

Do Expedited Asylum Screenings and Adjudications at the Border Work?

Expedited processing of asylum requests at the border hinges on unfair and unrealistic expectations that people seeking asylum, who on arrival at the border are often detained, unrepresented, separated from loved ones, and physically and mentally exhausted from their journeys to the United States, can immediately and fully articulate their requests for protection. The [risks](#) of conducting these cases in immigration detention or border custody facilities are multiplied by the harmful psychological and physical effects of detention, including severe anxiety, acute stress, depression, suicidality, and Post-Traumatic Stress Disorder, which are [intensified](#) in people who have previously experienced trauma, like many people seeking asylum. Expedited asylum processing at the border is not effective, raises serious due process concerns, and sacrifices refugee protection in the name of speed - leading to erroneous decisions and deportation of refugees to persecution and torture.

The existing expedited removal and credible fear processes are deeply flawed.

The bipartisan [U.S. Commission on International Religious Freedom](#) and other [organizations](#) have long [noted](#) the serious deficiencies and due process concerns of the expedited removal process. These include [failures](#) by Customs and Border Protection (CBP) officers and Border Patrol agents to follow basic required [procedures](#) to [identify](#) individuals who must be referred for credible fear interviews, intimidation and coercion of asylum seekers to withdraw requests for protection, [failures](#) by asylum officers to properly screen individuals, detention in abysmal conditions, and lack of access to appropriate interpretation services, counsel, legal orientations, and judicial review. Successive administrations have failed to address these long-documented flaws and limited legal [protections](#) for asylum seekers. A recent Supreme Court [decision](#) has effectively blocked challenges to the detention of asylum seekers who receive wrongful negative fear determinations. Families and adults blocked from access to the U.S. asylum system due to expedited removal have been deported to life-threatening dangers, including:

- a [Honduran asylum seeker](#) deported through expedited removal after an immigration judge affirmed an asylum officer's decision that the man did not have a credible fear was murdered just weeks after being expeditiously deported to Honduras;
- a former [police officer](#) from El Salvador who had attempted to request asylum in the United States but was deported through expedited removal after she was determined not to have a credible fear of persecution or torture and shot to death in El Salvador; and
- a [Guatemalan asylum seeker](#) who was gang-raped and shot nine times in Guatemala after she was deported through expedited removal without an opportunity to request asylum when CBP officers failed to refer her for a screening interview even though she expressed her fear of return.

Conducting expedited asylum interviews in CBP custody prevents traumatized asylum seekers from being able to fairly present requests for asylum protection.

Expecting asylum seekers to undergo fear screening or other asylum interviews in border detention facilities just days after completing dangerous journeys to the United States while experiencing ongoing [trauma](#) and at times [memory loss](#) from the persecution they suffered is unrealistic, unfair, and will result in erroneous negative fear determinations and deportations. For asylum seekers persecuted by police or military forces, militias, gangs, and similar actors, interactions with uniformed, armed government personnel – like CBP officers – can trigger emotional or psychological reactions that make it especially difficult for them to recount experiences crucial to articulating their asylum claims. When the Trump administration forced Mexican and Central American asylum seekers to undergo fear screening interviews while [held](#) in harsh conditions in often [overcrowded](#) CBP border detention facilities where access to legal counsel was extremely limited, an astounding [69 percent](#) received *negative* fear determinations and were deported. This represents a major deviation from screenings during the George W. Bush

and Obama administrations when [78 percent](#) conversely received *positive* fear determinations on average - and despite unduly low rates in some years. The Biden administration correctly [halted](#) these illegal policies; they should not be revived.

The Trump administration weaponized the expedited removal process; its use would continue to subject asylum seekers to these illegal policies.

Holdover policies and rulings adopted by the Trump administration to weaponize expedited removal remain on the books and continue to block people seeking U.S. humanitarian protections. Rulings by Trump administration Attorneys General, including [Matter of A-B-](#) (partially enjoined), [Matter of A-C-A-A-](#) [Matter of L-E-A-](#), [Matter of O-F-A-S-](#), and [Matter of R-A-F-](#) attempt to unlawfully narrow asylum eligibility for survivors of gender-based violence and attacks by gangs and other non-state groups and limit protection under the Convention against Torture. The Trump administration also issued unlawful [training materials](#) for asylum officers, including a lesson plan [vacated](#) by a federal court, that block refugees from the asylum process. These and other regulations, rulings, and standards illegally heighten the low screening threshold set by Congress to ensure people seeking humanitarian protections have access to the U.S. asylum system.

Limited language access disparately impacts asylum claims by Black and Indigenous people.

Asylum seekers who speak languages or dialects for which the government is unable to find an interpreter, including many [Indigenous](#) and African [languages](#) as well as Haitian [Creole](#), have reported being forced to undergo fear screenings in languages they do not fully understand or fluently speak. As a result, these asylum seekers struggle to comprehend interview questions and to convey information about the persecution or torture they fear, denying them due process and leading to erroneous negative determinations and [deportations](#).

The use of expedited removal is inefficient and exacerbates backlogs.

Placing asylum seekers in expedited removal and requiring them to undergo fear screenings contributes to the existing backlog of pending asylum applications as U.S. Citizenship and Immigration Services (USCIS) asylum officers are diverted to conduct fear screening interviews of people whose cases overwhelmingly warrant a full asylum assessment. Between fiscal years 2016 and 2019, an astounding [89 percent](#) of asylum officers employed on average each year were temporarily reassigned from adjudicating asylum applications to carry out fear screenings at the border, based on government data published by the [USCIS Ombudsman](#). The USCIS Ombudsman has noted that this massive diversion of resources “[inhibit\[s\]](#) the agency’s ability to reduce the affirmative asylum backlog.” The expedited removal process also adds to the workload of immigration court judges who review negative fear determinations.

Proposals to rush to conduct full asylum interviews in border facilities will result in erroneous denials of protection and return refugees to persecution and torture.

Adjudicating asylum cases at the border will not provide a fair opportunity for asylum seekers to present their requests for protection. Under the [Immigration and Nationality Act](#), asylum applications must generally be filed within one year of the applicant’s last arrival in the United States and adjudicated within 180 days of filing. Asylum cases cannot reasonably be prepared and decided in a matter of days or weeks. In addition to the asylum application, which must be completed in English, asylum seekers need to collect and translate supporting evidence for their cases, which may include witness declarations, medical and police records from abroad, or expert evaluations. These crucial components of an asylum application often cannot be completed on an expedited time frame given the need to collect evidence from the home country or arrange evaluations. The need to secure additional evidence and prepare complex legal submissions in asylum cases has grown exponentially due to round after round of new requirements imposed by statute and otherwise over the years. Even when asylum seekers find legal representation, many need months to build trust with their attorney to be able to share deeply personal details necessary to establish their claim for asylum. Holding asylum seekers in detention facilities to complete expedited asylum interviews will only further exacerbate their ongoing trauma and deny them a fair chance to explain their requests for protection in the United States.

Recommendations

Any changes to the processing of requests for protection at the border should seek to create a welcoming, effective, and timely system that ensures due process and does not subject traumatized asylum seekers to rushed, inefficient screening or adjudication procedures.

Support an innovative humanitarian reception system, that:

- reorients border processing to swiftly and humanely transit asylum seekers and children from CBP custody to shelters or other reception locations run by community-based organizations, adequately resources these groups to welcome asylum seekers, ensures appropriate interpretation services, and permits access for members of Congress, attorneys, UNHCR, NGOs, health professionals, and rights monitors to CBP facilities;
- avoids the use of costly, inhumane, and [unnecessary](#) immigration detention and harmful electronic monitoring, by using existing legal authority, including parole, to release asylum seekers to stay with family and community for them to heal from emotional and physical wounds while their cases are pending; and
- invests in appropriate, community-based support along the U.S. border and in cities around the United States to ensure that adults and families are able to transit to destination locations, receive prompt work authorization so that they can support themselves, and can successfully navigate their immigration cases.

Boost legal representation and legal orientation presentation capacities, injecting them as early as possible into the process, including government-funded [legal representation](#) programs with the goal of guaranteeing counsel to all people facing removal who cannot afford it. Recent studies have confirmed that legal representation also leads to near [universal](#) immigration court attendance and [more timely adjudication](#) of cases. However, merely allowing access to counsel in CBP detention facilities will not mitigate the harm of conducting rushed processing in these inherently coercive settings.

Do not [use expedited removal](#), which the Department of Homeland Security (DHS) is not required under U.S. law to use on all asylum seekers and other migrants at the border. Instead, the agency should utilize existing legal authority to parole asylum seekers or release individuals on recognizance to seek asylum in the community.

Refer asylum seekers for full asylum office interviews in their destination locations, ramping up asylum office staffing to fully adjudicate asylum requests, which will result in quicker initial decisions, reduce the number of individuals ultimately referred to immigration court hearings, and dramatically reduce the current immigration court backlog. Asylum office capacity to conduct these interviews must be enhanced by modernizing interview scheduling and filing systems and reducing asylum office backlogs, including through increasing USCIS staffing, elimination of the use of expedited removal, and creation of an application route for cancellation of removal cases. These full adjudications should not be conducted within the expedited removal process or other rushed processing programs that would limit due process. Instead, cases should be allowed to proceed in a timely manner and not delayed by lack of sufficient resources or capacity at the asylum office, and asylum seekers must have an opportunity for de novo review of any negative decisions by an immigration judge.

- Under current law, asylum seekers at the border can be placed directly in immigration court proceedings - avoiding the use of expedited removal - and then referred for asylum office interviews after their immigration court proceedings are terminated.
- Congress should act to create a fair and timely process that directly refers all asylum seekers for initial asylum adjudications with USCIS asylum officers and ensures adequate asylum officer staffing, while [preserving](#) crucial pathways to request protection in immigration court and to seek judicial review and avoiding the imposition of arbitrary deadlines or policies to rush asylum adjudications that have undermined due process and accurate adjudications. For cases that are not approved by the asylum office and referred to immigration court, which Congress should act to make an independent court, the administration can improve hearing efficiencies through the use of pre-hearing conferences and stipulations, restoring immigration judge authority to manage court dockets, and other [steps](#).