

Congress of the United States
Washington, DC 20515

August 1, 2023

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By ESEC at 10:25 am, Aug 01, 2023

Hon. Alejandro Mayorkas
Secretary
U.S. Department of Homeland Security
3801 Nebraska Avenue, NW
Washington, DC 20016

Hon. Merrick Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Dear Secretary Mayorkas and Attorney General Garland,

We write today to urge you to immediately halt the practice of subjecting individuals to fear screenings while in Customs and Border Protection (CBP) custody. Requiring asylum seekers to undergo their Credible Fear Interviews (CFI) while in CBP custody and articulate their traumatic experiences within as little as one day of arrival into the U.S. is inherently problematic because of the recency of the trauma many are fleeing and the carceral nature of CBP custody. Compounding this new problematic practice is the difficulty asylum seekers face of trying to figure out how navigate the United States' very complicated asylum law, overwhelmingly without the benefit of counsel.

Since April, your departments have implemented an expedited fear screening process wherein asylum seekers are held in CBP custody while they undergo their CFIs within as little as [24 hours](#)¹ of their arrival. Mirroring a program President Biden [ended](#)² upon taking office, these CFIs are conducted telephonically with U.S. Citizenship and Immigration Services (USCIS). If individuals fail these threshold screenings, which many do in these conditions, they can seek review by an immigration judge—although such review is conducted in the same telephonic settings in CBP facilities, promptly after USCIS's adverse determination, with attorneys often barred from meaningfully participating in the review.³

Navigating U.S. laws and agencies in a foreign language and while detained would prove dizzying for most asylum seekers. Undergoing fear screenings in CBP custody would therefore present insurmountable challenges even if every asylum seeker had an attorney by their side. And yet in CBP custody today, asylum seekers face [severely obstructed access to counsel](#).⁴ As a threshold matter, CBP does not allow lawyers physical access to their facilities or the opportunity to call their clients. Asylum seekers' only opportunity to consult with counsel is via the same telephone booths used to conduct CFIs, but many are denied access to call legal service

¹ <https://www.latimes.com/politics/story/2023-05-11/biden-immigration-lawyers-title-42-trump>

² <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/02/executive-order-creating-a-comprehensive-regional-framework-to-address-the-causes-of-migration-to-manage-migration-throughout-north-and-central-america-and-to-provide-safe-and-orderly-processing/>

³ CFI passage rate dropping to 46% from pre-asylum ban rate of 83%. <https://reuters.com/investigates/special-report/usa-immigration-asylum-border/>

⁴ <https://immigrantjustice.org/staff/blog/obstructed-legal-access-june-2023-update>.

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providers. In the few cases where people succeed in retaining counsel, legal service providers have documented USCIS and the Executive Office of Immigration Review (EOIR) routinely failing to even contact their attorneys when their CFIs or Immigration Judge reviews are scheduled. Unsurprisingly, recent figures show a [drastic increase](#)⁵ in the rejection of asylum seekers during these fear screenings, and their expeditious return to the conditions they fled.

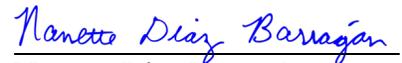
Legal service providers have documented young people under the age of 21, LGBTQIA individuals, and survivors of sexual trauma subjected to this rushed process. Furthermore, many asylum seekers require complex and extended consultations with legal counsel before they are even aware that their previous experiences render them eligible for asylum; this is often the case, for example, for survivors of gender-based violence.

Due process is a right and value enshrined in our nation's history. Affording people fair adjudication — including adequate time to obtain evidence, prepare one's case, and obtain and work with counsel — is particularly key for individuals fleeing life-threatening harm or torture. Hence, we call on your departments to immediately end the policy of conducting fear screenings in CBP custody. Such a process has consistently failed to adhere to basic principles of fairness, humane treatment of those fleeing persecution or torture, and compliance with due process obligations.

Sincerely,



Alex Padilla
United States Senator



Nanette Diaz Barragán
Member of Congress
Chairwoman, Congressional
Hispanic Caucus



Robert Menendez
United States Senator



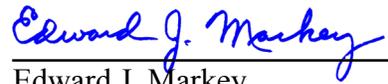
Adriano Espaillat
Member of Congress

⁵ <https://www.latimes.com/politics/story/2023-06-20/biden-asylum-seekers-turned-down-rates>.

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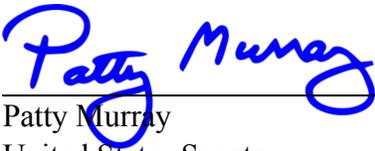
Henry C. "Hank" Johnson, Jr.
Member of Congress



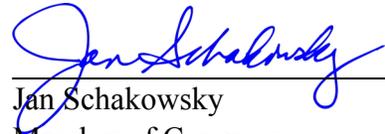
Jeffrey A. Merkley
United States Senator



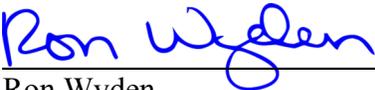
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Martin Heinrich
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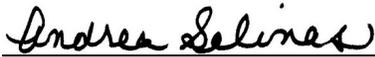
Dan Goldman
Member of Congress



Sylvia R. Garcia
Member of Congress



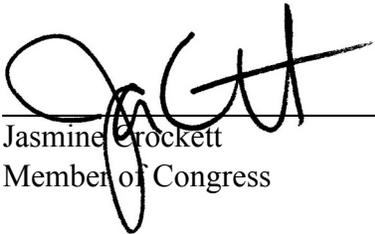
Maxwell Alejandro Frost
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Frederica S. Wilson
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Suzanne Bonamici
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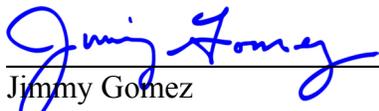
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Frank Pallone, Jr.
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Jimmy Gomez
Member of Congress



Robert Garcia
Member of Congress

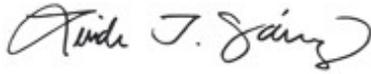


Kathy Castor
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Greg Casar
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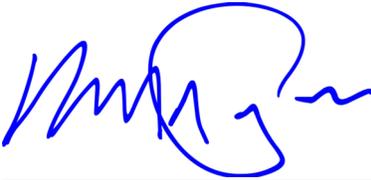
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Sara Jacobs
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Ted W. Lieu
Member of Congress



Jamie Raskin
Member of Congress

Cc: Troy A. Miller, Acting Commissioner, U.S. Customs and Border Protection
David L. Neal, Director, Executive Office for Immigration Review
Ur M. Jaddou, Director, U.S. Citizenship and Immigration Services



U.S. Citizenship
and Immigration
Services

October 2, 2023

The Honorable Alex Padilla
United States Senate
Washington, DC 20510

Dear Senator Padilla:

Thank you for your August 1, 2023 letter to the Department of Homeland Security (DHS) and the Department of Justice. I am responding on behalf of DHS.

On May 10, 2023, DHS announced new measures to humanely manage the border by enforcing our immigration laws while expanding safe, orderly, and lawful pathways.¹ As noted in your letter, certain noncitizens are now processed for expedited removal within days of their initial encounter and while in U.S. Customs and Border Protection (CBP) or U.S. Immigration and Customs Enforcement (ICE) facilities. The enhanced use of expedited removal is part of these border management and enforcement measures, and U.S. Citizenship and Immigration Services (USCIS) has surged staff and resources to prioritize credible fear processing during the expedited removal process to ensure protection screenings are carried out in a fair, efficient, and timely manner. In addition to specialized training in asylum and refugee law, USCIS asylum officers conducting credible fear interviews are trained in non-adversarial interviewing techniques, including interviewing children, LGBTQIA+ individuals, and survivors of torture. The credible fear interview is a non-adversarial interview, and USCIS asylum officers elicit all relevant testimony when making a credible fear determination.

Facilitating access to counsel or a consultant during the credible fear process is a DHS priority. CBP and ICE have operationalized additional logistics to support increased credible fear referrals, including installation of hundreds of phone lines and privacy booths, and implemented procedures to allow noncitizens to access counsel. At the beginning of the credible fear interview, USCIS asylum officers confirm that the noncitizen received and understood the Form M-444, Information about Credible Fear Interview, that is provided to the noncitizen prior to the interview. The current version of the M-444 has been translated from English into 16 languages. Paper copies of the Form M-444 are also available in the interview booths. The M-444 provides basic information about the credible fear process, including the right to consult with a person of the noncitizen's choosing, and to have an attorney, representative, or consultant

¹ Fact Sheet: Department of State and Department of Homeland Security Announce Additional Sweeping Measures to Humanely Manage Border through Deterrence, Enforcement, and Diplomacy, May 10, 2023, available online at <https://www.dhs.gov/news/2023/05/10/fact-sheet-additional-sweeping-measures-humanely-manage-border>

participate in the credible fear interview by telephone. USCIS asylum officers ensure that the noncitizen has no fewer than 24 hours for consultation before the credible fear interview is conducted.

Additionally, USCIS considers requests to reschedule the credible fear interview on a case-by-case basis, taking into account when the noncitizen arrived, whether they were given an opportunity to consult with a person of their choosing, including being provided access to a phone, and any extraordinary circumstances raised by the noncitizen. The USCIS asylum officer also asks the noncitizen if they have counsel or a consultant and whether counsel or a consultant should be contacted to participate in the credible fear interview telephonically. If so, the officer will add the counsel or consultant to the interview. Furthermore, in the credible fear process, a Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, is not required for an attorney, representative, or consultant to participate in the interview.

Conducting immigration processing at the border in a safe, orderly, and humane manner maximizes the number of noncitizens who can be processed, and, accordingly, enables DHS to provide timely protection and relief to noncitizens who are eligible while supporting the swift return of those that do not establish a legal basis to remain in the United States. While we continue to make significant progress in increasing access to lawful pathways, it is clear that we are operating within a fundamentally broken and outdated immigration and asylum system that has not been updated in decades. DHS continues to call on Congress to work together—in a bipartisan manner—to update our immigration framework, including by modernizing our asylum system.

Thank you again for your letter and interest in this important issue. The cosigners of your letter will each receive a separate, identical response. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (240) 721-3801.

Respectfully,

A handwritten signature in black ink, appearing to read "Ur M. Jaddou", with a long horizontal flourish extending to the right.

Ur M. Jaddou
Director