

11.10

LOP General Orientation Addendum: A Guide to Summary Removal Proceedings and Fear Interviews

Providers, please use these materials as they are useful to you. You can select, cut down and combine sections as you see fit. Based on the way that you compile your lists and information you receive prior to the GO about each participant, it may be most appropriate to incorporate parts of this script to your GO on an ad hoc basis. In other scenarios, you may want to preserve an extra half hour following your GO to conduct a PSW about these special proceedings.

How many people here have already received an order of deportation once before? How many people were picked up by Immigration Agents near the border or at an airport?

[If there are enough people in the audience that do not appear to be in Section 240 proceedings, make time in your presentation for this Addendum to the script and tailor your presentation accordingly, based on the observed needs of your audience.]

We are going to spend some time talking about some special types of deportation processes, or proceedings, that you might be in right now. Besides regular immigration court proceedings, there are three main types of proceedings that you might be in. These are called Expedited Removal, Reinstatement of Removal, and Administrative Removal. We are going to talk about them one by one now.

Expedited Removal

Expedited Removal is a way for the government to quickly remove people from the U.S. who entered the country without permission and meet certain conditions. An immigration officer (not a judge) can place a person in expedited removal proceedings. Most people in expedited removal do not go before an Immigration Judge.

I. How do you know if you are in expedited removal?

You know you are in an Expedited Removal proceeding if you received Form I-867A/B Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act or a Form I-860, Notice and Order of Expedited Removal or if the government says that you were arrested while trying to enter the U.S. at:

- a border checkpoint
- an international airport
- sea or

- near the U.S. border and you cannot prove that you have been in the U.S. for more than 14 days.

II. What are your defenses against expedited removal?

1. You have a fear of returning to your country.
 - a. If you express this fear, you will be given a form that tells you about something called a Credible Fear Interview: Form M-444, Information about Credible Fear Interview. You will have an **interview with an asylum officer** to determine whether you have a **credible fear** of return to your country.
2. You can claim that you **already have legal status in the U.S.**, such as U.S. citizenship, lawful permanent residency ("green card"), or refugee/asylum status.
 - a. If you do this, the immigration officer should try to find proof of your immigration status in their records. If no proof is available:
 - i. You will be able to make a statement under oath.
 - ii. The officer will give you an order of expedited removal, and
 - iii. Your case will be reviewed by a judge.
3. You can show that you qualify for U or T visa status. This can be hard to prove. [Insert information on the U and T visa nonimmigrant statuses here from your own GO script.]

III. What do you do if these defenses apply to you?

1. Tell an immigration or deportation officer **right away**. Give as much information about your case as you can.
2. Speak with an **immigration lawyer or legal services organization, like us**, about getting help.
3. Do not delay because Expedited Removal proceedings can take place very quickly.

IV. Can you be released when facing expedited removal?

It depends. [Mention the local trends that your site has been seeing at its LOP-covered facilities. Consider whether you are seeing people released in these circumstances and give the participants realistic expectations based on that assessment.]

Bond: You may be able to be released on **bond** if you were caught after crossing into the U.S. [Discuss the Bond rules as laid out in the GO script if you have not done so already] You usually have to ask the immigration judge for bond. If you think you are eligible for bond, then you should speak to an attorney or talk to me after this session in an Individual Orientation.

Parole: If you presented yourself at a port of entry, you may be eligible for parole. If you express fear of returning to your home country, you usually have to stay in detention at least until you have your credible fear interview with an asylum officer. [Please keep in mind local release policies and adjust this explanation to reflect what you see in practice.] If the government decides that you have a credible

fear, then you may be able to get released on **parole**. After you request parole, you will get a form called "**Parole Advisal and Scheduling Notification**" which tells you the date that your request for parole will be considered and the evidence you may present in support of your parole request.

Your deportation officer will talk with you in order to make a decision about your parole request. If you need more time, you must ask for it. Your deportation officer will want to know if you have someone outside the detention center that you can stay with and information about that person. The government may still require you to pay a parole "bond".

Humanitarian Parole: Even if you are not granted a positive credible fear determination, you can still apply for humanitarian parole. Humanitarian parole is special kind of release and is only granted in special cases where there are **urgent reasons** for why you should be released from detention. For example, you are pregnant or are suffering from an emergency medical condition that can only be addressed outside of the facility. If you think you might be eligible for humanitarian parole, we can talk about it in an Individual Orientation.

V. Consequences of Expedited Removal

If you are removed via expedited removal, you are barred from returning to the U.S. for 5 years or longer.

Credible Fear Interview

If you are in expedited removal proceedings and you tell DHS that you have a fear of returning to your country, you should be given the chance to talk to an asylum officer for a **credible fear interview**.

It is important to remember that the credible fear interview is only the first step in the process. The officer you talk to is going to decide whether you can present your case to a judge; they are not deciding your case. At the credible fear interview, an asylum officer will ask questions, either in person or via video/telephone communication. Ask the asylum officer right away if you need an interpreter. If English is not your first language, you may want to strongly consider getting an interpreter so that there is no misunderstanding about your story. If there is a problem with the interpreter or you do not understand each other well, please tell the officer immediately. It is very important that the interpreter accurately translates what you say so the officer can fully understand your situation.

I. Timing of the Interview

Usually you will have a waiting period of at least 48 hours before your interview. There is no exact waiting time, but it can be up to several months before you are interviewed. [This is another opportunity to relate the specific trends you are seeing in your local jurisdiction.] This may mean more time in detention, but it also means more time to prepare for your interview.

II. Preparing for the Interview

Keep in mind that this interview is your chance to explain why you are afraid to be deported. The asylum officer will ask you questions about yourself and your family and will ask specific questions about why you are afraid.

Remember to answer all questions **honestly**. If you do not know the answer to a question or do not remember, do not guess. Tell the officer that you do not know or that you do not remember. However, you should try to give as much information as you remember (for example, maybe you do not remember the exact date that something happened, but you remember that it was right before Christmas). If you do not have documents with you that prove your case, be sure to explain all the facts in your story. You will have time later to put together your evidence.

Be sure that the interpreter the Asylum Officer calls is someone that you are comfortable working with. You should expect that the first set of questions will be about your **background information**. This should include your birthday, home country, and whether you have any family ties in the United States.

The next set of questions will generally be about your fear of returning to your home country. Once you give your reason for being afraid, the interviewer will ask you a set of follow-up questions about that fear.

The interviewer will likely ask you whether you have faced **torture or mistreatment by government officials** in your country.

Next, the interviewer will likely ask questions about whether you have ever **persecuted other people, committed a crime in another country, or associated with terrorists or a group accused of using violence against someone else.** (bar)

Finally, the Asylum Officer will repeat back your story. Remember, it is important to tell the officer everything you are afraid of, even if it is hard to talk about. This is the place to talk about anything you want the officer to know but that the officer did not ask about.

III. Be Prepared to Answer These Types of Questions

We are going to go over the types of questions you will be asked so that you know what the Asylum Officer is trying to find out. These questions will also help you figure out if you might qualify for asylum. Remember, it is not your job to make legal arguments and you **should not** change your story in order to meet those requirements.

1. **Who** harmed, persecuted, or tortured you (or will do so in the future)?
 - a. Note: It is important to be specific and tell the officer if the person who harmed you or threatened to do so is a **police officer or connected to the government in any way.**

Remember, in order to qualify for asylum you have to show that the government in your home country could not or would not protect you from the persecution you fear.

2. Why did (or will) they do it?

- a. Note: If you are seeking asylum, this has to be something about you in particular. The person who hurt you must have been hurting you because of **your race, religion, nationality, political opinion, or membership in a group (sexual orientation, gender, disability, etc.)**
- b. Note: Be **really specific** about the why. If you say that the persecution was because of your political ideas, explain exactly how you know that was the reason. For example:
 - i. Did the person who hurt you say something specifically to you about your political belief?
 - ii. Was the person wearing some kind of clothing or have a hairstyle, for example, that led you to believe that they were from a different political party?

3. Was the **government** in your country involved with the harm?

4. If the government did not harm you itself, 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?

5. Can you **safely live somewhere else** in your country?

- a. Note: It is not enough to say you cannot go somewhere else “because you do not have family there.” You have to be able to show that if you tried to go somewhere else in your country, either:
 - i. The people who harmed you (or want to harm you) are still there and still want to harm you;
 - ii. The people who will harm you will find you wherever you go

relocation

The asylum officer will determine that you have a credible fear if you have demonstrated that you would have a chance to win your asylum case if you presented it to an immigration judge.

IV. What Happens After Your Credible Fear Interview?

The asylum officer will decide whether you have expressed a credible fear. If the asylum officer decides that you do, then you will have the opportunity to apply for **asylum, withholding of removal, or protection under the Convention Against Torture (CAT)** in front of an immigration judge. [*If you have not yet explained the fear-based claims in your GO, please take this opportunity to briefly explain these forms of relief.*]

If the asylum officer decides that you do **not** have a credible fear, you will still have the right to ask that a judge **review the asylum officer's decision**. If you request this review, you will have a short hearing with a judge and receive a **Form I-863, Notice of Referral to Immigration Judge**. The judge will read the Asylum Officer's decision and decide if it is right or wrong. Some judges will also allow you to explain why you think the Asylum Officer is wrong and give you a chance to turn in any documents that prove your case. If the judge decides that you **do not** have a credible fear, you will be ordered removed, and

will not have a chance to appeal. But if the judge decides that you have established a credible fear, you will be issued a **Notice to Appear** and allowed to have a full asylum and withholding of removal hearing before a judge.

Sometimes, you may be given a Notice to Appear before having an interview if the asylum office has a long waiting list. In those cases, you will explain your fear of returning to your home country directly to an Immigration Judge.

Reinstatement of Removal

DHS uses Reinstatement of Removal to quickly remove people from the U.S. who:

- Have been removed in the past and
- Have reentered the U.S. without permission.

Generally, under reinstatement of removal, you will **not** be able to speak with a judge. The immigration officer from DHS has the power to remove you from the U.S. based on your previous removal order.

I. How do you know if you are in Reinstatement of Removal?

You are in Reinstatement of Removal proceedings if you received a form stating that you are in Reinstatement proceedings called **Form I-871, Notice of Intent/Decision to Reinstate Prior Order of Removal** and DHS says that you entered the U.S. illegally after having been removed.

II. What are your defenses against reinstatement of removal?

1. If you **fear** that you will be **harmed or tortured** if you return to your country or
2. if you suffered harm there in the past:
 - a. If you tell an immigration officer that you are afraid to return to your country, you will be given a form that talks about a **Reasonable Fear interview** called **Form M-488, Information about Reasonable Fear Interview**, and an interview with an asylum officer to determine whether you have a “reasonable fear” of persecution or torture in your country. This is known as a **reasonable fear interview** and is different from a **credible fear interview**. Here, the asylum officer will determine whether you have a **reasonable fear** of returning to your country.
3. You believe you are a U.S. Citizen.
4. You believe that the DHS has mistakenly put you into Reinstatement of Removal based on incorrect information.
5. You believe you reentered the U.S. legally.
6. You last left the U.S. under an order of Voluntary Departure.
7. You believe that you have a visa ready for you.

8. You think you may be eligible for a U or T visa.
9. You believe you are eligible to apply for relief under NACARA or HRIFA.
 - a. If you are from Nicaragua, Cuba, Guatemala, El Salvador, Haiti, or certain countries in Eastern Europe, you may be eligible to apply for relief under the Nicaraguan Adjustment and Central American Relief Act (NACARA) or under the Haitian Refugee Immigration Fairness Act (HIFA) even though you have a prior deportation order.

III. What do you do if these defenses apply to you?

1. Tell an immigration or deportation officer **immediately**. You want to be sure that they understand your situation.
2. Speak with an **immigration lawyer or legal services organization** about getting help.

Do not delay because Reinstatement of Removal proceedings take place quickly.

III. Can you be released when facing reinstatement of removal?

Under the reinstatement of removal rules, you are not eligible for bond. However, in very special circumstances, you may be released under an order of supervision. **[If this is unlikely or impossible in your local jurisdiction, do not mention it.]** If you think you may qualify for the “exceptional circumstances” and would like to see if you can get this release, please talk to me after this class or talk to your immigration attorney.

Administrative Removal

DHS Officers can remove people through a process called administrative removal who are: (1) not lawful permanent residents; and (2) **who have been convicted of either an aggravated felony or other crimes involving drugs or firearms.** **[If you have not already discussed the consequences of criminal convictions on immigration status, explain the definition for aggravated felony and provide more information on drug and firearms now.]** Most people in administrative removal do not go before an Immigration Judge.

Under administrative removal, the DHS officer will serve you with a form called **Form I-851 “Notice of Intent to Issue Final Administrative Removal Order.** If the government decides that there is not enough evidence to remove you, DHS will terminate Administrative Removal proceedings. You will then get a chance to defend your case in front of an immigration judge.

I. How do you know you are in administrative removal proceedings?

You are in administrative removal proceedings if you are served the form I just showed you, Form I-851.

II. What rights do I have during administrative removal?

That form has information on the charges against you. You are allowed to review the evidence that DHS uses to make its decision, and you have the right to bring in other information, including documents, written sworn statements ("affidavits"), or other materials to challenge the charges. If you disagree with the charge, you will be given **10 days** from the date DHS gave you the information (or 13 days if it was mailed to you) to respond to them in writing. If you want more information on how to put together that response, we can discuss it in an Individual Orientation.

III. What are your available defenses under Administrative Removal?

1. If you **fear** that you will be **harmed or tortured** if you return to your country or
2. If you suffered harm there in the past:
 - a. If you tell an immigration officer that you are afraid to return to your country, you will be given a form that talks about Reasonable Fear interviews and an asylum officer will conduct a **reasonable fear interview** with you.
3. You believe that you are a lawful permanent resident or a U.S. Citizen.
4. You believe that you are not guilty of a CIMT or an aggravated felony.
5. You believe that one of your family members has already applied for a visa for you and the visa is both (1) approved, and (2) immediately available.

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moral turpitude*

IV. What do you do if these defenses apply to you?

1. Tell an immigration or deportation officer **immediately**. Give as much information about your case as possible.
2. Speak with an **immigration lawyer** or **legal services organization** about getting help.

Do not delay because Administrative Removal proceedings take place very quickly.

V. Can you be released when facing administrative removal?

You are most likely not eligible for bond. [*Consider the local trends within your jurisdiction.*]

In the administrative removal process, you are not eligible for parole if you are not eligible for bond.

VI. What are the consequences of administrative removal?

Once removed, you may be barred from ever reentering the United States.

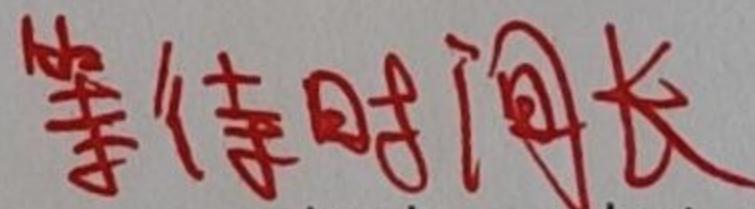
Reasonable Fear Interview

If you are in a reinstatement of removal or an administrative removal proceeding, and you tell the immigration officer that you have a fear of returning to your country, you should be referred to an asylum officer for a **reasonable fear interview**. [If members of the audience indicate that they do not want to be in reasonable fear proceedings, provide information on the local procedures for retracting their fear claim.]

Unlike in the credible fear process, if you are in a **reasonable fear process**, the Immigration Judge will say **you are not eligible for asylum**. If you pass this interview, you will have the right to a hearing before a judge on withholding of removal or CAT [Explain these forms of relief if you have not done so already.]

The **reasonable fear interview** is a lot like the **credible fear interview**. [Remember, you may need to pull from the Credible Fear section above if you are explaining Reasonable Fear interviews separately so that your participants have all the necessary information for preparing their story and understanding their claim.] However, there are a few important differences:

I. Timing



A reasonable fear interview is supposed to be conducted no later than 10 days after DHS officially decides to remove you, but it can often take much longer. Also, reasonable fear decisions must be reviewed within 10 days by an immigration judge if you get a negative decision from the Asylum Officer and ask for the judge to review it.

II. The Standard for Determination

The reasonable fear interview is **more difficult to pass** than a credible fear interview. Based on the reasonable fear interview, the asylum officer will decide whether there is a “**reasonable possibility**” of **future persecution or torture** in your case. If you pass the interview, you will be awarded a day in court with the immigration judge to prove your eligibility for withholding of removal or CAT.

III. What Happens After Your Reasonable Fear Interview?

The asylum officer will determine whether you have shown that you have a “reasonable fear” of persecution or torture. If he/she determines that you **do** have a reasonable fear of persecution or torture in your country, you will get a form explaining that you will see an immigration judge *called Form I-863 Notice of Referral to Immigration Judge*. You will then see an immigration judge to determine whether you are eligible for **withholding of removal** or **CAT**.

If the asylum officer decides that you do not have a reasonable fear of persecution or torture in your country, you have the right to have an immigration judge review the asylum officer’s decision. If the

judge reviews the Asylum Officer's decision and agrees that you **do not** have a reasonable fear, your case will go back to DHS and you will be deported from the U.S. You will not be able to appeal this decision. But if the judge decides that you **do** have a reasonable fear, you will be allowed a full hearing.

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