

# A Path to Asylum

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## A Guide to Credible and Reasonable Fear Proceedings

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The Florence Immigrant & Refugee Rights Project is a nonprofit legal services organization that works with adults and children in immigration custody in Arizona. The staff of the Florence Project prepared and updated this guide for immigrant detainees who represent themselves in their removal proceedings. We do not charge for our services. To see our guides, go to: [www.firrp.org](http://www.firrp.org).

This guide is not intended to provide legal advice. It is not a substitute for legal counsel.

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# Contents

Who Should Read this Guide? ..... 3

Did You Know that You Have a Right to Ask for Protection? ..... 4

How Are the *Credible Fear* Process and the *Reasonable Fear* Process Different? ..... 5

What Happens if You Change Your Mind and Do Not Want to Wait for Your Interview? ..... 6

How Can You Prepare for Your Interview? ..... 6

What Happens After Your Interview? ..... 8

How Can the Florence Project Help You? ..... 9

## Important Words to Know

Immigration law has a lot of technical words. Here is a list of some words you will see in this guide and a short explanation of what they mean.

- **Deportation:** ICE has put you in *deportation proceedings*, which are also called *removal proceedings*. If the judge orders you deported or “removed” from the United States, officials will send you back to the country where you are a citizen. You will not be able to legally return to the U.S. for at least 10 years.



- **Florence Project:** A group of lawyers and legal assistants who provide free legal help to people who do not have lawyers. The Florence Project wrote this guide to help you understand your case.



- **Government Attorney:** The lawyer who represents ICE when you go to your court hearings. This lawyer sits at the table next to you and talks to the judge. Government attorneys should see that justice is done. Usually, they ask the judge to order to deport you.



- **Immigration and Customs Enforcement (ICE):** The agency that has put you in deportation proceedings and detained you. ICE is part of the Department of Homeland Security, or *DHS*.



- **Immigration Judge (*judge*):** The person who will decide your case. Judges hold hearings in the courtroom and wear black robes. They should look at the facts of your case and apply the law fairly. Judges do not work for ICE.



## Who Should Read this Guide?

This guide from the Florence Project will help you if:

- You are in the United States without permission, and
- You are afraid to return to your home country.

*Asylum* is a way to stop your deportation and become a refugee in the United States. It is a type of protection from being deported. You may win asylum if you have been seriously harmed or persecuted in your home country before or if you can show that, if you are deported, you will be persecuted in the future. But how to gain asylum can be complicated, especially when you are detained.



If you tell an immigration officer or judge that you are afraid to be deported to your home country, an asylum officer may interview you. That asylum officer will decide if you can apply for asylum and which process applies to you.

Two different processes are possible — the *credible fear* process or the *reasonable fear* process.

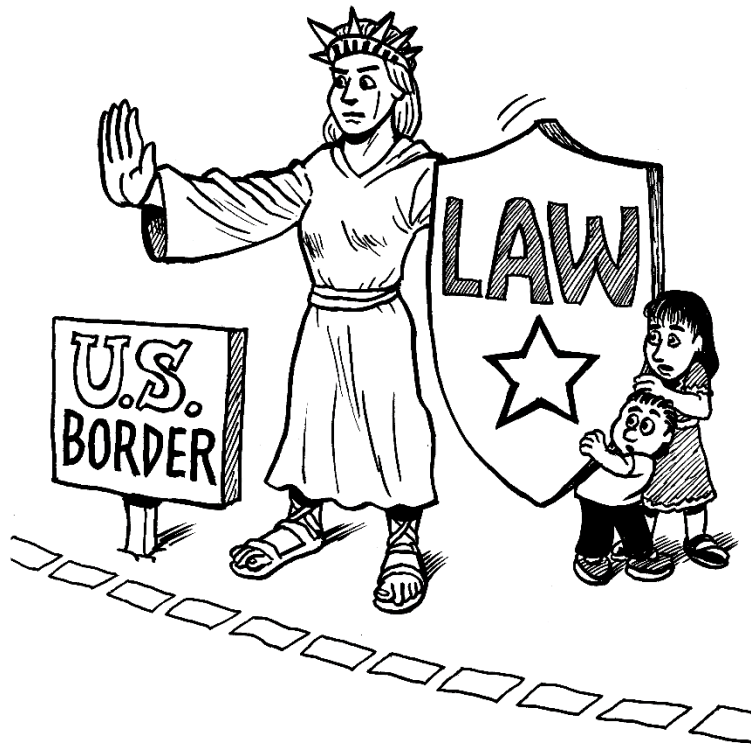
- **If you have recently come to the United States without permission**, then the *credible fear* process applies.
- **If you have been deported before, have a prior deportation order, or have been convicted of an aggravated felony and are not a lawful permanent resident**, the *reasonable fear* process applies.

The *credible fear* and *reasonable fear* processes are different from the regular deportation process. This guide will explain those processes and prepare you to advocate for yourself. For more detailed information about asylum, see the Florence Project's booklet, *I'm Afraid to Go Back: A Guide to Asylum, Withholding of Removal, and the Convention Against Torture*. Go to <https://firrp.org/resources/prose/>.

## Did You Know that You Have a Right to Ask for Protection?

By law, you have the right to ask the United States to protect you from persecution or torture in your home country. But this right is only to **ask for protection**. It does not necessarily mean that the government must let you stay here or that it cannot deport you.

In practice, if you express fear by telling an immigration officer or judge that you are afraid to be deported to your home country, then you must have the chance to tell an asylum officer your story. By expressing fear, you are exercising your right to seek protection and to start the credible fear or reasonable fear process. You *may* then be able to apply for asylum.



## **How Are the *Credible Fear* Process and the *Reasonable Fear* Process Different?**

### **About the Credible Fear Process**

The credible fear process can apply to you if:

- You do not have a prior order of deportation,
- You have not been convicted of committing an aggravated felony,
- You have expressed fear, and
- You have not been before an immigration judge.

Within 10 days of expressing fear, you should have an interview with an asylum officer. But, in Arizona, you will probably have to wait longer for your interview. During this time, you will not be able to see an immigration judge or ask for a bond.

During your interview, the asylum officer will decide if you have shown a “credible fear” of being deported, or if a “significant possibility” exists that you could win a case for asylum before a judge.

### **About the Reasonable Fear Process**

The reasonable fear process can apply if:

- You have been deported before,
- You have an in absentia order of deportation, or
- You have been convicted of committing an aggravated felony.

Unfortunately, in practice in Arizona, you will wait longer for your interview in this process than you would have in the credible fear process. Some people have waited 6 months to 12 months for their reasonable fear interviews. Although we hope that this waiting time will shorten in the future, we have no guarantee that it will.

During your reasonable fear interview, the asylum officer will decide if you have shown a “reasonable possibility” that you will be persecuted or tortured if you are deported.

## What Happens if You Change Your Mind and Do Not Want to Wait for Your Interview?

You have the absolute right to wait for your interview to apply for asylum. But be aware that you may face pressure to not wait. People may tell you that your case is not strong enough or that you will have to be detained for years before you have your interview. We know that it is hard to wait while you are in detention, but you must remember that **this may be your only chance to apply for asylum.**

You may decide that you do not want to stay in detention, waiting for your interview. If you do decide to leave detention, contact your deportation officer. You can say that you no longer want to wait for an interview and that you will accept deportation or voluntary departure if that is available.

But if you do decide to leave detention, it might be much harder or even impossible to apply for asylum later. Your level of proof will be higher in the future. The government attorney might argue that you were really not afraid because you chose to go back to your country. You must weigh the risk of these things against the possibility of harm that you face in your country and the time you would spend in detention waiting for your interview and fighting your case.

## How Can You Prepare for Your Interview?

Your interview is your chance to explain why you are afraid to return to your country. Preparing for your interview will help make your case stronger.

Keep these tips in mind when you prepare:

- **It is normal to feel nervous or scared about the process,** especially if you will be talking about frightening things that have happened to you or that may happen to you.
- **If you need an interpreter** for the interview, **tell the asylum officer right away.** If a problem with the interpreter arises or you do not understand each other well, tell the officer immediately. You can lose your case if the interpreter does not translate properly and the officer assumes that you caused the mistakes or errors. Since the officer decides if your case goes before a judge, it is especially important that you make a correction if it sounds like they misunderstood what you said.

- The asylum officer will ask you questions about yourself, your family, and why you are afraid. **Answer all questions honestly** and tell the officer if you are not sure or if you do not know an answer. Do not lie. Lying will just make things worse.

The questions will focus on your fear, not on whether you are a good person or if you deserve to stay here. Many people think that if they can show that they are good people and they only came to the United States to work and support their families, they will be allowed to stay. But this is not true. **The important issue is why you are afraid to go back to your country.**

The officer will want to know these things in your interview:



— **Who harmed, persecuted, or tortured you** (or will they do so in the future)? If the police or someone in the government harmed you, be sure to say this!

— **Why did they do it** (or will they do it)? It is not essential but it does help if the reason was something about you in particular rather than just because the person wanted money, was drunk, or something like that. For example, was the person motivated by:

- Your race,
- Your religion,
- Your nationality,
- Your political opinion, or
- Your membership in a group (your sexual orientation, gender, disability)?

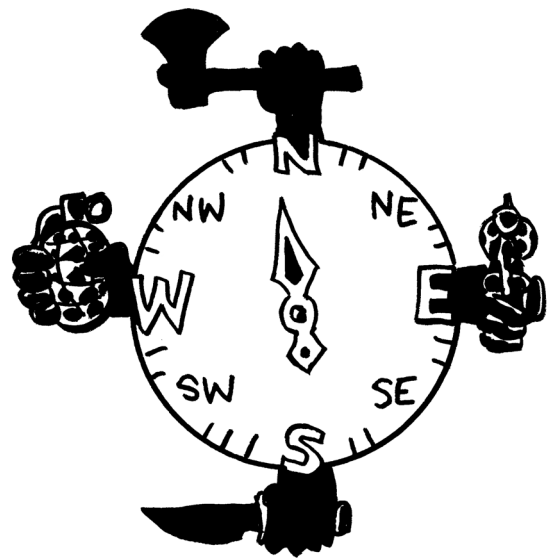


**Be specific about why.** If you tell the officer that you know you were harmed because of your political ideas, then explain precisely how you know that. For example, did the person who hurt you *say something* that told you about their reason? Was the person wearing clothing or have a hairstyle that let you know?

Think about all the clues that the persecutor gave that helped you reach a conclusion about their motivation.

- **How was the government in your country involved?** If the government itself did not harm, persecute, or torture you, what did the government of your country – including the police – try to do about it? Did you report it to them? Did they do anything about it? Did it help? In other words, can you prove that the government of your country, including the local authorities, were either unwilling or unable to protect you?
- **Can you safely live somewhere else in your country?** It is not enough to say that you cannot go somewhere else “because you do not have family there.” You must be able to show that if you tried to go somewhere else in your country:

- The people who harmed you (or who want to harm you) are still there and still want to harm you,
- The people who will harm you will find you wherever you go, or
- It would be unreasonable for you to go anywhere else, maybe because you would be at great risk of harm in general.



## What Happens After Your Interview?

In the days after your interview, the asylum officer will decide if your fear is credible or reasonable and if you should be able to apply for asylum before the immigration judge. The officer will write a summary of what you said in the interview and send it to you with the decision.

In a *reasonable* fear interview for people who have been deported before or have an aggravated felony, the asylum officer will summarize the facts of the interview and will usually ask if the summary is accurate. Once again, **it is extremely important that you speak up if the summary is not accurate.** You must correct everything that is wrong in the written summary.

- **If you pass your interview, it does NOT mean that you have won your case.** It only means that you will have the opportunity to see an immigration judge to apply for asylum, withholding of removal, or Convention Against Torture protection and tell your story.
- **If you DO NOT pass your interview, you can ask the immigration judge to review the asylum officer's decision.** But generally it is very difficult to get these decisions overturned. That means you should prepare that you will probably be deported. In the 9<sup>th</sup> Circuit, though, it is possible to obtain review of the immigration judge's decision through a Petition for Review. If you would like to do this, immediately contact an attorney for advice and assistance.