

Attorney General's Decision Makes Matters Worse for Asylum Seekers

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Blog Post

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U.S. Attorney General William Barr, shown here testifying before the House Judiciary Committee July 28, 2020 in Washington, D.C., made a decision that will make asylum cases much harder on appeal.

(Chip Somodevilla/Getty Images)

Over the last four years, the Trump administration has issued policy after policy making it harder for asylum seekers to win their cases. Now, a decision by U.S. Attorney General William Barr threatens to make immigration courts a nearly impossible barrier for asylum seekers to overcome.

The decision, issued on Sept. 24, uses the attorney general's power to supervise immigration judges. Those judges, unlike other federal judges, are employees of the Department of Justice. Though Congress requires them to "exercise their independent judgment," they are ultimately bound by the judgments of the attorney general, who can take on immigration cases himself and issue precedents that immigration judges must follow.

Before the Trump administration, this case referral power was little-known and rarely used. One retired immigration judge called it "kind of a nuclear option (<https://www.washingtonpost.com/immigration/2020/03/05/william-barr-certification-power/>).⁶ In the last four years, however, President Trump's attorneys general have used case referral more than a dozen times to attack asylum seekers and their rights. The most egregious example of this might be in *Matter of A-B*, where the Attorney General attempted to rewrite asylum law to deny asylum to those fleeing gang violence or domestic violence.

The latest case referral decision, *Matter of A-C-A-A*, would make it dramatically harder for asylum seekers to win their cases on appeal. After the asylum hearing on the merits, asylum seekers and the government often disagree on only one or two of the dozens of decisions the immigration judge makes. Before Sept. 24, their appeal to the Board of Immigration Appeals, or BIA, would only have to cover those small areas of disagreement. Attorney General Barr's decision now means the BIA must now reconsider every aspect of an asylum application; win or lose at the trial level, *A-C-A-A* means that an asylum seeker must reprove everything a second time on appeals.

This decision comes roughly one month after the Department of Justice proposed new rules (<https://www.federalregister.gov/documents/2020/08/26/2020-18676/appellate-procedures-and-decisional-finality-in->

[immigration-proceedings-administrative-closure](#)) that will give asylum seekers less time to prepare their appeals. So at the same time that the administration wants asylum seekers to do more to prove their cases with this policy change, it simultaneously proposes to speed up the process.

The decision means overturning and reexamining most asylum decisions will likely now create exponentially more work, and the BIA already has more than 91,000 [appeals pending](https://www.justice.gov/eoir/page/file/1248501/download) (<https://www.justice.gov/eoir/page/file/1248501/download>) as of June 30. With the attorney general already urging immigration judges to decide cases quickly, *Matter of A-C-A-A* practically forces appeals judges to rubber-stamp denials to keep up with their immense workload.

The new standard also makes it harder for asylum seekers to press their cases. Practically speaking, this exacting legal standard means that an asylum seeker will have to ensure that every part of their asylum claim can be re-proven upon appeal. Because asylum seekers seldom have lawyers helping them, and because immigration-court appeals do not involve face-to-face hearings, asylum seekers are unlikely to fully understand this change.

HIAS [formally opposed](https://www.hias.org/news/press-releases/hias-public-comment-opposing-proposed-rules-appellate-procedures-and-decisional) (<https://www.hias.org/news/press-releases/hias-public-comment-opposing-proposed-rules-appellate-procedures-and-decisional>) the administration's earlier effort to speed up the appeals process at the expense of asylum seekers, and we oppose this latest attempt to put additional burdens on those fleeing persecution and seeking a better life in the United States. The immigration appeals system should be a way to fairly judge asylum claims, not a stacked deck designed to turn away people who need help.

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