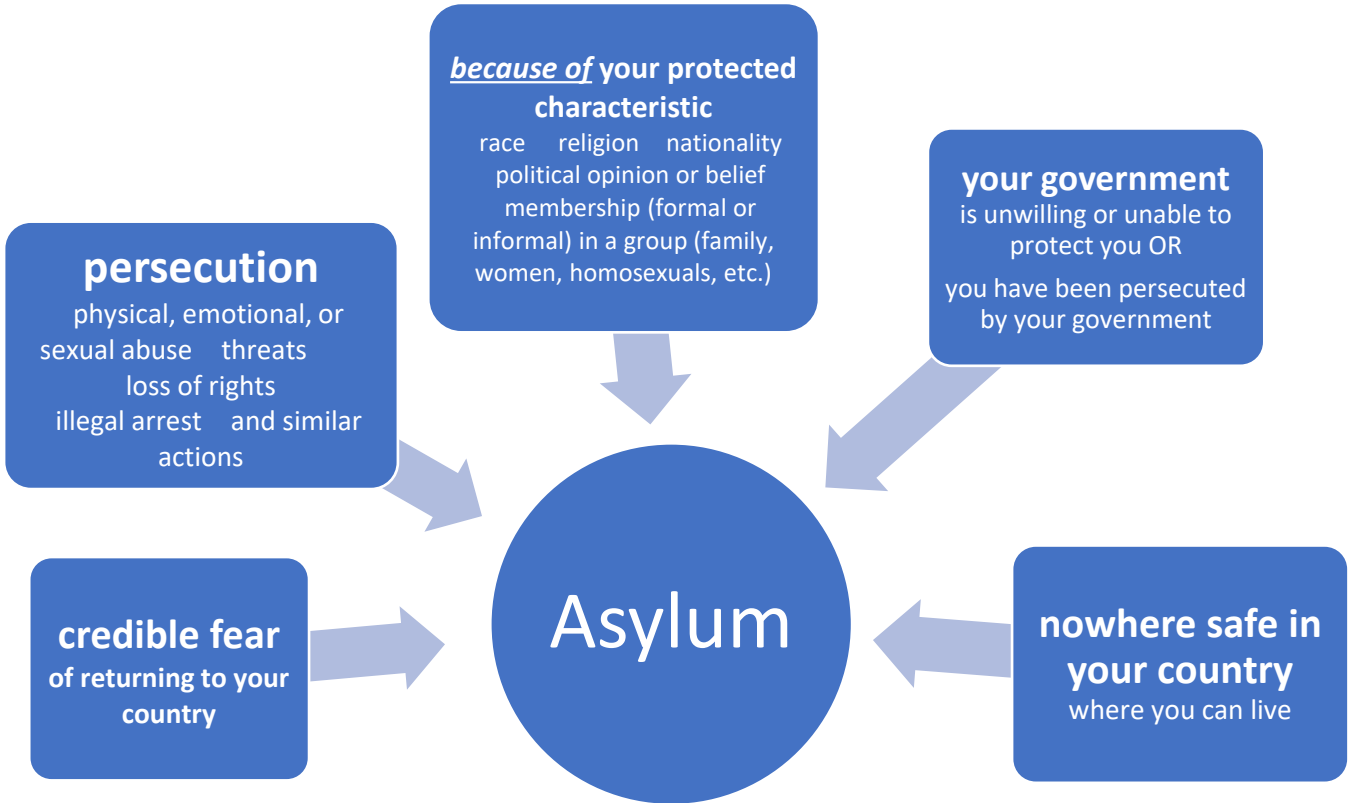
\* If you entered the United States after May 11<sup>th</sup>, 2023, and are granted Withholding of Removal or CAT, and the only reason you did not qualify for asylum was due to the Circumvention of Lawful Pathways rule, you can bring your spouse and children to the United States.

- You cannot bring your spouse and children to the United States if you did not qualify for asylum because of other reasons, such as:
  1. You applied for asylum outside the one-year filing deadline,
  2. You were previously removed, or
  3. Your criminal history.

### IV. PREPARING TO TALK ABOUT YOUR ASYLUM CASE

Before your credible fear interview, immigration judge review, or the review of your asylum application, think about what you want to say. You can focus on your current fear and why you came to the United States at this time. **Everything you say is confidential.** No one in your home country will know the information you share. To practice, answer the questions: Why are you afraid to return? What has happened to you in your country of origin? Why did that happen to you? When did it happen? What would happen if you had to return? How do you know that the authorities in your country are not going to protect you? Is there anywhere you can live safely in your country?

Your job is to tell the truth and show that your case meets the asylum requirements listed here:

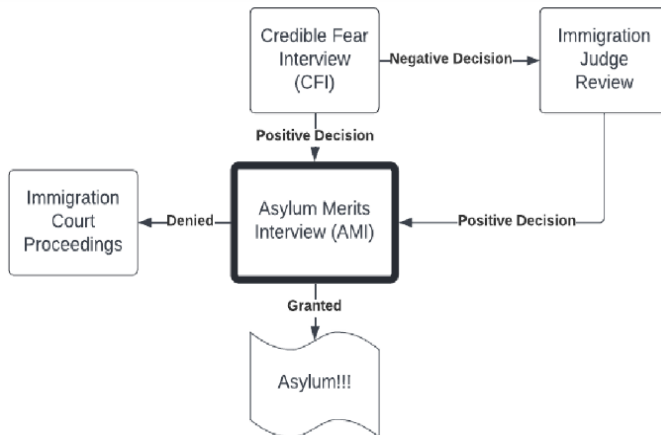


#### IV. ASYLUM PROCESSING RULES

On May 31, 2022, new asylum processing rules went into effect. The new processing rules do not currently affect everyone in expedited removal proceedings; however, they do affect certain individuals who the United States government has selected based on where they plan to live in the United States.

**The information from this point forward applies only to those subject to the new processing rules.**

#### ASYLUM MERITS INTERVIEW (AMI)



If you received a positive decision after your credible fear interview and are released after your CFI to one of the following six cities: **Boston, Chicago, Houston, Los Angeles, Miami, Newark, New Orleans, New York, or San Francisco**, you will likely then have an Asylum Merits Interview (AMI). At your AMI, an asylum officer (not an Immigration Judge) will review your case and all of the evidence presented.

- Your Asylum Merits Interview (AMI) should be held 21 to 45 days from when you received a copy of the record of your positive credible fear decision.
- The information you provide at your CFI becomes your asylum application (no form is required).
- The date you receive a copy of your CFI record is considered the date you applied for asylum.
- All changes, corrections, and additional information or evidence are due to the Asylum Office 7 days before the AMI (10 days if sent by mail).
- Asylum officers may consider late submissions for good cause.
- Generally, asylum officers will not consider late submissions that would prevent them from making a decision within 60 days after you receive the CFI record.
- **You have the right to:**
  - Have an attorney represent you at the AMI, but the Government will not provide a lawyer;
  - Make a closing statement at the end of the AMI; AND
  - Request an interpreter in your native language or a language you are **fluent** in.
- If the Asylum Officer grants your application for asylum, you have won your case and now have legal immigration status in the United States as an asylee – congratulations!
- If the Asylum Officer denies your application for asylum, you will have the opportunity for an immigration judge to review your asylum application in streamlined immigration court proceedings.

## Streamlined Immigration Court Proceedings After Denial at Asylum Merits Interview



### Initial Master Calendar Hearing (MCH)

- This is a preliminary hearing where the judge will inform you of your rights and review the information in the Notice to Appear.
- The MCH should be scheduled 30-35 days after an asylum officer denies your application for asylum after an AMI.
- You should receive a full transcript of your AMI at this hearing, if not sooner.

### Status Conference (SC)

- This is another preliminary hearing where both the asylum applicant and the government attorney must provide the court with specific information.
- The SC should be scheduled 30-35 days after the MCH.
- At the SC you must tell the court:
  - o If you will testify;
  - o Who you will call as witnesses;
  - o If you plan to file additional evidence;
  - o If there were mistakes or things left out from the AMI record;
  - o If you wish to continue with your application for asylum;**AND**
  - o If you will apply for any other immigration relief besides asylum.
- Generally, you must submit initial evidence no later than the SC. If you wish to submit supplemental evidence, you must do so no later than 5 days prior to the merits hearing.

### Individual Calendar Hearing (Merits Hearing)

- This is your final hearing in front of the Immigration Judge where you will present your case.
- The Merits Hearing should be scheduled 30 days after the SC or 60-65 days after the MCH.
  - o The Merits Hearing must be held within 135 days of the MCH unless fundamentally unfair.
- The Immigration Judge may make a decision without a Merits Hearing:
  - o If the Immigration Judge decides they can approve the case based on the AMI record and evidence submitted; OR
  - o If no one requests testimony and the government attorney does not ask to speak with you.



\*\*\*IMPORTANT NOTES\*\*\*

- **You have the right to:**
  - A lawyer, but the Government will not provide a lawyer;
  - An interpreter in your native language or a language you are fluent in;
  - Offer testimony;
- Waiving your right to offer testimony could result in not having a final Merits Hearing.
  - Present all defenses you qualify for; AND
  - Appeal the Immigration Judge's decision.
- If you choose to apply for a defense other than asylum and meet the basic requirements, your case will not move on the same timeline and will likely move more slowly.
- It is possible to ask for deadline extensions if you can show there is a good reason for the extension.
  - Each extension cannot be longer than 10 days unless the Immigration Judge decides a longer extension would be more efficient.
  - Generally, you cannot receive an extension that would cause your merits hearing to take place more than 90 days from your master calendar hearing or more than a total of 30 days of extensions throughout your case.
  - If there are scheduling delays caused by the immigration court or government attorney, those days **should not** be considered in your requests for extensions.
    - DHS' failure to meet deadlines also does not mean you advance to the next step automatically or that you will be automatically granted asylum.