

September 15, 2022

Secretary Alejandro Mayorkas
Department of Homeland Security
Washington, DC 20528

Commissioner Chris Magnus
United States Customs and Border Protection
1300 Pennsylvania Avenue, NW
Washington, DC 20229

Acting Director Tae D. Johnson
Immigration and Customs Enforcement
500 12th Street, SW
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Director David Neal
Executive Office for Immigration Review
5107 Leesburg Pike
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Kerry E. Doyle
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Office of the Principal Legal Advisor
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Re: Recommendations to Fix Erroneous Addresses on Migrant Paperwork

Dear Secretary Mayorkas, Commissioner Magnus, Director Neal, Acting Director Johnson, and Principal Legal Advisor Doyle:

We write on behalf of a number of immigration nonprofits and welcoming networks across the country regarding the continuing practice of federal officers completing asylum seeker processing paperwork with non-residential and often organizational addresses. Asylum seekers have consistently and reliably reported that Department of Homeland Security (DHS) officers/agents provide these non-residential addresses to migrants and/or enter the addresses on the paperwork. Our engagement with your agencies seeks resolution toward ensuring noncitizens' abilities to meaningfully engage with U.S. immigration courts and agencies, including humanitarian systems.

First, we want to commend your agencies on your willingness to address the issue through your prior interagency meetings on this matter. In this letter, we offer suggested changes that could efficiently solve this issue as well as prevent due process problems resulting from existing erroneous paperwork.

I. Background

Earlier this year, nonprofit organizations around the country began receiving government documents, including hearing notices for immigration court and Notices to Appear (NTAs) for asylum seekers they did not represent and have no way to contact. Catholic Charities in New York City received over 300 such notices. Similarly, some nonprofits reported that asylum seekers appeared at their offices with NTAs and reporting paperwork for Immigration and Customs Enforcement (ICE) that have the nonprofit's address on the document purporting to be the individual's intended residence. Of the documents we have reviewed, most were issued in Del Rio and Eagle Pass, Texas.

To date, asylum seekers with these organizational, non-shelter addresses did not arrive in the United States with a known sponsor or fixed address. However, we are starting to hear reports of asylum seekers who do inform DHS of sponsors still being provided with organizational, non-shelter addresses for reporting and court purposes. Regardless of the origin of the address, Customs and Border Protection (CBP) is putting a nonprofit address unconnected to the individual asylum seeker on government documents in lieu of a residential address without the consent of the nonprofit.

This practice of placing nonprofit addresses as the asylum seeker's residential address creates significant due process issues and administrative issues for the government. Regarding due process, a hearing notice mailed to an address unconnected to the noncitizen could result in an asylum seeker being removed *in absentia* without having ever received proper notice. Reports from nonprofits indicate that *in absentia* orders are already being issued and addressed by local Chief Counsels on an ad hoc basis. Not every *in absentia* order associated with an erroneous address is sent to a nonprofit with the resources and knowledge to facilitate this ad hoc approach.

While it is possible to file a motion to reopen on the grounds of lack of notice, doing so is particularly difficult without access to counsel and English fluency. An asylum seeker could also be removed prior to knowing that a motion to reopen is a possibility based on their lack of address, with all of the inadmissibility implications that follow such removal. After the nonprofit address is put on an NTA, navigating subsequent motions to reopen due to the *in absentia* orders caused by this practice only adds to existing immigration court backlogs.

Below, we list options to ensure this practice does not continue, as well as how to prevent and remedy harm to asylum seekers already impacted by this practice.

II. Addresses on DHS Documents Going Forward

An asylum seeker can be transient during the earliest stages of their arrival, as many individuals fleeing persecution may not have contacts in the United States. Building in flexibility at this early stage to allow the asylum seeker to later report or amend paperwork with a more stable address will ensure that the federal government has accurate information and that the noncitizen can meaningfully engage with the asylum process. The following would create more flexibility with this process when an asylum seeker does not have an intended address upon presenting to DHS:

- *Implementing a nationwide online or telephonic address changes with Immigration and Customs Enforcement (ICE).* Currently, changing an address with ICE is cumbersome, if not impossible, and it does not result in the amendment of any previously-created NTAs. To report an address change, ICE requires either an in-person check-in or communicating electronically with ICE officials.¹ Many local Enforcement and Removal Operations (ERO) offices have significant delays in providing in-person appointments as reflected in ICE's [online scheduling tool](#). The Victim Engagement and Services Line (VESL) cannot change a person's address. VESL line operators can only provide the Field Office location and

¹ See ICE, *Need to change your address?*, <https://www.ice.gov/check-in> (last visited Aug. 29, 2022) (“If you are a noncitizen and you need to change your address on file with ICE, you should report to your nearest ICE office to meet with an ICE representative.”)

telephone numbers or information about how to file a Change of Address form with the court of jurisdiction. The VESL also only currently has initial prompts in Spanish and English. Making address changes easy with ICE combined with explicit instructions on how to change the address provided at the initial encounter with the asylum seeker will improve accuracy of information and engagement overall. Additionally, ICE could add dedicated tablets at ICE reporting locations to allow for ease of updating address information. Finally, ICE should update EOIR with any address changes and/or re-file amended NTAs with updated address information with EOIR. Establishing effective communication between the two agencies on address changes improves notice and engagement.

- *Listing only the city and state on DHS documents.* Where an asylum seeker has an intended city, but not fixed address, the NTA and other paperwork should list city and state only. This should be combined with a notation on the NTA and clear instructions to update their address online or telephonically within a set period of time, such as 60 days, this 1.) does not enter an inaccurate address into the asylum seeker's paperwork; 2.) indicates to ICE and EOIR that the noncitizen did not have an initial fixed address; 3.) ensures that ICE can effectively staff reporting locations and immigration court jurisdiction can be established. As an alternative, a single agency PO box could be used to serve as a temporary address and signal to subsequent agencies that the address needs to be updated.
- *Allowing for flexibility in ICE reporting location.* In addition to implementing online or telephonic address changes, the ability to change an asylum seeker's ICE reporting location to correspond with the noncitizen's actual location should be made more accessible. This could be an option incorporated within the online or telephonic address change system.

III. Fixing Current Erroneous Addresses

We know from nonprofit reports that the Executive Office for Immigration Review (EOIR) has issued hearing notices to migrants inserting the address of a nonprofit organization as if it were the noncitizen's address. To prevent this from happening going forward, and to address cases where this has already happened, we recommend the following:

- *There should be a designated point of contact at both ICE and EOIR to report existing erroneous addresses.* We appreciate that the New York City ERO established an email to report these addresses, but this issue is seen nationwide beyond New York City. EOIR's change of address form necessitates the asylum seeker, which the nonprofit receiving the hearing notice may not have access to. As a result, erroneous addresses that reach EOIR cannot rely on the EOIR-33. Designating a point of contact within EOIR to report these erroneous addresses will save an immigration judge's valuable time to help ensure EOIR knows the address is incorrect from the beginning.
- *EOIR should delay or not schedule hearings when an erroneous address is present.* Building in a sufficient waiting period before scheduling hearings when an organizational address is on an NTA allows asylum seekers and other agencies time to update addresses. Doing so will increase actual notice being provided to noncitizens and will mitigate due process violations and save both EOIR and ICE's Office of the Principal Legal Advisor (OPLA) valuable time in reopening erroneously issued *in absentia* orders.

- *Prior to issuing an in absentia order, OPLA and EOIR should work together to confirm that an address listed on a hearing notice is not a nonprofit address. A memo should be issued advising OPLA attorneys to confirm the address prior to seeking an in absentia order, and EOIR should issue a memo to immigration judges advising them of this nationwide issue and to ask OPLA attorneys on the record whether they have confirmed the address by cross-checking it with ICE-ERO records. Even if EOIR does not request judges to ask on the record, it should strongly urge them to take such circumstances into account prior to issuing an in absentia order. We understand that an internet search is not always sufficient - for example, in large cities there are mixed use buildings, and a nonprofit may have multiple locations. We are willing to work with the agencies to create a list of “known bad addresses” to facilitate this process. This list could be used at the immigration-court stage, and earlier as a block on putting the address down at all.*
- *OPLA’s memo should also include directions to agree to reopening and termination when an in absentia order occurred due to the use of a nonprofit address. A motion to reopen can be a particularly complex and time-consuming process, even when the migrant is represented by an immigration attorney. OPLA should make every effort to mitigate the difficulties of reopening a case by agreeing to join any motions to reopen for cases with an in absentia order as a result of the federal government issuing a notice to appear with an erroneous address. For example, ICE could provide information and template motions to reopen, similar to [ICE’s position](#) with respect to using prosecutorial discretion for certain Temporary Protected Status (TPS) recipients with orders of removal or deportation.*

IV. Conclusion

First and foremost, the practice of putting a nonprofit address down without both the asylum seeker and nonprofit’s explicit consent needs to end and a uniform policy for addresses should be implemented. Promptly creating a streamlined, accessible process to change addresses will go far to mitigate the impact on current and future cases, as will taking steps to ensure *in absentia* orders are not issued for impacted cases.

Thank you for your time and consideration of these recommendations. We look forward to future discussions with you on this issue. If you have any questions, please feel free to reach out to Amy Grenier, Policy and Practice Counsel at the American Immigration Lawyers Association, agrenier@aila.org or Tania Guerrero, Project Attorney at Catholic Legal Immigration Network, Inc., tguerrero@cliniclegal.org.

Respectfully submitted,

American Immigration Lawyers Association

Catholic Charities of the Archdiocese of Washington, Inc.*

Catholic Legal Immigration Network, INC (CLINIC)

Central American Resource Center*

Cleveland Catholic Charities Immigration Legal Services*

Colectiva Legal Del Pueblo*

Community Refugee & Immigration Services*

Elissa Steglich, Clinical Professor and Co-Director, Immigration Clinic,
University of Texas School of Law (for identification purposes only)

Erie Neighborhood House

Illinois Coalition for Immigrant and Refugee Rights*

Immigrant & Refugee Services, Catholic Charities Community Services, Archdiocese of New York*

Immigrant ARC

National Immigration Project of NLG

New York Immigration Coalition*

Pima County Public Defender

Prisoners' Legal Services of New York*

RAICES*

RefugeeOne*

St. James Cathedral Immigrant Assistance

The Legal Aid Society (New York)

** Designates an organization whose address has been used on government documents for asylum seekers.*

Attached: Collected examples of erroneous addresses (sharepoint link)

Cc:

Mary Cheng, EOIR Deputy Director

Jason Houser, ICE Chief of Staff

Deborah Fleischaker, ICE Policy, Assistant Director for Regulatory Affairs and Policy

Charanya Krishnaswami, Senior Counselor, Office of the Secretary, DHS

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