

Allowing CBP to Conduct Credible Fear Interviews Undermines Safeguards to Protect Refugees

In 1996, Congress created an [expedited removal](#) process in which immigration officers may order the deportation of certain noncitizens charged as inadmissible without a full hearing. One component of this expedited removal process, the [credible fear](#) screening, is supposed to ensure that the United States does not summarily deport bona fide asylum seekers and that they have an opportunity to have their eligibility assessed by an immigration court. Immigration officers who conduct initial questioning of noncitizens must refer individuals who request asylum or indicate a fear of return for a credible fear interview with a trained asylum officer.

But Trump Administration officials have repeatedly [complained](#) about the rate at which asylum officers from the United States Citizenship and Immigration Service (USCIS) determine that asylum seekers meet the credible fear legal standard. White House senior advisor [Stephen Miller](#) is reported to have demanded that USCIS tighten, i.e. lower, the pass rate. The administration is reportedly considering a pilot program in which border officers from [Customs and Border Protection](#) (CBP), including [Border Patrol](#), would conduct credible fear interviews, instead of trained USCIS asylum officers. Stephen Miller is [reported](#) to have argued that these interviews should be conducted by CBP agents because they will be “[tougher](#)” than USCIS asylum officers and will determine that fewer asylum seekers meet the credible fear standard.

Human Rights First urges the Trump Administration to abandon these plans, because:

- Assigning CBP to carry out these interviews runs afoul of federal regulations, which mandate that credible fear screenings fall under the jurisdiction of asylum experts at USCIS.
- CBP is tasked with immigration enforcement; its officers are not suited to carrying out sensitive, legally complex, non-adversarial screenings of often traumatized asylum seekers.
- Successive U.S. administrations deliberately separated refugee protection from immigration enforcement to ensure efficient, uniform and fair adjudication of asylum cases.
- CBP officers already often fail to even properly question and refer asylum seekers for fear screenings.

Authorizing CBP to conduct crucial fear screenings would increase the likelihood that refugees at risk of persecution are summarily deported to their home countries without an opportunity to apply for asylum. **Just as a hospital would not assign security guards to triage incoming patients in the emergency ward, CBP border officers should not make life-or-death decisions about refugees seeking protection at the border.**

Under the Immigration and Nationality Act and Federal Regulations, Trained Asylum Officers Must Conduct Credible Fear Interviews

The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, which amended the Immigration and Nationality Act (INA), created the expedited removal process and **directed that asylum officers conduct credible fear interviews.**

- [Section 235](#) of the INA requires that trained asylum officers conduct interviews of noncitizens in expedited removal proceedings who have indicated a fear of persecution or intent to apply for asylum to determine if

they meet the criteria for demonstrating a “credible fear of persecution.” The credible fear standard is defined in the statute as a “significant possibility” that the person will be able to demonstrate eligibility for asylum after a full hearing. Under the statute, the asylum officers who conduct these interviews must have “**professional training in country conditions, asylum law, and interview techniques**” and be supervised by an asylum officer with “**substantial experience adjudicating asylum applications.**”

- Federal [regulations](#) specify that asylum officers must “receive special training in international human rights law, non-adversarial interview techniques, and other relevant national and international refugee laws and principles.”
- [8 CFR § 208.2\(a\)](#) mandates that asylum officers within “RAIO [[Refugee, Asylum, and International Operations](#)] shall . . . have initial jurisdiction over credible fear determinations.” RAIO is the division within USCIS that houses the specially trained officers who conduct asylum adjudications.
- Senator Alan Simpson (R-Wy), one of the IIRIRA co-sponsors, repeatedly emphasized during Congressional debates on the summary nature of expedited removal proceedings that “[a specially trained asylum officer](#)” would conduct credible fear interviews, which he characterized as “the key” safeguard. In response to concerns that asylum seekers would be interviewed by “the guy at the border,” Senator Simpson unequivocally stated, “that is simply not true. **This provision will only be administered by specially trained asylum officers** with translators. . . . **These are not low-level immigration officers.** This is not correct. These are highly trained individuals.”

CBP Border Officers are Not Suited to Conduct Sensitive, Non-Adversarial Credible Fear Interviews.

CBP officers carry out immigration enforcement functions. They determine whether noncitizens are admissible to the United States, and have [discretion](#) to place certain individuals they find to be inadmissible either in regular removal or expedited removal proceedings. For years, the [CBP Inspector's Field Manual](#) has made clear that the role of enforcement officers is to refer individuals who indicate a fear of persecution or intent to seek asylum for a credible fear interview with an asylum officer. **Transferring responsibility for credible fear screenings to CBP would eliminate this independent review by the specially trained USCIS asylum officers specifically established to screen refugees.**

Given their roles in immigration enforcement, as well as instances of misconduct, CBP officers and Border Patrol agents are not suited to carry out sensitive, non-adversarial fear screenings.

During fear screenings, asylum seekers are asked to recount details of often violent and traumatic events that led them to flee to the United States, including torture, beatings, and rape, or having witnessed the torture, beating, rape, or murder of others. Because of the sensitive nature of these interviews, credible fear screenings must be conducted in a [non-adversarial](#) manner that ensures asylum seekers are able to share information crucial to their claims. CBP officers are not well suited to carry out these sensitive interviews, as:

- Border Patrol agents have repeatedly used [excessive force](#) in encounters with migrants, [threatened](#) unaccompanied children, and some have [pressured](#) refugees who have crossed the border to not apply for asylum.
- **Some CBP officers have openly expressed skepticism of asylum claims, according to a recent report by [USCIRF](#), essentially pre-judging whether cases would be legally eligible for asylum or not. Some officers**

were hostile and confrontational when questioning individuals placed in expedited removal even during interviews observed by representatives of the Commission.

- Research shows that asylum seekers, particularly survivors of torture or those who have been abused by authorities in their home country, are hesitant to [confide](#) in immigration officers generally. Requiring individuals in expedited removal to disclose details of past persecution to a uniformed CBP officer or Border Patrol agent would make it even more difficult for traumatized asylum seekers to share information crucial to establishing a credible fear.

CBP Officers and Border Patrol Agents Lack the Training and Experience of Specialized Asylum Officers

- USCIS requires asylum officers to complete a rigorous six-week [training](#) course, receive regular in-service training, and conduct supervised asylum interviews before administering credible fear interviews. The complexity of asylum adjudication is reflected in the [675 pages of training materials](#) for asylum officers, much of which is relevant to credible fear screenings. The regulations further recognize that credible fear determinations necessitate an understanding of evolving questions of law, as [8 CFR § 208.30\(e\)\(4\)](#) obliges asylum officers to consider whether a credible fear claim presents “novel or unique issues” that should be forwarded to an immigration judge for full consideration.
- In contrast, according to [USCIRF](#), Border Patrol agents typically receive a two-hour lecture on expedited removal processing, plus 30 minutes of practical exercises during basic training, and a one to one-and-a-half hour review lesson on expedited removal, which reiterates the basic training, during their initial border station placements. CBP port of entry officers also receive two hours of training on expedited removal and two hours of practical exercises. During their initial assignments, they have one training module on all forms of removal, including expedited removal processing. None of the border officers interviewed by USCIRF in its recent report had “received any specific training on interviewing or on working with victims of persecution or torture.” Even if CBP officers receive some additional training, their legal analysis and country condition training will still fall far short of that of trained asylum officers.

Successive U.S. Administrations have Recognized the Need to Separate Refugee Protection Screening from Immigration Enforcement.

- In the 1980s, the Reagan Administration convened a cabinet-level Task Force on Immigration and Refugee Policy that [recommended](#) asylum applications be “heard before newly established INS asylum officers.” The task force drew from an earlier report by the [Select Commission on Immigration and Refugee Policy](#) that recommended that the INS hire specialized asylum admissions officers because the “the training and competence” of the general INS immigration officers conducting asylum interviews at the time was not sufficient given that the “factual situations giving rise to asylum claims are so complex that special expertise is needed to determine the validity of the claims.” “[E]xpeditious, equitable and uniform decisions on asylum petitions require special training for those officers who must make asylum determinations.”
- In 1990, the George H.W. Bush Administration created the Asylum Officer Corps (now the USCIS Asylum Division) with the issuance of final [regulations](#) implementing the Refugee Act of 1980.
- The bipartisan U.S. Commission on Immigration Reform [concluded](#) in a 1997 report to Congress that “[t]he most telling evidence of the value of separating the enforcement and adjudications functions comes from the recent history of INS itself.” The report cites “**the creation of an independent corps of asylum officers in**

1990” as one of the “most successful” “instances where adjudication programs were consciously and deliberately kept separate and insulated from the enforcement mission of the INS.”

CBP Officers Already Fail to Conduct Required Questioning and to Refer Asylum Seekers for Credible Fear Screening.

To implement CBP’s obligations under U.S. law not to return refugees to possible persecution, agency [regulations](#) require CBP officers to read the individuals placed in expedited removal a statement explaining the process and their opportunity to express a fear of persecution (Form I-867A). They must also administer four questions regarding fear of return and record the individual’s responses (Form I-867B). CBP is required to refer those who express a fear of return for screening by an asylum officer. However, human right monitors and federal oversight bodies have repeatedly warned that some **CBP officers and Border Patrol agents fail to appropriately and professionally carry out even these minimal requirements to simply identify individuals who must be referred for credible fear interviews with a USCIS asylum officer.**

- Human Rights First and other organizations have raised [concerns](#) about the “**long-standing systemic failure**” of some CBP officers to refer individuals who express a fear of persecution for credible fear screenings, resulting in the erroneous deportation of bona fide asylum seekers under expedited removal orders, including LGBTQ persons and women and young adults with domestic violence claims.
- Human Rights Watch concluded that border officers [fail to refer](#) Central American asylum seekers for credible fear screenings and a recent [study](#) of Mexican deportees by the American Immigration Council found that **more than half of the survey respondents were not asked the required fear of return questions by U.S. border officers.**
- The U.S. Commission on International Religious Freedom (USCIRF), a bipartisan body established by Congress, also [found](#) that **CBP officers and BP agents continue to fail to refer asylum seekers for credible fear interviews because these officials do not comply with the required expedited removal procedures.** USCIS reported to USCIRF that detention officials forward the majority of credible fear referrals, indicating the failure of CBP and BP officers to record and refer individuals with a fear of persecution for screening by an asylum officer.
- Similarly, a U.S. Government Accountability Office report [found](#) that **BP agents fail to consistently and accurately apply statutory standards in screening unaccompanied Mexican children** under the Trafficking Victims Protection Reauthorization Act, which results in the deportation of children in need of protection.

Given the failure of many CBP officers to appropriately question individuals they place in expedited removal, expanding the role of these officers to carry out credible fear interviews would place legitimate asylum seekers at increased risk of deportation to their countries of persecution, in violation of U.S. [law](#) and international obligations to prevent the [refoulement](#) of refugees.