

**Immigration Court: BIA****Case:** *Matter of H-A-A-V-*, 29 I&N Dec. 233 (BIA 2025)**Date:** September 11, 2025**Adjudicated by:** Malphrus, Hunsucker, McCloskey**Opinion:** Malphrus**Tags:** Asylum, pretermission, prima facie eligibility**Question Presented:** Was it proper for IJ to pretermit asylum application?**Holdings:**

- IJ may pretermit I-589 if there are no material facts in dispute and the underlying claim, viewed in a light most favorable to R, does not establish prima facie eligibility for relief.
- *Matter of Fefe*, 20 I&N Dec. 116, 118 (BIA 1989) is no longer binding precedent.

**Rationale:**

- No due process rights are violated if R had opportunity to present application and evidence and speak to a judge (MCH is sufficient).

**Facts:** (233-34) Peru. I589 based on extortion by gangs in Peru. (5<sup>th</sup> Circuit does not recognize this as a viable example of persecution for purposes of asilo.)**Procedural History:**

- 2 MCHs were held.
- 5/8/2025 - IJ pretermitted I589 after DHS oral motion.

**Respondent Arguments:**

- IJ's decision is contrary to existing Board precedent 234
- IJ "violated his right to due process of law and his statutory and regulatory rights by pretermmitting his application for relief." 234

**Appeals to Statute & Precedent:**

- **INA § 240(b)(4)(B), 8 U.S.C. § 1229a(b)(4)(B) (2018):** an alien in removal proceedings "shall have a reasonable opportunity to examine the evidence against the alien, to present evidence on the alien's own behalf, and to cross-examine witnesses presented by the Government."
- **INA § 240(c)(4)(B), 8 U.S.C. § 1229a(c)(4)(B) (2018):** IJ should evaluate testimony of R / any witnesses; "weigh the credible testimony along with other evidence of record."
- **8 C.F.R. § 1240.11(c)(3) (2025):** IJ will decide such applications for relief "after an evidentiary hearing to resolve factual issues in dispute"; R may be examined under oath and may present witnesses on his own behalf. BUT: **evidentiary hearing is not necessary if there are no factual issues in dispute.** (234)

- ***Matter of C-B-*, 25 I&N Dec. 888, 890-91 (BIA 2012):** The above provisions apply to claims for withholding of removal and protection under the CAT as well.
- ***Matter of Interiano-Rosa*, 25 I&N Dec. 264, 265 (BIA 2010):** for the doctrine that IJs have broad discretion to control length and type of merits hearings.
- **INA § 240(b)(1), 8 U.S.C. § 1229a(b)(1) (2018):** IJ control over hearings
- **8 C.F.R. § 1240.1(c) (2025):** IJ control over hearings
- ***Matter of C-A-R-R-*, 29 I&N Dec. 13, 15 (BIA 2025):** IJs need not consider the merits of an I-589 that is deemed incomplete
- ***Matter of J-G-P-*, 27 I&N Dec. 642, 643, 650 (BIA 2019):** affirming IJ's pretermination of a cancellation of removal application based on criminal conviction that precluded relief.
- ***Ramirez-Mejia v. Lynch*, 794 F.3d 485, 493 (5<sup>th</sup> Cir. 2015):** 5<sup>th</sup> Circuit does not recognize economic extortion as a form of persecution under immigration law.
  - ***Castillo Enriquez v. Holder*, 690 F.3d 667, 668 (5<sup>th</sup> Cir. 2012)**
  - ***Gonzalez Soto v. Lynch*, 841 F.3d 682, 684 (5<sup>th</sup> Cir. 2016)**
  - ***Garcia v. Holder*, 756 F.3d 885, 890 (5<sup>th</sup> Cir. 2014)**
  - ***Roy v. Ashcroft*, 389 F.3d 132, 140 (5<sup>th</sup> Cir. 2004):** same goes for higher bar of torture.
- ***Matter of W-Y-C- & H-O-B-*, 27 I&N Dec. 189, 191 (BIA 2018):** “Where an applicant raises membership in a particular social group as the enumerated ground that is the basis of her claim, she has the burden to clearly indicate the exact delineation of any particular social group(s) to which she claims to belong. (citation omitted)”
- ***Matter of L-O-G-*, 21 I&N Dec. 413, 419 (BIA 1996):** holding that prima facie eligibility requires a reasonable likelihood of satisfying the requirements for relief.
- ***Matter of Fefe*, 20 I&N Dec. 116, 118 (BIA 1989):** matter of fairness to allow for testimony: IJ “should not . . . adjudicate a written application for asylum if no oral testimony has been offered in support of that application.” Testimony also necessary to avoid fraud if frivolous. MINIMUM: place R under oath and swear to application. 236
- ***Matter of E-F-H-L-*, 26 I&N Dec. 319 324 (BIA 2014):** reaffirmed *Matter of Fefe*: “an applicant for asylum and withholding of removal was entitled to a hearing on the merits of his or her applications even without having established prima facie eligibility.” (*H-A-A-V-* at 237) – **vacated by Trump 1.0 (*Matter of E-F-H-L-*, 27 I&N Dec. 266 (A.G. 2018))**
- ***Matter of Velasquez*, 19 I&N Dec. 377, 382-83 (BIA 1986):** Rs are generally bound by the admissions and concessions of their counsel (e.g., in pleadings or stipulations)
- ***Mathews v. Eldridge*, 424 U.S. 319, 333 (1976):** Due process requires that Rs be given “an opportunity to be heard at a meaningful time and in a meaningful manner.” (citation omitted)
- ***Matter of M-D-C-V-*, 28 I&N Dec. 18, 29-30 (BIA 2020):** BIA can evaluate constitutional issues, such as whether 5<sup>th</sup> Amendment Due Process rights have been violated.

**Relevant U.S. History:**

- Can't rely on *Matter of Fefe* (BIA 1989) because it predated the IIRIRA in 1996, which enacted INA § 240(b)(4)(B), and relied on regulations that are no longer in effect. 237 **Thus, *Matter of Fefe* is no longer binding precedent.**

**Discussion:**

- Sure, an evidentiary hearing is required for the I589 application. 234
- “These provisions, however, do not require a full evidentiary hearing if there are no factual issues in dispute.” 234 (per regulations)
- “Immigration Judges have broad discretion to conduct and control immigration proceedings and may determine the length and type of hearings held.” 234
  - **NOTE: IJs do not seem to have this measure of independence over their cases during Trump 2.0!**
- “Immigration judges are not required to hold merits hearings on applications that are incomplete or where an applicant is ineligible for relief and may pretermits those applications.” 235
- “...the R had a reasonable opportunity to present evidence on his own behalf, as he was represented by counsel and the Form I-589 instructions and corresponding regulations provide notice of the importance of submitting a complete asylum application and additional supporting evidence.” 235
- “...the R had an abbreviated hearing on the claim at the master calendar stage. The IJ confirmed with counsel that there were no disputed issues of fact and gave the respondent’s counsel the opportunity to proffer any PSGs in support of his application claim.” 235
  - NO PSGs were articulated by counsel in this case. 236
  - NO reason was presented for why evidentiary hearing was necessary 236
  - NO future harm was contemplated in I589 236
- IJ can act on facts conceded by counsel: “It was therefore permissible for the IJ to rely on counsel’s assertion that if the Immigration Judge accepted the facts as included in the application, there were no factual issues in dispute.” 237
- “An applicant’s fundamental due process rights are not violated when an Immigration Judge preterms an application for asylum or related relief or protection if the applicant appeared at a hearing before an IJ, had the opportunity to plead the charges and submit an application for relief and supporting evidence, and the applicant or his legal representative did not, either in writing or orally, show prima facie eligibility for the relief or protection sought.” 237-38
  - IOW, appearance at an MCH is fair enough.

**Commentary:**

- BIA likes the idea of Motions to Dismiss or Motions for Summary Judgment in civil litigation , which do not require a full evidentiary hearing when the plaintiff fails to state a claim upon which relief can be granted, and facts are undisputed and considered in a light most favorable to nonmoving party. 235n.3
- DISTINGUISH:
  - If there are material facts in dispute – e.g., whether R should have a full evidentiary hearing
  - If PSGs are presented by counsel
  - If due process & right to full & fair hearing are raised by counsel
  - If future harm is contemplated on I589
  - If pretermitted sans MCH or ICH