

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

March 13, 2023

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

Dear Secretary Mayorkas,

We write to express our serious concerns over this administration's recently announced initiatives that drastically restrict the rights of asylum-seekers at the U.S.-Mexico border, to call on the Department of Homeland Security (DHS) to uphold its obligations under domestic and international law, and to urge you to take immediate steps to resolve the serious equity and accessibility issues migrants are facing when trying to use the CBP One mobile application as the sole means of seeking asylum at southwest border land Ports of Entries (POEs).

First, we urge DHS and the Department of Justice to reverse course on the proposed rule published on February 23, 2023 that would ban most migrants from asylum protection in the United States. If implemented, the rule would create a presumption of asylum ineligibility for individuals who did not apply for, and/or did not receive a denial of, protection in a transit country, and for those who entered between ports of entry at the southern border or attempted to enter at a port of entry without a previously scheduled appointment through the CBP One mobile application. The standard for asylum is well-established under U.S. and international law, and does not discriminate based on manner of entry or immigration status. We are deeply concerned that establishing a higher standard for asylum for people unable to seek and be denied protection in a third country or to obtain an appointment through a mobile application would circumvent this statutory scheme and undermine the fundamental right to asylum, violating the letter and spirit of the law. The administration should withdraw this rule and pursue rational policies that ensure pathways to asylum for all migrants arriving at the southern border

Second, while we recognize the administration's efforts to provide convenient, orderly and lawful pathways to migration at the southern border, we advise you to both diversify methods to achieve this goal beyond the CBP One mobile application and to increase accessibility and usability of this app. DHS announced that individuals seeking to enter the United States under exemptions to Title 42 at southern land POEs should use CBP One to submit information prior to their arrival and schedule appointments starting on January 12, 2023. Since then, our offices have received numerous reports of unusability, inaccessibility, and inequity that have already resulted in grave harm to asylum seekers.

Create an alternative pathway to present at POEs. According to DHS Guidance, asylum seekers or others seeking humanitarian protection cannot be required to submit advance information in order to be processed at a southwest Border land POE.¹ However, the app is now a requirement to access the Title 42 exemption process (and, in the future, asylum processing at ports of entry), a photo is required from all migrants, and NGOs may no longer provide help with pre-submittal of information, which must come from an individual's smartphone.²

Under both U.S. and international law, an appointment is not required to seek asylum. For as long as Title 42 has been enforced, CBP has allowed certain vulnerable asylum seekers to seek exemption from the policy and enter the United States. As it stands today, CBP One requires attestation to direct harm in Mexico and provides no pathway for asylum-seekers escaping harm in their home countries including due to group membership status such as sexual orientation, gender identity, religious belief, or race.

Additionally, many migrants are either unable to access the CBP One app, or, if they are able to log in to the app, are unable to access appointments due to their extremely limited availability. Many migrants do not have access to high-speed internet or high-end technology such as the smartphones with specific capabilities required to download the CBP One application.³ Further, our offices have received numerous reports of appointment slots being filled within seconds of their release at 8:00 am each morning, creating grave concerns about the safety of individuals who are particularly vulnerable or facing medical emergencies or other crises.

We urge you to take all steps possible to ensure that people seeking asylum at POEs are provided access in accordance with U.S. refugee law and are not turned away when they have not used, or been able to use, CBP One to make an appointment. With Title 42 in effect, we also urge you to follow CBP's written commitment to make admissibility and processing determinations on a case-by-case basis at the POE, and ensure that port directors and CBP officers retain discretion to prioritize processing of migrants based on need, medical emergency, vulnerability, or other humanitarian factors for which we owe them a statutory duty, in order to ensure individuals who

¹ *Guidance for Management and Processing of Undocumented Noncitizens at Southwest Border Land Ports of Entry*, U.S. Customs and Border Protection (Nov. 1, 2021), <https://www.cbp.gov/sites/default/files/assets/documents/2021-Nov/CBP-mgmt-processing-non-citizens-swb-lpoes-signed-Memo-11.1.2021-508.pdf>. Indeed, A 2021 information collection notice assured that the use of CBP One as “voluntary,” saying photos would only be required from those migrants that “choose to provide advance information,” and that, even upon full roll-out of the application, NGOs would still be able to help individuals with the process that needed it. <https://www.federalregister.gov/documents/2021/09/28/2021-20988/collection-of-advance-information-from-certain-undocumented-individuals-on-the-land-border>.

² *Supra*, note 1.

³ CBP One Mobile Application, U.S. Customs and Border Protection, *NEW: Submit Advance Information and Schedule an Appointment Capability for Non-Citizens without Appropriate Travel Documents*, <https://www.cbp.gov/about/mobile-apps-directory/cbpone>.

are unable to secure appointments via CBP One are able to apply for exemption and seek asylum.

Make Critical Changes to App Procedures. We also advise you to immediately increase the accessibility and usability of the app by addressing the following issues.

Keep all families together. The current process for submitting information and scheduling appointments in CBP One makes it all but impossible for a family to get a block of appointments together, as each family member must book an appointment and appointment blocks are not set aside for families, leading to de facto priority for single adults. Attestation to harm in the third country of Mexico also presents families with a heightened standard that does not align with the vulnerabilities under Title 42.

Make migration processing technology accessible. CBP One requires high levels of technological literacy, and its interface is only available in English, Spanish, and Haitian Creole languages, leaving asylum seekers that read and write in other languages unable to use it or forced to pay high fees to third parties for paper instructions in their native language. We urge you to immediately add simple instructions to the application while making it accessible in other common languages read and written by asylum seekers presenting at the ports, using recent historical data to prioritize the order of translation efforts. We also urge you to address accessibility issues for asylum seekers who lack literacy in any language, require help due to disability, or are blind.

Cease reliance on third-party photograph comparison technology. CBP One requires users to submit photos as part of the information entry process and the facial comparison technology it has used is far more likely to misidentify people of color, children, and transgender migrants. Some migrants, particularly those with darker skin tones, have reported that CBP One rejects required photos, delaying or rejecting their applications. Similarly, there have been many problems associated with capturing images of babies and small children. Transgender migrants may present differently at the border than they did at the time of photo capture, leading to problems at the POE. We recommend ceasing use of the photo comparison tool until and unless the technology can be used equitably and to ensure vulnerable groups can seek Title 42 exemptions, even if their faces are not recognized by CBP One's facial comparison technology.

Families traveling thousands of miles to seek safety abroad are entitled to dignity and respect when they arrive at our border. While technology can be helpful to facilitate processing, it should never be used to create a tiered system that treats groups differently according to economic status, gender identity, age, language, nationality, or race.

We ask that the administration develop alternative pathways to apply for Title 42 exemption appointments immediately, while rapidly disseminating concise and accessible information about

both how to use the app and the availability of alternative methods for individuals who do not have access to the application. We believe these measures are essential to ensure that CBP One meets the balance between efficiency, access, and transparency for asylum-seekers approaching our southwest border.

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

Sincerely,



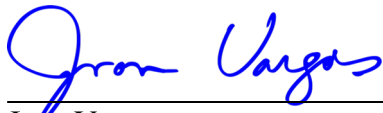
Jesús G. "Chuy" García
Member of Congress



Raúl M. Grijalva
Member of Congress



Eleanor Holmes Norton
Member of Congress



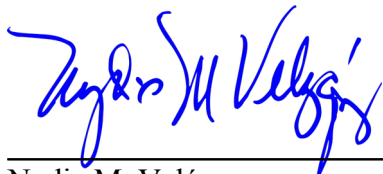
Juan Vargas
Member of Congress



Adriano Espaillat
Member of Congress



Cori Bush
Member of Congress



Nydia M. Velázquez
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Tony Cárdenas
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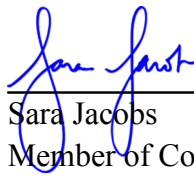
Rashida Tlaib
Member of Congress



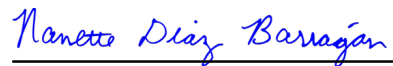
Joaquin Castro
Member of Congress



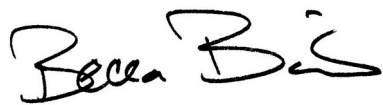
David J. Trone
Member of Congress



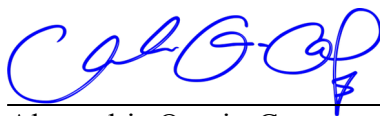
Sara Jacobs
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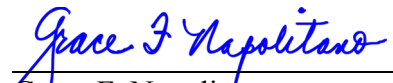
Nanette Diaz Barragan
Member of Congress



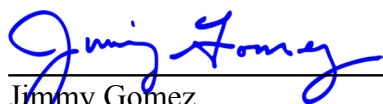
Becca Balint
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Alexandria Ocasio-Cortez
Member of Congress



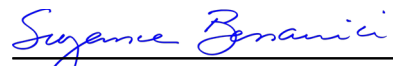
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Valerie P. Foushee
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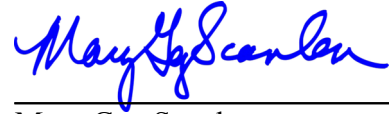
Rick Larsen
Member of Congress



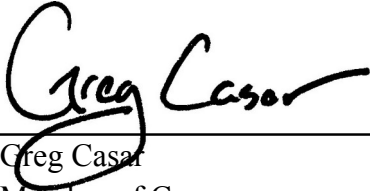
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Mary Gay Scanlon
Member of Congress



Greg Casar
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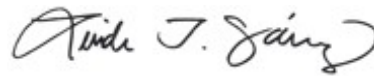
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