

Implementation of the new asylum rule

On August 20, 2021, the Department of Homeland Security (DHS) and the Department of Justice (DOJ) published a notice of proposed rulemaking (NPRM) amending the procedures and processes of protection claims and parole for individuals subject to expedited removal. Then, responding to and incorporating changes from comments received in response to the NPRM, DHS and DOJ, on March 29, 2022, issued an [interim final rule](#) (IFR), which went into effect [May 31, 2022](#).

New asylum rule

The IFR amends regulations and procedures that govern the process for removal proceedings. Specifically, as noted in the IFR, the rule “applies prospectively and only to adults and families who are placed in expedited removal proceedings” and not unaccompanied children. Most significantly, the new rule establishes a positive credible fear determination as the application for asylum, a new asylum merits interview conducted by an asylum officer, and the use of a status conference in a streamlined immigration court hearing. While the rule itself has necessary changes to make the asylum process more efficient in general, USCRI has raised a few specific [concerns](#) about the potential downsides of the reduced timelines, specifically, in regard to not allowing sufficient time for asylum seekers to find legal counsel.

Scope

Adults and families placed into expedited removal proceedings after May 31, 2022, are potentially subject to the new process. DHS has discretion whether to refer asylum seekers to an asylum merits interview (AMI) or to normal section 240 removal proceedings. This rule does not apply to unaccompanied children.

Implementation

Starting May 31, 2022, following a positive credible fear determination, DHS will refer approximately a few hundred asylum seekers each month to U.S. Citizenship and Immigration Services (USCIS) for AMIs. As USCIS builds operational capacity, the number of asylum seekers referred for AMIs will grow in a phased manner.

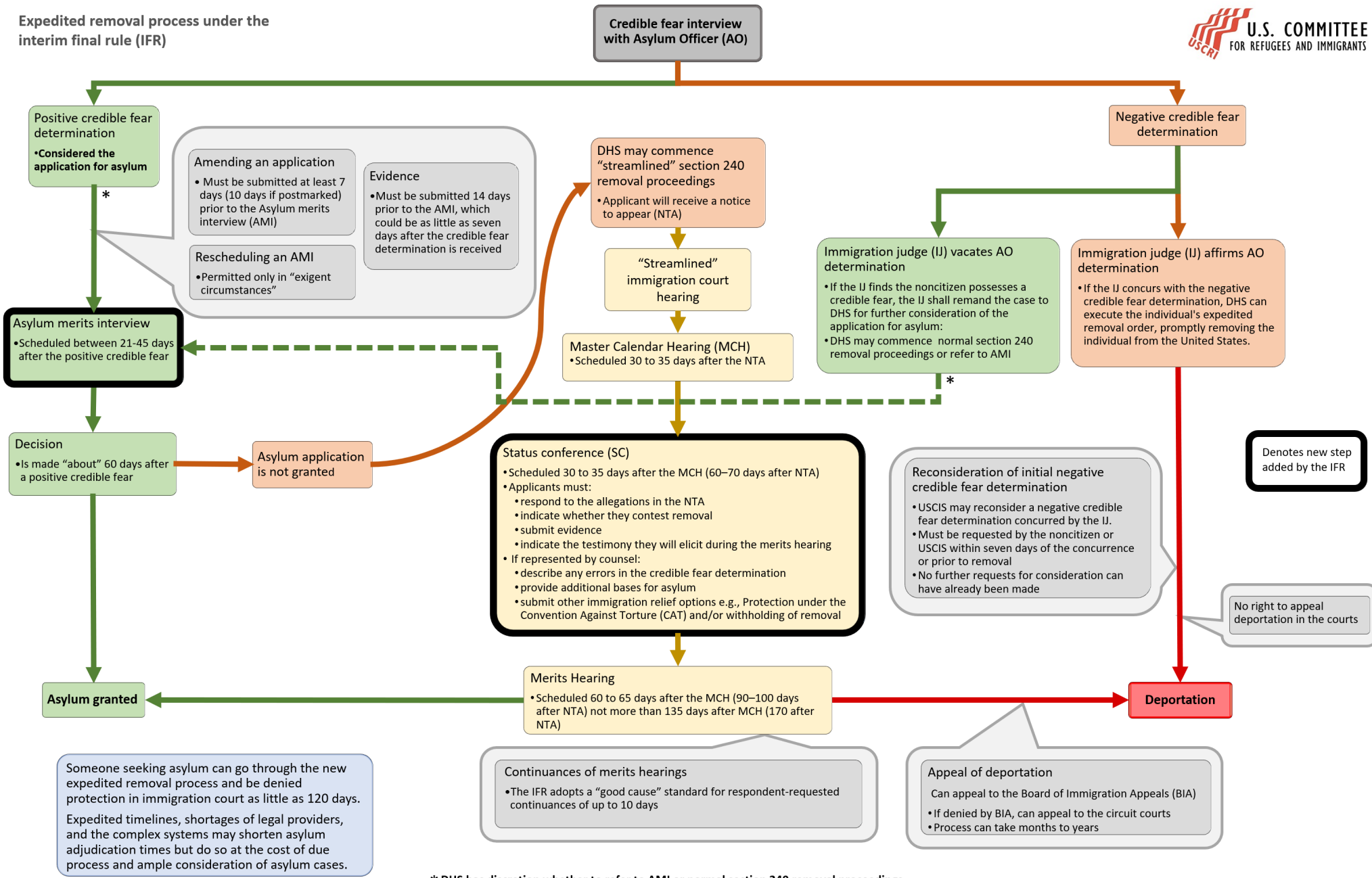
Locations

Asylum officers in two Texas detention centers, Pearsall and Houston detention centers, will conduct credible fear interviews and AMI interviews for individuals referred to USCIS after a positive credible fear determination via telephone. AMIs are limited to those individuals who indicate an intention of residing in one of the following six cities: Boston, Los Angeles, Miami, New York, Newark, or San Francisco. These locations are temporarily the focus and others will be phased in as the new process continues.

Expedited removal process under the new rule

Individuals encountered at the border by Customs and Border Protection (CBP) who are placed into expedited removal and who claim fear will be transferred to ICE detention, consistent with current procedure.

The following flowchart shows a step-by-step description of how the process will work after being placed in expedited removal:



* DHS has discretion whether to refer to AMI or normal section 240 removal proceedings

Someone seeking asylum can go through the new expedited removal process and be denied protection in immigration court as little as 120 days. Expedited timelines, shortages of legal providers, and the complex systems may shorten asylum adjudication times but do so at the cost of due process and ample consideration of asylum cases.