

Congress of the United States
Washington, DC 20515

August 1, 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.

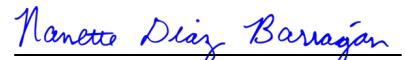
Legal service providers have documented young people under the age of 21, LGBTQIA individuals, and survivors of sexual trauma subjected to this rushed process. Furthermore, many asylum seekers require complex and extended consultations with legal counsel before they are even aware that their previous 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



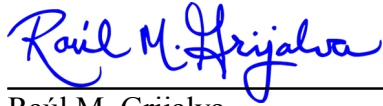
Robert Menendez
United States Senator



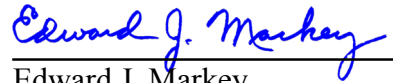
Adriano Espaillat
Member of Congress

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

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Raúl M. Grijalva
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Edward J. Markey
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Eleanor Holmes Norton
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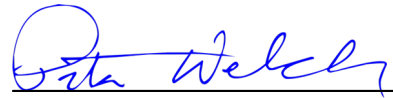
Tony Cárdenas
Member of Congress



Mazie K. Hirono
United States Senator



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Joaquin Castro
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Benjamin L. Cardin
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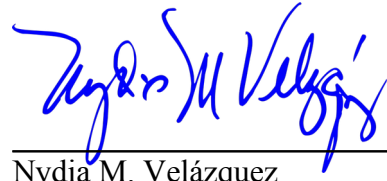
Cory A. Booker
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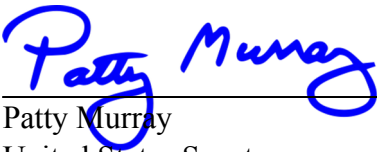
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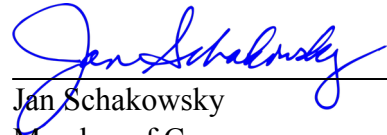
Jeffrey A. Merkley
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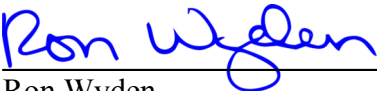
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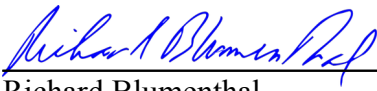
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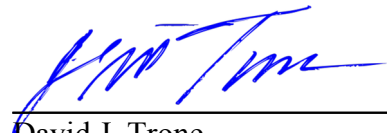
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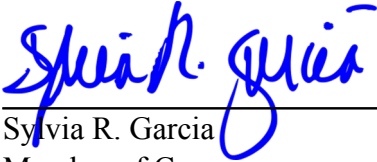
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United States Senator



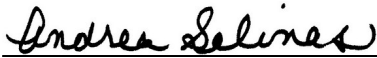
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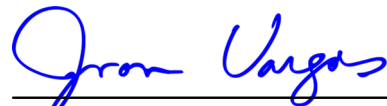
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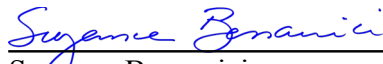
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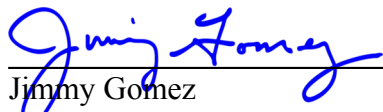
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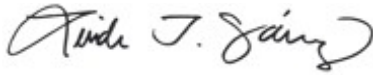


Kathy Castor
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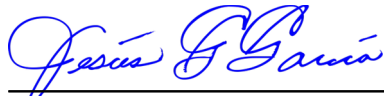
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Grace F. Napolitano
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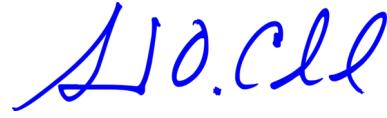
Ritchie Torres
Member of Congress



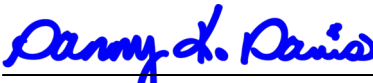
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Mark Pocan
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Salud Carbajal
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Danny K. Davis
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Robert J. Menendez
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Chellie Pingree
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Zoe Lofgren
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André Carson
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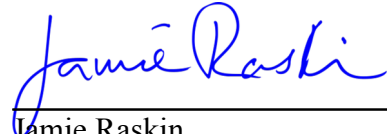


Sara Jacobs
Member of Congress

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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