

Biden Administration Move to Eliminate Requests for Reconsideration Would Endanger Asylum Seekers, Deport Them to Persecution and Torture

On August 20, 2021, the Biden administration [published](#) a Notice of Proposed Rulemaking (NPRM) on asylum processes that would eliminate the life-saving protection of asylum office requests for reconsideration of negative credible fear determinations, among other proposed changes. The proposed rule would eliminate a crucial asylum office safeguard to reconsider mistaken decisions regarding whether asylum seekers placed in expedited removal have a credible fear of persecution. At the same time that the rule could lead to a dramatic expansion in the use of expedited removal – a deeply [flawed process](#) that risks returning refugees to persecution and torture and whose deficiencies have been documented for [decades](#). These changes would further increase the likelihood of wrongful deportations of refugees to harm.

Shortly after the U.S. government began implementing expedited removal in 1997, the former Immigration and Naturalization Service (INS) [clarified](#) that it had authority to conduct a second credible fear interview and reverse a negative credible fear determination even if it had been affirmed by an immigration judge. After widespread [reports](#) of asylum seekers wrongly deported under expedited removal, and [concerns](#) about mistaken credible fear denials expressed by U.S. Senator [Patrick Leahy](#) on the floor of the Senate in September 2000, the INS [published](#) final regulations in December 2000 to make clear that the INS (later the Department of Homeland Security (DHS)) could reconsider a negative determination including after it had been affirmed by an immigration judge.

Like the Biden administration, the Trump administration also proposed to eradicate requests for reconsideration in a June 15, 2020 proposed rule that attempted to unlawfully rewrite asylum law and eviscerate virtually all protection claims (often referred to as the “death to asylum rule”), but ultimately [excluded](#) the change from the final regulation explaining that it had been made inadvertently. The Biden administration’s attempt to resurrect this harmful change – that even the Trump administration admitted was a mistake and declined to implement – will further magnify the risks of expedited removal, obliterate a crucial safeguard in an already dangerous system of fast-track deportations, and result in the return of refugees to harm in violation of the Refugee Convention and Protocol.

The Biden administration has detained thousands of asylum seekers and subjected many to expedited removal proceedings riddled with due process violations and unlawful and abusive conduct by government agents, highlighting the critical need for safeguards against erroneous credible fear decisions other than immigration judge review, which often serves as a rubber stamp. Asylum seekers harmed by egregious due process violations in expedited removal under the Biden administration include: a 13-year-old unaccompanied child illegally subjected to a credible fear interview; dozens of detained African asylum seekers and many others forced to have credible fear interviews (CFIs) in a language in which they are not fully fluent; and at least a dozen asylum seekers pressured to proceed with their credible fear interviews without counsel present – in at least one instance resulting in the wrongful deportation of a Nicaraguan asylum seeker who had been jailed for her political opposition to the current regime.

This factsheet documents a small fraction of the lives that have been saved through the critical safeguard of a request for reconsideration, including: an 18-year-old Venezuelan asylum seeker whose negative credible fear determination was reversed through a request for reconsideration filed the day before DHS

was scheduled to deport him; a Nicaraguan asylum seeker who had been detained, beaten, stabbed, and tortured by police officers for participating in anti-government marches; a Haitian refugee who has since been granted asylum; an asylum seeker from Burkina Faso who had suffered attacks and threats after converting to Christianity; and an asylum seeker from the Ivory Coast who had been violently attacked for his political views.

Requests for Reconsideration Are a Minimal Safeguard in Dangerous Expedited Removal Process

The Biden administration's August 2021 asylum [NPRM](#) hinges on subjecting asylum seekers at the border to expedited removal while at the same time eliminating requests for reconsideration of negative credible fear interviews that have been reviewed by an immigration judge. These requests are a critical safeguard that can and has stopped the wrongful removal of refugees who would have been returned to persecution without access to the U.S. asylum system. The Biden administration cites "[efficiency](#)" to attempt to justify sacrificing the ability of asylum offices to review and reverse wrongful decisions, but efficiency cannot be used as an excuse for circumventing U.S. legal obligations to refugees. Eliminating requests for reconsideration is inexcusable and would further amplify the mistakes of the broken expedited removal process, under which individuals are rapidly deported without a hearing and opportunity to apply for asylum before an immigration judge unless they are referred for and receive a positive credible fear determination.

As the bipartisan U.S. Commission on International Religious Freedom and non-governmental [organizations](#) have long [confirmed](#), the dangerous flaws of expedited removal include [failures](#) by asylum officers to properly screen individuals, elicit relevant information, and apply the correct legal standards; lack of access to counsel; detention in abysmal conditions; due process issues arising from telephonic interviews; traumatic and ongoing [family separation](#); impact of medical and mental health conditions on ability to testify; and limited judicial review. DHS routinely fails to provide adequate interpretation services to asylum seekers while they are in detention and often [subjects](#) them to CFIs in a language they do not speak fluently or with an interpreter they have trouble communicating with due to differences in dialect, frequent interruptions, and poor phone call quality with intrusive background noise. Asylum offices and interpreters frequently [interrupt](#) people and require them to reply with "yes" or "no" answers, further truncating an already rushed and deficient proceeding. Successive administrations have failed to address the long-documented flaws of expedited removal and limited statutory/regulatory protections for asylum seekers that are "[often misapplied or flouted altogether](#)." A recent Supreme Court [decision](#) further narrowed judicial review, limiting the availability of habeas corpus to challenge wrongful negative fear determinations. The Trump administration's weaponization of the credible fear process, which caused grant rates to [plummet](#) as countless asylum seekers were wrongly denied access to the U.S. asylum system, only further confirms that requests for reconsideration are a critical safeguard.

Under existing regulations, an asylum seeker who receives a negative credible fear determination (a finding that the individual has not established a "[significant possibility](#)" of eligibility for asylum) is entitled to review by an immigration judge. In addition, asylum seekers can [request](#) that the asylum office reconsider a negative decision that has been affirmed by the immigration judge to provide an opportunity for the asylum office to rectify erroneous determinations that were not detected during the often cursory immigration judge review. The asylum office may reverse the decision based on the asylum seeker's written request or conduct another interview. Asylum seekers are typically only able to submit requests for reconsideration with the assistance of counsel, as many unrepresented people do not know about the process let alone can write a request for reconsideration in English and submit it to the asylum office

while detained. If the immigration judge or asylum office vacates the negative credible fear determination, the asylum seeker is permitted to apply for asylum and receive a full hearing before an immigration judge.

The former INS [clarified](#) in 1997 that it had authority to reverse negative credible fear determinations. In 2000, Senator Leahy [drew](#) attention to numerous reports of people being deported to persecution under the expedited removal process and the critical importance of review mechanisms including the ability of the asylum office to reverse its decisions. Due to the egregious flaws of expedited removal, Senator Leahy and others proposed the bipartisan [Refugee Protection Act of 1999](#) to limit the use of expedited removal to emergency situations and ensure review. In December 2000 the INS published final [regulations](#) to include a provision reiterating that it could reconsider a negative determination, including after it had been affirmed by the immigration judge.

The Biden administration falsely [claims](#) in the August 2021 asylum NPRM that review by an immigration judge of negative credible fear determinations is an adequate safeguard against the serious and unfixable defects in the expedited removal process. But immigration judge review of negative credible fear determinations is, in many cases, a “[rubber stamp](#).” From June 2017 to June 2018, immigration judges affirmed negative CFIs in [76 percent](#) of cases, according to the most recent available analysis of Executive Office of Immigration Review (EOIR) data by the Syracuse University’s Transactional Records Access Clearinghouse. Moreover, there is [enormous, unfair variation](#) in outcomes depending on the immigration judge assigned to review the credible fear determination, with some judges affirming negative determinations in nearly every case.

Judges often schedule CFI reviews within [24 hours](#) of the initial determination – leaving asylum seekers with virtually no time to prepare or consult with counsel, bar attorneys from participating in reviews (the government [contends](#) there is no right to counsel in these reviews), reject additional evidence or testimony, and interpret additional information the asylum seeker did not have time or ability to present at the CFI as impugning the credibility of the asylum seeker. Attorneys and asylum seekers report that immigration judges sometimes limit their review to a few questions and prevent asylum seekers from sharing any additional information. Even in the rare instance where an asylum seeker does manage to secure counsel, attorneys are frequently [not notified](#) of an immigration judge review until the night before or not at all. Attorneys have reported that asylum seekers sometimes do not receive the credible fear decision and notes taken by the asylum officer prior to the immigration judge review, leaving them unable to identify or challenge errors in the record. They are at a major disadvantage even if they do receive these documents because the notes are in English, and a translation is not provided.

Due to the [well-documented](#) flaws of expedited removal and the inadequacy of immigration judge review of negative credible fear determinations, it is critical that the asylum office retain the ability to review and reverse erroneous decisions to prevent the wrongful deportation of refugees.

Asylum Seekers’ Lives Saved Through Requests for Reconsideration, Including Under Biden Administration

Many asylum seekers whose negative CFIs were wrongly affirmed after cursory review by an immigration judge have avoided imminent deportation to persecution and torture through requests for reconsideration or reinterview. These include refugees whose initial negative fear determinations were reversed through reconsideration mechanisms and who were subsequently granted asylum, such as:

- **A negative credible fear determination for a refugee who fled severe domestic violence was reversed by the Newark asylum officer in June 2009 after an attorney at Human Rights First**

requested reconsideration, and she was later granted asylum. The woman had been brutally beaten, raped, stalked, and threatened with death and the death of her children by her ex-partner in the Dominican Republic. The asylum officer did not permit the woman's attorney to attend the interview in person and did not provide the woman advance notice of the interview, depriving her of an opportunity to call her attorney to attend the interview telephonically. The asylum officer found her not credible due to interpretation problems and engaged in a hostile and adversarial questioning style, including blaming the woman for staying with her abusive partner.

- **After Human Rights First requested reconsideration in August 2000 for a rape survivor from the Dominican Republic, the former INS reversed a negative credible fear finding, and the woman was ultimately granted asylum.** She had fled after being abused for years by her partner, raped—including at knifepoint—violently beaten with weapons, forbidden to leave the house, and threatened with a gun to her head. The asylum officer found she lacked a credible fear after interviewing her while she was unrepresented and relying on a BIA case that at the time was under review by the Attorney General and pending appeal in the Ninth Circuit. After Senator Patrick Leahy and Congresswoman Carolyn Maloney advocated for reconsideration, the INS reversed its determination.
- **In 2017, a Haitian refugee fleeing gender-based violence and death threats was found to have a credible fear of persecution upon a request for reconsideration to the San Francisco asylum office and later granted asylum.** After surviving a difficult journey to the United States, she received a negative credible fear determination while detained, as she did not have access to counsel or resources in Haitian Creole. The woman tried to explain her claim but was interrupted by the interpreter, whom the woman had trouble understanding. After an attorney at the Center for Gender and Refugee Studies submitted a request for reconsideration, the asylum office determined that she had a credible fear of persecution and, in December 2019, the woman was granted asylum by an immigration judge.

Recent requests for reconsideration have also reversed erroneous decisions by the asylum office that resulted from erroneous interpretations, inappropriate questioning, or abusive conduct by asylum officers during CFIs that prevented asylum seekers from disclosing important aspects of their claims, including:

- **In September 2021, the negative credible fear finding for a torture survivor from the Democratic Republic of Congo (DRC) was vacated by the asylum office through a request for reconsideration.** According to his attorney from the Southeast Immigrant Freedom Initiative (SIFI), the man had fled the DRC after members of a rebel group broke into his home, attacked him with machetes, and slit his father's throat. After conducting further interviews and reviewing a psychological evaluation and physical examination documenting the extent of his scars, injuries, and mental trauma, the asylum office vacated the original negative CFI.
- **In July 2021, an erroneous negative credible fear determination for an unrepresented eighteen-year-old Venezuelan asylum seeker was vacated through a request for reconsideration.** The day before his removal flight was scheduled to depart, attorneys at SIFI filed a request for reconsideration noting numerous errors with the CFI, including the interviewing asylum officer's failure to adequately analyze the seriousness of the persecution the young man had experienced.
- **In September 2021, the asylum office vacated a negative credible fear determination in the case of an asylum seeker from Ghana after his attorney at SIFI filed a request for**

reconsideration that highlighted multiple errors in the initial CFI, including inappropriate questioning and offensive language by the interviewing asylum officer. For instance, in the summary of the interview, the asylum officer referred to the man as the “girlfriend of a wealthy man” misgendering the applicant and misdescribing the nature of the relationship.

- **In April 2021, the Houston asylum office reconsidered its initial determination that a Mexican asylum seeker who had fled years of physical abuse, imprisonment, and threats of incest by her family did not have a credible fear of persecution.** Traumatized and unrepresented at her CFI after being detained for four months, the woman was unprepared to fully describe her abuse, and the asylum officer failed to ask about any form of abuse other than physical violence. The officer found that she lacked credible fear based on an overbroad application of former Attorney General Sessions’ ruling in *Matter of A-B-*, an unlawful case that has since been vacated. Her attorney, Thera McAvoy with the Innovation Law Lab, filed a request for reconsideration with evidence of the long history and extent of abuse the woman had suffered, prompting the asylum office to reverse its earlier determination.
- **In June 2020, the asylum office reversed a negative credible fear determination for a 21-year-old Honduran asylum seeker who had witnessed the murder of his guardian and fled after the same gang murdered all the other witnesses to the killing.** The gang killed the man’s guardian because the guardian had previously helped the asylum seeker’s mother leave the country after the gang sexually abused and threatened her. At the time of his CFI, the young man was unrepresented and did not know why his mother had fled or why his guardian had been killed, as his mother had tried to protect him from this trauma. After speaking with his mother, the man’s attorneys at Florence Immigrant & Refugees Rights Project (FIRRP) were able to submit a fuller explanation of his claim.
- **A young Salvadoran asylum seeker who fled death threats resulting from his refusal to submit to voter intimidation by gang members was found to have a credible fear of persecution after the Los Angeles asylum office re-interviewed him pursuant to a request for reconsideration by his attorney.** At the man’s initial telephonic CFI in 2014, the asylum officer refused to review his corroborating evidence, as did the immigration judge before affirming the negative determination. His application for asylum remains pending before the immigration court.

DHS typically subjects asylum seekers to CFIs while they are detained in abysmal and retraumatizing conditions that threaten their physical and mental health and where they lack access to adequate medical care. As a result of its ability to reconsider negative CFIs, the asylum office has vacated decisions or conducted additional interviews in cases where asylum seekers were forced to undergo CFIs while suffering from serious medical conditions impacting their ability to speak about their fear of return, including:

- **An asylum seeker who suffered a miscarriage the night before her CFI in August 2014 successfully requested review of the negative fear determination that she received from the Los Angeles asylum office.** The woman was rushed to the hospital the night before her CFI due to intolerable abdominal pain and returned to the detention facility in the middle of the night without knowing if she had lost the pregnancy. During the CFI the following morning, she could not concentrate on the interview, worried that she had suffered a miscarriage. With the assistance of FIRRP, the woman, who had experienced significant gender-based violence, filed a request for reconsideration, was interviewed a second time by the asylum office, and found to have a credible fear of persecution.

- **The negative credible fear determination for a Nicaraguan asylum seeker was reversed in May 2021 after his attorney submitted repeated requests for reconsideration detailing the effects of his brain injury, including memory loss, speech impediments, severe migraines, and difficulty concentrating.** The Houston asylum office initially determined the man, who had fled Nicaragua after being detained, beaten, stabbed, and tortured by police officers for participating in anti-government political marches, did not have a credible fear of persecution. The man had suffered the brain injury during a brutal attack by a Nicaraguan police officer who hit him on the head, according to his attorney at the Refugee and Immigrant Center for Education and Legal Services (RAICES).

Asylum seekers are often unable to communicate effectively during CFIs due to inadequate interpretation services. Countless people have likely been deported due to defective translation, as they did not have access to legal counsel to file requests for reconsideration. Asylum seekers whose lives have been saved through requests for reconsideration after they received negative credible fear determinations due to translation problems include:

- **In June 2021, the Houston asylum office vacated a negative credible fear finding for an Angolan asylum seeker fleeing persecution due to his sexual orientation after a request for reconsideration filed by SIFI.** Unrepresented during his CFI, the man was afraid to disclose that he was gay and had difficulty understanding the Brazilian Portuguese interpreter, a different dialect from the Angolan Portuguese he speaks. The man, who suffered abuse and medical neglect while detained, tried to inform the officer that he was sick at the beginning of the interview but was forced to proceed while experiencing symptoms of COVID-19 and post-traumatic stress disorder.
- **In August 2020, an Angolan political activist, who was threatened and assaulted by members of an opposing political party, and his family were erroneously found to not have a credible fear of persecution.** After failing to conduct the CFI in the family's best language, the asylum office erroneously found that they did not have a well-founded fear of persecution even though the man tried to explain the death threats he had received, that his wife was raped by members of the opposing party, and that the police refused to protect him after he filed reports against his persecutors. After his attorney at RAICES submitted multiple requests for reconsideration, the Houston asylum office reversed its determination.
- **In October 2020, an asylum seeker who fled the Ivory Coast after being violently attacked for his political views received a negative credible fear determination by the Houston asylum office.** He had to go ahead with the CFI in French despite stating that his best language is Jula. As a result, the asylum officer made egregious errors in concluding that the man did not have a credible fear of persecution, including mischaracterizing his past persecution as having been "beaten by sticks" when the man had been repeatedly sliced with a machete. After the immigration judge affirmed the decision, his attorney at RAICES filed multiple requests for reconsideration, ultimately prompting the Houston asylum office to reverse its decision.
- **In August 2021, the Newark asylum office determined that a Brazilian asylum seeker who had been threatened and attacked by a police officer who fired a gun at him and continued to search for him had a credible fear of persecution after his attorney submitted a request for reconsideration.** The request, filed by Alyssa Kane at the Aldea - People's Justice Center, explained that the man had had difficulty understanding the European Portuguese translator at his CFI—during which he was unrepresented—and highlighting the translation errors in the transcript.

Not only must the reconsideration process be maintained, but it must also be improved and provided stronger quality control. Multiple requests for reconsideration are sometimes necessary to obtain a fair decision from the asylum office when it has declined valid and compelling requests for reconsideration. This was particularly the case under the Trump administration when the asylum office was under extreme political pressure to deny asylum in violation of U.S. laws and treaty obligations. Recent examples of asylum seekers where multiple reconsideration requests were required to reverse wrongful negative fear determinations underscore the continued need to avoid strict numerical limits on requests for reconsideration. For example:

- **In summer 2021, a negative credible fear determination for a Nicaraguan asylum seeker was reversed after his attorney submitted multiple requests for reconsideration to the Houston asylum office documenting a traumatic head injury that caused significant amnesia.** Nicaraguan paramilitary groups threatened to rape and kill the man for his political opposition views, according to his attorney at RAICES.
- **In June 2021, the Houston asylum office reversed a negative fear determination for an asylum seeker from Burkina Faso fleeing religious persecution who had been interviewed in French despite stating that his best language was Mossi.** The man had suffered attacks and death threats because he converted from Islam to Christianity. After his attorney at RAICES submitted multiple requests for reconsideration documenting interpretation problems during the CFI and clarifying the man's asylum claim, the asylum office vacated its negative CFI determination.
- **An asylum seeker from Burkina Faso who suffered attacks and death threats after converting to Christianity received a negative credible fear determination in March 2021, which was subsequently reversed through a request for reconsideration.** He was unrepresented during his CFI and forced to answer questions in French despite stating that Mossi was his best language. After the immigration judge affirmed the determination and the man secured legal representation, his attorney at RAICES submitted requests for reconsideration. The Houston asylum office vacated the negative fear determination in June 2021.

Egregious Errors and Due Process Violations under Biden Administration's Use of Expedited Removal Confirms Dangers of Eliminating Requests for Reconsideration

Major due process violations have persisted as the Biden administration embraces the use of expedited removal, resulting in wrongful outcomes that endanger asylum seekers' lives and highlighting the critical need for safeguards such as requests for reconsideration. [Guidance](#) issued by the Biden administration in September 2021 categorically designates recently arriving asylum seekers as an enforcement priority for apprehension and deportation. Pursuant to interim [guidance](#) issued in February 2021, the Biden administration has detained thousands of asylum seekers, transferred them between different detention centers across the country, rather than paroling them to family or community groups—including to facilities in Colorado, Virginia, Minnesota, Florida, Louisiana, Mississippi, and Washington, and separated asylum-seeking families by detaining them in different facilities. While inflicting this additional harm and trauma on asylum seekers, the administration has persisted in administering deeply flawed CFIs despite escalating reports of due process violations. From February 1, 2021 to September 15, 2021, the Biden administration [conducted](#) 36,540 CFIs, with the number of CFIs administered more than quadrupling from February to September 2021.

Under the Biden administration, abusive and improper conduct by Immigration and Customs Enforcement (ICE) and asylum officers at CFIs continues to condemn asylum seekers to deportation in violation of U.S. law and international obligations. In the past months, DHS has forced over a dozen asylum seekers to conduct a CFI without their lawyer present, according to their attorney Sally Santiago, using disturbing tactics such as threatening to throw them into an *hielera* (a cold cell used by Customs and Border Protection to migrants and asylum seekers near the border), telling them they do not need their attorney for the interview, and threatening to detain them indefinitely if they refuse to proceed. Recent abusive actions during CFIs include:

- **Around July 2021, a Nicaraguan asylum seeker received a negative credible fear determination at the Stewart Detention Center and was deported after proceeding without an attorney because an ICE officer told her she did not need her attorney for the interview.** A teacher in Nicaragua, the woman had been arrested and jailed for supporting an opposition presidential candidate and refusing to intimidate people into voting for the ruling party. She was confused by the highly technical legal questions the asylum officer asked such as “what particular social group are you in?” The officer also instructed her to limit her answers and only respond with “yes” or “no.” During the IJ review, the immigration judge did not permit her attorney to be present and affirmed the negative CFI. She is now in hiding in Nicaragua and fears for her life, according to attorney Sally Santiago.
- **In August 2021, a Nicaraguan asylum seeker received a negative determination at the Stewart Detention Center after an ICE officer threatened her in the presence of the asylum officer that she would never get a CFI if she did not proceed without her attorney.** The woman had been stalked, threatened, and fired for her political opinion in Nicaragua. Attorney Sally Santiago reported that the woman was desperate to complete a CFI after having been detained for several months already in the United States, since April 2021, with gynecological problems including heavy bleeding and unable to obtain treatment for it.
- **In Spring 2021, the Houston asylum office subjected an unrepresented 13-year-old Guinean child to a CFI in violation of U.S. [law](#) requiring the child to be designated as an unaccompanied minor, exempted from expedited removal, transferred to Office of Refugee Resettlement custody, and allowed to apply for asylum.** Despite finding the child’s statements about his age to be credible, the asylum office proceeded with the interview and issued a negative credible fear determination, leaving the traumatized child illegally detained in an adult detention facility for an additional two months, according to his attorney at SIFI.

On June 30, 2021, a coalition of advocates and organizations [wrote](#) to USCIS, ICE, and EOIR documenting the many systemic due process violations suffered by asylum seekers in expedited removal but to date have not received a response from the agencies. Grievances outlined in this letter include months-long delays in providing CFIs—leading to months of traumatic detention and in some cases family separation—failure by ICE to provide an appropriate interpreter when issuing initial documentation about the credible fear process, lack of adequate interpretation during CFIs, broad use of telephonic interviews, CFIs where asylum seekers are only permitted to respond with one-to-two sentence answers, little or no notice of a scheduled IJ review, and failure to provide CFI determinations and interview notes prior to the review.

An advocate reported to Human Rights First that in the past few months alone she has spoken with dozens of detained African asylum seekers who were forced to conduct their CFIs in a language (typically French) that is not their native or best language and received negative determinations. Some of them

reported that when they stated that they were not comfortable speaking in French, they were required to proceed with the French interpreter and told, “This is what we have.” Lack of adequate interpretation during the expedited removal process violates the due process rights of asylum seekers and increases the risk that they will be wrongly deported to harm:

- **In Spring 2021, two asylum seekers from Burkina Faso were left with little choice but to proceed with their CFIs in French, a language they are not fluent in, despite the fact that they both requested Bissa interpreters.** One of the asylum seekers was forced to reschedule his CFI twice, prolonging his detention after already waiting for a month for his CFI to be scheduled, only to relent and proceed in French. This caused the asylum officer to record glaring misstatements of facts in his CFI notes, ultimately resulting in a negative determination. The asylum office’s actions expressly violated USCIS [guidance](#) requiring that a Notice to Appear be issued if a rare language interpreter is not available within 48 hours.
- **An immigration court judge refused to provide an unrepresented 19-year-old asylum seeker from the Ivory Coast an interpreter in his best language on 17 separate occasions for his immigration judge review after the asylum office wrongly interviewed him in French and entered a negative CFI determination.** Determined to receive a fair opportunity to be heard at his CFI review, the man stated each of the 17 times that he could not proceed without a Maouka interpreter, leading to prolonged months-long detention. He is terrified that he will be deported to the Ivory Coast, where his parents were murdered a local government official where they lived, according to an advocate who spoke with Human Rights First.
- **In May 2021, the asylum office entered a negative credible fear determination for an Angolan torture survivor who was forced to undergo the CFI and immigration judge review in French even though his native and best language is Lingala.** The man had trouble understanding the French interpreter and felt extremely ill, suffering from high blood pressure, during both the CFI and review. In Angola, he had been attacked and tortured by a political group. Two years ago, when his wife and daughters fled to the United States to seek asylum, an asylum officer determined that they had a credible fear of persecution based on the harm and threats to the man, but he was mistakenly determined to not meet the credible fear standard, and as a result would be ordered removed without a chance to seek asylum.

[Policies](#), [regulations](#), and [rulings](#) implemented by the Trump administration to illegally block people from protection have further increased the risk of wrongful deportation of asylum seekers in expedited removal. For instance, the Trump administration unlawfully [elevated](#) the burden of proof for CFIs by changing the lesson plans provided to asylum officers, a policy change that has been [enjoined](#) by a federal court since October 2020. Nonetheless, reports from asylum seekers and advocates suggest that some asylum officers fail to comply with the injunction and apply a higher threshold burden of proof, according to the coalition letter. Requests for reconsideration are a crucial safeguard against these misapplications of law, which may have deadly consequences if not reversed.

Other frequent problems during CFIs, including interpretation issues, deficiencies in telephonic interviews, and lack of access to legal counsel, prevent asylum officers from fully and accurately assessing the persecution asylum seekers would face. For instance, attorneys report that notes produced by asylum officers during CFIs often reflect only a tiny fraction of the harm asylum seekers have disclosed during interviews and often contain blatant errors including basic biographical information. Serious privacy violations have occurred during CFIs that undermine asylum seekers’ ability to explain the basis for their asylum claim. For example, an attorney noted that in the summer of 2021, her asylum-seeking client, who

was unrepresented at the time, was instructed to complete her CFI on the phone in her dormitory, where detained individuals and detention center staff would be able to listen to the call.

While the vast majority of detained asylum seekers do not have access to legal representation during the CFI process, those few with attorneys are often not able to be represented during immigration judge reviews of CFIs. The regulations governing CFI reviews do not prohibit participation by counsel, but some immigration judges continue to forbid attorneys from speaking at or even attending CFI reviews. This egregious and arbitrary conduct results in wrongful affirmances of erroneous CFIs, some of which have been later reversed through requests for reconsideration.

While Requests for Reconsideration are a Critical Safeguard, the Dangerous Expedited Removal Process Is Fundamentally Flawed

Since Congress created expedited removal in 1996, the United States has chosen to subject many asylum seekers to this flawed process. However, DHS is [not required](#) to use expedited removal on asylum seekers. Rather, it has [legal authority](#) to parole asylum seekers or release them on recognizance and place them in regular [removal proceedings](#) to provide an opportunity to apply for asylum and have a hearing before an immigration judge.

At the time of its creation, the expedited removal process was viewed by many in Congress as “an [abandonment](#) of our historical commitment to refugees.” In recognition of this reality, the Senate – in a bipartisan vote – amended the proposed law to [restrict](#) expedited removal to emergency situations, but this amendment was removed in a partisan conference committee. Only a few years later, Senator Patrick Leahy and others proposed the bipartisan [Refugee Protection Act of 1999](#) to restrict expedited removal due to its apparent flaws and numerous reports of asylum seekers “[thrown](#) out of the country without the opportunity to convince an immigration judge that they faced persecution in their native lands.” As Senator Leahy [explained](#) in the Congressional record in 2000, “people who flee their countries to escape serious danger should be able to have asylum hearings in the United States without having to navigate the procedural roadblocks established by expedited removal.”

The consequences of this flawed and inhumane process are deadly. Families and adults blocked from access to the U.S. asylum system due to expedited removal have been deported to life-threatening dangers. A [Honduran asylum seeker](#) deported through expedited removal after receiving a negative credible fear determination despite his attempts to request refugee protection was murdered just weeks after being sent back to Honduras. A former [Salvadoran police officer](#), who had attempted to request asylum in the United States, was deported through expedited removal after receiving a negative credible fear determination and shot to death in El Salvador, after she was determined not to have a credible fear of persecution or torture. A [Guatemalan asylum seeker](#) was gang-raped and shot nine times in Guatemala after she was deported through the expedited removal process.

While requests for reconsideration are a critical safeguard, expedited removal is a fundamentally flawed process. The Biden administration should end the use of expedited removal to protect refugees from return to persecution and torture and to comply with U.S. law and treaty obligations.