# The Department of Justice moves to gut the right of asylum

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On February 6, 2026, the Department of Justice amended its regulations to strip asylum seekers in the United States of a meaningful right to appellate review of denials of their asylum claims. These changes will go into effect after 30 days.

The Department of Justice encompasses the Executive Office for Immigration Review (EOIR), a federal administrative body, which holds the United States immigration court system as well as the immigration appellate court, the Board of Immigration Appeals (BIA). Normally, an asylum seeker files a claim for asylum before an immigration court, which concludes with a hearing on the merits of that claim before an immigration judge. If the immigration judge denies the claim and orders the immigrant deported, the asylum seeker may appeal that decision to the BIA within 30 days of the denial, at which time the BIA will review the merits of the case, determine whether the immigration judge made any errors in the denial and issue a decision either granting or dismissing the appeal.

The rule change results in the default outcome for BIA appeals to be summary dismissal, i.e., dismissal without review of the merits of a case. In addition, the 30-day appellate deadline is cut to a mere 10 days, and summary denials are directed to be issued within 15 days of filing the appeal. A case on appeal will now only be determined on the merits where a majority of permanent BIA members vote to accept the case for review. In the rare occasions this will happen, both the asylum seeker and the government must submit briefs simultaneously without an opportunity for the asylum seeker to respond to any arguments the government may make opposing the appeal.

The rule states outright that "the board cannot—and does not need to—adjudicate every case on the merits with the tools at its disposal." The rationale behind this is simply that the BIA already has a high appeal denial rate, and that its current tools are "insufficient" to review all appeals on the merits. Significantly, the DOJ issued a rule in April 2025 which reduced the number of permanent BIA members by nearly half. Therefore, the DOJ intentionally cut resources to the BIA and is now using that as a flimsy pretext to deny appellate rights to asylum seekers in furtherance of the Trump regime's onslaught against immigrants.

The BIA rule change should also be considered in the wake of a recent BIA decision, *Matter of C-I-G-M- & L-V-S-G-*, published in October 2025, and the institution of Asylum Cooperative Agreements, and the influx of hundreds of new immigration judges. Asylum Cooperative Agreements (ACAs) are agreements the United States has made with other countries which permit the deportation of asylum seekers in the United States to a third-country participant of these agreements without a hearing on the merits of their asylum claim. The rationale for these agreements is that these countries are "safe" for asylum seekers and can provide adequate alternate opportunities to seek asylum. However, these countries include Honduras, Guatemala and Uganda—all of which have State Department travel advisories due to threats of violent crime and terrorism—thus undercutting the government's claim that they are truly safe third countries.

*C-I-G-M-* states that DHS may assert that an ACA bars an immigrant from applying for asylum in the United States, which an immigration judge must rule on before determining the merits of the asylum claim. *C-I-G-M-* does not require that DHS prove anything other than that an ACA may apply to the case. The immigrant is then burdened with proving an entirely new asylum claim for the proposed third country DHS seeks to deport them to—often a country that the immigrant has never been to and has no ties to. If an immigrant is unable to make such a claim, he or she is deported to the third country proposed by DHS. *C-I-G-M-* specifically permits ACAs to be retroactively applied to immigrants who entered the United States on or after November 19, 2019, despite the agreements not going into effect until 2025.

In September 2025, the Department of Defense approved sending as many as 600 military lawyers to serve as temporary immigration judges—double the total number of immigration judges. These appointees, along with other

newer recruits, are given six-month appointments and have been trained by BIA judges who have informed them that asylum should only be rarely granted. This recruitment push follows the firing of more than 100 immigration judges in 2025. A June 2022 DOJ memo directed that new immigration judges be given six weeks of initial training, along with ongoing education for all sitting judges. The October 2025 training, however, was only three weeks. Anam Petit, a former immigration judge in Annandale, Virginia, who was fired by the DOJ in September 2025, stated "[i]f you're not having the proper training, and then on top of that you're in a very short temporary appointment, you're just being set up for failure." Emmett Soper, a former immigration judge and counsel to the EOIR director during the Biden administration, stated that "[i]n the past, training has been fairly comprehensive, and non-ideological, and we were not being pushed in any real way toward particular results."

*C-I-G-M-* thus enables DHS to request dismissal of asylum cases before merits hearings, or often at the merits hearing itself, while the DOJ, having directed immigration judges to deny as many asylum claims as possible, frequently does not give immigrants ample time to construct asylum claims for whatever third country DHS seeks to deport them to, often finding that any such asylum claims that can be made are insufficient. The immigrant is then deported to that third country. It is axiomatic that any immigrant will have difficulty proving a valid asylum claim—which requires showing a risk of *individualized*, not general, persecution—for a country they have never been to. This problem is compounded with ideologically compromised immigration judges.

*C-I-G-M-*, the February 6 rule change and the influx of new immigration judges under partisan pressure, taken together, result in asylum seekers in the United States being denied the right to a hearing on the merits of their asylum claims, ordered deported to third countries chosen for them by DHS, and denied the opportunity for any meaningful review of those denials and deportations. This throws the viability of seeking asylum in the United States into question and is a wild break with decades of judicial precedent which has exhaustively affirmed and defended the right of due process, the right to a fair trial and the right to seek asylum.

The United States is a signatory to the United Nations 1967 Protocol Relating to the Status of Refugees, which established legal obligations for the United States to provide protection to refugees and asylum seekers. The Refugee Act of 1980 established the ways through which refugees and asylum seekers may seek protection in the United States.

The Fifth Amendment to the Constitution specifically protects the due process rights of individuals. The Supreme Court has held in *Mathews v. Eldrige* (1976) that individuals are entitled to due process of law in administrative proceedings, reinforcing that the fundamental requirement of due process is the meaningful opportunity for a person to present their case.

The right to seek asylum has been reaffirmed by federal courts across the United States; *OA v. Trump,* a 2019 decision from the District Court of D.C., stated particularly that the government "may not extinguish" this right by regulation or proclamation. *Matter of E-F-H-L-*, a 2014 BIA decision, also upholds the right of asylum seekers to full evidentiary hearings, including the opportunity to testify and present evidence.

Concerning the right to appeal the denial of an asylum claim, the Supreme Court in *Santos-Zacaria v. Garland* implicitly affirmed the right of asylum seekers to pursue BIA review of denied asylum claims. The 9th Circuit also held in *Nolasco-Amaya v. Garland* that summary dismissal by the BIA is a due process violation when the appeal itself was sufficiently specific to inform the BIA of the legal challenges.

The ideological twisting of the role of immigration judges to order as many deportations as possible also runs afoul of established precedent. The Sixth Amendment to the U.S. Constitution protects the right to a fair trial. Various federal courts, including the 2nd, 3rd and 6th Circuits, have held that immigration judges must act as neutral arbiters, refrain from advocating for either party and uphold the neutrality required for a fair hearing.

The extent to which the Trump regime is grossly violating the right of immigrants to seek asylum in the United States, and the constitutionally protected rights of due process and to a fair trial, cannot be overstated. The government is attempting to justify these actions through administrative procedures, but these rule changes are not mere bureaucratic reforms and are not meant to streamline adjudication. The Trump regime is denying asylum seekers meaningful opportunities to be heard and has converted appellate review of asylum claims into a fiction. The result is a growing legal-administrative infrastructure meant to accelerate deportations and deprive asylum seekers of their rights under international law.