



## Policy Brief: The Asylum Credible Fear Standard

November 27, 2023

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Speaker Mike Johnson and other leaders have [proposed legislation](#) that would further restrict access to asylum, including a plan to tighten the legal standard that would be applied when people are initially screened for asylum upon arrival at the border. AILA opposes this change, as it would make it far more difficult for asylum seekers to obtain life-saving protection and result in children, families, and adults who would otherwise qualify for asylum being returned to violent, dangerous conditions. Moreover, this change would be counterproductive toward effective and efficient border processing. This brief explains the current law governing this part of the asylum process called the credible fear interview.

### I. Basics of Expedited Removal and Credible Fear

At U.S. borders, the ability to apply for asylum sometimes intersects with a process called expedited removal. In 1996, Congress authorized **expedited removal** to quickly expel people who are at a port of entry without valid entry documents (*or* are apprehended within 100 miles of a border and 14 days of entry). Expedited removal allows the government to remove people without the opportunity to appear before a judge to hear their case. An expedited removal order carries a penalty barring the person from re-entering the United States for five years.

To ensure that refugees are not returned to harm, Congress also required a preliminary screening (a **credible fear interview** (CFI))<sup>2</sup> for people placed in the expedited removal process. A USCIS officer interviews the person to determine whether there is a “**significant possibility**” they could establish an asylum claim. To obtain asylum, the person must show that they will be persecuted on account of a protected ground (race, religion, nationality, political opinion, or membership in a particular social group) if returned. These screenings are usually done telephonically, while the person is detained. The interviews take about 1.5 to 4 hours.

- [DHS reports](#) having reduced the CFI process by about one week: currently, the time from referral for a CFI to determination is 13 days, which is down from 21 days pre-pandemic.
- CFI decisions are only reviewed by an immigration judge if the person requests it.
- Rarely do people have legal representation or familiarity with U.S. law.

In May 2023, the Biden Administration issued the **Circumvention of Lawful Pathways** (CLP) regulation to further expedite asylum screenings at the border. The CLP **raised the standard** (referred to as “reasonable possibility”) for CFIs for almost all people going through the expedited removal process at the southern border. The CLP is set to expire on May 11, 2025. Data DHS submitted in a [court filing](#) shows the impact of this regulation:


- An increase in DHS’s use of expedited removal.
- A lower overall credible fear pass rate (down to 59 percent from 85 percent pre-pandemic).
- For the CFIs where the higher **reasonable possibility standard applied**, there was a 32 percent drop in positive credible fear findings, with only 53 percent still establishing credible fear.

### II. The Credible Fear Legal Standard

Congress intended the legal standard for credible fear interviews to be lower than what is required for the final grant of asylum because the CFI is the preliminary stage.<sup>3</sup> CFIs occur far more rapidly than the usual asylum process and enable DHS to remove the person with limited review. At the same time, Congress recognized that the

expedited process could result in people with a valid asylum claim being returned to their country of persecution. Raising the legal standard for credible fear interviews to a “more likely than not” standard, as is being proposed by some politicians, would upset this delicate balance and endanger people’s lives.

- **People Subjected to a CFI rarely have legal representation.** Available data for CFIs found that [one percent of people](#) were represented in their CFI process.<sup>4</sup> With no right to an attorney being present at the interview or the review, and with very limited opportunities to consult with attorneys while detained, people going through their CFI process are at a distinct disadvantage.
- **The CFI process is already expedited and stacked against asylum seekers.** Individuals are usually detained during the interview and must recount their experience over the phone to an asylum officer. The interviews occur in a few days, giving people who have survived trauma inadequate time to recover and prepare evidence.<sup>5</sup>
- **The legal standard for CFI hinges on whether the individual could likely establish an asylum claim.** The CFI process should not be conflated with the more **complex analysis** needed for a final asylum determination.
- **The “more likely than not” standard is the highest legal standard** in asylum law and is not even applied in most asylum cases. It is only applied outside of expedited removal and in limited cases where the person is not eligible for asylum because a bar to asylum applies.

Different Legal Standards to Consider within the Asylum Process			
	Process	Applies to	Legal Standard
 <p>Lowest standard</p> <p>Highest standard</p>	Credible fear (created by Congress in 1996)	Individuals in expedited removal (ER) where the CLP does not apply.	significant possibility that the individual can establish an asylum claim.
	Credible fear (under the CLP)	Individuals in ER where the CLP applies, and they could <b>not</b> overcome the rebuttable presumption or establish an exception.	reasonable possibility of persecution or torture for the purposes of withholding.
	Reasonable fear	Individuals in ER who have been previously removed and re-enter without authorization.	reasonable possibility that a withholding/CAT claim can be established.
	Asylum	Individuals applying for asylum before USCIS officers or immigration courts.	well-founded fear of future persecution.
	Withholding of Removal or Convention Against Torture (CAT)	This is the final protection from removal to ensure U.S. compliance with its asylum laws. It is exercised in removal proceedings where the asylum seeker is not eligible for asylum because one of the bars to asylum applies, but the person would still face persecution or torture if removed.	more likely than not.

<sup>1</sup> Thanks to Margaret Cargioli, AILA Asylum and Refugee Committee, for her contributions to this brief.

<sup>2</sup> There is a similar process called a “reasonable fear interview,” where a higher standard is applied to noncitizens with a prior order of removal.

<sup>3</sup> See 142 CONG. REC. S11491–02 (daily ed. Sept. 27, 1996) (statement of Sen. Hatch) (“The conference report struck a compromise by rejecting the higher standard of credibility included in the House bill. The standard adopted . . . is intended to be a low screening standard for admission into the usual full asylum process”), <https://www.govinfo.gov/content/pkg/CREC-1996-09-27/html/CREC-1996-09-27-pt1-PgS11491-2.htm>.

<sup>4</sup> This data was collected by USCIS only for the individuals going through the CFI process under their asylum processing rule.

<sup>5</sup> In the [words of Senator Ted Kennedy](#) speaking out against a proposed thirty-day deadline for asylum in 1996, “[m]any [asylum seekers] are so traumatized by the kinds of persecution and torture that they have undergone [that] they are psychologically unprepared to [participate in any legal process.]”