



AMERICAN  
IMMIGRATION  
LAWYERS  
ASSOCIATION

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

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

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

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

June 30, 2023

Re: Concerns Regarding Conducting Credible Fear Interviews in CBP Custody

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

On behalf of the American Immigration Lawyers Association (AILA), we write to express grave concerns over your administration's current practice of conducting credible fear interviews (CFI) in U.S. Customs and Border Protection (CBP) custody in a manner that is deeply eroding the fairness of the immigration system and depriving people access to asylum and other life-saving humanitarian relief. We urge the Biden Administration to take corrective measures immediately.

We recognize the administration is facing significant challenges at the U.S. southern border due to historically high global migration rates and increased instability and violence in Western hemisphere nations. AILA welcomed the administration's innovative programs to address regional migration shifts, such as [the expansion of legal pathways](#) for Cuban, Haitian, Nicaraguan and Venezuelan nationals using congressionally enacted parole authority. AILA has proposed similar effective solutions in the policy brief, "[What Does Effective Border Management Look Like?](#)" to manage changing migration patterns while upholding U.S. law and ensuring protection for asylum seekers.

However, the policy of conducting CFIs in CBP custody runs counter to ensuring the integrity of the asylum system due in large part to the limited access to counsel and the expedited time frame. Rushing asylum seekers through this process without access to counsel increases the likelihood of erroneous decisions. CBP does not allow for in-person meetings between the client and attorney, and there are ongoing and deeply concerning reports of individuals not having even telephonic access to counsel, or not having access until after the CFI. Furthermore, 24 or even 48 hours is simply not enough time for an asylum seeker to adequately contact an attorney or be contacted by a legal services organization to impart essential information to prepare for the CFI. Conducting CFIs in CBP custody denies meaningful access to asylum and a fair process.

To that end, in line with the recommendations [sent earlier this month](#) by civil, human rights, faith-based, and immigration groups, we urge the administration to end or correct the following practices:

- Conducting CFIs within 24 or 48 hours after arrival, in CBP detention, without allowing individuals the time they need to recover from their journey or other trauma they experienced;
- 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 consult with an attorney by phone to a mere 24 hours after receiving notice of the credible fear process. This timeframe is made even more difficult to meet given the administration's asylum transit ban and practice of returning certain nationalities to Mexico, which complicate the legal content about which an individual may need to consult an attorney;
- Failing to provide 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 to asylum seekers;
- Heightening the standard for requests to reschedule a CFI to a showing of "extraordinary circumstances," making it nearly impossible for asylum seekers to reschedule a CFI in order to secure representation or prepare for the interview;
- Restricting asylum seeker's access to telephones, in contravention of 8 CFR § 208.30(d)(4), and denying them writing implements to record their attorney's contact information and information about the credible fear process;
- Requiring an applicant's signature on the Form G-28 for attorneys to enter an appearance with the Asylum Office, which attorneys often cannot obtain timely while representing jailed clients remotely. This obstructs the attorneys' ability to obtain information about their client;
- 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 to consult with counsel following negative fear determinations to advise them about their rights and the immigration court 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;
- Barring attorneys from participating 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 for asylum seekers. Sacrificing fairness for speed and forcing asylum seekers 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.

We urgently ask the Biden administration to end the above practices and the general policy of conducting CFI interviews while asylum seekers remain deprived of their liberty in CBP custody.

Sincerely,

Farshad Owji  
President

Benjamin Johnson  
Executive Director