

# United States Senate

February 21, 2023

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U.S. SENATE CLIMATE CHANGE TASK FORCE

The Honorable Alejandro Mayorkas  
Secretary of Homeland Security  
U.S. Department of Homeland Security  
3801 Nebraska Avenue, NW  
Washington, DC 20016

Dear Secretary Mayorkas,

I write to urge the Department of Homeland Security (DHS) to cease using the CBP One mobile application, which DHS recently made a requirement for migrants seeking asylum in the United States at the southern border. Under the new DHS policy, those asylum seekers must now use the CBP One app to submit biometric information and schedule appointments to present themselves at certain points of entry (POEs).<sup>1</sup> This expanded use of the CBP One app raises troubling issues of inequitable access to—and impermissible limits on— asylum, and has been plagued by significant technical problems and privacy concerns. DHS should shelve the CBP One app immediately.

I appreciate that, through the expanded use of the CBP One app— initially launched in October 2020 with limited functionality—the Biden administration intended to ensure the safe and orderly processing of noncitizens at POEs. But requiring asylum seekers to use a virtual platform accessible only with a smartphone effectively denies to indigent migrants their legally protected right to seek asylum.<sup>2</sup> Those fleeing dangerous conditions often lack access to technology, including smartphones and the internet access required to download and use the CBP One app.<sup>3</sup>

Furthermore, even migrants with the resources and know-how to obtain and use this technology must schedule an appointment at, and travel to, one of only eight POEs participating in the CBP One app's expanded rollout—out of 328 POEs nationwide.<sup>4</sup> Advocates report that migrants in

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<sup>1</sup> *DHS Continues to Prepare for End of Title 42: Announces New Border Enforcement Measures and Additional Safe and Orderly Processes*, Dep't of Homeland Security (Jan. 5, 2023), <https://www.dhs.gov/news/2023/01/05/dhs-continues-prepare-end-title-42-announces-new-border-enforcement-measures-and>.

<sup>2</sup> CBP One Mobile Application, U.S. Customs and Border Protection, *NEW: Submit Advance Information and Schedule an Appointment Capability for Non-Citizens without Appropriate Travel Documents*, <https://www.cbp.gov/about/mobile-apps-directory/cbpone>.

<sup>3</sup> *Id.*

<sup>4</sup> *DHS Continues to Prepare for End of Title 42: Announces New Border Enforcement Measures and Additional Safe and Orderly Processes*, Dep't of Homeland Security (Jan. 5, 2023), <https://www.dhs.gov/news/2023/01/05/dhs->

Reynoso and Matamoros, Mexico were given appointments for asylum in Tijuana, some 1,500 miles away.<sup>5</sup> Technology can facilitate asylum processing, but we cannot allow it to create a tiered system that treats asylum seekers differently based on their economic status — including the ability to pay for travel — language, nationality, or race.

According to reports, the app also was not ready for its expanded use, could not handle the volume of applicants, and frequently did not work.<sup>6</sup> One user described how she “would create an account, go through several more steps and the app would then restart to step one, a seemingly endless cycle.”<sup>7</sup>

Additionally, the use of the CBP One app to collect biometric information raises privacy concerns and poses unique threats to immigrant communities. According to DHS, the CBP One app uses facial comparison and cloud technology to collect, store, and process data — including biometric and geolocation information — on asylum seekers before they enter the United States.<sup>8</sup> But this technology is fraught with serious problems. An analysis of face recognition software tools conducted by the National Institute of Standards and Technology (NIST) found that “one-to-one matching . . . saw higher rates of false positives for Asian and African American faces relative to images of Caucasians,” up to a factor of 100 times.<sup>9</sup> It therefore comes as no surprise that CBP One has reportedly rejected photos from some migrants — particularly those with dark complexions — delaying or rejecting their applications and requiring them to start the arduous process all over again.<sup>10</sup> Accuracy issues aside, government collection of biometric data is extremely problematic because it is highly invasive and invites serious privacy violations.

The use of geolocation tracking and cloud storage also raises surveillance concerns. These features allow the government to identify and track migrants’ movements without their knowledge or consent. Communities of color are systematically subjected to over-policing. The proliferation of biometric surveillance tools is therefore likely to disproportionately infringe on the privacy of individuals in Black, Brown, and immigrant communities.

Last, but certainly not least, the CBP One app promotes the false notion that, in order to seek asylum in the United States, an appointment is required. It is not, under either U.S. or international law. Indeed, according to DHS guidance from November 2021, “asylum seekers or

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[continues-prepare-end-title-42-announces-new-border-enforcement-measures-and](#); *At Ports of Entry*, U.S. Customs and Border Protection, <https://www.cbp.gov/border-security/ports-entry>.

<sup>5</sup> Sandra Sanchez, *CBP One app gives cash-strapped asylum-seekers interviews hundreds of miles away* (Jan. 18, 2023), <https://www.borderreport.com/immigration/cbp-one-app-gives-cash-strapped-asylum-seekers-interviews-hundreds-of-miles-away/>.

<sup>6</sup> Regina Yurrita, *Asylum seekers met with issues from new CBP One app*, CBS8 (Feb. 1, 2023), <https://www.cbs8.com/article/news/local/asylum-seekers-met-with-issues-from-cbp-one-app/509-5f69579c-05e1-4999-a7a9-720eab0cc680>.

<sup>7</sup> *Id.*

<sup>8</sup> *Privacy Impact Assessment for CBP One*, Dep’t of Homeland Security (Feb. 19, 2021), <https://www.dhs.gov/sites/default/files/2023-01/privacy-pia-cbp068-cbpmobileapplication-jan2023.pdf>.

<sup>9</sup> National Institute of Standards and Technology, *NIST Study Evaluates Effects of Race, Age, Sex on Face Recognition Software* (Dec. 19, 2019), <https://www.nist.gov/news-events/news/2019/12/nist-study-evaluates-effects-race-age-sex-face-recognition-software>.

<sup>10</sup> Suzanne Monyak, *Migrants grapple with government app to make asylum appointments*, Roll Call (Jan. 31, 2023), <https://rollcall.com/2023/01/31/migrants-grapple-with-government-app-to-make-asylum-appointments/>.

others seeking humanitarian protection cannot be required to submit advance information in order to be processed at a Southwest Border land POE.”<sup>11</sup> Disturbingly, requiring asylum seekers to remain in Mexico and await their appointments mirrors “metering” efforts under the Trump administration.<sup>12</sup> And those awaiting their appointments can face dangerous conditions, In January, a 17-year old Cuban boy awaiting his scheduled CBP One appointment in Monterrey, Mexico was fatally shot, underscoring the dangers facing asylum seekers.<sup>13</sup>

Currently, the CBP One app is required for asylum seekers requesting an exception from Title 42; after Title 42 restrictions are lifted, its use will be greatly expanded.<sup>14</sup> This carries profound long-term implications for the U.S. immigration system. In order to help us better understand current and future issues surrounding the CBP One app, please provide written answers to the following questions by March 10, 2023:

1. Will DHS commit to permanently cease using the CBP One application to screen asylum applicants? If not, why not, and will DHS at least temporarily stop using it until DHS can remove any biometric technology and geolocation functionality and fix the app’s technical issues?
2. Will DHS ensure that there is an alternative means for migrants to seek asylum at the southern border, one that does not require an app or internet access? Currently, are asylum seekers who lack a smartphone or internet access — and therefore cannot schedule an appointment through CBP One — turned back when they present themselves at a POE?
3. How is DHS preventing the CBP One app from discriminating against applicants of color, including the app’s rejecting photos of applicants with darker complexions?
4. What assistance, if any, is DHS providing to asylum seekers whose photos are rejected, or who receive error messages or experience other technical problems with CBP One? Can migrants seeking asylum at the southern border still exercise that right without using the CBP One app?
5. Before CBP One’s expanded rollout, was the application tested to screen for technology glitches or failures? If not, why not?
6. Before CBP One’s expanded rollout, were civil society or nongovernmental organizations consulted? If not, why not?
7. Why are only eight POEs participating in CBP One? How and why did DHS decide on this number and the specific locations?
8. How many appointments does DHS make available each day through the CBP One app?

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<sup>11</sup> *Guidance for Management and Processing of Undocumented Noncitizens at Southwest Border Land Ports of Entry*, U.S. Customs and Border Protection (Nov. 1, 2021), <https://www.cbp.gov/sites/default/files/assets/documents/2021-Nov/CBP-mgmt-processing-non-citizens-swb-lpoes-signed-Memo-11.1.2021-508.pdf>

<sup>12</sup> *Metering and Asylum Turnbacks*, American Immigration Council (Mar. 8, 2021), <https://www.americanimmigrationcouncil.org/research/metering-and-asylum-turnbacks>.

<sup>13</sup> Press Release, *Teenager Killed While Waiting in Mexico to Seek Asylum in the United States*, Young Center for Immigrant Children’s Rights (Jan. 26, 2023), <https://www.theyoungcenter.org/media-press-releases/2023/1/26/teenager-killed-while-waiting-in-mexico-to-seek-asylum-in-the-united-states>.

<sup>14</sup> *DHS Continues to Prepare for End of Title 42: Announces New Border Enforcement Measures and Additional Safe and Orderly Processes*, Dep’t of Homeland Security (Jan. 5, 2023), <https://www.dhs.gov/news/2023/01/05/dhs-continues-prepare-end-title-42-announces-new-border-enforcement-measures-and>.

9. In what geographic areas does the CBP One application work and how was this decided?
10. How is DHS working with Mexico to ensure the safety of individuals who must travel in order to present themselves at one of the eight participating POEs?
11. The CBP One app is available only in English, Spanish, and Haitian Creole languages. This makes the app inaccessible to asylum seekers who speak a different language. How did DHS decide on these three languages? What options are available for asylum seekers using the CBP One app who don't speak those three languages?
12. What steps is DHS taking to prevent exploitation of asylum seekers through clone apps or scam attempts? How is DHS defending against misinformation around the CBP One app?
13. How is DHS safeguarding biometric and geolocation information obtained through use of the CBP One App? How is DHS ensuring that this information cannot be misused? Has CBP shared any personal information collected by the CBP One App with any other government agencies or law enforcement entities? If so please describe that sharing in detail.

Rather than mandating use of an app that is inaccessible to many migrants, and violates both their privacy and international law, DHS should instead implement a compassionate, lawful, and human-rights centered approach for those seeking asylum in the United States.

Thank you for your attention to this urgent matter, and I look forward to your response.

Sincerely,



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Edward J. Markey  
United States Senator