

Frequently Asked Questions

Asylum

What is asylum?

The right to seek asylum is guaranteed under U.S. and international law. Asylum protects people from being forced to return to their home country if they demonstrate that they have experienced past persecution or have a “well-founded fear of persecution” on account of their race, religion, nationality, membership in a particular social group, or political opinion. Once granted asylum, individuals are allowed to live and work in the United States, to be reunited with immediate family members who remained abroad, and eventually to apply for permanent residence (a “green card”) and citizenship.

Asylum and refugee status are related concepts. Both asylees and refugees must demonstrate a well-founded fear of persecution in their home country. People seeking refugee status in the United States apply from abroad, while people seeking asylum status apply from within the United States or at the U.S. border.

Who is eligible to apply for asylum?

Families, single adults, and unaccompanied children are all eligible to apply for asylum. Individuals are legally allowed to seek asylum at the border or after they enter the United States, regardless of whether they approach a “port of entry” (a place where U.S. border officials are processing people and goods entering the United States) or enter the United States without authorization between “ports of entry.” Congress set up the system this way to ensure that people seeking asylum would not be forced to return to danger just because they were not able to go through a regular border crossing. If someone is already inside the United States, they can apply for asylum regardless of whether they are undocumented or already have a temporary legal status (such as a student visa or a tourist visa).

Under certain circumstances, people may not be eligible to seek asylum. These individuals may still qualify for other forms of protection like “withholding of removal” under U.S. law as well as protection under the United Nations Convention Against Torture. If an individual qualifies for those protections, the U.S. government is prohibited from deporting them to a country where they will suffer persecution or torture. They can obtain work permits in the United States, but they are not able to be reunited with family members or to obtain permanent residence (a “green card”) or citizenship.

How do individuals apply for asylum?

In general, there are two different pathways to apply for asylum, known as “affirmative” and “defensive” processes. If the U.S. government has started a case in immigration court to try to deport an individual, that individual can apply for asylum “defensively,” to prevent being deported. Otherwise, an individual can apply for asylum “affirmatively” if they are inside the United States and not in immigration proceedings.

In the “affirmative” asylum process, an individual who is not in any immigration proceedings fills out a [Form I-589](#) application for asylum and submits it, with supporting evidence, to U.S. Citizenship and Immigration Services (“USCIS”). This application must be submitted within one year of their arrival in the United States, with some exceptions. The person seeking asylum is then scheduled for an interview with an Asylum Officer who works for USCIS. If the Asylum Officer determines that the case should be approved, the officer will grant the person asylum at that time. If the Asylum Officer does not grant asylum, the individual’s case will be referred to an Immigration Judge where they will have a chance to apply for asylum “defensively.”

In the “defensive” asylum process, an individual in immigration proceedings submits a [Form I-589](#) application for asylum and supporting evidence to the Immigration Judge in immigration court. The Immigration Judge schedules a hearing, known as a “merits” or “individual” hearing, in which the person seeking asylum has the opportunity to present testimony, evidence, and witnesses in support of their asylum application. The government attorney seeking deportation (who works for Immigration and Customs Enforcement or ICE) and the Immigration Judge will ask questions to the person seeking asylum. If the judge determines that the individual should be granted asylum, they will issue an order granting asylum. If not, the judge will issue an order for the individual to be deported. If a person seeking asylum loses their case before the Immigration Judge, the person may appeal to the Board of Immigration Appeals (“BIA”). If unsuccessful, the person seeking asylum may then file a petition for review with a federal appellate court. If the appeal or petition is successful, the case may be sent back to the BIA or Immigration Judge for more proceedings.

Depending on whether an individual is applying for asylum “affirmatively” or “defensively,” it can take from several months to years for a final decision to be made.

What happens when someone seeks asylum at or near the border?

People seeking asylum may present themselves at a port of entry or be apprehended by U.S. immigration officials at or near the border shortly after crossing into the United States. In these cases, immigration officials have the authority to decide whether these individuals are (1) sent directly to an Immigration Judge for regular immigration proceedings where they can present their asylum application and supporting evidence at a full court hearing (this is the “defensive” asylum process described above) or (2) placed in “expedited removal,” an accelerated deportation process with few procedural protections, whose flaws are described in the final section below. If the government decides to put an individual in “expedited removal,” an official is required to ask whether they fear being returned to their country of origin. If the official says that the individual does not claim fear, the individual is summarily deported without ever seeing an Immigration Judge or having an opportunity to apply for asylum. If the official says that the

individual claims fear, the person is scheduled for a screening interview with an Asylum Officer who will ask them for details about why the person is seeking protection. The Asylum Officer then determines whether the individual has a “credible fear” of persecution, which means they have a “significant possibility” of meeting the standard for asylum or other protection. If they pass the interview, the person is placed in regular immigration proceedings. If the person does not pass the interview, the individual may request that an Immigration Judge review the Asylum Officer’s decision. If the Immigration Judge agrees with the Asylum Officer, the individual is summarily deported without ever having a chance to fully present their asylum claim. If the Immigration Judge disagrees and finds a credible fear of persecution, the individual will be placed in regular immigration proceedings.

What barriers do people seeking asylum face in proving that they qualify for protection?

People seeking asylum must navigate a complex and technical process to show that they qualify for protection in the United States. Multiple barriers to asylum may prevent people with valid asylum claims from obtaining the protection that they need. For instance:

- There is no right to government-appointed counsel in immigration court (with some very limited exceptions)—even for children. This means that unlike in criminal court, the U.S. government will not appoint an attorney to represent people seeking asylum who face deportation. If a person seeking asylum can’t find an attorney to represent them or can’t find one they can afford, they must present their asylum application to the Immigration Judge on their own (“pro se”). Research has shown that individuals who have an attorney are [five times more likely to win their asylum cases](#).
- The twelve-page asylum application ([Form I-589](#)) must be submitted in English. Likewise, any supporting evidence must be submitted in English or with a certified translation. Many people seeking asylum are not able to complete the application in English and, especially if they are detained, may be unable to access an attorney or volunteer who can translate.
- Immigration Judges are not independent. They work for the Department of Justice (“DOJ”) in the Executive Office for Immigration Review (“EOIR”). The head of the DOJ, the Attorney General, also oversees the DOJ attorneys who prosecute immigration cases in federal court and, thus, serves as both the chief judge and chief prosecutor. In addition, as DOJ employees, Immigration Judges may be ordered by their supervisors to manage their workloads or to make decisions in the cases of people seeking asylum in certain ways that impact fairness. For instance, they may be told to speed up processing of their cases, which may result in the person seeking asylum not having enough time to find an attorney or prepare their application. Fundamentally, this lack of judicial independence means that people seeking asylum are often unable to get a fair day in court.

Are people seeking asylum detained while they are seeking protection in the United States?

People seeking asylum are often detained in prison-like conditions while they try to prove to an Immigration Judge that they should not be deported. Many are held in the custody of ICE, the federal agency in charge of immigration enforcement. People seeking asylum are often held in conditions similar to prison and often subjected to severe mistreatment, including physical and sexual abuse and denial of access to medical care, even though they are in civil (non-criminal) immigration proceedings and their detention is, by law, not supposed to be punitive.

Depending on how long their immigration cases last, people seeking asylum can be detained for months or years—even if they will eventually win their case and be allowed to stay permanently in the United States.

Some people seeking asylum who are detained may be eligible to be released on a bond. They can request that an Immigration Judge hold a bond hearing. However, many of them are unable to pay the high bond amounts set by an Immigration Judge, which can be up to \$25,000 or more. People seeking asylum who are not eligible for bond may be released on “parole” or under other conditions. Those conditions are set by ICE officers and they are purely discretionary. While ICE officers are supposed to only consider certain factors, such as whether an individual is likely to attend their court proceedings or whether they pose a danger to the community, ICE officers will sometimes refuse to grant “parole” without justification or for discriminatory reasons.

How do other U.S. policies prevent people seeking asylum from obtaining protection?

In recent years, the U.S. government has implemented many harmful policies, particularly at the U.S.-Mexico border, that prevent people with valid asylum claims for protection from accessing the U.S. immigration system. These policies run counter to U.S. law and our international obligations to ensure that individuals and families are not returned to places where they are likely to be persecuted or tortured.

Since March 2020, the U.S. government has routinely expelled people seeking asylum at the U.S.-Mexico border under a policy known as “Title 42.” It restricts entry based on an unprecedented and unlawful invocation of the Public Health Service Act, located in Title 42 of the U.S. Code (federal statutes). This illegal expulsion policy, initiated at the very beginning of the COVID-19 pandemic, has functionally shut down the asylum system at the border and blocked individuals and families fleeing danger from obtaining protection in the United States. People are prevented from approaching the ports of entry to start the process of applying for asylum. If they are apprehended along the border, they are often summarily forced to return to Mexico or their country of origin with no screening of their asylum claims. This policy [places vulnerable individuals, families, and children in danger](#)—either by returning them to the danger they fled in their home country or expelling them to extremely dangerous conditions in northern Mexico, in areas controlled by cartels that particularly target migrants. Public health experts have concluded that this policy has no scientific basis as a public health measure, and that the United States has the resources it needs, including testing, masking, and vaccines, to process people seeking asylum safely.

Even when individuals and families at the U.S.-Mexico border are permitted to start the asylum process, the U.S. government often denies them a fair day in court by putting them in the accelerated “expedited removal” process described above. As explained above, these highly truncated proceedings lack important procedural protections and often result in people with valid asylum claims being deported to danger. In addition to the lack of a full hearing, the screening interviews frequently take place while people are detained and within days of their arrival after a traumatizing journey. These conditions limit a person seeking asylum’s ability to find an attorney, much less to prepare for a high-stakes interview that requires people to disclose past trauma, in intimate detail, to a U.S. government officer. Without an attorney, people who are unfamiliar with the details of U.S. asylum law often do not know what information is important to convey to demonstrate that they have a legal claim to protection in the United States. Moreover, advocates have documented a pattern of immigration officials failing to properly ask individuals about fear of returning to their home countries, resulting in summary deportations without even an asylum screening interview.

Under the Trump administration, thousands of individuals, families, and children were unlawfully blocked from seeking asylum in the United States through a [patchwork of border and asylum policies](#). While the Biden administration has taken some steps to reverse some of these policies and to permit a few individuals and families to enter the United States and seek asylum, there has been no serious effort to fully remedy the serious harms suffered by people. The Biden administration’s decision to keep the unlawful Title 42 order largely in place (described above) means that the right to seek asylum at the southern border remains illusory.

Immigration Detention

Who is subject to immigration detention?

A non-U.S. citizen apprehended at the border or elsewhere within the United States can be detained by one or more federal government agencies before their immigration proceedings, while their proceedings are pending, or while awaiting deportation. Certain aspects of immigration detention can vary depending on which federal governmental agency has custody over the person.^[1]

What types of immigration detention exist?

“Hieleras”

U.S. Customs and Border Protection (CBP) and Border Patrol (BP)^[2] operate holding facilities at or near the U.S. border that detain hundreds of thousands of people each year, including adults and children seeking asylum.

These prison-like facilities near the border are often referred to as “*hieleras*” (Spanish for “freezers” or “iceboxes”), because of their notoriously cold temperatures. They are only designed to hold people for short periods of time during their initial processing. The term “*hielera*” may refer to both holding facilities within a port of entry or holding facilities located within Border Patrol stations, which exist throughout the borderlands.

Temporary processing facilities

CBP also operates other temporary processing facilities where individuals apprehended at or near the border may be detained, such as soft-sided tent “influx facilities” used to detain unaccompanied migrant youth with little to no oversight^[3] and “*perreras*” (Spanish for “dog pound” or “kennel”) – outdoor pens where migrants have been held for multiple days, exposed to extreme temperatures and the elements and without access to medical care.^[4]

Long-term detention centers operated by Immigration and Customs Enforcement (ICE)

ICE operates over 200 long-term detention centers throughout the United States where the agency incarcerates people who are awaiting immigration proceedings, a final determination of their immigration proceedings, or potential deportation. People in ICE detention can include individuals who were initially apprehended by CBP or the Border Patrol who have been transferred to ICE, or individuals apprehended directly by ICE in other parts of the United States. ICE maintains that over 70 percent of people detained in its custody are subject to so-called “mandatory detention,” meaning automatic incarceration without any kind of individualized assessment.^[5] Those not subject to mandatory detention may seek an order for release on bond from an immigration judge, or they may seek release on bond or parole directly from ICE. In addition to creating an insurmountable financial obstacle for many individuals, bond conditions further fuel ICE’s detention and deportation regime.^[6]

More information on ICE detention can be found here:

<https://www.detentionwatchnetwork.org/issues>.

What are conditions like in *hieleras*?

The vast majority of *hieleras* are designed for short-term detention only, and do not have beds, showers, or full-time medical staff.^[7] Individuals detained in *hieleras* have reported the following conditions:

- Being forced to sit and sleep on cold, concrete floors or metal benches;^[8]
- Receiving little or no food (or spoiled or frozen food);^[9]
- Lacking access to clean drinking water;^[10]
- Being packed into overcrowded and unsanitary holding cells without access to basic hygiene items (like sufficient soap or menstrual products);^[11]
- Being denied adequate or timely medical care;^[12]
Being subjected to degrading verbal abuse;^[13]
- Being separated from family members;^[14] and
- Experiencing physical and sexual abuse at the hands of Border Patrol agents or CBP officers – including rampant abuses perpetrated against children.^[15]

These horrific conditions are even more egregious when considering that many individuals taken into CBP custody are people seeking asylum who have already endured significant trauma in fleeing their countries of origin to escape persecution. The abuse and neglect that people then experience in *hieleras* can exacerbate their pre-existing trauma.

How long are people detained in *hieleras*?

Hieleras are not designed for overnight custody, yet people are routinely jailed in these facilities for multiple days. Although CBP policy states that individuals “should generally not be held for longer than 72 hours in CBP hold rooms or holding facilities,”^[16] and Border Patrol policy provides that “[w]henver possible, a detainee should not be held for more than 12 hours,”^[17] detentions exceeding these limits are common.

A July 2019 Department of Homeland Security (DHS) report found that of 8,000 people detained by Border Patrol in the Rio Grande Valley, 42.5 percent were detained for longer than 72 hours, while 18.75 percent were detained for more than ten days.^[18] Children have likewise been detained in *hieleras* for up to – if not longer than – a week.^[19]

Given the structural deficiencies and inhumane conditions of the *hieleras*, it is the ACLU’s position that these border prisons are categorically unsuitable and inappropriate for any period of detention beyond the time required for initial processing, which typically takes no more than a few hours.

Can I locate someone detained in a *hielera*?

Unlike ICE, CBP has never implemented a detained person locator system, nor does it facilitate visitation or communications with family.^[20] By both detaining individuals longer than they should and refusing to implement a locator system or facilitate outward communication,^[21] CBP essentially disappears vulnerable people into its detention system, causing extreme stress and anxiety for both the detained person and family and friends who are unable to locate their loved ones.

It is thus imperative that CBP implement a telephonic or online detainee locator system for all individuals in CBP custody that will allow people to find detained family members and facilitate access to legal counsel for those in CBP custody.

Do people detained in *hieleras* have access to legal assistance?

Although people seeking asylum have a right to confer with lawyers and others to prepare for their initial credible fear interviews^[22] and other screenings for protection, CBP has consistently denied people detained in *hieleras* meaningful access to legal assistance.^[23] Even if a lawyer were able to locate a client, confidential communication with a client is similarly inaccessible. Except for narrow circumstances in which access to confidential communication with counsel has been ordered by federal courts,^[24] as a matter of practice, CBP does not typically let people communicate confidentially by telephone with their lawyers; does not provide any callback number by which lawyers may reach their clients; denies lawyers physical access to *hieleras*; and denies lawyers the opportunity to be present during their clients' screening interviews.^[25] This not only denies people seeking asylum their right to due process, but all but guarantees that many people seeking asylum will be erroneously sent back to countries where they face danger.

Where do people go when they are released from a *hielera*?

Where someone goes upon their release from a *hielera* depends upon their individual circumstances and, sometimes, the whims of DHS enforcement officials. In some cases, a person will be transferred from a *hielera* to ICE custody for long-term detention in a detention center, thus prolonging their suffering for months or years and fueling profits to the private prison companies that ICE often hires to run its facilities. Other individuals may accept "voluntary departure," which permits an individual to leave the United States by a certain date without being subject to a formal order of removal. (Note, however, that individuals detained in CBP custody often report being coerced into signing "voluntary" repatriation documents under threat of violence, criminal charges, or lengthy detention times.^[26]) Others may be released to their networks of care where they can be supported by family members, friends, and their community while their immigration proceedings are ongoing. Those who are released may still be required to report to regular check-ins, wear electronic ankle monitoring devices^[27] or be subjected to other forms of harmful electronic surveillance. Unaccompanied youth are generally transferred into the custody of the Office of Refugee Resettlement (ORR) within the Department of Health and Human Services. ORR is responsible for the youths' care and facilitating their release to family or another sponsor in the United States.

Who is responsible for oversight of the *hieleras*?

CBP abuse – both within and outside of *hieleras* – is exacerbated and encouraged by weak internal accountability mechanisms resistant to addressing human rights violations.^[28] Individuals who wish to file a complaint about their treatment while in CBP custody can go through:

- The Chief Agent in Charge on duty in the facility where they are detained (if they are still in CBP custody);
- The DHS Office of Civil Rights and Civil Liberties (CRCL); or
- The DHS Office of the Inspector General (OIG)

Fear of retaliation often discourages people from making complaints. When people do file complaints, many go unanswered. Few result in any satisfactory disciplinary outcome.^[29] Giving responsibility for investigating allegations of abuse to the agency that is also the subject of the complaint creates a clear conflict of interest.^[30]

And while CRCL and OIG can issue policy recommendations, they do not have the power to discipline or prosecute CBP officials. As such, CBP largely operates within an unchecked culture of abuse.

[1] Am. Immigration Council, *Immigration Detention in the United States by Agency*, at 1 (Jan. 2020), https://www.americanimmigrationcouncil.org/sites/default/files/research/immigration_detention_in_the_united_states_by_agency.pdf.

[2] CBP is the largest law enforcement agency in the United States, with over 60,000 officers. Border Patrol, whose agents generally patrol the border between U.S. ports of entry and as far as 100 miles into the U.S. interior, is a subcomponent of CBP, the broader agency whose officers operate at land, air, and sea ports of entry. **References to CBP herein also include Border Patrol.**

[3] Miriam Jordan, *'No Place for a Child': Inside the Tent Camp Housing Thousands of Migrant Children*, N.Y. Times, Mar. 30, 2021, <https://www.nytimes.com/2021/03/30/us/texas-border-facility-migrants.html>; Edwin Delgado, *Tornillo: Detention Site for Migrant Children to Close Amid Safety Fears*, The Guardian, Jan. 12, 2019, <https://www.theguardian.com/us-news/2019/jan/11/immigration-migrant-children-tornillo-camp-closing>.

[4] See Shaw Drake & Kate Huddleston, *Border Patrol Must Stop Holding People in an Inhumane Outside Pen Under a Highway in South Texas*, Am. Civ. Liberties Union of Tex., Aug. 9, 2021, <https://www.aclu.org/news/civil-liberties/border-patrol-must-stop-holding-people-in-an-inhumane-outside-pen-under-a-highway-in-south-texas/>; American Civil Liberties Union of Tex., *Administrative Complaint Re: Abusive Conditions in Border Patrol Detention Facilities in the Rio Grande Border Patrol Sector* (May 17, 2019), <https://bit.ly/3saCV0l>; Robert Moore, *"They Treated Us Like We Are Animals": Holding Pen for Migrant Families in El Paso Shut Down*, Tex. Monthly, Mar. 31, 2019, <https://www.texasmonthly.com/news-politics/holding-pen-migrant-families-shut-down-el-paso/>.

[5] *Mandatory Detention*, Detention Watch Network, <https://www.detentionwatchnetwork.org/issues/mandatory-detention> (last visited Aug. 12, 2021).

[6] See Stanford Law Sch. Immigrants' Rights Clinic & UC Davis Sch. of Law Immigration Law Clinic, *Following the Money: New Information about the Federal Government's Billion Dollar Immigration Detention and Bond Operations*, at 3-7 (Feb. 2019), <https://bit.ly/3g1wHLc>.

[7] American Civil Liberties Union of San Diego & Imperial Counties, et al., Administrative Complaint Re: U.S. Customs and Border Protection and Border Patrol's Abuse and Mistreatment of Detained Pregnant People, at 2 (Jan. 2020) [hereinafter "CBP Abuse and Mistreatment of Detained Pregnant People"], https://www.aclusandiego.org/sites/default/files/2020-01-22-oig-complaint-1-final-1_0.pdf; see Complaint at 8-9, 15-16, Doe v. McAleenan et al., No. 3:19-cv-02119-DMS-AGS (S.D. Cal. Nov. 5, 2019), available at <https://bit.ly/3semFeL>.

[8] Am. Immigration Council, *Hieleras* (Iceboxes) in the Rio Grande Valley Sector: Lengthy Detention, Deplorable Conditions, and Abuse in CBP Holding Cells, at 4 (Dec. 2015) [hereinafter "*Hieleras* in the Rio Grande Valley"], <https://bit.ly/3xHu3Ar>; CBP Abuse and Mistreatment of Detained Pregnant People, *supra* note 7, at 3-4. See generally Complaint, Doe v. Johnson, No. 4:15-cv-00250-DCB (D. Ariz. June 8, 2015), available at https://www.acluaz.org/sites/default/files/field_documents/doe_v_johnson_complaint_1.pdf.

[9] *Hieleras* in the Rio Grande Valley, *supra* note 8, at 4; CBP Abuse and Mistreatment of Detained Pregnant People, *supra* note 7, at 3-4. See generally Complaint, Doe v. Johnson, *supra* note 8.

[10] *Hieleras* in the Rio Grande Valley, *supra* note 8, at 4; CBP Abuse and Mistreatment of Detained Pregnant People, *supra* note 7, at 3-4. See generally Complaint, Doe v. Johnson, *supra* note 8.

[11] *Hieleras* in the Rio Grande Valley, *supra* note 8, at 4; CBP Abuse and Mistreatment of Detained Pregnant People, *supra* note 7, at 3-4. See generally Complaint, Doe v. Johnson, *supra* note 8.

[12] *Hieleras* in the Rio Grande Valley, *supra* note 8, at 4; see also American Civil Liberties Union of San Diego & Imperial Counties, et al., Administrative Complaint Re: U.S. Customs and Border Protection and Border Patrol's Abuse and Mistreatment of Detained Sick Children, at 9-13 (Feb. 2020) [hereinafter "CBP Abuse and Mistreatment of Detained Sick Children"], <https://www.aclusandiego.org/sites/default/files/2020-02-18-oig-complaint-2-final.pdf>. See generally Complaint, Doe v. Johnson, *supra* note 8.

[13] See generally American Civil Liberties Union of San Diego & Imperial Counties, et al., Administrative Complaint Re: U.S. Border Patrol's Verbal Abuse of Detained Individuals (July 2020), <https://www.aclusandiego.org/sites/default/files/2020-07-07-oig-complaint-4-final-1.pdf>.

[14] American Civil Liberties Union of San Diego & Imperial Counties, et al., Administrative Complaint Re: Separation of Families via CBP Detention and Processing, and the Agency's Refusal to Implement a Detainee Locator System, at 2-7 (Apr. 2020) [hereinafter "Separation of Families via CBP Detention and Processing"], <https://www.aclusandiego.org/sites/default/files/2020-04-15-oig-complaint-3-final.pdf>; see also Letter from Am. Civil Liberties Union of San Diego & Imperial Counties et al. to Alejandro Mayorkas, Secretary, U.S. Dep't of Homeland Sec'y, *Forced Splitting of Protection-Seeking Families at the Southern Border* (July 13, 2021), available at <https://bit.ly/3yKldTF>.

[15] Univ. of Chicago L. School Int'l Hum. Rights Clinic, ACLU Border Litigation Project, & ACLU Border Rights Center, Neglect and Abuse of Unaccompanied Immigrant Children by U.S. Customs and Border Protection, at 10-15, 24-27 (May 2018) [hereinafter "Neglect and Abuse of Unaccompanied Immigrant Children"], <https://bit.ly/3D0o51t>.

[16] U.S. Customs and Border Protection, Nat'l Standards on Transport, Escort, Detention, and Search, at § 4.1 (Oct. 2015), <https://www.cbp.gov/sites/default/files/assets/documents/2020-Feb/cbp-teds-policy-october2015.pdf>.

[17] U.S. Border Patrol, Detention Standards: Hold Rooms and Short Term Custody, Reference No. 08-11267, at § 6.2.1 (Jan. 31, 2008), <https://www.documentcloud.org/documents/818095-bp-policy-on-hold-rooms-and-short-term-custody.html>.

[18] Dep't of Homeland Sec., Office of Inspector General, Management Alert – DHS Needs to Address Dangerous Overcrowding and Prolonged Detention of Children and Adults in the Rio Grande Valley, at 2-3 (July 2, 2019), https://www.oig.dhs.gov/sites/default/files/assets/2019-07/OIG-19-51-Jul19_.pdf.

[19] Neglect and Abuse of Unaccompanied Immigrant Children, *supra* note 15, at 16.

[20] Separation of Families via CBP Detention and Processing, *supra* note 14, at 11.

[21] U.S. Customs and Border Protection, Online Detainee Locator System (FY2017 Report to Congress), at ii (Dec. 4, 2017), <https://bit.ly/3ClvqCu>.

[22] A credible fear interview is an initial interview conducted by a U.S. Citizenship and Immigration Services (USCIS) asylum officer at which the asylum officer determines whether a “significant possibility” exists that the person will be able to demonstrate eligibility for asylum. Human Rights First, *Credible Fear: A Screening Mechanism in Expedited Removal* (Feb. 2018), <https://bit.ly/2XqFlqW>.

[23] See *Doe v. Wolf et al.*, 432 F. Supp. 3d 1200, 1204 (S.D. Cal. 2020), *vacated as moot*, 854 Fed. Appx. 115 (9th Cir. 2021) (order granting motion for classwide preliminary injunction, holding that “Petitioners have met their burden and that the Administrative Procedures Act [], specifically 5 U.S.C. § 555(b), provides a right to retained counsel in these circumstances.”); First Amended Complaint for Declaratory and Injunctive Relief, Las Americas Immigrant Advocacy Ctr. et al., v. Wolf et al., No. 1:19-cv-03640 (D.D.C. Dec. 5, 2019), *available at* <https://bit.ly/3yNdhBl>; Am. Immigration Council, *CBP Restrictions on Access to Counsel*, <https://bit.ly/3xlljFw> (last visited Aug. 12, 2021) (citing 5 U.S.C. § 555(b) and 8 C.F.R. § 292.5(b) and several agency policy documents to show right to access to counsel in CBP custody).

[24] *Doe*, 432 F. Supp. 3d at 1215-16.

[25] See First Amended Complaint for Declaratory and Injunctive Relief, Las Americas Immigrant Advocacy Ctr. et al., v. Wolf et al., *supra* note 23, at 4-5; Complaint, *Doe v. McAleenan et al.*, *supra* note 7, at 9-10.

[26] No More Deaths, *A Culture of Cruelty: Abuse and Impunity in Short-Term U.S. Border Patrol Custody*, at 32-33 (2011) [hereinafter “A Culture of Cruelty”], <https://bit.ly/3jUvyXf>; see also *CBP Abuse and Mistreatment of Detained Pregnant People*, *supra* note 7, at 7-8; *Neglect and Abuse of Unaccompanied Immigrant Children*, *supra* note 15, at 29-31.

[27] Research shows that immigration surveillance technologies, like ankle monitors, adversely impact immigrants’ physical and mental health, and create financial hardships. See, e.g., Benjamin N. Cardozo School of L. Kathryn O. Greenberg Immigration Justice Clinic et al., *Immigration Cyber Prisons: Ending the Use of Electronic Ankle Shackles*, at 12-20 (July 2021), <https://bit.ly/3jO4vwt>.

[28] *A Culture of Cruelty*, *supra* note 26, at 44.

[29] See *id.*; Letter from Am. Civil Liberties Union of Tex. et al. to Alejandro Mayorkas, Secretary, U.S. Dep’t of Homeland Sec’y, *Unresolved Complaints of CBP Misconduct Require Immediate Attention and Accountability* (March 3, 2021), *available at* <https://www.aclu.org/letter/letter-biden-administration-must-address-cbp-abuses-border>; *Neglect and Abuse of Unaccompanied Immigrant Children*, *supra* note 16, at 33-35. See generally Nat’l Immigration Project of the Nat’l Lawyers Guild, *Complaints Ignored, Abuses Excused: Why the Department of Homeland Security’s Internal Accountability Mechanisms Must Be Reformed* (Apr. 2021), *available at* https://www.nationalimmigrationproject.org/PDFs/2021_27Apr_ice-report.pdf.

[30] *A Culture of Cruelty*, *supra* note 26, at 45.