

July 13, 2021

Hon. Alejandro N. Mayorkas
Secretary of Homeland Security
U.S. Department of Homeland Security
2707 Martin Luther King Jr. Avenue, SE
Washington, DC 20528
By Email

Dear Secretary Mayorkas,

We, the undersigned organizations, write to urge the Department of Homeland Security (DHS) and Immigration and Customs Enforcement (ICE) to stop targeting asylum seekers fleeing persecution and torture for detention and deportation. Many of our organizations [wrote](#) to you on June 28, 2021 urging your administration to change course on the enforcement “priorities” designated in the interim ICE [guidance](#) on February 18, 2021. These priorities target broad groups of immigrants for deportation, categorically deny them the favorable exercise of prosecutorial discretion, and rip apart families and communities. We now write to emphasize the serious harm that these enforcement priorities inflict on people requesting asylum protection in the United States.

The interim enforcement guidance targets for enforcement, deportation, and detention any individual who enters or attempts to enter the United States without inspection on or after November 1, 2020 as well as any individual who was not present in the United States prior to November 1, 2020. This so-called “border security” enforcement priority effectively adopts the last administration’s demonization of people seeking protection at the U.S.-Mexico border. There is no justification for singling out for enforcement this group of individuals, many of whom are asylum seekers, simply because of when and where they sought safety in the United States.

The Obama administration’s designation of asylum seekers as enforcement priorities led to the widespread and often arbitrary [detention](#) of asylum seekers across the country and sparked sharp [criticism](#) by the United Nations and international human rights authorities.

Asylum seekers fleeing persecution and torture have a [legal right](#) to request [protection](#) at a U.S. port of entry or after they have entered the United States. Many [flee](#) across the border without inspection in part because asylum access has not been restored at ports of entry due to the Title 42 expulsion policy that your administration has continued, which [misuses](#) public health to block and expel asylum seekers to danger in Mexico and their countries of persecution. Human Rights First has tracked [3,250](#) reports of kidnappings and other violent attacks against asylum seekers and migrants blocked or expelled to Mexico in the first five months of the Biden administration. This policy, as well as other illegal U.S. policies including the Migrant Protection Protocols (MPP) and metering, have stranded tens of thousands of asylum seekers in Mexico, unable to

request protection, and have led individuals and families to make desperate choices to reach safety.

Punishing recently arrived asylum seekers by designating them as enforcement priorities is cruel and inhumane. It inflicts further trauma on those who have left everything behind to find safety. It is also perverse in light of U.S. government policies that have deliberately forced asylum seekers to remain outside of the United States for months or years. Treating people seeking refugee protection as priorities for detention and deportation would moreover flout U.S. legal [obligations](#) under the Refugee Convention and Protocol. The Refugee Convention makes clear that people seeking refuge should not be penalized. UNHCR [guidelines](#) stress that “the use of detention is, in many instances, contrary to the norms and principles of international law” and specifically confirm the general principle that “asylum-seekers should not be detained.” Not only is the United States a member of the UNHCR Executive Committee, but it helped lead efforts to draft the Refugee Convention and regularly encourages other countries to uphold their legal obligations under refugee law.

Immigration detention numbers have skyrocketed since President Biden took office, with most of the people detained being recent arrivals and likely asylum seekers. ICE has [increased](#) the number of people in its facilities by *more than 90 percent*, from 14,195 individuals at the start of the Biden administration to [27,008](#) as of July 8, 2021. The [vast majority](#) of individuals--approximately 87 percent--detained by ICE in May 2021 were transferred from Customs and Border Protection (CBP) custody, which means that the administration continues to target asylum seekers and migrants at the border for detention and removal based on flawed enforcement priorities. Detained asylum seekers who have passed credible fear screenings make up at least [15 percent](#) of all immigrants in ICE custody, with the number soaring from 1,700 to more than 4,000 in the past two months. The total number of detained asylum seekers, which includes those waiting for their credible fear interviews and those not subjected to expedited removal, is much higher.

DHS is not required under U.S. law to detain asylum seekers and has existing [legal authority](#) to release people to communities where they can safely live with family and friends to wait for their cases to be decided. Detaining asylum seekers [inflicts](#) further psychological and physical [harm](#), exacerbates trauma, blocks access to legal counsel, and makes it extremely difficult to prepare and present an asylum claim. Medical studies have [repeatedly confirmed](#) that immigration detention is dangerous and inhumane. Indefinite immigration detention may cause such severe health problems that it regularly [rises](#) to the level of of cruel, inhuman, and degrading treatment, especially for survivors of torture, for whom “even detention for a short period of time can be extremely harmful, bringing the original torture experience back to mind and exacerbating their mental health symptoms,” according to the Center for Victims of Torture. The COVID-19 pandemic made the horrors of detention all the more apparent: the government’s failure to

release many immigrants from crowded immigration detention centers [led](#) to widespread disease transmission, serious illness, and death.

Targeting asylum seekers for enforcement has also proven wholly unnecessary, as studies have [repeatedly confirmed](#) that asylum seekers overwhelmingly appear for hearings after they are released from DHS custody. Appearance rates are even higher where asylum seekers are represented by counsel. For example, [96 percent](#) of non-detained immigrants represented by a lawyer attended all of their hearings from 2008 to 2018.

As a result of the current flawed enforcement guidance, ICE detention centers overseen by the New Orleans ICE field office, for instance, are [predominantly](#) jailing asylum seekers who recently sought safety in the United States. In recent months, the population numbers at these prisons have [grown](#) from 1,000 to 6,000, largely [due to](#) asylum seekers fleeing across the border to reach safety after being blocked or expelled under the Title 42 expulsion policy. The administration has subjected many of these asylum seekers to the [flawed](#) expedited removal process and forced them to wait [weeks or months](#) in detention for a credible fear interview. Asylum seekers recently detained in these prisons have endured [horrific conditions](#), including lack of food, toilets, and hot water; physical assault by guards; and denial of medical care. In Aurora, Colorado, attorneys report that in the past two months the number of detained asylum seekers has exploded to 600, up from a few at any given time, and nearly all are subjected to expedited removal.

Asylum seekers who have been unnecessarily detained by ICE under the interim enforcement guidance rather than being released to live in safety in their communities while they wait for their asylum proceedings, include:

- A 23-year-old gay Cuban asylum seeker who entered the United States in February 2021 was detained by ICE for more than two months despite having a sponsor, his mother, who was ready to receive him. Even after an asylum officer determined that he had a credible fear of persecution, ICE continued to jail him for another month and eventually released him but with an invasive ankle shackle monitor. The man had fled Cuba due to his forced inscription in the Cuban military and fear of persecution as a gay man in the military.
- ICE has been jailing a Mexican asylum seeker in a Colorado detention center since she fled to the United States in April 2021 to escape physical, sexual, and psychological abuse by her partner. ICE continues to detain her even though she passed a credible fear screening in June and has family members who are ready to receive her. ICE is arbitrarily requiring that her sponsors amend the lease agreement where they live to include the woman as an authorized occupant, which has forced her to languish in detention for longer.

- In late April 2021, U.S. immigration officials separated a 27-year-old Honduran asylum seeker from his family after they were processed at a port of entry through a Title 42 exemption and have detained him in Laredo since. In late June, ICE denied his parole request. The man fled Honduras with his family after his partner suffered a kidnapping and the family received death threats for filing a police complaint. He has been scheduled for an individual hearing this month, which he must prepare for while incarcerated.
- A 33-year-old gay activist and political dissident from Angola has been languishing in immigration detention since April 2021 despite passing a credible fear interview and suffering serious medical complications from the persecution he suffered. He was forced to wait over a month for the credible fear interview to be conducted. In detention the man has suffered inhumane conditions including homophobic verbal abuse by others in detention, poor nutrition, and medical neglect by staff at the facility in Louisiana where he is detained. A hernia in the man's testicles that resulted from the persecution he endured in Angola causes severe pain and makes it difficult for him to walk. In late June, he was finally taken to a hospital only to be returned to the detention facility and told to endure the continued pain with only ibuprofen as treatment.
- In mid-June 2021, U.S. immigration officials separated an Afro-Honduran asylum seeker from the Garifuna community from his pregnant wife and five children after they were processed under a Title 42 exemption and detained him at La Palma Correctional Facility. As of early July, he remains detained and separated from his family.

DHS frequently refuses to release asylum seekers from detention and imposes unreasonable requirements for granting parole. For instance, practitioners report that in Aurora, Colorado, ICE applies inconsistent and arbitrary requirements to qualify for parole, in some instances mandating that detained asylum seekers provide a lease agreement from their sponsor which lists the asylum seeker's name, and may also insist that the housing includes sufficient bedrooms for each person listed on the lease agreement. Such requirements are invasive, burdensome, and unreasonable, and trap asylum seekers in prolonged detention.

As many of our organizations wrote in the June 28, 2021 letter, we urge the agency to leave behind the "enforcement priorities" framework and instead to designate categories of individuals for protection from enforcement. DHS must treat people as human beings, not targets. Targeting and scapegoating asylum seekers was a hallmark of the Trump administration, and we urge your administration to instead welcome people fleeing persecution to safety and treat them with dignity.

Sincerely,

ACLU Immigrants' Rights Project
Al Otro Lado
Aldea - The People's Justice Center

American Friends Service Committee
American Immigration Council
Asian Americans Advancing Justice - Atlanta
Asylum Seeker Advocacy Project (ASAP)
Bellevue Program for Survivors of Torture
Bridges Faith Initiative
Catholic Legal Immigration Network, Inc.
Center for Civic Policy
Center for Gender & Refugee Studies
Center for Victims of Torture
Christian Reformed Church Office of Social Justice
Church World Service
Coalition on Human Needs
De Novo Center for Justice and Healing
Disciples Immigration Legal Counsel
Espacio Migrante
Florence Immigrant and Refugee Rights Project
HealthRight International
Houston Immigration Legal Services Collaborative
Human Rights First
Human Rights Watch
Humanitarian Outreach for Migrant Emotional Health (H.O.M.E.)
Immigrant Action Alliance
Immigrant Legal Resource Center
Innovation Law Lab
Instituto para las Mujeres en la Migración (IMUMI)
International Refugee Assistance Project (IRAP)
International Rescue Committee
La Union del Pueblo Entero (LUPE)
Latin America Working Group (LAWG)
Legal Aid Justice Center
Migrant Center for Human Rights
Mount Sinai Human Rights Program
National Immigrant Justice Center
National Immigration Law Center
National Immigration Project (NIPNLG)
NETWORK Lobby for Catholic Social Justice
Partnerships for Trauma Recovery
Project Blueprint
Refugees International

Rocky Mountain Immigrant Advocacy Network
Survivors of Torture, International
Tahirih Justice Center
The Advocates for Human Rights
Torture Abolition And Survivors Support Coalition International (TASSC)
Utah Health & Human Rights

CC:

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