

“DON’T TELL ME ABOUT YOUR FEAR”

Elimination of Longstanding
Safeguard Leads to Systematic
Violations of Refugee Law

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Kino Border Initiative
Iniciativa Kino
para la Frontera



Overview

As part of a June 2024 asylum ban rule, the Biden administration eliminated a safeguard that had been in place for nearly 30 years to protect people seeking asylum from being summarily deported without a chance to present their asylum claim. This provision, included in an [Interim Final Rule](#) (IFR) titled “Securing the Border” that went into effect immediately on June 5th, eradicates a key requirement for immigration officers to ask people arriving in the United States about their fear of return.

In just two months, this change has had disastrous consequences. Based on countless interviews conducted by our legal service organizations with asylum seekers impacted by this policy since it was implemented in June, immigration officials are failing to comply with U.S. and international refugee law and summarily deporting people who fear return without a screening on their asylum claim (referred to as a “credible fear interview,” or CFI). The effects of the new policy include:

- **Immigration officers are removing people from the United States without a CFI** even when they are required by law to be referred for a CFI because they express fear of return, including survivors of gender-based violence, people whose family members were assassinated, LGBTQI+ people, individuals with visible marks and bruises from attacks, and people fleeing death threats and other harms with young children.
- **Many people who are detained and processed under expedited removal are not given an opportunity to express their fear of return** and are summarily deported without a CFI, with immigration officers routinely telling them they are not allowed to speak, that there is no more asylum, and that they are being deported.
- **Elimination of the safeguard is fueling family separation**, where family members are arbitrarily removed from the United States without a CFI while their loved ones are referred for a CFI, including where their asylum cases could have been processed together.

The IFR includes other provisions that also increase the risk of returning (refouling) refugees to harm, including banning the majority of people who arrive between ports of entry at the U.S.-Mexico border from being granted asylum and imposing a higher standard of proof during the CFI process to make it more difficult to access lesser forms of protection (withholding of removal and protection under the Convention against Torture).

A [joint report](#) issued in July 2024 documents the consequences of the first six weeks of implementation of the IFR.

U.S. agencies should immediately rescind the IFR, including its elimination of the requirement to ask about fear, and Congress should reject any attempts to enact such a provision into law.



Background

[U.S. law](#) requires immigration officers to ensure that any person arriving in the United States who is subject to deportation under the “expedited removal” process and expresses fear of return or an intent to apply for asylum is interviewed by an asylum officer about their asylum claim in a CFI. Congress incorporated this requirement when it enacted the expedited removal process in 1996 to [ensure](#) that there would be “no danger that [a non-citizen] with a genuine asylum claim will be returned to persecution.” Shortly after expedited removal was implemented, the Immigration and Naturalization Service—the agency that handled immigration matters at the time including expedited removal—issued a [regulation](#) requiring immigration officers to ask people who are processed under expedited removal whether they fear return, among other questions, in order to ascertain whether they should be referred for a credible fear interview (CFI). The agency designed these requirements due to [concerns](#) that asylum seekers may be reluctant to express a fear of return to an officer immediately upon arrival or may be unaware that they need to do so.

This requirement remained in effect for nearly three decades until the Biden administration’s IFR eradicated it and replaced it with a nontransparent practice whereby Customs and Border Protection (CBP) officers need only refer people for a fear screening if CBP perceives them to “manifest” a fear of return or otherwise express an intention to apply for asylum, fear of persecution or torture, or fear of return. This practice has been facetiously referred to as the “Shout Test,” referencing the fact that people seeking protection must now spontaneously shout out their fear upon arrival to be referred for CFIs. A [filing](#) submitted by Human Rights First, Hope Border Institute, Immigrant Defenders Law Center, Kino Border Initiative, and Refugees International in litigation challenging the IFR details the history of the crucial requirement to ask about fear and consequences of the newly imposed Shout Test.

Under the IFR, immigration officials are ignoring and summarily deporting people expressing fear

Immigration officials are required by U.S. law to refer for a credible fear interview any person who expresses fear of return or intent to apply for asylum. [Regulations](#) in effect for nearly thirty years previously required officials to ask everyone processed for expedited removal about their fear of return, among other questions included on the I-867AB form, to identify who must be referred for a credible fear interview. Immigration officials would complete the I-867AB form during the expedited removal process and use it to record responses. The regulations [required](#) that officials provide oral interpretation into the person’s language where needed when completing the form.

The IFR’s elimination of the requirement to ask about fear and document responses on the I-867AB form is causing failures to refer for CFIs and the summary deportation of people who *do* explicitly express fear of return or an intent to apply for asylum. It has led to a disturbing lack of accountability for compliance with U.S. law.



- Since the implementation of the IFR, our groups have interviewed asylum seekers who have expressly **requested asylum, relayed their past persecution, explained their asylum claims, showed agents their injuries, had anxiety attacks, and visibly sobbed and begged to be heard.** However, they were summarily deported after facing an intimidating and hostile environment in CBP custody, being ignored by officers, or told that they would be deported anyway.
- In June, **more than 75% of hundreds of people** arriving at Kino Border Initiative (KBI)¹ in Nogales, Mexico after being removed from the United States reported to KBI staff that they were either ignored or not allowed to ask for asylum.

People seeking protection who spoke with our groups expressly told CBP officers that they fear return or intend to seek asylum but were unlawfully deported without a CFI, including²:

- A seven-month-pregnant Mexican woman escaping harm and death threats by her partner;
- a Mexican survivor of gender-based violence who was so violently harmed that she suffered a miscarriage;
- a Mexican woman with young children who showed an officer severe bruises from an attack suffered in Mexico;
- a Mexican man fleeing with his family who showed officers marks on his body from when he had been kidnapped and tortured; and
- a Mexican woman fleeing with her son after her husband was assassinated and her son received death threats;

Even in some cases where attorneys have intervened and communicated with U.S. immigration officials about their clients' fear of return, officials have still deported their clients without a CFI.

The failure to refer people for CFIs in accordance with U.S. law, even where an attorney creates a written record of the statutory obligation, demonstrates the lack of accountability and scale of refugee law violations occurring as a result of the IFR. For instance:

¹ Kino Border Initiative is a binational Catholic organization that provides direct humanitarian assistance and holistic accompaniment to people removed or returned to Nogales, Sonora or who are in transit to the United States.

² The high proportion of Mexican nationals in these examples is due to the fact that asylum seekers of other nationalities, upon summary removal by the United States at the U.S.-Mexico border, are frequently turned over to Mexican immigration authorities who transport them away from the border areas where interviews and research was conducted by our groups. Return of Mexican nationals to Mexico without a proper protection screening leads to direct, unlawful refoulement.



- Immigration officials **disregarded emails from immigration attorneys** with Texas Rio Grande Public Defender stating that their clients intended to seek refugee protection and summarily removed their clients to their countries of feared persecution without CFIs.
- Four people seeking protection from Guatemala, Honduras, and Mexico represented by attorney David Square were **summarily deported even though Square submitted written requests to CBP for a CFI in all four cases**. Square also heard three of the clients call over a CBP officer and express fear of return while on legal calls with them.

The IFR is creating an **arbitrary and non-transparent system where the fate of people seeking protection is decided at random**, often depending on the CBP officer, whether the person has an opportunity to speak, and whether they continue to express their fear after being told not to speak, that they cannot apply for asylum, or that they are being deported. In some instances, people who persisted in repeatedly expressing their fear were referred to a CFI whereas those who did not or could not do so were summarily deported.

- A Nicaraguan asylum seeker fleeing political persecution was only given a CFI after insisting on needing asylum, **whereas other people detained with him were summarily removed despite also expressing that they were seeking asylum**. Initially, CBP officers told the group that they could not apply for asylum, but then only referred for CFIs the men who continued to insist on needing asylum and removed the rest.
- A Black gay man from Peru fleeing sexual and physical violence, including physical assaults by police officers, **was ordered removed without referral for a CFI despite expressing an intent to seek asylum to CBP officers and was only referred for a CFI after he had been transferred to ICE custody for removal and continued to insist that he was afraid of return**. He reported to the Texas Rio Grande Public Defender that he was not asked any questions by CBP officers, was unable to give CBP a letter indicating that he intended to seek asylum because his belongings had been confiscated, was told “no” when he asked whether he could have an interview, was frequently told not to speak by officers, and was jailed in a cell for days after initial processing without any opportunity to speak with officers. Seven days after he was transferred to ICE detention with a deportation order, he was able to speak with an ICE officer and insist that he was afraid and wanted an asylum interview. He was finally referred for a CFI and received a positive credible fear determination.
- A Colombian LGBTQI+ woman and other women seeking protection were told that they would be deported despite expressing fear, forcing the women to beg and cry to be referred for CFIs. **When the women told the officer that they “feared death,” “were afraid,” and “were seeking refuge,” the officer told them they would be deported because they did not use the word “asylum,” due to the new policy**. The women reported to a legal service provider that when they began to cry and beg, the officer told them to **“stop crying and speak like normal, decent people.”** He also stated that he **did not want “to see more immigrants taking American jobs”**



and that “everyone says the same story.” The women persisted in pleading for CFIs and were eventually referred.

The IFR has led to widespread mistreatment of asylum seekers by CBP officers who blatantly and repeatedly disregard obligations under U.S. law after elimination of the requirement to affirmatively ask about fear. According to interviews conducted by our groups since the IFR went into effect, immigration officers have responded to peoples’ expressions of fear of return with the following statements before summarily removing them:

**“What if I went to your house and entered without permission?
You’re entering my country without permission.”**

“There is no asylum and whatever happened to you is not our problem.”

“There are no spots for asylum and if we want, you’ll be detained for a long time.”

**“Don’t say anything;
what you say doesn’t matter.”**

“The law has changed.”

“That’s what everyone says.”

“There is no asylum anymore; we don’t care.”

“They are not going to give you asylum. Stay as long as you want, it’s a prison.”

“By orders of President Biden, we are no longer giving asylum to anyone. We don’t want any more Mexicans.”

“If you return, your children will be taken and you’ll be put in jail because you’re illegal.”

“There is no asylum.”

“Do you think you have the same rights as I do? The government deducts \$1,000 dollars from every paycheck I earn just so that any idiot can show up here.”

“I’m not asking about your fear; don’t tell me about your fear.”

“There is no asylum. You guys need to watch the news.”

“I don’t speak Spanish; I don’t know what you are saying.”

**“The border has closed.
Don’t come back.”**

“There is no political asylum these days, just deportation.”

“Asylum has closed. You can seek asylum in Mexico.”

“There is no asylum. Haven’t you seen the news?”

“I don’t speak good Spanish.”

“Everyone here is wasting their time because there is no asylum since the President signed [an order] on the 4th at 9 PM, and he doesn’t want any Mexicans. “



“The border is closed.”



Due to the IFR, many people seeking protection are denied opportunity to claim fear before deportation

The deficient “manifestation” of fear approach imposed by the IFR is depriving many people seeking protection of an opportunity to express their fear. Under the prior regulations, the requirement for CBP officers to complete the I-867AB form with each person processed under expedited removal was intended to provide a setting where people could express fear and be referred to a CFI. Since the agencies eliminated this requirement, many people have reported to our groups that they were not asked about fear of return and did not even have an opportunity to speak to officers in CBP custody, let alone feel safe expressing their fear. Barriers to expressing fear in the wake of the IFR include:

Prohibition against speaking, intimidation, threats in CBP custody

- **“They didn’t let us talk”** was a sentiment commonly expressed by people seeking protection who were removed without a CFI in the past two months since the IFR went into effect and spoke with Kino Border Initiative. People have also reported to our groups that they were unable to express their fear because officers forbade them from speaking, reprimanded them, intimidated them, threatened them with prolonged detention, or told them there was no asylum anymore.
- A woman fleeing with her three-year-old son **was unable to express her fear of return because she was not allowed to speak** and was instructed by a Border Patrol agent to sign a deportation order to “continue the process.” She and her child were summarily removed without a CFI. She reported to Human Rights First that when they sought protection a second time, an agent told her there was no asylum and no more hearings and removed her again.
- A Mexican woman was removed with her two young children after being detained in CBP custody for four days and prohibited from speaking to officers. She and others grew desperate and **began to cry, pleading that the officers let them speak. “After everything we went through in Guerrero, for them to not even let us speak of the fear we carry with us,”** she told Human Rights First. Instead, she was reprimanded and told she had broken the law, that “asylum has closed,” and that her children would be taken from her if she ever returned.

Environment in CBP custody impedes people from expressing fear under IFR

- In the wake of the IFR, people have reported to Human Rights First that they cannot speak confidentially with CBP officers because they are called to sign their deportation orders, at times together or in groups, and jailed in holding cells without any chance to speak privately with an officer.
- Lack of a confidential space to express fear particularly endangers **survivors of rape, torture, and other trauma, LGBTQI+ people, political dissidents** and other at-risk refugees who are now expected to shout out or otherwise volunteer



personal, traumatic information about their fear of return to uniformed officers in immigration jail, potentially in front of many people including others from their home country. For instance, LGBTQI+ refugees may be afraid or hesitant to express fear of harm relating to their sexual orientation, gender identity, or other persecution in a non-confidential setting and as a result will not be properly identified and referred for fear screenings.

- People with disabilities, including individuals with speech impediments, cognitive disabilities, and mental health issues—including PTSD resulting from trauma and persecution—may be unable to express fear in CBP custody before deportation, and our groups are not aware of any agency guidance to ensure that they will have a meaningful opportunity to express fear. Additionally, some people may not spontaneously shout out or otherwise express their fear due to cultural norms and will be summarily deported to their countries of feared persecution.

Lack of interpretation under the new rule's elimination of safeguards

- Since the IFR was issued, CBP officers are no longer required to ask fear questions with interpretation. People attempting to tell officers that they fear return or intend to seek asylum have been told **"I don't speak good Spanish" and "I don't speak Spanish; I don't know what you are saying."** They were then summarily deported without a CFI.
- The hurdles will be even greater for people who speak other languages, including **people fleeing China, Russia, Syria, Sudan, the Democratic Republic of Congo, as well as Indigenous language speakers**, who may not have any opportunity to convey fear in their language before they are summarily deported.

Lack of information and false claims by CBP in the wake of the rule

- As a result of the IFR, many asylum seekers will not know how or when to express their fear and will be summarily removed merely because they do not know that they were required to shout or otherwise **"manifest"** their fear immediately upon arrival. **A Colombian man fleeing political persecution was processed for deportation without a CFI because he did not know that he needed to spontaneously express fear of return.** His deportation was narrowly averted due to the intervention of an attorney at the Immigrant Defenders Law Center.
- In the past two months, people detained and processed under expedited removal have been told that **"there is no asylum," "what you say doesn't matter," "everyone here is wasting their time," "don't tell me about your fear," "the law has changed," "they are not going to give you asylum," "we are no longer giving asylum to anyone," "there is no political asylum these days, just deportation," "there is no asylum since the President signed [an order] on the 4th at 9 PM," and "by orders of President Biden, we are no longer giving asylum to anyone."** This false information and hostile, intimidating environment will lead people to believe that the decision to deport them has already been made and that they



cannot safely raise fears about their deportation. Indeed, there is a long history of CBP officers telling people in custody that they are being deported, subjecting them to verbal and physical abuse, and threatening and pressuring them into signing deportation orders.

Confiscation of belongings prevents people from expressing fear under new rule

- People who intended to show officers documentation of their fear of return have been unable to do so because CBP and ICE confiscated their belongings when jailing them. Texas Rio Grande Public Defender's clients had letters expressing fear of return to their country of nationality but were unable to present their letters to CBP and ICE officers because their belongings were confiscated.

IFR separates families by causing arbitrary failures to refer people for CFIs

Since the implementation of the IFR, the arbitrariness of who is referred for a CFI and who is summarily removed has already resulted in family separation, **with family members separated in CBP custody, removed within hours and days without knowing their loved ones' whereabouts, and experiencing disparate outcomes** where some family members can seek asylum while others face summary removal despite having similar and/or related asylum claims.

- **A Colombian family fleeing persecution was separated, and three of the four family members were removed without a credible fear screening** despite all of them expressing their fear based on the same asylum claim. One of the women, who had been raped and threatened by her persecutors due to her political opinion and Indigenous identity, told Immigrant Defenders Law Center that she was referred for a credible fear interview while her husband, sister-in-law, and brother-in-law were removed.
- **A Colombian man fleeing persecution due to his political opinion was separated from his partner and processed for deportation because he did not know that he needed to tell CBP officers about his fear of return**, whereas his partner expressed fear and was referred for a CFI. The man was told to sign papers in English without having the contents translated for him and was then processed for deportation. His removal was narrowly averted due to the intervention of an attorney at the Immigrant Defenders Law Center, who contacted immigration officials about his case. He was finally referred for a CFI, received a positive credible fear determination, and has reunited with his partner in the United States.



Mission statement

Human Rights First works to create a just world in which every person's intrinsic human rights are respected and protected, to build societies that value and invest in all their people. To reach that goal demands assisting victims of injustice, bringing perpetrators of abuse to justice, and building institutions that ensure universal rights.

Human Rights First is a nonprofit, nonpartisan international human rights organization based in Los Angeles, New York, and Washington D.C.

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