

Congress of the United States
House of Representatives
Washington, DC 20515–1304

July 31, 2024

The Honorable Alejandro Mayorkas
Secretary of Homeland Security
U.S. Department of Homeland Security
2801 Nebraska Avenue, NW
Washington, DC 20528

The Honorable Merrick B. Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

The Honorable Ur M. Jaddou
Director
U.S. Citizenship and Immigration Services
5900 Capital Gateway Drive
Camp Springs, MD 20746

Dear Secretary Mayorkas, Attorney General Merrick Garland, and Director Jaddou,:

We write to express serious concerns related to the Presidential Proclamation issued on June 3rd and the June 4th Interim Final Rule (IFR), Docket No. USCIS-2024-0006, issued by the Department of Homeland Security and the Department of Justice. We call for the rescission of the IFR in its entirety.

The IFR mirrors an earlier asylum ban issued by the Trump administration, violating the guarantee in Section 208(a)(1) of the Immigration and Nationality Act that people fleeing violence and persecution may apply for asylum no matter how they enter the United States.¹ When Congress passed the Refugee Act of 1980 we made clear:

Any alien who is physically present in the United States or who arrives in the United States (**whether or not at a designated port of arrival** and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien's status, may apply for asylum... (emphasis added)²

¹ INA § 208(a)(1).

² *Id.*

The language of the statute is explicit and clear. Congress intended for individuals to be able to apply for asylum even if they do not present themselves at a port of entry. The IFR put forth by the Department directly contradicts this statute.

Since its implementation, individuals have experienced inconsistent application of the new legal requirements required by the IFR, undermining the humane treatment of those fleeing persecution or torture, and our nation's compliance with due process and non-refoulement obligations. Families and single adults have been detained for prolonged periods of time in CBP facilities that were designed for just one- to three-day stays without being referred to Credible Fear Interviews.³ In June, one organization providing shelter for migrants saw 457 people arrive at its shelter after being deported from the United States. Most reported they were deported without being given a chance to ask for asylum, being told where they were going, or receiving an explanation of what was going on. Those who were brave enough to ask an immigration officer for asylum were ignored, told that asylum is closed to them, or threatened with prolonged detention. Many said immigration officers instructed them to not speak.⁴

The IFR allows asylum access only for individuals who are able to secure an appointment with Customs and Border Protection (CBP) through the CBP One mobile application, which has had a long history of failing asylum seekers attempting to schedule appointments. Issues with the application include literacy, language, and technological barriers, difficulty accessing the internet, family separation due to different appointment dates, and the enforced scarcity of CBP One appointments.

Additionally, the IFR forces individuals to wait in danger while facing active threats to their safety – in violation of U.S. law and international treaty obligations. Even though these individuals remain eligible for asylum, the United Nations High Commissioner for Refugees has made clear this does not matter. Access to asylum cannot be conditioned on regular entry or cut off for categories of asylum seekers without an individualized determination of whether they qualify as a refugee.⁵ The rule's central purpose is to punish – or deliver “consequences” to – asylum seekers based on how they enter the United States. This violates Article 31 and the introductory note of the Refugee Convention, both of which recognize that seeking asylum may require refugees to try entering through irregular means.⁶ It is particularly troubling that Mexican asylum seekers are not exempted from the IFR's asylum ban, since they will by definition be forced to remain in the country in which they are at risk of persecution while awaiting a CBP One appointment.

³ *Id.*

⁴ “Report: Six-Week Report: Implementation of the Biden Administration's June 2024 ‘Securing the Border’ Asylum Ban.” *National Immigrant Justice Center*, immigrantjustice.org/research-items/Biden-June-2024-asylum-ban-six-week-report.

⁵ Brief of the U.N. High Comm'r for Refugees as Amicus Curiae in Support of Plaintiffs at 11, *O.A. v. Trump*, No. 1:18-CV-02718-RDM (D.D.C. 2018), <https://www.refworld.org/jurisprudence/amicus/unhcr/2018/en/123317>.

⁶ Convention Relating to the Status of Refugees art. 31(1), July 28, 1951.

The IFR also imposes a screening standard that is higher than the “significant possibility” standard established by Congress. It does so by requiring asylum seekers to prove a significant possibility that they can meet the preponderance of the evidence standard, and, for those to whom the bar would apply, by assessing eligibility for statutory withholding and Convention Against Torture relief under a “reasonable probability” standard. This new multi-step process flouts Congress’s intent of asylum fear screenings.

Further, doing away with long-standing policy and protocol for CBP to ask certain questions to identify Credible Fear Interview referrals and requiring people to “manifest” or “shout out” their fear of return guarantees that people with strong claims to asylum and related relief will be deported back to harm. Human rights monitors have documented how the use of these approaches has resulted in CBP failing to refer people who expressed a fear of return to the required fear screening interviews.⁷ Moreover, people who have suffered torture, persecution, violence, and trauma often have difficulty raising their fears in non-confidential group settings.⁸ Refugees who do not speak English and do not know they can raise fear of return have even more barriers. Posting a sign or playing a video at ports of entry is wholly insufficient to ensure we are identifying asylum seekers, and it cannot be considered a substitute for asking questions in the person’s language.

Lastly, we are deeply concerned that this IFR further decreases the amount of time asylum seekers have to consult with an attorney ahead of their credible fear interviews. Previously, individuals were given a minimum of 24 hours to seek legal counsel, which was already a significant reduction from the 48-hour minimum in place last year. Under policies enacted contemporaneously to the IFR, the waiting period will be reduced to as few as four hours, which greatly reduces opportunities for people to access representation or legal orientation as they prepare for protection screenings that have a higher standard to meet than ever before. As a result of this change, people who find a way to speak to a legal service provider or a family member often reach these people after they have already had their credible fear interview and received a negative outcome.

This IFR does not comply with existing U.S. law or international treaty obligations, contravenes Congressional intent, and imposes cruel and inhumane barriers to individuals seeking protection. As such, we urge the administration to rescind the rule in full.

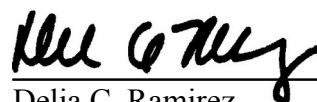
Sincerely,

⁷ *Allowing CBP to Conduct Credible Fear Interviews*, humanrightsfirst.org/wp-content/uploads/2022/10/CBP_Credible_Fear.pdf.

⁸ *Id.*



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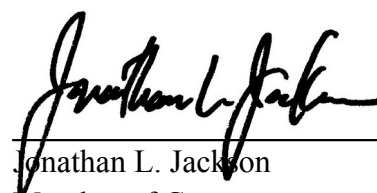
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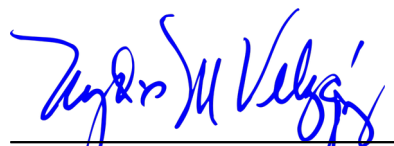
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