

President Joseph R. Biden
The White House
1600 Pennsylvania Avenue N.W.
Washington, D.C. 20500

December 14, 2023

Alejandro Mayorkas
Secretary of Homeland Security
U.S. Department of Homeland Security
301 7th Street, S.W.
Washington, D.C. 20528

Members of Congress
U.S. Senate
U.S. House of Representatives
Washington, DC 20515

Re: Selling Out LGBTQ Immigrants Will Result in the Death of Queer and Trans Asylum Seekers

Dear Mr. President, Secretary Mayorkas, and Members of Congress,

The undersigned LGBTQ and immigrant rights organizations are horrified by reports that in negotiating *temporary* domestic and foreign funding, Congress and the White House are considering *permanent* and radically irresponsible restrictions to the asylum system. The reported dangerous and highly politicized proposals would make asylum out of reach for many, if not most, refugees. This includes denying protection for thousands of LGBTQ asylum seekers fleeing persecution and torture. These proposals are reminiscent of the draconian immigration agenda of former President Donald Trump. Moreover, these short-sighted changes fail to tackle any of the real issues preventing LGBTQ refugees from securing safety, such as a years' long backlog and insufficient capacity for humane processing at the border. The reported measures would also cost American taxpayers billions of dollars without fixing our broken immigration system, and would be immensely unpopular with the American people who want real solutions¹ and who are strongly in favor of protecting refugees.²

These proposals are of great concern to the American LGBTQ community as they will have a profound impact on queer and trans immigrants and their families by:

¹ AILA Urges Focus on Actual Solutions for Border Security and Management, (Dec. 8, 2023), <https://www.aila.org/about/press/aila-urges-focus-on-actual-solutions-for-border-security-and-management#:~:text=Fund%20cities%20to%20provide%20temporary,create%20bottlenecks%20at%20the%20border>

² Refugee Advocacy Lab, Majority of U.S. Likely Voters Support Access to Asylum at the U.S. Southern Border, (June 12, 2023), [Majority of U.S. Likely Voters Support Access to Asylum at the U.S. Southern Border — The Refugee Advocacy Lab](#)

Reinstating Mass Expulsions that Give *Any* President the Power to Indefinitely and Unilaterally Shut Down Access to Asylum at the Border.

The expulsion authority purportedly under consideration would allow *any* President to shut down access to asylum at the Border *unilaterally* and *indefinitely* at any time. As we saw under the deadly Title 42 policy, over thirteen thousand migrants were subjected to severe violence in Mexico, including LGBTQ asylum seekers who were kidnapped, raped and assaulted.³ Today, cartels, smugglers, police, and others continue to target queer and trans asylum seekers for sexual violence, kidnapping, and abuse as they wait in Mexico for a CBP One appointment to enter the U.S.⁴ The current system is already putting LGBTQ refugees in danger. However, the proposed changes could give *any* President unfettered ability to end asylum at the border altogether. This will force LGBTQ asylum seekers into a dangerous limbo where they must choose between returning to their persecutors in their country of origin, remaining in danger in an unsafe third country, or entering the U.S. without authorization. Such a measure would unquestionably be deadly for LGBTQ refugees.

Enacting a “Transit Ban” or “Safe Third Country” Agreements That Will Subject LGBTQ Asylum Seekers to Mortal Danger. Common transit countries on the journey to the Southern border are nearly all extraordinarily dangerous for LGBTQ asylum seekers. In those transit countries, LGBTQ people face brutal violence, sexual assault, and even death because of their identity.⁵ In reality, applying for asylum in common transit countries is simply not an option. Many LGBTQ asylum seekers have reported that they could not request asylum in a transit country because they were unsafe and it was unclear if they could even base a claim on persecution on account of their sexual orientation or gender identity. Indeed, most common transit countries – including, Mexico, Honduras, El Salvador, and Guatemala – have long, documented histories of severe violence and torture of LGBTQ people. Forcing queer and trans people to seek protection in places that cannot provide it, endangering LGBTQ lives in the process, must be rejected.

Raising the Asylum Screening Standard Resulting in Bona Fide LGBTQ Refugees Being Returned to Persecution. Credible Fear Interviews (CFIs) are *preliminary*

³ Human Rights First, Human Rights Stain, Public Health Farce, (December 2022), [HumanRightsStainPublicHealthFarce-1.pdf \(humanrightsfirst.org\)](#); Human Rights First Tracker of Reported Attacks Against Asylum Seekers and Migrants Who Are Stranded in and/or Expelled to Mexico Due to Title 42 Since January 2021, [Attacks-on-Asylum-Seekers-Blocked-Expelled-or-Returned-to-Mexico-During-Biden-Administration-1.pdf \(humanrightsfirst.org\)](#)

⁴ Comment on the NPRM by the DHS and the EOIR, DOJ on Circumvention of Lawful Pathways, CIS No. 2736-22; Docket No: USCIS 2022-0016; A.G. Order No. 5605-2023. (Mar. 27, 2023), [https://immigrationequality.org/wp-content/uploads/2023/03/LGBTQ_Comment_NPRM-3_27_23.pdf](#) at 19-21

⁵ Comment on the NPRM by the DHS and the EOIR, DOJ on Circumvention of Lawful Pathways, CIS No. 2736-22; Docket No: USCIS 2022-0016; A.G. Order No. 5605-2023. (Mar. 27, 2023), [https://immigrationequality.org/wp-content/uploads/2023/03/LGBTQ_Comment_NPRM-3_27_23.pdf](#) at 13-40

screenings usually performed in immigration detention without an attorney. They are often conducted very shortly after an asylum seeker survives a treacherous journey to the border. As such, many LGBTQ asylum seekers fleeing persecution who have suffered sexual violence and other severe mistreatment on the journey to the U.S. may not yet be ready to share their full story. Recognizing the circumstances of flight, Congress intentionally established the credible fear standard as a low bar so that “there should be no danger that a [person] with a genuine asylum claim will be returned to persecution.”⁶ Still, under current CFI standards, LGBTQ refugees with strong claims are wrongly denied a credible fear. This is due to a variety of factors, including fear of disclosing LGBTQ status to government officials, insufficient privacy in detention facilities where CFIs are often held, insufficient time to understand the process or speak with an attorney, and lack of LGBTQ competency or other errors among immigration officers. Immigration Equality and other advocacy organizations have successfully gotten negative CFIs reversed, with LGBTQ clients going on to win their asylum or withholding of removal cases. However, most individuals are deported before they can access an attorney to assist in overturning a denial. Plus, restrictions under the Biden Administration’s current policies have made challenging these denials even more difficult. The number of erroneous denials will skyrocket if the standard is heightened. LGBTQ refugees who would normally qualify for asylum will instead be returned to countries of persecution.

Forcing More LGBTQ Asylum Seekers into Detention Where They Will Be Abused, while Costing American Taxpayers Billions. For years, immigrants’ rights organizations have warned DHS that throwing asylum seekers in prisons is dangerous and irresponsible.⁷ Voluminous reports have documented dangerous and inhumane detention conditions, including sexual assault, medical neglect, and other homophobic and transphobic abuse directed at detained LGBTQ asylum seekers.⁸ Tragically, abuses have continued under the Biden Administration. In a forthcoming report from Immigration Equality, Human Rights First, and the National Immigrant

⁶ Report of the Committee on the Judiciary House of Representatives on H.R. 2202, (March 4, 1996), at 158, <https://www.congress.gov/104/crpt/hrpt469/CRPT-104hrpt469-pt1.pdf>

⁷ DHS Office of Inspector General, “Management Alert – Issues Requiring Action at the Adelanto ICE Processing Center in Adelanto, California,” OIG-18-86 (Sept. 27, 2018), <https://www.oig.dhs.gov/sites/default/files/assets/Mga/2018/oig-18-86-sep18.pdf>; Human Rights First, “‘I’m a Prisoner Here’: Biden Administration Policies Lock Up Asylum Seekers,” Rebecca Gendelman (Apr. 21, 2022), <https://humanrightsfirst.org/wp-content/uploads/2022/09/ImaPrisonerHere.pdf>

⁸ Immigration Equality, “Letter to Sec. Alejandro Mayorkas Re: The Abuse of Transgender and HIV-Positive People in Detention,” (Jun. 16, 2021), <https://immigrationequality.org/wp-content/uploads/2021/06/Ltr-to-DHS-and-ICE-re-Abuse-of-Trans-and-HIV-Positive-People.pdf>; Detention Watch Network, et. al., “Anthology of Abuse: Violence and Neglect at the Winn Correctional Center (Dec. 6, 2023), https://www.detentionwatchnetwork.org/sites/default/files/reports/Winn%20Anthology%20of%20Abuse_w%20Letter.pdf

Justice Center, current and formerly detained queer, trans and HIV-positive asylum seekers reported rampant mistreatment, including:

- Jennifer⁹ is a trans woman from a Central American country. Jennifer was sexually assaulted while in ICE custody. Additionally, Jennifer was detained and had to fight her immigration case pro se while she was in custody. Jennifer was subject to the Trump administration's illegal asylum bar and for this reason she was ineligible to apply for asylum. Jennifer lost her case and tried to commit suicide as a result. In custody, Jennifer was also diagnosed with HIV. She reported it took the facility about two months to start giving her HIV medication.
- Antonio is a trans man from a Caribbean country. While in ICE custody, he was discriminated against by one of the guards. This led Antonio to attempt suicide. As a result, Antonio was placed in solitary confinement. He was made to undress and was given only a straitjacket to wear.
- Isabel is a trans woman from a Central American country. In ICE custody she was placed in a maximum security cell because the detention staff did not know where else they could house a trans woman. Isabel reported that while in maximum security a man exposed himself and masturbated in front of her twice. He called her slurs and threatened to murder her if she reported what had happened.
- Miguel is an HIV-positive gay man from a South American country. Miguel reported suffering several HIV-related health complications, including kidney problems. Miguel's issues required close monitoring, which he was not getting in ICE detention. Miguel was worried that his health would continue to deteriorate and he would have to be on dialysis. Miguel represented himself pro se in his immigration proceedings. The Judge denied him relief, and Miguel decided not to appeal because he was scared it would prolong his detention, which in turn would further harm his health.

Jailing traumatized and vulnerable asylum seekers in abusive prisons is morally reprehensible. Detention already costs American taxpayers billions each year,¹⁰ and increasing it will mean millions or billions more going directly into the pockets of the private prison industry. The Biden Administration should be eliminating detention, not increasing it.

⁹ Pseudonyms have been used to protect the applicant's identity.

¹⁰ NIJC, Policy Brief | 5 Reasons To End Immigrant Detention, (Sept. 14, 2020), <https://immigrantjustice.org/research-items/policy-brief-5-reasons-end-immigrant-detention#:~:text=In%20just%20fiscal%20year%202020,years%20from%20The%20Marshall%20Project>

Make no mistake, destroying asylum will not fix the immigration system or solve problems along the Southern Border. It will, however, result in the preventable persecution, torture, and death of thousands of LGBTQ refugees.

Congress and the Biden Administration cannot bargain away the lives of LGBTQ asylum seekers. The President should be undoing his predecessor's anti-asylum policies, not expanding them or solidifying them in law. LGBTQ asylum seekers deserve a system that is equitable and accessible. Their lives depend on it.

Signed:

Immigration Equality
Immigration Equality Action Fund
American Friends Service Committee (AFSC)
Asylum Seeker Advocacy Project (ASAP)
Border Butterflies Project
Center for Gender & Refugee Studies (CGRS)
Council for Global Equality
Center for Victims of Torture
DignityUSA
Familia: Trans Queer Liberation Movement
Florence Immigrant & Refugee Rights Project
GLAAD
Human Rights Campaign
Human Rights First
Immigrant Defenders Law Center
InReach (fka AsylumConnect)
Institute for Justice and Democracy in Haiti
Lambda Legal
Latin America Working Group
Lawyers for Good Government (L4GG)
Los Angeles LGBT Center
Mobile Pathways
MPact Global Action
National Center for Transgender Equality
National Immigration Project
National LGBTQ Task Force Action Fund
NIJC/National Immigrant Justice Center
Oasis Legal Services
Outright International
ORAM – Organization for Refuge, Asylum and Migration
Rainbow Railroad
Rev. Dr. Jim Merritt - The Global Justice Institute
Robert F. Kennedy Human Rights

Rocky Mountain Immigrant Advocacy Network
Santa Fe Dreamers Project
Tahirih Justice Center
Transgender Law Center
Quixote Center
Young Center for Immigrant Children's Rights