AMERICAN IMMIGRATION LAWYERS ASSOCIATION

**Policy Brief: USCIS's Unlawful Asylum Dismissals Increases Government Inefficiency and Harms Asylum Seekers**

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Upon taking office on January 20, 2025, the Trump Administration swiftly implemented policies effectively blocking access to asylum and humanitarian protection throughout the United States. One mechanism the Administration is employing is unlawfully fast-tracking deportations for certain asylum seekers after they have applied for asylum with U.S. Citizenship and Immigration Services (USCIS), using a process called expedited removal (ER), USCIS is attempting to retroactively use ER against people whom the Department of Homeland Security (DHS) previously admitted on valid visas or paroled in, but ER only applies to those *not* admitted or paroled into the United States. The dismissal notices typically contain no evidence of ER, and in nearly half of the cases AILA members have reported the asylum seekers had proof that they could not legally have been subject to ER.

This practice violates the plain language of the Immigration and Nationality Act (INA), raises significant due process concerns, and inefficiently shifts affirmative asylum cases to the immigration court backlog at great cost to the American public. These actions put asylum seekers at risk of quick deportation to their home countries, where they may face persecution or torture. This practice highlights how the current administration is rapidly transforming USCIS's mission from adjudicating immigration applications to enforcement. In some cases, DHS has not only unlawfully dismissed affirmative asylum applications but also collaborated with ICE to detain those who followed the legal process to request protection.

## Background

Noncitizens have the right to apply for asylum whether they have lawful immigration status or not.[1] There are two ways to file an asylum application (Form I-589) with the U.S. government: 1) "affirmatively" with USCIS for those not in removal proceedings and 2) "defensively" in immigration court for those in removal proceedings.

Asylum seekers who are in ER have an extra step – they must first undergo a screening called a credible fear interview (CFI) with a USCIS asylum officer. If USCIS makes a favorable credible fear finding, USCIS refers the person to immigration court to hear the asylum case.

In May 2025, AILA first became aware that USCIS was dismissing numerous asylum cases, claiming USCIS does not have jurisdiction because DHS previously placed the person in ER. If someone is in ER, USCIS cannot process their case through the affirmative asylum process.[2] However, very few USCIS dismissal letters included a copy of DHS's ER order (Form I-860), and many asylum seekers had no government-issued documents indicating that they were in ER.

While some affirmative applications can be properly closed for this reason, this overly broad sweep includes many cases that should not be dismissed. This raises significant concerns for due process, rule of law, and government efficiency.

## Improperly Dismissing Certain Asylum Cases Violates Federal Law

USCIS has dismissed cases that were not in ER or in immigration court even though it cited ER as the reason in the dismissal letters, including people DHS paroled into the U.S. ("parolees") for the purpose of applying for asylum. It is unlawful to place parolees in ER based on the expedited removal statute, which was confirmed in a recent court case.[3] In addition to violating statutes and case law, dismissing properly filed affirmative cases effectively blocks access to asylum protection as guaranteed by U.S. and international law; these dismissals halt the full adjudication process and puts them in the highly truncated ER process.

### *In nearly all cases DHS did not provide evidence of expedited removal with the dismissal notification.*

Of 134 reports about AILA members' clients:

- **96%** did not receive the expedited removal Form I-860 with the dismissal letter.
- **45%** had documents from the border confirming that they were paroled into the U.S. and therefore could not legally be subject to ER.

### *DHS is dismissing cases and applying ER to people the law does not subject to ER*

DHS is violating the plain language of the Immigration and Nationality act by attempting to retroactively subject people to ER whom DHS had previously paroled in or admitted on valid visas. ER only applies to those *not* admitted or paroled into the United States.[4]

> Case example: A 23-year-old Somali woman experienced female genital mutilation as a young girl, which has long been recognized as a human rights violation and valid basis for claiming asylum. In 2022, DHS paroled her into the U.S. She has been waiting for her affirmative asylum interview for nearly three years, only to have her case summarily and unlawfully dismissed. USCIS stated this is because she is in ER; however, she cannot legally be subject to ER because DHS paroled her into the U.S.
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> Case example: An asylum seeker operated a secret school for girls in Afghanistan, where such activity is prohibited. The Taliban government found out and threatened the individual on multiple occasions. Initially the person continued to teach but decided to flee as threats escalated. They were paroled into the United States, remain in valid parole status, and have never received an ER order. The attorney only learned USCIS had closed the case by checking the U.S. government online application system. The asylum seeker, fleeing from arrest and persecution by the Taliban government, now lives in fear of arrest by U.S. officials after fleeing to the U.S. seeking safety.

***USCIS is dismissing asylum cases even for those who entered lawfully on visas***

DHS has also dismissed the cases of asylum seekers who entered on valid visas, in clear violation of the law. Members reported clients had received dismissal letters for those who entered on visitor visas and one who entered on a religious visa. USCIS incorrectly alleged in their dismissal letters that these individuals were apprehended upon entry, and that expedited removal applies. This could not be the case, as DHS admitted them to the U.S. on visas. As stated above, ER only applies to those *not* admitted or paroled into the United States.

**Dismissing Legitimate Asylum Cases Raises Significant Due Process Concerns**

The erroneous dismissals of asylum cases deprives asylum seekers of due process protections guaranteed by federal law and the Constitution. The opportunity to be heard in a meaningful manner is a foundation of due process, as is the right to counsel.[5] By shifting asylum seekers from the affirmative process into expedited removal, it narrows access to both a meaningful hearing and counsel and raises significant due process concerns.

These asylum applicants followed the proper procedures Congress set forth by statute by applying with USCIS. By dismissing their cases, USCIS does not review their complete applications on the merits. In the typical affirmative process, an asylum officer conducts an in-depth, in-person interview with the asylum seeker to decide eligibility. The asylum seeker then presents the case by answering the officer's questions verbally and often provides extensive documentation such as photos, medical records, text messages, news articles, declarations from witnesses, country reports, and more. If the asylum seeker has a lawyer, the lawyer attends and can help provide clarification and support.

After dismissal purportedly based on ER, the only option to pursue the asylum case is to have a CFI with an asylum officer. This will likely occur with the asylum seeker in immigration detention, as DHS now frequently detains asylum seekers post-dismissal. In some cases, asylum seekers are detained after their CFI at an asylum office, regardless of the CFI's outcome. Detained CFIs occur over the phone through an interpreter who is also on the phone. Detained asylum seekers have much more difficulty preparing with their attorneys and families, presenting expert testimony, and are unable to gather evidence or regularly communicate with their attorneys.[6]

**Shifting Cases from the USCIS Backlog to the Immigration Court Backlog Compounds Government Inefficiency**

The Trump Administration is attempting to eliminate as many asylum cases as possible by placing people in ER, potentially dismissing hundreds of thousands of cases according to a June news report, allegedly to reduce the backlog and tackle fraud. While both USCIS and immigration courts have large backlogs, this new policy instead compounds these backlogs and contributes to significant government inefficiency.

These affirmative dismissals will shift the cases in USCIS's backlog to the immigration court backlog, ultimately creating more work for both USCIS and immigration courts. After dismissal,

USCIS is not finished with the case. When asylum seekers are in ER, USCIS asylum officers conduct CFIs to screen for asylum eligibility. Asylum officers then refer positive CFI cases to immigration court for a full hearing on the asylum claim, which will likely take years. In fiscal year 2024, asylum seekers in immigration court who eventually received asylum waited more than 1,283 days, or about 3.5 years, on average.

To properly reduce the backlog, the government should devote sufficient resources for USCIS to decide these affirmative cases instead of dismissing them. Asylum officers would grant asylum to those who are eligible, preventing those cases from ever going to immigration court. The government's tactics unlawfully use expedited removal to attempt to accomplish two of the Administration's imperatives: eliminating protections for asylum seekers and refugees and conducting mass deportations.

**Related Resources**

AILA, Policy Brief: ICE Arrests at USCIS Field Offices Undermine U.S. Immigration Processes

AILA, Policy Brief: Trump Administration Day One Executive Orders

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[1] 8 U.S.C. § 1158(a)(1) "[a]ny [noncitizen] who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival . . . **irrespective** of such [noncitizen's] status), may apply for asylum."

[2] 8 U.S.C. §1158(a)(1) Authority to apply for asylum, which refers to the expedited removal provision; 8 U.S.C. §1225(b) outlining the separate procedure for people subject to ER to apply for asylum.

[3] *See* Coalition for Humane Immigrant Rights et al v. Noem et al (D.C. 2025).

[4] 8 U.S.C. §1225(b)(1) Inspection of aliens arriving in the United States and certain other aliens who have not been admitted or paroled.

[5] *See Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) ("The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'"); *see, e.g., Tawadrus v. Ashcroft*, 364 F.3d 1099, 1103 (9th Cir. 2004) ("Congress has recognized [the right to counsel] among the rights stemming from the Fifth Amendment guarantee of due process that adhere to individuals that are the subject of removal proceedings."); *see also* 8 U.S.C. § 1362.

[6] *See* Coalition for Humane Immigrant Rights et al v. Noem et al (D.C. 2025); *see also* No Fighting Chance: ICE's Denial of Access to Counsel in U.S. Immigration Detention Centers, American Civil Liberties Union (2022) ("Detained immigrants, however, face monumental barriers in finding and communicating with attorneys. These barriers have rendered detained immigrants' right to counsel essentially meaningless.").



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