September 14, 2026

Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
5900 Capital Gateway Drive
Camp Springs, MD 20746

Re: Affirmative Asylum Referrals Without Interview, DHS Docket No. USCIS-2026-0199

To Whom It May Concern,

The Center for Immigration Studies (CIS) respectfully submits the following public comment to the U.S. Citizenship and Immigration Services (USCIS) in response to the Department of Homeland Security (DHS)'s interim final rule (IFR), *Affirmative Asylum Referrals Without Interview*, DHS Docket No. USCIS-2026-0199**,** as published in the Federal Register on July 28, 2026.

CIS is a national, nonprofit, public-interest organization comprised of concerned citizens who share a common belief that our nation's immigration laws must be enforced, and that policies must be reformed to better serve the national interest. CIS examines trends and effects, educates the public on the impacts of sustained high-volume immigration, and advocates for sensible solutions that enhance America's environmental, societal, and economic interests today and into the future.

I. Background

Section 208 of the Immigration and Nationality Act (INA) governs processes, procedures, and legal standards for requesting and granting asylum in the United States. INA § 208(a) governs the eligibility to apply for asylum. This section generally allows any alien who is physically present in the United States, irrespective of such alien's status, to apply for asylum in accordance with section 208. Aliens, however, who are subject to a safe third country agreement or who have been present in the United States for more than one year are barred from applying for asylum, subject to additional exceptions and limitations.[1] Congress prohibits judicial review from a determination that an alien is barred for applying for asylum under this section.[2]

INA § 208(b) governs the conditions for granting asylum, or, in other words, eligibility standards for receiving asylum. In general, the Secretary of Homeland Security or the Attorney General

[1] INA § 208(a)(2).
[2] INA § 208(a)(3).

may grant asylum to an alien who has applied for asylum, in accordance with the requirements and procedures established by the Secretary or Attorney General if they determine that the alien is a refugee within the meaning of INA § 101(a)(42)(A).[3]

An alien is considered a refugee if he or she is outside of his or her country of nationality (or, if stateless, his or her country of last habitual residence) and is unable or unwilling to return to that country and is unable or unwilling to avail himself or herself of that country because he or she has suffered past persecution or there is a reasonable possibility the alien will suffer future persecution in the alien's country of nationality (or, if stateless, in his or her country of last habitual residence) on account of his or her race, religion, nationality, membership in a particular social group, or political opinion.[4] An alien who establishes past persecution is presumed to have a well-founded fear of persecution on the basis of the original claim.[5] That presumption may be rebutted if an asylum officer or immigration judge finds by a preponderance of the evidence that there has been a fundamental change in circumstances such that the alien no longer has a well-founded fear of persecution in their country of nationality (or, if stateless, in the applicant's country of last habitual residence), or that the alien could avoid future persecution by relocating to another part of the alien's country of nationality (or, if stateless, another part of the alien's country of last habitual residence) and it would be reasonable to expect the alien to do so.[6]

Part 208 of 8 C.F.R. gives U.S. Citizenship and Immigration Services (USCIS) initial jurisdiction over an Application for Asylum and for Withholding of Removal, Form I-589. Because asylum is a discretionary benefit, no alien has a right to asylum nor a specific application procedure outside of what has been established by Congress and by regulation.[7]

While USCIS has initial jurisdiction over affirmative asylum applications, nothing in statute requires that USCIS interview an applicant or even adjudicate an affirmative asylum application. The USCIS Asylum Division has a long-standing practice of conducting asylum interviews for applicants who submit affirmative asylum applications to USCIS, but the INA merely designated general authority to DHS to "establish a procedure for the consideration of asylum applications" and promulgate regulations related to other conditions or limitations on the consideration of an asylum application.[8]

DHS issued this IFR because the asylum system in the United States "is facing an unprecedented crisis that is straining its adjudicatory capacity and undermining the timely protection of

[3] INA § 208(b)(1)(A).
[4] *See* INA § 101(a)(42).
[5] *See* 8 C.F.R. § 208.13(b)(1).
[6] *Id.; see also* 8 C.F.R. §§ 208.13(b)(1)(i)(A)-(B), (b)(3).
[7] *See* INA § 208(b)(1)(A).
[8] *See* INA §§ 208(b)(1)(A), (d)(1), and (5)(B).

individuals seeking refuge."[9] DHS reports that the volume of annual affirmative asylum applications has grown significantly in the past five years, peaking at 465,810 submissions in fiscal year (FY) 2023 alone.[10]

Processing times have also increased at an unsustainable rate directly because of the dramatic increase in volume of filings. DHS reported that aliens who apply for asylum today may now have to wait over 7.3 years for a resolution of their case.[11] Extreme processing times such as these impact both the integrity of the asylum program and asylum applicants personally. Structurally, these processing times create incentives for aliens who lack a lawful immigration status or may soon fall out of lawful status to file fraudulent or frivolous claims in order to remain in the United States without accruing unlawful presence and to obtain work authorization. Moreover, these processing delays will force aliens, including those with legitimate claims, to remain in what DHS describes as "prolonged legal and personal uncertainty."[12]

To increase the efficiency of the affirmative asylum program and address these issues, DHS issued this IFR to amend:

- 8 C.F.R. § 208.4(a) to remove language stating that an asylum officer "in an interview" shall review the application and give the applicant the opportunity to present any relevant and useful information bearing on any prohibitions on filing;
- 8 C.F.R. § 208.9(a)(2) to permit an asylum officer to refer without conducting an interview, based on a review of the record and other relevant evidence, as applicable;
- 8 C.F.R. § 208.10 and 208.14 to remove language referring to the "right to an" interview, consistent with the fact that there is no explicit statutory right for an asylum applicant to receive an interview;
- 8 C.F.R. § 208.14(c) to add language confirming that an asylum officer may also refer an asylum application even if no interview was conducted, and to remove language referring to the "applicant's right to an" interview; and
- 8 C.F.R. § 208.19 to add language clarifying that a denial or referral decision letter include an assessment of the applicant's credibility only "for denials."[13]

CIS generally supports this IFR. CIS, however, believes this rule can be strengthened by further amending 8 C.F.R. § 208.9(a)(2) to require that asylum officers refer all affirmative asylum applications to the immigration judges within the U.S. Department of Justice, Executive Office for Immigration Review (EOIR), for adjudication if that application was submitted by an alien

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[9] 91 Fed. Reg. 47101 (Jul. 28, 2026).
[10] 91 Fed. Reg. 47101, 47108-09 (Jul. 28, 2026).
[11] *Id*.
[12] *Id*. at 47108.
[13] 91 Fed. Reg. 47101 (Jul. 28, 2026).

who the asylum officer knows to be removable from the United States. CIS believes this amendment will further DHS's objectives in issuing this IFR, consistent with DHS's statutory authority.

II. DHS Should Amend Its Regulations to Permit an Asylum Officer to Refer an Affirmative Asylum Application to an Immigration Judge Without Conducting an Interview.

CIS strongly supports this IFR because we believe that the IFR will strengthen the integrity of the asylum program by reducing the affirmative asylum backlog, removing other structural incentives for aliens to file fraudulent or frivolous asylum applications, and allowing USCIS to more efficiently use scarce and limited agency resources. The IFR also preserves adequate process to ensure affirmative asylum applicants have a full and fair opportunity to have their claims heard and considered. Finally, the IFR brings agency processes into better alignment with the statutes governing asylum.

A. The IFR Will Strengthen the Integrity of the Asylum Program.

CIS strongly believes that allowing asylum officers to refer certain affirmative asylum applications to immigration judges without conducting interviews will support the overall integrity of the asylum system and reduce abuse of the immigration system. In addition to allowing USCIS to use its limited adjudicatory resources more efficiently, this IFR will strengthen the integrity of the asylum program because it will help USCIS reduce its backlog and thereby reduce incentives to file fraudulent or frivolous asylum applications solely to prolong an alien's ability to remain and work in the United States without lawful immigration status.

As DHS reported, USCIS is currently experiencing an historic affirmative asylum backlog of approximately 1.4 million cases, resulting from an historic increase in the volume of affirmative asylum application submissions during the past five years. [14] DHS now estimates that an affirmative asylum applicant who submits their application to USCIS today can expect to wait more than seven years to receive a decision on his or her application.[15]

In addition to impeding asylum applicants' ability to receive timely decisions on their applications, the agency's historic backlog has created an incentive structure that, by itself, encourages the filing of an affirmative asylum application regardless of the applicant's likelihood of success on their claim. Due to USCIS's 1.4 million case backlog, applicants often expect to and do remain in the United States for several years before receiving final decisions on their applications.

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[14] 91 Fed. Reg. 47101, 47108 (Jul. 28, 2026).
[15] *Id*.

The period of administrative delay itself can become a benefit associated with filing, regardless of the ultimate merits of the asylum claim. While their applications are bottlenecked within the agency, affirmative asylum applicants do not accrue unlawful status and become eligible to apply for work authorization after the 180-day waiting period elapses.[16] CIS believes that prolonged processing times have become a significant incentive to file an asylum application, even when an applicant is unlikely to qualify for asylum or has no true fear of persecution.

The program integrity issue created by long processing times is straightforward. When USCIS is able to adjudicate affirmative asylum applications promptly, an applicant without a viable claim has little to gain from filing an asylum application. An asylum officer can promptly examine and deny an application, where appropriate, and refer the case to EOIR for removal proceedings within a relatively short period of time. When applicants can reasonably anticipate that their cases will remain pending for years, however, as the IFR makes clear is the status quo today, a prospective asylum applicant's calculus changes.

This incentive is particularly strong for an alien who lacks a lawful immigration status or whose authorized period of stay is expiring. When an applicant with no lawful immigration status files an affirmative asylum application, the application may remain pending with USCIS for a substantial period before the agency conducts an interview. An asylum applicant generally will not accrue unlawful presence while an affirmative asylum application is pending. The INA also makes an applicant eligible to apply for discretionary work authorization after 180 days passes following submission of the asylum application.[17]

If USCIS ultimately determines that the applicant is not eligible for asylum and refers the case to EOIR, additional years may pass before an immigration judge adjudicates the claim.[18] Moreover, applicants who do not expect to prevail in their asylum cases may nevertheless perceive a substantial benefit in filing an affirmative asylum application if doing so delays the point at which the government can finally resolve their cases.

CIS believes this IFR will ameliorate this issue by allowing USCIS to, as an initial matter, quickly remove hundreds of thousands of cases from its affirmative asylum backlog, but also allow USCIS to prevent the backlog from returning to unsustainable levels in the future. A regulatory framework that allows asylum officers to identify appropriate referral cases from the written record, which includes the alien's application and all evidence submitted to support their

[16] *See* INA § 208(d)(2).
[17] INA § 208(d)(2).
[18] Transactional Records Access Clearinghouse, *Immigration Court Backlog (Historical backlog from 1998 through July 2026)*, (reporting that the average days pending since receiving a notice to appear (NTA) is 939 days).

claim, and move them promptly to immigration court reduces the expected procedural benefit of filing an abusive application.

Further, there is substantial evidence that some affirmative asylum applicants with low likelihoods of receiving an asylum grant are abusing the asylum system primarily as a means to remain lawfully present in the country. This practice undermines the integrity, agility, and responsiveness of the asylum program as a whole.

For example, DHS reported that as of December 11, 2025, 444,724 pending affirmative asylum applications (approximately 31 percent of the affirmative asylum backlog) were filed more than one year after the alien's last entry, and as a result, are unlikely to be meritorious. Of these, 129,525 pending applications were filed more than 10 years after the alien's last entry.[19]

Under section 208 of the INA, an alien may be granted asylum based on an application filed more than a year after entering the United States in extremely limited circumstances: if the alien can prove to the satisfaction of the adjudicator either changed circumstances that materially affect the alien's eligibility for asylum or extraordinary circumstances relating to the delay in filing.[20] An alien who is denied asylum on this basis may still receive withholding of removal, an alternate form of humanitarian protection, but only from an immigration judge.[21]

Moreover, DHS data shows that where aliens do not file a timely application and are ultimately referred to immigration court, a majority fail to qualify for an exception to the filing deadline even after an interview with a USCIS asylum officer is conducted. Additionally, DHS reported that approximately 94 percent of untimely filed applications over the past five fiscal years are still awaiting an interview with USCIS or have completed the interview process but are pending adjudication.[22]

By allowing asylum officers to refer these types of cases to EOIR without first conducting an interview, this IFR will conserve administrative resources that prolong the processing time of an affirmative asylum application and eliminate a duplicative layer of adjudication. CIS strongly believes that this reform will allow USCIS to quickly reduce its backlog and decrease adjudication times for applicants with bona fide claims.

B. The IFR Preserves Due Process for Affirmative Asylum Applicants.

CIS disagrees with comments that argue this IFR violates affirmative asylum applicants' due process rights. Contrary to suggestions that eliminating a regulatory entitlement to a USCIS

[19] 91 Fed. Reg. 47101, 47104 (Jul. 28, 2026).
[20] INA § 208(a)(2)(D).
[21] *See* INA § 241(b)(3).
[22] 91 Fed. Reg. 47101, 47110 (Jul. 28, 2026).

interview deprives applicants of due process, the IFR preserves sufficient process to ensure that affirmative asylum applicants receive a full and fair opportunity to present their claims.

The Supreme Court has repeatedly held that how much procedure is "due" requires balancing the private interest affected, the risk of an erroneous deprivation of that interest, and the government's interests, including its administrative and fiscal burdens.[23] Moreover, the government generally must provide a meaningful opportunity to be heard and an impartial decisionmaker.[24]

No alien, however, is entitled to receive asylum in the United States. Congress created asylum as a discretionary immigration benefit.[25] INA § 208(b)(1)(A) authorizes, but does not require, the Secretary of Homeland Security or the Attorney General to grant asylum to an eligible alien. Moreover, the United States nonrefoulement obligations are not implemented through the asylum program, but are rather implemented through withholding of removal, which is an alternative form of relief for available for individuals who fear persecution in their country of origin.[26]

Importantly, the IFR does not authorize USCIS to deny an affirmative asylum application without giving the applicant an opportunity to be heard. To the contrary, under this framework, asylum officers are permitted to review the alien's written record, Form I-589, Application for Asylum and for Withholding of Removal, and all evidence submitted by the alien in support of his or her claim.[27] An asylum officer may also only refer applicants who lack another lawful basis to remain in the United States and who therefore may be placed in removal proceedings to EOIR, where they may present their applications for asylum and withholding of removal before an immigration judge.[28]

A referral to EOIR is also not a final denial of asylum.[29] The IFR, thus, only changes the forum and sequencing of adjudication for these types of cases. It does not eliminate the applicant's

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[23] *See Mathews v. Eldridge*, 424 U.S. 319 (1976); *see also Zadvydas v. Davis*, 533 U.S. 678, 693-94 (2001) (discussing the scope and applicability of due process in immigration proceedings).
[24] *See Goldberg v. Kelly*, 397 U.S. 254, 271 (1970) ("Finally, the decisionmaker's conclusion as to a recipient's eligibility must rest solely on the legal rules and evidence adduced at the hearing. To demonstrate compliance with this elementary requirement, the decisionmaker should state the reasons for his determination and indicate the evidence he relied on, though his statement need not amount to a full opinion, or even formal findings of fact and conclusions of law. And, of course, an impartial decisionmaker is essential.") (internal citations omitted).
[25] *See INS v. Cardoza-Fonseca*, 480 U.S. 421, 423 (1987) ("Section 208(a) of the Act… authorizes the Attorney General, in his discretion, to grant asylum to an alien who is unable or unwilling to return to his home country 'because of persecution or a well[-]founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.'").
[26] INA § 241(b)(3)(B); *see also INS v. Stevic*, 467 U.S. 407, 414-421 (1984) (history of U.S. refugee law); *see generally Cardoza-Fonseca*, (distinguishing asylum and withholding of deportation).
[27] *See* new 8 C.F. R. § 208.9(a)(2).
[28] 91 Fed. Reg. 47101 (July 28, 2026).
[29] *Id*. at 47104.

ability to demonstrate eligibility for this discretionary immigration benefit or otherwise seek protection from an immigration court. Referred applicants can present their asylum applications in removal proceedings before an immigration judge.[30]

Moreover, applicants referred without interview retain a meaningful opportunity to present their claims with the immigration court. The applicant retains the ability to present testimony and documentary evidence, to be represented by counsel at no expense to the government, and to seek applicable forms of protection or relief within EOIR's jurisdiction.[31]

An adverse immigration judge decision also generally preserves an alien's ability to appeal. Denials by immigration judges are generally subject to administrative review by the Board of Immigration Appeals and judicial review in the federal circuit courts.[32] The IFR, therefore, saves administrative resources because it eliminates a potentially duplicative opportunity to be heard before multiple adjudicators without depriving an applicant of an opportunity to have their claims meaningfully heard.

Due process does not require the Government to provide two separate evidentiary proceedings merely because agency regulations historically provided an additional preliminary interview before USCIS. Indeed, the statutory structure confirms that Congress did not regard a USCIS asylum interview as a necessary procedure. Congress never established a statutory right to an asylum officer interview in every affirmative case. Congress instead referred to an initial "interview or hearing" on an asylum application.[33] As DHS correctly observed, Congress knew how to require an interview expressly when it wished to do so and has imposed express interview requirements elsewhere in the INA.[34] Congress's decision not to impose such a requirement for every affirmative asylum application weighs strongly against treating the USCIS asylum officer interview as a procedure required under principles of due process.[35]

Additionally, given the scope and severity of USCIS's affirmative asylum backlog, CIS believes that the cost of denying certain affirmative asylum applicants an interview with an asylum officer is pointedly outweighed by the government's interest in efficiently adjudicating asylum applications in a timely manner and the need to deter additional illegal immigration to the United States. As discussed at length in above, allowing asylum officers to refer an affirmative asylum

[30] *Id*.
[31] *See* INA § 240 (removal proceedings).
[32] *See* INA § 242(a)(1) ("Judicial review of orders of removal"), 8 C.F.R. § 1003.1(b) ("Appellate jurisdiction" of the BIA).
[33] INA § 208(d)(5)(A)(ii).
[34] 91 Fed. Reg. 47101, 47104-05 (Jul. 28, 2026).
[35] *See Vargas-Hernandez v. Gonzales*, 497 F.3d 919, 926-27 (9th Cir. 2007) ("Where an alien is given a full and fair opportunity to be represented by counsel, prepare an application for . . . relief, and to present testimony and other evidence in support of the application, he or she has been provided with due process.").

application to EOIR without first conducting an interview in appropriate cases changes the regulation's incentive structure in favor of the government interest of strengthening the integrity and efficiency of the entire asylum program.

CIS agrees with DHS that asylum applicants will also experience sustained benefits because of this IFR.[36] By conserving agency resources and increasing the overall efficiency of the affirmative asylum process, asylum applicants, regardless of the strength of their claim, should experience faster adjudication of their cases and spend less of their lives in personal and legal limbo.[37]

CIS also strongly believes the IFR will improve procedural fairness for many applicants by reducing unnecessary delays. As DHS recognized in this rulemaking, prolonged delays can leave asylum seekers in personal and legal uncertainty and can impair the quality of the adjudicatory record as evidence becomes more difficult to obtain.[38] Faster referrals would allow applicants whose cases ultimately require immigration court adjudication to reach EOIR sooner.

Accordingly, CIS strongly believe that this IFR preserves due process for affirmative asylum applicants. CIS supports DHS's efforts to eliminate duplicative proceedings while preserving the applicant's opportunity to obtain a merits adjudication before an immigration judge, in certain circumstances. Due process does not require USCIS to conduct an additional asylum interview merely because the agency historically chose by regulation to provide one with USCIS asylum officers. By preserving a meaningful opportunity to present an asylum claim, CIS believes the IFR appropriately balances procedural fairness with Congress's equally clear expectation that asylum claims be adjudicated efficiently and expeditiously.[39]

C. The IFR Will Bring the Affirmative Asylum Program in Line with Statutory Mandates.

CIS supports this IFR because we strongly believe that it will help bring the asylum program in line with Congress's mandate that, in absence of exceptional circumstances, an "initial interview or hearing" shall commence "no later than 45 days after the date an application is filed" and final administrative adjudication of an asylum application, not including administrative appeal, will "be completed within 180 days after the date an application is filed."[40] The current regulatory framework, which provides a regulatory right to an interview, impedes if not renders impossible USCIS's ability to comply with this mandate in the vast majority of cases.

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[36] *Id.* at 47104.
[37] *Id.*
[38] *Id*. at 108.
[39] *See* INA § 208(d)(5)(A)(iii).
[40] INA § 208(d)(5)(A)(ii)-(iii).

Section 208(d) of the INA reflects congressional judgment that asylum applications must proceed rapidly from filing to adjudication. Congress directed DHS to pursue efficient adjudication by incorporating specific timeframes into statute. Although Congress qualified those timeframes by recognizing "exceptional circumstances," an asylum system in which substantial numbers of applications routinely remain pending for years bears little resemblance to the process Congress prescribed.[41]

The prior regulatory framework unnecessarily impedes the federal government's ability to meet Congress's 180-day deadline because it requires USCIS to provide an interview before it is able to dispose of every affirmative application within its jurisdiction.[42] As DHS explained in the IFR, the prior regulations required an interview even though the INA itself establishes no statutory right to an asylum officer interview in every affirmative case.[43] The IFR appropriately removes that regulatory constraint and permits an asylum officer, in certain cases, to refer an application to EOIR without first conducting an asylum interview.

Congress gave DHS discretion to create alternative procedural mechanisms through which an asylum claim could be adjudicated. Section 208(d)(5)(A)(ii) refers expressly to an initial "interview *or hearing*" (emphasis added). Nothing in the statute requires USCIS to expend its limited resources conducting interviews in every affirmative asylum case before an applicant may present the claim before an immigration judge. In fact, reading the statute to require both an interview with a USICS asylum officer and, following referral, a hearing before an immigration judge would effectively substitute "interview and hearing" for the disjunctive formulation Congress actually enacted into law.

This approach is also consistent with Congress's delegation of substantial authority over asylum procedures. Section 208(d)(1) directs the Attorney General to "establish a procedure for the consideration of asylum applications," while section 208(d)(5)(B) expressly authorizes additional regulatory "conditions or limitations on the consideration of an application for asylum" that are consistent with the INA. The relevant question therefore should not be whether applicants have historically received an asylum-office interview as a matter of regulation, but whether the statute requires that additional procedural step in every affirmative case. It does not.

DHS itself notes that, in the 1994 rulemaking, the agency considered making asylum interviews discretionary but ultimately retained mandatory interviews because it believed at that time that it could achieve its streamlining objectives without eliminating them.[44] The present caseload and backlog underscore how shortsighted (if not unreasonably optimistic) that judgment was and

[41] *Id*.
[42] *See* previous 8 C.F.R. § 208.9.
[43] *Id*.; 91 Fed. Reg. 47101, 47104-05 (Jul. 28, 2026).
[44] *See* 59 Fed. Reg. 62284, 62285 (Dec. 5, 1994); *see also* 59 Fed. Reg. 14779 (Mar. 30, 1994).

provide more than ample reason for DHS to revisit that regulatory determination. A procedural choice made by the agency more than three decades ago need not be preserved when the factual assumptions underlying that choice no longer hold.

CIS therefore believes that the IFR therefore advances the statutory scheme. Where USCIS determines that an application should be referred to EOIR, requiring an asylum officer first to conduct a full interview can consume scarce adjudicatory resources without often producing a final resolution of the claim. Those resources, consequently, cannot simultaneously be devoted to cases that USCIS is positioned to adjudicate conclusively.

Eliminating the regulatory interview requirement gives USCIS greater flexibility to allocate asylum officer resources to those cases in which an interview is most useful and to move other cases more efficiently into immigration court, in which they ultimately will be resolved. The IFR appropriately removes that self-imposed constraint and gives USCIS a tool to direct its resources toward reducing the backlog, accelerating adjudications, and bringing the affirmative asylum program closer to the scheme Congress prescribed.

III. DHS Should Strengthen the IFR By Requiring Asylum Officers to Refer All Affirmative Asylum Applications Submitted by Removable Aliens to EOIR.

CIS strongly recommends that DHS amend the IFR to require that asylum officers refer all affirmative asylum applications submitted by removable aliens to EOIR without an interview. Currently, the IFR only authorizes asylum officers to "issue a referral without interview in cases where the alien is barred from applying for asylum, is barred from a grant of asylum, does not merit a grant as a matter of discretion, or is not eligible on the merits of the claim."[45]

Under the IFR's current approach, a removable applicant may obtain an additional layer of agency processing – *i.e.,* yet another "bite at the apple" -- merely by filing an affirmative application, even though an immigration judge may ultimately need to adjudicate the same claim. Direct referral would eliminate that additional procedural step and ensure that the application proceeds promptly to an immigration judge, who is authorized to resolve both removability and the alien's request for relief. It would thus reduce the potential value of filing an asylum application principally to delay proceedings or prolong administrative processing, while preserving applicants' full opportunity to present their claims before an immigration judge.

Direct referral also would substantially increase administrative efficiency within the USCIS asylum program. Once DHS determines that an applicant is removable, requiring an asylum officer to conduct a full interview and evaluate eligibility, credibility, corroboration, statutory bars, and whether the applicant warrants a positive grant of discretion consumes scarce resources

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[45] 8 C.F.R. § 208.9(a)(2).

without necessarily producing a final resolution. Those resources could instead be directed toward applications USCIS can conclusively adjudicate, helping to reduce backlogs and improve processing times throughout the affirmative asylum system.

As discussed above, the INA does not require USCIS to conduct an interview or adjudicate an affirmative asylum claim. Referral to EOIR of cases in which DHS determines the applicant is removable will further minimize the incentive to submit a fraudulent or frivolous asylum application, increase administrative efficiency within the USCIS asylum program, and avoid duplicative adjudications, which waste both agency and taxpayer resources.

Limiting interview-free referrals to applicants whom asylum officers deem barred or ineligible preserves much of this duplication. It would also require asylum officers to make potentially complex legal and factual determinations merely to decide whether a case should be referred to EOIR without an interview. Questions involving statutory bars, eligibility, credibility, corroboration, and discretionary relief, however, are often intertwined. Requiring asylum officers to resolve those issues at the referral stage would still consume substantial agency resources while producing no final disposition on the alien’s case, because an immigration judge must again consider the application in removal proceedings.

DHS therefore should revise 8 C.F.R. § 208.9(a)(2) to provide that, upon determining that an affirmative asylum applicant is removable, USCIS will issue the appropriate charging document and refer the application to EOIR without first conducting an asylum interview. At a minimum, the final rule should authorize such referrals whenever USCIS determines that the alien lacks a lawful immigration status or is otherwise removable from the United States, regardless of whether an asylum officer has already determined that a statutory bar or other ground of ineligibility applies.