

**NATIONAL
IMMIGRATION
PROJECT**

Lawyers for the Movement

COMMUNITY EXPLAINER

PRETERMISSION OF ASYLUM CASES IN IMMIGRATION COURT

WHAT IS PRETERMISSION?

Pretermission means that the immigration judge denies your asylum application and orders you removed without ever scheduling a hearing on your claim. Generally, pretermission happens after the attorney for the Department of Homeland Security (DHS) makes a motion, either orally in court, or in writing, asking the judge to pretermite the asylum application.



WHAT HAPPENS IF MY CASE IS PRETERMITTED?

If your case is pretermitted, the immigration judge generally orders you removed (deported) unless you have some other application for relief that the immigration court is also considering.

THREE TYPES OF PRETERMISSION

There are three distinct reasons that immigration judges have been pretermiteing asylum applications. Sometimes DHS will ask the judge to pretermite for more than one of these reasons.

1 Incomplete asylum application

Immigration judges are pretermiteing some applications because of a Board of Immigration Appeals (BIA) decision called *Matter of C-A-R-R-*, which immigration judges have interpreted to allow them to pretermite applications that they think are incomplete. Immigration judges may pretermite your application as incomplete if they find that you did not respond to every question on the I-589 form with a sufficiently detailed answer.

What to do if you face *Matter of C-A-R-R-* pretermission

- ◆ **Before you get to Court:** Review your I-589 carefully and make sure you have fully answered the questions. You can attach the I-589 supplement sheets to provide details about your asylum claim and bring them to court with you. Be sure to give a detailed answer about every country you traveled through, how long you were there, and what your immigration status was, as well as what groups you or your family members were a part of in your country of origin.
- ◆ **In Court:** If DHS makes a motion to pretermite, you should ask for more time (a continuance) to add more details to your asylum application.
- ◆ **If the judge pretermite and orders you removed:** Reserve your right to appeal to the BIA and be sure to file a [notice of appeal](#) within 30 days.

2 Failure to convince the judge you could win your case even if you have the opportunity to give testimony at a hearing

Immigration judges are pretermittting some applications and ordering removal because of a BIA decision called *Matter of H-A-A-V-*, which says that if the immigration judge reads your asylum application and decides that, even if they agree with everything you said in the application, they would not grant the case, there is no need to hold a hearing. Judges may say that you did not “state a prima facie case for asylum” or that “there are no facts in dispute” to require a hearing.

What to do if you face *Matter of H-A-A-V-* pretermission

- ◆ **Before you get to Court:** Review your application and resources about asylum. Be prepared to explain why you are seeking asylum. Remember asylum claims require you to have been harmed or to fear harm because of your race, religion, nationality, membership in a particular social group (PSG), or political opinion. If your case is based on a PSG, the judge may require you to explain what the PSG is. Some examples of PSGs include: being part of a family, identifying as LGBTQ, or being part of a group that is subjected to female genital cutting. If your fear is not directly from the government, you should also be prepared to explain why you do not believe the government is able or willing to protect you.
- ◆ **In Court:** If DHS makes a motion to pretermitt, ask for more time (a continuance) to find a lawyer to review your claim. The judge is supposed to help unrepresented immigrants develop the record in court; ask the judge what they see as the problem with your application.
- ◆ **If the judge pretermitts and orders you removed:** Reserve your right to appeal to the BIA and be sure to file a notice of appeal within 30 days.

3 Pretermission to send you to another country to seek asylum

On November 19, 2019, the United States issued a regulation creating so-called Asylum Cooperative Agreements (ACAs), which allows immigration judges to order asylum seekers deported to countries they have no connection to. In theory, asylum seekers are supposed to apply for asylum in that country, but in reality, the ACA countries are often dangerous and do not have functioning asylum application systems.

What to do if you face ACA pretermission

- ◆ **In Court:** If DHS makes an ACA motion to pretermitt ask for more time (a continuance) so that you can find out more information about how people from your country or with your characteristics (race, religion, sexual orientation, etc.) are treated in the country DHS wants to deport you to. Under *Matter of C-I-G-M-*, another Board of Immigration Appeals case, the judge should give you a continuance (more time) to explain why you are afraid of being sent to that country. On the next court date, you

will have to convince the judge that you would face persecution because of your race, religion, nationality, membership in a particular social group (PSG), or political opinion in that country, or that you would be tortured there. Demonstrating that the country is generally unsafe will not be sufficient to prevent your removal to that country.

- ◆ **If the judge pretermits and orders you removed:** Reserve your right to appeal to the BIA and be sure to file a notice of appeal within 30 days.



WHY ARE THESE PRETERMISSIONS HAPPENING?

The Trump administration is trying to detain and deport as many people as it can. Pretermitting asylum applications rather than giving them hearings and considering them fully allows the administration to deport people more quickly. Unfortunately, this administration is not committed to protecting noncitizens who face harm if they are deported.