

Seeking Safety from Darkness: Recommendations to the Biden Administration to Safeguard Asylum Rights in CBP Custody

Introduction

United States law guarantees the right to seek asylum on the basis of feared persecution. This protection is incorporated from the 1951 Refugee Convention and its 1967 Protocol, written in the aftermath of World War II. Today, this fundamental right to asylum is in grave jeopardy. As the Biden administration comes to a close, people seeking asylum at the southern border must navigate complicated asylum laws made more complex by two overlapping regulatory asylum bans. U.S. officials require many to present their legal case within hours or days of their arrival while in Customs and Border Protection (CBP) custody. The Biden administration [promised an expansion](#) of legal access along the border to accompany these restrictions but has refused to permit lawyers physical access to CBP custody and has obstructed telephonic access.

The result of compromised legal access in an already restrictionist policy context is dire – the United States is summarily returning asylum seekers to persecution and death. President-elect Donald Trump has vowed to impose even harsher restrictions along the border, many of which will be implemented in CBP facilities. **The National Immigration Law Center (NILC) and Human Rights First urgently call on the Biden administration to take action to ensure accountability and safeguards in anticipation of these harmful policies. Specifically, the administration should implement longstanding recommendations by non-profit legal services providers to formally end the practice of conducting asylum screenings in CBP custody and issue a directive permitting lawyers physical access to CBP custody. Putting these safeguards in place now will rectify a significant existing policy failure and protect against some of the worst abuses the Trump administration plans to unleash against people seeking asylum.**

This report focuses on the details and consequences of obstructed access to counsel in CBP custody. The report begins by outlining policies currently in place at the southern border and then presents findings from the authors' interviews with legal service providers attempting to provide legal orientations and representation to people in CBP custody. Our findings from these interviews include:

- ▶ There is no physical access for lawyers in CBP custody and telephonic legal access is often only on weekends or outside of working hours;
- ▶ The requirement of a “wet signature” on official paperwork and other logistical challenges render representation nearly impossible;
- ▶ The vast majority of people in CBP custody undergo fear screenings without ever speaking to a lawyer; and
- ▶ Many providers are declining to provide services because the obstacles to legal access are too severe.

Together, the findings illustrate that telephonic access is woefully insufficient and unworkable as a means of access to counsel in CBP custody. Granting lawyers physical access to CBP custody is crucial to help ensure meaningful legal access, a protective measure that is more vital than ever in anticipation of the incoming administration.

Background: CBP custody has become the centerpiece of restrictionist policies at the border

The Biden administration published two regulatory asylum bans, in [May 2023](#) and [June 2024](#), that deny protection to many asylum seekers who arrive at the southern border. With limited exceptions, the only people eligible to apply for asylum at the southern border today are those who can obtain a lottery-based appointment to appear at a port of entry through a government smartphone app called CBP One. Those who cannot use the app due to language and other barriers, who do not have an appointment, or [cannot safely wait up to nine months](#) to get one are often pushed to try to cross between ports of entry to seek safety. If apprehended, the government quickly deports most unless a border agent determines they have expressed a fear of return to their country and refers them for a fear screening. Those referred are only permitted to seek a limited form of protection from deportation if they can meet a heightened standard of proof.

These restrictions run afoul of the United States' international treaty obligations and [U.S. federal law](#), which guarantee that people who arrive at a U.S. border at or between ports may apply for asylum. Both the 2023 and 2024 regulations face [legal challenges](#); the 2023 ban was [struck down as illegal](#) by a federal court but remains in effect while that decision is appealed. Human rights monitors have documented resulting [increased harms to migrants](#) on the Mexico side of the border and [violations of asylum law and human rights](#) for those who attempt to enter.

The Biden administration's [increased use](#) of a process called [expedited removal](#) is central to these harsh rules. Expedited removal is a process created by federal statute that allows CBP and Immigration and Customs Enforcement (ICE) to quickly deport people without a day in court unless they express a fear of return and pass a threshold fear screening interview (a "credible fear interview," or CFI). Watchdogs and civil society have long documented [serious deficiencies, limitations on access to counsel, and due process concerns](#) associated with expedited removal, resulting in the [wrongful deportation](#) of asylum seekers to persecution, torture, and murder. The government detains most people subject to expedited removal in [CBP or ICE facilities](#) in [abusive, harmful](#), sometimes [life-threatening conditions of confinement](#). Importantly, [expedited removal is discretionary](#) – the Department of Homeland Security (DHS) can choose not to utilize it and instead allow people to pursue their asylum cases in immigration court while living safely in their communities.

Newly implemented rules have changed the expedited removal process in three critical ways:

1. CBP officers are no longer required to ask people arriving at the border if they are afraid to return to their country. The 2024 asylum ban eliminated this nearly 30-year-old safeguard and instead [allows](#) CBP to summarily deport people from the border without a CFI if they do not "manifest" or affirmatively make known their fear. The United States is [routinely summarily deporting refugees back to harm](#) without CFIs because of this change.
2. The 2024 asylum ban also raised the already challenging [evidentiary standard](#) a person must meet to pass the credible fear interview if they entered without a CBP One appointment and do not meet one of the very narrow exceptions to the ban.

3. In April 2023, the Biden administration began [pushing people](#) – now [including families with children](#) – through their CFIs within hours or days of arriving at the border and while in CBP custody. In June 2024 the administration [curtailed to only four hours](#) the minimum window of time people in CBP custody can use to consult telephonically with a lawyer after referral for a CFI. This is a major departure from the past, when these screenings were largely held in ICE facilities weeks or months after a person’s arrival. Significant due process and conditions concerns persist in both ICE and CBP custody, but lawyers are permitted physical access to ICE facilities and there is some in-person legal orientation.

The government’s decision to push people through the expedited removal process while in CBP custody has had devastating consequences. This practice was [first piloted](#) by the Trump administration. Under both administrations, it has resulted in [plummeting passage](#) rates for those scrambling to prove their fear in the immediate aftermath of an often-traumatic journey. CBP is currently holding people for [much longer](#) than its [own standards](#) permit while they undergo the credible fear process. CBP facilities have a long history of substandard conditions, with the agency facing [repeated federal litigation](#) for issues ranging from insufficient food and sanitation to freezing temperatures, the denial of medical treatment and deliberate indifference leading to [death](#).

Historically, DHS has not provided lawyers physical access to CBP facilities, and has persisted in denying physical access despite the complex fear screenings now taking place there. For years, attorneys have had difficulties even locating where their clients are detained when they are apprehended by CBP, leading the United Nations to [issue general allegations](#) to the U.S. government regarding enforced disappearances of asylum seekers and migrants in CBP custody. The government recently created a [searchable database](#) of those in CBP custody, but this function does not indicate where a person is detained and is [only available](#) after the person has been in custody for several days, meaning CBP has already deported many people before they even appear in the database.

Federal law [requires](#) DHS to provide noncitizens in expedited removal the ability to “consult” with counsel prior to both the CFI interview and the Immigration Judge’s review of negative CFI decisions, and to have [their lawyer present](#) during their CFI if requested. In practice, asylum seekers’ only access to counsel in CBP custody is through phone booths that CBP has installed in its border processing facilities. From the start, this meager telephonic access has proved woefully insufficient, as documented [repeatedly](#) and [publicly](#) by lawyers [trying to provide services](#).

Findings: obstructed access to counsel

NILC and Human Rights First spoke with legal service providers at five organizations currently or recently providing legal services to people in CBP custody, including: RAICES, the Immigrant Defenders Law Center, the Jones Day Border Project, the Immigration Justice Project of the American Bar Association, and the American Immigration Council. These services primarily include orientation and preparation provided to people before CFIs and Immigration Judge reviews; some organizations also attempt to provide direct representation.

NILC and Human Rights First identified the following key categories of government-imposed obstructions to access to counsel for people undergoing expedited removal in CBP custody. Notably, the administration has been on notice of these challenges for more than a year; these obstructions are all identified and discussed in the previous reporting and news articles highlighted above. Legal service providers have repeatedly raised these issues to the administration since it began conducting CFIs in CBP custody.

Many service providers are declining to provide services to people in CBP custody because the timeframes and restrictions on access to counsel are too challenging to manage.

The expedited timeframes and restrictions on communication with detained individuals make it extraordinarily difficult for attorneys to provide consultations or direct representation in CBP custody while responsibly managing their existing dockets and complying with the rules of professional ethics. Providing legal services to people in CBP custody requires constant emergency management – an attorney taking a call from a detained individual must be able to drop everything for one to three days or longer to prepare the client for their CFI and potentially appear with them at their CFI or Immigration Judge review.

Few providers can accommodate work on such an expedited and unpredictable timeline, and the same holds true for the private immigration bar and corporate law firms who engage in pro bono work. When DHS first started conducting expedited removal in CBP custody, the Immigrant Defenders Law Center put out a call for volunteer attorneys from private law firms to consider taking cases, but received few responses because private practitioners cannot manage such emergent time frames.

Private attorney Emily Robinson recently represented a client in CBP custody and found it extremely challenging to juggle this one case with her full workload of cases: “I’ve been working basically every hour of the day. I haven’t been able to work on my other cases. I’m fitting in all my other work on the side.”

NILC and Human Rights First spoke with numerous legal service providers whose organizations would like to provide legal services to people in CBP custody but are not doing so because of the severity and breadth of the challenges to providing effective legal services. The International Refugee Assistance Project (IRAP), Las Americas Immigration Advocacy Center, the Asylum Defense Project, and the Florence Immigrant and Refugee Rights Project are all organizations that made the difficult decision not to provide services. Jones Day has paused its services indefinitely.

Access to phone booths is too restricted and frequently outside working hours.

DHS permits people who have been referred for a CFI [a minimum window of only four hours](#) to access phone booths and try to speak to an attorney to prepare for their CFI. Yet even this limited window is elusive for most because CBP does not coordinate with legal service providers and often runs the four-hour windows on weekends and outside of working hours, when legal service providers are not available to answer their phones.

- ▶ **The legal team at RAICES maintains data on the calls that come in from CBP facilities on their legal services hotline. Between May 6, 2024, and September 1, 2024, 4,200 calls came into the RAICES hotline. Of these calls, 47% (1,957) came in on weekends or outside of working hours. In total, because of the staffing and timing challenges discussed in this report, RAICES was only able to answer 4% (166) of all the calls.**
- ▶ The Jones Day Border Project maintains similar data on their legal services hotline. Between June 4, 2024, and August 26, 2024, 765 calls came into the Border Project hotline from CBP custody. Of these calls, 18% (138) came in on weekends. In some sectors the trends are even more extreme; for example, 9 out of 20 calls that came into the Border Project hotline from the CBP El Paso facility between June 5 and July 6 came in on a weekend.
- ▶ The American Immigration Council maintains similar data on their hotline, which is staffed by volunteers. Between December 2023 and June 2024, approximately 52% of the calls that came in from CBP custody were made outside of the organization’s business hours. Again, this trend was more severe in certain sectors; for example, 93% of the calls from a particular area code in Arizona (928) were received outside business hours.

CBP does not coordinate with legal service providers regarding when people are brought to the phone booths and often brings people to the booths in bunches. As a result, service providers' phones regularly ring off the hook for short periods and then are silent for hours. RAICES's legal team will often get a cluster of calls all at once – as many as 40 calls in 50 minutes – followed by hours of silence. Even when fully staffed, it is impossible for the RAICES team to answer all the calls coming in during these “cluster” periods. RAICES has asked CBP to consider spacing out the calls more and communicating with RAICES regarding when people will be brought into the phone booths, but CBP has declined.

Legal service providers report they are unable to reach the majority of those whose calls they miss. RAICES [told the Associated Press](#) in July 2024 that it had been able to respond to only 74 of 1,215 calls received from people in CBP custody since implementation of the June 2024 rule. The timing and volume of the calls are so unpredictable that Jones Day's Border Project has temporarily suspended answering calls from CBP custody entirely.

Phone log data and our interviews demonstrate that the vast majority of people undergoing expedited removal in CBP custody are never able to speak with a lawyer. For some, the conversation may happen but come too late. Sixty-six percent of the people calling the American Immigration Council's hotline between October 2023 to June 2024 had already had their CFI before their call. Almost 95 percent of these callers had a negative outcome at their CFI.

Talking to a lawyer is largely a “one shot” deal.

After an initial phone consultation, CBP rarely allows people to re-establish contact with an attorney. This compounds the emergency nature of CBP legal services work, because providers know that the first call from a potential client is likely to be the last.

Generally, when people are escorted into the CBP phone booths they receive a list of legal service providers with phone numbers that correspond to what is essentially a hotline at each organization. For the most part, the four-hour window is the one shot a person in CBP custody receives to talk to a lawyer; there is no regularized process for calling a lawyer back or for service providers to call the facility and request a call.

- ▶ When an Immigrant Defenders Law Center staff member answers an incoming call on the CBP hotline, their first step is to reach out to Immigrant Defenders Law Center staff to see if there is a lawyer who can drop everything and jump on CFI preparation. That lawyer will then call back the incoming number and hope that the client is still sitting in the phone booth, able to answer the return call. But if CBP has already escorted the person out, the Immigrant Defenders Law Center will almost certainly never be able to reach them again.
- ▶ The Immigration Justice Project of the American Bar Association reported similar experiences. If a call comes in through the CBP hotline at a time when there is not a lawyer available to jump on CFI preparation, the hotline operator will ask the person to try back after a little while. Most often, people are never able to call back again.

U.S. Citizenship and Immigration Services (USCIS) requires a physical signature on the notice of representation, making representation at the CFI interview nearly impossible.

The service providers we interviewed nearly exclusively provide legal orientation services because the hurdles to providing direct representation are usually insurmountable. While conducting orientations provides people with important

information about the credible fear process, full representation is critical to ensure people receive fair and accurate decisions given the complexity of asylum law and policy.

A central obstacle to representation is USCIS's requirement that attorneys submit a notice of representation with a "wet" (i.e. not electronic) signature from the client in order for USCIS to recognize them as the attorney of record and communicate about the case. This means that when an attorney identifies a potential client during the first incoming phone call, they must: email a completed notice of representation to a CBP email inbox; "hope and pray" (in the words of a RAICES managing attorney) that a CBP officer brings the form to their client, has them sign it, and sends it back; and submit the form to USCIS.

The wet signature requirement makes legal access contingent on the availability and cooperativeness of particular CBP officers.

- ▶ RAICES reports CBP's cooperation with the wet signature requirement is very hit or miss – sometimes the officer will get it signed and back to the attorney within a day, and sometimes never at all. It is not uncommon for RAICES attorneys to learn that their clients were summarily deported before CBP returned the signed notice of representation to them. This challenge is so foundational that RAICES is largely stopped from providing direct representation and limited to focusing attempts to provide direct representation to extreme cases where the individual should be disenrolled entirely from the expedited removal process because of a health or rare language vulnerability.
- ▶ The Immigrant Defenders Law Center team reports that on several occasions CBP told an attorney their client was unavailable to sign the notice of representation, only for the attorney to later learn the client was unavailable because they were already in their CFI, unrepresented.

USCIS's wet signature requirement is unreasonable in light of the obstacles to obtaining a signature from a detained client. Even when a wet signature is obtained, service providers report that USCIS asylum officers often push people through their CFI without contacting the attorney on the notice of representation that was submitted. The Immigrant Defenders Law Center reports that at least once per week, USCIS pushes a client through their CFI even when their notice of representation was fully signed and submitted. In some cases, the asylum officer will note that the person declined the opportunity to have a lawyer present, but when the attorney later speaks with the client they nearly always emphatically deny such a waiver. RAICES reports that their legal team has only successfully appeared telephonically with a client at their CFI in one case despite efforts to appear at many.

Representation at Immigration Judge reviews is challenging because the Executive Office for Immigration Review (EOIR) provides little notice and obtaining the record is mostly impossible.

Providing direct representation to a client who is seeking Immigration Judge review of a negative CFI decision is equally if not more challenging than providing representation at a CFI. EOIR does not permit attorneys to dial into an Immigration Judge review unless their notice of appearance appears in the immigration court's online filing system, but hearings sometimes occur before the notice appears. Further, the immigration court does not post the date and time of the scheduled hearing until approximately four hours before it is set to begin, regardless of whether those hours are working hours.

- ▶ The Jones Day Border Team attempted to provide direct representation in Immigration Judge reviews during the pilot phase of their legal service program in CBP custody, and experienced significant barriers to representation resulting in a decision to discontinue efforts to provide full representation. On one occasion, a senior partner volunteering in Laredo, Texas spent nearly a full day repeatedly hitting refresh on the immigration court's website to see if her notice of representation had been uploaded; before it appeared, the client contacted the Jones Day Border Project to flag that they were being pulled into their Immigration Judge review right then and there.
- ▶ RAICES's managing attorney recalled a client who had failed her CFI despite having a strong claim to asylum. The lawyer agreed to represent the client at her Immigration Judge review and checked the EOIR website more than four times throughout the day for the day and time of the hearing. She checked that evening at 5:30 pm before closing out for the day. When she checked at 8:30 am the next morning the hearing had already happened and the Immigration Judge had affirmed the negative decision. Her client was deported.

Providers also report that DHS rarely provides the CFI record to legal service providers prior to an Immigration Judge review, even when a notice of appearance is on record. This makes preparation for the Immigration Judge review extremely challenging, leaving lawyers to guess the basis for the negative decision. The legal team at RAICES has asked DHS and USCIS to fax them the explanation for the CFI denial in advance of the Immigration Judge review, but to date that outreach has not proven successful.

Legal service providers' mental health is suffering because of the extreme experience of trying to provide services to people in CBP custody.

Day in and day out, the legal organizations who provide services to people in CBP custody face an untenable reality that undermines their ability to do this work and retain the staff needed for it. Imagine walking into your office every day to be met by voicemails from hundreds of people, including mothers with children, begging for your help. Then imagine knowing that there is literally no way for you to call them back. Imagine knowing that many of these people have strong claims to asylum in the United States but will not understand how to articulate those claims without a legal consultation. Imagine knowing that those with the most complex claims – mothers trying to protect themselves and their children from domestic violence or Indigenous language speakers fleeing violence they endured because of their Indigeneity – are those most likely to be summarily deported because they did not speak with an attorney. Imagine doing this day after day after day.

Legal service providers report that providing services to people undergoing expedited removal in CBP custody is causing severe mental health challenges for their teams. A managing attorney at RAICES reported that the government-imposed challenges to representation make it difficult and nearly impossible for them to sustainably provide legal services to individuals in CBP custody in a way that is psychologically safe for RAICES staff.

A managing attorney at the Immigration Justice Project at the ABA noted that the government's refusal to provide in-person or video access to people in CBP custody exacerbates the emotional challenges for her team. People calling the CBP legal service hotlines are largely trauma survivors who are managing multiple crises in their lives; legal service providers must ask them details about the most intimate parts of their lives *by phone* in a matter of minutes or hours, with no chance to follow up.

Life or death consequences: harms caused by the government's obstruction of access to CBP facilities

Isabel (pseudonym) is an Indigenous woman who fled horrific persecution in Colombia because of her Indigeneity and gender, including multiple rapes. The government forced Isabel to undergo her CFI less than 48 hours after she arrived in the United States, even though she was trying to heal from injuries. Isabel recalls that prior to her CFI, she was given no time to prepare or consult with an attorney. “The officers made us feel hopeless. They made fun of us and constantly discouraged us, telling us that it was unnecessary to hire an attorney and that it was a waste of time because only about 1% of people win a credible fear interview. We would be deported anyway, so we should just agree to be deported already.”

Isabel was finally able to connect with a private attorney after she received her negative CFI decision, but barely had an opportunity to speak with her because of awful sound quality and because officers only permitted her to speak on the phone for 15 to 30 minutes. This limited phone access was from a small, cold room where Isabel was constantly watched by guards through transparent windows. Devastatingly, USCIS told Isabel she had not passed her CFI. Isabel's attorney advocated for a re-interview and CBP retaliated against Isabel for this advocacy by keeping her in the hallway all day and telling her that if she didn't sign her deportation papers she wouldn't be allowed to make phone calls to anyone or return to her room. Because of persistent and repeated advocacy from her attorney, Isabel was finally released from custody and will be able to present her asylum claim.

Obstructed access to counsel combined with regulations that prevent many asylum seekers from accessing credible fear interviews is leading to [systematic, unlawful deportations](#) of people seeking safety, including survivors of gender-based violence, people whose family members were assassinated, LGBTQI+ people, Indigenous people, people with disabilities, pregnant asylum seekers, and people fleeing death threats with young children.

As described above, a [June 2024 policy change](#) eliminated the longstanding requirement that CBP officers ask people arriving at the border if they are afraid to return to their country, allowing officers to summarily deport people without CFIs unless they “manifest” or otherwise express their fear. In the months since implementation, Human Rights First and partner organizations have [documented](#) how immigration officials are summarily deporting people without a CFI even when they try repeatedly to express a fear of return. The government has summarily deported people who requested asylum, relayed their past persecution, explained their asylum claims, showed agents their injuries, had anxiety attacks, and visibly sobbed and begged to be heard.

Critically, [DHS policy](#) makes telephonic access to a lawyer contingent on a referral for CFI, meaning that the government is deporting many people before they have the opportunity to even attempt to call an attorney. This policy is particularly harmful for Indigenous people and others who speak less common languages and who may be unaware of the need to affirmatively express their fear. RAICES's managing attorney recalled a particularly concerning incident when she asked CBP to help her get in touch with a client named Maria. CBP brought three people to the phone to speak with her, all of whom were named Maria but none of whom were her client. Two of these three “Marias” happened to be Indigenous language

speakers and both explained to the RAICES attorney that they were trying – so far without success – to demonstrate to CBP that they were afraid to return to their country.

On the border today, CBP officers are engaging in widespread mistreatment of people attempting to seek asylum, including making [misrepresentations](#) that “there is no asylum” and “the border is closed.” Without an opportunity to speak with an attorney, many people detained by CBP believe that they cannot request asylum or express fear and are deported without a CFI even though they fear return.

Human Rights First staff spoke with a woman in October 2024 whose experience illustrated this reality. Laura (pseudonym) fled gender-based violence in Mexico and was detained by CBP in Arizona. CBP personnel referred Laura for a CFI but never gave her access to a phone until after USCIS gave her a negative decision on her CFI, which took place at 6 a.m. on a Sunday. After her negative CFI, CBP permitted her access to a phone once, and as she entered the phone booth a CBP agent told her she shouldn’t bother calling a lawyer because no one ever answers the legal calls and she was going to lose her case anyway. Laura used the single opportunity she had to call her family, and when she tried to access a phone again she was told the booths were full. When Human Rights First spoke with Laura, she had just been deported back to Mexico.

Those who do manage to receive a credible fear interview, like Laura, often face insurmountable challenges in presenting their case without legal representation, leading to erroneous decisions and deportations. This is especially the case given the unprecedented complexity of asylum law and policy today, with two new regulations layered on top of the already labyrinthine federal immigration code.

People whose asylum claims are the most complex and difficult to understand without a lawyer are often members of particularly vulnerable groups, including survivors of domestic violence, gender-based harms, and anti-LGBTQI violence. In these cases in particular, asylum law is rarely straightforward. A managing attorney at the ABA Immigration Justice Project explained, “People know their life is in danger and they are seeking protection, but concepts like nexus [the requirement that one’s identity be connected to the feared harm] and protected ground [the basis on which the applicant fears persecution] are not intuitive.”

Policy recommendations and conclusion

The Biden administration has a short but critical window of time to ensure its original promise of access to counsel in CBP custody is realized. NILC and Human Rights First are specifically concerned that government operations in CBP custody have few checks and balances to guard against abuses, especially when critical adjudications are taking place without access for lawyers and rights monitors. NILC and Human Rights First urge DHS to:

1. Stop the practice of implementing Credible Fear Interviews in CBP custody; and
2. Issue a directive permitting lawyers physical access to CBP facilities.

People arriving at the United States’ southern border have survived myriad harms and often endured additional trauma during their journey. The incoming Trump administration has promised to unleash a new series of restrictive, anti-asylum policies at the border that will make protection even more elusive. It is incumbent on the Biden administration to take bold steps in its remaining time in office to safeguard the U.S. asylum system to the greatest extent possible.

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