

June 5, 2023

The Honorable Alejandro N. Mayorkas
Secretary
U.S. Department of Homeland Security
2707 Martin Luther King Jr. Avenue, SE
Washington, D.C. 20528

Troy A. Miller
Acting Commissioner
U.S. Customs and Border Protection
1300 Pennsylvania Avenue, NW
Washington, D.C. 20229

Ur M. Jaddou
Director
U.S. Citizenship and Immigration Services
5900 Capital Gateway Drive
Camp Springs, Maryland 20588

David L. Neal
Director
Executive Office for Immigration Review
5107 Leesburg Pike
Falls Church, VA 22041

The Biden Administration Must Immediately Stop Conducting Credible Fear Interviews in CBP Custody

Dear Secretary Mayorkas, Director Jaddou, Acting Commissioner Miller, and Director Neal,

We, the undersigned 112 civil, human rights, faith-based, and immigration groups write to express our deep concern with your [return](#) to the Trump-era policy of forcing asylum seekers to explain by phone the life-threatening harms they're fleeing mere hours after arriving in the U.S., while being held in Customs and Border Protection (CBP) detention, and essentially cut off from legal help. In March 2023, nearly 100 organizations [reminded](#) President Biden of his commitment to [end](#) the Trump policy, urging him not to rush back to the broken, anti-asylum policies that this administration rightly terminated. We are incredibly disappointed that this administration has chosen to move forward, full steam ahead. **We call on the Biden administration to immediately cease conducting credible fear interviews (CFIs) in CBP custody and instead ensure that asylum seekers are given full and fair access to the U.S. asylum system, including meaningful access to counsel.**

Since taking effect, President Biden's iteration of this policy has produced systemic due process barriers [similar](#) to its predecessor policy, with asylum seekers being rushed through CFIs and immigration judge reviews with little to no access to counsel. President Biden's [asylum ban](#), [another iteration](#) of Trump-era policies, is further exacerbating these mass due process violations and fueling the systematic deportation of individuals who may qualify for protection in the U.S., in violation of the non-derogable principle of non-refoulement.

The Biden administration is effectively denying asylum seekers any meaningful chance to consult with counsel and rushing them through a sham process to quickly deport them, including by:

- Conducting CFIs shortly upon an individual's arrival in CBP detention without providing or allowing them to access the time and resources needed to recover from their journey or the harm they survived;
- Barring attorneys from entering the CBP facilities where asylum seekers are jailed and CFIs are conducted;
- Truncating the minimum time period individuals have to attempt to telephonically consult with an attorney to a mere 24 hours after receiving notice of the credible fear process. This change is

especially absurd given that new policies, such as the asylum ban and the return of certain nationalities to Mexico, expand the content about which an individual may need to consult an attorney;

- Failing to provide asylum seekers hard copies of the M-444 Information About Credible Fear Interview in contravention of 8 CFR § 208.30(d)(2), hard copies of the list of pro bono legal service providers, and advanced written notice of the CFI;
- Heightening the standard for requests to reschedule a CFI to a showing of “extraordinary circumstances,” likely making it nearly impossible for asylum seekers to reschedule a CFI in order to secure representation or prepare for the interview;
- Restricting asylum seekers’ access to telephones, in contravention of 8 CFR § 208.30(d)(4), and denying them writing utensils, in effect forcing them to attempt to commit key information to memory, including their attorney’s contact information and information about the CFI process;
- Requiring an applicant’s signature on the Form G-28 for attorneys to enter an appearance with the Asylum Office, which often cannot be timely obtained by attorneys who are remotely representing jailed clients, thereby obstructing their ability to obtain information about their clients;
- Conducting CFIs, including outside of normal business hours and on weekends, without the attorney of record present, in contravention of 8 CFR § 208.30(d)(4);
- Failing to provide advance written notice to attorneys of record prior to a scheduled CFI or immigration court review hearing, including by not updating the EOIR Cases and Appeals System (ECAS) to reflect upcoming court hearings;
- Failing to afford individuals time and opportunity following negative fear determinations to consult with counsel who could advise them about their rights and the review process;
- Failing to serve asylum seekers and their attorneys with their record of credible fear determinations in contravention of 8 CFR § 208.30(g)(1);
- Blocking attorneys from entering an appearance with the immigration court, including by not docketing immigration court review cases in a timely manner, thereby preventing them from representing their clients;
- Refusing to permit attorneys to actively participate in immigration court reviews and rejecting evidence submitted in advance of the immigration court review; and
- Conducting Immigration Judge reviews of negative credible fear findings without the attorney of record present.

Forcing asylum seekers in CBP detention to proceed with their CFIs while facing nearly insurmountable barriers to legal counsel –while also subjecting them to an asylum ban – upends any notion of fairness. Instead, it is an evisceration of our asylum system. The installation of new phone booths, which you claim differentiate Biden’s program from the Trump policy, fails entirely to address any of these systemic obstacles. Additionally, the Biden administration’s decision to conduct immigration court reviews immediately following these lightning-fast CFIs, while the individual is still in

CBP custody, unacceptably further heightens the due process barriers asylum seekers must overcome to avoid summary deportation.

We have also received troubling reports of the terrible conditions that asylum seekers face in CBP custody while awaiting their CFIs, in line with years of reports of [abusive](#), [dehumanizing](#), and sometimes life-threatening conditions that include medical neglect, inedible food and water, and lack of access to showers and other basic hygiene. **It has been less than a month since the [unforgivable death](#) of eight-year-old Anadith Tanay Reyes Álvarez, who was jailed in one of the CBP facilities where your administration conducts CFIs.** We are horrified that the administration has systematized the detention of asylum seekers in these same deadly conditions while rushing them through fear screenings.

Notably, the administration has a choice: it is not required to use expedited removal and has the authority to refer people for full asylum hearings, rather than subjecting them to rushed CFIs in dehumanizing CBP detention while cut off from legal help. **Sacrificing fairness for speed by jailing people fleeing persecution and torture, subjecting them to a ban on asylum, and forcing them to proceed with a life-or-death interview without meaningful access to counsel must not be this administration's response to people wishing to exercise their fundamental human right to seek asylum.** These policies punish people seeking safety and prioritize political optics over the administration's [stated aim](#) of working to "restore and strengthen our own asylum system, which has been badly damaged by policies enacted over the last four years that contravened our values and caused needless human suffering."

Respectfully,

Acacia Center for Justice
Afghans For A Better Tomorrow
African Human Rights Coalition
Al Otro Lado
Alianza Americas
Alliance of Californians for Community Empowerment, ACCE
American Friends Service Committee (AFSC)
American Gateways
American Immigration Council
Americans for Immigrant Justice (AI Justice)
Amnesty International USA
Angry Tias and Abuelas
Asian Americans Advancing Justice | AAJC
Asylum Seeker Advocacy Project (ASAP)
Bend the Arc: Jewish Action
Black Alliance for Just Immigration (BAJI)
Bridges Faith Initiative
Border Kindness
Capital Area Immigrants' Rights Coalition
Center for Constitutional Rights
Center for Gender & Refugee Studies
Center for Victims of Torture
Central American Resource Center of Northern CA – CARECEN SF
Church World Service

Cleveland Jobs with Justice
Coalition for Humane Immigrant Rights (CHIRLA)
Community Action Board of Santa Cruz County, Inc. (CAB)
Community Legal Services in East Palo Alto (CLSEPA)
Diocesan Migrant and Refugee Services Inc.
Dorcas International Institute of RI
Fellowship Southwest
First Focus on Children
Florence Immigrant & Refugee Rights Project
Franciscan Action Network
Freedom Network USA
Greater Boston Legal Services
Harvard Immigration and Refugee Clinical Program
HIAS
Houston Immigration Legal Services Collaborative
Human Rights First
Human Rights Initiative of North Texas
Immigrant Defenders Law Center
Immigrant Legal Resource Center
Immigration Equality
Immigration Law & Justice Network
Immigration Hub
Innovation Law Lab
Interfaith-RISE
Interfaith Welcome Coalition – San Antonio
International Center of Kentucky
International Institute of Los Angeles
International Institute of New England
International Refugee Assistance Project (IRAP)
ISLA: Immigration Services and Legal Advocacy
JAMAAT – Jews and Muslims and Allies Acting Together
Jewish Family Service of San Diego
Jewish Vocational Service of Kansas City
Just Neighbors
Justice in Motion
Kino Border Initiative
Las Americas Immigrant Advocacy Center
Latino Community Foundation
Lawyers for Good Government
Legal Aid Justice Center
Lost and Found Church of the Nazarene
Lutheran Immigration and Refugee Services
Mariposa Legal, program of COMMON Foundation
Massachusetts Law Reform Institute

Metrowest Legal Services
Minnesota Freedom Fund
MLPB
Mujeres Unidas y Activas
Muslim Advocates
National Employment Law Project
National Immigrant Justice Center
National Immigration Law Center
National Network for Immigrant and Refugee Rights
National Partnership for New Americans
NCLR (National Center for Lesbian Rights)
Northeastern University School of Law Immigrant Justice Clinic
Open Immigration Legal Services
Oromo Center for Civil and Political Rights
Oxfam America
Phoenix Legal Action Network
Physicians for Human Rights
Public Law Center
RAICES
Refugees International
Resource Center Matamoros / Asylum Seeker Network of Support, Inc.
Robert F. Kennedy Human Rights
Rocky Mountain Immigrant Advocacy Network
SIREN, Services Immigrant Rights and Education Network
Southwest Asylum & Migration Institute (“SAMI”)
Student Clinic for Immigrant Justice
Survivors of Torture, International
Team Brownsville
Tennessee Justice for Our Neighbors
The Advocates for Human Rights
The Catholic Legal Immigration Network, Inc.
The Reformed Church of Highland Park
UC Davis Immigration Law Clinic
Unitarian Universalists for Social Justice
Unitarian Universalist Service Committee
United Sikhs
U.S. Committee for Refugees and Immigrants (USCRI)
USAHello
Vera Institute of Justice
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