



Practice Pointer

AILA Frequently Asked Questions (FAQs) on Changes to the Asylum Office Affirmative Scheduling System

By AILA's Asylum and Refugee Committee¹

On January 29, 2018, USCIS [announced](#) a change in scheduling procedures for affirmative asylum cases. Effective immediately, USCIS is returning to a “last in, first out” (LIFO) policy for scheduling asylum interviews. This change will have a profound effect on work flow for attorneys with a heavy asylum practice.

What are the new scheduling priorities?

According to the January 31, 2018 [announcement](#), the Asylum Offices will schedule cases in the following order:

- **First priority:** Applications that were scheduled for an interview, but the interview had to be rescheduled at the applicant's request or the needs of USCIS.
- **Second priority:** Applications that have been pending 21 days or less.
- **Third priority:** All other pending affirmative asylum applications will be scheduled for interviews starting with newer filings and working back towards older filings.²

Note: Unaccompanied Minors are no longer explicitly listed as a scheduling priority.

If I file a case today, when can I expect to have it heard?

When the Asylum Offices previously used the LIFO system, interviews were scheduled within approximately 6 weeks. This is the timeframe provided in the Immigration and Nationality Act.³

How will this change affect how I prepare my cases?

When the asylum office previously followed a “first in, first out” (FIFO) system, meaning cases were handled in the order received, there was a delay from two to four years depending on the asylum office, in having cases scheduled for an interview. As a result, many practitioners filed “barebones” Form I-589 applications for asylum as quickly as possible to get their clients into the queue and then worked on the client's declaration and securing corroborating evidence closer to the projected interview date. With the change in scheduling, practitioners must be prepared for the interview within three to six weeks after filing. If there

¹ Special thanks to Victoria Neilson, Asylum and Refugee Committee Member.

² See <https://www.uscis.gov/humanitarian/refugees-asylum/asylum/affirmative-asylum-interview-scheduling>.

³ INA §208(d)(5)(A)(ii) states “in the absence of exceptional circumstances the initial interview or hearing on the asylum application shall commence not later than 45 days after the application is filed.”

is critical evidence that will take longer to secure, it will be better to wait to file (provided, of course, there is no impending one-year filing deadline issue.)

If I file now, can I adjourn if I'm not ready at the time of the interview?

Yes, asylum offices generally give one adjournment without requiring a showing of cause. However, asylum office adjournments are typically one to approximately three weeks. The new procedure continues to prioritize the scheduling of adjourned asylum interviews. Asylum offices consider second adjournment requests on a case-by-case basis.

Does this new memo affect scheduling of children for asylum interviews?

Probably yes. Previously, the USCIS Affirmative Asylum Scheduling Bulletin [webpage](#) listed “Applications filed by children” as the second priority after adjourned cases.⁴ The new priorities on the current USCIS webpage no longer list children as an independent category for prioritization.

What if my client is already in the backlog?

For clients who have already been waiting for months or years to have their asylum case scheduled, the wait is about to get much longer. Currently, each asylum office receives more asylum applications on a weekly basis than it is able to schedule for interviews.⁵ This means that unless the asylum office hires many more officers or further changes procedures, they do not seem to have any plan in place to schedule interviews for clients in the backlog. Moreover, because they likely will not be able to keep up with all newly filed applications, it is not clear whether USCIS will create a queue for those cases that are not scheduled within 45 days or whether some newly filed cases will go into the current backlog.

Can I file a mandamus action?

When the asylum offices previously used LIFO, prior to 2014, some practitioners were able to get their clients' cases scheduled by filing mandamus actions. The asylum offices would frequently settle mandamus cases by simply agreeing to schedule the interview at a date certain. After switching to FIFO in 2014, USCIS became more aggressive in its response to these cases and began filing motions to dismiss, which were largely successful.⁶ It is unclear whether USCIS will continue to take a more aggressive litigation stance if practitioners file mandamus cases, and if so, whether such cases may be more likely to succeed because of the change in scheduling priorities.

⁴ See <http://www.aila.org/infonet/processing-time-reports/affirmative-asylum-scheduling-bulletins/2015/uscis-affirmative-asylum-scheduling-bulletin>.

⁵ In March 2017, the Asylum Offices overall received 16,545 asylum applications and scheduled 6,650 interviews. See https://www.uscis.gov/sites/default/files/USCIS/Outreach/PED-Affirmative_Asylum_Statistics_-_March_2017.pdf.

⁶ See *Pesantez v. Johnson*, 2015 U.S. Dist. LEXIS 124508 (E.D.N.Y. 2015); *L.M. v. Johnson*, 150 F. Supp. 3d 202 (E.D.N.Y. 2015); *Alkassab v. Rodriguez*, 2017 U.S. Dist. LEXIS 50110 (D.S.C. Apr. 3, 2017); *Ou v. Johnson*, 2016 U.S. Dist. LEXIS 191685 (N.D. Cal. 2016); *Alaei v. Holder*, 2016 U.S. Dist. LEXIS 69382 (C.D. Cal. 2016).

See AILA and The American Immigration Council's Practice Advisory, [Mandamus Actions in the Asylum Context: Avoiding Dismissal and Proving the Case](#).⁷

What happened to the Affirmative Asylum Scheduling Bulletin?

The Affirmative Asylum Scheduling Bulletin is no longer in use because asylum offices no longer have a predictable queue for scheduling old cases.

What if my client is in the backlog and has a compelling reason to have her case expedited?

Each asylum office has a procedure in place whereby an applicant can request that her case be expedited.⁸ Asylum offices do not frequently grant expedite requests but decisions are made on a case-by-case basis.⁹ The practitioner must generally demonstrate that the asylum applicant has a spouse and/or children in harm's way outside the United States, or that the applicant or immediate relative has a serious medical issue. Some asylum offices also maintain a "short list" of cases on which an applicant or attorney can request to be placed. To be on the short list, the case must be ready for interview at sometimes very short (as little as one day's) notice.

What is USCIS's reasoning for making these changes?

USCIS states that the reason for these changes is to "reduc[e] the incentive to file for asylum solely to obtain employment authorization."¹⁰ It is likely that USCIS is implementing this change now because it anticipates an increase in affirmative asylum applications by individuals who may lose their DACA or TPS status in the coming months. As asylum practitioners who practiced prior to 2014 know, this policy change based on an assumption that asylum applicants are economic migrants who merely want an Employment Authorization Document (EAD), will exacerbate the asylum office backlog and leave thousands of legitimate asylum seekers (more than 311,000 in the current affirmative asylum backlog) in legal limbo indefinitely.

⁷ See AILA and The American Immigration Council, "Mandamus Actions in the Asylum Context: Avoiding Dismissal and Proving the Case" (June 20, 2017), available at http://www.aila.org/infonet/mandamus-actions-in-the-asylum-context-avoiding?utm_source=aila.org&utm_medium=InfoNet%20Search.

⁸ For information on how to request an expedited interview for each asylum office, see the AILA Asylum and Refugee Committee's Best Practices Guide, available at http://www.aila.org/infonet/uscis-asylum-office-guide-best-practices?utm_source=aila.org&utm_medium=InfoNet%20Search.

⁹ "Asylum office directors may consider, on a case-by-case basis, an urgent request to be scheduled for an interview outside of the priority order listed above." See <https://www.uscis.gov/humanitarian/refugees-asylum/asylum/affirmative-asylum-interview-scheduling>.

¹⁰ See <https://www.uscis.gov/humanitarian/refugees-asylum/asylum/affirmative-asylum-interview-scheduling>.