

# “I FELT NOT SEEN, NOT HEARD”

Gaps in Disability Access at USCIS for  
People Seeking Protection

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## Overview

People seeking asylum in the United States navigate a complex process to apply for asylum and present their case, with potentially life-threatening consequences if they are denied protection and ordered deported. Under federal [law](#) and [regulations](#), government agencies must ensure that asylum seekers with disabilities<sup>1</sup> have a meaningful opportunity to apply for asylum, receive reasonable accommodations to enable them to participate in the process, and do not face disability discrimination at any stage of their asylum proceedings. However, the United States has a long [history](#) of detaining and deporting people with disabilities without a meaningful opportunity to present their case.

U.S. Citizenship and Immigration Services (USCIS) of the Department of Homeland Security (DHS) handles a range of asylum matters, including adjudicating many asylum applications, conducting preliminary fear screenings for people placed in the expedited removal process, and obtaining biometrics to run background and security checks. For example, people in the United States who are not in deportation proceedings may apply for asylum with USCIS (referred to as applying “affirmatively”), while those in deportation proceedings may apply for asylum before the [immigration court](#) (which is part of a separate federal agency). USCIS also adjudicates the asylum applications of unaccompanied children regardless of whether they are in deportation proceedings. Some asylum seekers are placed in “expedited removal” when they seek protection at U.S. borders or airports and must pass a “credible fear interview” (CFI) with USCIS to avoid summary deportation and have an opportunity to apply for asylum.

The Rehabilitation Act requires USCIS to ensure disability access and provide reasonable accommodations throughout these different processes, while the Constitution [guarantees due process](#) in these proceedings.

Pursuant to federal disability laws, regulations, and mandates from DHS, USCIS has recently taken important steps to establish a disability access plan, implement procedures for requesting reasonable accommodations, and provide disability accommodations trainings to employees. These measures are critical, but gaps remain in the agency’s compliance with the Rehabilitation Act and Constitutional due process protections.

Despite the steps USCIS has taken, some people with disabilities continue to face discrimination and barriers as they navigate the asylum process at USCIS, as documented in this report. These barriers include: denials of reasonable accommodations; hostile, discriminatory, and inappropriate interview questions; and denials of protection without a meaningful opportunity to seek asylum.

To ensure USCIS compliance with federal law, Human Rights First recommends urgent steps to improve disability access. DHS and USCIS should take steps to:



<sup>1</sup> There is ongoing [discussion](#) within the disability community about using person-first language (e.g. person with autism) versus identify-first language (e.g. autistic person). This report alternates between both approaches.

- Designate disability access coordinators in each asylum office and make their contact information publicly available and easily accessible;
- Provide increased and regular disability training for USCIS asylum officers and other staff;
- Clarify and expand existing USCIS guidance on disability access including strengthening the process for requesting reasonable accommodations and appealing denials; and
- Create policy requiring asylum officers to affirmatively inquire into whether an applicant has a disability during both asylum adjudication and credible fear interviews, engage in an informal, interactive process to provide accommodations, and ensure that people with disabilities are taken out of the expedited removal process and given an opportunity to apply for asylum.

Human Rights First's full recommendations are included below in this report's recommendations section. The organization has also issued detailed [recommendations](#) to the Department of Justice (DOJ) and the Executive Office for Immigration Review (EOIR) with respect to access for people with disabilities in U.S. immigration courts.

This report is based on research conducted by Human Rights First between September 2022 and August 2023, including 39 interviews with attorneys, advocates, and people seeking asylum, and information on 86 immigrants with disabilities in Arizona, California, Colorado, Florida, Illinois, Louisiana, Massachusetts, New Jersey, New York, North Carolina, Texas, Vermont, Washington D.C., and Virginia who participated in credible fear interviews, asylum office interviews, or biometrics appointments; publicly available government documents; civil rights violations complaints; published investigations by other human rights organizations; and media reports.

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## Key Findings

- **Though USCIS has taken important steps to establish disability access policies, it fails to consistently comply with its own policies and must take further steps to ensure disability access in accordance with the Rehabilitation Act.** In full asylum adjudications and credible fear screenings, some people seeking asylum have faced disability discrimination and due process violations, including denial of reasonable accommodations, hostile and inappropriate interviews, and denial of protection without a meaningful opportunity to present their case. USCIS has wrongfully denied reasonable accommodations to some disabled asylum applicants including in cases where their attorneys filed formal, detailed requests and engaged in extensive advocacy with USCIS.



- **In asylum adjudications, the USCIS asylum office has denied reasonable accommodations to some applicants with mental, physical, and cognitive disabilities in violation of federal disability law.** For instance, the asylum office recently denied reasonable accommodations for: a gay Jamaican man with intellectual disabilities who was not questioned by the asylum officer as to material aspects of his asylum claim and was denied extra time for his interview; a Mexican child who has seizures when he is anxious or has to discuss past trauma, whose attorney's repeated requests—asking USCIS to expedite the interview and/or rely on the child's detailed declaration and supporting evidence instead of requiring him to testify—were ignored for years, leading the child to suffer a seizure right before the interview; and a d/Deaf<sup>2</sup> man from Mexico whose request to communicate through his own interpreters was denied, forcing him to rely on a government-contracted interpreter who was not competent to translate and rolled his eyes, yelled, and used a sarcastic tone with the applicant.
- **Some asylum officers have expressed hostility and bias when interacting with people who have disabilities, asked inappropriate questions, and ignored concerns raised by attorneys regarding mistreatment of clients with disabilities during their interviews.** Recent misconduct by asylum officers during asylum adjudications includes: laughing inappropriately in response to an Afghan adult woman who has severe autism and is largely non-verbal when she struggled to answer complex questions; fixating on a Ugandan man's bipolar disorder and instead of asking questions about his asylum claim—which was based on his LGBTQ+ activism—asking detailed questions about his diagnosis, his medications, and how having bipolar disorder impacts his day-to-day life; asking a 15-year-old Black autistic child from Honduras complex questions that were inappropriate given his age and disability and then rolling her eyes when the child's attorney attempted to help the child understand a question; and repeatedly asking a 16-year-old d/Deaf Honduran child who grew up without sign language communication or any education complex questions that the child could not understand, even though the government interpreters repeatedly intervened and expressed their concerns.
- **Disabled people seeking asylum who are placed into the [flawed](#) expedited removal process and forced to pass a fear interview with an asylum officer to avoid summary deportation experience disability discrimination and due process violations.** Fear interviews are typically conducted telephonically in detention, with little to no access to counsel, inadequate medical and psychological care, and dangerous, sometimes life-threatening conditions—depriving people of a fair opportunity to disclose disabilities or learn about disability protections under federal law. Even where evidence of a person's disabilities is documented or apparent, the asylum office has in some cases blatantly ignored evidence of disabilities and competency concerns or failed to explore and identify such concerns. **The risks that people with disabilities face are exacerbated by the Biden administration's new [asylum ban](#) and evisceration of the critical safeguard of filing requests for reconsideration of erroneous negative credible fear interviews.** The expedited removal process continues to result in the deportation of asylum seekers with



disabilities who did not have a meaningful opportunity to share their asylum claim, including an Indigenous Guatemalan woman with epilepsy and cognitive disabilities whose inability to understand questions was apparent in the CFI notes and decision; a man with a traumatic brain injury (TBI) who had severe memory loss, head pain, and difficulty concentrating during his CFI and was subjected to the Biden administration's asylum ban; and a Colombian woman who, due to the Biden administration's restrictions on requests for reconsideration, was denied reconsideration of a negative CFI decision where the asylum officer failed to take into account the impact of severe trauma—including being raped—on her testimony and determined that she was not credible because of a minor inconsistency about a date.

- **People with physical disabilities who are seeking asylum have faced additional barriers when required to attend biometrics appointments without reasonable accommodations, in violation of USCIS policy.** USCIS has scheduled biometrics appointments at service centers that are located hours away from applicants' homes, with no accessible transportation, and in some cases has refused or ignored requests to reschedule or change the location of the biometrics appointment to a closer service center in order to enable the person to safely travel and attend. Even where a person is represented, requests for accommodations may require extensive advocacy by the attorney. For instance, an attorney representing a Honduran man who has physical disabilities that impaired his growth and limit his mobility spent months making multiple phone calls, submitting numerous online requests, and filing a formal letter with USCIS before the agency finally changed the location of the biometrics appointment to a service center closer to the man's home; and a blind asylum seeker who cannot drive and had no access to public transit in the rural region where he lived was denied when his attorney requested that USCIS change the location of his appointment to enable him to safely travel.

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## Recommendations

### To the Biden administration, DHS, USCIS, Immigration and Customs Enforcement (ICE), and Customs and Border Protection (CBP):

- **Enhance monitoring and oversight of all DHS subagencies' adherence to their own disability policies** through strengthening existing oversight mechanisms, conducting regular [evaluations](#), and trainings.
- **Stop using the expedited removal process against people with disabilities as well as other people seeking protection**, which deprives people of a meaningful opportunity to share information about their asylum claim and increases the risk of deportation to danger, and in particular harms disabled people who are often unable to share information about their disabilities and are forced to participate in their interviews without necessary accommodations.



- **Instead of using expedited removal, parole people seeking asylum into the United States**, which would allow them to seek full adjudication of their asylum claim before the USCIS asylum office.
- To the extent that U.S. agencies continue to use expedited removal, if DHS, CBP, ICE, or USCIS become aware at any point that an asylum seeker in expedited removal has a disability, **the agency should, in coordination with other agencies, immediately take them out of the expedited removal process and ensure that they have an opportunity to seek full adjudication of their asylum claim before the USCIS asylum office.** Where asylum seekers have already been referred, or are in, full removal proceedings, those proceedings may be terminated or adjourned with the consent of the applicant to allow them to apply for asylum with the USCIS asylum office.
- **Do not conduct credible fear or reasonable fear interviews in ICE or CBP jails, as detention exacerbates the fundamental flaws of expedited removal** by subjecting asylum seekers to woefully deficient and horrendous conditions of confinement, pushing them to undergo CFIs without adequate interpretation and disability accommodations, and cutting them off from legal representation and information, which results in wrongful negative credible fear determinations.
- **Rescind recent regulatory provisions that eliminate critical safeguards in the expedited removal process.** This includes rescinding the May 11, 2023 Circumvention of Lawful Pathways rule (“asylum ban”) in its entirety and eliminating the regulatory provision in the March 29, 2022 rule (“asylum processing rule”) that imposes dangerous restrictions on requests for reconsideration of negative credible fear determinations—eviscerating a crucial safeguard that has [prevented](#) the erroneous deportation of people with disabilities.
- In compliance with the CBP [Disability Access Plan](#), which states that it is CBP policy to engage in an “interactive and individualized process to identify reasonable accommodations and modifications to allow participation in CBP’s programs and activities,” **develop a screening process to identify individuals with disabilities and ensure that they are accommodated, and ensure that this identification is shared with other immigration agencies with which those individuals will be interacting, including ICE, USCIS, and EOIR.**

To USCIS:

**Designate disability access coordinators in each asylum office and field office.**

- In line with existing USCIS [policy](#), designate a disability access coordinator in each asylum office and field office who is trained in federal disability law and USCIS disability policy and **ensure that their contact information is publicly available, disseminated, and prominently posted.** While current policy requires a Public Disability Access



Coordinator to consult with USCIS and concur on any accommodation denial or alternative accommodation offered, there is no easily accessible public information on who has been designated as a disability coordinator, their training in disability law and policy, or contact information to enable applicants and their attorneys to consult with the coordinator regarding accommodations requests.

#### **Internal monitoring and oversight of accommodation requests and interviews.**

- Track and publish statistics regarding accommodation requests, denials, appeals, and resolutions of appeals. Institute or, if existing, publish, an internal review and appeals process for accommodation request denials.
- Increase internal oversight on the conduct of asylum office and credible fear interviews by asylum officers, particularly in cases where the applicant has a documented disability, to ensure compliance with standards, identify situations of misconduct, and understand whether additional trainings are needed.

#### **Engage with the disability community.**

- Host regular stakeholder engagements to hear from impacted communities about accommodations and disability access issues, including regular stakeholder engagements specifically on the asylum process.

#### **Issue policy and provide regular trainings to ensure disability access in asylum adjudications.**

- Asylum officers and other USCIS staff should receive regular training on:
  - Identifying applicants with disabilities, communicating, and understanding how disabilities, including mental health and cognitive challenges, may impact a person's ability to present their case;
  - Reviewing and promptly responding to all accommodations requests including those submitted through the USCIS accommodations request online tool, by phone, or informally through other means, such as where a person requests accommodations at the start of or during an interview, in line with [policy](#) requiring USCIS to generally decide requests within seven days of receipt and encouraging officers to provide reasonable accommodations requested by walk-ins;
  - Generally cultivating a non-adversarial [environment](#), including offering breaks during all interviews and using a professional and neutral tone in all interactions;
  - Interviewing people with disabilities, including mental health, cognitive, and intellectual disabilities, with sensitivity, compassion, and flexibility, including, for example, by inquiring into what steps could be taken to make the applicant comfortable, not using hostile or aggressive tones or words, refraining from body





language or other nonverbal cues that could express impatience or other negative emotions, and displaying patience and willingness to rephrase or repeat questions;

- The complexities of d/Deaf language acquisition, Deaf culture, and interviewing a d/Deaf or hard of hearing person, including where they have other disabilities or are a child;
- The importance of deviating from scripted questions in some situations, including avoiding questions that are inappropriate for or do not make sense for the person because of their disability and/or other vulnerability (such as age), in compliance with existing USCIS [guidance](#) to be “flexible...adapting your questioning to fit the situation,” and to “use questions that are clear, short, and simple.”
- USCIS should further develop its disability policy and issue guidance to clarify existing policy, including:
  - Institute a requirement that officers conducting interviews affirmatively ask people about whether they have a disability based on the definition of a disability under federal law<sup>2</sup>, by, for example, reading the definition out loud, and if they answer affirmatively or if they have previously indicated that they have a disability, engage in an interactive and informal process to identify and provide any reasonable accommodations;
  - Add a question on the I-589 Application for Asylum and Withholding of Removal and on other forms submitted in advance of interviews or other interactions with USCIS that allows the applicant to indicate whether they have a disability, and ensure that this question uses simplified, non-technical language to describe the definition of a disability under federal law and informs the applicant about the process for requesting accommodations;
  - Make the disability accommodations landing [page](#) available in common languages including French, Haitian Creole, Portuguese, Russian, and Arabic in addition to English and Spanish, to ensure that applicants can access information about the reasonable accommodations process;
  - Clarify on the accommodations landing page that asylum applicants may now use the accommodations request online [tool](#) and ensure that all information on the USCIS website reflects that asylum applicants may use the tool (for instance, a computer-generated virtual assistant called “Ask Emma” still indicates as of September 2023 that asylum applicants must call and cannot use the tool);
  - Provide asylum applicants other options for appealing denials of accommodation requests in addition to the current policy of instructing applicants to call the USCIS

<sup>2</sup> Under the [Rehabilitation Act](#), a person with disabilities is defined as anyone who has a physical or mental impairment that substantially limits one or more major life activities, has a history or record of such an impairment, or is perceived by others as having such an impairment.



Contact Center, including permitting applicants to informally or formally appeal denials directly to the Public Disability Access Coordinator;

- Require USCIS to respond to accommodations requests in writing and with an individualized explanation of any denial, and provide in the denial letter contact information for the Public Disability Access Coordinator who concurred with the denial, to allow the applicant and their attorney to appeal the request and/or discuss any alternative accommodations;
- Where a disabled applicant cannot provide their own interpreter or other disability accommodation, the government should provide it as an accommodation. In line with existing USCIS [policy](#) of providing d/Deaf interpretation, USCIS should provide Certified Deaf Interpreter (CDI) and/or relay team interpretation when requested. However, USCIS should not restrict d/Deaf applicants from bringing their own interpreters, even in cases where USCIS policy requires applicants to generally use government-contracted interpreters (such as the temporary [rule](#) implemented during the COVID-19 pandemic), because some d/Deaf people communicate most effectively when working with an interpreter with whom they have a pre-existing working relationship, particularly where they are not fluent in sign language;
- Ensure that written materials are available in Braille, large print, or other accessible format upon request;
- Ensure that digital communications like emails and the USCIS website are accessible for anyone using assistive technology, including for blind and low vision people who use screen readers.

**To the extent that U.S. agencies continue to wield the expedited removal process against people seeking protection, avoid subjecting people with disabilities to expedited removal, and ensure they have an opportunity to apply for asylum.**

- Issue guidance instructing asylum officers conducting credible fear interviews to, within 48 hours of learning that someone has a disability, take the person out of the expedited removal process. This guidance should also instruct asylum officers to affirmatively ask people at the start of the CFI if they have a disability, which could include reading out loud the statutory [definition](#) of a federal disability and asking the applicant if they have a disability or a mental or medical health issue. If they do have a disability, the interview should be paused, and the person should be taken out of expedited removal and permitted to seek full adjudication of their asylum claim with the USCIS asylum office.
- Issue guidance to clarify that at any point that the asylum office receives information that an asylum seeker underwent a fear interview while they had a disability that impacted their ability to participate in the interview (whether or not the disability was identified at the time), the asylum office should reverse the negative fear determination and ensure that the person can pursue full adjudication of their asylum claim ,



regardless of limitations placed on requests for reconsideration by the asylum ban and the asylum processing rule.

- Make public existing [guidance](#) that directs asylum officers to issue a Notice to Appear (NTA) for certain individuals in the credible fear process who have mental health concerns;
- While people with disabilities are forced to undergo expedited removal, provide new and strengthened training and guidance for asylum officers conducting fear interviews to ensure that officers comply with their statutory duties under federal disability law, including sensitive and contextually appropriate interviews of people with disabilities, identifying competency concerns, and providing accommodations.
- Make publicly available information that USCIS [tracks](#) regarding when the asylum office is unable to complete a CFI because the individual is unable to effectively communicate due to a mental or physical condition. This information should be disaggregated by nationality, race, whether the person was represented at the interview, and whether an NTA was issued.
- Work with ICE and CBP to develop a mechanism to share all medical and psychological records and other information related to a person's competency and disabilities with the relevant USCIS officer before the asylum office conducts a CFI, to the extent that agencies have not already developed these procedures, and if a mechanism is already in place, share information about these processes with the public and seek input from advocates and other stakeholders on how they can be strengthened.

**Ensure that USCIS provides accommodations to attend biometrics appointments.**

- Instruct USCIS staff to schedule biometrics appointments at the service center located closest to the applicant's zip code.
- Regularly train all staff, including those staffing the USCIS Contact Center phone lines, on accommodating people with disabilities, including instructing staff to generally reschedule or change the location of a biometrics appointment where a person requests the change on the basis of their disability.
- Issue policy stating that if someone has a biometrics appointment notice, they can walk into any service center and complete the appointment there, given the difficulty of accessing appointments that are often automatically scheduled at locations that may be inaccessible for some people with disabilities.

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## Background



People seeking asylum and other migrants with disabilities face unique challenges in their home countries, in their journeys to the United States, and upon arrival in the United States.

Studies have estimated that approximately [fifteen percent](#) of the global population has disabilities. The Centers for Disease Control and Prevention in the United States estimates that approximately 1 in 4, or [26 percent](#) of people in the United States have a disability. Among migrating people, including people seeking asylum, the percentage of people with disabilities globally may be [even higher](#) than these estimates due to the effects of persecution, torture, and trauma.

People with disabilities and their family members are often [targeted](#) for brutal violence in their home countries because of their disabilities, leading them to [flee](#) to seek safety. The migratory journey can also be disabling. Across the world, migrants cross harsh and unsafe [conditions](#) including deserts, rivers, and oceans in pursuit of safety. Those who survive the journey sometimes have lasting physical or mental disabilities caused or exacerbated by the trauma they have suffered. Many disabled people experience [additional harm](#) when they seek safety due to U.S. immigration policies that may further exacerbate mental and physical disabilities.

Persecution in home countries can cause or exacerbate mental and physical disabilities. For example, traumatic brain injury is one of the [most common injuries](#) sustained by asylum seekers. [Studies](#) have confirmed that asylum seekers often suffer repeated head trauma and sustain TBIs due to torture, abuse, and other violence in their home countries, as well as further persecution and violence during the migration journey. Many people fleeing gender-based violence, including domestic or intimate partner violence, have suffered [TBIs](#) as a result of their persecution. Traumatic brain injuries can cause [memory lapses](#), difficulty recalling traumatic events such as incidents of persecution, difficulty remembering dates, names, and other details, and inconsistencies in testimony. Many people suffer the impacts of TBIs for [years or longer](#) and some may have permanent cognitive disabilities resulting from the injury.

Refugees and people seeking asylum also have trauma-related psychosocial [diagnoses](#) at a [higher](#) rate than the general public, particularly Post-Traumatic Stress Disorder (PTSD). People with PTSD experience [symptoms](#) including memory issues, avoidance of traumatic reminders, and trouble sequencing events. The impact of TBIs, PTSD, and other disabilities on testimony can lead to wrongful negative decisions in asylum adjudications and credible fear interviews where the asylum officer determines they are not credible because of inconsistencies and memory gaps or where the asylum seeker is afraid or unable to disclose information about their asylum claim due to trauma.



USCIS and its parent agency DHS are bound by federal laws, regulations, policies, and guidance prohibiting disability discrimination and requiring reasonable accommodations for people with disabilities.

**Section 504 of the Rehabilitation Act prohibits federal agencies and organizations that receive federal financial assistance from excluding and discriminating against people with disabilities.** Under the Rehabilitation Act, a person with disabilities is defined as anyone who has a physical or mental impairment that substantially limits one or more major life activities, has a history or record of such an impairment, or is perceived by others as having such an impairment. Section 504 applies to all people in the United States, regardless of their immigration status.

DHS regulations implementing the Rehabilitation Act require DHS and all its component agencies, including USCIS, **to provide reasonable accommodations to people with disabilities unless the agency can demonstrate that the accommodation would impose a fundamental alteration or an undue hardship on its operations**, and to give primary consideration to the requests of a person who requires accommodations to effectively communicate. USCIS must comply with Section 504's disability nondiscrimination mandate in all its interactions.

DHS has issued directives and guidance to USCIS and other components to ensure compliance with the Rehabilitation Act, including:

- In 2013, DHS issued a directive regarding compliance with the Rehabilitation Act in all DHS programs. The directive reinforced DHS's policy to **"engage in an interactive and individualized process to identify reasonable accommodations and modifications."** It also instructed all agencies under DHS to designate a disability access coordinator and any supporting coordinators to "coordinate and provide support for compliance with Section 504," conduct a self-evaluation that identifies barriers and gaps in disability access, publish a disability access plan that addresses these barriers and documents policies and procedures for ensuring disability access and providing reasonable accommodations, and "publicize and disseminate information" to inform people who interact with the agency on their rights under Section 504, how to request accommodations, and how to file a Section 504 complaint.
- The DHS CRCL Office published a guide in 2013 for all DHS components on interacting with people who have disabilities. This guide emphasized that people with disabilities are "the most knowledgeable about their own needs," that officers and other staff should not make assumptions that people have the same abilities and needs based on their disabilities, that many disabilities are not observable, and that **federal law requires active steps to "remove barriers" for people with disabilities because merely treating people the same does not ensure equal opportunity.** The guide also included appropriate language for interacting with people with disabilities and described what would constitute inappropriate behavior, including focusing on a



person's disability rather than what they are communicating where the interviewer does not need to know specifics about the disability.

- Pursuant to President Biden's 2021 [executive order](#) instructing agencies to produce a plan to address potential barriers that underserved communities, including people with disabilities, face in accessing agency programs, DHS published an [equity plan](#) in January 2022, in which it **identified humanitarian protection during immigration processing as a key program area with equity barriers and instructed USCIS to address disability access gaps by taking the following steps:**
  - Update guidance that directs asylum officers to issue NTAs for certain individuals in the credible fear process who have mental health concerns, so that they can be assigned safeguards in immigration court instead of forced through the credible fear process;
  - Inform individuals of their rights to accommodations and available disability services;
  - Work with ICE to ensure that individuals in detention have access to attorneys and legal service providers;
  - Continue to track the number of CFIs where accommodations are provided; and
  - Host stakeholder engagements to hear from impacted communities about accommodations and disability access issues.

### **Steps that USCIS has taken to comply with its obligations and gaps that remain**

USCIS has taken important steps to comply with its disability access mandate. In 2018, USCIS published a [Disability Access Plan](#) that identified systemic gaps and barriers to disability access, including lack of a consistently effective accommodations request process, the need to provide employees with updated information and resources regarding accommodations, sign language interpretation issues, and Braille material availability. The plan required USCIS to, among other actions, develop a central page for disability information, train staff on accommodation requests, and create a centralized reasonable accommodation request system. In the last several years, USCIS has created a central [landing page](#) for disability information, established a centralized procedure for requesting reasonable accommodations, provided accommodations trainings to employees, and designated a disability access coordinator.

However, gaps remain in USCIS's disability access policies. As this report documents, some USCIS asylum officers and staff have failed to comply with disability policies and accommodate some asylum seekers in recent years, underscoring the need to further develop and expand disability access policies at USCIS. Last year, DHS also [confirmed](#) ongoing gaps in disability access for asylum seekers who interact with USCIS. Deficiencies in disability access for immigrants extend beyond the asylum process as well. For instance,



legal permanent residents seeking to naturalize have [faced](#) discrimination and denial of accommodations, including USCIS's [refusal](#) to offer the citizenship test in Braille for a blind immigrant.<sup>3</sup>

With respect to steps that USCIS has undertaken to ensure disability access for people seeking protection, further action is critical:

- **Reasonable accommodations request process**

- *Steps taken:* USCIS has created a landing [page](#) on its website where members of the public may learn about the reasonable accommodations process and submit accommodations requests online.<sup>4</sup> The USCIS Policy Manual [instructs](#) the asylum office to provide accommodation requests made by walk-ins wherever practical and to decide accommodation requests within seven calendar days of receipt. If an accommodation request is denied, USCIS instructs the applicant to call back and ask for reconsideration or file a CRCL complaint.
- *Gaps:* USCIS does not have publicly available policy requiring officers conducting interviews to affirmatively ask people if they have a disability and it does not currently ask applicants about disabilities on the I-589 Application for Asylum and Withholding of Removal. These gaps limit the extent to which USCIS can engage in an interactive and individualized process to provide accommodations and undermine USCIS compliance with its mandate to "inform individuals of their rights to accommodations and available disability services." The accommodations request process does not provide for a written, individualized explanation of accommodations denials or a formal mechanism to request review of denials beyond calling USCIS or filing a CRCL complaint. USCIS also does not publish information about its internal oversight of accommodation denials or statistics on accommodation requests, denials, and appeals.

- **Trainings for asylum offices and other staff**

- *Steps taken:* USCIS provides disability accommodation training to all employees in regional, district, and field offices, according to a 2023 DHS [report](#).
- *Gaps:* There is no publicly available information on whether asylum officers receive these trainings regularly, training materials that are provided, and other categories

<sup>3</sup> As part of its efforts to improve the naturalization process for people with disabilities, USCIS released a new [version](#) of its form to request exceptions to civics and English testing requirements due to disability. The [form](#) was shortened, streamlined, and added new telehealth guidelines. USCIS connected the new form to President Biden's [executive order](#) on advancing racial equity and support for underserved communities, including people with disabilities.

<sup>4</sup> USCIS confirmed to Human Rights First in September 2023 that asylum applicants may now use the online request tool, although Ask Emma (a computer-generated virtual assistant on the USCIS website) still indicates that asylum applicants must call and may not use the online form.



of disability access and non-discrimination covered by the trainings. There is also no publicly available information about any internal oversight mechanisms to monitor individual officer and staff compliance with disability policy, including through monitoring, documenting, and responding to any instances of discrimination, bias, or hostility towards disabled applicants.

- **Disability access coordinators**
  - *Steps taken:* USCIS has [designated](#) one or more Public Disability Access Coordinators. The coordinator must concur with any accommodation denial or alternative accommodation provided.
  - *Gaps:* USCIS has not provided any publicly available information about disability access coordinators at the headquarters or regional levels, their training in disability law, their scope of responsibility and authority, or their contact information. Attorneys, advocates, and people in USCIS proceedings are unable to easily find contact information to consult with the disability access coordinator.
- **Guidance regarding CFIs and tracking of outcomes for people with disabilities**
  - *Steps taken:* The 2022 DHS [equity plan](#) noted that USCIS has guidance regarding the issuance of NTAs for individuals who cannot participate in the credible fear process due to a mental or physical condition and that USCIS tracks when asylum offices are unable to complete a CFI due to the applicant's disability.
  - *Gaps:* Neither the guidance nor the information tracked by USCIS is publicly available. Additionally, USCIS has not publicized any updated guidance on issuing NTAs for people with disabilities in the credible fear process. Existing USCIS policy and practice regarding credible fear interviews does not adequately protect asylum seekers with disabilities and does not, for instance, provide that where a person has a disability, they should be taken out of the expedited removal process, paroled, and allowed to apply for full adjudication of their asylum claim before the USCIS asylum office.

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## Disability Access Violations in the Asylum Adjudication Process

Despite policies and trainings for asylum officers on providing accommodations to people with disabilities and conducting respectful, appropriate, and non-adversarial interviews for vulnerable populations, attorneys and asylum seekers reported to Human Rights First that over the past few years some applicants have continued to face disability discrimination during the USCIS asylum adjudication process. **This has included wrongful denials of reasonable accommodations to applicants with mental, physical, and cognitive disabilities, refusal to acknowledge or decide requests for accommodations even when**





**submitted by attorneys with detailed supporting documents, and hostile and inappropriate interview tactics.**

People who are in the United States but have not been placed in immigration court deportation (“removal”) proceedings may apply for asylum with the USCIS Asylum Office by submitting a Form I-589 Application for Asylum and Withholding of Removal. This is referred to as applying “affirmatively” (in contrast to applying for asylum “defensively” while in removal proceedings, which are overseen by a separate [federal agency](#)). USCIS also has initial [jurisdiction](#) over the asylum applications of unaccompanied children (also referred to as UACs or unaccompanied minors).

After filing an asylum application with USCIS, people are scheduled for a “[non-adversarial](#)” interview with an asylum officer, where the applicant has an opportunity to testify and present evidence related to their asylum claim. The Asylum Office grants asylum if it determines that the applicant is [eligible](#) for asylum under U.S. law. If the asylum office does not determine that the applicant is eligible for asylum, it “refers” the individual for removal proceedings, where they will have the opportunity to apply for asylum in defense to removal before an immigration judge. People who apply for asylum with USCIS are generally not detained while they prepare and present their asylum claim. Last year, the Biden administration promulgated a [regulation](#) that creates a process for DHS to also schedule some asylum seekers who pass credible fear interviews for non-adversarial asylum adjudications with the Asylum Office, rather than place them in removal proceedings.

### **Wrongful denials and delays of reasonable accommodations requests**

USCIS has established procedures for asylum applicants or their attorneys to request [reasonable accommodations](#) on the USCIS website or by contacting the Asylum Office. Generally, the Asylum Office must review and decide requests within seven days of receipt. USCIS [policy](#) also directs asylum officers to provide reasonable accommodations requested by walk-ins whenever practical.

However, USCIS has continued to deny or disregard some requests for reasonable accommodations, including in cases where attorneys submitted detailed requests with supporting evidence. These denials have devastating psychological and physical impacts on people seeking protection and impede them from presenting their asylum case. Even where accommodations are ultimately granted by the asylum office, it may require extensive and time-consuming advocacy by an attorney to secure them.

- **In 2023, an asylum officer denied reasonable accommodations to a Jamaican refugee who required additional interview time and other accommodations due to his intellectual disabilities.** The man, who fears persecution on the basis of his intellectual disabilities and his status as a gay man living with HIV, cannot read or write and has difficulty directing conversations to explain his asylum claim. His attorney requested in writing that the asylum office grant him extra time for the interview on account of his documented disability and permit him to keep his phone on because he uses a phone



application that reads and writes for him. The office denied both requests. After refusing to provide additional time for the interview, the asylum officer failed to interview him about why he fled, the persecution he suffered as an adult, or his future persecution, and the man could not raise these issues or redirect the interview due to his intellectual disabilities. After the attorney intervened and attempted to ask her client questions at the end of the interview, the asylum officer only permitted her to briefly ask a few questions that were insufficient to elicit the relevant testimony. The applicant later said, in a declaration submitted with a complaint his attorney filed with the Asylum Office that was reviewed by Human Rights First: **“I was so happy when my lawyer asked me those questions at the end because [the officer did] not ask me those questions. The only time I got to talk about why I left Jamaica was when my lawyer ask me questions.”** Additionally, the officer caused the man extreme stress because he required him to immediately turn off his phone, even though the telephone’s application is his “lifeline for communication” given his disabilities, as his attorney explained in the complaint. The applicant said in the declaration: “I didn’t know he was going to make me turn off my phone. I was nervous when he make me turn off my phone. I was scared because I can’t read and I was scared I would have to read something and I need my phone to read. That makes me nervous.” After the attorney filed the complaint, the case was granted.

- **For years, USCIS disregarded requests to accommodate a disabled Mexican child during the asylum process,** leading him to suffer a seizure right before an asylum interview with USCIS. In 2021, the child’s attorney first requested that USCIS expedite the asylum interview and/or rely on the child’s detailed declaration and other evidence rather than requiring him to testify, explaining that he has a seizure disorder and has seizures when discussing past trauma or experiencing anxiety. His attorney submitted medical records with the request. USCIS neither responded to this request prior to the interview nor did the asylum officer acknowledge or address the request when the attorney raised it again on the day of the interview. After the child was forced to proceed with the interview, USCIS requested another interview two years later in 2023 without explanation and again did not address the applicant’s condition or accommodations request. The applicant, who had since turned 18, had a seizure the day of the interview. During the second interview, USCIS again did not offer any accommodations. He is still waiting for a decision, according to his attorney, who told Human Rights First that the anxiety of waiting also worsens his seizures.
- **In 2017, the asylum office partially denied a request for reasonable accommodations for a seventeen-year-old girl from El Salvador who had come to the United States as an unaccompanied minor and who had a traumatic brain injury, developmental delays, ADHD, and PTSD, but after extensive advocacy by the girl’s attorney was flexible in granting accommodations.** Prior to the interview, the attorney sent a request for accommodations that was accompanied by supporting evidence and a letter from the girl’s psychologist recommending certain accommodations. While the asylum office granted some of the accommodations, it denied the request that the interviewer use leading questions and that a person with whom the girl is familiar, like her attorney, be allowed to conduct questioning. The attorney subsequently met with the asylum office



to emphasize the need for the denied accommodations. Fortunately, on the day of the interview, the asylum office provided additional accommodations, including assigning a senior asylum officer to the case, allowing the girl's social worker (whom the officer had also met with prior) to be present during the interview, asking the social worker for input on the interview approach throughout the interview, and ensuring that a supervising officer was present during the interview. Due to these accommodations the interview went smoothly and the girl was granted asylum, according to her attorney, but securing these accommodations would have been difficult without representation or extensive, time-consuming advocacy by the attorney.

d/Deaf asylum seekers also continue to face denials of reasonable accommodations and inappropriate conduct during their asylum interviews. The 2022 DHS equity [plan](#) acknowledged that DHS agencies, including USCIS, ICE, and CBP, have failed to consistently provide reasonable accommodations and appropriate interpretation for d/Deaf and hard-of-hearing individuals. Consistent with this agency finding, attorneys and asylum seekers reported to Human Rights First that some asylum officers have failed to comply with DHS regulations and USCIS policies regarding [d/Deaf](#) accommodations.

Some d/Deaf people may need—as a reasonable accommodation—to communicate with the asylum office through interpreters with whom they have a pre-existing relationship. Many d/Deaf children, particularly those living in households where their parents and other relatives use spoken language, communicate through “[home signs](#),” a family-created sign language used within a family or small community. Many are not fluent in sign language and face additional barriers communicating in immigration proceedings, and in some instances may require assistance from a [Certified Deaf Interpreter](#) (CDI) who can work on a “relay team” with a sign language interpreter if the immigrant is not fluent in sign language and communicates through home signs, writing, and gesturing.<sup>5</sup> In some situations, interpreters who have a pre-existing relationship with the d/Deaf person may be best able to communicate effectively with them. DHS [regulations](#) implementing the Rehabilitation Act require the asylum office to give primary consideration to proposed accommodations requested by people with disabilities to enable them to communicate effectively.

- **In 2021, a man seeking asylum from Mexico endured erroneous interpretation, eye-rolling, sarcasm, and yelling by a government-contracted interpreter at his asylum interview after his request to communicate through his own American Sign Language (ASL) and CDI interpreters, with whom he had been working to prepare for the interview and felt comfortable communicating, was denied pursuant to a USCIS [rule](#) requiring applicants to use government-contracted interpreters during the**

<sup>5</sup> CDIs are Deaf and have Deaf cultural and linguistic experiences that allow them to more effectively communicate in forms of communication that people who do not have fluent sign language can understand. With relay interpretation, the immigrant communicates directly with the CDI, who translates to the sign language interpreter, who then translates into English. The Deaf Interpreters Work Team, established by The National Consortium of Interpreter Education Center, [recommends](#) that adjudicators work with CDIs where a d/Deaf or hard of hearing individual has factors like “underdeveloped ASL skills, limited socialization in the Deaf community, limited education, cognitive challenges, delayed language,” and other vulnerabilities.



COVID-19 pandemic. USCIS denied multiple requests to permit the man's interpreters to conduct the interpretation, but eventually allowed them to observe the interview. According to a complaint submitted by the man's interpreter's that Human Rights First reviewed, the government-contracted CDI mixed features of Mexican Sign Language (MSL) and ASL, causing misunderstandings. The government interpreters saw and repeatedly ignored the asylum seeker's requests that the CDI use ASL and continued to use both languages. According to the complaint, the government-contracted CDI also had multiple conversations with the applicant that he did not interpret for the asylum officer and at times rolled his eyes, used a sarcastic tone, and yelled, suggesting that he was frustrated or angry with the applicant and creating a hostile, adversarial environment. The man, who was ultimately granted asylum, said to his attorney of the experience: **"I felt not seen, not heard, and that I had been denied so many rights. I thought the United States was a place with rights. If the government doesn't respect me here, who will?"**

### **Inappropriate, hostile, and insensitive questioning**

In addition to denying reasonable accommodations, some asylum officers have asked inappropriate questions and expressed frustration, hostility, and a lack of sensitivity regarding peoples' disabilities during interviews, in violation of DHS and USCIS guidance. While DHS [confirmed](#) this year that USCIS staff have received training on reasonable accommodations, it is unclear whether trainings are provided regularly, whether they will be provided to future USCIS staff, whether asylum officers receive specialized training on conducting interviews with survivors of persecution and trauma who have disabilities, and whether training includes topics such as sensitive and appropriate interviewing of people with disabilities, identifying disabilities, and adapting questions based on a person's disability and other vulnerabilities.

Asylum officers currently complete a [basic training course](#) before they start conducting asylum interviews and adjudications. The course [covers](#) U.S. asylum law and includes separate sessions on interviewing children, LGBTQI+ individuals, trafficking victims, and survivors of torture. Asylum officers also receive [regular training](#) determined by the needs of a particular office and new case law and procedures. [Training](#) materials published online instruct USCIS asylum and refugee officers conducting interviews to "be flexible...adapting your questioning to fit the situation," "be patient and prepared to repeat or rephrase questions," be aware of "body language and other nonverbal cues as they may reflect emotions such as impatience," and "use questions that are clear, short, and simple."

Despite this guidance and training, some asylum officers have been unwilling to adapt interview questions and exhibited frustration, hostility, and impatience when people with disabilities were unable to understand or answer questions. For instance:

- **In 2022, a USCIS asylum officer laughed inappropriately at an Afghan adult woman who has severe autism and is largely nonverbal and repeatedly asked her complex questions that she could not answer, according to her attorney.** The woman had been evacuated from Afghanistan to the United States with her family in summer 2021.



Her attorney notified the Virginia asylum office in advance of the interview that the woman's disabilities would make a direct interview challenging and requested that the office provide an accommodation by permitting her mother and brother to join the interview and help her communicate. The asylum officer permitted the mother to join but denied the request to allow the brother in the room on the basis that she did not have enough chairs. While the woman was able to provide basic information like her name, she became quiet when asked about her life in Afghanistan and appeared nervous and confused, according to her attorney. **In response, the asylum officer laughed and continued to ask questions that the woman clearly was unable to answer due to her disabilities**, such as specific Taliban attacks on her village. Given the asylum officer's inappropriate conduct throughout the interview, the woman's lawyer asked for a break, but the officer refused. When the attorney insisted on speaking with a supervisor, she attempted to explain that the officer was asking inappropriate questions that the woman did not understand and could not answer, but the supervisor instructed them to "just get through this." The woman's attorney explained to the supervisor that questions about supporting the Taliban were not appropriate because the woman did not understand them. USCIS later granted the woman's asylum application, as well as her family's separate applications.

- **In December 2021, a Ugandan man who has bipolar disorder and was persecuted for his LGBTQI+ activism was perplexed and upset by an asylum officer's focus on his bipolar disorder and failure to ask questions about his asylum claim during his interview in Boston.** According to his attorney, the officer spent a significant portion of the interview asking detailed questions about the man's diagnosis, how it affects his day-to-day life, and medications he has taken. This line of questioning violates CRCL [guidance](#) warning officers that it is inappropriate to focus on a person's disability rather than what they are communicating where the interviewer does not need to know specifics about the disability. The officer's questions caused stress and confusion for the applicant, who had difficulty maintaining his composure and focus as a result. His attorney subsequently requested a re-interview based on the asylum officer's failure to focus the interview on the man's asylum claim. USCIS granted the request and conducted a second interview, during which the officer correctly focused the interview questions on the man's LGBTQI+ activism and the persecution he fled. The applicant is currently awaiting a decision. Had the man not had an attorney to advocate for him, he may not have been able to secure a second interview after the officer's discriminatory conduct during the first interview.
- **In 2020, an asylum officer rolled her eyes and displayed a dismissive and frustrated attitude toward a fifteen-year-old Black autistic child from Honduras who had difficulty understanding questions during his asylum interview, according to his attorney.** Prior to the interview, the attorney had submitted medical records and explained the child's disabilities and need for slow, simple, and clear interview questions. Nonetheless, the asylum officer asked the child complex questions about his persecution that he had trouble understanding, used a frustrated tone of voice, and rolled her eyes and said "fine" brusquely when the child's attorney attempted to



reframe a question to help the child understand. USCIS then required the child to return for a second interview and has yet to issue a decision on his case.

- In February 2021, an asylum officer repeatedly asked questions that were inappropriate for a 16-year-old d/Deaf Honduran boy with cognitive disabilities, even when the government-contracted interpreters intervened multiple times to express concern about the child’s capacity to understand the questions.** The child had total hearing loss since birth and grew up without any sign language communication or any education, which has been linked to cognitive delays for some d/Deaf people.<sup>6</sup> When he arrived in the U.S., he began learning ASL. The child’s attorney had notified the asylum office in advance of the child’s disabilities and difficulty understanding and communicating dates, times, and names. Nonetheless, the asylum officer spent three hours asking inappropriate questions, including attempting to elicit details regarding dates and times of events and names of specific people in the child’s life. The child had to repeatedly ask the interpreter and attorney what the officer was talking about. The government-contracted CDI and ASL interpreters stopped the interview multiple times to voice their concerns about the child’s capacity to understand the questions and ask the asylum officer to rephrase or adjust their expectations, according to the attorney. At one point, the CDI started laughing, likely due to the absurdity of the questions. The attorney reported that the officer appeared flustered and annoyed during the interview, creating a tense environment. The asylum office ultimately granted the child asylum after subjecting him to this unnecessarily stressful and difficult experience.

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## Disability Discrimination and Due Process Violations in Expedited Removal

Expedited removal is an inherently flawed process that leads to the refoulement (return) of refugees to persecution and torture in violation of U.S. legal obligations to refugees. As outlined below, **people with disabilities face particularly severe barriers to protection, due process violations, and deportation to harm through expedited removal without an opportunity to request accommodations or apply for asylum.**

Under U.S. [law](#), DHS may place some people who have recently come to the United States into expedited removal, but it is not required to do so and may instead refer people seeking protection for full adjudication of their asylum claim. People placed in expedited removal who express an intent to seek asylum or fear of return to their country face summary deportation unless they can pass a credible fear interview with a USCIS asylum officer. If the asylum seeker establishes a credible fear of persecution at their interview (i.e. a “significant possibility” the individual would be eligible for asylum after a full hearing), the government must ensure that the person has an opportunity to apply for asylum and a full hearing on

<sup>6</sup> Language deprivation or limited access to language acquisition and formal education (including sign language) at a young age is linked to [cognitive delays](#). According to the [National Association of the Deaf](#), the effects can be “so severe as to result in serious health, education and quality of life issues.” Many d/Deaf asylum seekers were raised in rural and/or low-income areas where access to sign language and other forms of communication was limited, sometimes resulting in cognitive delays or disabilities.



their asylum application.<sup>7</sup> People who receive negative credible fear decisions are entitled to review of the decision by the immigration court and then may be summarily deported unless the decision is reversed by an immigration judge or USCIS.

CFIs are typically conducted in immigration detention, by telephone with an asylum officer, usually before people can consult with a lawyer, and often within mere days or weeks of a person's arrival in the United States after fleeing persecution and undertaking a dangerous journey to reach safety. These interviews are [plagued](#) by due process violations, including barriers to securing legal representation, confusing, cursory, or hostile interviews, failure to provide interpretation in the correct language, and horrific conditions of confinement that deprive asylum seekers of a meaningful opportunity to share their stories. For decades, this process [has resulted](#) in the wrongful [deportation](#) of [refugees](#), in some cases even [leading](#) to the [murder](#) or [torture](#) of people returned to harm—which is likely only a small fraction of those who were attacked and killed following deportation given that many people never speak with attorneys, advocates, or media prior to or after expedited removal.

As the Biden administration has escalated the use of expedited removal, there have been mounting reports of due process violations and wrongful deportations of asylum seekers through expedited removal. Widespread flawed credible fear determinations have resulted in deportation orders against political activists tortured by their countries' governments, LGBTQ individuals fleeing violence, and other refugees, as Human Rights First documented in an August 2022 [report](#) on the use of expedited removal. Simultaneously, the Biden administration has taken steps to more quickly deport people through expedited removal, rig the process against refugees, and eliminate crucial safeguards.

The administration has [eviscerated](#) asylum seekers' ability to request reconsideration from USCIS of erroneous credible fear decisions<sup>8</sup> and promulgated an [asylum ban](#) that rigs the credible fear process against refugees and unlawfully raises the credible fear screening standard set by Congress. It has also returned to the Trump-era policy of conducting some CFIs in CBP custody on an accelerated timeframe, where people have no meaningful access to counsel and undergo CFIs within a little as 24 hours of arriving. [Conditions](#) in CBP custody are [abusive](#), [dehumanizing](#), and sometimes life-threatening, with widespread reports of medical neglect, inedible food and water, overcrowding, cold conditions, and lack of access to showers and other basic hygiene. In May 2023, an [eight-year-old child](#) died in

<sup>7</sup> Some asylum seekers in expedited removal are instead required to pass a "reasonable fear interview"—where they must meet a higher standard than the standard for CFIs—if they have previously been removed from the United States and DHS reinstated their removal order when they re-entered. The Biden administration's asylum ban also directs officers to use the higher "reasonable possibility" screening standard for asylum seekers who are covered by the ban and not able to prove an exception, making it more difficult for people to pass their fear interviews. The barriers and due process violations addressed in this section apply to various types of fear interviews conducted by USCIS.

<sup>8</sup> The administration's March 29, 2022 Asylum Processing Rule created a draconian and unrealistic seven-day deadline for asylum seekers to file requests for reconsideration and barred them from submitting more than one request. The administration's new May 11, 2023 asylum ban rule further destroys the protection of requests for reconsideration, providing that asylum seekers who receive negative credible fear determination due to the ban — i.e. because of how they entered the United States or their travel through a transit country — cannot submit a request for reconsideration at all.



CBP custody after being jailed for over a week, during which her mother's repeated pleas to take the girl to the hospital went ignored.

**The barriers and due process violations in expedited removal are magnified for people with disabilities forced to undergo the process.** The horrendous conditions, accelerated timeframe, limited access to counsel, cursory and intimidating nature of many CFIs, widespread failure to conduct the CFI in peoples' best language, and other violations all prevent people with disabilities from learning about federal disability protections, disclosing disabilities during the process, receiving accommodations, and sharing their story during the limited opportunity they are given to discuss their asylum claim telephonically before summary deportation.

People seeking protection have been [forced](#) to undergo CFIs while experiencing physical and psychological suffering, in some cases due to persecution, trauma, disabilities, health conditions, or assaults and abuses in detention, and were unable to meaningfully share their story as a result. These include people who have severe PTSD, traumatic brain injuries that cause memory loss and other cognitive issues, or health conditions and illnesses that make it difficult to focus during a CFI, such as COVID-19 or high blood pressure. Even in some cases where people disclosed their inability to participate in the CFI due to these reasons, officers still forced them to proceed and recount their trauma and persecution.

**Disabilities are extremely difficult to identify during a CFI. Because CFIs are conducted telephonically and often through an interpreter, with [reports](#) of connection issues, officers may not detect disabilities such as physical disabilities that are visually apparent or perceive signs of mental and cognitive disabilities, confusion, and difficulty understanding questions.** Asylum seekers often cannot access their [documents](#)—such as medical records or evidence related to their asylum claim—while detained or are unable to translate them into English and submit them to the asylum office in advance of their CFI, particularly where they are unrepresented. Those who receive negative CFIs might then be barred from submitting evidence to the immigration judge conducting the credible fear review because some judges arbitrarily [refuse to accept evidence](#) or hear additional testimony before quickly affirming the deportation order.

These barriers are [compounded](#) by the improper conduct of some CFIs, including some officers requiring people to respond to questions only with “yes” or “no” and repeatedly interrupting people who attempt to share additional information. Even where asylum officers ask during CFIs whether the applicant has medical or health issues, some asylum seekers do not realize that symptoms of PTSD or other mental health concerns are relevant to the asylum officer's question, according to an attorney who spoke with Human Rights First. Additionally, attorneys report that people are afraid to disclose mental health disabilities while detained because they fear the government will retaliate against them by placing them in solitary confinement (referred to euphemistically by DHS as “segregation”). Detained people with physical and mental health disabilities are especially [likely](#) to be [placed](#) in solitary confinement.





Many asylum seekers are suffering from PTSD when they are detained for their CFIs and their symptoms may be exacerbated by the conditions of incarceration. Asylum seekers forced to undergo CFIs while experiencing the effects of severe trauma include those who suffered horrific attacks at the border or in detention shortly before the CFI process, such as a [woman](#) who was raped 24 hours prior to entering the United States and subjected to an accelerated CFI in CBP custody at the border in spring 2023, and a gay [man](#) who was attacked and called homophobic slurs in detention before his CFI last year and was ignored when he attempted to tell the asylum officer he was feeling physically and psychologically unwell.

**DHS has confirmed the risks of conducting CFIs with people who have disabilities and failures of asylum officers to identify mental health and cognitive disabilities that impact ability to participate in the CFI.** A CRCL [memorandum](#) to ICE and USCIS in June 2022 announced an investigation into failures to address competency concerns during CFIs and documented cases of asylum seekers who received negative fear determinations after USCIS asylum officers failed to take into account competency concerns, including cases where ICE was aware of mental health disabilities but did not disclose that information to USCIS prior to the interview. In its 2022 equity [plan](#), DHS also acknowledged that it is “challenging to elicit testimony and make credible fear determinations when individuals have mental health or capacity issues.”

The Biden administration’s use of expedited removal continues to place people with disabilities at risk of wrongful deportation without a meaningful opportunity to express their asylum claim or receive accommodations. For instance:

- **In Spring 2023, a then unrepresented 19-year-old Honduran woman who had been diagnosed with cerebral palsy, psychomotor retardation, and autism, and who communicates at the level of a three-year-old child according to her attorney, was forced to undergo the credible fear process and ordered deported.** After she received a negative credible fear determination that was affirmed by the immigration judge, an attorney began representing her. The attorney reported to Human Rights First that the client’s cognitive disabilities were apparent from the first legal call, that the woman could not respond to simple questions about her case, and that she did not understand the credible fear process or the consequences of the negative CFI even though her attorney explained it repeatedly. Her mother also explained to the attorney that the woman requires constant supervision from trusted adults. The attorney submitted a request for reconsideration to USCIS within seven days of the immigration judge’s decision, highlighting the clear indicia of cognitive disabilities and arguing that any attempt to conduct a CFI was fundamentally unfair. USCIS granted the request and reversed the negative CFI decision, allowing the woman to apply for asylum. However, had the woman been unable to find counsel—as most people in the credible fear process cannot secure representation—she may have been deported. Even if she had made contact with an attorney only days later, her request for reconsideration may have been denied under the Biden administration’s seven-day deadline for such requests.



- **In July 2023, an unrepresented Indigenous Mam speaker from Guatemala with cognitive disabilities and epilepsy who had no formal schooling and cannot read or write was deported after USCIS failed to provide a Mam interpreter, conducted her CFI in Spanish (which she does not speak fluently), and failed to detect her apparent cognitive disabilities during her CFI.** The woman, who was assaulted in Guatemala due to her indigenous identity, disabilities, and gender, had been diagnosed—including by ICE—with cognitive disabilities (including memory, attention, and processing difficulties) and epilepsy. During the CFI, according to the USCIS decision and notes reviewed by Human Rights First, the asylum officer repeatedly failed to acknowledge the woman's obvious inability to understand or respond to the questions and ordered her deported without exploring competency concerns. For example, when the asylum officer asked if she had a political opinion and she responded "I don't know. I just fall and get headache," the asylum officer did not ask her to clarify her response. After a negative CFI decision, she was also forced to undergo an immigration judge review in Spanish while still unrepresented. A legal services organization later attempted to assist her but she was deported before the organization could even have a legal call with her.
- **In May 2023, a Guatemalan man who was threatened with death and run over with a car by police in his home country, causing a traumatic brain injury, was forced to undergo a CFI and deported.** During his CFI at the Torrance County Detention Facility, the asylum seeker struggled to convey his story due to severe memory loss, head pain, and difficulty concentrating resulting from his TBI, which had been further exacerbated by kidnapping and torture he suffered in Mexico while fleeing to the United States. There were also times during the interview where he couldn't understand the interpreter. He was experiencing a severe migraine during his CFI, but he felt obligated to keep responding to questions. Because the asylum officer determined that he was subject to the Biden administration's asylum ban for entering the United States without a CBP One appointment<sup>9</sup> (even though he had fled to the border immediately after escaping kidnapping and torture), he was required to meet a higher screening standard to pass his interview. The asylum seeker was issued a negative credible fear determination and has been deported, according to his attorney at the New Mexico Immigrant Law Center.
- **In 2023, DHS forced an asylum seeker with epilepsy, PTSD, and a head injury to undergo a CFI, after which she had multiple seizures in detention that required her to be hospitalized and then monitored in a medical ward in the ICE jail.** She had fled the Dominican Republic after being brutally beaten, cut with a knife, and threatened with death by drug lords who were collaborating with the police in the Dominican Republic. On the day of her CFI, she was experiencing dizziness, memory loss, and severe headaches—symptoms that she often feels prior to a seizure. She was in observation for a mental health crisis related to her PTSD immediately before her immigration court

<sup>9</sup> The asylum ban bars nearly all people who enter the United States at the southern border or adjacent coastal borders who traveled through another country on their way to the border, unless they (1) applied for asylum in one of those countries and received a denial, or (2) managed to secure one of the highly limited appointments to enter at an official port of entry (via a glitchy, inequitable smartphone app known as CBP One).



review of the negative decision and was unable to consult with an attorney or prepare for the review as a result. Due to her seizures, she was unable to request reconsideration within seven days of the immigration court's decision (as required by the Biden administration's new restrictions on requests for reconsideration). A legal service organization reported to Human Rights First that they later assisted her in requesting reconsideration in March 2023 and explained that she was unable to meet the deadline due to her seizures, but the request was denied because of the seven-day deadline.

- **In 2023, the asylum office failed to inquire into whether an Ecuadorian woman—who was suffering from acute symptoms of HIV during her CFI—had any health conditions.** She had fled Ecuador because she was raped, beaten, stabbed, strangled, and threatened with death by her partner. During her interview, she was physically ill with symptoms of HIV and experiencing psychological distress due to her illness. The asylum office issued a negative credible fear determination, which was only reversed after extensive advocacy by a legal service organization that spoke with Human Rights First.
- **In 2023, an asylum officer conducting a CFI failed to take into account the impact of severe trauma on testimony and determined that a woman from Colombia who was experiencing symptoms consistent with PTSD was not credible because there was a minor inconsistency about a date in her testimony.** The woman, who had been raped and threatened with death because she is married to a military official in her home country, requested reconsideration of the decision with the assistance of a legal service organization. The request for reconsideration explained that she had symptoms consistent with PTSD, which affect her memory and ability to discuss traumatic events, but it was denied due to the Biden administration's new restrictions on requests for reconsideration. She was subsequently deported, according to a legal service organization that spoke with Human Rights First.
- **The Asylum Office subjected an unrepresented Honduran asylum seeker with a traumatic brain injury—resulting from a severe beating he had suffered in Honduras—to a reasonable fear interview in November 2021 and determined that he was not credible because he struggled to describe the timeline of the many incidents of past persecution he had suffered.** He had fled Honduras after being repeatedly attacked and nearly killed by police officers and gang members who had murdered his family members. A legal service provider that spoke with Human Rights First later assisted him in submitting a request for reconsideration based on the clear evidence of his disability present in the interview record, but the Asylum Office denied it and only agreed to schedule an additional interview after extensive advocacy by the organization. Even though his legal representative submitted a psychological evaluation diagnosing the asylum seeker with a cognitive disability affecting memory and sequencing, the Asylum Office again determined that the client was not credible because he confused the dates and order of events. The Asylum Office later reversed the negative fear determination in June 2022 after a complaint was filed with DHS CRCL.



- **In February 2021, the Houston Asylum Office issued a negative credible fear determination for a Nicaraguan asylum seeker who had suffered a brain injury that resulted in memory loss, speech impediments, severe migraines, and difficulty concentrating.** The man had fled Nicaragua after being detained, beaten, stabbed, and tortured by police officers for participating in anti-government political marches. The Asylum Office ultimately reversed the negative credible fear determination after his attorney at the Refugee and Immigrant Center for Education and Legal Services submitted multiple requests for reconsideration detailing the effects of his brain injury, which had resulted from a brutal attack by a Nicaraguan police officer. With the Biden administration's new restrictions on requests for reconsideration in place, asylum seekers in similar situations may be unable to reverse their erroneous CFI decisions.
- **An asylum seeker with a traumatic brain injury and mental health issues received a negative credible fear decision** after ICE failed to take him out of the expedited removal process or share information about his medical condition with USCIS prior to the credible fear interview. The asylum officer conducting the CFI failed to recognize difficulties he was experiencing due to his disabilities, as [reported](#) to CRCL in October 2021.
- **An asylum officer issued a negative reasonable fear determination after finding that an asylum seeker with a traumatic brain injury and depressive disorder was not credible,** according to a [complaint](#) submitted to CRCL in December 2021. The officer did not elicit sufficient testimony to explore the asylum seeker's mental health and determined during the interview that he "suffers from no medical issues that would affect his ability to testify." The asylum office then refused to rectify its mistake and denied multiple requests for reconsideration submitted by the person's attorney in October 2021 and November 2021, which included previously unavailable medical evaluations.
- **After ICE failed to take an asylum seeker with a traumatic brain injury and hallucinations out of the expedited removal process or alert the asylum officer to the person's medical conditions, the asylum seeker was forced to undergo a fear interview and issued a negative fear determination.** While detained by ICE, he had been treated for a head injury, hallucinations, nightmares, and other illnesses, as documented in medical records submitted with a [complaint](#) to CRCL in March 2021 about the erroneous fear determination.

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## Additional Barriers for People with Disabilities During Biometrics Process

USCIS has also failed to accommodate disabled people at other stages of the asylum application process, including biometrics appointments. Asylum applicants and other immigrants are required to attend [biometrics appointments](#) scheduled by USCIS to provide their fingerprints, photograph, and signature to the U.S. government. People seeking



protection may be [denied asylum](#) and [ordered deported](#) if they do not complete their biometrics.

USCIS schedules biometrics appointments at Application Support Centers (ASCs) for a particular date and time. The USCIS [website](#) page on biometrics appointments states that an applicant may request to reschedule an appointment for “good cause.” It also indicates that people may request disability accommodations through the USCIS website or by calling the USCIS Contact Center. Even where a person is represented, Human Rights First has received reports that USCIS staff refused to provide disability accommodations, including by rescheduling an appointment or relocating it to an ASC closer to the applicant’s home. Lack of accessible transportation compounds the difficulties that people with disabilities face when required to attend biometrics appointments.

- **In 2021, an attorney spent months trying to secure accommodations for a Honduran asylum seeker with physical disabilities that impaired his growth and limited his mobility who could not attend his biometrics appointment for his work authorization permit because it was scheduled at an ASC away from his home in New Jersey.** Additionally, there was no accessible transportation to the ASC. Even if he had secured transportation, the round trip would have taken a full day and posed challenges given his disabilities. Over the course of months, his attorney had to make two phone calls, numerous online inquiries, and send a letter to USCIS before USCIS finally agreed to schedule his appointment at a center much closer to his home. In phone conversations, USCIS staff initially told the man’s attorney that there was “nothing [they] could do.” Eventually, USCIS changed the location of the appointment after the attorney sent a formal letter documenting the multiple requests and denials USCIS’s initial refusal to relocate the appointment delayed his ability to obtain his work permit and start working.
- **In 2020, a blind asylum seeker who cannot drive and lives in a rural area of the Midwest with no access to public transit was denied disability accommodations by USCIS to attend his biometrics appointment.** The man scheduled for an appointment at an ASC located hours from where he lives. His attorney requested to change the appointment to a closer location to enable the man to attend, but USCIS denied the request. As a result, the attorney had to request to reschedule the appointment to have more time to arrange transportation. The appointment was rescheduled to December 24 (Christmas Eve). A friend drove the asylum seeker for hours through a snowstorm to the site. When they arrived, the office was closed and they were told the appointment had been automatically rescheduled.
- In 2022, an asylum seeker from Rwanda who has physical hip-related disabilities had to travel from one area of Vermont to another to complete his biometrics, totaling a three-and-a-half hour roundtrip. A volunteer from an organization that welcomes asylum seekers drove him. **He reported to Human Rights First that without the**



**assistance of the community volunteer, he may not have been able to make the journey due to financial and mobility constraints.**

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## Conclusion

People seeking asylum must be afforded a fair opportunity to present their case without confronting disability discrimination and barriers. DHS, USCIS, ICE, and CBP should take the steps outlined in the report's recommendations to improve disability equity in the immigration process. Human Rights First is grateful to the immigrants and advocates who shared their experiences in asylum office interviews, credible fear interviews, and biometrics appointments.



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## Mission Statement

Human Rights First works to create a just world in which every person's intrinsic human rights are respected and protected, to build societies that value and invest in all their people. To reach that goal demands assisting victims of injustice, bringing perpetrators of abuse to justice, and building institutions that ensure universal rights.

Human Rights First is a nonprofit, nonpartisan international human rights organization based in Los Angeles, New York, and Washington D.C.

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