



Tae Johnson, Acting Director
U.S. Immigration and Customs Enforcement
500 12th St. SW
Washington, D.C. 20536

Ur Jaddou
U.S. Citizenship and Immigration Services
20 Massachusetts Ave NW
Washington, DC 20001

October 20, 2021

Re: Delays of Credible and Reasonable Fear Interviews for Detained Asylum Seekers

Dear Directors Johnson and Jaddou,

On June 28, 2021, a coalition of legal service providers and advocates wrote you and former Acting Director Renaud regarding barriers to due process for detained asylum seekers in expedited removal.¹ While the letter described a variety of due process concerns, we write to follow up with more details specifically on delays of credible and reasonable fear interviews. We urge U.S. Immigration and Customs Enforcement (ICE) and U.S. Citizenship and Immigration Services (USCIS) to take shared responsibility for this serious barrier to due process and immediately address all factors contributing to interview delays, including but not limited to those listed below.

Continued Delays for Credible and Reasonable Fear Interviews

Attorneys around the country continue to report increasing delays for credible and reasonable fear interviews. Legal service providers in Georgia reported speaking to 34 people who had entered the United States between April 2, 2021, and June 13, 2021, were detained at Folkston ICE Processing Center (“Folkston”), Stewart Detention Center (“Stewart”), and Irwin County Detention Center (“Irwin”) and had waited at least 30 days from their date of entry to undergo a credible or reasonable fear interview. Of these 34, 32 had waited at least 60 days, and 15 had waited at least 90 days. One of them reported waiting 117 days. Many individuals waited an extended period of time for an interview while detained at Irwin before the facility closed, and then continued to wait for an interview after they were

¹ Letter to USCIS, ICE, and EOIR, “Detained Asylum Seekers Deprived of Due Process in Expedited Removal Process,” June 28, 2021, <https://immigrationjustice.us/advocacy/advocacy-issues/due-process-in-court/coalition-letter-calls-for-due-process-for-detained-asylum-seekers-in-expedited-removal>.

transferred to another facility. While the closure of Irwin is a welcome development, individuals previously detained there should not have to endure the increased hardship of processing delays.

Legal service providers in Louisiana reported speaking to 16 people who had entered the United States in April or May of 2021, were detained at Winn Correctional Center (“Winn”), Adams County Detention Center (“Adams”), South Louisiana ICE Processing Center (“South Louisiana”), LaSalle ICE Processing Center (“LaSalle”), River Correctional Center (“River”), and Richwood Correctional Center (“Richwood”), and had waited at least 30 days for credible or reasonable fear interviews. Of these 21, 7 had waited at least 60 days, and 2 had waited at least 90 days. One survivor of sexual assault waited 106 days to undergo her interview. Not speaking English or Spanish can increase wait times further. 11 of the 16 individuals who waited over 30 days for interviews in Louisiana spoke languages other than English: Portuguese, Tigrinya, Creole, More, Wolof, and Pulaar.

Attorneys with clients detained at the Aurora Detention Center (“Aurora”) in Aurora, Colorado report that they are waiting one or two months for an interview. Attorneys with clients detained at Otay Mesa Detention Center (“Otay Mesa”) in San Diego, California report that around June 2021, wait times for interviews, increased from approximately one month to two or three months. Some individuals at Otay Mesa reported receiving a letter that informed them that there would be a delay in receiving an interview.

Attorneys also report that many individuals detained at Tarrant County Detention Facility (“Tarrant”) in Estancia, New Mexico, waited two months for fear interviews this summer, and then recently were put into 240 removal proceedings and issued a Notice to Appear without an interview. In response to attorneys submitting parole requests for some of these individuals, the El Paso Field Office has stated that it cannot adjudicate the requests because the individuals did not undergo credible fear interviews.

Causes of Interview Delays

We acknowledge that the increasing number of arrivals at the border and the COVID-19 pandemic have contributed to these delays. However, the administration has continued to use Title 42 to expel thousands of people arriving to southern border, and we firmly believe that USCIS and ICE can and must provide meaningful due process to the limited number that are allowed in, including through timely credible and reasonable fear interviews and decisions. Furthermore, while the ratio of border arrivals to interior enforcement has increased, book-ins from border arrivals have not surpassed the numbers seen in the summer of 2018, at which time asylum seekers did not experience delays of this magnitude.² We therefore believe that other factors are contributing to the delays, including the following:

1. Some facilities, such as Tarrant and Cibola County Detention Center, do not have any ICE officers present on site. Detained individuals therefore struggle to contact ICE to report interview delays, and ICE officers are not able to adequately evaluate and address the causes of delays.
2. USCIS and ICE officials at certain facilities have blamed wait times on a limited number of phones in confidential areas. An ICE representative in Denver told an attorney that there was

² U.S. Immigration and Customs Enforcement, “ICE Detention Statistics,” October 1, 2021, <https://www.ice.gov/detain/detention-management>; TRAC, “Immigrant Detention Numbers Fall Under Biden, But Border Book-Ins Rise,” March 15, 2021, <https://trac.syr.edu/immigration/reports/640>.

only one phone available for fear interviews at Aurora. A representative of USCIS' New Orleans field office told an attorney that the delays were caused by the fact that each facility had only two phones that could be used for interviews.

3. At least one asylum seeker in Georgia reported that an ICE officer stated that delays were due to documents not being processed and transferred in a timely manner.
4. Some individuals spend weeks waiting for an interview at one facility, and then are transferred without having started the credible or reasonable fear process and must wait again.

Delays in Service of Interview Results

Attorneys have also reported increases in the amount of time their detained clients wait to receive the results of their fear interview.

Individuals detained at Aurora previously received a phone call with the results of their interview within a couple days. Now, they do not receive that call and must wait weeks for hard copies of their results. Attorneys for clients detained at Otay Mesa also report waiting approximately three weeks after their fear interview to receive results. 18 people detained at Folkston ICE Processing Center who reported delays in receiving an interview then waited an average of 44 days to receive the results. One detained individual reported undergoing a credible fear interview at Irwin before being transferred to Folkston where he was forced to wait at least 36 days for the results while being held in quarantine, during which time he placed multiple requests to speak to his Deportation Officer through a tablet without response. Another asylum seeker was separated from his pregnant wife at the border and detained in Georgia where he waited approximately three months for a credible fear interview, during which time his wife suffered a devastating late-term miscarriage that threatened her life. He waited at least six weeks to receive the results of his credible fear interview, increasing the time that he was detained and unable to grieve with his wife.

One attorney reported that in Louisiana, particularly at South Louisiana ICE Processing Center, their clients are waiting one to two months to receive a Notice to Appear even after passing a credible fear interview. One woman waited two months and was repeatedly told by an immigration judge that she could not be released on bond without a Notice to Appear. Other attorneys reported an individual who waited 85 days for their results at River Correctional Center, one who waited 89 days at LaSalle ICE Processing Center, and one who waited 121 days at Richwood Correctional Center. One medically vulnerable *Fraihat v. ICE* class member experienced a significant delay in receiving his credible fear interview and then waited 64 days for his results, keeping him in a medically hazardous situation due to his health conditions and the pandemic

Recommendations

Members of the Biden administration have told advocates that the waiting period for credible and reasonable fear interviews has remained at approximately three weeks on average. However, the above examples show that many individuals are waiting four, and some even five times that stated average. Requiring individuals to wait for months for interviews in certain locations is a serious violation of due process, regardless of the overall national average.

We ask that ICE and USCIS:

1. Ensure that asylum seekers receive a credible or reasonable fear interview within ten days of claiming fear entering ICE custody,³ regardless of any transfers between ICE facilities.
2. Ensure that asylum seekers are notified of their credible or reasonable fear interview results within seven days of the interview.
3. Inform asylum seekers of the steps and expected timeline for the credible and reasonable fear process, and that ICE ensure a reasonable opportunity for detained individuals to contact and exchange paperwork with their Deportation Officer.
4. If ICE is not able to provide the above-described level of due process, ICE should release individuals from custody. ICE's detention capacity must be limited by its ability to provide the bare minimum of required services.

Thank you for your attention to this urgent issue.

Sincerely,

American Immigration Council

Florence Immigrant & Refugee Rights Project

Immigration Services and Legal Advocacy

Innovation Law Lab

Lara Nochomovitz, LSN Legal LLC

Southern Poverty Law Center

³ 8 CFR 208.31(b) requires that when a non-citizen is in reasonable fear proceedings, "a reasonable fear determination...will be conducted within 10 days of referral" to USCIS, "in the absence of exceptional circumstances."