



**LAWYERS FOR  
CIVIL RIGHTS  
BOSTON**

March 27, 2023

**BY FIRST CLASS MAIL AND EMAIL**

The Honorable Alejandro Mayorkas  
Office of the Executive Secretary  
MS 0525  
Department of Homeland Security  
2707 Martin Luther King Jr. Ave SE  
Washington, DC 20528-0525

**Re: Concerns Relating to CBP One Mobile Application**

Dear Secretary Mayorkas:

Lawyers for Civil Rights (LCR) writes to express concerns surrounding features of the CBP One mobile application that create unfair and unnecessary obstacles for people seeking immigration protection and relief in the United States. At best, CBP One appears to be technologically deficient, and, at worst, it functions in a racially discriminatory manner. We respectfully request a meeting with the Department of Homeland Security (DHS), Customs and Border Protection (CBP), and the Office for Civil Rights and Civil Liberties (CRCL) to discuss our concerns regarding the implementation and functionality of CBP One.

Haitian families and individuals affiliated with Haitian-Americans United, a community-based group in Boston, have contacted LCR regarding their experiences with CBP One, including: (1) serious language access issues, and (2) the required photo submission process disproportionately rejects people with darker skin tones. Because the use of CBP One is mandatory for certain immigration applications, these obstacles place a prohibitive burden on the ability to apply for, much less actually obtain, immigration protection and relief.

**Language Access**

With regard to language access issues, certain CBP One prompts and informational displays on the app are not fully translated from English into other languages, including Haitian Creole. For example, certain instructions and error messages are either not translated at all or are not translated thoroughly. This inconsistency creates a language barrier to entry at the first step of the immigration application process, and it runs contrary to DHS and CBP standards and guidance for interaction with those seeking immigration protection.

DHS has internal regulations requiring that CBP provide meaningful language access to those seeking immigration protection, as set forth in the CBP Language Access Plan. The Language Access Plan “sets forth the standards, principles, and guidelines which CBP will use to provide, and improve, meaningful access to agency programs and activities” to those with limited English

proficiency.<sup>1</sup> The DHS regulations are mandated by Executive Order 13166 (2000), which directs federal agencies to identify and address the language needs of the public they serve. *See* 65 C.F.R. 159 (2000). CBP acknowledges that many individuals with whom they interact “do not read, write, speak, or understand English as their primary language.”<sup>2</sup> CBP also recognizes that “[l]anguage barriers can negatively impact interactions with the public, provision of services, and law enforcement activities,” and, therefore “[e]nsuring effective communication with all persons, including persons who are limited English proficient, facilitates the CBP mission.”<sup>3</sup> The language access issues with CBP One demonstrate an area in which DHS and CBP have failed to live up to that mission by rolling out CBP One without adequate translation, effectively denying access to those with limited English proficiency.

## **Photo Requirement**

CBP One requires applicants to take and submit a photo of themselves in real time to complete the application process. However, in many instances photos taken by applicants with darker skin tones have been repeatedly rejected by CBP One. For example, LCR is aware of applicants who attempted to submit a photo more than 30 times over the course of several days and using a variety of lighting conditions before CBP One would accept a photo. Practically speaking, unless CBP One eventually accepts a photo, the applicant cannot move forward in the process and will not be eligible for immigration protection, all as a result of merely having darker skin. This result – disproportionate exclusion of people with darker skin tones from this immigration process – is untenable. In addition, as the demand for access to CBP One increases, the disproportionate impact on people with darker skin tones will almost certainly increase.

## **Conclusion**

Issues with language access and the photo submission process create significant burdens for those seeking immigration protection and relief. For example, in some instances, applicants were required to miss days of work and spend significant sums of money to travel long distances to areas where they could find and utilize translation services. In this manner, CBP One’s deficiencies create insurmountable burdens on applicants that are tantamount to a denial of the opportunity to seek immigration protection and relief.

LCR urges DHS and CBP to: (1) thoroughly translate the application, including instructions and error messages, for all languages currently available on the platform; (2) immediately upgrade the photo submission software to eliminate the issue of rejecting applicants with darker skin tones; and (3) thoroughly test any new technology with the demographic expected to use it, prior to implementing it for full use.

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<sup>1</sup> CBP Language Access Plan (Nov. 2016). Available at <https://www.cbp.gov/sites/default/files/assets/documents/2017-Oct/CBP%20Language%20Access%20Plan%2011%2018%202016.pdf>.

<sup>2</sup> U.S. Customs and Border Protection, Language Access in Customs and Border Protection. Available at <https://www.cbp.gov/about/language-access>.

<sup>3</sup> *See* note 2.

It is crucial that DHS and CBP address these issues expeditiously to minimize the disproportionate burdens placed on non-English speakers and people with darker skin tones, in accord with the goal of fostering equitable access to immigration protection and relief. Further, LCR requests the opportunity to meet and discuss the resolution of these issues.

Sincerely,

/s/ Michael A. Kippins

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