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Credible Fear and Defensive Asylum Processes: Frequently Asked Questions

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Credible Fear and Defensive Asylum Processes: Frequently Asked Questions

SUMMARY

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Non-U.S. nationals (*aliens* under federal statute and regulation) subject to removal from the United States may seek asylum and other forms of humanitarian protection during standard and expedited removal processes. Asylum may be granted to persons in the United States, regardless of their immigration status, who are unable or unwilling to return to their countries because of persecution or a well-founded fear of persecution based on race, religion, nationality, membership in a particular social group, or political opinion.

The Immigration and Nationality Act (INA) authorizes the U.S. Department of Homeland Security (DHS) to charge aliens with immigration violations and process them for standard removal proceedings in immigration court. During removal proceedings, an alien may apply for asylum, withholding of removal, and protection from removal under the Convention Against Torture (CAT) to avoid removal. Immigration courts are within the Executive Office for Immigration Review, an agency within the U.S. Department of Justice.

Section 235(b) of the INA (8 U.S.C. §1225(b)) establishes a separate, expedited removal process for certain aliens. Under this process, if an immigration officer determines that an alien lacks valid entry documents or has tried to procure admission through fraud or misrepresentation, the alien may be ordered removed without further hearing or review. The expedited removal process may be used for persons apprehended by DHS at a U.S. port of entry, at or near a U.S. border between ports of entry, or in the interior of the United States if they have been present in the country for less than two years without being admitted or paroled. During expedited removal, individuals who express fear of persecution or torture if returned to their countries of origin or express an intent to apply for asylum may undergo credible fear screenings to determine whether they may qualify for asylum or other forms of protection from removal. An alien who meets the threshold for a credible fear of persecution or torture may be referred to an immigration judge and placed in standard removal proceedings.

Although the law specifies which aliens may be subject to expedited removal, DHS generally has discretion over whether to place those individuals in either expedited or standard removal and may make such decisions based on operational circumstances on a case-by-case basis. Those persons whom DHS processes directly for standard removal—even if they are subject to expedited removal under the law—do not undergo credible fear screenings.

This report addresses frequently asked questions about credible fear and asylum, including those related to expedited and standard removal processes; credible fear screening processes, criteria, and legislative history; procedural protections; and data regarding credible fear and asylum outcomes.

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Introduction

The Immigration and Nationality Act (INA)[1] provides multiple processes for the removal of individuals who are not citizens or nationals of the United States (defined as *aliens* under the INA)[2] charged with immigration violations, including standard and expedited removal pathways. Both pathways allow individuals subject to removal to seek humanitarian protection, including through asylum, withholding of removal, and protection under the Convention Against Torture (CAT).[3]

During standard removal proceedings, immigration judges[4] in the U.S. Department of Justice's (DOJ's) Executive Office for Immigration Review (EOIR) determine whether an alien who has been charged with an immigration violation by the U.S. Department of Homeland Security (DHS) is removable and whether that individual qualifies for any relief or protection from removal for which he or she has applied, including asylum. A person placed directly in standard removal does not undergo a credible fear screening.

Section 235(b) of the INA (8 U.S.C.§1225(b)) establishes a separate, expedited removal process for certain aliens. Under this process, if an immigration officer determines that the alien lacks valid entry documents or has tried to procure admission through fraud or misrepresentation, the alien may be ordered removed without further hearing or review.[5] The expedited removal process may potentially be used for persons apprehended by DHS at U.S. ports of entry, at or near the U.S. border between ports of entry, or in the interior of the United States if they have been present in the country for less than two years without being admitted or paroled.[6] Courts and DHS have generally treated the exercise of expedited removal authority as discretionary, meaning that DHS may opt to place an alien otherwise subject to expedited removal into standard removal proceedings instead.[7]

If an individual subject to expedited removal expresses a fear of persecution or torture if returned to his or her country of origin or an intent to apply for asylum, that person is referred for a *credible fear interview* with a DHS U.S. Citizenship and Immigration Services (USCIS) asylum

[1] INA §§101 et seq.; 8 U.S.C. §§1101 et seq.

[2] INA §101(a)(3); 8 U.S.C. §1101(a)(3). Although in this report the words *foreign national* and *alien* are used interchangeably, the terms are not legally identical in scope. While an alien is neither a U.S. national nor a U.S. citizen, it is possible for a U.S. citizen or national to also be a national or citizen of a foreign country (INA §101(a)(22); 8 U.S.C. §1101(a)(22)). See also U.S. Department of State, Bureau of Consular Affairs, "Dual Nationality," https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/Relinquishing-US-Nationality/Dual-Nationality.html.

[3] See INA §208(a)(1); 8 U.S.C. §1158(a)(1) (asylum), INA §235(b)(1)(A)(ii); 8 U.S.C. §1225(b)(1)(A)(ii) (allowing those in expedited removal to pursue asylum), INA §241(b)(3)(A); 8 U.S.C. §1231(b)(3)(A) (withholding of removal), and 8 C.F.R. §§1208.16(c), 1208.17(a) (CAT protection). The Convention Against Torture refers to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. See 8 C.F.R. §208.16(c)(1).

[4] Immigration judges are attorneys appointed by the Attorney General as administrative judges. See INA §101(b)(4); 8 U.S.C. §1101(b)(4).

[5] 8 U.S.C. §1225(b)(1).

[6] INA §235(b)(1)(A)(iii); 8 U.S.C. §1225(b)(1)(A)(iii). For further discussion of the expedited removal process and its expanded use over the years, see infra at What is expedited removal?.

[7] See Innovation Law Lab v. McAleenan, 924 F.3d 503, 508 (9th Cir. 2019) (citing Matter of E-R-M- & L-R-M-, 25 I. & N. Dec. 520, 522-24 (BIA 2011)) ("Congress' creation of expedited removal did not impliedly preclude the use of §1229a removal proceedings for those who could otherwise have been placed in the more streamlined expedited removal process.").

officer.[8] Individuals who during credible fear interviews show a *significant possibility* of establishing eligibility for asylum or related protections are referred to standard removal proceedings, where they may file asylum applications with the immigration court.[9]

This report addresses frequently asked questions related to defensive asylum and credible fear,[10] including those related to standard and expedited removal processes; credible fear screening processes, criteria, and legislative history; procedural protections; and data regarding credible fear and asylum outcomes.

Asylum and Related Forms of Relief

What is asylum?

Asylum can be granted to aliens who are physically present in the United States or arrive in the United States (whether or not at a port of entry) who are unable or unwilling to return to their home countries because of past persecution or a well-founded fear of future persecution based on one of five statutorily defined protected grounds (race, religion, nationality, membership in a particular social group, or political opinion) and who satisfy other requirements.[11] Asylum is a discretionary form of relief, meaning an alien might be denied such relief despite meeting eligibility requirements.[12] Persons granted asylum (known as asylees) can become U.S. lawful permanent residents (LPRs) after one year of physical presence in the United States as asylees.[13] When an individual in removal proceedings applies for asylum, it is considered a *defensive* asylum application.[14]

What related forms of relief or protection may be available to asylum seekers?

In some cases, an alien may be statutorily barred from either applying for or receiving asylum (e.g., because the application is untimely or the applicant has been convicted of a particularly

[8] INA §235(b)(1)(A)(ii); 8 U.S.C. §1225(b)(1)(A)(ii).

[9] INA §235(b)(1)(B)(v), 8 U.S.C. §1225(b)(1)(B)(v) (defining "credible fear"); INA §235(b)(1)(B)(ii), 8 U.S.C. §1225(b)(1)(B)(ii) (providing that an alien who is found to have a credible fear "shall be detained for further consideration of the application for asylum."); 8 C.F.R. §208.30(f) (authorizing USCIS to issue a Notice to Appear initiating standard removal proceedings for consideration of an application for asylum and withholding of removal in cases where an alien is found to have a credible fear.).

[10] Because this report focuses on asylum, its use of the term *credible fear* typically refers to a credible fear of persecution except where otherwise noted.

[11] INA §101(a)(42); 8 U.S.C. §1101(a)(42), INA §208(a)-(b); 8 U.S.C. §1158(a)-(b).

[12] See INS v. Cardoza-Fonseca, 480 U.S. 421, 428 n.6 (1987) ("[A]s we have mentioned, there is no entitlement to asylum, it is only granted to eligible refugees pursuant to the Attorney General's discretion."). For further discussion on the parameters of discretionary determinations by immigration authorities, see USCIS, *Policy Manual*, vol. 1, part E, chap. 8, https://www.uscis.gov/policy-manual/volume-1-part-e-chapter-8.

[13] INA §209; 8 U.S.C. §1159.

[14] Individuals who are not in removal proceedings may *affirmatively* apply for asylum with USCIS. This report does not cover the affirmative asylum application process. For more information about affirmative asylum, see CRS Report R48249, *What Is Affirmative Asylum?*

serious crime).[15] However, even if an alien is ineligible for asylum, he or she may still pursue related forms of relief, including withholding of removal and protection under the CAT.[16]

An applicant for withholding of removal must meet a higher burden than the standard for asylum and must prove that it is more likely than not (i.e., a clear probability) that he or she will be persecuted because of one of the five protected grounds.[17] An applicant for CAT protection must show that it is more likely than not that he or she will be tortured by a public official or other person acting with the consent or acquiescence of an official.[18]

Unlike asylum, withholding of removal and CAT protection are mandatory forms of protection from removal and may not be denied as a matter of discretion (i.e., the adjudicator must grant the applicant protection if the qualifications are met).[19] Nonetheless, while asylum affords the recipient an opportunity to pursue LPR status, a grant of withholding of removal or CAT protection provides no path to LPR status and only prevents removal to the country where the alien would likely face persecution or torture (but not necessarily to a third country).[20]

Do all asylum seekers have credible fear interviews?

The only asylum seekers who undergo credible fear interviews (also known as *credible fear screenings*) are those who are placed in expedited removal proceedings (see "What is expedited

[15] INA §208(a)(2), (b)(2)(A); 8 U.S.C. §1158(a)(2), (b)(2)(A).

[16] See 8 C.F.R. §1208.16(a) ("In exclusion, deportation, or removal proceedings, an immigration judge may adjudicate both an asylum claim and a request for withholding of removal whether or not asylum is granted.").

[17] INA §241(b)(3)(A); 8 U.S.C. §1231(b)(3)(A); INS v. Stevic, 467 U.S. 407, 424, 429-30 (1984) (explaining that an application for withholding of removal must "be supported by evidence establishing that it is more likely than not that the alien would be subject to persecution on one of the specified grounds."). There are also statutory bars to withholding of removal, and some of them overlap with the asylum bars (e.g., ineligibility based on a particularly serious crime conviction). INA §241(b)(3)(B); 8 U.S.C. §1231(b)(3)(B).

[18] 8 C.F.R. §§208.16(c)(2), 208.18(a)(1), 1208.16(c)(2), 1208.18(a)(1). An applicant for CAT protection does not have to show that the alleged torture would be on account of one of the five specified grounds for which asylum or withholding of removal may be granted. See Hamoui v. Ashcroft, 389 F.3d 821, 826 (9th Cir. 2004) ("A claim under the Convention differs from an asylum claim because there is no requirement that the petitioner show that torture will occur on account of a statutorily protected ground."). There are two forms of CAT protection: withholding removal under CAT and deferral of removal under CAT (8 C.F.R. §§208.16(c), 208.17(a)). There are mandatory bars to withholding of removal under CAT, including, for example, if the applicant participated in the persecution of others or was convicted of a particularly serious crime (8 C.F.R. §208.16(d)(2), INA §241(b)(3)(B); 8 U.S.C. §1231(b)(3)(B)). However, an applicant who is otherwise eligible for CAT protection but subject to a mandatory bar must be granted deferral of removal under CAT (8 C.F.R. §208.17(a)). At any time while deferral of removal is in effect, an immigration judge must reopen removal proceedings to determine whether deferral of removal should be terminated if DHS presents evidence that was not presented at the previous hearing that is relevant to whether the alien would be tortured in the country of removal (8 C.F.R. §208.17(d)(1)). Deferral of removal may be terminated if, following a hearing, the immigration judge determines that it is not more likely than not that the alien would be tortured in the country to which removal has been deferred (8 C.F.R. §208.17(d)(4)).

[19] See INS v. Aguirre-Aguirre, 526 U.S. 415, 420 (1999) (explaining that "whereas withholding is mandatory unless the Attorney General determines one of the exceptions applies, the decision whether asylum should be granted to an eligible alien is committed to the Attorney General's discretion."); Niang v. Gonzales, 422 F.3d 1187, 1194 (3d Cir. 2005) ("Relief under the CAT is mandatory if the convention's criteria are satisfied.").

[20] See Aguirre-Aguirre, 526 U.S. at 419 ("Under the immigration laws, withholding is distinct from asylum, although the two forms of relief serve similar purposes. Whereas withholding only bars deporting an alien to a particular country or countries, a grant of asylum permits an alien to remain in the United States and to apply for permanent residency after one year."); Sathanthrasa v. Attorney Gen., 968 F.3d 285, 289 (3d Cir. 2020) ("But while withholding is mandatory if the statutory criteria are satisfied, the decision to grant asylum is ultimately left to the discretion of the Attorney General and, between the two forms of relief, only the latter provides a pathway to legal permanent resident status and a basis to petition for admission of family members as derivative asylees."). For more information about third country removals, see CRS In Focus IF13295, *Immigration Removals to Third Countries*.

removal?") and express a fear of persecution or torture, a fear of returning to their home countries, or an intent to apply for asylum.[21]

Persons placed directly in standard removal proceedings do not have credible fear interviews. These persons do not have to establish a credible fear to be able to request asylum from an immigration judge (see "What is standard removal?").

Standard and Expedited Removal Processes

DHS has two primary law enforcement components responsible for immigration enforcement. U.S. Customs and Border Protection (CBP) is primarily responsible for immigration enforcement at ports of entry and between ports of entry along the border. Immigration and Customs Enforcement (ICE) is mainly responsible for interior enforcement. All aliens who arrive in the United States and those who are already in the country but have not been admitted (e.g., those who entered unlawfully) are considered *applicants for admission*.[22] These individuals are subject to inspection by immigration officers, who may determine whether they are subject to removal.[23]

What is standard removal?

The INA provides for the removal of aliens whom DHS—typically ICE or CBP—charges with immigration violations.[24] DHS may process such an individual for standard removal proceedings by issuing a Notice to Appear (NTA) charging document and filing it with an immigration court.[25] DHS is required to detain certain individuals during their removal proceedings (e.g., those who have been convicted of committing certain crimes). In most other cases, DHS has discretion to release individuals on bond or their own recognizance.[26] Since 2025, immigration detention capacity has expanded substantially through congressional appropriations, allowing ICE to detain a larger number of aliens.[27]

During removal proceedings, an immigration judge determines whether the alien (referred to as the *respondent*) is removable as charged in the NTA and if that individual is eligible for any forms of relief or protection from removal, including asylum.[28] To be considered for asylum, the respondent must file an application for asylum with the immigration court. Individuals placed in standard removal proceedings do not undergo credible fear screenings as part of the asylum application process, although they may be referred to standard removal proceedings as the result of positive credible fear findings (see "What is expedited removal?").

[21] 8 C.F.R. §235.3(b)(4).

[22] INA §235(a)(1); 8 U.S.C. §1225(a)(1).

[23] INA §235(a)(3); 8 U.S.C. §1225(a)(3).

[24] INA §240(a); 8 U.S.C. §1229a(a). These include grounds of inadmissibility (INA §212(a); 8 U.S.C. §1182(a)) and deportability (INA §237(a); 8 U.S.C. §1227(a)).

[25] INA §239; 8 U.S.C. §1229, and 8 C.F.R. §239.1. For more information about removal proceedings, see CRS In Focus IF11536, *Formal Removal Proceedings: An Introduction*. For more information about immigration courts, see CRS Report R47077, *U.S. Immigration Courts and the Pending Cases Backlog*.

[26] INA §236(a), (c); 8 U.S.C. §1226(a), (c). For more information about immigration detention, see CRS In Focus IF11343, *The Law of Immigration Detention: A Brief Introduction*.

[27] For example, Section 90003 of P.L. 119-21 appropriated $45 billion to ICE for immigration detention. For more information, see CRS Report R49032, *Immigration Legislation and Issues in the 119th Congress*.

[28] INA §240; 8 U.S.C. §1229a. For information about other types of protection and relief from removal, see CRS Report R47077, *U.S. Immigration Courts and the Pending Cases Backlog*, Table 2.

Parties in standard removal proceedings include the respondent, who may or may not have counsel (see "Do asylum applicants have legal representation during standard removal proceedings?"), and DHS, which is represented by counsel from ICE's Office of the Principal Legal Advisor.

What is the process for standard removal proceedings?

Standard removal proceedings typically consist of multiple hearings before an immigration judge. A respondent who fails to appear for any hearing may be ordered removed *in absentia* (see "How many asylum applicants fail to appear for their immigration court hearings?").[29] During the initial *master calendar hearing*, the immigration judge explains the respondent's rights, the charges against the respondent, and the nature of the proceedings; verifies the respondent's contact information; provides information about legal representation; and sets filing dates for applications.[30] To apply for asylum, the respondent must file an application with the court, generally within one year of arrival in the United States.[31] A respondent may use the same application to apply for withholding of removal and CAT protection, which may be available to those who are ineligible for asylum.[32]

During an evidentiary *merits hearing* (also called an *individual hearing*), the immigration judge addresses any challenges to DHS's charges of removability and considers the respondent's application(s) for relief and protection from removal.[33] Parties may present witnesses, testimony, and evidence. At the conclusion of the proceedings, the immigration judge issues a decision.

What are the possible outcomes of standard removal proceedings?

At the conclusion of the standard removal hearings, the immigration judge may do the following:

- Issue a removal order[34]
- Find the respondent removable and allow him or her to request *voluntary departure* and leave the United States at his or her own expense[35]

[29] INA §240(b)(5)(A); 8 U.S.C. §1229a(b)(5)(A). For more information about *in absentia* removal orders, see CRS In Focus IF11892, *At What Rate Do Noncitizens Appear for Their Removal Hearings? Measuring In Absentia Removal Order Rates*.

[30] See EOIR, *EOIR Policy Manual*, Part II, chap. 3.14, https://www.justice.gov/eoir/policy-manual-eoir/part-II/icpm/chapter-3-14.

[31] INA §208(a)(2)(B); 8 U.S.C. §1158(a)(2)(B). The one-year filing deadline may be excused if the alien can establish changed or extraordinary circumstances. For more information about the asylum process in immigration court, see CRS Report R47504, *Asylum Process in Immigration Courts and Selected Trends*.

[32] An alien is eligible for asylum if he or she has suffered past persecution or has a well-founded fear of future persecution on account of his or her race, religion, nationality, membership in a particular social group, or political opinion (INA §§101(a)(42), 208(b)(1)(B)(i); 8 U.S.C. §§1101(a)(42), 1158(b)(1)(B)(i)). An alien qualifies for withholding of removal if the individual can show it is more likely than not that he or she will be persecuted on account of one of these enumerated grounds (INA §241(b)(3)(A); 8 U.S.C. §1231(b)(3)(A), and 8 C.F.R. §208.16(b)(2)). To qualify for CAT protection, an alien must show that it is more likely than not that he or she will be tortured by a government official or person acting with the consent or acquiescence of that official (8 C.F.R. §§208.16(c)(2), 208.18(a)(1)).

[33] EOIR, *EOIR Policy Manual*, Part II, chap. 3.15.

[34] INA §240(a)(1); 8 U.S.C. §1229a(a)(1), INA §240(c)(1); 8 U.S.C. §1229(c)(1).

[35] If the immigration judge grants a respondent's request for voluntary departure in lieu of removal, there is no removal order entered against the respondent (see 8 U.S.C. §1229c(b)). Voluntary departure may be granted before the completion of removal proceedings or at the conclusion of removal proceedings (see INA §240B; 8 U.S.C. §1229c and 8 C.F.R. §1240.26).

- Grant relief or protection from removal, such as asylum
- Terminate or dismiss a case[36]

The immigration judge may terminate a case in some circumstances, including, for example, if the respondent establishes eligibility for U.S. citizenship or demonstrates that the charges on the NTA are substantively or procedurally defective.[37] The immigration judge may dismiss a case when DHS moves to dismiss proceedings under certain grounds.[38] Parties may appeal an immigration judge's decision within 30 days to the Board of Immigration Appeals, EOIR's appellate component.[39]

Do asylum applicants have legal representation during standard removal proceedings?

The INA provides respondents with the privilege of being represented by counsel "at no expense to the government."[40] Respondents may obtain counsel at their own expense, obtain pro bono services, or represent themselves (pro se). The federal government generally may not fund counsel, but there are exceptions. Under EOIR's National Qualified Representative Program, counsel is provided to unrepresented detained respondents with mental disorders and disabilities that "may render them incompetent to represent themselves in immigration proceedings."[41] The U.S. Department of Health and Human Services (HHS), Office of Refugee Resettlement, which is responsible for the care and custody of unaccompanied alien children also funds legal services for some children under requirements specified in the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (P.L. 110-457).[42]

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[36] The immigration judge may terminate cases under circumstances specified in 8 C.F.R. §1003.18(d). A judge may also grant a party's motion to dismiss proceedings under conditions specified in 8 C.F.R. §1239.2. For more information about these outcomes and 2025 outcomes data, see CRS Insight IN12638, *FY2025 Immigration Court Data: Case Outcomes*.

[37] See 8 C.F.R. §1239.2(f) (authorizing termination of proceedings "when the alien has established prima facie eligibility for naturalization and the matter involves exceptionally appealing or humanitarian factors"); Matter of J-A-B- & I-J-V-A-, 27 I. & N. Dec. 168, 169 (BIA 2017) ("It is well settled that an Immigration Judge may only 'terminate proceedings when the DHS cannot sustain the charges [of removability] or in other specific circumstances consistent with the law and applicable regulations'") (quoting Matter of Sanchez-Herbert, 26 I. & N. Dec. 43, 45 [BIA 2012]).

[38] 8 C.F.R. §239.2(a).

[39] 8 C.F.R. §§1003.3(a)(1), 1003.38. In February 2026, EOIR issued an interim final rule (IFR) to, among other things, generally require the board to summarily dismiss most appeals, with certain exceptions, and reduce the appeal period from 30 days to 10 days after the immigration judge's decision. EOIR, "Appellate Procedures for the Board of Immigration Appeals," 91 *Federal Register* 5267, February 6, 2026, https://www.federalregister.gov/documents/2026/02/06/2026-02326/appellate-procedures-for-the-board-of-immigration-appeals. Following a legal challenge to the IFR, a federal district court partially vacated the IFR, and the 30-day deadline remains in place as of the date of this report. Amica Ctr. for Immigrant Rts. v. Exec. Office for Immigr. Rev., 822 F. Supp. 3d 119, 128, 167–68 (D.D.C.).

[40] INA §§240(b)(4), 292; 8 U.S.C. §§1229a(b)(4), 1362. For more information about access to counsel and EOIR's legal access programs, see CRS In Focus IF12158, *U.S. Immigration Courts: Access to Counsel in Removal Proceedings and Legal Access Programs*.

[41] EOIR established this program following a federal district court order requiring immigration officials to, among other things, screen individuals to determine whether they have serious mental disorders, assess whether they are competent to represent themselves in removal proceedings, and provide "qualified representatives" for individuals deemed incompetent to represent themselves. Order Further Implementing This Court's Permanent Injunction at 2, Franco-Gonzalez v. Holder, No. CV-10-02211, 2014 WL 5475097, at *1–2 (C.D. Cal. Oct. 29, 2014).

[42] This act requires HHS to "ensure, to the greatest extent practicable" that unaccompanied children in its care have counsel. For more information about unaccompanied children, see CRS Report R43599, *Unaccompanied Alien Children: An Overview*.

EOIR is required under federal regulations to provide respondents with a list of free or low-cost legal service providers.[43] Persons eligible to serve as respondents' representatives in immigration court are specified in federal regulation.[44] As of May 2026, among all pending immigration court cases, 45% of respondents were represented.[45]

What is expedited removal?

Expedited removal is a streamlined removal process that may be used in cases involving certain arriving aliens and aliens who already entered the United States without inspection. An immigration officer may order the removal of a person arriving in the United States without a hearing or further review of the order to remove the individual if that person is inadmissible because he or she lacks valid entry documents or procured or sought to procure admission by fraud or misrepresentation.[46] In addition, Section 1225(b)(1) authorizes the DHS Secretary[47] to apply the expedited removal process to persons present in the United States who have not been admitted or paroled[48] if they have been in the country less than two years and are inadmissible because they lack valid entry documents or procured or sought to procure their admission by fraud or misrepresentation.[49]

Based on this statutory authority, DHS has historically employed expedited removal primarily for three categories of inadmissible aliens: (1) individuals arriving at U.S. ports of entry (e.g., a land border crossing or an international airport), (2) individuals who arrived in the United States by sea within the previous two years and have not been admitted or paroled by immigration authorities, and (3) individuals found in the United States within 100 air miles of the border within 14 days of entering the country who have not been admitted or paroled by immigration authorities.[50]

Under the second Trump Administration, DHS has implemented expedited removal to the fullest extent authorized by Section 1225(b)(1) to include all aliens who are present in the United States

[43] 8 C.F.R. §1003.61(b); see EOIR, "List of Pro Bono Legal Service Providers," https://www.justice.gov/eoir/list-pro-bono-legal-service-providers.

[44] 8 C.F.R. §1292.1.

[45] TRAC Immigration, "Immigration Court Backlog," https://tracreports.org/phptools/immigration/backlog/. For state-level representation data, see TRAC Immigration, "Pending Court Cases by Immigrant's Address," https://tracreports.org/phptools/immigration/addressrep/.

[46] INA §235(b)(1)(A)(i); 8 U.S.C. §1225(b)(1)(A)(i).

[47] Although the statutory provisions under 8 U.S.C. §1225(b)(1) refer to the "Attorney General," the Homeland Security Act of 2002 subsequently transferred many immigration-related functions to the DHS Secretary, including the authority related to the detention and removal of aliens (6 U.S.C. §251).

[48] Parole is a process by which a person may enter the United States temporarily pending his or her application for admission (INA §212(d)(5); 8 U.S.C. §1182(d)(5)). Samirah v. O'Connell, 335 F.3d 545, 547 (7th Cir. 2003) ("Parole allows an alien temporarily to remain in the United States pending a decision on his application for admission.") (quoting 8 U.S.C. §1182(d)(5)). For more information about parole, see CRS Report R46570, *Immigration Parole*; and CRS Legal Sidebar LSB11102, *Humanitarian Parole Authority: A Legal Overview and Recent Developments*.

[49] INA §235(b)(1)(A)(iii); 8 U.S.C. §1225(b)(1)(A)(iii).

[50] See Inspection and Expedited Removal of Aliens, 62 *Federal Register* 10312, March 6, 1997; Notice Designating Aliens Subject to Expedited Removal Under Section 235(b)(1)(A)(iii) of the Immigration and Nationality Act, 67 *Federal Register* 68924, November 13, 2002; and Notice Designating Aliens for Expedited Removal, 69 *Federal Register* 48877, August 11, 2004.

without admission or parole, have been in the country less than two years, and lack valid entry documents, or procured or sought to procure admission through fraud or misrepresentation.[51]

Until 2025, during the expedited removal process, DHS officers generally asked the aliens questions to assess whether they feared returning to their home countries, including asking why they left their homes or countries, whether they have any fear of being returned, and whether they would be harmed in their countries.[52] In February 2025, DHS introduced a new protocol in which an alien is instead asked the reason for leaving the home country or country of last residence and whether that person has any questions or anything to add.[53]

Although a person in expedited removal proceedings typically has no right to a hearing or review of the expedited removal order, there is an exception for individuals who express an intent to apply for asylum, a fear of persecution or torture, or a fear of returning to their home countries.[54] In these cases, the immigration officer must refer the individual for an interview with an asylum officer (see "Who conducts credible fear interviews?") to make a credible fear determination.[55]

What is a credible fear determination?

A credible fear determination results from a screening process that evaluates whether a person placed in expedited removal proceedings might qualify for asylum, withholding of removal, or protection from removal under the CAT.[56] Federal statute defines *credible fear of persecution* as "a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum."[57] Federal regulations define *credible fear of torture* as "a significant possibility that the alien is eligible for" protection under the CAT.[58] As discussed in this report, depending on the outcome of the credible fear interview, the applicant may potentially apply for asylum and related protections in standard removal proceedings.

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[51] DHS, "Designating Aliens for Expedited Removal," 90 *Federal Register* 8139-8140, January 24, 2025, https://www.federalregister.gov/documents/2025/01/24/2025-01720/designating-aliens-for-expedited-removal. Initially, following a legal challenge to DHS's expansion of expedited removal, the U.S. District Court for the District of Columbia in 2025 ruled that expanding the scope of expedited removal to cover aliens apprehended anywhere in the United States likely violated their constitutional right to due process and issued an order staying the expansion while litigation continued. Make the Rd. N.Y. v. Noem, 805 F. Supp. 3d 139, 158, 174 (D.D.C. 2025), *vacated sub nom*. Make the Rd. N.Y. v. Mullin, 179 F.4th 16 (D.C. Cir. 2026). In 2026, the U.S. Court of Appeals for the D.C. Circuit vacated the district court's decision, thereby allowing DHS to implement and enforce the expansion of expedited removal for the time being. *Make the Rd. N.Y.*, 179 F.4th at 38.

[52] See CBP, "Claims of Fear," July 17, 2020, https://www.cbp.gov/newsroom/stats/sw-border-migration/claims-fear.

[53] DHS, *Jurat for Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act*, Form I-867B, February 11, 2025. A lawsuit challenging DHS's change in policy that no longer requires asking whether aliens placed in expedited removal proceedings fear returning to their home countries was filed in the U.S. District Court for the District of Columbia, and that case is pending in the district court. Complaint, Coal. For Humane Immigrant Rts. v. Mullin, No. 26-cv-01084 (D.D.C. Mar. 31, 2026), Dkt. No. 6.

[54] INA §235(b)(1)(A)(ii); 8 U.S.C. §1225(b)(1)(A)(ii), and 8 C.F.R. §235.3(b)(4).

[55] INA §235(b)(1)(A)(ii); 8 U.S.C. §1225(b)(1)(A)(ii) ("If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States or is described in clause (iii) is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title and the alien indicates either an intention to apply for asylum under section 1158 of this title or a fear of persecution, the officer shall refer the alien for an interview by an asylum officer under subparagraph (B)."); 8 C.F.R. §208.30(b) ("A USCIS asylum officer shall then screen the alien for a credible fear of persecution or torture.").

[56] 8 C.F.R. §208.30(e)(2), (3).

[57] INA §235(b)(1)(B)(v); 8 U.S.C. §1225(b)(1)(B)(v). See also 8 C.F.R. §208.30(e)(2).

[58] 8 C.F.R. §208.30(e)(3).

How does DHS determine whether to put someone in standard removal proceedings or expedited removal?

As described previously (see "What is expedited removal?"), expedited removal has previously been applied mainly to aliens who have recently arrived at U.S. ports of entry or have been apprehended at U.S. land borders and are found to be inadmissible because they lack valid entry documents or procured or sought to procure admission through fraud or misrepresentation.[59] Section 1225(b)(1) also authorizes (but does not require) the expedited removal process for other aliens physically present in the country for less than two years if they have not been admitted or paroled and are inadmissible on the same grounds.[60] Citing this authority, DHS in 2025 expanded the scope of expedited removal to cover individuals present in the United States less than two years who meet the criteria for expedited removal (see the "What is expedited removal?" section).

If an immigration officer determines that an individual is inadmissible on certain other grounds, such as having engaged in specified criminal activity, he or she must be detained and processed for standard removal.[61] In other situations, DHS has discretion to place certain aliens otherwise subject to expedited removal directly into the standard removal process by issuing NTAs (see "What is standard removal?") and release them from custody.[62] For example, in general, DHS may process for standard removal and release individuals who pose no threat to safety or national security and are low flight risks. In the recent past, this has happened amid operational constraints at the border—for instance, lack of capacity in CBP holding facilities for migrants to await credible fear screenings.[63]

Under the second Trump Administration, expedited removal has been prioritized when applicable. In February 2025, then-ICE Acting Director Caleb Vitello, whose officers and agents are responsible for interior enforcement, issued the following guidance concerning the agency's expansion of expedited removal in the interior of the United States:

> ICE immigration officers will apply [expedited removal] to aliens who cannot establish to the satisfaction of the immigration officer that they were physically present in the United States continuously for the two-year period immediately prior to the date of the determination of inadmissibility, and who otherwise fall within the legal parameters of the expedited removal designation.[64]

Can DHS move someone from standard removal proceedings to expedited removal?

An immigration judge may order dismissal when DHS files a motion to dismiss under certain grounds, including, among others, when "[c]ircumstances of the case have changed after the

[59] INA §235(b)(1); 8 U.S.C. §1225(b)(1). For more information, see CRS In Focus IF11357, *Expedited Removal of Aliens: An Introduction*.

[60] INA §235(b)(1)(A)(ii); 8 U.S.C. §1225(b)(1)(A)(ii).

[61] INA §235(b)(2)(A); 8 U.S.C. §1225(b)(2)(A), and 8 C.F.R. §235.3(c).

[62] See Matter of E-R-M- & L-R-M-, 25 I. & N. Dec. 520, 523 (BIA 2011) ("DHS has discretion to put aliens in section 240 removal proceedings even though they may also be subject to expedited removal under section 235(b)(1)(A)(i) of the Act.").

[63] For more information, see CRS Insight IN12383, *The Biden Administration's Proclamation and Rule, Securing the Border, and DHS Operational Constraints*.

[64] Caleb Vitello, Acting Director, ICE, "Implementation Guidance for January 2025 Federal Register Notice, Designating Aliens for Expedited Removal," Memorandum to all ICE employees, February 28, 2025, https://www.ice.gov/doclib/foia/policy/jan2025_ExpeditedRemovalImpGuidance.pdf.

notice to appear was issued to such an extent that continuation is no longer in the best interest of the government."[65] In February 2025, Vitello issued guidance to ICE employees stating that, under DHS's expansion of expedited removal,[66] "ICE personnel will take all necessary steps to review the alien's case and consider, in exercising your enforcement discretion, whether to apply expedited removal. This may include steps to terminate any ongoing removal proceedings," citing the changed circumstances ground.[67]

Subsequently, reporters, advocates, and other observers have documented instances of individuals' (including asylum applicants') removal proceeding being dismissed, after which they were detained by ICE and placed into expedited removal.[68]

Credible Fear Screening Process

Has credible fear screening always been part of the asylum process for migrants arriving at U.S. borders?

Asylum regulations and statutory provisions did not originally include a credible fear screening process. In the 1970s, the former Immigration and Naturalization Service (INS)—the DOJ agency primarily responsible for administering and enforcing immigration laws prior to the creation of DHS—issued regulations that established procedures for applying for asylum in the United States and for adjudicating asylum applications. In 1980, with the enactment of the Refugee Act of 1980, a three-paragraph asylum section was added to the INA.[69] INS asylum regulations, which were revised between 1980 and 1994, continued to set forth procedures.[70] It was not until enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208, Division C, §302(a)) that expedited removal and credible fear screening became features of the asylum system.[71]

What is the process for a credible fear interview?

Who conducts credible fear interviews?

USCIS asylum officers conduct credible fear interviews. An asylum officer is an immigration officer who "has had professional training in country conditions, asylum law, and interview

[65] 8 C.F.R. §239.2(a)(7), (c).

[66] DHS, "Designating Aliens for Expedited Removal," 90 *Federal Register* 8139, January 24, 2025.

[67] Vitello, "Implementation Guidance."

[68] Corrie Boudreaux and Cindy Ramirez, "Migrants Arrested Outside El Paso Federal Building After Immigration Hearings Under New Trump Expedited Deportation Strategy," *El Paso Matters*, June 3, 2025, https://elpasomatters.org/2025/06/03/ice-courthouse-detentions-el-paso-after-immigration-hearings/; Democracy Forward, "Unlawful ICE Arrests at Immigration Courthouses Prompt Lawsuit by Advocates and Immigrants," press release, July 16, 2025, https://democracyforward.org/news/press-releases/ice-courthouse-arrests/; Laila Khan and Chris Opila, "ICE Attorneys Increasingly Request Case Dismissals at Immigration Court Hearings—and Immigration Judges Grant Them on the Spot," American Immigration Council, October 7, 2025, https://www.americanimmigrationcouncil.org/blog/ice-attorneys-case-dismissals-immigration-court-hearings-judges-grant/. The termination policy was subject to legal challenge, and the case remains pending. See Class Action Complaint, Immigrant Advocs. Response Collaborative v. DOJ, No. 25-cv-02279 (D.D.C. July 16, 2025).

[69] INA §208; 8 U.S.C. §1158.

[70] 8 C.F.R. §208.

[71] For further historical discussion, see archived CRS Report R45539, *Immigration: U.S. Asylum Policy*.

techniques comparable to that provided to full-time adjudicators of [asylum] applications."[72] The asylum officer is "supervised by an officer" who has the same training and qualifications and "has had substantial experience adjudicating asylum applications."[73]

What rights are available to applicants who are referred for credible fear interviews?

The asylum officer is required to explain to the applicant the credible fear interview process, the right to consultation before the interview, the right to request a review of the asylum officer's determination, and the consequences of failing to show a credible fear of persecution or torture.[74] If the applicant cannot proceed with the interview in English, the asylum officer is required to obtain the assistance of an interpreter.[75] The asylum officer must also create a summary of the material facts as stated by the applicant and, at the end of the interview, review the summary with the applicant and provide him or her with an opportunity to correct any errors in it.[76]

An applicant may consult any person before a credible fear interview.[77] "Such consultation shall be at no expense to the Government and shall not unreasonably delay the process."[78] The consulted person may be present at the interview and permitted, at the discretion of the asylum officer, to offer a statement at the end of the interview.[79] The applicant may also present evidence during the interview.[80]

Are applicants detained pending the outcome of their credible fear screenings?

An alien "shall be detained" pending a determination of whether that person has a credible fear of persecution or torture.[81] ICE is responsible for immigration detention during this process. Although detention is generally mandatory, immigration officials, at their discretion, have statutory authority to parole applicants for admission into the United States temporarily "on a case-by-case basis for urgent humanitarian reasons or significant public benefit."[82] Under DHS regulations, the agency may parole aliens who have been placed in expedited removal proceedings, including those who are being detained pending a credible fear interview, if they do

[72] INA §235(b)(1)(E)(i); 8 U.S.C. §1225(b)(1)(E)(i).

[73] INA §235(b)(1)(E)(ii); 8 U.S.C. §1225(b)(1)(E)(ii).

[74] INA §235(b)(1)(B)(iv); 8 U.S.C. §1225(b)(1)(B)(iv), 8 C.F.R. §235.3(b)(4)(i).

[75] 8 C.F.R. §208.30(d)(5) ("If the alien is unable to proceed effectively in English, and if the asylum officer is unable to proceed competently in a language the alien speaks and understands, the asylum officer shall arrange for the assistance of an interpreter in conducting the interview.").

[76] 8 C.F.R. §208.30(d)(6).

[77] INA §235(b)(1)(B)(iv); 8 U.S.C. §1225(b)(1)(B)(iv), 8 C.F.R. §§208.30(d)(4), 235.3(b)(4)(i)(B), (ii). The consulted person may be a relative, friend, clergy person, attorney, or other representative. USCIS, Refugee, Asylum, and International Operations Directorate Officer Training, "Credible Fear of Persecution and Torture Determinations," April 30, 2019, https://perma.cc/AB7Q-W8MU.

[78] INA §235(b)(1)(B)(iv); 8 U.S.C. §1225(b)(1)(B)(iv), 8 C.F.R. §208.30(d)(4).

[79] 8 C.F.R. §208.30(d)(4). Under the regulation, "[t]he asylum officer, in his or her discretion, may place reasonable limits on the number of persons who may be present at the interview and on the length of the statement."

[80] 8 C.F.R. §208.30(d)(4).

[81] INA §235(b)(1)(B)(iii)(IV); 8 U.S.C. §1225(b)(1)(B)(iii)(IV), and 8 C.F.R. §235.3(b)(4)(ii). See also Jennings v. Rodriguez, 583 U.S. 281, 297 (2018) ("Read most naturally, §§1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded.").

[82] 8 U.S.C. §1182(d)(5)(A). Parole is not considered a lawful admission into the United States or a determination of admissibility, and a decision to grant parole is subject to DHS's discretion and may be revoked at any time. See INA §§101(a)(13)(B), 212(d)(5)(A); 8 U.S.C. §§1101(a)(13)(B), 1182(d)(5)(A).

not present security or flight risks and fall within certain categories (e.g., those who have serious medical conditions, those who will be witnesses in judicial proceedings, or those "whose continued detention is not in the public interest").[83]

In July 2025, ICE issued new interim guidance[84] directing ICE employees to consider all unlawfully present aliens in the United States who have not been admitted—regardless of how long they have resided in the country—in addition to those arriving in the United States without authorization, as "applicants for admission" and therefore requiring that these individuals be detained for the duration of their removal proceedings.[85] Under this guidance, these individuals may not be released from custody unless they have been granted immigration parole and are ineligible for bond hearings before immigration judges. This policy is associated with a large increase in habeas corpus litigation filed in federal courts.[86]

What is the difference between the requirement to establish credible fear and the requirement to establish reasonable fear?

Aliens placed in expedited removal proceedings who indicate an intention to apply for asylum or fear of returning to their country of origin are interviewed to determine whether they have a credible fear of persecution or torture.[87]

A separate streamlined procedure applies to the removal of aliens who have unlawfully reentered the United States after having been previously removed under orders of removal and, upon being apprehended by immigration officers, express a fear of persecution or torture if returned to their native countries.[88] Under this reinstatement of removal process, the alien's prior removal order is reinstated and may not be reopened or reviewed, and the alien is typically removed without a hearing or opportunity to pursue relief from removal.[89] An alien with a reinstated removal order who expresses a fear of returning to the country of removal is entitled to administrative review of that claim.[90] An asylum officer will interview the alien to determine whether he or she has a *reasonable fear* of persecution or torture.[91]

The reasonable fear standard is a higher standard of proof than the credible fear standard. In expedited removal proceedings, to establish a credible fear, a person must show a "significant

[83] 8 C.F.R. §§208.30(f), 212.5(b), 235.3(b)(2)(iii), 235.3(b)(4)(ii); see also Jennings v. Rodriguez, 583 U.S. 281, 300 (2018) ("With few exceptions not relevant here, the [DHS Secretary] may 'for urgent humanitarian reasons or significant public benefit' temporarily parole aliens detained under §§1225(b)(1) and (b)(2). That express exception to detention implies that there are no *other* circumstances under which aliens detained under §1225(b) may be released.") (quoting 8 U.S.C. §1182(d)(5)(A)).

[84] ICE, "Interim Guidance Regarding Detention Authority for Applications for Admission," memo, July 8, 2025, https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission. CBP issued similar guidance. See CBP, "Detention of Applicants for Admission," July 10, 2025, https://www.cbp.gov/sites/default/files/2025-09/intc-46100_-_c1_signed_memo_-_07.10.2025.pdf.

[85] For more information, see CRS Legal Sidebar LSB11438, *Mandatory Detention During Removal Proceedings: Circuit Split*.

[86] See Santillan Quiroz v. Mullin, 180 F.4th 1226, 1233 (10th Cir. 2026) ("The Government's new position has resulted in a large increase in the number of immigration detainees and a flood of habeas petitions challenging those detentions."); Kyle Cheney, "'We've Never Seen Anything Like This': ICE's Detention Crackdown Swamps the Courts," *Politico*, August 10, 2026.

[87] INA §235(b)(1)(A)(ii); 8 U.S.C. §1225(b)(1)(A)(ii), and 8 C.F.R. §§208.30(b), 235.3(b)(4).

[88] INA §241(a)(5); 8 U.S.C. §1231(a)(5), and 8 C.F.R. §241.8.

[89] INA §241(a)(5); 8 U.S.C. §1231(a)(5), and 8 C.F.R. §241.8(a).

[90] 8 C.F.R. §241.8(e).

[91] 8 C.F.R. §§208.31(b), 241.8(e).

possibility" of establishing eligibility for asylum, withholding of removal, or CAT protection.[92] To establish reasonable fear in reinstated removal proceedings, an alien must show a "reasonable possibility" that he or she would be persecuted or tortured in the country of removal.[93] The reasonable possibility standard is the same standard used to determine whether an applicant has shown a "well-founded fear" of persecution for the purpose of asylum.[94] By contrast, a credible fear determination is a "low screening standard"[95] that considers only whether the alien has shown a "substantial and realistic possibility of success on the merits" of an application for asylum and related protections.[96]

An alien with a reinstated removal order who shows a reasonable fear of persecution or torture is placed in proceedings before an immigration judge for consideration of the alien's eligibility for withholding of removal and CAT protection only.[97] The alien may not apply for asylum in those proceedings.[98] On the other hand, an alien in expedited removal proceedings who shows a credible fear of persecution or torture may apply for asylum as well as withholding of removal and CAT protection.[99] This distinction is significant because, unlike asylum, which provides an alien with the opportunity to pursue LPR status,[100] a grant of withholding of removal or CAT protection bars removal to the country only if the alien fears persecution or torture (but not necessarily to a third country) and affords no pathway to LPR status.[101]

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[92] See USCIS, "Asylum Division Officer Training Course: Reasonable Fear of Persecution and Torture Determinations," February 13, 2017, https://www.uscis.gov/sites/default/files/document/lesson-plans/Reasonable_Fear_Asylum_Lesson_Plan.pdf.

[93] 8 C.F.R. §208.31(c).

[94] See INS v. Cardoza-Fonseca, 480 U.S. 421, 440 (1987) ("As we pointed out in *Stevic,* a moderate interpretation of the 'well-founded fear' standard would indicate 'that so long as an objective situation is established by the evidence, it need not be shown that the situation will probably result in persecution, but it is enough that persecution is a reasonable possibility.'") (quoting INS v. Stevic, 467 U.S. 407, 424−25 [1984]); 8 C.F.R. §1208.13(b)(2)(i)(B); DHS, USCIS, "Asylum Division Officer Training Course: Reasonable Fear of Persecution and Torture Determinations," February 13, 2017, https://www.uscis.gov/sites/default/files/document/lesson-plans/Reasonable_Fear_Asylum_Lesson_Plan.pdf.) ("This is the same standard required to establish a 'well-founded fear' of persecution in the asylum context.").

[95] See Grace v. Whitaker, 344 F. Supp. 3d 96, 107 (D.C. Cir. 2018) (citing 142 CONG. REC. S11491–02 daily ed. Sept. 27, 1996) (statement of Sen. Hatch)), *aff'd in part, rev'd in part sub nom.* Grace v. Barr, 965 F.3d 883 (D.C. Cir. 2020).

[96] DHS, USCIS, Asylum Division Officer Training Course: Credible Fear 15, February 28, 2014, (citing Holmes v. Amerex Rent-a-Car, 180 F.3d 294, 297 [D.C. Cir. 1999]), https://www.uscis.gov/sites/default/files/document/lesson-plans/Asylum_and_Female_Genital_Mutilation.pdf; see also USCIS, Refugee, Asylum, and International Operations Directorate Officer Training, "Credible Fear of Persecution and Torture Determinations." ("A claim that has no possibility, or only a minimal or mere possibility, of success, would not meet the 'significant possibility' standard.")

[97] See Johnson v. Guzman Chavez, 594 U.S. 523, 531 (2021) ("If the asylum officer concludes that the alien has a reasonable fear, he will refer the matter to an immigration judge for initiation of withholding-only proceedings. Those proceedings are 'limited to a determination of whether the alien is eligible for withholding or deferral of removal,' and as such, 'all parties are prohibited from raising or considering any other issues, including but not limited to issues of admissibility, deportability, eligibility for waivers, and eligibility for any other form of relief.'") (citing and quoting 8 C.F.R. §§208.2(c)(3)(i), 208.31(e), 1208.2(c)(3)(i), 1208.31(e)).

[98] See Ibid.

[99] INA §235(b)(1)(B)(ii); 8 U.S.C. §1225(b)(1)(B)(ii), and 8 C.F.R. §§208.30(f), 1208.30(g)(2)(iv)(B).

[100] See INA §209(b); 8 U.S.C. §1159(b) (providing that a person granted asylum may apply for adjustment to LPR status if that person has been physically present in the United States for at least one year after being granted asylum and meets other requirements).

[101] See *Guzman Chavez*, 594 U.S. at 531 ("If an alien is granted withholding-only relief, DHS may not remove the alien to the country designated in the removal order unless the order of withholding is terminated. But because withholding of removal is a form of 'country-specific' relief, nothing prevents DHS 'from removing [the] alien to a third country other than the country to which removal has been withheld or deferred.'") (citing and quoting INS v. Cardoza-Fonseca, 480 U.S. 421, 428 n.6 (1987); 8 C.F.R. §§208.16(f), 208.22, 1208.16(f) 1208.22).

What are the recent executive branch actions related to asylum, and how might they impact the credible fear screening process?

The Biden Administration and second Trump Administration, in response to large numbers of enforcement encounters at the southwest border—many with individuals seeking asylum—implemented various restrictions on asylum eligibility.

In May 2023, DHS and DOJ issued a final rule, "Circumvention of Lawful Pathways," that applied to aliens without valid entry documents who entered the United States at "the southwest land border or adjacent coastal borders" from May 11, 2023, to May 11, 2025, after traveling through third countries (countries other than the United States or their countries of citizenship or nationality).[102] The rule made these aliens subject to a rebuttable presumption of asylum ineligibility unless certain exceptions applied. For individuals placed in expedited removal and referred for credible fear interviews, the rule required the asylum officer conducting the interview to determine whether the alien is covered by the rule and, if so, whether the alien had rebutted the presumption.[103] If the alien was determined to be ineligible for asylum, the asylum officer made a negative credible fear determination and would consider whether the alien could show eligibility for withholding of removal and protection from removal under the CAT.[104] The rule was subject to legal challenge and is currently not in effect.

In October 2024, DHS and DOJ promulgated a final rule, "Securing the Border," in conjunction with an associated presidential proclamation that makes aliens entering the United States across the southern border during "emergency border circumstances" ineligible for asylum unless certain exceptions apply.[105] Like the "Circumvention of Lawful Pathways" rule, this rule requires consideration of whether an alien is subject to this asylum limitation during a credible fear interview.[106] Under the "Securing the Border" rule, CBP officers do not affirmatively ask individuals whether they fear returning to their countries to determine whether they should be placed in credible fear proceedings. Instead, to be considered for a credible fear interview, the individual must affirmatively express either a fear of return or an intention to apply for asylum or protection from removal.[107] If the alien makes an affirmative statement and the asylum officer finds that the alien is subject to the rule's limitation, the asylum officer will automatically make a negative credible fear determination and will, instead, consider whether the alien can show

[102] DHS and EOIR, "Circumvention of Lawful Pathways," 88 *Federal Register* 31314, 31321-31322, May 16, 2023 (codified at 8 C.F.R. §§208, 1003, and 1208).

[103] Ibid., p. 31322; 8 C.F.R. §208.33(b)(1), (2). For more information about the 2023 rule, see CRS Legal Sidebar LSB11044, *The Biden Administration's Final Rule on Arriving Aliens Seeking Asylum (Part One)*.

[104] DHS and EOIR, "Circumvention of Lawful Pathways," 88 *Federal Register* 31314, 31322. See E. Bay Sanctuary Covenant v. Trump, 2026 WL 1256873, at *1, *9 (N.D. Cal. May 7, 2026) (reaffirming prior order vacating the rule as contrary to law), *appeal docketed*, No. 26-4982 (9th Cir. Aug. 4, 2026).

[105] DHS and EOIR, "Securing the Border," 89 *Federal Register* 48710, 48718, June 7, 2024 (codified at 8 C.F.R. §§208, 235, and 1208). Under the rule, the term *emergency border circumstances* refers to a situation in which encounters at the southern border exceed certain thresholds. DHS and EOIR, "Securing the Border," 48711.

[106] DHS and EOIR, "Securing the Border," 48711. For more information about the 2024 rule, see CRS Legal Sidebar LSB11178, *The Biden Administration's June 2024 Proclamation and Rule, Securing the Border* and CRS Insight IN12383, *The Biden Administration's Proclamation and Rule, Securing the Border, and DHS Operational Constraints*.

[107] DHS and EOIR, "Securing the Border," 48718.

eligibility for withholding of removal and CAT protection.[108] The rule was subject to a legal challenge and is not currently in effect.[109]

Access to asylum was further restricted under a January 2025 presidential proclamation, "Guaranteeing the States Protection Against Invasion."[110] The proclamation states that "aliens engaged in the invasion across the southern border of the United States" on or after the date of the proclamation may not, among other things, apply for asylum until the President issues "a finding that the invasion at the southern border has ceased."[111] It also makes ineligible for asylum "any alien who fails, before entering the United States, to provide Federal officials with sufficient medical information and reliable criminal history and background information."[112] Those who are subject to the proclamation may be screened for CAT protection if they manifest a fear of torture in the countries of removal, and such screening is conducted under a heightened standard with no administrative review of the immigration officers' determinations.[113] The proclamation and its implementing guidance were subject to legal challenge.[114] As of the date of this report, DHS may enforce the restrictions on asylum under the proclamation while litigation continues but may not immediately repatriate aliens subject to the proclamation who are already present in the United States without complying with statutorily mandated removal procedures. It also may not restrict the ability of aliens subject to the proclamation from pursuing withholding of removal or CAT protection.[115]

Additionally, in May 2024, USCIS proposed a rule that would allow asylum officers to consider whether certain mandatory statutory bars to eligibility for asylum or withholding of removal (e.g., those applicable to persons who have been convicted of particularly serious crimes or have engaged in terrorist activity) apply in determining whether an individual can show a credible fear of persecution and in reasonable fear screenings (e.g., for reinstatement of removal).[116] Under this

[108] Under the IFR, aliens are subject to a *reasonable probability* standard, which is "substantially more than a reasonable possibility but somewhat less than more likely than not" (which is the standard used to qualify for withholding of removal or CAT protection). DHS and EOIR, "Securing the Border," 48718.

[109] See Las Ams. Immigrant Advoc. Ctr. v. DHS, 783 F. Supp. 3d 200, 222, 225 (D.D.C. 2025) (holding that the rule's limitation on asylum eligibility and the manifestation of fear requirement were unlawful), *appeal docketed*, No. 25-5313 (D.C. Cir. Aug. 28, 2025).

[110] Proclamation 10888, "Guaranteeing the States Protection Against Invasion," 90 *Federal Register* 8333-8336, January 29, 2025. The proclamation was based on authorities granted under INA Sections 212(f) and 215(a)(1) (8 U.S.C. §§1182(f), 1185(a)(1)).

[111] Proclamation 10888, "Guaranteeing the States Protection Against Invasion," 8335.

[112] Proclamation 10888, "Guaranteeing the States Protection Against Invasion," 8335.

[113] See Refugee & Immigrant Ctr. for Educ. & Legal Servs. v. Mullin, 174 F.4th 81, 97 (D.C. Cir. 2026), *reh'g denied*, No. 25-5243 (D.C. Cir. July 23, 2026), *petition for cert. docketed*, No. 26-239 (U.S. Aug. 24, 2026).

[114] See Refugee & Immigrant Ctr. for Educ. & Legal Servs. v. Noem, 793 F. Supp. 3d 19, 94-95, 105 (D.D.C. 2025) (holding that proclamation and implementing guidance were unlawful), *aff'd sub nom*. Refugee & Immigrant Ctr. for Educ. & Legal Servs. v. Mullin, 174 F.4th 81 (D.C. Cir. 2026), *reh'g denied*, No. 25-5243 (D.C. Cir. July 23, 2026), *petition for cert. docketed*, No. 26-239 (U.S. Aug. 24, 2026).

[115] See Refugee & Immigrant Ctr. for Educ. & Legal Servs. v. Noem, No. 25-5243, 2025 WL 5144253 (D.C. Cir. Aug. 1, 2025) (per curiam) (granting, in part, the government's motion for an emergency stay of district court's order vacating the proclamation's implementing guidance pending consideration of the government's appeal); Order, Refugee & Immigrant Ctr. for Educ. and Legal Servs. v. Mullin, No. 25-5243 (D.C. Cir. July 27, 2026) (per curiam) (granting the government's motion to stay the D.C. Circuit's mandate pending the filing and disposition of a petition for further review before the Supreme Court, allowing D.C. Circuit's partial stay of district court's order to remain in effect for the time being).

[116] USCIS, "Application of Certain Mandatory Bars in Fear Screenings," 89 *Federal Register* 41347, May 13, 2024. This represents a change in practice, as, historically, asylum officers "have not considered the applicability of mandatory bars to asylum or statutory withholding of removal when determining whether a noncitizen could establish (continued...)

rule, if there is evidence that a mandatory bar could apply, the asylum officer would be permitted to issue a negative credible fear finding if the alien fails to show that there is a significant possibility that he or she would be unable to prove by a preponderance of the evidence that the mandatory bar does not apply and if the alien is otherwise unable to show a credible fear of torture.[117] DHS finalized the rule, without substantive changes, in December 2024, with an effective date of January 17, 2025.[118]

Credible Fear Outcomes

What are the possible outcomes of a credible fear screening?

If an asylum officer finds that an alien has a credible fear of persecution or torture, that individual is typically placed in standard removal proceedings (see "What is standard removal?").[119]

When an asylum officer finds that an alien does not have a credible fear of persecution or torture, the alien may request that an immigration judge review that determination.[120] The immigration judge's review "shall be concluded as expeditiously as possible, to the maximum extent practicable within 24 hours, but in no case later than 7 days" after the asylum officer's decision.[121] If the alien declines further review, the asylum officer must order the alien removed from the United States without further hearing or review.[122]

If the immigration judge concurs with the asylum officer's negative credible fear finding, the applicant is to be removed from the United States, and the immigration judge's decision may not be appealed.[123]

Conversely, if the immigration judge determines that the alien has a credible fear of persecution or torture, the immigration judge must vacate the asylum officer's negative credible fear determination, and the alien may be placed in standard removal proceedings.[124] During those proceedings, the alien may pursue asylum, withholding of removal, and CAT protection.[125]

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eligibility for asylum or other forms of protection during the initial screening interview." USCIS, "Application of Certain Mandatory Bars in Fear Screenings," 41350.

[117] USCIS, "Application of Certain Mandatory Bars in Fear Screenings," 41355. For more information about the bars to being granted asylum, see CRS Legal Sidebar LSB10816, *An Overview of the Statutory Bars to Asylum: Limitations on Granting Asylum (Part Two)*.

[118] DHS, "Application of Certain Mandatory Bars in Fear Screenings," 89 *Federal Register* 103370, December 18, 2024.

[119] INA §235(b)(1)(B)(ii); 8 U.S.C. §1225(b)(1)(B)(ii), and 8 C.F.R. §208.30(f).

[120] INA §235(b)(1)(B)(iii)(III); 8 U.S.C. §1225(b)(1)(B)(iii)(III), and 8 C.F.R. §208.30(g)(1).

[121] INA §235(b)(1)(B)(iii)(III); 8 U.S.C. §1225(b)(1)(B)(iii)(III). See also 8 C.F.R. §§208.30(g)(1)(i), 1003.42(e) ("The immigration judge shall conclude the review to the maximum extent practicable within 24 hours, but in no case later than 7 days after the date the supervisory asylum officer has approved the asylum officer's negative credible fear determination issued on the Record of Negative Credible Fear Finding and Request for Review.").

[122] INA §235(b)(1)(B)(iii)(I); 8 U.S.C. §1225(b)(1)(B)(iii)(I), and 8 C.F.R. §208.30(g)(1)(ii).

[123] 8 C.F.R. §§1003.42(f)(2), 1208.30(g)(2)(iv)(A).

[124] 8 C.F.R. §1208.30(g)(2)(iv)(B).

[125] 8 C.F.R. §1208.30(g)(2)(iv)(B).For more information about how recent executive branch actions may impact the process for seeking asylum, withholding of removal, and CAT protection, as well as eligibility for these forms of relief and protection, see "What are the recent executive branch actions related to asylum, and how might they impact the credible fear screening process?"

Can asylum seekers withdraw their applications for admission during the credible fear screening process?

DHS may permit an individual, including someone placed in expedited removal, to voluntarily withdraw an application for admission if he or she intends (and is able) to depart the United States immediately.[126] An alien does not have a right to withdraw his or her application for admission. Instead, it is up to the discretion of the agency whether to permit the alien to withdraw the application and immediately leave the United States in lieu of undergoing removal proceedings.[127]

What percentage of people pass their credible fear interviews?

The DHS Office of Homeland Security Statistics and USCIS have published the outcomes of nationwide credible fear screenings. These data cover credible fear of persecution screenings and credible fear of torture screenings combined. **Table 1** shows the percentage of nationwide screenings since FY2016 with positive findings, meaning that the person established credible fear and could pursue a claim for asylum or other relief in immigration court. The significant drop in positive credible fear findings from FY2019 to FY2020 reflected the impact of various DHS asylum-related policies, among other factors.[128]

Table 1. Percentage of Nationwide Credible Fear Screenings with Positive Outcomes, FY2016-FY2025

Fiscal Year	Positive Fear	Negative Fear	Percentage of Positive Outcomes
2016	72,780	9,190	80%
2017	60,730	8,250	77%
2018	74,330	9,160	77%
2019	76,190	16,420	74%
2020	12,880	16,080	38%
2021	29,900	11,680	68%
2022	31,560	18,740	58%
2023	82,050	42,730	60%
2024	85,270	69,780	42%
2025	27,256	20,891	43%

[126] INA §235(a)(4); 8 U.S.C. §1225(a)(4).

[127] 8 C.F.R. §235.4.

[128] For example, in April 2019 and September 2019, USCIS revised its guidance (known as a *lesson plan*) for asylum officers on making credible fear determinations, making it more difficult for individuals to pass the screening. See Amended Complaint ¶ 83, Kiakombua v. Wolf, No. 19-cv-01872 (D.D.C. June 28, 2019), Dkt. No. 6. (arguing, among other things, that the lesson plan "increases the evidentiary burden the asylum seeker must carry to pass a credible fear screening" and that it "may make it difficult for the asylum seeker to present her story in the setting of the credible fear screening."). In 2020, several asylum seekers who received negative credible fear findings successfully challenged "the unlawful changes to the Credible Fear Interview Lesson Plan." International Refugee Assistance Project, "Kiakombua v. Wolf: Protecting the Credible Fear Process for Seeking Asylum," https://refugeerights.org/news-resources/kiakombua-v-mcaleenan-protecting-the-rights-of-asylum-seekers.

Source: CRS presentation of data from Department of Homeland Security, Office of Homeland Security Statistics, Immigration Enforcement and Legal Processes Monthly Tables—November 2024, "Nationwide Credible Fear Screenings Referred to USCIS by Selected Citizenship," (FY2014-FY2024); and U.S. Citizenship and Immigration Services, "Number of Service-Wide Forms by Quarter, Form Status, and Processing Time," July 1, 2025, to September 30, 2025 (FY2025).

Do asylum seekers automatically receive work authorization once they pass their credible fear screenings?

By law, an asylum applicant who is not otherwise eligible for employment authorization cannot be granted such authorization until at least 180 days have passed since the filing of a completed asylum application.[129] Regulations further provide that the applicant must wait 150 days after the receipt of a completed asylum application to apply for employment authorization, leaving a 30-day period for application processing.[130] These restrictions do not apply to asylum applicants who are authorized to work under other immigration categories, such as immigration parole or Deferred Action for Childhood Arrivals (DACA).[131]

An asylum seeker granted work authorization through this application process receives an Employment Authorization Document (EAD). As of December 2025, the maximum validity period for an initial or renewal EAD issued to an asylum applicant is 18 months.[132]

Asylum Outcomes in Immigration Court

What percentage of applicants are granted asylum in immigration court?

Asylum applications filed in immigration court may result in one of several outcomes (**Table 2**). In some cases, immigration judges may grant or deny asylum applications. In others, the applicant may abandon or withdraw his or her application. During the past 10 fiscal years (through FY2026 Q3), the grant rate has ranged between a high of 25% in FY2017 and a low of 3% in FY2026 (as of Q3). Since FY2021, other outcomes, collectively, have represented the highest proportion of outcomes. In FY2026 (as of Q3), the most common outcome was abandonment (92,081, or nearly 37%), a substantial increase compared to previous years.

[129] INA §208(d)(2); 8 U.S.C. §1158(d)(2).

[130] 8 C.F.R. §208.7(a)(1). A February 2026 Notice of Proposed Rulemaking proposes to change this period to 365 days. DHS, "Employment Authorization Reform for Asylum Applicants," 91 *Federal Register* 8616, February 23, 2026.

[131] 8 C.F.R. §274a(c)(11), (33).

[132] USCIS, "Updating Certain Employment Authorization Document Validity Periods," December 4, 2025, https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20251204-EmploymentAuthorizationValidity.pdf.

Table 2. Defensive Asylum Outcomes, FY2017-FY2026 (Q3)

FY	Grants	Grant Rate	Denials	Denial Rate	Abandonment	Abandonment Rate	Not Adjudicated	Not Adjudicated Rate	Withdrawn	Withdrawn Rate	Total Outcomes
2017	10,524	25%	17,575	41%	3,502	8%	5,719	13%	5,334	13%	42,654
2018	13,134	21%	26,499	43%	5,524	9%	8,835	14%	7,389	12%	61,381
2019	18,865	21%	45,294	50%	8,971	10%	8,065	9%	10,107	11%	91,302
2020	14,570	19%	41,471	55%	6,493	9%	5,883	8%	7,230	10%	75,647
2021	7,403	17%	14,117	33%	2,266	5%	14,209	33%	5,182	12%	43,177
2022	22,501	16%	26,490	19%	7,397	5%	72,242	52%	9,713	7%	138,343
2023	32,073	16%	34,634	17%	13,324	7%	109,309	54%	12,968	6%	202,308
2024	32,436	13%	38,529	15%	18,444	7%	145,741	58%	14,456	6%	249,606
2025	26,599	10%	82,431	32%	51,654	20%	78,243	31%	15,120	6%	254,047
2026 (Q3)	7,231	3%	89,740	36%	92,081	37%	44,062	18%	18,251	7%	251,365

Source: Executive Office for Immigration Review, "Asylum Decisions," Adjudication Statistics, July 24, 2026.

Notes: Table does not include administratively closed cases moved to inactive dockets.

How many asylum applicants fail to appear for their immigration court hearings?

Under the law, individuals who fail to appear for their immigration court hearings must be ordered removed in absentia.[133] Therefore, the number of in absentia removal orders issued by immigration judges may be used as a measure of the number of individuals who fail to appear for their hearings.

EOIR publishes the annual number of in absentia removal orders for proceedings with filed asylum applications (see **Table 3**). The annual number of in absentia removal orders has increased substantially since FY2021, likely reflecting the large number of migrants who entered the country in recent years, many seeking asylum. In the first three quarters of FY2026, immigration judges issued 90,288 in absentia removal orders for asylum applicants, the largest number since at least FY2008 (earliest available data).

Table 3. In Absentia Removal Orders for Asylum Applicants, FY2017-FY2026 (Q3)

Fiscal Year	In Absentia Removal Orders
2017	4,794
2018	7,113
2019	10,585
2020	6,955
2021	2,282
2022	7,470
2023	13,788
2024	19,069
2025	50,254
2026(Q3)	90,288

Source: Executive Office for Immigration Review, "Asylum Applicant *In Absentia* Removal Orders," July 24, 2026.

[133] INA §240(b)(5); 8 U.S.C. §1229a(b)(5). Individuals may file motions to reopen their proceedings alleging they did not receive proper notice of a hearing, among other things. For more information, see CRS In Focus IF11892, *At What Rate Do Noncitizens Appear for Their Removal Hearings? Measuring In Absentia Removal Order Rates*.

Appendix. Acronyms Used in This Report

Acronym	Definition
CAT	Convention Against Torture
CBP	U.S. Customs and Border Protection
DACA	Deferred Action for Childhood Arrivals
DHS	U.S. Department of Homeland Security
DOJ	U.S. Department of Justice
EAD	Employment Authorization Document
EOIR	Executive Office for Immigration Review
HHS	U.S. Department of Health and Human Services
ICE	Immigration and Customs Enforcement
INA	Immigration and Nationality Act
INS	Immigration and Naturalization Service
LPR	Lawful permanent resident
NTA	Notice to Appear
USCIS	U.S. Citizenship and Immigration Services

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