
Raising the Credible Fear Screening Standard Will Endanger Lives but Won't Fix the Border

Elevating the credible fear asylum screening standard – whether through statutory, regulatory or other administrative action – would be unjust, return refugees to persecution, subvert international law, and fail to address the real challenges at the border.

Enacted by Congress, the credible fear standard is used to ensure individuals who have a “significant possibility” of establishing eligibility for asylum are not ordered removed from the United States through the expedited removal process. [Proposed or potential](#) changes would evade or eliminate this safeguard and impose a higher standard that would deport without asylum hearings people who have significant chances of proving their eligibility for asylum.

Raising the credible fear standard would:

Eviscerate limited safeguards in the expedited removal process, already a due process and refugee protection disaster. Human Rights First [detailed](#) the failure of the expedited removal process to protect asylum seekers from being returned to persecution and torture.

- There are [many cases](#) of erroneous negative credible fear determinations at the current standard, including a victim of political persecution from Nicaragua, a gay asylum seeker from Venezuela, and a torture survivor from Eritrea.
- The bipartisan U.S. Commission on International Religious Freedom [repeatedly documented](#) government failures to adhere to the already limited safeguards in the expedited removal process, such as [inquiring about fear of return](#).
- Asylum seekers face great difficulties navigating expedited removal and credible fear interviews as they are often conducted within days of arrival while asylum seekers are still traumatized from their journeys and the persecution they fled. Interviews are overwhelmingly conducted without legal representation, often in detention, and with insufficient time provided to gather evidence.

Violate international refugee legal standards. The United Nations High Commissioner for Refugees has repeatedly explained that heightening the [U.S. fear screening standard, which is already higher than and inconsistent with the international law standard, would endanger refugees](#), deny them asylum hearings, and increase risks of refoulement to persecution.

Endanger lives. Denying asylum hearings to people who demonstrate a significant possibility of establishing asylum eligibility, but do not meet an unduly high standard, will lead to the return to persecution of at-risk people. A similar approach (under the [Circumvention of Lawful Pathways \(“Asylum Ban”\) Rule](#)), which raised the standard for individuals crossing between Ports of Entry, led to a massive increase in the denial of access to asylum hearings – [with asylum seekers three times as likely to not pass screenings](#). Some people ordered deported without asylum hearings under expedited removal in the wake of the heightened credible fear standard [include](#):

- A Chinese pro-democracy dissident and former political prisoner with a history of persecution documented by western media;
- A transgender Venezuelan woman living with HIV who suffered years of physical abuse and was threatened with rape in Venezuela due to her sexual orientation and gender identity;
- A Venezuelan air force lieutenant, the son of a known opponent to the Maduro regime, was found not to meet the credible fear screening standard, deported without an asylum hearing, and delivered to Venezuela in December where he was sent to a military prison;
- An Egyptian man who was brutally beaten because he is Christian and fears he will be killed if he is returned to Egypt;
- An Indigenous family with two minor children that was attacked in Ecuador because they are Indigenous.

Violate law enacted by Congress, if implemented through administrative action. Congress [prohibited](#) the use of expedited removal against individuals who demonstrate a significant possibility of establishing eligibility for asylum. Administrative [attempts to evade this legal screening standard](#) are contrary to law.

Fail to stop or deter migration. During both the Trump and Biden administrations, attempts to raise the credible fear standard have not stopped migration or people from seeking asylum. Asylum seekers are [overwhelmingly unaware](#) of the asylum ban or its higher standard and are instead driven by concerns about their safety and security. Heightening the standard won't stop the people it is targeting from seeking protection from harm. Moreover, contrary to misleading assertions that most asylum seekers are not eligible for asylum, immigration judges [grant relief](#) to the majority of individuals who receive positive credible fear determinations under the existing “significant possibility” standard.

Further endanger lives, if the Trump policy of assessing bars to asylum in credible fear screening interviews were resurrected through [legislative](#) or administrative action. In March 2022, the Biden administration [rightly returned](#) to the two-decade-long practice of not applying bars to asylum at the credible fear screening stage, explaining that applying bars during credible fear screening “would make these screenings less efficient” and that the complexity of the required inquiry, due process and fairness considerations, along with congressional intent that the “expedited removal process be truly expeditious” counseled against the application of these bars in the screening process. Assessing bars at the screening stage would restrict access to an asylum hearing to people who could demonstrate a significant possibility of establishing asylum eligibility and would subject them to the higher screening standard, increasing the risk of wrongful return to persecution. The Biden administration should adhere to its analysis and reject any proposals that would resurrect this unjust and inefficient approach to credible fear screening.

Not constitute a real solution. Instead of blocking, barring, and punishing people seeking asylum protection, the Biden administration and Congress should focus on real solutions, as Human Rights First [recommends](#). These include maximizing asylum seekers’ access to ports of entry, including for those without appointments; improving reception capacity in both U.S. border and interior communities; properly funding and staffing asylum and immigration court adjudications; and providing asylum seekers prompt access to work authorization.