

Congress of the United States

Washington, DC 20515

March 21, 2024

The Honorable Alejandro Mayorkas
Department of Homeland Security
300 7th St. SW
Washington, D.C. 20024

Dear Secretary Mayorkas,

We write to follow up on our previous correspondence expressing serious concerns that the Biden administration's expanded use of the Customs and Border Protection mobile application (CBP One) is contravening the rights of asylum seekers and contributing to dysfunction within our immigration system. We call on the Department of Homeland Security (DHS) to take immediate steps to both improve CBP One and resolve accessibility issues to protect the safety of asylum seekers and support border communities and other cities that receive new arrivals.

A year has passed since the implementation of CBP One as the primary mechanism for managing asylum interview requests. While CBP has implemented minor changes to address serious glitches within the app, there are still several critical issues that require immediate attention and resolution. As asylum seekers remain in danger, CBP must address these access issues to ensure safe and humane asylum processing and relief for those at risk.

CBP One Application Limits Access to Asylum

First and foremost, CBP's decision to require asylum seekers to use the still-faulty CBP One app fundamentally undermines the accessibility of the asylum process. Because individuals seeking asylum at our southern border are required to pre-schedule an appointment through the app, the current process obstructs the right to seek asylum by forcing individuals to remain in Mexico while waiting for their asylum cases to be heard. CBP One itself is technologically complex and has significant language limitations, creating inherent barriers for applicants who are not familiar with mobile devices or who speak a language other than the three currently offered in the app. We strongly believe the requirement to use CBP One to apply for asylum contradicts President Biden's Executive Order 14012 directive to "ensure full participation by immigrants and eliminate barriers to accessing government services."

Emboldening Criminal Actors and Endangering Asylum Seekers

To date, many vulnerable individuals have been forced to wait in unsafe and impoverished Mexican border regions for an appointment through CBP One.¹ The appointment system operates like a lottery system, with far fewer appointments than needed. Individuals are only permitted to present their cases at ports of entry that can be hundreds of miles apart. For example, the DeConcini Port of Entry in Nogales, Arizona is the only port that accepts CBP One appointments in the 700 miles between Calexico, California, and El Paso, Texas, and it only

¹ *Inhumane and Counterproductive: The Expansion of Expedited Removal to the Interior and its Impact*, Human Rights First (October 2023), <https://humanrightsfirst.org/wp-content/uploads/2023/10/Inhumane-and-Counterproductive-final-report.pdf>

accepts 100 appointments a day.² This limitation has resulted in prolonged waiting periods, sometimes extending up to six months, forcing families to wait in Mexico in areas rife with criminal activities, including kidnapping, extortion, robbery, and assaults. Requiring asylum seekers to wait for a rare CBP One appointment, available only in a limited number of ports of entry, inadvertently fuels gang violence as criminal groups exploit these vulnerable individuals for financial gain.

The difficulties with CBP One increase the likelihood that asylum seekers will rely on cartel-backed smugglers to enter the United States instead of applying through legal pathways. If these challenges continue, our country could see more tragedies like the June 2022 mass death incident in San Antonio, Texas, where 53 people died after being trapped in the back of a sweltering tractor-trailer. There is also strong evidence that smugglers themselves have been actively spreading misinformation to capitalize on CBP One's faulty implementation. Multiple organizations have reported that smugglers falsely claim that the app will soon be discontinued and suggest that crossing between ports of entry is quicker and more straightforward than waiting for an appointment. There have also been reports of unscrupulous shadow businesses that charge asylum seekers to register for appointments outside of eligible geographic areas in northern or central Mexico. Such deceptive practices, combined with insufficient CBP One appointment availability, confuse asylum seekers about their place in line. At minimum, CBP needs to improve agency communications and outreach to help asylum seekers avoid misinformation and exploitation and reliably navigate the CBP One app.

Language Barriers

Another significant issue with CBP One is the language and technological barriers asylum seekers face. As you are well aware, the demographics of asylum seekers have diversified, including rises in extra-continental asylum seekers arriving at our southern border from Ukraine and Nepal among other countries. Notably, since its launch, CBP One has only been offered in English, Spanish, and Haitian Creole. Many asylum seekers who do not speak these languages find themselves at a significant disadvantage, struggling to access critical information and navigate our complex asylum process. One recent report identified that many African asylum seekers are completely unaware of the CBP One application, and those who are aware are unable to use it due to language barriers.³

Even for individuals who do speak one of the three main operating languages, the app can be difficult to understand. For example, accessing the Haitian Creole version of the app requires navigating initial questions in English or Spanish, and there are poor translations for critical and contextual words like "Customs." Moreover, the Spanish version of the app is not fully or accurately translated. While there have been additions to Russian and Portuguese language factsheets, these languages are not integrated into the app's core sections.⁴ These limitations are extremely problematic because the app is the only way for arriving asylum seekers to schedule an appointment and get screened for asylum. Individuals who cannot use CBP One due to language barriers, technical failures, or other obstacles and present at a port of entry must demonstrate to often-skeptical CBP officials that it was not possible to apply through the app.⁵

² *A Line that Barely Budes: Nogales, Arizona*, Human Rights First (June 2023), https://humanrightsfirst.org/wp-content/uploads/2023/06/A-Line-That-Barely-Budes_Nogales-Arizona-1.pdf

³ *Asylum Policies Harm Black Asylum Seekers*, Human Rights First (February 2024), <https://humanrightsfirst.org/wp-content/uploads/2024/02/Asylum-Policies-Harm-Black-Asylum-Seekers-FACTSHEET-formatted.pdf>

⁴ *CBP One – Ficha Técnica (Português)*, U.S. Customs and Border Protection, <https://www.cbp.gov/document/fact-sheets/cbp-one-ficha-tecnica-portugues>

There are real consequences for individuals who cannot use the app to schedule an appointment. Under the Circumvention of Lawful Pathways (CLP) final rule issued by DHS on May 11, 2023, noncitizens who cross the border outside of a port of entry are presumed ineligible for asylum by immigration authorities.⁶ This rule, along with the challenges associated with accessing CBP One, was found arbitrary and capricious by the U.S. District Court in *East Bay Sanctuary Covenant v. Biden*, because exceptions for not using the app are not meaningfully available.⁷ Despite that, the East Bay ruling has yet to be fully implemented, as the U.S. Court of Appeals for the Ninth Circuit decided on August 3, 2023, to continue the enforcement of the CLP rule.⁸

The final rule issued by DHS and the DOJ in 2023, which states that asylum seekers who arrive at the southern border without any authorization will face a “rebuttable presumption,” is deeply concerning given the serious concerns we have outlined and adds another layer of complexity, danger, and potential exclusion.⁹ The system’s reliance on exceptions, which appear neither meaningful nor accessible, arbitrarily excludes people from accessing the asylum system because of the language they speak or their limited technological literacy.

Accessibility Barriers to the CBP One App

Finally, we urge CBP to address the heavy burden that has been placed on Non-Governmental Organizations (NGOs) to compensate for the federal government’s shortcomings. In border communities, humanitarian organizations that already face funding and resource constraints are additionally providing technical and physical support for CBP One, including access to internet, smartphones, and chargers. This situation underscores the urgent need for CBP to enhance its support mechanisms and ensure that all individuals seeking asylum can do so without undue hindrance. Furthermore, CBP must fulfill its duties and ensure prompt processing of asylum requests and adherence to the National Standards on Transport, Escort, Detention, and Search (TEDS) standards on language access at ports to guarantee that technical and language barriers do not impede an individual’s right to seek protection.

Given the listed challenges, we urge CBP and DHS to implement the following changes:

- **Expansion of Languages:** CBP One should be expanded to include a greater number of languages for all sections of the app, including preliminary questions.
- **Improvement of Translation:** CBP One’s reliance on machine translation has led to mistranslations that jeopardize asylum seekers’ ability to accurately represent their cases. CBP must review and correct these errors, which are particularly prevalent in both the Haitian Creole version of the app and the Russian factsheet. All translations should rely primarily on human translators to ensure that the information is conveyed correctly in an accurate and culturally competent manner.

⁵ *United States of America: Mandatory Use of CBP One Application Violates the Right to Seek Asylum*, Amnesty International, <https://www.amnesty.org/en/wp-content/uploads/2023/05/AMR5167542023ENGLISH.pdf>

⁶ *Fact Sheet: Circumvention of Lawful Pathways Final Rule*, Department of Homeland Security (May 11, 2023), <https://www.dhs.gov/news/2023/05/11/fact-sheet-circumvention-lawful-pathways-final-rule>.

⁷ *East Bay Sanctuary Covenant v. Biden, Summary Judgement Order*, ACLU, <https://www.aclu.org/documents/east-bay-sanctuary-covenant-v-biden-summary-judgment-order>

⁸ *Obtaining Asylum in the United States*, U.S. Citizenship and Immigration Services (August 3, 2023), <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/obtaining-asylum-in-the-united-states>

⁹ *Department of Homeland Security and Department of Justice Executive Office for Immigration Review. “Circumvention of Lawful Pathways*. The Federal Register 88, no. 94 (May 16, 2023). <https://www.govinfo.gov/content/pkg/FR-2023-05-16/pdf/2023-10146.pdf>.

- **Increase in Appointment Availability:** We recommend increasing CBP One appointment slots to address high demand and other access issues outlined in this letter.
- **Removal of Rebuttable Presumption of Asylum Ineligibility:** This policy severely limits access to asylum and has exposed the most vulnerable of individuals to refoulement, insecurity, and violence. We ask that you publish updated data on all cases of asylum seekers who have been able to meet the standards necessary to overturn the presumption of asylum ineligibility.
- **Accounting for Variations in Language Literacy, Digital Literacy, and Reading Comprehension:** It is crucial to accommodate diverse levels of literacy (including digital literacy) and reading comprehension among asylum seekers. Should the administration decide to continue using CBP One as a tool of access to asylum, the agency should strive to make the guidance in the app more accessible and provide visual aids or audio options for those who may have difficulty reading or understanding text, as well as those with limited literacy.
- **Establishment of Clear Pathways for Troubleshooting:** CBP should develop accessible channels (including linguistically accessible channels) for both asylum seekers and supporting organizations to report issues with CBP One and ensure timely resolutions to technological issues.
- **Consistent Information Dissemination:** CBP should prioritize the dispersion of accurate and consistent information about CBP One and the asylum process in border communities and shelters and through supporting NGOs to dispel rumors and misinformation.

We believe these measures are essential to ensure that CBP One meets the balance between efficiency, access, and transparency while also addressing language access issues for asylum-seekers. Additionally, we request that DHS provide and/or make public current data on how frequently the language/other barrier exception is being established in both credible fear interviews (CFIs) and affirmative asylum interviews under the rule. We seek responses to the actions CBP is taking to address the issues outlined above and ask if any of the recommendations have been recently implemented no later than April 15, 2024.

Thank you for your attention to this serious matter, and we look forward to your timely response.

Sincerely,



Raúl M. Grijalva
Member of Congress



Jesús G. "Chuy" García
Member of Congress



Joaquin Castro
Member of Congress



Grace Meng
Member of Congress



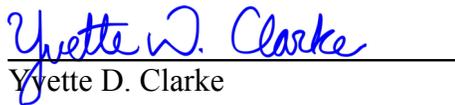
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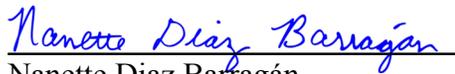
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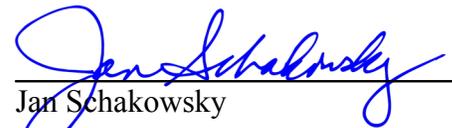
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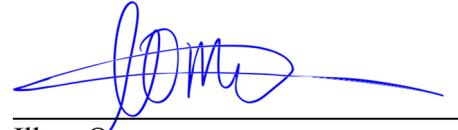
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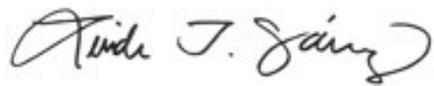
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