

# Barriers to Protection as of 2024

UPDATED RECOMMENDATIONS ON ASYLUM SEEKERS  
IN EXPEDITED REMOVAL

**8 U.S.C. Sec. 1225(b)(1)**  
**Inspection of aliens arriving in the United States and**  
**been admitted or paroled**

**(A) Screening**

**(i) In general**  
If an immigration officer determines that an alien . . . who is arriving in the United States . . . is inadmissible. . . , the officer shall order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum. . . or a fear of persecution.

**(ii) Claims for asylum**  
If an immigration officer determines that an alien . . . who is arriving in the United States . . . is inadmissible. . . and the alien indicates either an intention to apply for asylum. . . or a fear of persecution, the officer shall refer the alien to an asylum officer under subparagraph (B).

**(B) Asylum interviews**

**(i) Conduct by asylum officers**  
An asylum officer shall conduct interviews of aliens referred under subparagraph (A)(ii), either at a port of entry or at such other place designated by the Secretary.

**(ii) Referral of certain aliens**  
If the officer determines at the time of the interview that an alien is persecuted. . . , the alien shall be detained for further consideration.



# USCIRF'S MISSION

*To advance international freedom of religion or belief, by independently assessing and unflinchingly confronting threats to this fundamental right.*

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This report is based on research conducted in 2023–24 into policies and practices in place at that time. Policies and practices implemented in 2025 are not covered.

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# ABOUT THE UNITED STATES COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM

## WHO WE ARE

The U.S. Commission on International Religious Freedom (USCIRF) is an independent, bipartisan U.S. federal government commission created by the 1998 International Religious Freedom Act (IRFA). USCIRF uses international standards to monitor violations of freedom of religion or belief abroad and makes policy recommendations to the president, the secretary of state, and Congress. USCIRF Commissioners are appointed by the president and congressional leaders of both political parties. The Commission's work is supported by a professional, nonpartisan staff of regional and subject matter experts. USCIRF is separate from the U.S. Department of State, although the department's ambassador-at-large for international religious freedom is a nonvoting, ex officio Commissioner.

## WHAT RELIGIOUS FREEDOM IS

Inherent in religious freedom is the right to believe or not believe as one's conscience leads and to live out one's beliefs openly, peacefully, and without fear. Freedom of religion or belief is an expansive right that includes the freedoms of thought, conscience, expression, association, and assembly. While religious freedom is America's first freedom, it also is a core human right that international law and treaty recognize; a necessary component of U.S. foreign policy and America's commitment to defending democracy and freedom globally; and a vital element of national security, critical to ensuring a more peaceful, prosperous, and stable world.

# EXECUTIVE SUMMARY

When Congress enacted the expedited removal process in 1996 to establish stronger controls at the border and ports of entry (POEs), it included safeguards to protect bona fide asylum seekers. In 1998, Congress enacted the International Religious Freedom Act (IRFA), which authorized the U.S. Commission on International Religious Freedom (USCIRF) to conduct a study to examine the treatment of asylum seekers in expedited removal. This study aimed to ensure immigration officials implemented expedited removal in a manner consistent with the United States' obligations to protect noncitizens fleeing persecution.

In 2005, USCIRF released its [study](#), which revealed serious flaws in the processing and detention of asylum seekers in expedited removal and made recommendations to address them. Since then, USCIRF has periodically assessed whether the 2005 study's recommendations have been implemented and, if not, whether they remain relevant or need to be revised. Specifically, USCIRF released a 2007 [report card](#), a 2013 [assessment](#) of the implications of detention reforms, and a 2016 [report](#) on the effects of changes in the expedited removal process overall. Since USCIRF's last report in 2016, there have been several significant policy changes that altered the legal and procedural standards for asylum seekers in expedited removal. Altogether, the passage of time and these policy changes led USCIRF to commission this report to reevaluate the status and relevance of USCIRF's 2016 recommendations. The research took place in 2023 and 2024 and looked at policies and implementation practices in effect during that period.

## THE EXPEDITED REMOVAL PROCESS

Expedited removal is a streamlined process to screen and swiftly remove certain noncitizens. Although quick, the expedited removal process is complex, involving numerous agencies within both the Department of Homeland Security (DHS) and the Department of Justice (DOJ). These include DHS's Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), and U.S. Citizenship and Immigration Service (USCIS), and DOJ's Executive Office for Immigration Review (EOIR) and Board of Immigration Appeals (BIA). (A glossary of these and other relevant acronyms can be found at the end of the report.)

If CBP decides to subject a noncitizen to expedited removal, they can be deported without an immigration court hearing unless they express an intention to apply for asylum or a fear of persecution, torture, or return to their home country. If they express such intention or fear, they are typically referred to USCIS for a credible fear interview (CFI), which is a screening interview conducted while they are detained to determine whether there is a *significant possibility* that they would later be able to show that they qualify for asylum or other protections in an immigration court. If a USCIS asylum officer determines they have a credible fear, an EOIR immigration judge (IJ) then decides whether they are eligible for asylum or other protection and can remain in the United States. If the asylum officer determines they do not have a credible fear, the noncitizen can either ask for an IJ to review the CFI decision or they are swiftly removed from the country.

The expedited removal process has changed significantly over the past few years. At the time of the research, there had been several recent policy changes that:

- Fast-tracked the process further and allowed for processing, detention, and CFIs (as well as IJ reviews of CFI decisions) to take place in CBP facilities;
- Changed the legal standard and procedure for deciding these asylum claims;
- Applied a different process to families in expedited removal allowing their conditional release from detention; and
- Prevented certain noncitizens, whom an asylum officer determined to have a credible or reasonable fear of return, from being released from detention on bond while an IJ considers their asylum or protection claim.

## METHODOLOGY

The findings in this report are based on a literature review conducted from December 2023 to February 2024 and primary research conducted from May to August 2024. The primary research consisted of interviews, survey responses, observations, site visits, and consultations with DHS officials. The research was less extensive in time and scope than USCIRF's prior research on expedited removal but did allow for an assessment, in light of conditions during the research period, of the status and relevance of USCIRF's 2016 recommendations and the development of new recommendations.

## KEY FINDINGS

Based on primary and secondary research, it was determined that some of USCIRF’s 2016 recommendations were implemented, several were not and are still relevant, and several are no longer relevant due to recent policy changes. The research also revealed several important new concerns raised by expedited removal policies in place in 2024. Most notably:

- **The “shout test” that CBP is using under the Securing the Border policy to identify whether a noncitizen fears return may prevent bona fide asylum seekers from receiving a chance to access legal protection.** Under policies in force during periods of high encounters, noncitizens are not asked about fear during CBP screenings, as they were in the past. Instead, noncitizens must express fear on their own volition to be referred for a CFI. Previously, CBP officers were required to ask four questions about fear of return set forth on Forms I-867, although USCIRF’s past research revealed inconsistent compliance with this requirement. The research for this report found that: CBP and ICE officers did not receive additional training on how to recognize a noncitizen’s manifestation of fear; CBP and ICE facilities did not provide adequate notice to noncitizens about this new requirement; CBP officers may be improperly assessing the credibility of fear claims (an issue also identified in USCIRF’s previous research); and intake procedures using contractors, virtual processing, and artificial intelligence could hinder a noncitizen from manifesting fear while in CBP custody.
- **Coupled with the fast-tracked processes, detention in CBP facilities makes it difficult for asylum seekers to prepare for and undergo their CFIs and for lawyers to advise and represent them.** Since 2023, many steps of the expedited removal process have taken place in CBP processing facilities, including overnight multi-day holding, CFIs, and IJ reviews. Previously, CBP handled intake and CFI referrals in its facilities and then transferred detainees to ICE detention centers, which are better equipped for multi-day stays, access to counsel, and CFIs. The research found that CBP facilities are designed for short-term processing; that legal representatives are not allowed inside and have difficulty contacting detained noncitizens and obtaining notice of appearance forms; that phone access for detainees is rushed and sporadic; that lawyers do not receive adequate notice of their clients’ CFIs and IJ reviews; and that CFIs, which are telephonic, are held at odd hours, including on weekends and holidays, and can be lengthy given the exceptions and additional issues that are now considered.

## RECOMMENDATIONS

Finally, this report includes reiterated and updated policy recommendations from the 2016 report as well as new ones reflecting changes in policies. Like USCIRF’s prior recommendations in this area, these recommendations seek to further Congress’s intent that the expedited removal process both protect U.S. borders and ensure the fair and humane treatment of bona fide asylum seekers. USCIRF is troubled that many of the problems it has repeatedly documented since 2005 in the U.S. government’s treatment of asylum seekers in expedited removal—including flawed screening and documentation practices, a lack of training and quality control, inadequate information for noncitizens in the process, inappropriate detention conditions, and insufficient coordination and oversight—remain unaddressed 20 years later. These flaws raise serious concerns that the United States is erroneously returning asylum seekers to countries where they could face persecution or torture in violation of both U.S. and international law.

For the full list of detailed recommendations to DHS, DOJ, and Congress, see pages 19 to 20. While the specific policies in place at the time of the research for this report are Biden administration policies, the first Trump administration put in place a similar fast-tracked process for CFIs in CBP detention and used expedited removal to the fullest extent allowed under the law. Given that the second Trump administration is also expected to vigorously implement expedited removal, the recommendations in this report on how to better protect asylum seekers in this process while also securing U.S. borders remain relevant.

# INTRODUCTION

When Congress enacted the expedited removal process in 1996 to establish stronger controls at the border and POEs, it included safeguards to protect bona fide asylum seekers.<sup>1</sup> Congress purposely set a low screening standard to ensure that asylum seekers were not returned to countries of persecution.<sup>2</sup> In 1998, Congress enacted IRFA, which authorized USCIRF to conduct a study to determine whether U.S. immigration officials, in exercising expedited removal authority over noncitizens who may be eligible for asylum, were (1) improperly encouraging withdrawals of applications for admission; (2) incorrectly failing to refer such noncitizens for credible fear determinations; (3) incorrectly removing such noncitizens to countries where they may face persecution; or (4) improperly detaining such noncitizens or detaining them under inappropriate conditions.<sup>3</sup>

In 2005, USCIRF released a comprehensive study<sup>4</sup> that documented serious implementation flaws that placed asylum seekers at risk of being returned to countries where they could face persecution and prison-like detention conditions. USCIRF made a series of recommendations to various federal agencies to address these flaws, ensure fair and humane treatment of asylum seekers in expedited removal, and help protect U.S. borders. Since then, USCIRF has periodically assessed whether the 2005 study's recommendations were

implemented and, if not, whether they remain relevant or need revision. Specifically, USCIRF released a 2007 report card, a 2013 assessment of the implications of detention reforms, and a 2016 report on the effects of changes in the expedited removal process overall.<sup>5</sup> The most recent report, which was titled *Barriers to Protection*, found that even though some of the 2005 recommendations were implemented by 2016, there were continuing and new concerns about the processing and detention of asylum seekers. Between 2016 and 2023, the circumstances and policies surrounding the expedited removal process had changed considerably and required reevaluation, which led USCIRF to commission this report.

This follow-up report is divided into four sections. First, it explains the expedited removal process as implemented when the research was conducted. Second, it provides key findings from primary research gathered through a survey, interviews, site visits to DHS facilities, observations of CFIs, and consultations with DHS HQ officials. Third, the report reevaluates the recommendations made in the 2016 report to determine whether they were implemented and, if not, whether they remain relevant. Finally, it provides reiterated, updated, and new recommendations that reflect this research and the expedited removal process as of 2024.

<sup>1</sup> Illegal Immigration Reform and Immigrant Responsibility Act, INA § 235(b)(1), 8 U.S.C. § 1252 (1996). <https://www.govinfo.gov/content/pkg/COMPS-13677/pdf/COMPS-13677.pdf>.

<sup>2</sup> See 142 Cong. Rec. S11491-92 (September 27, 1996). See statement of Senator Orrin Hatch, former Chair of the Senate Judiciary Committee: "The (credible fear) standard ... is intended to be a low screening standard for admission into the usual full asylum process."

<sup>3</sup> International Religious Freedom Act of 1998, Pub. L. 105-292 § 605 (1998), 112 Stat. 2787 § 6474.

<sup>4</sup> U.S. Commission on International Religious Freedom (USCIRF). 2005. *Asylum Seekers in Expedited Removal: A Study Authorized by Section 605 of the International Religious Freedom Act of 1998*. Washington, DC: USCIRF. <https://www.uscirf.gov/publications/report-asylum-seekers-expedited-removal>.

<sup>5</sup> U.S. Commission on International Religious Freedom (USCIRF). 2007. "Expedited Removal Study Report Card: 2 Years Later." [https://www.uscirf.gov/sites/default/files/Reportcard%20Scorecard\\_0.pdf](https://www.uscirf.gov/sites/default/files/Reportcard%20Scorecard_0.pdf). See also U.S. Commission on International Religious Freedom (USCIRF). 2007. "Expedited Removal Study Recommendations Report Card." [https://www.uscirf.gov/sites/default/files/Score%20Card%20Grades\\_0.pdf](https://www.uscirf.gov/sites/default/files/Score%20Card%20Grades_0.pdf); U.S. Commission on International Religious Freedom (USCIRF). February 8, 2007. "USCIRF Finds Disappointing Response from Departments of Justice and Homeland Security to Its Recommendations on Expedited Removal Process." Press Release. <https://www.uscirf.gov/news-room/releases-statements/uscirf-finds-disappointing-response-departments-justice-and-homeland>; U.S. Commission on International Religious Freedom (USCIRF). 2013. *Assessing the U.S. Government's Detention of Asylum Seekers: Further Action Needed to Fully Implement Reforms*. Special Report. Washington, DC: USCIRF. <https://www.uscirf.gov/sites/default/files/resources/ERS-detention-reforms-report-April-2013.pdf>; U.S. Commission on International Religious Freedom (USCIRF). 2016. *Barriers to Protection: The Treatment of Asylum Seekers in Expedited Removal*. Washington, DC: USCIRF. <https://www.uscirf.gov/sites/default/files/Barriers%20To%20Protection.pdf>.

# THE EXPEDITED REMOVAL PROCESS

Expedited removal is a streamlined removal process utilized to screen and swiftly remove certain noncitizens.<sup>6</sup> If DHS decides to subject a noncitizen to expedited removal, they can be deported without an immigration court hearing unless they express an intention to apply for asylum or fear of persecution, torture, or return to their home country. If they do, they are typically referred for a CFI, which is a screening interview to determine whether there is a *significant possibility* that they would later be able to show they qualify for asylum or other protections in immigration court. If an asylum officer determines they have a credible fear, an IJ then decides whether they are eligible for asylum or other protection.

Noncitizens subject to expedited removal, who are not referred for a CFI, do not have a right to counsel<sup>7</sup> or a hearing,<sup>8</sup> and there is little opportunity for them to challenge an expedited removal order.<sup>9</sup> Those who receive an expedited removal order are rapidly deported from the United States without a full hearing before an IJ and are typically barred from reentering the country for five years.<sup>10</sup>

Although quick, the expedited removal process is complex and involves several steps and multiple federal agencies, including DHS and its component agencies CBP, ICE, and USCIS as well as DOJ's EOIR and BIA.

From 2023 to 2024, there were several significant policy changes that altered the way these agencies implement expedited removal:

- The Enhanced Expedited Removal (EER) policy fast-tracked the process, providing noncitizens 24 hours to speak to a legal representative and prepare for their CFIs.<sup>11</sup> It also allowed noncitizens to be processed and detained and to undergo their CFIs, as well as IJ reviews of CFI decisions, in CBP processing facilities. Previously, noncitizens were detained and had their CFIs in ICE detention centers.
- The Circumvention of Lawful Pathways (CLP) rule presumes that noncitizens are ineligible for asylum if they do not enter the United States in specific ways and did not seek protection or asylum in a country they traveled through, unless they meet certain exceptions.<sup>12</sup> They can still seek other forms of protection but are held to a higher legal standard (*reasonable possibility*) to receive them. Whether a noncitizen meets the exceptions to this rule or the higher standard for protection is now considered during their CFI.
- The Securing the Border (STB) policy (including a presidential proclamation and final rule) prevents noncitizens from entering the United States at the southern border during periods of high encounters, unless they meet

<sup>6</sup> 8 U.S.C. § 1225, I.N.A. § 235. <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>.

<sup>7</sup> The statutory right to consult does not attach until a noncitizen is referred for a CFI, and the noncitizen must pay for representation or access pro bono services. INA 235(b)(1)(B)(iv), 8 U.S.C. 1225(b)(1)(B)(iv). These consultations are also made available under the policies and procedures of the detention facility where they are detained. See 8 CFR 235.3(b)(4)(ii).

<sup>8</sup> 8 U.S.C. § 1225, I.N.A. § 235. <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>. See also 8 C.F.R. § 235.3(b)(2)(ii).

<sup>9</sup> *Id.* See also U.S. Department of Homeland Security v. Thuraissigiam, 591 U.S. (2020). <https://supreme.justia.com/cases/federal/us/591/19-161/>. (The Supreme Court held that IIRIRA 8 U.S.C. § 1252(e)(2) limits on judicial review of expedited removal orders (preventing habeas corpus challenges in federal court), and this does not violate the Suspension or Due Process clauses of the Constitution.)

<sup>10</sup> 8 U.S.C. § 1182(a)(9)(A)(i), I.N.A. § 212(a)(9)(A)(i). <https://uscode.house.gov/view.xhtml?req=granuleid%3AUSC-prelim-title8-section1182&num=0&edition=prelim>.

<sup>11</sup> U.S. Department of Homeland Security. 2023. "Fact Sheet: U.S. Government Announces Sweeping New Actions to Manage Regional Migration." <https://www.dhs.gov/news/2023/04/27/fact-sheet-us-government-announces-sweeping-new-actions-manage-regional-migration>. EER was not the first time the CFI process has been fast-tracked. In 2019, under the first Trump administration, DHS began implementing two pilot programs, the Prompt Asylum Claim Review (PACR) and Humanitarian Asylum Review Process (HARP). Noncitizens in the CFI process were given 24 to 72 hours to prepare for their CFI, and they were detained in CBP custody (instead of ICE custody) until they were either removed or their case was decided by an IJ. The programs were implemented until March 2020, when Title 42 blocked asylum seekers from entering the country for public health reasons, which remained in force until May 2023. In 2021, the Biden administration issued an executive order directing DHS to stop the PACR and HARP programs. Creating a Comprehensive Regional Framework to Address the Causes of Migration, to Manage Migration Throughout North and Central America, and to Provide Safe and Orderly Processing of Asylum Seekers at the United States Border, E.O. 14010, 86 F.R. 8267 (February 2, 2021). <https://www.federalregister.gov/documents/2021/02/05/2021-02561/creating-a-comprehensive-regional-framework-to-address-the-causes-of-migration-to-manage-migration>.

<sup>12</sup> Under the CLP policy, noncitizens entering the United States at its borders are presumed ineligible for asylum if they (1) approach U.S. POEs without an appointment through the CBP One app (or without using other existing lawful pathways) or cross the border irregularly between POEs and (2) did not seek protection or asylum in a third country they traveled through on their way to the United States. If noncitizens cannot meet these requirements, they can only seek asylum if they can prove they meet one of the following exceptions: they are facing imminent threats to their lives; they are victims of severe forms of trafficking; they cannot access the CBP One app to make an appointment due to technical or other accessibility issues; they face an acute medical emergency; or they face other exceptionally compelling circumstances that immigration officers determine to be sufficient to provide an exception on a case-by-case basis. See Circumvention of Lawful Pathways 88 F.R. 11704, 8 C.F.R. 208 (May 11, 2023). <https://www.federalregister.gov/documents/2023/05/16/2023-10146/circumvention-of-lawful-pathways>; U.S. Department of Homeland Security. May 11, 2023. "Fact Sheet: Circumvention of Lawful Pathways Final Rule." <https://www.dhs.gov/news/2023/05/11/fact-sheet-circumvention-lawful-pathways-final-rule>.

- certain exceptions.<sup>13</sup> While this policy is in effect, CBP officers are no longer required to ask noncitizens specific questions about whether they fear persecution or return as part of the initial screening process; instead, noncitizens must express this fear on their own volition to be referred for a CFI. The STB policy also further fast-tracked the process, providing noncitizens four hours to prepare for their CFIs, which are conducted in CBP custody. Like the CLP rule, the STB policy presumes noncitizens are ineligible for asylum if they do not enter the country a certain way or meet exceptions, and those not within the exceptions must meet an even higher legal standard (*reasonable probability*) to receive other forms of protection. This policy also allows families to be detained in CBP facilities and undergo their CFIs there.
- DHS started requiring asylum officers to consider whether noncitizens are subject to statutory bars to asylum during CFIs.<sup>14</sup> These were previously considered later in the process by IJs.

- DHS and DOJ created a dedicated Recent Arrivals docket for certain cases of those who crossed the southwest border, without inspection, between POEs (which may arise from positive CFI determinations).<sup>15</sup> This is intended for IJs to decide these cases as fast as possible.
- The Family Expedited Removal Management (FERM) program allows certain families in expedited removal to be conditionally released from detention while they go through their CFIs.<sup>16</sup>
- DHS policies, which are being challenged in the ongoing *Padilla v. ICE* lawsuit, prevent certain noncitizens, whom an asylum officer determined to have a credible fear during a CFI, from being released from detention on bond while an IJ considers and decides their asylum or protection claim.<sup>17</sup>

Table 1 describes the roles of the various agencies in the process, as implemented during the research period.

<sup>13</sup> Under the STB policy, most noncitizens are barred from entering the United States at the southern border until daily encounters fall below a certain level. There are exceptions for certain noncitizens who approach POEs, including: unaccompanied minors; victims of severe forms of trafficking; those with CBP One appointments; those whom CBP officers permit to enter based on the totality of the circumstances, including consideration of law enforcement, officer and public safety, and urgent humanitarian and public health interests; and those permitted to enter due to operational consideration at the time of entry or encounter. While the STB policy is in force, noncitizens who approach a POE or are encountered at or near the border are deemed ineligible for asylum unless they meet one of the foregoing exceptions or show exceptionally compelling circumstances. This includes cases where the noncitizen or their family member: faced an acute medical emergency; faced an imminent and extreme threat to life or safety; or meet the definition of a victim of a severe form of trafficking under federal regulations. See *Securing the Border Proclamation 10773*, 89 F.R. 48487 (June 3, 2024). <https://www.federalregister.gov/documents/2024/06/07/2024-12647/securing-the-border>; *Securing the Border Interim Final Rule (IFR) 89 F.R. 48710* (June 5, 2024). <https://www.federalregister.gov/documents/2024/06/07/2024-12435/securing-the-border>; *A Proclamation Amending Proclamation 10773*, 89 F.R. 80351 (September 27, 2024). <https://www.federalregister.gov/documents/2024/10/02/2024-22942/amending-proclamation-10773>; *Securing the Border Final Rule*, 89 F.R. 81156 (October 7, 2024). <https://www.federalregister.gov/documents/2024/10/07/2024-22602/securing-the-border>.

<sup>14</sup> *Application of Certain Mandatory Bars in Fear Screenings*, 89 F.R. 41347, 8 C.F.R. 208 (May 13, 2024). <https://www.federalregister.gov/documents/2024/05/13/2024-10390/application-of-certain-mandatory-bars-in-fear-screenings>.

<sup>15</sup> *Efficient Case and Docket Management in Immigration Proceedings*, 89 F.R. 46742 (May 29, 2024). <https://www.federalregister.gov/documents/2024/05/29/2024-11121/efficient-case-and-docket-management-in-immigration-proceedings>; U.S. Department of Homeland Security. May 16, 2024. "DHS and DOJ Announce 'Recent Arrivals' Docket Process for More Efficient Immigration Hearings." <https://www.dhs.gov/news/2024/05/16/dhs-and-doj-announce-recent-arrivals-docket-process-more-efficient-immigration>.

<sup>16</sup> U.S. Immigration and Customs Enforcement. May 10, 2023. "ICE Announces New Process for Placing Family Units in Expedited Removal." Press Release. <https://www.ice.gov/news/releases/ice-announces-new-process-placing-family-units-expedited-removal>.

<sup>17</sup> U.S. Department of Justice. March 20, 2019. *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019); National Immigration Litigation Alliance (NILA), Northwest Immigrant Rights Project (NIRP), and American Immigration Council (AIC). 2024. "Padilla v. ICE and Delays in Credible Fear Interviews." Practice Alert. [https://www.americanimmigrationcouncil.org/sites/default/files/practice\\_advisory/padilla\\_practice\\_alert\\_-\\_032224.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/practice_advisory/padilla_practice_alert_-_032224.pdf).

**Table 1: Roles of Federal Agencies in the Expedited Removal Process**

Federal Agency	Sub-Agency	Role
U.S. Department of Homeland Security (DHS)	U.S. Customs and Border Protection (CBP)	CBP conducts initial screenings to determine whether certain noncitizens should be subject to expedited removal at POEs and along the border. Office of Field Operations (OFO) officers screen noncitizens at POEs, and Border Patrol agents screen those apprehended at or near the border. If a noncitizen expresses an intention to apply for asylum or a fear of persecution, torture, or return to their home country, CBP refers them to USCIS for a CFI (or a reasonable fear interview [RFI] if they were previously ordered removed or their deportation, exclusion, or removal order was reinstated). Since 2023, most noncitizens stay in CBP custody until they receive an order of expedited removal or a USCIS decision on their CFI.
	U.S. Immigration and Customs Enforcement (ICE)	Previously, noncitizens referred for CFIs were transferred to ICE custody until their CFIs and sometimes their immigration court hearings, but since 2023 most remain in CBP custody at least until their CFI is completed. Some are still transferred to ICE facilities under certain circumstances, including a lack of space in CBP facilities. ICE Enforcement and Removal Operations (ERO) works with CBP to facilitate removals. ICE also conducts check-ins and provides ankle monitors and other alternatives to detention (ATD) aspects of the FERM program.
	U.S. Citizenship and Immigration Services (USCIS)	USCIS conducts CFIs or RFIs for noncitizens who express to CBP or ICE officers an intent to apply for asylum or a fear of persecution, torture, or return to their home country. These interviews are done over the phone by a USCIS asylum officer (who could be anywhere in the country) within 24 hours (under the EER process) or four hours (if the STB policy is in effect) from the time the detained noncitizen is given an opportunity to consult with a legal representative or other consultant. These timeframes usually begin when the noncitizen is provided access to phones or given information about the expedited removal and CFI process. During the interview, the asylum officer determines whether there is a significant or reasonable possibility (or probability under the STB policy) that the noncitizen would later show that they qualify for asylum, withholding of removal, or Convention Against Torture (CAT) protection in immigration court.
U.S. Department of Justice (DOJ)	Executive Office of Immigration Review (EOIR)	If an asylum officer determines that the noncitizen has a credible or reasonable fear, they are placed in removal proceedings before an EOIR IJ who determines whether to grant them legal protection. If the asylum officer determines that the noncitizen does not have a credible or reasonable fear, the noncitizen can request that an IJ review this determination. If the IJ reverses the asylum officer's determination, they will be placed in removal proceedings before an IJ to seek asylum and other legal protections.
	Board of Immigration Appeals (BIA)	The BIA decides appeals of the decisions made by EOIR IJs.

**SCOPE OF APPLICATION**

DHS is authorized, but not required, to apply expedited removal to any noncitizen who enters the United States without inspection or with fraudulent or misrepresented documents who cannot demonstrate that they have been physically present in the country for at least two years.<sup>18</sup> It typically applies to noncitizens who do not have proper documentation to enter the country at U.S. POEs,<sup>19</sup> entered the United States by sea without inspection,<sup>20</sup> or entered the United States by land without inspection and are encountered

within 100 miles of a U.S. land border within 14 days of their unauthorized entry into the country.<sup>21</sup>

**INITIAL SCREENINGS BY CBP OFFICERS**

CBP conducts initial screenings to determine whether certain noncitizens should be subject to expedited removal and referred for a CFI at POEs and the border. Typically, CBP OFO officers screen these noncitizens at POEs, and Border Patrol agents screen those who are apprehended at or near the border.

<sup>18</sup> 8 U.S.C. § 1225(b)(1)(A)(iii)(II), I.N.A. § 235(b)(1)(A)(iii)(II). <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>.

<sup>19</sup> When expedited removal was first implemented in 1997, it only applied to these noncitizens. Illegal Immigration Reform and Immigrant Responsibility Act, I.N.A. § 235(b)(1), 8 U.S.C. § 1252 (1996). <https://www.govinfo.gov/content/pkg/COMPS-13677/pdf/COMPS-13677.pdf>.

<sup>20</sup> In 2002, the Immigration and Naturalization Service (INS) expanded expedited removal to apply it to these noncitizens. Notice Designating Aliens Subject to Expedited Removal I.N.A. § 235(b)(1)(A)(iii), 67 F.R. 68924 (November 13, 2002). <https://www.federalregister.gov/documents/2002/11/13/02-29038/notice-designating-aliens-subject-to-expedited-removal-under-section-235b1a-iii-of-the-immigration>.

<sup>21</sup> In 2004, DHS—which succeeded the INS—expanded its use of the expedited removal process again and began to also apply it to these noncitizens. Designating Aliens for Expedited Removal, 69 F.R. 48877 (August 11, 2004). <https://www.federalregister.gov/documents/2004/08/11/04-18469/designating-aliens-for-expedited-removal>. In 2019, the Trump administration expanded its use of expedited removal again to the fullest extent possible under the Illegal Immigration Reform and Immigrant Responsibility Act, applying it to these noncitizens encountered anywhere in the United States who have been in the country for less than two years, removing the 100-mile encounter location and 14-day limits. See Designating Aliens for Expedited Removal, 84 F.R. 35409 (July 23, 2019). <https://www.federalregister.gov/documents/2019/07/23/2019-15710/designating-aliens-for-expedited-removal>. In 2022, the Biden administration rescinded that rule, reverting to the above application of the expedited removal process. See Recission of the Notice of July 23, 2019, Designating Aliens for Expedited Removal, 87 F.R. 16022 (March 21, 2022). <https://www.federalregister.gov/documents/2022/03/21/2022-05961/rescission-of-the-notice-of-july-23-2019-designating-aliens-for-expedited-removal>.

During these initial screenings, CBP officers were previously required to ask mandatory questions and take a sworn statement documenting the noncitizen's fears and intentions using Forms I-867A and B before issuing a notice and order of expedited removal (Form I-860).<sup>22</sup> This included four carefully designed questions about fear of persecution or return to ensure that no refugee or asylee was returned to a country of persecution, as required by the Refugee Act of 1980 and the Refugee Protocol.<sup>23</sup> However, under the STB policy, this standard has changed since June 2024.<sup>24</sup>

While the STB policy is in effect, CBP officers neither ask the required questions nor take a sworn statement using I-867 forms. They will only refer noncitizens for CFIs if the noncitizens manifest fear on their own volition. This fear can be expressed in several ways (i.e., verbally, in written form, through bodily signals, etc.) during screenings or while they are in CBP or ICE custody, but whether fear is manifested is open to interpretation and up to the discretion of the officer. Under the STB policy, instead of using I-867 forms to record how and whether a noncitizen manifested fear, DHS uses a Form I-213 with a "credible fear" stamp to record the details of the person's apprehension and immigration history.

The overall number of southern border credible fear screening referrals and decisions over the past decade shows that 2023 registered a peak with 148,480 referrals. This figure is 29.5 percent higher than the number recorded in 2019, prior to the COVID-19 pandemic.<sup>25</sup> However, after the STB policy was implemented in June 2024, there was a drastic decrease in the number of credible fear referrals and decisions.<sup>26</sup> Between May and August 2024, the total monthly CFI referrals plummeted from 20,010 to 1,382, an approximately 93 percent drop. CFI decisions also decreased by approximately 87 percent (from a total of 18,515 decisions in May to 2,390 in August 2024).

Previously, CBP officers usually turned over noncitizens referred for CFIs to ICE custody, and CFIs were not done in CBP facilities.<sup>27</sup> However, since 2023 many remain in CBP

custody while they await their CFI and before they receive an order of expedited removal or a hearing with an IJ.<sup>28</sup>

## CREDIBLE FEAR INTERVIEWS

If a noncitizen expresses an intention to seek asylum or a fear of persecution, torture, or return to their home country during CBP's initial screenings or while they are in CBP or ICE custody, they are typically referred to USCIS for a CFI. During this screening interview, a USCIS asylum officer determines whether there is a *significant possibility* that they would later show they qualify for asylum or other legal protection in immigration court.<sup>29</sup> If a noncitizen was previously ordered removed or their deportation, exclusion, or removal order was reinstated, they are referred to USCIS for an RFI instead of a CFI.<sup>30</sup> In this case they would not be eligible for asylum and would only receive withholding of removal or CAT protection if the asylum officer determines there is a *reasonable possibility* (which is a higher legal standard) that they can later show they qualify for these protections in court. DHS cannot remove those who are referred for CFIs and RFIs until their claim is evaluated.

When noncitizens are referred for CFIs, CBP (or ICE) officers must provide them with a written explanation of the CFI process (Form M-444 or a form titled "Information About the Credible Fear Interview Sheet," which is a modified version of Form M-444) to explain the circumstances under the STB policy. This includes information about the purpose of the referral and a description of the CFI process; the right to consult with an attorney or accredited representative (who will not be provided or paid for by the U.S. government) prior to and after their interview; what happens after they receive a positive or negative credible fear determination; and the right to request a review by an IJ of the asylum officer's fear determination.<sup>31</sup>

The CFI process was fast-tracked twice: in May 2023 by the EER policy and again in June 2024 by the STB policy. Under these policies, CFIs shall occur within 24 hours (under

<sup>22</sup> 8 C.F.R. § 235.3(b)(2)(i). <https://www.ecfr.gov/current/title-8/chapter-I/subchapter-B/part-235>.

<sup>23</sup> Refugee Act of 1980, S. 643 P.L. 96-212 96th Cong. (March 17, 1980). <https://www.congress.gov/bill/96th-congress/senate-bill/643/text>; Protocol Relating to the Status of Refugees, G.A. Res. 2198 (XXI) (January 31, 1967).

<sup>24</sup> See *Securing the Border*, 89 C.F.R. 48710 *supra* note 13; and U.S. Department of Homeland Security, Immigration and Customs Enforcement. (June 4, 2024). "Memorandum for Daniel A. Bible, Executive Associate Director Enforcement and Removal Operations, 'Implementation Guidance for Noncitizens Described in Presidential Proclamation of June 3, 2024, *Securing the Border*,' and 'Interim Final Rule, *Securing the Border*.'" [https://drive.google.com/file/d/1jedC-2TzM0wzDaKWy4F\\_y7niS1ffkbhj/view](https://drive.google.com/file/d/1jedC-2TzM0wzDaKWy4F_y7niS1ffkbhj/view).

<sup>25</sup> U.S. Office of Homeland Security Statistics. March 2024. "Immigration Enforcement and Legal Processes Monthly Tables." <https://www.dhs.gov/ohss/topics/immigration/enforcement-and-legal-processes-monthly-tables>.

<sup>26</sup> U.S. Office of Homeland Security Statistics. "Semi-Monthly Credible Fear and Reasonable Fear Receipts and Decisions. Data July 1, 2023–August 31, 2024." <https://www.uscis.gov/tools/reports-and-studies/semi-monthly-credible-fear-and-reasonable-fear-receipts-and-decisions>.

<sup>27</sup> Hillel Smith. October 8, 2019. "Expedited Removal of Aliens: Legal Framework." Congressional Research Service. <https://crsreports.congress.gov/product/pdf/R/R45314>.

<sup>28</sup> See DHS 2023 *supra* note 11 and *Securing the Border* 89 CFR 48710 *supra* note 13. This practice was also applied under previous programs the Trump administration implemented in 2019 that were rescinded in 2021. These pilot programs were the Prompt Asylum Claim Review (PACR) and Humanitarian Asylum Review Process (HARP).

<sup>29</sup> 8 C.F.R. § 235.3(b)(4). <https://www.ecfr.gov/current/title-8/chapter-I/subchapter-B/part-235>.

<sup>30</sup> 8 C.F.R. 208.31. <https://www.ecfr.gov/current/title-8/chapter-I/subchapter-B/part-208/subpart-B/section-208.31>.

<sup>31</sup> Information about Credible Fear Interview Form M-444 (Rev. 5-31-2022).

EER) or four hours (if apprehensions reach certain levels and the STB policy is implemented) from the time the noncitizen is given information about the CFI process and phone access to consult with a legal representative or other consultant. Previously, USCIS's policy was to wait at least 48 hours from the noncitizen's arrival in ICE custody to conduct a CFI. Asylum officers completed most CFIs in 20 days or less between 2014 and 2019.<sup>32</sup>

During CFIs, USCIS asylum officers typically determine whether noncitizens may qualify for asylum or other protections under the *significant possibility* legal standard, explained above. However, under the CLP rule (since May 2023) and the STB policy (since June 2024), certain noncitizens who do not enter the country in certain ways are presumed ineligible for asylum. Unless they meet certain exceptions, they can only seek withholding of removal and CAT protections and are subject to different legal standards. If they do not meet exceptions, an asylum officer determines whether there is a *reasonable possibility* (under the CLP rule—a higher standard than *significant possibility*) or a *reasonable probability* (under the STB policy—an even higher standard than *reasonable possibility*) that they can later show they qualify for these legal protections in court. USCIS HQ confirmed that asylum officers received training on the new legal standards under the CLP and STB policies.

Although noncitizens can still receive withholding of removal or CAT protection if they do not meet an exception to the CLP and STB rules, these protections are not substitutes for asylum. Unlike asylum, withholding of removal and CAT protection do not provide permanent residence or a pathway to citizenship. In addition, the noncitizen can still be deported to a third country, and spouses and unmarried children under 21 cannot receive derivative protection as family members of the noncitizen.<sup>33</sup>

If the asylum officer determines through the CFI or RFI that a noncitizen has a credible or reasonable fear, the noncitizen receives a notice to appear (NTA) before an IJ, is placed in removal proceedings, and can seek legal protection in immigration court. The noncitizen must file an application with the court, and an IJ eventually decides whether to grant them asylum, withholding, or CAT protection.

If an asylum officer determines that the noncitizen does not have a credible or reasonable fear, the noncitizen may request that an IJ review this determination.<sup>34</sup> If the noncitizen does not make this request, they may be swiftly deported. The IJ review happens quickly, usually at most seven days after the noncitizen receives the negative determination. An IJ review is not a full hearing on the merits of the case; it only reviews the asylum officer's CFI determination. If the IJ agrees with that determination, the noncitizen will receive a removal order and be deported shortly thereafter. If the IJ does not agree, the noncitizen receives an NTA and is placed in removal proceedings to apply for asylum or other protection and have a full hearing.

Most noncitizens subject to expedited removal are detained (whether they wind up receiving an order of expedited removal or a referral for a CFI).<sup>35</sup> If an asylum officer determines that a noncitizen has a credible fear, they are typically granted parole and released from CBP or ICE custody, unless they pose certain security risks.<sup>36</sup> Those who do not qualify for parole are kept in detention until their case is decided by an IJ and they are transferred from CBP to ICE custody.<sup>37</sup>

<sup>32</sup> Government Accountability Office (GAO). February 19, 2020. *Immigration: Actions Needed to Strengthen USCIS's Oversight and Data Quality of Credible and Reasonable Fear Screenings*. GAO-20-250, Washington, DC: GAO. <https://www.gao.gov/products/gao-20-250>. USCIS did not require CFIs to be completed within a certain timeframe and used timeliness goals to monitor their CFI workload.

<sup>33</sup> See U.S. Department of Justice. 2021. "Model Hearing Program Substantive Law Lecture: Asylum, Withholding of Removal, and Protection under the U.N. Convention Against Torture." [https://icor.eoir.justice.gov/substantive\\_law\\_lecture\\_asylum\\_withholding\\_cat\\_accessible.pdf](https://icor.eoir.justice.gov/substantive_law_lecture_asylum_withholding_cat_accessible.pdf).

<sup>34</sup> 8 U.S.C. § 1225(b)(1)(B)(iii)(III). <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>. See also 8 C.F.R. 280.30(g)(1).

<sup>35</sup> 8 C.F.R. § 235.3(b)(4)(ii). <https://www.ecfr.gov/current/title-8/chapter-1/subchapter-B/part-235>.

<sup>36</sup> ICE HQ confirmed this during consultations. See "Parole of Arriving Aliens Found to Have a 'Credible Fear' of Persecution or Torture," ICE Policy Directive No. 11002.1, December 8, 2009. (In 2009, ICE issued a directive to automatically consider these noncitizens for parole if they entered at POEs.) [https://www.ice.gov/doclib/dro/pdf/11002.1-hd-parole\\_of\\_arriving\\_alien\\_found\\_credible\\_fear.pdf](https://www.ice.gov/doclib/dro/pdf/11002.1-hd-parole_of_arriving_alien_found_credible_fear.pdf). See also ICE. 2023. "Parole of Arriving Aliens Found to Have Credible Fear of Persecution or Torture." <https://www.ice.gov/factsheets/credible-fear>.

<sup>37</sup> 8 U.S.C. § 1225(b)(1)(B)(ii), and (iii)(V). <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>. See also 8 C.F.R. § 212.5(b). <https://www.ecfr.gov/current/title-8/chapter-1/subchapter-B/part-212/section-212.5>.

# RESEARCH METHODOLOGY AND FINDINGS

## METHODOLOGY

The findings in this report are based on a literature review conducted from December 2023 to February 2024 and primary research conducted from May to August 2024. The primary research consisted of interviews, survey responses, observations, site visits, and consultations with DHS officials. The research was less extensive in time and scope than USCIRF's prior research on expedited removal but did allow for an assessment—in light of conditions during the research period—of the status and relevance of USCIRF's 2016 recommendations and the development of new recommendations.

The primary research involved the following: First, the research team conducted 14 interviews and circulated a survey that received 18 responses from a total of 26 legal representatives from 15 different organizations and four private law firms that work with asylum seekers in expedited removal. As of the research period, few legal representatives and organizations represent asylum seekers in expedited removal. When this research was conducted in the summer of 2024, only five organizations provided pro bono legal services to noncitizens in CBP custody; five provided these services to those enrolled in the FERM program; 16 organizations provided these services in the eight ICE detention centers that held asylum seekers in expedited removal; and few private attorneys took on these noncitizens as clients. In addition, the research team interviewed policy experts about border and expedited removal policy as well as representatives of shelters and other service providers near the southwest border.

Second, the research team conducted several site visits to DHS facilities in Texas and Arizona in July and August 2024. This included in-person site visits to four CBP processing facilities in Donna, McAllen, and El Paso, TX, and Tucson, AZ, and a virtual visit and briefing at the Brownsville, TX, POE. In-person site visits were also conducted in August 2024 to the IAH Polk and Eloy ICE Detention Centers (two of the eight detention centers holding asylum seekers in expedited removal at that time) in Livingston, TX, and Eloy, AZ. These visits allowed the research team to observe the conditions of these facilities and speak with CBP and ICE officers. However, the team was not able to observe screening and intake procedures or to formally interview noncitizens in CBP and ICE custody.

Third, the research team observed six CFIs, randomly chosen by USCIS, at asylum offices in Newark, NJ, Arlington, VA, and Houston, TX, in August 2024. Four of the observed interviews were conducted virtually (with asylum seekers who were in CBP and ICE custody) and two were in person (with families enrolled in the FERM program). The observed CFIs involved noncitizens from several countries who spoke different languages, including one who identified as indigenous and another who spoke a rare language.

Finally, the research team consulted with officials from DHS HQ, including its component agencies CBP, ICE, and USCIS, to gather information about their new protocols and procedures and understand whether some of the 2016 report's recommendations were implemented and still relevant. The research team sent written questions to DHS HQ and component agencies and received their responses in August 2024. They also reached out to EOIR several times to do the same but did not receive a response.

## FINDINGS

The research identified several barriers that bona fide asylum seekers face in accessing asylum or other forms of legal protection under policies in place in 2024. As discussed further in this section:

- Many asylum seekers may not be aware of the new “shout test” requirement or may not be able to affirmatively manifest fear to be referred for a CFI.
- The conditions in CBP custody are not suitable for multi-day stays, the detention of families, access to counsel, or preparing for and undergoing CFIs.
- Legal representatives face so many obstacles representing noncitizens in CBP custody that many have decided to stop doing so. ICE facilities, by contrast, provide more appropriate detention conditions and better access to counsel and other legal resources.
- CFIs are lengthy, are conducted telephonically, and take place at odd hours and on short notice. Lack of availability of interpreters for CFIs, especially for rare languages, can be an issue.
- Families enrolled in the FERM program and released from CBP custody experience unique challenges.

- Joint Processing Centers, where CBP, ICE, and USCIS operate under the same roof, could help these agencies better manage the expedited removal process.

### The Shout Test

As discussed above, under the STB policy, to be referred for a CFI, noncitizens must manifest fear on their own volition either during CBP's initial screenings or while they are in CBP or ICE custody. This new requirement—coupled with issues identified by the research team, including a lack of training, signage, or opportunities to manifest fear during intake—increases the risk that bona fide asylum seekers are not receiving the opportunity to seek legal protection. This concern is heightened by DHS data showing that CFI referrals and decisions plummeted after the STB policy was implemented in June 2024.

During consultations with DHS HQ and site visits, the research team confirmed that CBP and ICE officers did not receive additional training on how to identify manifestations of fear. They were only given guidance memorandums providing some examples of verbal, nonverbal, and physical ways noncitizens may show fear.<sup>38</sup> During site visits, CBP officers told the researchers that if a detainee claims fear, officers follow up with questions to verify that fear and, depending on their view of the adequacy of the response, do not necessarily refer the detainee for a CFI. This practice exceeds CBP's role in the process, which does not include assessing the credibility of fear claims.

The research team also observed a lack of visible, easily understandable signs in the CBP and ICE facilities they visited to inform detainees of the need to express fear on their own and the significance of this requirement. Some CBP facilities had posted standard-size pieces of paper that explained the new requirements in dense paragraphs in four languages (English, Spanish, Chinese, and Hindi), but they were not easily noticeable and did not convey that they contained important information. The Eloy ICE Detention Center had the same signs, but they were available in at least 10 additional languages, and it also had videos about manifesting fear playing in the intake area. At the IAH Polk ICE Detention Center and El Paso CBP facility, the research team did not observe any signage or videos on manifestation of fear or the new requirements.

Because the fear questions are no longer asked during screenings, the brief intake period presents the only opportunity for a noncitizen to manifest fear before CBP takes the next step on their case (whether that is a CFI referral, release, or deportation). In some CBP facilities that the research team visited, CBP officers or staff conducted this intake. Others used contractors (who may not have the training and experience to recognize manifestations of fear),<sup>39</sup> virtual processing (by video conference with CBP officers located elsewhere), and/or artificial intelligence software (to pull data from biographical documents and fill in intake forms). These forms of intake may prevent noncitizens from manifesting fear or affect whether it is recognized, potentially making it less likely that a bona fide asylum seeker will be referred for a CFI.

### Detention Conditions in CBP Facilities

CBP facilities are designed for short-term processing. However, since the EER policy was implemented in May 2023, CBP is handling additional aspects of the expedited removal process, including longer-term stays, on top of their other preexisting duties. Detention conditions in CBP facilities are inadequate for such stays, especially when they exceed their capacity during periods of high apprehensions. For example, CBP officers at the El Paso facility told the research team it has capacity to hold 2,500 individuals, but during surges in apprehensions it held up to 7,000 individuals. During site visits, the research team observed that the pods where single adult detainees were held were crowded and uncomfortable, and this was during periods of low apprehensions.<sup>40</sup> The holding pods were empty rooms without beds or other basics for overnight stays. Officers indicated that they try to keep an average of about 15–16 people in each pod but exceed this during times of high volume of encounters. In the pods, the research team observed detainees sleeping on the floor with foil blankets, side by side, with the lights on when they arrived early in the morning.

When the researchers spoke to CBP officers about their experiences adapting to the fast-tracked approach and their additional responsibilities under the EER and STB policies, they said that initially, the new CFI process sometimes took longer than intended but had become more efficient over time. For example, they reported that at the Donna facility,

<sup>38</sup> U.S. Department of Homeland Security, Immigration and Customs Enforcement. June 4, 2024. "Memorandum for Daniel A. Bible, Executive Associate Director Enforcement and Removal Operations, 'Implementation Guidance for Noncitizens Described in Presidential Proclamation of June 3, 2024,' *Securing the Border*, and 'Interim Final Rule, *Securing the Border*.'" [https://drive.google.com/file/d/1jedC-2TzMOwzDaKWY4F\\_y7ni51fkbhj/view](https://drive.google.com/file/d/1jedC-2TzMOwzDaKWY4F_y7ni51fkbhj/view).

<sup>39</sup> According to CBP HQ, CBP staff trains the contractors to assist with parts of the intake process, while CBP officers oversee and compete immigration processing, and if a contractor identifies something that seems to be a manifestation of fear, the contractor must bring that information to a CBP officer. However, CBP HQ did not confirm whether these contractors were trained or received memoranda or guidance to understand different ways fear could be manifested.

<sup>40</sup> For example, at the CBP facilities in Donna and McAllen, TX, CBP officers said they were receiving about 150–300 people per day when the team visited in July 2024, but in the past, they had experienced 2,000–4,000 people per day. This decrease was also reflected in CBP southwest border encounter statistics overall. Comparing the percentage change in total encounters at the southwest border from July 2023 to July 2024, encounters were down by 57.5 percent, from 132,642 to 56,399. See U.S. Customs and Border Protection. 2024. "Southwest Land Border Encounters (By Component)." <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters-by-component>.

noncitizens referred for CFIs were held for 15–16 days, and in El Paso 11–20 days, when apprehensions were high. But CBP officers in El Paso indicated that the holding period was down to five days when the research team visited in July 2024.

The facilities holding women and children had separate pods for unaccompanied children and families and a designated area for children under six years old. More space was provided, and phones were available so these detainees could call family members without limitations. Children under six years old were held in separate areas that had toys, blankets, and televisions, with contractors who took care of the children. CBP officers told the research team that there were time limits on detaining children and families (72 hours for unaccompanied minors and 120 hours for families), but at least one legal representative interviewed was aware of families and children being held in CBP custody for periods of five to 15 days.

### Access to Counsel and CFI Preparation in CBP Facilities

CBP facilities are also not designed to facilitate access to counsel or CFI preparation. The research revealed that: phone access for detainees can be rushed, sporadic, and granted at unusual hours; legal representatives are not allowed inside the facilities and have difficulty contacting detained noncitizens and obtaining signed notice of appearance forms; detainees typically only have a few hours and at most one phone call with counsel to prepare for their CFIs; and lawyers do not receive adequate notice of their clients' CFIs and IJ reviews, which may be held at odd hours, on weekends, or on holidays, limiting their ability to attend. Among the legal representatives surveyed, almost all of them (94.1 percent) indicated it was easier to work with clients in ICE custody than in CBP custody. Seven out of 18 legal representatives interviewed said that they have drastically reduced, or entirely ceased, working with clients in CBP custody because it was too difficult to represent them in good faith. Several more indicated in the survey that they, or their organization, only work with FERM or ICE custody clients.

During site visits to CBP facilities, the research team asked about detainee phone access. The officers explained that it is provided “when operationally feasible.” Legal representatives interviewed reported that CBP sometimes provides this access outside of normal business hours, such as during the night or very early in the morning, when they are not available to answer these calls. They also indicated that they had trouble communicating with CBP officers and the DHS Office of

Chief Counsel (OCC) to facilitate contact with or call back detainees. DHS and DOJ do provide a list of points of contact for CFIs in CBP custody with emails and phone numbers for CBP, USCIS, and EOIR in various Border Patrol sectors in Texas, Arizona, and California.<sup>41</sup> DHS HQ said that these points of contact were established in 2023. However, legal representatives interviewed and surveyed reported that their calls and emails frequently go unanswered, and some only learned about this list in August 2024.

When detainees and their counsel do manage to talk by phone, the call is usually rushed, complicated information needs to be covered very quickly, and detainees do not have access to pens and paper. The four- and 24-hour consultation periods under the STB and EER policies and limited phone access mean that detainees in CBP custody typically are given one phone call before their CFIs, and if they manage to reach a lawyer, that call is their only opportunity to prepare for this highly consequential interview.

Legal representatives interviewed and surveyed also reported that their clients in CBP custody, especially families, are not in any condition to prepare themselves for CFIs. Detainees are traumatized from their journey to the border, are sleeping on the floor and sometimes sick from the cold conditions or the food, do not have freedom of movement, and have difficulty concentrating on their cases while taking care of their children. Family units are unable to prepare for their CFI together; they are typically detained separately, with women and young children placed in a different facility than their male family members, and they only reunite for the CFI.

### Detention Conditions and Access to Counsel in ICE Facilities

ICE facilities are better suited for multi-day stays, with beds and other basic necessities, and they provide better access to counsel and legal resources than CBP facilities. As of August 2024, only eight ICE detention centers held asylum seekers in expedited removal. The research team was able to visit two: the Eloy Center in Arizona and IAH Polk Center in Texas. Although only 16 organizations provided pro bono legal services to these eight facilities, that is more than triple the amount that served CBP facilities nationwide at that time. The ICE detention centers the team visited provided multiple mechanisms to contact legal representatives. For example, at Eloy, detainees had access to tablets with an app to chat with and send messages to legal representatives<sup>42</sup> and to virtual attorney visitation (VAV)<sup>43</sup> video conferencing systems. In addition, representatives could visit the facilities

<sup>41</sup> American Immigration Lawyers Association. August 12, 2024. “Points of Contact for Credible Fear Interviews in CBP Custody.”

<sup>42</sup> U.S. Immigration and Customs Enforcement. 2024. “Tablet Legal Orientation Program Initiative.” <https://www.ice.gov/doclib/detention/tabletLOPinitiative.pdf>.

<sup>43</sup> U.S. Immigration and Customs Enforcement. 2024. “Virtual Attorney Visitation Program.” <https://www.ice.gov/detain/detention-facilities/vav>.

in person and make appointments for calls to detained clients. Some ICE detainees also have access to law libraries, Legal Orientation Program (LOP) group and individual orientations, pro se workshops, referrals to pro bono services, and Know Your Rights (KYR) materials and presentations.

ICE HQ confirmed during consultations that these resources vary depending on location. For example, the research team observed differences between Eloy and IAH Polk. IAH Polk was also set up for VAV, but detainees there had less access to tablets, the facility could accommodate fewer attorney visits, there was insufficient indoor space for in-person group LOP presentations, and detainees usually needed to contact the LOP provider by phone if they wanted to talk to legal representatives.

### CFIs and IJ Reviews

Many legal representatives interviewed or surveyed said they were unable to attend CFIs or IJ reviews for clients in CBP custody because they were scheduled so rapidly and with little or no notice. By contrast, those representing clients in ICE custody indicated they received notice some or most of the time. According to USCIS HQ, if a notice of appearance is on file at the time of scheduling or received before the CFI, the asylum officer must notify the legal representative—via email, phone, or voicemail—of the date and time at least one business day beforehand, if operationally feasible. If this is not operationally feasible, the asylum officer must notify the legal representative at the time of the interview.<sup>44</sup> Several legal representatives indicated they received notice this way, and if they did not answer the phone or were unavailable at the time, they could not attend.

CFIs may be scheduled at odd hours, on weekends, or on holidays, and are done telephonically. The asylum officer, noncitizen, and legal representative may be in different time zones. According to USCIS HQ, they schedule CFIs based on the length of time the case has been pending and the number of asylum officers available in a variety of locations nationwide. CFIs are conducted by telephone seven days a week and on federal holidays, beginning at 7:30 a.m. until about 8:00 p.m. local time at the CBP or ICE detention facility where the noncitizen is held.

The CFIs observed by the research team took about two to five hours to complete. Asylum officers confirmed that these interviews take longer than they did before the 2023–24 policies were implemented. During site visits, ICE officers told the team that CFIs can even take up to eight hours. With additional factors to adjudicate, including exceptions and statutory bars to

asylum, a CFI must cover extensive ground. This is particularly true for CFIs with FERM families, where each family member's claim must be considered, including children.

Undergoing a lengthy telephone interview with a stranger about traumatic events can be difficult and exhausting, especially when done from a small phone booth while in detention. A phone interview also does not allow the asylum officer to see the interviewee's face, expressions, and body language. The phone booths used for CFIs at the IAH Polk ICE Detention Center are small closets with all-black walls and floor. The CBP facilities the research team visited had new phone booths for CFIs and IJ reviews that seemed to be more private and soundproof but are not large enough to fit a family of more than two people. Each had a landline phone and a Teams phone to connect to Microsoft applications but no video conference capability. Incorporating video conferencing by adding webcams, computers, or tablets could help improve conditions for conducting CFIs and IJ reviews from CBP and ICE detention.

None of the noncitizens in the observed CFIs had legal representatives, which may also have contributed to the length of the interview. Noncitizens who meet with counsel beforehand or have representation during CFIs are more likely to understand the protection they are applying for and to be better prepared to answer complicated questions, making interviews more efficient. The research team noted that the noncitizens in the observed interviews did not seem to understand how important some questions were to meet the legal requirements to receive asylum or other protection. The research team also observed that some asylum officers were sensitive and accommodating to the noncitizens and their children and spent time making sure they were comfortable and understood certain requirements, while one was impatient, cut off the noncitizens' answers, and may have intimidated them from sharing critical details.

Some legal representatives interviewed or surveyed noted that IJ reviews, which are usually a noncitizen's one chance to appeal a negative CFI decision, are cursory and short. They also explained that IJs often treat CFI transcripts as verbatim records and afford them significant weight, when in fact these documents are only the asylum officer's notes from the interview and not a comprehensive recounting of the interviewee's entire claim.

<sup>44</sup> See also U.S. Citizenship and Immigration Service. 2023. "Credible Fear Procedures Manual." Last updated October 5, 2023. <https://www.uscis.gov/sites/default/files/document/guides/CredibleFearProceduresManual.pdf> (which highlights similar protocols).

## Interpretation Issues

Due to the rapid nature of the expedited removal process, noncitizens who speak rare or indigenous languages do not always receive adequate interpretation. According to legal representatives interviewed and surveyed, these noncitizens may receive interpreters who speak a different dialect of their language that they cannot understand, or they feel pressured to go forward with the CFI or IJ review in more common languages like English, Spanish, or French to get out of detention faster. In these situations, the noncitizen may be unable to provide a clear story or may get confused, potentially leading to misinterpretations or misunderstandings that negatively impact their ability to receive legal protection.

The research team observed one CFI with a rare language speaker. The asylum officer tried but was unable to find a USCIS-certified interpreter in the noncitizen's language. The asylum officer asked the noncitizen if he wanted to proceed in another language or reschedule; the noncitizen agreed to go forward but mentioned he may not be able to express himself well. The officer told the research team that the asylum office he worked in was seeing rare language speakers every other day. During consultations with DHS HQ, the research team asked USCIS about the procedure for providing interpreters to rare or indigenous language speakers. USCIS explained that if a noncitizen's preferred language is not serviced and they do not agree to proceed with their CFI in another language, they will be issued an NTA. If their preferred language is serviced

but an interpreter cannot be scheduled or secured within three business days, then USCIS also may issue them an NTA.

## FERM Program

DHS has been applying a different CFI process to certain families in expedited removal through the FERM program since May 2023.<sup>45</sup> This program seeks to keep some families in expedited removal out of CBP custody and move them through the CFI process quickly. The program aims to issue decisions on their cases within 30 days of their CFI referral. Initially, it was implemented in four cities but expanded to 45 during its first year.<sup>46</sup>

At the time of the research, only certain FERM families that reside near nine cities can receive an asylum merits interview after a positive CFI determination, instead of an NTA.<sup>47</sup> In these cases, an asylum officer would later decide whether to grant them asylum, withholding, or CAT protection instead of an IJ. These families are subject to a different CFI process that was previously applied to noncitizens in expedited removal from June 2022 to April 2023.<sup>48</sup> Under this process, their positive CFI determination is treated as a full application for asylum, withholding, or CAT protection, and they do not need to file a separate one.<sup>49</sup> If the asylum officer decides to grant them protection, they do not need to go to immigration court afterward. If the asylum officer decides not to grant them asylum, they would then be placed in removal proceedings before an IJ where they would need to file a new application with the court.

<sup>45</sup> U.S. Immigration and Customs Enforcement. May 10, 2023. "ICE Announces New Process for Placing Family Units in Expedited Removal." Press Release. <https://www.ice.gov/news/releases/ice-announces-new-process-placing-family-units-expedited-removal>. See also U.S. Citizenship and Immigration Service. 2023. "Implementation of the Credible Fear and Asylum Processing Interim Final Rule." Fact Sheet. <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/fact-sheet-implementation-of-the-credible-fear-and-asylum-processing-interim-final-rule>; and Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers, 87 F.R. 18078 (2023). <https://www.federalregister.gov/documents/2022/03/29/2022-06148/procedures-for-credible-fear-screening-and-consideration-of-asylum-withholding-of-removal-and-cat>. Families are selected for enrollment based on factors including whether they are nationals of countries to which ICE has regular removal flights, whether they intend to live within 75 miles of one of the designated cities, and whether the head of household is eligible for ICE's Alternatives to Detention (ATD) program.

<sup>46</sup> These cities are in the following states: Indiana, Ohio, Maryland, District of Columbia, Massachusetts, New Jersey, Rhode Island, Florida, Georgia, Kentucky, Louisiana, North Carolina, Tennessee, Virginia, Missouri, Minnesota, Colorado, California, Nevada, Oregon, Utah, Washington, Arizona, and Texas. See ICE 2023 *supra* note 16.

<sup>47</sup> See U.S. Immigration and Customs Enforcement. 2023. "Implementation of the Credible Fear and Asylum Processing Interim Final Rule." Fact Sheet. <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/fact-sheet-implementation-of-the-credible-fear-and-asylum-processing-interim-final-rule>.

<sup>48</sup> Even though the CFI process is different for families enrolled in the FERM program, they are still subject to the CLP rule and the STB policy and are held to the legal standards described above. See Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers, 87 F.R. 18078 (2023). <https://www.federalregister.gov/documents/2022/03/29/2022-06148/procedures-for-credible-fear-screening-and-consideration-of-asylum-withholding-of-removal-and-cat>.

<sup>49</sup> *Id.*

The research found that families enrolled in the FERM program face unique difficulties, even though they are released from detention. All five legal representatives interviewed who worked with FERM families reported that the required check-ins with ICE or the program's contractor, which are weekly and in person, were so frequent and time-consuming they did not have sufficient time to prepare their clients for their CFIs and IJ reviews. They also reported that the use of ankle monitors, GPS tracking, and curfews feels punitive to the families. In addition, the legal representatives interviewed noted the length of the CFIs of FERM families. One recounted a CFI that lasted for six hours (three hours for CLP exceptions and three hours for asylum screening standards). Another said they tell FERM families to be prepared to be at the USCIS asylum office all day.

The research team observed two CFIs of FERM families. Both took between three and four hours. It can be difficult for a parent to talk about trauma, persecution, or torture they faced in front of their children during a CFI, as well as for an asylum officer to ask children similar questions about their experiences. Some asylum officers may be sensitive to these difficulties, and some may not. For example, during one observed CFI, the asylum officer asked a nonverbal baby about their asylum claim, expecting answers, and did not let the parent testify on the baby's behalf.

## Joint Processing Centers

CBP officers at the facilities that the research team visited expressed interest in and support for more Joint Processing Centers (JPCs). These centers are a new concept and allow all component agencies involved in the expedited removal process (including CBP, ICE, and USCIS) to operate under one roof. CBP HQ confirmed that construction of the first JPC in Laredo, TX, started in 2024, and Congress set aside \$200 million to build two JPCs along the border in FY 2022.<sup>50</sup> CBP officers explained that JPCs would make it easier for them to coordinate with USCIS (to schedule CFIs and handle issues during and after the interview) and ICE (to handle deportation, ATD aspects of the FERM program, and release of detainees), making the expedited removal process more efficient. These JPCs are also designed to provide healthcare, childcare, legal support, adjudication of cases, and border security. DHS HQ did not provide the research team with much detail on how JPCs would be managed, but if they incorporate better conditions for multi-day stays and better coordination throughout the process, they could improve circumstances both for DHS and for asylum seekers in expedited removal.

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<sup>50</sup> Consolidated Appropriations Act, 2022, H.R. 2471 P.L. 117-103 117th Cong. (March 15, 2022). <https://www.congress.gov/117/plaws/publ103/PLAW-117publ103.pdf>.

# ANALYSIS OF USCIRF'S 2016 RECOMMENDATIONS

This section analyzes the recommendations made in USCIRF's 2016 expedited removal report.<sup>51</sup> It lists the 2016 recommendations, organized by agency, and provides an assessment of whether they have been implemented and, if not, whether they remain relevant.

## TO THE SECRETARY OF HOMELAND SECURITY

In 2016, USCIRF made three recommendations to the Secretary of Homeland Security:

1. Appoint a high-ranking official with authority to make reforms and oversee implementation to ensure protection of asylum seekers going through the expedited removal process. *Finding: Not Implemented.*
2. Request that the DHS Office of Inspector General (OIG) audit the expedited removal process for compliance with laws and policies regarding the protection of asylum seekers. *Finding: Partially Implemented.* There have been several DHS OIG audits of specific operations along the U.S. southern border that incorporate evaluation of the treatment of asylum seekers in expedited removal.<sup>52</sup> But there have been no broad audits of the expedited removal process, and DHS HQ confirmed that it has not made a specific request to OIG for this type of audit.
3. Reiterate to all agencies and officers implementing expedited removal that their law enforcement mandate includes fully implementing U.S. laws and regulations governing the protection of individuals seeking refuge from return to persecution or torture. *Finding: Fully Implemented* and is part of training for all component agencies.

## TO CBP

The 2016 report made five recommendations to CBP, *none of which were implemented*:

1. Videorecord all expedited removal processing interviews and require supervisory and headquarters review of the recordings of a sampling of interviews for quality assurance purposes. *Finding: Not Implemented.* CBP HQ confirmed that it does not videorecord all expedited removal processing because it is not operationally feasible, but it noted that portions of the process may be captured via CCTVs in CBP facilities and body cameras worn by Border Patrol officers. CBP did not comment on whether any of this video is reviewed in the manner recommended in 2016.
2. Retrain officers and agents on their role in the expedited removal process, procedures for screening noncitizens, and special needs of asylum seekers and other vulnerable populations. *Finding: Not Implemented.* CBP provides officers in the field with policy guidance and memorandums when there are changes in the process but does not retrain them.
3. Establish a dedicated corps of specially trained, nonuniformed officers, including female interviewers, to interview women and children to identify fear claims. *Finding: Not Implemented.* CBP HQ confirmed that it did not establish a dedicated corps of this sort.
4. Track the results of interviews conducted by virtual processing against those conducted in person to determine if the two methods are producing materially different outcomes. *Finding: Not Implemented.* CBP HQ confirmed that the fourth recommendation was not implemented and that it does not track the results of virtual vs. in-person processing interviews.
5. Develop a document that briefly and clearly explains the expedited removal process, its consequences, the right to

<sup>51</sup> U.S. Commission on International Religious Freedom (USCIRF). 2016. *Barriers to Protection: The Treatment of Asylum Seekers in Expedited Removal*. Washington, DC: USCIRF. <https://www.uscirf.gov/sites/default/files/Barriers%20To%20Protection.pdf>.

<sup>52</sup> See, e.g., OIG. September 25, 2023. *CBP Needs to Improve Its Video and Audio Coverage at Land Ports of Entry*. Report OIG-23-54. Washington, DC: OIG. <https://www.oig.dhs.gov/sites/default/files/assets/2023-09/OIG-23-54-Sep23.pdf>; OIG. 2023. *Results of Unannounced Inspections of CBP Holding Facilities in the San Diego Area*. OIG-24-07. Washington, DC: OIG. <https://www.oig.dhs.gov/sites/default/files/assets/2023-11/OIG-24-07-Nov23.pdf>; OIG. January 25, 2021. *Prompt Asylum Claim Review: DHS Has Not Effectively Implemented the Prompt Asylum Pilot Programs*. OIG-21-16. Washington, DC: OIG. <https://www.oig.dhs.gov/taxonomy/term/2622>; OIG. 2020. *CBP Has Taken Steps to Limit Processing of Undocumented Aliens at Ports of Entry*. OIG-21-02. Washington, DC: OIG. <https://www.oig.dhs.gov/sites/default/files/assets/2020-10/OIG-21-02-Oct20.pdf>; and OIG. 2020. *CBP Separated More Asylum-Seeking Families at Ports of Entry than Reported and for Reasons Other than Those Outlined in Public Statements*. OIG-20-35. Washington, DC: OIG. <https://www.oig.dhs.gov/sites/default/files/assets/2020-06/OIG-20-35-May20.pdf>.

seek protection for those who fear return, and the right to request a private interview, and provide this document to all individuals, in a language they understand, as soon as possible when they come into CBP custody. *Finding: Not Implemented.* Such a document was not developed. The 2016 report recommended the creation of this document to incorporate information present in I-867 forms to provide noncitizens with an overview of the expedited removal process. This was originally recommended to ensure that bona fide asylum seekers were not summarily removed because they did not understand the information provided by CBP officers from this form during initial screenings, or because the officer did not provide it. Now that I-867 forms are no longer being used during initial screenings under the STB policy, this recommendation is even more relevant.

## TO USCIS

In the 2016 report, USCIRF made four recommendations to USCIS:

1. Track whether CFI referrals are coming from CBP or ICE to better understand when in the process most fear claims are being raised. *Finding: Not Implemented.* USCIS confirmed that it does not track when in the process most fear claims are being raised.
2. Reaffirm in the asylum officers' lesson plan that the credible fear standard is a screening standard that requires showing a *significant possibility* of eligibility for asylum, not a full assessment of the merits of the case. *Finding: No Longer Relevant* as the Biden administration changed the standards applied during credible fear interviews.
3. Continue to track the results of CFIs conducted telephonically and those conducted in person to determine if the two methods are producing materially different outcomes. *Finding: No Longer Relevant.* Nearly all CFIs are now performed telephonically, aside from those done under the FERM program. USCIS HQ also indicated that when it tracked and compared the results of telephonic and in-person CFIs, there were no significant differences in outcomes. However, the researchers did not receive or analyze this data.
4. Allow asylum officers to convert and adjudicate appropriate expedited removal cases in which credible fear is found as affirmative asylum cases (decided by an asylum officer instead of an IJ). *Finding: Partially Implemented.* Through the FERM program, in some cities, asylum officers are conducting asylum merits interviews to adjudicate cases with

positive CFI determinations. However, this is being done in a limited fashion and does not apply to anyone outside the FERM program.

## TO ICE

In the 2016 report, USCIRF made six recommendations to ICE:

1. Require an individualized reassessment of the need for custody for all detainees with a positive credible fear finding and apply a presumption of bond for detainees with credible fear who do not fall under the 2009 parole directive. *Finding: No Longer Relevant* because noncitizens who receive positive CFI determinations do not have access to bond hearings under DHS policy at the time of the research.
2. Ensure that programs that detain nationals of particular countries separately do not have the effect of preventing them from learning about the right to seek asylum. *Finding: No Longer Relevant.* ICE HQ confirmed that they are not detaining nationals of particular countries separately.
3. Increase the use of Alternatives to Detention, such as monitored release, for asylum seekers, beyond bond and parole opportunities. *Finding: Partially Implemented.* The recommendation was implemented for families in the FERM program but not for other noncitizens in expedited removal.
4. If families are placed in expedited removal and detained, detain them only in facilities that meet the standards of the Flores Agreement and individually reassess the need for custody after credible fear is found, with a presumption of release. *Finding: Partially Implemented.* ICE HQ confirmed that it stopped holding families in ICE detention centers by FY 2022 and only holds single adults there as of the time of the research. Families are also being released from detention through the FERM program. However, some families are still being held in CBP facilities under the STB policy while they wait to undergo their CFI. It is unclear how long and under what conditions they are being held and whether their detention complies with the Flores Agreement.<sup>53</sup>
5. Detain all adult asylum seekers who must be detained, whether before or after a credible fear determination, in civil facilities only. *Finding: Unclear.* From a review of the eight ICE facilities that held asylum seekers in expedited removal at the time of the research, most seem to be civil facilities. However, at least two, the Torrance County Detention Facility in New Mexico and IAH Polk, hold other prisoners charged with crimes, in addition to ICE detainees.<sup>54</sup> ICE HQ also

<sup>53</sup> Santamaria, Kelsey Y. 2021. "Child Migrants at the Border: The Flores Settlement Agreement and Other Legal Developments." Congressional Research Service. <https://crsreports.congress.gov/product/pdf/IF/IF11799>.

<sup>54</sup> TRAC Immigration. "Detention Facilities Average Daily Population." <https://tracreports.org/immigration/detentionstats/facilities.html>.

did not confirm whether penal facilities held asylum seekers in the past, and it is unclear whether this will be done in the future.

- Expand the KYR presentations that provide detainees with basic legal information to all facilities that house asylum seekers. *Finding: Unclear.* ICE HQ confirmed that the location of KYR presentations is dependent on capacity and EOIR and other local funding and can change at any time.

## TO EOIR

In the 2016 report, USCIRF made two recommendations to EOIR:

- Retrain IJs that the interview record created by CBP is not a verbatim transcript of the interview and does not document the individual's entire asylum claim in detail and should be weighed accordingly. *Finding: Unclear.* The research team asked EOIR about the implementation of these recommendations and did not receive any response. They were also unable to confirm the information independently. Training materials for IJs are not publicly available.
- Expand the LOP available in some facilities to all detention facilities housing asylum seekers and provide it to detainees before their CFIs. *Finding: Partially Implemented.* As of fall 2024, the LOP was available in all ICE detention centers that house asylum seekers in expedited removal, except for the Torrance County Detention Facility.<sup>55</sup> However, LOP services vary between ICE detention centers and are not available to all detainees before their CFIs. The LOP also has not been expanded overall. Historically, EOIR has managed the LOP through contracts with nonprofit organizations. Until 2022, EOIR's contracting partner was the Vera Institute of Justice. According to the Vera Institute of Justice's website,<sup>56</sup> the program was operational in 40 facilities. As of 2024, the LOP is managed by another organization, Acacia Center for Justice. According to Acacia's website, LOP services are available in 35 ICE facilities.<sup>57</sup>

## TO CONGRESS

In the 2016 report, USCIRF made four recommendations to Congress:

- Authorize and fund another independent, comprehensive study of the treatment of asylum seekers in expedited removal at all stages of the process. *Finding: Not Implemented.*
- Request the Government Accountability Office (GAO) to conduct a study to assess whether noncitizens removed to their home countries under expedited removal have faced persecution or torture after their return. *Finding: Not Implemented.*
- Increase funding for the adjudicatory aspects of expedited removal to enable USCIS and EOIR to address backlogs, conduct timely adjudications, and provide due process. *Finding: Partially Implemented.* EOIR and USCIS received more funding since 2016, and some of it was specific to addressing the backlogs, increasing legal representation, and adding staff.<sup>58</sup> Despite these efforts and modest increases in budgets, the immigration court backlog has continued to grow tenfold and USCIS still struggles with an overwhelming number of asylum and credible and reasonable fear cases.<sup>59</sup>
- Increase funding to EOIR to expand the LOP to all facilities housing asylum seekers and to enable it to be provided to detained asylum seekers before their CFIs. *Finding: Unclear.* Although recent EOIR congressional budgets included efforts to increase access to LOP resources, these efforts are grouped with Legal Access initiatives in the most recent budget, which was allotted a small portion of the budget and included multiple programs.<sup>60</sup>

<sup>55</sup> Acacia Center for Justice. "Legal Orientation Program (LOP)." <https://acaciajustice.org/what-we-do/legal-orientation-program-lop/> (Accessed on Sept. 23, 2024).

<sup>56</sup> Vera Institute of Justice. "Legal Orientation Program." <https://www.vera.org/projects/legal-orientation-program/legal-orientation-program-lop-facilities> (accessed on September 23, 2024).

<sup>57</sup> Acacia Center for Justice. "Legal Orientation Program (LOP)." <https://acaciajustice.org/what-we-do/legal-orientation-program-lop/> (Accessed on Sept. 23, 2024).

<sup>58</sup> EOIR. 2016. "Executive Office for Immigration Review (EOIR) FY 2017 Budget Request at a Glance." <https://www.justice.gov/jmd/file/821961/download>. EOIR. 2023. "Executive Office for Immigration Review (EOIR) FY 2024 Budget Request at a Glance." DHS. 2023. "United States Citizenship and Immigration Services Budget Overview Fiscal Year 2023." [https://www.dhs.gov/sites/default/files/2022-03/U.S.%20Citizenship%20and%20Immigration%20Services\\_Remediated.pdf](https://www.dhs.gov/sites/default/files/2022-03/U.S.%20Citizenship%20and%20Immigration%20Services_Remediated.pdf). USCIS. 2022. "USCIS Announces New Actions to Reduce Backlogs, Expand Premium Processing, and Provide Relief to Work Permit Holders." <https://www.uscis.gov/newsroom/news-releases/uscis-announces-new-actions-to-reduce-backlogs-expand-premium-processing-and-provide-relief-to-work>. USCIS. 2024. "Completing an Unprecedented 10 Million Immigration Cases in Fiscal Year 2023, USCIS Reduced Its Backlog for the First Time in Over a Decade." <https://www.uscis.gov/EOY2023>.

<sup>59</sup> TRAC (Transactional Records Access Clearinghouse) Immigration. December 18, 2023. "Immigration Court Backlog Tops 3 Million; Each Judge Assigned 4,500 Cases." <https://tracreports.org/reports/734/> (the immigration court backlog also increased drastically from approximately 516,000 cases in 2016 to over three million cases at the start of 2024). DHS and USCIS. 2023. "Asylum Application Processing Fiscal Year 2022." [https://www.dhs.gov/sites/default/files/2023-08/23\\_0717\\_uscis\\_asylum\\_application\\_processing.pdf](https://www.dhs.gov/sites/default/files/2023-08/23_0717_uscis_asylum_application_processing.pdf). (The amount of affirmative asylum and credible and reasonable fear cases that USCIS asylum officers had to tackle increased by 166 percent between 2021 and 2022, a huge jump compared to previous years.)

<sup>60</sup> DOJ. 2022. *United States Department of Justice Executive Office for Immigration Review FY 2023 Performance Budget Congressional Budget Submission*. Washington, DC: DOJ. 2021. *United States Department of Justice Executive Office for Immigration Review FY 2022 Congressional Budget Submission*. Washington, DC: DOJ. <https://www.justice.gov/jmd/page/file/1398381/download>; and DOJ. 2020. *United States Department of Justice Executive Office for Immigration Review FY 2021 Congressional Budget Submission*. Washington, DC: DOJ. <https://www.justice.gov/doj/page/file/1246381/download>.

# UPDATED POLICY RECOMMENDATIONS

Considering recent policy changes, the research findings, and the analysis of the 2016 recommendations, updated policy recommendations are necessary to address new and evolving concerns and circumstances. Below are reiterated and updated policy recommendations from the 2016 report and new ones that reflect the expedited removal process as implemented during the research period.

## TO THE SECRETARY OF HOMELAND SECURITY

### Reiterated and Updated 2016 Recommendations:

- Appoint a high-ranking official with authority to make reforms and oversee implementation to ensure protection of asylum seekers going through the expedited removal process.
- Request that the DHS OIG audit the expedited removal process and all relevant recent policy changes for compliance with laws and policies regarding the protection of asylum seekers and their due process rights.

### New Recommendation:

- Expand the use of JPCs to improve coordination among the component agencies involved in expedited removal, enhance the efficiency of the process, and provide better conditions for multi-day detention and access to legal support.

## TO CBP

### Reiterated and Updated 2016 Recommendations:

- Develop a document that provides information that was previously read to noncitizens from the I-867 forms during the screening process. The document should explain the expedited removal process, its consequences, the right to seek protection for those who fear return, and the right to request a private interview. It should be provided to all individuals, in a language they understand, as soon as possible when they come into CBP custody.
- Videorecord all expedited removal screening and intake procedures (conducted by CBP OFO and Border Patrol) and require supervisory and headquarters review (overseen by the high-ranking official referenced above) of a sampling of recordings of these procedures for quality assurance purposes.

- Provide CBP officers with regular training to understand new and updated policies, their role in the expedited removal process, procedures for screening noncitizens, and the special needs of asylum seekers and other vulnerable populations.
- Establish a dedicated corps of specially trained, nonuniformed officers, including female interviewers, to interview women and children to identify fear claims.
- If families are placed in expedited removal and detained, detain them only in facilities that meet the standards of the Flores Agreement (which governs the duration and conditions of family detention) and individually reassess the need for custody after credible fear is found, with a presumption of release. (This recommendation was made to ICE in 2016 but is now more appropriate for CBP because ICE HQ confirmed it stopped detaining families in its facilities in 2022.)

### New Recommendations:

- Display prominent signage and informational videos on manifestation of fear requirements under the new “shout test” in CBP facilities and train CBP officers on how to identify manifestation of fear.
- Make conditions in CBP facilities more hospitable for overnight stays and access to counsel, including by allowing detainees to meet with legal representatives (in person or via tele- or videoconferencing), making available KYR presentations, and creating a central email and phone number that lawyers can use to reach their clients.

## TO USCIS

### Reiterated and Updated 2016 Recommendations:

- Track whether CFI referrals are coming from CBP or ICE to better understand when in the process most fear claims are being raised.
- Allow asylum officers to convert and adjudicate appropriate expedited removal cases, in which credible fear is found, as affirmative asylum cases through asylum merits interviews instead of having them adjudicated by an IJ. (As of the research period, this is only done for some cases in the FERM program.)

**New Recommendations:**

- Video and/or audiorecord CFIs so that there is an accurate record and transcript of the interview for IJ reviews and hearings in case any details need to be further evaluated.
- Conduct CFIs with noncitizens in CBP and ICE custody via video conferencing instead of voice calls to allow the asylum officer to observe the noncitizen's body language, physical features, and emotional reactions and make the noncitizen more comfortable to express necessary details about their case.
- If there is a notice of appearance (Form G-28) on file for a noncitizen, provide the legal representative with timely notice of the date, time, and location (in person or virtual) of the CFI. If a noncitizen indicates they have or want a legal representative during a CFI, provide a continuance and reschedule the interview to make sure the representative can prepare for and attend it.

**TO ICE****Reiterated and Updated 2016 Recommendations:**

- Require an individualized reassessment of the need for custody for all detainees with a positive CFI determination.
- Increase the use of Alternatives to Detention, such as monitored release, for asylum seekers (aside from those in the FERM program) beyond parole opportunities.
- Detain all adult asylum seekers who must be detained, whether before or after a credible fear determination, in civil facilities only.
- Expand the KYR presentations that provide detainees with basic legal information to all facilities that house asylum seekers.

**TO EOIR****Reiterated and Updated 2016 Recommendations:**

- Retrain IJs that the record created by CBP during screenings and CFI transcripts (consisting of notes written by asylum officers during CFIs) are not verbatim transcripts, do not document the noncitizen's entire asylum claim in detail, and should be weighed accordingly.
- Expand LOP resources at all CBP and ICE facilities housing asylum seekers and provide these resources to detainees before their CFIs and IJ reviews.

**New Recommendation:**

- If there is a notice of appearance (Form EOIR-28) on file for a noncitizen, provide the legal representative with timely notice of the date, time, and location (in person or virtual) of the IJ review. If a noncitizen indicates they have or want a legal representative during an IJ review, provide a continuance and reschedule the IJ review to make sure their representative can prepare for and attend it.

**TO CONGRESS****Reiterated and Updated 2016 Recommendations:**

- Authorize and fund another independent, comprehensive study of the treatment of asylum seekers in expedited removal at all stages of the process.
- Request the GAO to conduct a study to assess whether noncitizens removed to their home countries under expedited removal faced persecution or torture after their return.
- Increase funding for the adjudicatory aspects of expedited removal to enable USCIS and EOIR to address backlogs, conduct timely adjudications, and provide due process.
- Increase funding to EOIR to expand the LOP to all CBP and ICE facilities housing asylum seekers and enable it to be provided to detained asylum seekers before their CFIs.

**New Recommendation:**

- Appropriate resources and direct DHS and EOIR to develop and activate a "reserve corps" of officers and IJs to provide surge capacity to support expedited removal proceedings when there are significant increases in arrivals at or between POEs.

# GLOSSARY OF ACRONYMS

## GOVERNMENT AGENCIES

**USCIRF:** U.S. Commission on International Religious Freedom  
**DHS:** Department of Homeland Security  
**CBP:** Customs and Border Protection  
**OFO:** CBP Office of Field Operations  
**ICE:** Immigration and Customs Enforcement  
**ERO:** ICE Enforcement and Removal Operations  
**USCIS:** U.S. Citizenship and Immigration Services  
**OCC:** DHS Office of Chief Counsel  
**OIG:** DHS Office of Inspector General  
**GAO:** Government Accountability Office  
**DOJ:** Department of Justice  
**EOIR:** Executive Office for Immigration Review  
**BIA:** Board of Immigration Appeals

## LEGAL AND PRACTICAL TERMS

**CFI:** Credible Fear Interview  
**RFI:** Reasonable Fear Interview  
**IJ:** Immigration Judge  
**IRFA:** International Religious Freedom Act  
**NTA:** Notice to Appear  
**CAT:** Convention Against Torture  
**LOP:** Legal Orientation Program  
**KYR:** Know Your Rights  
**ATD:** Alternatives to Detention  
**POE:** Port of Entry

## POLICY ACRONYMS

**CLP:** Circumvention of Lawful Pathways Rule  
**EER:** Enhanced Expedited Removal  
**FERM:** Family Expedited Removal Management Program  
**STB:** Securing the Border Policy

# ABOUT THE AUTHORS

This research was conducted by HIAS. The report was made possible by the contributions of several authors, contributors, technical advisors, and reviewers. **Melissa Katsoris** authored the report and directed phase two (primary research component) of this project. She also conducted secondary and primary research by providing legal and policy analysis, collecting data, and leading outreach, interviews, site visits, observations, information gathering, and consultations.

**Vanessa Dojaquez-Torres** and **Yael Schacher** contributed to this report by conducting and facilitating outreach, interviews, site visits, observations, and real-time analysis of the evolving laws and policies governing expedited removal (which were changing as this project was underway). **Bonnie Ip** guided the conceptualization of the survey and interview structure, conducted qualitative analysis to derive findings from the research team's interviews and survey, and analyzed publicly available data for this report.

**Mark Hetfield** provided technical guidance throughout the project to develop an overall research plan, facilitate outreach, and provide his expertise and in-depth review based on his experience directing and authoring USCIRF's 2005 expedited removal study. **Andy Schoenholtz** provided research guidance and legal expertise and conducted an in-depth review of the report to ensure quality and accuracy of the legal analysis and research. **Rachel Levitan** reviewed the report and provided practical support to the authors and contributors throughout the project.

**Guillermo Cantor** led the conceptualization and development of the research plan, directed the first phase of this project (secondary research) and coauthored the interim report, which provided the conceptual foundation for this report.

**Ingrid Eagly** provided technical guidance and review during the first phase of the project.

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