
Elimination of Fear Screening Referral Safeguards in Expedited Removal

To ensure that asylum seekers are properly referred for screening interviews and not mistakenly deported through expedited removal, Customs and Border Protection (CBP) is required to ask several questions to ascertain whether a person may have a fear or concern of return, triggering their referral for a Credible Fear Interview (CFI).

Eliminating these crucial referral questions – and expecting people to pass the “Shout Test” where people who fear return are expected to spontaneously express it – will endanger vulnerable and at-risk asylum seekers including rape survivors, people who do not speak English or Spanish, LGBTQ asylum seekers, political dissidents, and victims of trauma or torture.

Background

Form I-867B prompts CBP Officers to ask questions to elicit whether an individual fears persecution or torture if returned, including:

Q: Why did you leave your home country or country of last residence?

Q: Do you have any fear or concern about being returned to your home country or being removed from the United States?

Q: Would you be harmed if you are returned to your home country or country of last residence?

These questions are necessary as some asylum seekers may not know that they can ask for asylum, may not know that this is the time when they must raise their fear, or may fear raising their fear affirmatively in settings that are often not confidential. The questions are supposed to be asked with proper interpretation, as many asylum seekers do not speak English.

If an individual expresses fear in response to these questions, CBP is supposed to refer them for a CFI. If an individual in their CFI successfully demonstrates they have a “significant possibility” of establishing their eligibility for asylum, CBP refers them for a hearing before an Immigration Judge on their asylum claim or for an [Asylum Merits Interview](#).

These questions are critical to ensuring that CBP actually identifies people who require fear screening interviews. [Research confirms](#) that when questions are not asked, people who express fear are not referred for credible fear screenings.

Concerns

This already limited safeguard is frequently ignored by CBP, resulting in the deportation of asylum seekers without the required fear screening. The bipartisan U.S. Commission on International Religious Freedom [found](#) that CBP frequently improperly issued expedited removal orders because its officers failed to ask these required questions or read related explanations, deporting individuals CBP should have referred for CFIs.

The elimination of crucial affirmative questions that identify people who should be referred to fear screening interviews is referred to as the Shout Test, as it relies on individuals to spontaneously express or manifest their fear of return. Most recently, CBP [employed](#) only the Shout Test – rather than the referral questions – for members of family units subject to expulsion under Title 42 in connection with a [court order](#) preventing their return to persecution or torture. Recent [research](#) showed the use of the Shout Test or “manifestation” approach resulted in CBP failing to refer people who expressed a fear of return to the fear screening interviews they are due under law. Of 97 families [interviewed by advocates](#) and expelled during 2022, DHS failed to refer for a screening any of the 73 families that verbally or non-verbally expressed fear. Instead, CBP officers, “verbally abused them, telling them to ‘shut up,’ declaring they had ‘no right’ to an interview, or completely ignoring their attempts to communicate.”

DHS also fails to use key referral questions, and instead uses only the Shout Test when migrants, specifically Haitian nationals, attempting to come to the United States are [encountered at sea](#). As expected, this results in very few referrals for CFIs. One of the few publicly available data points from 2005 showed that only [.005%](#) of Haitians interdicted at sea received a CFI. DHS does not share public information about CFI referral rates for people interdicted at sea, and the referral numbers no doubt continue to be unduly low even though dangers facing people in Haiti have become acute. The absurd reliance on manifestations of fear, rather than a few simple questions, can turn into a game of charades. Agents are [instructed](#) to look out for “non-verbal actions such as hysteria, trembling, unusual behavior, incoherent speech patterns, self-inflicted harm, panic attacks, or an unusual level of silence.”

The Shout Test is insufficient to guard against the return of bona fide asylum seekers to persecution or torture. It will fail individuals who do not speak the same language as an officer, those from marginalized groups who may not be able to safely express fear in front of others with whom they are detained, or those who are simply so traumatized by their persecution or journeys to the United States that they fail to affirmatively express their fear.

The Shout Test leaves too much to chance. For example:

- If a victim of religious persecution from China seeking U.S. asylum were taken into U.S. custody, CBP would, under a Shout Test approach, no longer be required to ask in a language they understand if that person had a fear of return. As a result, the person might not be referred for a CFI or an asylum hearing. They would risk being summarily deported back to China under expedited removal.
- If an LGBTQ asylum seeker, a rape survivor, or a political dissident fears raising their fear of return in front of other potential deportees – due to fears of retribution, harm, or further persecution if returned – they would, under a Shout Test approach, be denied a screening interview and as a result might be deported through expedited removal even if they meet the screening standard.