

November 17, 2022

Director Ur Jaddou  
United States Citizenship and Immigration  
Services  
Department of Homeland Security  
5900 Capital Gateway Drive  
Camp Springs, MD 20746, USA

Principal Legal Advisor, Kerry E. Doyle  
U.S. Immigration and Customs Enforcement  
500 12th St., SW  
Washington, D.C. 20536

David Neal  
Director, Executive Office for Immigration  
Review  
Department of Justice  
5107 Leesburg Pike, 18th floor  
Falls Church, Virginia 22041

**Re: Respondents facing undue burden to complete biometrics requirements in immigration court**

Dear Director Jaddou, Director Neal, and Ms. Doyle:

Prior to their final hearing before the Executive Office of Immigration Review (EOIR), non-detained individuals are required to seek a biometrics appointment before the U.S. Citizenship and Immigration Services (USCIS). Navigating both agencies is unnecessarily onerous and confusing. The current process wastes significant time and resources for both the government and respondents, further delays long-awaited merits hearings, and can even result in a denial of asylum claims.

The undersigned 52 legal services and advocacy organizations call on the Department of Homeland Security (DHS) and EOIR to end this undue burden on respondents, and to reduce such inefficiencies among federal agencies serving noncitizens, which already face crushing backlogs. We include proposed solutions to remedy the harm incurred by respondents as a result of these inefficiencies.

Under the current system, a non-detained person in removal proceedings is required to have biometrics captured by the government in advance of their merits hearing before EOIR. The respondent carries the sole burden of complying with this requirement, even though USCIS alone is authorized to process and schedule these biometrics appointments. Nevertheless, USCIS regularly fails to issue timely biometrics appointments, or any at all. Even where biometrics are already on file with USCIS or Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE) routinely declines to “refresh” the previously captured biometrics, instead communicating to attorneys and respondents that they must return another application form to USCIS to request a new biometrics appointment notice.

Despite doing everything within their power to comply with the biometrics requirement — including submitting duplicative requests for biometrics and escalating the request to the USCIS Ombudsman’s office — many respondents fail to have their biometrics captured by the date of their merits hearing.

The consequences of these structural inefficiencies can be dire. In one case represented by one of the undersigned organizations, an asylum seeker succeeded in advancing his final EOIR hearing because his children faced threats in his home country — only to see this hearing pushed back by months because USCIS had failed to respond to his multiple requests for a biometrics appointment. Failure to present biometrics ahead of a merits hearing can even result in a denial and removal order for asylum seekers, with little to no remedy to re-open their removal proceeding. *See Mejia-Velasquez v. Garland*, 26 F.4th

193, 195 (4th Cir. 2022). Finally, delays when scheduled cases cannot go forward due to biometrics hurdles also add to EOIR's backlog, waste USCIS resources with duplicate processing, and further burden ICE's docket.

This biometrics issue routinely wastes governmental resources and harms people seeking protection. We strongly believe this harm is avoidable and that your agencies can implement better processes to protect asylum seekers and other noncitizens seeking relief in immigration court. We therefore make the following suggestions:

- **Where applicable, DHS should “refresh” existing fingerprints.** Fingerprints do not change. Refreshing the fingerprints (including those taken by CBP) would save the time and resources for an already overburdened USCIS, and would also reduce the burden on applicants for relief and attorneys of following up with USCIS. The Chief Principal Legal Advisor for ICE has said on stakeholder calls that the Office of the Principal Legal Advisor (OPLA) is able to conduct this “refresh” for fingerprints previously taken by USCIS. Nonetheless, OPLA is inconsistent in requesting this “refresh”, and directs respondents to file the request for a new biometrics appointment with USCIS. OPLA has also indicated that they are unable to refresh fingerprints taken by CBP, even though both ICE and CBP are DHS components. DHS should update internal mechanisms to allow OPLA to refresh CBP fingerprints just as it is able to refresh USCIS fingerprints. Furthermore, the burden should be on OPLA to perform this function, since a respondent in removal proceedings has no authority to run fingerprints or create a fingerprinting appointment.
- **In cases where ICE cannot refresh fingerprints, ICE should prompt USCIS to send a biometrics notice by mail 6 months in advance of a merits hearing.** Better communication between these two DHS agencies on this discrete administrative need would not only relieve respondents of this undue burden but minimize processing delays EOIR and OPLA incur when biometrics are not timely completed.
- Finally, **USCIS should accept walk-ins for biometrics with a hearing notice dated within a period of time, such as 90 days.** This last-resort solution would ensure that merits hearings are not postponed due to inefficiencies inherent to federal agencies.

Thank you very much for your time and consideration of these matters. As attorneys, stakeholders, and advocates, we are prepared to work with you on these improved processes. Please reach out to Pooja Asnani ([pasnani@sffny.org](mailto:pasnani@sffny.org)), Azadeh Erfani ([aerfani@heartlandalliance.org](mailto:aerfani@heartlandalliance.org)), Amy Grenier ([AGrenier@aila.org](mailto:AGrenier@aila.org)), Victoria Neilson ([victoria@nipnl.org](mailto:victoria@nipnl.org)). Amitesh Parikh ([aparikh@immigrationequality.org](mailto:aparikh@immigrationequality.org)), and Ximena Valdarrago ([ximena@pangealegal.org](mailto:ximena@pangealegal.org)) if you have any questions.

Sincerely,

Advocates for Basic Legal Equality  
The Advocates for Human Rights  
African Human Rights Coalition  
American Friends Service Committee (AFSC)  
American Immigration Lawyers Association  
Asylum Seeker Advocacy Project (ASAP)  
Bridges Faith Initiative  
Brooklyn Defenders  
Capital Area Immigrants' Rights (CAIR) Coalition

Catholic Charities Community Services, Immigrant & Refugee Services  
Catholic Migration Services, New York  
Catholic Social Services of Fall River, MA  
Center for Gender & Refugee Studies  
Central American Legal Assistance  
Central American Refugee Center (CARECEN-NY)  
Chavarro Law Firm LLC  
Coalición de Derechos Humanos  
DRUM - Desis Rising Up & Moving  
Freedom Network USA  
Haitian Bridge Alliance  
Hispanic Federation  
Human Rights First  
Immigration Center for Women and Children  
Immigration Equality  
Immigration Hub  
Innovation Law Lab  
Institute for Justice & Democracy in Haiti  
Jewish Family Service  
Justice in Motion  
Legal Aid Justice Center  
The Legal Aid Society  
Migrant Center for Human Rights  
Minnesota Freedom Fund  
National Immigrant Justice Center  
National Immigration Law Center  
National Immigration Project (NIPNLG)  
National Network for Immigrant and Refugee Rights  
New Jersey Consortium for Immigrant Children  
New York Law School Asylum Clinic  
Pangea Legal Services  
Phoenix Legal Action Network (PLAN)  
Refugees International  
The Resurrection Project  
Rocky Mountain Immigrant Advocacy Network  
Sanctuary for Families New York  
SSFL Law APC  
Tahirih Justice Center  
UndocuBlack Network  
United Stateless  
UnLocal  
Witness at the Border  
The Young Center for Immigrant Children's Rights

CC: Phyllis Coven, Ombudsman, Office of the Citizenship and Immigration Services Ombudsman;  
Mary Cheng, Deputy Director, EOIR;  
Amanda Baran, Chief, Office of Policy and Strategy, USCIS.