

Human Rights First Guidance Regarding Asylum Office Interim Final Rule Of July 28, 2026

On July 28, 2026, U.S. Citizenship and Immigration Services (USCIS) published a new [Interim Final Rule \(IFR\)](#) that went into effect immediately. The IFR gives the Asylum Office the authority to refer affirmative asylum applications to removal proceedings in immigration court without conducting an individualized interview before issuing the referral.

According to the IFR, an Asylum Office may issue a referral notice and a Notice to Appear (which places the asylum applicant in removal proceedings in immigration court) without an interview for **several reasons, including, but not limited to**, situations where:

- 1. The applicant missed their one-year-from-arrival filing deadline (OYFD).** While the IFR acknowledges that there are well-established exceptions to the OYFD (based on changed and/or extraordinary circumstances) that excuse an applicant filing their asylum application more than one year after their arrival in the United States, it implies that most applicants with an OYFD issue do not qualify for an exception. Thus, even though asylum officers are supposed to review the explanation of late filing articulated in the individual's asylum application (Forms 589) and supporting documentation before making a referral, there is a risk of referral of any case where the I-589 application was filed more than one year after the applicant's last entry to the United States
- 2. The applicant is barred from a grant of asylum, especially due to serious criminal history and/or terrorism-related issues.** The IFR suggests that responses to various I-589 questions, we believe particularly related to past criminal charges or convictions, as well as applicants' biometrics data, may establish "ineligibility for asylum" and trigger a referral without an interview under the IFR. See the full list of bars to asylum [here](#).
- 3. The applicant does not merit a grant as a matter of discretion.** The IFR provides asylum officers with broader authority to refer cases for discretionary reasons. Previously, an asylum officer was required to first decide whether an applicant met the legal elements required for establishing asylum eligibility before moving on to determining whether they merit an exercise of discretion. According to the IFR, officers no longer have to first determine whether an applicant is eligible for asylum, they can refer a case solely on the basis of discretion when "negative factors outweigh any positive factors in the totality of the circumstances." It seems clear from the IFR that any criminal history is considered a negative factor, and the IFR also allows referrals based on classified information.
- 4. The applicant is not eligible on the merits of the claim.** The IFR does not explain how the asylum officers would make such a merits determination without conducting an interview (and, often, based only on a barebones application filed many years ago). We assume that this will operate in practice similar to [pretermissions](#) in immigration court based on "a failure to state a claim."

The IFR states that Asylum Offices *may* issue Requests for Evidence (RFE) before referring the case, allowing applicants an opportunity to provide additional evidence and explanations, but can also refer cases directly to removal proceedings without an RFE. The IFR states that RFEs are more likely to be issued for I-589s that were pending before the IFR was published on July 28, 2026, while I-589s filed after that date are expected to be submitted together with all required evidence and would likely be referred to court without RFEs.

Note that the IFR **does not apply to:**

- 1. Asylum applicants who are in some other immigrant or non-immigrant status**—for example, those who entered the United States on a valid visa or parole status and have maintained their status. Applicants who are in status should still be interviewed by asylum officers who will either grant or deny their claims after the interview, per previous USCIS practice. Due to their underlying status, such individuals cannot be referred to removal proceedings in immigration court.
- 2. Asylum applicants who have already been interviewed.**
- 3. Asylum applicants who have already been scheduled for an asylum interview, even if the interview is being rescheduled.** In such cases, asylum officers will conduct the scheduled interviews, but can, of course, still refer individuals to immigration court, exercising their increased discretionary authority under the IFR.
- 4. Asylum applicants who are class members of any pending litigation or settlement agreements that require USCIS to schedule interviews.** For example, [Ms. L Settlement](#) class members.

If you (or your client) already filed an I-589 application form with USCIS, please take the following steps:

- 1. If you/your client currently holds valid immigrant or non-immigrant status,** check your records to make sure that the asylum office has this information in their records. Do not assume that the asylum office will be aware of the currently valid status. For example, for an individual in F-1 student status, check whether you've filed a copy of the Form I-20. If not, or if you are not sure if it was filed, or if you or the client have extended their status since filing the I-589, prepare and send a letter to the asylum office confirming your/your client's current status, include proof of status, and flag that you or your client are NOT subject to the IFR.
- 2. If you/your client filed their I-589 more than one year since their last entry into the United States** (regardless of whether currently in status or not), review their answer to Question C.5 on the I-589 and any proof you filed regarding applicable exceptions. Prepare and send a follow-up letter that clearly articulates the reasons why the I-589 should be considered timely and provide any corroborating evidence.
- 3. If your/your client's I-589 was re-filed with USCIS after dismissal of removal proceedings in court, and the USCIS receipt notice was not properly back-dated to the original I-589 filing date,** it is advisable to write to USCIS to make clear the original date of filing of the I-589 and that the application was timely filed. Include [USCIS guidance from 2023](#) that explicitly states that the original filing date will be honored after the dismissal of removal proceedings that required the refiling of the application with USCIS.
- 4. If you/your client has any criminal history in the United States or in any other country:** Review responses to relevant questions on the I-589 (B.2, C.3, and C.6) and prepare any amendments in case of a potential RFE. Make sure that you have all related existing records (police reports, court documents, certificates of disposition). Prepare legal arguments for why the relevant criminal history does not bar asylum and why a discretionary grant of protection is merited. Review [USCIS guidance on discretion](#) and gather evidence of positive equities.

5. **If you/your client filed the original I-589 without corroborating evidence (or filed with evidence many years ago), start working on gathering and/or updating the evidence because you might get an RFE.**
6. **In all cases, review the original I-589 and, if needed, prepare amendments to overcome any “failure to state a claim” challenge.** Make sure that the I-589 includes enough detail about the asylum claim to support all of the necessary elements to establish prima facie eligibility for relief.
7. **In all cases, ensure that both your address and the client’s address on file with USCIS are correct and up to date.** If you need to update your/your client’s address, please file Form AR-11 or change the address through your USCIS online account, and be sure in doing so to note the pending asylum application (and any other pending applications or petitions, such as for work authorization) and to input the receipt numbers for those applications, so that USCIS updates the address across the board.

If you/your client have not yet filed their affirmative I-589 with USCIS, please take the following steps:

1. **If you/your client are currently in some immigrant or non-immigrant status,** make sure to include that documentation in the I-589 submission to USCIS and flag it in your cover letter.
2. **If you/your client are filing the I-589 after more than one year since entering the United States** (regardless of whether in valid status or not), articulate and highlight the applicable exception to the OYFD bar and include corroborating evidence.
3. **Include as much evidence as possible in the initial application packet and/or work to upload additional evidence soon after filing the I-589**—it is likely that no RFEs will be issued for I-589s filed on or after July 28, 2026, and applicants will instead be referred directly to removal proceedings without an opportunity to contest the referral decision.

Disclaimer

Please note that this is HRF’s initial guidance, current as of August 7, 2026. We might refine our guidance once we see how the IFR will be implemented in practice. This guidance is not intended to constitute legal advice.

About Human Rights First: Human Rights First is a nonprofit, nonpartisan international human rights organization founded in 1978 to address the lack of legal protection for refugees and asylum seekers. We work alongside Human Rights Defenders, hold human rights abusers accountable, fight for the conditions that uphold democracy, and provide tools that bring the power of AI and advanced technologies to justice and human rights movements.

Human Rights First is based in Los Angeles, New York, and Washington D.C.