



**FOIA Agreement Allows Noncitizens to Learn
If a Border Patrol Agent Conducted Their Credible Fear Interview**

Frequently Asked Questions¹

March 23, 2023

From May 2019 through March 2020, U.S. Customs and Border Protection (CBP) and U.S. Citizenship and Immigration Services (USCIS) implemented a pilot program at nine immigration detention centers where U.S. Border Patrol agents employed by CBP, rather than trained asylum officers, conducted credible fear interviews to determine whether asylum seekers could present their claims to an immigration judge. During the time that CBP and USCIS rolled out the program, the agencies provided little to no information about the program to advocates and asylum seekers, including whether the individual conducting the credible fear interview was a CBP Border Patrol agent.

On February 16, 2023, USCIS and CBP agreed to confirm whether CBP Border Patrol agents conducted the credible fear interviews of up to 1000 individuals. This agreement resolves certain claims in a [lawsuit](#) brought by the American Immigration Council and the Tahirih Justice Center under the Freedom of Information Act (FOIA) seeking records about the pilot program.

1. What Was the Credible Fear for U.S. Border Patrol Pilot Program? When and Where Did it Operate?

Credible fear interviews (CFIs) are asylum screening interviews for certain arriving asylum seekers who would otherwise face fast-track deportations without a hearing before an immigration judge. For decades, these interviews have been conducted by a corps of asylum officers employed by USCIS, trained specifically to adjudicate asylum claims. However, from May 2019 through March 2020, Border Patrol agents employed by CBP conducted CFIs at these nine detention centers:

- South Texas Family Residential Center at 300 El Rancho Wy, Dilley, TX 78017
- El Paso Service Processing Center at 8915 Montana Avenue, El Paso, TX 79925
- Florence Service Processing Center at 3250 N. Pinal Parkway, Florence, AZ 85132

¹ Copyright (c) 2023, American Immigration Council (Council), Immigrant Legal Defense (ILD), and Tahirih Justice Center (Tahirih). [Click here](#) for information on reprinting this FAQ. This FAQ is not a substitute for independent legal advice supplied by legal counsel familiar with a client's case.

- Central Arizona Florence Correctional Center at 1100 Bowling Road, Florence, AZ 85132
- Imperial Regional Detention Facility at 1572 Gateway Road, Calexico, CA 92231
- El Centro Service Processing Center at 1115 N Imperial Ave, El Centro, CA 92243
- Northwest ICE Processing Center at 1623 E J Street, Tacoma, WA 98421
- Broward Transitional Center at 3900 N. Powerline Road Pompano Beach, FL 33073
- Krome North Service Processing Center at 18201 SW 12th Street, Miami, FL 33194

[The Border Patrol agents](#) used aggressive tactics, according to the asylum seekers who were interviewed and legal representatives present at the interviews. Agents also were more likely than trained asylum officers to issue negative CFI determinations. A federal court [preliminarily enjoined](#) the pilot program, finding the agents were not properly trained.

2. How Does the Agreement Work?

On February 16, 2023, USCIS and CBP entered into an agreement with the Council and Tahirih to resolve a dispute about a redacted email that contained the names of the Border Patrol agents who participated in the pilot. The district court [ordered](#) the agencies to produce the email with the names unredacted. In lieu of producing the unredacted email, the agencies agreed to confirm whether a CBP Border Agent conducted a given screening interview, for up to 1000 individuals.

Under the agreement,

- (1) USCIS agreed to provide the Council and Tahirih with the dates and locations where the pilot program operated (see above).
- (2) The Council and Tahirih will provide USCIS with up to 1,000 names, accompanied by Department of Homeland Security Form G-639 releases, for individuals who received credible fear interviews at those locations during the relevant period.
 - a. The Council and Tahirih must provide each individual's first and last name, including any known aliases, date of birth, Alien Registration Number, and location of interview.
 - b. The Council and Tahirih have until August 16, 2023 to provide the list of names—the list can be rolling, but the first list must include at least 250 names.
- (3) Within 60 days of receiving the first list of names, CBP will provide the Council and Tahirih with a spreadsheet with the names and confirmation as to whether the individuals were interviewed by a Border Patrol agent.
- (4) USCIS will provide the Council and Tahirih with a copy of the transmittal letter that USCIS will give to CBP explaining the contents of the list of names and CBP's anticipated spreadsheet.
- (5) The Council and Tahirih then will provide copies of the spreadsheet to each individual on the list and/or their attorneys, redacting the names so that just the name of the recipient is revealed, along with the letter USCIS provides explaining the spreadsheet.

3. Who May Be Impacted by This Agreement?

Anyone who received a CFI between May 2019 and March 2020 while detained at one of the nine immigration detention facilities.

4. What Do I Need to Do to Find Out if a Border Patrol Agent Conducted My Credible Fear Interview or My Client's Credible Fear Interview?

- (1) Complete, print out, sign, and scan [Form G-639](#) following these instructions:
 - a. Part 1: DO NOT COMPLETE
 - b. Part 2:
 - i. MUST COMPLETE: Questions 1, 2, 5, 6, 7
 - ii. MAY COMPLETE (to assist finding records): Questions 3, 9-11
 - iii. DO NOT COMPLETE: Questions 8, 12
 - c. Part 3: SIGN DECLARATION
 - d. Part 4: MUST COMPLETE AND INCLUDE THE THIRD-PARTY RELEASE (CBP and USCIS require this release to provide the requested information to the Council)
 - i. Question 1: Emma Winger
 - ii. Question 2: American Immigration Council, 1331 G Street, NW, Washington, DC 20005, (202) 507-7512, ewinger@immcouncil.org
 - iii. Question 3: Select D, Other; Explain: "See agreement in AIC v. DHS, 1:19-cv-02965 (DDC)"
 - iv. Question 4: DO NOT COMPLETE
 - v. NONCITIZEN MUST CHECK NECESSARY BOX AND SIGN AND DATE DECLARATION RELEASING INFORMATION TO THE AMERICAN IMMIGRATION COUNCIL
 - e. Part 5: DO NOT COMPLETE
- (2) If applicable, a [release of information](#) signed by the asylum seeker permitting the Council to release information to an attorney or other representative.
- (3) Complete this [form](#), which collects the necessary information.
- (4) Email signed G-639 and, where relevant, release of information, to clearinghouse@immcouncil.org.

5. How and What Will I Receive If I Submit the Required Information?

The Council will provide by email (a) a redacted copy of a spreadsheet indicating whether the individual was interviewed by a Border Patrol agent and (b) the USCIS cover letter explaining the contents of the spreadsheet to the individual at the email address(es) provided in the form. The Council will email this material to the individual's attorney if the attorney submits the signed release described above.

6. How Soon After I Submit the Required Information Will I Get a Response?

It depends. We need to collect names and we cannot give USCIS more than four lists of names. Once we submit a list of names, CBP has 60 days to respond. We have to submit all names before August 16, 2023.

7. What Are Potential Benefits to Confirming that a Border Patrol Agent Conducted My Credible Fear Interview or My Client's Credible Fear Interview?

Depending on their current circumstances, individuals who received a negative credible fear interview may be able to use this information to submit a request for reconsideration of that determination to the USCIS Asylum Office.

For individuals who received a positive credible fear interview, who are still in removal proceedings, and who have had or face the possibility of having their credible fear record used against them (for example, if there are inconsistencies between their testimony before the immigration judge and the credible fear record), evidence that their interview was conducted by a Border Patrol agent may provide a basis for objecting to the CFI record or requesting that an immigration judge give it no evidentiary weight.

Knowing whether a CBP Border Patrol agent conducted a CFI can also serve as the basis for attorneys to explore whether other misconduct may have occurred during the interview. There may also be options for individuals who were subjected to expedited removal and physically deported from the United States on the basis of a negative CFI conducted by a BP agent.

Questions?

Questions regarding this explainer may be sent to clearinghouse@immcouncil.org.