

February 16, 2021

Hon. Alejandro Mayorkas
Secretary
U.S. Department of Homeland Security
301 7th Street, SW
Washington, DC 20528

Re: Use of Expedited Removal Process for Asylum Seekers at the Border

Dear Secretary Mayorkas,

Our undersigned faith-based, immigration, civil rights, and human rights organizations urge the Department of Homeland Security (DHS) to reject the use of expedited removal and immigration detention as it ends policies that effectively eliminated humanitarian protections at the border in violation of U.S. law and treaty obligations. We reiterate our call for the administration to swiftly end dangerous and illegal expulsions under Title 42 and other policies that block and turn away people seeking U.S. refugee protection at the border, as many of our groups have urged in [separate letters](#). As DHS undertakes the “review of procedures for individuals placed in expedited removal proceedings at the United States border” directed by President Biden’s February 2 [executive order](#) on asylum, we write to express our grave concerns with the expedited removal process.

As you are aware, U.S. immigration authorities are not required to use expedited removal on all asylum seekers and other migrants at the border. DHS has legal authority to parole asylum seekers or release individuals on recognizance and place them in removal proceedings under the Immigration and Nationality Act. For many years, the expedited removal process was [implemented](#) only at ports of entry. The previous administration sought to [expand](#) the use of expedited removal to the maximum extent permitted by statute in order to limit the number of people able to seek asylum protections. The continued application of expedited removal to asylum seekers and other migrants would be a serious mistake. When processing people seeking U.S. protection, DHS should use existing legal authority to parole or otherwise release asylum seekers pending their immigration court proceedings.

As the bipartisan [U.S. Commission on International Religious Freedom](#) (USCIRF) and other [organizations](#) have long [noted](#), expedited removal presents serious deficiencies and due process concerns. These include [failures](#) by Customs and Border Protection (CBP) officers and Border Patrol agents to [appropriately](#), [professionally](#), and accurately identify and [document](#) individuals who must be referred for credible fear interviews, as USCIRF reported, as well as the use of intimidation and coercion by border officers, [failures](#) by asylum officers to properly screen individuals, lack of access to counsel, detention in abysmal conditions, and limited judicial

review. Successive administrations have failed to address the long-documented flaws of expedited removal and limited statutory/regulatory protections for asylum seekers that are “[often misapplied or flouted altogether](#).” A recent Supreme Court [decision](#) further narrowed judicial review, limiting the availability of habeas corpus to challenge wrongful negative fear determinations.

Families and adults blocked from access to the U.S. asylum system due to expedited removal have been deported to life-threatening dangers, including:

- a [Honduran asylum seeker](#) deported through expedited removal despite his attempts to request refugee protection was murdered just weeks after being sent back to Honduras;
- a former [Salvadoran police officer](#), who had attempted to request asylum in the United States, was deported through expedited removal and shot to death in El Salvador, after she was determined not to have a credible fear of persecution or torture; and
- a [Guatemalan asylum seeker](#) was gang-raped and shot nine times in Guatemala after she was deported through expedited removal without an opportunity to request asylum when CBP officers failed to refer her for a screening interview even though she explained her fear of return.

If expedited removal is employed, holdover policies and standards adopted by the Trump administration to weaponize expedited removal that remain on the books will continue to block people seeking U.S. humanitarian protections. Rulings by Trump administration Attorneys General, including [Matter of A-B-](#) (partially enjoined), [Matter of L-E-A-](#), [Matter of O-F-A-S-](#), and [Matter of R-A-F-](#), which attempt to unlawfully narrow asylum eligibility for survivors of domestic violence and attacks by non-state groups and limit protection under the Convention against Torture, will bar refugees from access to full determinations on their claims for protection. The Trump administration also issued unlawful [training materials](#) for asylum officers, including a lesson plan [vacated](#) by a federal court, that changed standards for the credible fear process, caused chaos for asylum officers, and blocked refugees from the asylum process. These and other regulations, rulings, and standards illegally heighten the low screening threshold set by Congress to ensure people seeking humanitarian protections have access to the U.S. asylum system. Asylum officers should not be conducting fear screenings interviews without updated, legally correct, and rigorous training.

Jailing people in Immigration and Customs Enforcement (ICE) detention centers to carry out expedited removal and conduct fear screenings is costly, harmful to physical and mental [health](#), and not appropriate for asylum seekers, as the U.N. Refugee Agency has [explained](#) in its detention guidelines. Detention subjects immigrants and asylum seekers to inhumane conditions and widespread [human rights abuses](#), including [unnecessary and invasive medical procedures](#). Before the pandemic, access to counsel was often unavailable for those in detention. With COVID-19 restrictions, in-person access to attorneys and legal orientation programs is even more [limited](#), particularly during an individual’s first days in immigration jail when they are held

in quarantine. As a result, many asylum seekers subject to expedited removal would be unable to access legal counsel as they attempt to prepare for fear screening interviews. Further, DHS failure to heed the advice of [public health experts](#) - including medical experts retained by DHS who warned that ICE detention facilities were a “[ticking time bomb](#)” - to release asylum seekers and immigrants from congregate detention has resulted in [widespread](#) COVID-19 infections and numerous [deaths](#) of detainees and DHS staff and contractors. Instead of detention, [case management services](#) operated by non-governmental organizations, which have proven effective in ensuring appearance at check-ins and hearings, can be used to support asylum-seeking families and adults when needed. A recent study shows that [96 percent](#) of represented individuals appeared for all their immigration court hearings.

Any attempt to conduct fear screenings while individuals are in the custody of CBP would be a grave error. Through the Humanitarian Asylum Review Process and Prompt Asylum Claim Review the prior administration forced Mexican and Central American asylum seekers to undergo fear screening interviews while [held](#) in harsh conditions in often [overcrowded](#) CBP border detention facilities without adequate food and medical care and with extremely limited access to legal counsel. According to a U.S. Government Accountability Office report, these programs resulted in an astounding [69 percent](#) of individuals receiving *negative* fear determinations - a major deviation from screenings during the George W. Bush and Obama administrations when [78 percent](#) received *positive* fear determinations. President Biden correctly [halted](#) these illegal policies.

As DHS processes people seeking humanitarian protection at the border, we urge the agency to exercise its discretion to reject the use of expedited removal, which often violates the due process rights of asylum seekers and risks returning them to persecution and torture without access to the U.S. asylum system.

Sincerely,

Advocating Opportunity
African American Ministers In Action
Aldea - the People's Justice Center
Al Otro Lado
American Civil Liberties Union
American Friends Service Committee
American Immigration Council
American Immigration Lawyers Association
Amnesty International USA
Angry Tias and Abuelas of the RGV
Asian Americans Advancing Justice | AAJC
Asian Pacific Institute on Gender-Based Violence

Asylum Seeker Advocacy Project (ASAP)
AsylumWorks
Bellevue Program for Survivors of Torture
Black Alliance for Just Immigration
Border Kindness
Bridges Faith Initiative
Capital Area Immigrants' Rights Coalition
Center for Gender & Refugee Studies
Center for Victims of Torture
Church World Service
Coalition for Humane Immigrant Rights (CHIRLA)
Coalition on Human Needs
Columbia Law School Immigrants' Rights Clinic
Cooperative Baptist Fellowship
Disciples Refugee & Immigration Ministries
Families Belong Together
First Focus on Children
Florence Immigrant & Refugee Rights Project
Freedom for Immigrants
Freedom Network USA
Haitian Bridge Alliance
Harvard Immigration and Refugee Clinical Program
HIAS
Hope Border Institute
Human Rights First
Human Rights Initiative of North Texas
Human Rights Watch
Immigration Equality
Innovation Law Lab
Institute for the Geography of Peace (Mexico)
International Forum on Haitian Migration in the Americas
International Refugee Assistance Project
International Rescue Committee
International Tribunal of Conscience of Peoples in Movement
Kids in Need of Defense (KIND)
Las Americas Immigrant Advocacy Center
Latin America Working Group (LAWG)
Leadership Conference of Women Religious
Make the Road New York
Make the Road Pennsylvania

Mississippi Center for Justice
Northern Illinois Justice for Our Neighbors
National Immigrant Justice Center
National Immigration Litigation Alliance
National Immigration Project (NIPNLG)
National Network for Immigrant & Refugee Rights
NETWORK Lobby for Catholic Social Justice
NM CAFE
Oxfam America
Proyecto Dilley
Refugee Health Alliance
RefugeeOne
Refugees International
Rocky Mountain Immigrant Advocacy Network
Save the Children Action Network
Service Employees International Union (SEIU)
Society of the Sacred Heart - United States Canada
Southern Border Communities Coalition
Southern Poverty Law Center
Tahirih Justice Center
UDC Law Immigration and Human Rights Clinic
United Stateless
Union for Reform Judaism
Washington Office on Latin America
Wind of the Spirit Immigrant Resource Center
Witness at the Border
Women's Refugee Commission
Young Center for Immigrant Children's Rights