

Glossary: Fear Based Forms of Relief in ICE Immigration Detention

In Immigration Court

Asylum:

- **What:** Defense to deportation based on fear of return to country of origin. Can lead to permanent lawful status in US, ability to petition to reunite with family, and access to benefits.
- **How:** Applicants must:
 - Prove that they will be persecuted in country of origin because of their race, religion, national origin, political opinion, or because they are a member of a “particular social group” that would be recognized as a group in their country.
 - Prove that the government is unwilling or unable to protect them from persecution.
 - Show at least a 10% likelihood of persecution.
- **Who is not eligible:**
 - Criminal Bars - Individuals with certain criminal convictions for an “aggravated felony” or “particularly serious crimes” may not qualify.
 - One-Year Bar - Individuals must generally apply within first year after entry to qualify

Withholding of Removal:

- **What:** Defense to deportation based on fear of return to country of origin. Prevents removal to that one country, but not to other countries. No path to permanent status, but can get work permit.
- **How:** Applicants must:
 - Prove that they it is “more likely than not” that they will be persecuted in the country of origin because of their race, religion, national origin, political opinion, or because they are a member of a “particular social group” that would be recognized as a group in their country.
 - Prove that the government is unwilling or unable to protect them from persecution.
 - Show that persecution is “more likely than not” – aka 51% or more - likely to occur.
- **Who is not eligible:**
 - Criminal Bars - Individuals with a conviction for a “particularly serious crimes” may not qualify.

Convention Against Torture (“CAT”):

- **What:** Defense to deportation based on fear of return to ones’ country of origin. Prevents removal to that one country, but not to other countries. No path to permanent status, but can get work permit.
- **How:** Applicants must:
 - Prove that it is “more likely than not” that they will be tortured or killed in country of origin.
 - Prove that the person or people who will torture/kill must be the government, someone acting on the part of the government, or the government must acquiesce or be willfully blind to the harm that is being done.
 - Show that torture/deat is “more likely than not” – aka 51% or more - likely to occur.
- **Who is not eligible:**
 - No bars to this relief, but hardest to win and fewest benefits and protections if you do win.

For more on each form of relief: <https://firrp.org/resources/prose/>

Immigration Court Alphabet Soup:

- **EOIR:** Executive Office of Immigration Review = the immigration court
- **IJ:** Immigration Judge
- **NTA:** Notice to Appear = charging document that starts full deportation process before IJ
- **BIA:** Board of Immigration Appeals = appeal court above the IJ
- **USCIS:** United States Citizenship and Immigration Services = separate immigration office that mostly handles affirmative applications as opposed to defensive applications that are filed in immigration court

Before or Separate from Immigration Court

Expedited Removal:

- **What:** Rapid administrative removal process used against people who are attempting to enter or recently entered the U.S. without legal documents to do so. Generally will not get to see a Judge
- **Who Does It Apply To?**
 - Individuals who present at a port of entry and have no legal documents to enter the U.S., or
 - Individuals who are apprehended within the U.S. but within 100 miles from a border and who cannot establish physical presence in the U.S. for at least 14 days immediately prior to arrest
- **UNLESS:** The person expresses a fear of return to the country of origin.

Credible Fear Interview (CFI)

- **What:** Screening interview to determine if someone who would otherwise be subject to expedited removal should get to see a Judge and have a full immigration court proceeding on their fear claim.
 - **IMPORTANT:** Passing a CFI is not the same as being granted asylum and does not mean the person will win asylum. It is just a preliminary screening interview and the standard is lower.
- **Who Gets a CFI?**
 - Individuals who were in expedited removal and who claimed fear of removal.
 - Note: Immigration officers have discretion to issue a NTA rather than refer for CFI.
- **How:**
 - Non-adversarial interview with an Asylum Officer from USCIS. Notes taken, but no transcript.
 - Applicant must be found credible and show a “significant possibility” of success in a potential asylum claim – purposefully low standard
 - Applicant may have an attorney or other representative present in interview, but limited role.
- **What Next?**
 - Pass = NTA is issued and person is referred for full immigration court process
 - Not Pass = option for brief review by IJ, but not a full hearing on the claim. Standards shift from court to court how review is conducted.

Reinstatement of Removal:

- **What:** Rapid administrative removal process that uses a prior order of removal against a person to deport them again. Generally will not get to see a Judge
- **Who Does It Apply To?**
 - Individuals who previously have been physically deported and re-entered the country
 - No geographic or time restrictions on how long ago the removal or re-entry took place
- **UNLESS:** The person expresses fear of return to country of origin or the person can prove the prior removal order was invalid.

Reasonable Fear Interview (RFI)

- **What:** Screening interview process to determine if someone who would otherwise be subject to reinstatement of removal should get to see a Judge for withholding only proceedings.
 - **IMPORTANT:** Passing a RFI is not the same as being granted relief and does not mean the person will win. It is a preliminary screening and the standard is lower.
- **Who Gets a RFI?**
 - Individuals who were in reinstatement of removal and who claimed fear of removal.
- **How:**
 - Non-adversarial interview with an Asylum Officer with USCIS. Notes taken, but no transcript.
 - Applicant must be found credible and show a “reasonable possibility” of success in a potential asylum claim – purposefully low standard, but higher than that used in CFI
 - Applicant may have an attorney or other representative present in interview, but limited role.
- **What Next?**
 - Pass = person is referred for withholding only proceedings – cannot apply for asylum.
 - Not Pass = option for brief review by IJ, but not a full hearing on the claim. Standards shift from court to court how review is conducted.

Options for Release from Immigration Detention

Bond

- **What is bond:** A set amount of money that detained people can pay to be released to the community while they are fighting their immigration case. It is used like an insurance policy to ensure that the person will show up to all immigration court hearings
 - Minimum \$1,500, No Maximum – DHS must get full amount to release the person
 - Money returned with interest if person attends all court and immigration appointments
- **Who can set a bond?**
 - ICE officers can set bond amounts, or
 - Immigration Judges can grant release on bond
- **How to get bond:**
 - Person must be able to show that they are (1) eligible, (2) not a danger to the community, and (3) not a flight risk.
 - **For more on what evidence is needed to get bond:** <http://firrp.org/media/Bond-Guide-2013.pdf>
- **Who is not eligible for bond?**
 - Any person subject to “mandatory detention” – a system that makes entire groups of people automatically ineligible for bond.
 - **Who is under “mandatory detention”:**
 - Any person who is an “arriving alien” which means a person who was detained at an official port-of-entry trying to be admitted to the U.S.
 - Any person who has certain types of criminal convictions in the U.S. These can include even minor crimes like shoplifting or possession of a small amount of drugs or drug paraphernalia.
 - NOTE: Whether a conviction makes someone subject to mandatory detention is very complicated, so speak to a lawyer or get more information if you are concerned about if someone is not eligible for bond for this reason
 - Any person who has previously been physically deported under a valid order of removal.

Parole

- **What:** alternative way to request release from detention that is not a monetary bond
- **Who can grant parole?**
 - ICE officers can grant release on parole.
- **How:**
 - Gather documents in support of parole to send to the person’s deportation officer. Person must generally be able to prove (1) their identity, (2) that they are not a danger to the community, and (3) that they are not a flight risk.
 - Additional Evidence to include:
 - **Humanitarian Parole** – include evidence of serious medical conditions, family need, or other significant humanitarian reason supporting release from detention
 - **CFI Parole Policy** – 2009 policy memo that creates a presumption in favor of release on parole for individuals who have passed their CFIs and otherwise establish their identity and prove that they are neither a danger nor flight risk.
 - Memo available here: https://www.ice.gov/doclib/dro/pdf/11002.1-hd-parole_of_arriving_alien_found_credible_fear.pdf
 - **For more information on what documents you need for a parole request see:** <https://firrp.org/resources/prose/> (Release from Detention)