

## Lawyers Say Helping Asylum Seekers in Border Custody Is Nearly Impossible

The Biden administration changed the way “credible fear” interviews are conducted and raised the bar for who is eligible to seek asylum.



By Eileen Sullivan

Reporting from Washington

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In the first weeks after President Biden’s new border policies were put in place, his administration recorded a sharp drop in the number of people allowed to apply for asylum after crossing into the United States illegally.

But lawyers who counsel migrants seeking asylum say the changes make it nearly impossible for them to do their jobs and leave the people most in need of protection struggling to find help.

Lawyers cannot meet with clients who are in the custody of Border Patrol. Or call them. Or leave messages for them. There is no system to find out where a client is being held. And the government sets the schedules for key meetings when a lawyer should be present and changes dates and times often without notification.

These barriers are a byproduct of changes in how and where the government conducts what is called a credible fear interview, a make-or-break step that determines whether someone who crossed the border illegally and fears persecution or torture at home should be allowed to apply for asylum in the United States.

Before the changes, the interviews were conducted in Immigration and Customs Enforcement detention facilities, which have longstanding policies for detainees to access lawyers. Migrants were transferred there from border custody, and it took an average of 30 days from the time someone was picked up by Border Patrol to a final decision about whether the person would be allowed to apply for asylum.

Now, many people are being interviewed in Customs and Border Protection facilities, cutting the time down to an average of 13 days.

The government also raised the bar for who is eligible to seek asylum, which has reduced the number of people allowed to apply after crossing the border illegally. In June of 2019, about 74 percent of the people interviewed were given the chance to apply for asylum. Last month, just 30 percent were, according to government data.

Biden officials say the new rules are working by limiting the ability to apply for asylum to people with a good chance at winning their case. The administration has added hundreds of phones and private booths to border facilities so that people can consult with a lawyer.

“D.H.S. has taken significant steps to ensure that noncitizens who claim a fear of return are afforded a safe and efficient process that protects their confidentiality and privacy,” Luis Miranda, a spokesman for the Department of Homeland Security, which oversees Customs and Border Protection, said in a statement.

“We are operating within a broken system that only Congress can fix,” he added.

The Trump administration put policies in place to limit who is eligible to seek asylum as well, but faced court challenges. Mr. Biden chose not to continue the court fight for those policies when he took office.

But as illegal crossings at the southern border reached record levels, Mr. Biden embraced increasingly restrictive measures and issued rules similar to those in the Trump era. Officials in his administration say their approach, which is also facing a legal challenge, is different from former President Donald J. Trump’s because, they say, access to legal counsel is built into their plan.

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But in interviews, reports and court filings, asylum lawyers say this is hardly the case.

“It’s a mere fig leaf of legal access,” said Greg Chen, who leads the government relations division for the American Immigration Lawyers Association.

Some lawyers have refused to take on clients because the quality of representation they can provide under these circumstances is so compromised, Mr. Chen said.

“Attorneys are essentially going into guerrilla warfare just to enter a process with a whack-a-mole setting,” said Faisal Al-Juburi, a spokesman and vice president of development for the nonprofit group RAICES, one of five organizations on a list that the government provides to help migrants held in Customs and Border Protection custody.

Lawyers have long complained about the conditions and remote locations of I.C.E. detention facilities. But they say C.B.P. is much worse.

Customs and Border Protection facilities were designed for booking and charging migrants who cross the border illegally. They were never intended to hold people for more than a few days or provide access from the outside world.



A Customs and Border Protection processing center in El Paso. The facilities were designed for booking and charging people, but not intended to hold people for more than a few days. Patrick T. Fallon/Agence France-Presse — Getty Images

But the Biden administration tasked Customs and Border Protection with making sure migrants could try to connect with a lawyer ahead of interviews that could mean life or death.

A senior C.B.P. official, who was authorized to speak on the condition of anonymity, said that the agency was aware of the challenges asylum lawyers were facing and that it was clear to the government that demand for legal representation was greater than ever. But, the official said, the fact that lawyers are raising these concerns based on their experiences shows that migrants in C.B.P. custody have some level of access to legal counsel.

In addition to adding phone booths for migrants, the administration has created C.B.P. liaison email accounts that lawyers can contact for help sending detainees the forms they must sign to formalize representation.

But a migrant’s access to phones appears to be unpredictable, lawyers said. And often, the liaison email accounts are black holes, said Lisa Koop, the national director of legal services for the National Immigrant Justice Center.

Ruth Pebror, a lawyer with the organization, said hours can pass without a single call to a legal aid hotline. Another lawyer said there have been times when 150 calls came in at once.

During one of her shifts, Ms. Pebror answered a call from a 20-year-old Colombian who said he fled his country because paramilitary groups had threatened him and his family.

After their call, Ms. Pebror emailed a C.B.P. account, seeking to formalize her representation of the client. Days passed, and Ms. Pebror said she heard nothing while her client was interviewed without her and determined to be ineligible to apply for protection. She hoped she could help him during his appeal before an immigration judge. But the court changed the time of his hearing to earlier in the day without telling her. The judge denied her client’s appeal, and Ms. Pebror never spoke with her client again.

“As far as I know, he was removed,” she said.

Cynthia Bautista, a California-based lawyer, said an asylum officer told her that he would conduct her client’s credible fear interview at 9 a.m. or 2 p.m. the following day. But he never called that day, Ms. Bautista said, and she had no way of finding out what happened to her client.

“I was going ballistic,” she said, concerned that the government had already deported her client.

The next day, a Saturday, Ms. Bautista received the call she had expected 24 hours earlier. It was noon, and the asylum officer told her it was time for the interview. Ms. Bautista said it was lucky she was home and able to take the call, which lasted three hours. Ultimately, her client was released and allowed to apply for asylum.

**Eileen Sullivan** is a Washington correspondent covering the Department of Homeland Security. Previously, she worked at the Associated Press where she won a Pulitzer Prize for investigative reporting. [More about Eileen Sullivan](#)

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