

## TECHNOLOGY IS NOT YOUR FRIEND: HOW ONE MOBILE APP HARMS ASYLUM SEEKERS

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## INTRODUCTION

In June 2023, Guadalupe Doe, her mother, and her three children fled their home in Mexico in fear for their lives.<sup>1</sup> Guadalupe and her children suffered continued domestic violence and their attacker repeatedly threatened their lives.<sup>2</sup> In hopes of seeking protection, Guadalupe’s family traveled to the Pedestrian West San Ysidro Port of Entry in California to claim asylum.<sup>3</sup> Instead of evaluating the family’s circumstances to authorize entry into the United States (“U.S.”), the Customs and Border Protection (“CBP”) officer gave them two options: (1) pre-schedule an appointment to present their claim using the CBP One Mobile app (“CBP One” or “the app”), or (2) wait in an endless, stagnant line.<sup>4</sup> Out of fear for her children’s safety, Guadalupe decided to stay in a migrant shelter while attempting to secure an appointment instead of forcing her family to sleep on the ground while waiting in line because of the violent nature of the area.<sup>5</sup> During their stay at the shelter the family ran out of money; were forced to eat expired food provided by the shelter; and Guadalupe’s children developed the flu, sore throats, and gastrointestinal illnesses.<sup>6</sup>

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1. Class Action Complaint at 48–49, *Al Otro Lado v. Mayorkas*, No. 3:23-cv-01367-AGS-BLM (S.D. Cal. July 27, 2023). The contents of the complaint are considered allegations. For the purposes of this article, all factual allegations and information are taken as true. This note was written in February 2024, after the case was filed but before a decision was reached. *Al Otro Lado, Inc. et al v. Mayorkas et al*, JUSTIA, <https://dockets.justia.com/docket/california/casdce/3:2023cv01367/764598> (last visited Feb. 22, 2024).

2. Class Action Complaint, *supra* note 1. *Asylum Seekers Ask Court to Block Turnback Policy*, AM. IMMIGR. COUNCIL (Aug. 10, 2023), <https://www.americanimmigrationcouncil.org/news/asylum-seekers-ask-court-block-turnback-policy>.

3. Class Action Complaint, *supra* note 1, at 10–11, 48–49.

4. *Id.* at 10, 36. The San Ysidro Port of Entry encounters roughly 20,000 pedestrians per day and processes 70,000 vehicle entries. *San Ysidro Port of Entry Overview*, U.S. GEN. SERVS. ADMIN., <https://www.gsa.gov/about-us/gsa-regions/region-9-pacific-rim/land-ports-of-entry/san-ysidro-land-port-of-entry> (last updated Dec. 8, 2023).

5. Class Action Complaint, *supra* note 1, at 10–11, 48–49.

6. *Id.* at 48–49. Dara Lind, *CBP’s Continued “Turnbacks” are Sending Asylum Seekers Back to Lethal Danger*, IMMIGR. IMPACT (Aug. 10, 2023), <https://immigrationimpact.com/2023/08/10/cbp-turnback-policy-lawsuit-danger/>.

In July 2023, the family attempted to seek asylum for a second time without a prescheduled appointment.<sup>7</sup> Unfortunately, CBP refused entry to the family again because they did not have a prescheduled appointment.<sup>8</sup> Their difficult experience is not unique; many asylum seekers face similar struggles under the new asylum application requirements.<sup>9</sup> These requirements now require asylum seekers to overcome an additional hurdle—using CBP One to be able to apply for asylum.<sup>10</sup>

Generally, CBP One is used by individuals seeking asylum in the U.S. to obtain an appointment with CBP.<sup>11</sup> CBP One was expanded in May 2023 to regulate asylum requests by requiring asylum seekers to preschedule an appointment through the app’s system to present their claim at a port of entry.<sup>12</sup> The mobile app is the only way for individuals traveling through Mexico to remain eligible for asylum in the U.S.<sup>13</sup> This limitation is problematic, not only because it is a violation of the internationally recognized human right to seek asylum,<sup>14</sup> but also because it raises severe privacy concerns.<sup>15</sup> The privacy concerns are raised when asylum seekers provide personally identifying information (“PII”) before they are able to secure an appointment.<sup>16</sup> PII is any information that can correctly identify an individual; this information includes, but is not

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7. Class Action Complaint, *supra* note 1, at 10.

8. *Id.* at 2, 10–11.

9. *See generally id.*; Kate Morrissey, *U.S. Border Officials Have Been Turning Asylum Seekers Away at Ports of Entry Despite New Rules*, SAN DIEGO UNION TRIB. (May 20, 2023), <https://www.sandiegouniontribune.com/news/immigration/story/2023-05-20/border-asylum-seekers-turn-backs-ports>; *CBP One Mobile Application*, U.S. CUSTOMS & BORDER PROT., <https://www.cbp.gov/about/mobile-apps-directory/cbpone> (last modified Jan. 30, 2024).

10. *CBP One: An Overview*, AM. IMMIGR. COUNCIL 1, [https://www.americanimmigrationcouncil.org/sites/default/files/research/cbp\\_one\\_an\\_overview\\_0.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/cbp_one_an_overview_0.pdf) (last modified June 2, 2023); *see CBP One Mobile Application, supra* note 9.

11. *CBP One: An Overview, supra* note 10.

12. *Id.* at 2.

13. *Id.* at 1, 7.

14. G.A. Res. 217 (III) A, Universal Declaration of Human Rights art. 14(1) (Dec. 8, 1948) [hereinafter UDHR].

15. *CBP One: An Overview, supra* note 10, at 1, 7.

16. U.S. DEP’T HOMELAND SEC., *CBP/PIA-068, PRIVACY IMPACT ASSESSMENT FOR CBP ONE 14–16* (2021).

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limited to, live photographs, names, and intended ports of entry.<sup>17</sup> Furthermore, the app uses facial recognition and geolocation services.<sup>18</sup> If a security breach were to occur, the obtained PII may allow asylum seekers' aggressors to access their exact location, which may result in further irreparable physical and psychological harm.<sup>19</sup> Therefore, this Paper analyzes the data protection rights that asylum seekers must be afforded while using CBP One.

Part I discusses the history and development of CBP One, addresses the PII required by the app, and explains reported issues. Part II looks to international examples to analyze if the U.S. possesses the authority to collect PII beyond its borders. Finally, Part III provides three solutions to protect asylum seekers' data privacy rights as a result of using the app.

## I. THE EMERGENCE OF CBP ONE

An individual who qualifies for asylum, or the protection from the requirement to return to their home country, is an asylee.<sup>20</sup> Generally, an asylee can apply for asylum at a port of entry or once within the territorial borders of the U.S.<sup>21</sup> However, U.S. immigration policy is

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17. *Id.* at 14–15; U.S. CUSTOMS & BORDER PROT., 2120-010A, PRIVACY POLICY, COMPLIANCE, AND IMPLEMENTATION 7 (2022) [hereinafter PRIVACY POLICY, COMPLIANCE, AND IMPLEMENTATION]. A live photograph is a “selfie” the user takes to determine the user is a real person, as opposed to an old, priorly taken picture of a person. *Id.* at 23. Specifically, when the user takes the photograph within the app, CBP One uses embedded technology to capture 3D facial changes and recognize perspective distortion to confirm liveliness. *Id.* at n.39.

18. Austin Kocher, *Glitches in the Digitization of Asylum: How CBP One Turns Migrants' Smartphones into Mobile Borders*, 13 SOCIETIES, at 5 (June 20, 2023); Class Action Complaint, *supra* note 1, at 31–32; *CBP One: An Overview*, *supra* note 10, at 5–7.

19. *See CBP One: An Overview*, *supra* note 10, at 6.

20. *Asylum in the United States*, AM. IMMIGR. COUNCIL 1 (Jan. 2024) [https://www.americanimmigrationcouncil.org/sites/default/files/research/asylum\\_in\\_united\\_states\\_update\\_jan\\_2024.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/asylum_in_united_states_update_jan_2024.pdf) [hereinafter *Asylum in the United States 2024*].

21. *Id.* at 2; *see Question and Answers: Affirmative Asylum Eligibility and Applications*, U.S. CITIZ. & IMMIGR. SERV., <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/affirmative-asylum-frequently-asked-questions/questions-and-answers-affirmative-asylum-eligibility-and-applications> (last visited Sept. 11, 2023). There are two forms of asylum processing in the U.S.: affirmative and defensive. *Asylum in the United States 2024*, *supra* note 20, at 2; *Obtaining Asylum in the*

ever changing due to its political nature.<sup>22</sup> For example, the Immigration and Nationality Act Amendments of 1965 established an admissions category for asylees, rather than only granting admission based on the Attorney General's parole authority.<sup>23</sup> The creation of the U.S. asylum system was influenced by this change through the passage of the Refugee Act of 1980.<sup>24</sup> Under the Trump and Biden administrations, asylum applications are more complex than ever before.<sup>25</sup>

The U.S. grants protection to individuals who are unable to return to their home country because they do not have protection from persecution in that country.<sup>26</sup> Specifically, the individual must show "a well-founded fear of persecution in the future 'on account of race, religion, nationality, membership in a particular social group, or political opinion.'"<sup>27</sup> For example, Laura Doe, a twenty-three-year-old mother of three children, demonstrated a well-founded fear of persecution due to her family's harm imposed by a powerful Mexican cartel.<sup>28</sup> The cartel kidnapped her father-in-law, murdered her brothers-in-law, and threatened her and her children's lives.<sup>29</sup> She established a well-founded fear of persecution because (1) she was threatened with harm, (2) her in-laws' physical harms indicate the truth of the threats, and (3) she cannot return home.<sup>30</sup>

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*United States*, U.S. CITIZ. & IMMIGR. SERVICES, <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/obtaining-asylum-in-the-united-states> (last updated Sept. 13, 2023). Affirmative asylum processing allows asylum seekers to apply for asylum at a port of entry or from within the U.S. *Questions and Answers: Affirmative Asylum Eligibility and Applications*, *supra* note 21. Defensive asylum processing occurs when an individual claims asylum as a defense during removal proceedings in immigration court. *Obtaining Asylum in the United States*, *supra* note 21.

22. Jessica Bolter, *Immigration Has Been a Defining, Often Contentious, Element Throughout U.S. History*, MIGRATION POL'Y INST. (Jan. 6, 2022), <https://www.migrationpolicy.org/article/immigration-shaped-united-states-history>.

23. *Id.*

24. *Id.*

25. *See generally Asylum in the United States 2024*, *supra* note 20.

26. *Id.* at 1.

27. *Id.*; *see also* Convention Relating to the Status of Refugees art. 1(A)(2), July 28, 1951, 189 U.N.T.S. 137.

28. Class Action Complaint, *supra* note 1, at 46.

29. *Id.*

30. 8 C.F.R. § 208.13 (2023). "The applicant may qualify as a refugee either because he or she has suffered past persecution or because he or she has a well-founded fear of future persecution." *Id.* § 208.13(b).

Therefore, the family's experiences allow Laura to seek protection in the U.S. as a member of a particular social group who face threats from the cartel because of their family connection.<sup>31</sup>

In January 2019, the Trump administration began implementing the Migrant Protection Protocol ("MPP"), commonly referred to as "Remain in Mexico" program, which required individuals to wait in Mexico until their immigration court hearings.<sup>32</sup> From January 2019 to December 2020, roughly 70,000 migrants returned to Mexico to wait for their hearings.<sup>33</sup> On January 21, 2021, the Biden administration suspended new enrollments in the program.<sup>34</sup> In June 2021, the Department of Homeland Security ("DHS"), following an Executive Order, terminated MPP.<sup>35</sup> Despite this critical decision, in August 2021, the Northern District court of Texas required the Biden administration to reinstate MPP.<sup>36</sup> The Biden administration reinstated a more restrictive program from December 2021 to August 2022.<sup>37</sup> During this short eight-month-period, 7,505 migrants returned to Mexico.<sup>38</sup> The reinstatement also expanded the program's reach.<sup>39</sup> Unlike the Trump era program, this new version of

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31. *See id.* § 1208.1(c).

32. *Asylum in the United States*, AM. IMMIGR. COUNCIL 6 (Aug. 2022), <https://www.americanimmigrationcouncil.org/research/asylum-united-states> (on file with Author) [hereinafter *Asylum in the United States 2022*]; *see, e.g. Migrant Protection Protocols Cohort Reports*, U.S. DEP'T HOMELAND SEC., <https://www.dhs.gov/immigration-statistics/special-reports/migrant-protection-protocols-report> (last updated Nov. 20, 2023).

33. *The "Migrant Protection Protocols": an Explanation of the Remain in Mexico Program*, AM. IMMIGR. COUNCIL 1 (Feb. 2024), [https://www.americanimmigrationcouncil.org/sites/default/files/research/migrant\\_protection\\_protocols\\_2024.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/migrant_protection_protocols_2024.pdf).

34. Press Release, Dep't Homeland Sec., DHS Statement on the Suspension of New Enrollments in the Migrant Protection Protocols Program (Jan. 20, 2021), <https://www.dhs.gov/news/2021/01/20/dhs-statement-suspension-new-enrollments-migrant-protection-protocols-program>.

35. *See generally* Memorandum from Alejandro N. Mayorkas, Secretary, U.S. Dep't Homeland Sec., on Termination of the Migrant Protection Protocols Program to Troy A. Miller, Acting Commissioner, U.S. Customs & Border Prot. et al.1 (June 1, 2021), [https://www.dhs.gov/sites/default/files/publications/21\\_0601\\_termination\\_of\\_mpp\\_program.pdf](https://www.dhs.gov/sites/default/files/publications/21_0601_termination_of_mpp_program.pdf).

36. *Texas v. Biden*, 554 F.Supp.3d 818, 857 (N.D. Tex. 2021).

37. *The "Migrant Protection Protocols": an Explanation of the Remain in Mexico Program*, *supra* note 33, at 7.

38. *Id.* at 1.

39. *Id.* at 7.

MPP applied to all migrants from the Western Hemisphere.<sup>40</sup> This change captured migrants, such as Haitians and other Caribbean populations, who were previously excluded.<sup>41</sup> It was not until June 2022, when the Supreme Court of the United States held MPP violated immigration law.<sup>42</sup> As a result, the Biden administration immediately terminated MPP.<sup>43</sup> Despite this vital change, the Biden administration implemented a similar policy under a different name—CBP One Mobile App.<sup>44</sup>

### A. *The Mobile App—An Overview*

CBP One first launched in October 2020 with the purpose of allowing travelers easy access to their I-94<sup>45</sup> and to preschedule cargo inspections.<sup>46</sup> The app did not expand to encompass asylum eligibility requests until May 2023, under the Circumvention of Lawful Pathways (“CLP”).<sup>47</sup> CLP explains that due to the termination of Title 42,<sup>48</sup> there

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40. *Id.*

41. *Id.*

42. *Asylum in the United States 2024*, *supra* note 20, at 6. *Biden v. Texas*, No. 21–954, 597 U.S. at 25 (2022).

43. The Biden administration originally terminated the program in June 2021; however, a Texas federal case ruled that the termination was improper. *Asylum in the United States 2024*, *supra* note 20, at 6; *Biden*, 597 U.S. at 25. It was not until June 2022 that the Supreme Court upheld the Biden administration’s decision. *Id.*; *Asylum in the United States 2024*, *supra* note 20, at 6; *Biden v. Texas*, 597 U.S. at 25.

44. Molly O’Toole, *Exclusive: Biden has quietly deployed an app for asylum seekers. Privacy experts are worried*, L.A. TIMES, <https://www.latimes.com/politics/story/2021-06-04/asylum-bidens-got-an-app-for-that-with-privacy-risks-and-surveillance-beyond-border> (last updated June 6, 2021, 2:51 PM); *CBP One: An Overview*, *supra* note 10.

45. An I-94 is an electronic record of a traveler’s arrival(s) and departure(s) in the U.S. *Definition of an I-94*, U.S. CUSTOMS & BORDER PROT. (July 6, 2023), [https://help.cbp.gov/s/article/Article-880?language=en\\_US](https://help.cbp.gov/s/article/Article-880?language=en_US).

46. Kocher, *supra* note 18, at 5. *Government Documents Reveal Information about the Development of the CBP One App*, AM. IMMIGR. COUNCIL (Feb. 28, 2023), <https://www.americanimmigrationcouncil.org/FOIA/government-documents-reveal-information-about-development-cbp-one-app>; PRIVACY POLICY, COMPLIANCE, AND IMPLEMENTATION, *supra* note 17, at 2.

47. *CBP One: An Overview*, *supra* note 10, at 2. Circumvention of Lawful Pathways, 88 Fed. Reg. 31314, 31317 (May 16, 2023) (to be codified at 8 C.F.R. pt. 208).

48. Title 42 authorizes the prevention of foreign national entry due to the existence of a communicable disease that is a serious danger if introduced in the U.S. 42 U.S.C. § 265; John Gramlich, *Key facts about Title 42, the pandemic policy that has*

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would be an overwhelming number of migrants seeking asylum in the U.S., thus requiring proper procedures to be implemented to regulate the influx.<sup>49</sup> CLP further explains that asylum seekers are presumed to be ineligible for asylum if they did not (1) seek an alternative legal pathway, such as parole, (2) pre-schedule an appointment through CBP One to present their asylum case, or (3) receive a denial of asylum in another country they traveled through.<sup>50</sup>

Many advocates criticize CLP for continuing the previous, unlawful Trump era policies.<sup>51</sup> For example, Melissa Crow, Director of Litigation at the Center for Gender and Refugee Studies, stated “[t]he Biden administration has had over two years to set up a fair and humane asylum process post-Title 42. That it has instead chosen to resurrect and repackage illegal Trump-era policies is reprehensible.”<sup>52</sup> In addition, advocates have raised concerns about the information required to obtain a pre-schedule appointment, and the technical difficulties individuals experience when using CBP One.<sup>53</sup> Advocacy Coordinator for the Kino

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*reshaped immigration enforcement at U.S.-Mexico border*, PEW RSCH. CTR. (Apr. 27, 2022), <https://www.pewresearch.org/short-reads/2022/04/27/key-facts-about-title-42-the-pandemic-policy-that-has-reshaped-immigration-enforcement-at-u-s-mexico-border/>. Title 42 was invoked in March 2020 to allow Border Patrol agents to expel asylum seekers from entering due to the COVID-19 pandemic. *Id.*

49. Circumvention of Lawful Pathways, 88 Fed. Reg. at 31316; *Fact Sheet: Circumvention of Lawful Pathways Final Rule*, U.S. DEP’T HOMELAND SEC. (May 11, 2023), <https://www.dhs.gov/news/2023/05/11/fact-sheet-circumvention-lawful-pathways-final-rule>; Jacob Katz Cogan, *Contemporary Practice of the United States Relating to International Law: Immigration and Migration: The Biden Administration Takes Actions to Restructure Migration to the U.S.-Mexico Border*, 117 AM. J. INT’L L. 528, 528–29 (2023).

50. *Fact Sheet: Circumvention of Lawful Pathways Final Rule*, *supra* note 49; Circumvention of Lawful Pathways, 88 Fed. Reg. at 31322.

51. Katz Cogan, *supra* note 49, at 533–34. *See, e.g.*, *E. Bay Sanctuary Covenant v. Garland*, 994 F.3d 962 (9th Cir. 2021) (holding that requiring asylum seekers to first apply for asylum in another county before seeking asylum in the U.S. was arbitrary and does not support the claims that Mexico is a safe alternative); Katrina Eiland & Jonathan Blazer, *Biden Must Reverse Plans to Revive Deadly Trump-era Asylum Bans*, ACLU (Jan. 26, 2023), <https://www.aclu.org/news/immigrants-rights/biden-must-reverse-plans-to-revive-deadly-trump-era-asylum-bans>.

52. *Immigrants’ Rights Advocates Sue Biden Administration Over New Asylum Ban*, ACLU (May 11, 2023, 11:00 PM), <https://www.aclu.org/press-releases/immigrants-rights-advocates-sue-biden-administration-over-new-asylum-ban>.

53. Ava Sasani, *Biden administration sued over asylum appointment app that ‘does not work,’* THE GUARDIAN (Aug. 7, 2023), <https://www.theguardian.com/us-news/>



Border Initiative, Zoe Martens, commented that the ““required use of the CBP One app conditions access to protection on financial resources, tech literacy, and luck. . . . Access to protection should not be conditional on your cell phone model, native language, or the whims of a glitchy app.””<sup>54</sup>

In stark contrast, the government claims using CBP One is voluntary.<sup>55</sup> Reality shows, however, CBP One is the only exception out of the three that is accessible to most asylum seekers.<sup>56</sup> Therefore, the involuntary use of CBP One raises numerous privacy concerns due to the PII required and potential physical harm to asylum seekers.<sup>57</sup>

### 1. Personally Identifiable Information and Its Protection

One privacy concern with CBP One is caused by the sensitive data required to request an appointment. Individuals must provide PII before they can request an appointment.<sup>58</sup> PII is any information that directly, or indirectly, identifies an individual, including, but not

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2023/aug/07/biden-administration-lawsuit-cbp-one-app (reporting limitations such as inaccessible internet or electricity, mistranslations, limited lanague availability, error messages, and technical glitches); Kocher, *supra* note 18, at 8 (explaining issues logging in and darker skin tones being unrecognizable for live photos); Circumvention of Lawful Pathways, 88 Fed. Reg. at 31396-97, 31402-407 (expressing concerns about the security of collected PII due to past data breaches, a language barrier due to the limited non-English lanaguges available and certain portions and messages offered only in English, inability to accept photos from individuals with darker skin tones, and the app crashing, glitching, or freezing); Class Action Complaint, *supra* note 1, at 26–32 (addressing financial hurdes, access to smartphones with the required operating system and storage space, rejected live photos for individuals with darker complexions, mistranslated words, non-English languages available, error messages appearing only in English, and limited access to the internet); *Government Documents Reveal Information about the Development of the CBP One App*, *supra* note 53 (discussing reported issues regarding the live photos and geolocation requirements).

54. *Report Highlights Harm and Injustices of CBP One App for Asylum Seekers*, NETWORK LOBBY FOR CATH. SOC. JUST. (Aug. 31, 2023), <https://networklobby.org/news/83123-cbponereport/>.

55. PRIVACY POLICY, COMPLIANCE, AND IMPLEMENTATION, *supra* note 17, at 5–6, 10, 14–15, 27.

56. *See generally Government Documents Reveal Information about the Development of the CBP One App*, *supra* note 53; O’Toole, *supra* note 44.

57. O’Toole, *supra* note 44.

58. Class Action Complaint, *supra* note 1, at 25–26; PRIVACY POLICY, COMPLIANCE, AND IMPLEMENTATION, *supra* note 17, at 15–16.

limited to, their birthday, photograph, and name.<sup>59</sup> Specifically, CBP One requires individuals to provide a live photo, first and last name, date of birth, nationality, country and/or city of birth, country of residence, travel document information, phone number, U.S. address, family information, marital status, gender, height, weight, eye color, requested date of arrival, and intended port of entry.<sup>60</sup> Once the individual provides the aforementioned PII, they are required to provide their exact location at the time of submitting their request.<sup>61</sup> CBP One assures PII is protected because the app is secure.<sup>62</sup> However, the app poses significant problems and asylum seekers' data privacy rights are limited under U.S. law.<sup>63</sup>

The Privacy Act of 1974 recognizes the importance of privacy regulations.<sup>64</sup> As of February 2024, there are only three states (Illinois, Texas, and Washington) and one city (New York City) that enacted legislation to protect a user's biometric data.<sup>65</sup> Unfortunately, the additional measures are limited and only extend to residence, U.S. citizens, and Legal Permanent Residents.<sup>66</sup> Despite these limitations, asylum seekers may receive

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59. PRIVACY POLICY, COMPLIANCE, AND IMPLEMENTATION, *supra* note 17, at 7.

60. *Id.* at 15–16. The government claims the information is necessary to streamline review by CBP at Ports of Entry. *Id.* at 15.

61. *Id.* at 9.

62. *Id.* at 12; *Fact Sheet: Using CBP One to Schedule an Appointment*, U.S. CUSTOMS & BORDER PROT. (Jan. 9, 2023), [https://www.cbp.gov/sites/default/files/assets/documents/2023-Jan/CBP%20One%20Fact%20Sheet\\_English\\_3.pdf](https://www.cbp.gov/sites/default/files/assets/documents/2023-Jan/CBP%20One%20Fact%20Sheet_English_3.pdf).

63. *See generally* 8 CFR § 208.6 (2023).

64. *Data Protection Laws of the World United States*, DLA PIPER, <https://www.dlapiperdataprotection.com/index.html?t=law&c=US&c2=> (last modified Jan. 29, 2023). *See generally* Privacy Act of 1974, 5 U.S.C. § 552(a) (2020).

65. *2024 State Biometric Privacy Law Tracker*, HUSCH BLACKWELL, <https://www.huschblackwell.com/2024-state-biometric-privacy-law-tracker> (last modified Feb. 13, 2024); Lori Ross, *Biometric Data Protection: A Growing Trend in State Privacy Legislation*, OUTSIDE GC (Feb. 7, 2024), [https://www.outsidegc.com/blog/biometric-data-protection-a-growing-trend-in-state-privacy-legislation#\\_edn1](https://www.outsidegc.com/blog/biometric-data-protection-a-growing-trend-in-state-privacy-legislation#_edn1).

66. *Data Protection Laws of the World United States*, *supra* note 64. *See generally* Privacy Act of 1974 § 552(a).

third-party data sharing protections under the Disclosure to Third Parties requirement enshrined in the Code of Federal Regulations.<sup>67</sup>

Under the Code of Federal Regulations (“CFR”), information kept by DHS and the Executive Office for Immigration Review about asylum applications must be protected from disclosure to nongovernmental bodies.<sup>68</sup> To secure an appointment, the applicant is required to turn over PII.<sup>69</sup> If the information is incorrectly shared or accessed, a person may easily identify the applicant because of their picture, name, email address, birthday, and any other required information the applicant supplies.<sup>70</sup> As a result, the PII allows any third party to easily identify a specific applicant’s intent to claim asylum. This PII should only be required when applicants present their claim upon entry.<sup>71</sup> Therefore, CBP One’s pre-schedule appointment data should fall within the scope of the Disclosure to Third Parties protections.<sup>72</sup> In addition to the collection of PII, the combination of previous

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67. Disclosure to Third Parties, 8 C.F.R. §§ 208.6(a) (information collected cannot be shared to a third-party without the applicant’s written consent), 208.6(b) (information that indicates a specific individual applied for asylum cannot be shared with a third party) (2023).

68. *Id.* § 208.6(b). See Memorandum from Joseph E. Langlois, Director, Office of Refugee, Asylum, and Internal Operations, Dep’t Homeland Sec., on Fact Sheet on Confidentiality to Asylum Office Directors 2 (June 15, 2005), <https://www.uscis.gov/sites/default/files/document/fact-sheets/fctsheetconf061505.pdf>.

69. PRIVACY POLICY, COMPLIANCE, AND IMPLEMENTATION, *supra* note 17, at 15–16.

70. See generally *Id.* at 9, 15–16.

71. U.S. DEP’T HOMELAND SEC., CBP/PIA-076, PRIVACY IMPACT ASSESSMENT FOR THE COLLECTION OF ADVANCE INFORMATION FROM CERTAIN UNDOCUMENTED INDIVIDUALS ON LAND BORDER 17 (2023) [hereinafter PRIVACY IMPACT ASSESSMENT FOR THE COLLECTION OF ADVANCE INFORMATION]; PRIVACY POLICY, COMPLIANCE, AND IMPLEMENTATION, *supra* note 17, at 15–16.

72. 8 C.F.R. § 208(b).

government data breaches<sup>73</sup> and potential future breaches give rise to third party protections.<sup>74</sup>

## 2. Reported Issues

Within the last five years, DHS, the Immigration and Customs Enforcement (“ICE”), and CBP all released sensitive immigration data.<sup>75</sup> In 2019, a subcontractor working with CBP collected travelers’ images and license plate data without authorization.<sup>76</sup> The breach compromised almost 100,000 travelers’ facial recognition images and more than 105,000 license plate images.<sup>77</sup> Nineteen of the facial recognition images were found on the dark web.<sup>78</sup> DHS’s Office of Inspector General’s review of the incident stated, while it was the subcontractor’s actions and technology that subjected the information to the breach, it is ultimately CBP’s responsibility to prevent data breaches.<sup>79</sup> The Inspector General

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73. These are examples of government breaches because DHS, CBP, and ICE are all U.S. governmental departments responsible for enforcing U.S. immigration laws. *Immigration Enforcement Actions Annual Flow Report*, U.S. DEP’T HOMELAND SEC., <https://www.dhs.gov/ohss/topics/immigration/enforcement-AFR> (last updated Nov. 20, 2023). These government organizations disclosed the private information about asylum seekers to third parties without the asylum seekers’ consent. *See, e.g., Hamed Aleaziz, ICE accidentally released the identities of 6,252 immigrants who sought protection in the U.S.*, L.A. TIMES (Nov. 30, 2022, 6:04 PM), <https://www.latimes.com/california/story/2022-11-30/ice-released-names-6252-immigrants-persecution> [hereinafter *ICE Accidentally Released the Identities*]; Hamed Aleaziz, *DHS accidentally informed Cuba that deportees had sought protection in the U.S.*, L.A. TIMES (Dec. 19, 2022, 5:02 PM), <https://www.latimes.com/world-nation/story/2022-12-19/cuba-immigrants-deported-asylum-leak> [hereinafter *DHS Accidentally Informed Cuba*]; Drew Harwell & Geoffrey A. Fowler, *U.S. Customs and Border Protection says photos of travelers were taken in a data breach*, WASH. POST (June 10, 2019, 7:54 PM), <https://www.washingtonpost.com/technology/2019/06/10/us-customs-border-protection-says-photos-travelers-into-out-country-were-recently-taken-data-breach/>.

74. Kocher, *supra* note 18, at 8. *See generally* Class Action Complaint, *supra* note 1, at 16–17.

75. *See ICE Accidentally Released the Identities*, *supra* note 73; *DHS Accidentally Informed Cuba*, *supra* note 73; Harwell & Fowler, *supra* note 73.

76. *Review of CBP’s Major Cybersecurity Incident During a 2019 Biometric Pilot*, OFF. INSPECTOR GEN. 6–9, (Sept. 21, 2020), <https://www.oig.dhs.gov/sites/default/files/assets/2020-09/OIG-20-71-Sep20.pdf>.

77. *Id.* at 6, 8.

78. *Id.* at 6–8.

79. *Id.* at 11.

also noted that CBP was unaware of the breach until it became aware of a published news article.<sup>80</sup> While CBP did temporarily suspended its contract with the subcontractor, it lifted the suspension only three months later.<sup>81</sup> As a result, the subcontractor is still eligible to complete other federal projects.<sup>82</sup> This course of action indicates CBP implemented no real solutions and no repercussions were sought; therefore, similar data breaches may occur in the future.

In a conversation with the Cuban Government, DHS unintentionally referred to 103 Cubans who were subject to the data breach—individuals who sought asylum protection from persecution or torture—indicating they may be deported back to Cuba.<sup>83</sup> Essentially, the data breach and DHS's lack of confidentiality alerted Cuba to the fact that many Cuban nationals sought protection in the U.S.<sup>84</sup> Following the breach, all 103 individuals were not removed from the U.S. and ninety individuals were released from U.S. custody in January 2023.<sup>85</sup>

Another breach occurred in November 2022 when ICE accidentally posted the names, birthdays, nationalities, and detention location of over 6,000 individuals seeking asylum.<sup>86</sup> ICE shared the information on its website for five hours.<sup>87</sup> DHS did not become aware of the breach until the Human Rights First advocacy group informed the Department.<sup>88</sup> It was not until January 2023 when 3,000 of the effected individuals were released from detention centers.<sup>89</sup> Unfortunately, the U.S. deported 100 affected migrants before discovering the breach and then deported another ten after the Department received notice of the breach.<sup>90</sup>

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80. *Id.*

81. *Id.* at 9.

82. *Id.*

83. *DHS Accidentally Informed Cuba*, *supra* note 73.

84. Hamed Aleaziz, *ICE releases thousands of migrants affected by data breach*, L.A. TIMES (Jan. 19, 2023, 3:38 PM), <https://www.latimes.com/world-nation/story/2023-01-19/ice-leak-personal-information-immigrants-asylum> [hereinafter *ICE Releases Thousands of Migrants*].

85. *Id.*

86. *ICE Accidentally Released the Identities*, *supra* note 73.

87. *Id.*

88. *Id.*

89. *ICE Releases Thousands of Migrants*, *supra* note 84.

90. *Id.*

All three examples are clear violations of the CFR because each case released sensitive information to nongovernmental third parties without obtaining written consent from the harmed individuals.<sup>91</sup> Furthermore, these examples depict that, at a minimum, the CFR should extend to CBP One because of the frequently reported technical issues and potential security threats.<sup>92</sup>

Asylum seekers cannot be sure that their information is truly protected because of the technical glitches and errors they experience.<sup>93</sup> Due to the quick development of the app, many individuals using CBP One have experienced technical errors that are unacceptable in any mobile app.<sup>94</sup> For example, many users state that when errors occur, they cannot resolve the issue by closing and reopening the app.<sup>95</sup> In fact, there are reports that the app has crashed, froze, cycled back to the log in screen, and failed to allow users access.<sup>96</sup> In addition, users of darker skin tones are unable to complete the live photo step to register for an appointment; defeating the purpose of implementing a live photo requirement to prevent fraud.<sup>97</sup>

Even if individuals did not experience glitches and possessed the technological expertise to navigate the app, the app is only available in Spanish, English, and Haitian Creole.<sup>98</sup> This limited language availability does not accurately reflect the number of different languages asylum seekers speak.<sup>99</sup>

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91. See *ICE Accidentally Released the Identities*, *supra* note 73; *DHS Accidentally Informed Cuba*, *supra* note 73; Harwell & Fowler, *supra* note 73; 8 C.F.R. § 208.6(a)–(b) (generally preventing the disclosure of asylum and withholding of removal application without the applicant’s written consent).

92. See 8 C.F.R. § 208.6(a)–(b).

93. See generally *Class Action Complaint*, *supra* note 1, at 16–17; Kocher, *supra* note 18, at 8.

94. Kocher, *supra* note 18, at 8.

95. *Class Action Complaint*, *supra* note 1, at 8.

96. Lindsay Toczyłowski (@L\_Toczyłowski), X (Mar. 1, 2023, 3:01 PM), [https://twitter.com/L\\_Toczyłowski/status/1631067224269004800](https://twitter.com/L_Toczyłowski/status/1631067224269004800); Kocher, *supra* note 18, at 7.

97. Kocher, *supra* note 18, at 8–9.

98. *Id.* at 7; *CBP One Mobile Application*, *supra* note 10.

99. See, e.g., *Languages Spoken Among U.S. Immigrants, 2018*, PEW RSCH. CTR. (Aug. 31, 2020), <https://www.pewresearch.org/hispanic/chart/languages-spoken-among-u-s-immigrants-2018/>; *40 Languages Spoken Among Asylum Seekers with*

According to the U.S. Census, 22% of the U.S. population speaks a language other than English.<sup>100</sup> In 2019, the five most spoken non-English languages included Spanish (61.6%), Chinese (5.2%), Tagalog (2.6%), Vietnamese (2.3%), and Arabic (1.9%).<sup>101</sup> These languages vary based on location.<sup>102</sup> For example, in San Diego, California, there are at least seventy different languages and dialects spoken.<sup>103</sup> Among the foreign-born population in San Diego County, the most common non-English languages spoken in 2020 included Spanish, Tagalog, Chinese, and Vietnamese.<sup>104</sup> In Boston, Massachusetts, the three most common non-English languages spoken are Tagalog, Haitian Creole, and Chinese.<sup>105</sup> While this data is based on the U.S. population, CBP One's language availability should reflect the documented language diversity that exists. In addition, a survey of 937 CBP One users provided data indicating that asylum seekers spoke one of twenty languages that are not available.<sup>106</sup> This includes, but is not limited to, French, Portuguese, Arabic, and various Indigenous languages.<sup>107</sup> The app's current, limited

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*Pending MPP Cases*, TRAC REPS., INC., <https://trac.syr.edu/immigration/reports/644/> (last visited Feb. 22, 2024).

100. See *S1601 Languages Spoken at Home*, U.S. CENSUS BUREAU, <https://data.census.gov/table/ACSST1Y2022.S1601?g=010XX00US> (last visited Nov. 19, 2023). It should be noted that the U.S. Census collects data from individuals who live within the U.S.; therefore, the data provided is not a full representation of asylum seekers's backgrounds. See, e.g., *Combining Data—A General Overview*, U.S. CENSUS BUREAU, <https://www.census.gov/about/what/admin-data.html#:~:text=Some%20data%20are%20collected%20from,well%20as%20some%20commercial%20entities> (last revised Sept. 15, 2022).

101. Sandy Dietrich & Erik Hernandez, *What Languages Do We Speak in the United States?*, U.S. CENSUS BUREAU (Dec. 6, 2022), <https://www.census.gov/library/stories/2022/12/languages-we-speak-in-united-states.html>.

102. *S1601 Languages Spoken at Home*, *supra* note 100.

103. See Tom K. Wong & Mikayla Sanchez, *Immigrant Integration in the City of San Diego*, U.S. IMMIGR. POL'Y CTR. 8, (June 29, 2020), <https://usipc.ucsd.edu/publications/usipc-immigrant-integration-san-diego-final.pdf>.

104. *Id.*

105. See *Diversity Map*, BPDA RSCH. DIV. ANALYSIS, <https://bpda-research.shinyapps.io/diversity-map/> (last visited Nov. 19, 2023).

106. Class Action Complaint, *supra* note 1, at 28–29, 35.

107. *Id.* at 29. Additional languages spoken include Russian, Farsi, Ukrainian, Uzbek, Azeri, Belarusian, Turkish, Amharic, Tigrinya, Dari, Tajik, Hindi, and Mandarin. *Id.* The Indigenous languages recorded include Garifuna, Mixteco, Trigqui, Miskito, Nahuatl, Q'eqchi, Tzotzil, and Pech. *Id.*

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use of only Spanish, Haitian Creole, and English<sup>108</sup> prevents individuals who are unable to read or understand one of the three languages from using the app.

The language barriers are not limited to initial users.<sup>109</sup> Individuals who can navigate the app in one of the three non-English languages, but are unable to read English, cannot understand the error messages because the errors are only relayed in English.<sup>110</sup> According to a CBP spokesperson, the agency is aware of the issues but blames the high user rate and hardware as the problem.<sup>111</sup> The agency has yet to announce if it has found a solution.<sup>112</sup>

Despite formal statements made on the current technical issues, the continued lack of positive change to the CBP One app is not surprising. In 2017, 2018, and 2019, members of Congress called for a halt of PII collection programs until the implementation of proper safeguards.<sup>113</sup> The U.S. Government Accountability Office (“GAO”) conducted an

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108. *CBP One Mobile Application*, *supra* note 10.

109. Class Action Complaint, *supra* note 1, at 30.

110. Sasani, *supra* note 53; Class Action Complaint, *supra* note 1, at 30.

111. Regina Yurrita, *Asylum Seekers Met with Issues from New CBP One App*, CBS 8 <https://www.cbs8.com/article/news/local/asylum-seekers-met-with-issues-from-cbp-one-app/509-5f69579c-05e1-4999-a7a9-720eab0cc680> (last updated Feb. 1, 2023, 10:31 PM).

112. *See, e.g., CBP Releases July 2023 Monthly Update*, U.S. CUSTOMS & BORDER PROT. (Aug. 18, 2023), [https://www.cbp.gov/newsroom/national-media-release/cbp-releases-july-2023-monthly-update#:~:text=In%20July%202023%2C%20CBP%20processed,air%2C%20truck%2C%20and%20rail](https://www.cbp.gov/newsroom/national-media-release/cbp-releases-july-2023-monthly-update#:~:text=In%20July%202023%2C%20CBP%20processed,air%2C%20truck%2C%20and%20rail.). *One Application Update Announcement*, U.S. CUSTOMS & BORDER PROT. (May 10, 2023), [https://www.cbp.gov/sites/default/files/assets/documents/2023-May/App%20Update%20Flyer%20-%20English\\_0.pdf](https://www.cbp.gov/sites/default/files/assets/documents/2023-May/App%20Update%20Flyer%20-%20English_0.pdf).

113. *See, e.g., Review of CBP’s Major Cybersecurity Incident during a 2019 Biometric Pilot*, *supra* note 76, at 14; Katie Lannan, *Markey: Data Breach Under-scores Need for DHS Face Recognition Rules*, HERALD NEWS (June 11, 2019), <https://www.heraldnews.com/story/news/2019/06/11/markey-data-breach-under-scores-need/4936375007/>; *Senators Markey and Lee Call for Transparency on DHS Use of Facial Recognition Technology*, ED MARKEY U.S. SENATOR FOR MASS. (Mar. 12, 2019), <https://www.markey.senate.gov/news/press-releases/senators-markey-and-lee-call-for-transparency-on-dhs-use-of-facial-recognition-technology> [hereinafter *Call for Transparency on DHS*]; *Senators Markey and Lee Release Statement on Facial Recognition Technology Use at Airports*, ED MARKEY U.S. SENATOR FOR MASS. (June 22, 2018), <https://www.markey.senate.gov/news/press-releases/senators-markey-and-lee-release-statement-on-facial-recognition-technology-use-at-airports> [hereinafter *Statement on Facial Recognition Technology*].



audit report to evaluate CBP's programs from October 2021 to April 2023.<sup>114</sup> The report determined that CBP is deploying program capabilities that have not been fully tested.<sup>115</sup> Further, the report indicated that CBP fails to identify the root causes of issues and fails to implement proper solutions.<sup>116</sup> The report states, “[GAO] found that CBP is not consistently collecting information about the activities and results of its acquisition programs, analyzing lessons learned to determine root causes and appropriate actions to address them, or validating that it has identified the right lessons learned and determined the scope of their availability.”<sup>117</sup> Based on the foregoing, it is reasonable to infer authorities did not fully test CBP One's capabilities, which could lead to a breach that mirrors previous ones.

### 3. *Security of the CBP One App*

CBP One is advertised as a secure platform; however, the use of Login.gov threatens the security of personally identifiable information.<sup>118</sup> Users are required to sign into their Login.gov account to access CBP One.<sup>119</sup> Login.gov is a single sign-on platform<sup>120</sup> that allows the public access to online government services that verifies user information to prevent fraud.<sup>121</sup> Login.gov is owned and operated by the General Services Administration (“GSA”);<sup>122</sup> therefore, CBP does

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114. U.S. GOV'T ACCOUNTABILITY OFF., GAO-23-105472, CUSTOMS AND BORDER PROTECTION ACTIONS NEEDED TO ENHANCE ACQUISITION MANAGEMENT AND KNOWLEDGE SHARING 2–3 (2023) [hereinafter CUSTOMS AND BORDER PROTECTION ACTIONS NEEDED].

115. *Id.*

116. *Id.* at 21.

117. *Id.*

118. *Fact Sheet: Using CBP One to Schedule an Appointment*, *supra* note 62.

119. PRIVACY POLICY, COMPLIANCE, AND IMPLEMENTATION, *supra* note 17, at 1.

120. A single sign-on platform allows a user to login to multiple applications at one time. *What Is SSO? How Single Sign-On Works*, CLOUDFLARE, INC., <https://www.cloudflare.com/learning/access-management/what-is-sso/> (last visited Feb. 22, 2024).

121. U.S. GEN. SERVS. ADMIN., LOGIN.GOV PRIVACY IMPACT ASSESSMENT 6 (2023); U.S. GEN. SERVS. ADMIN., NIST SP 800-171, LEXISNEXIS RISK SOLUTIONS (LNRS) IDENTITY PROOFING PRIVACY IMPACT ASSESSMENT (PIA)—GUIDANCE 11 (2022) [hereinafter LEXISNEXIS RISK SOLUTIONS (LNRS) IDENTITY PROOFING].

122. LOGIN.GOV PRIVACY IMPACT ASSESSMENT, *supra* note 121, at 5.

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not have control over the system's data security.<sup>123</sup> In addition, Login.gov verifies PII by using a third-party data analyst service, LexisNexis Risk Solutions ("LexisNexis").<sup>124</sup>

LexisNexis experienced several severe data breaches that raise serious concerns about the security of Login.gov.<sup>125</sup> In a 2005 data breach, unauthorized users stole 310,000 individuals' Social Security numbers, driver's license information, and addresses.<sup>126</sup> The unauthorized users obtained customers' log-in information by using former employees' access ID and guessing passwords or using a virus to access customers' information.<sup>127</sup> LexisNexis, a division of RELX,<sup>128</sup> offered mere fraud insurance and credit bureau reports for a year to the affected individuals.<sup>129</sup> It also promised to attempt to improve its password system.<sup>130</sup> However, this attempt was not effective to prevent another breach. In yet another data breach in 2009, it was reported that hackers obtained 32,000 persons' names, birthdays, and Social Security numbers to create fake

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123. *Id.*; Circumvention of Lawful Pathways, 88 Fed. Reg. at 31397.

124. LEXISNEXIS RISK SOLUTIONS (LNRS) IDENTITY PROOFINGS, *supra* note 121, at 6. *See also About Us*, LEXISNEXIS RISK SOLUTION, <https://risk.lexisnexis.com/corporate> (last visited Nov. 19, 2023).

125. *See* Angela Moscaritolo, *LexisNexis admits to another major data breach*, SC MAG. (May 4, 2009), <https://ago.vermont.gov/sites/ago/files/wp-content/uploads/2018/02/2009-05-04-SC-Magazine-LexisNexis-admits-to-another-major-data-breach.pdf>; Heather Timmons, *Security Breach at LexisNexis Now Appears Larger*, N.Y. TIMES (Apr. 13, 2005), <https://www.nytimes.com/2005/04/13/technology/security-breach-at-lexisnexis-now-appears-larger.html>; Marcia Savage, *LexisNexis security breach worse than thought*, S.C. MEDIA (Apr. 12, 2005), <https://www.scmagazine.com/news/lexisnexis-security-breach-worse-than-thought>; *LexisNexis warns 32,000 people about data breach*, ABC NEWS (May 2, 2009), <https://abcnews.go.com/Business/story?id=7487026&page=1>.

126. Timmons, *supra* note 125; Savage, *supra* note 125.

127. Timmons, *supra* note 125.

128. RELX is formerly known as Reed Elsevier, Inc. *Issuing Companies and Guarantors*, RELX, <https://www.relx.com/investors/debt-investors/issuing-companies-and-guarantors> (last visited Feb. 19, 2024); *Who We Are*, LEXISNEXIS, <https://www.lexisnexis.com/en-us/about-us/about-us.page> (last visited Feb. 19, 2024).

129. Timmons, *supra* note 125.

130. *Id.*

credit cards.<sup>131</sup> Again, LexisNexis's sole solution was to offer the affected individuals one year of free credit monitoring.<sup>132</sup>

Moreover, since February 2021, LexisNexis has a contract to sell PII to ICE.<sup>133</sup> From March 2021 to September 2021, ICE used the database to run over 1.2 million searches and generate more than 300,000 reports.<sup>134</sup> ICE ran these searches for the purpose of collecting individuals' PII to determine their immigration status in order to obtain their current location, arrest them, and then subsequently deport them.<sup>135</sup> These searches violate the sanctuary policies created to prevent state and local police from helping ICE facilitate deportations.<sup>136</sup> As a result, advocates in Chicago filed a lawsuit against LexisNexis in August 2022 for violating Illinois' Consumer and Fraud Deceptive Business Practice Act and Illinois common law.<sup>137</sup> Advocates also called for the termination of the LexisNexis and ICE contract prior to its end date on February 28, 2023.<sup>138</sup> Despite these raised concerns, the parties renewed the contract

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131. Moscaritolo, *supra* note 125.

132. *Id.*

133. U.S. Dep't of Homeland Sec., Contract No. 70CMSD21C00000001 (Feb. 25, 2021) (unpublished contract), [https://www.usaspending.gov/award/CONT\\_AWD\\_70CMSD21C00000001\\_7012\\_-NONE\\_-NONE-](https://www.usaspending.gov/award/CONT_AWD_70CMSD21C00000001_7012_-NONE_-NONE-) [hereinafter LexisNexis Contract].

134. Complaint at 15, *Castellanos v. LexisNexis Risk Solution*, No. 2022CH07984 (Cir. Court of Ill., 2022). The contents of the complaint are considered allegations. For the purposes of this article, Author takes the information contained in this complaint as true. This note was written in February 2024 after the case was filed, but prior to a decision. *Ramirez et al v. LexisNexis Risk Solutions*, JUSTIA, <https://dockets.justia.com/docket/illinois/ilndce/1:2022cv05384/422084> (last visited Feb. 22, 2024).

135. Complaint, *supra* note 134, at 16, 21; Advocates for Immigrant Rights, *Permanently Cancel ICE Contract with Data Broker LexisNexis Ahead of February 28th Contract Renewal Date*, EPIC PRIV. INFO. CTR. 2, <https://epic.org/wp-content/uploads/2023/02/EPIC-Coalition-Letter-ICE-LexisNexis-Contract-2023-02-23.pdf> (last visited Nov. 19, 2023).

136. *See generally* Lena Graber & Nikki Marquez, *Searching for Sanctuary*, IMMIGRANT LEGAL RES. CTR. (Dec. 2016), [https://www.ilrc.org/sites/default/files/resources/sanctuary\\_report\\_final\\_1-min.pdf](https://www.ilrc.org/sites/default/files/resources/sanctuary_report_final_1-min.pdf); Advocates for Immigrant Rights, *supra* note 135.

137. *See* Complaint, *supra* note 134, at 3–4.

138. *See generally* Advocates for Immigrant Rights, *supra* note 135.

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until February 2024 and has the potential to be extended until February 2026.<sup>139</sup>

LexisNexis's history of data breaches and cooperation with a third-party service undermines the security of Login.gov as well as CBP One. It raises concerns that asylum seekers' PII will not be adequately protected. Third-party data services should be considered a violation of the CFR because an asylum seeker's PII will be automatically released to a nongovernmental third party, likely without the asylum seeker's written consent.<sup>140</sup> Furthermore, the use of a third-party nongovernmental agency having access to the individual's PII illustrates that the CFR should extend to the use of CBP One due to the likelihood of additional repeating breaches.<sup>141</sup> These domestic issues are not the only problems with the app. In fact, the requirement to use CBP One raises international policy concerns.

## II. INTERNATIONAL INSTRUMENTS

A hurdle to granting data privacy rights to asylum seekers while using CBP One is that applicants must remain in Mexico prior to their asylum appointment.<sup>142</sup> International bodies of law protect individuals detained outside of the territory of the U.S. from having their PII collected by a government abroad. Fortunately, the United Nations Human Rights Committee ("UNHRC")<sup>143</sup> recognizes an international privacy standard that protects all individuals against private and government actors regardless of whether the data was collected lawfully.<sup>144</sup>

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139. LexisNexis Contract, *supra* note 133.

140. 8 C.F.R. § 208.6(a)–(b).

141. *Id.*; Timmons, *supra* note 125; Moscaritolo, *supra* note 125.

142. Kocher, *supra* note 18, at 6–7 (explaining that migrants traveling through Mexico were required to allow geolocating services to confirm that the applicant was in Mexico, as far as Mexico City, before securing an appointment).

143. The committee is made up of eighteen independent experts which monitor the compliance with the ICCPR, among other rules. *See generally Introduction to the Committee*, U.N. HUM. RTS., <https://www.ohchr.org/en/treaty-bodies/ccpr/introduction-committee> (last visited Nov. 19, 2023).

144. HRCComm., CCPR General Comment No. 16: Article 17 (Right to Privacy) ¶ 1 (April 8, 1988); Mira Burri, *Interfacing Privacy and Trade*, 53 CASE W. RSRV. J. INT'L L. 35, 44 (2021).

*A. Beyond the United States Border – How Far International Human Rights Extend*

The UNHRC is not the only international institution that recognized the need for international data protection. The *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations* (“Tallinn Manual 2.0”), created by a group of international legal experts,<sup>145</sup> recognizes international human rights treaties apply to digital activities and States are responsible for its violations.<sup>146</sup> Here, the International Covenant on Civil and Political Rights (“ICCPR”)<sup>147</sup> applies to the *Tallinn Manual 2.0*<sup>148</sup> and U.S. law.<sup>149</sup> The U.S. signed the ICCPR on October 5, 1977, and ratified the treaty on June 8, 1992.<sup>150</sup> The U.S. must comply with the ICCPR because of the U.S. Constitution’s Supremacy Clause.<sup>151</sup> Under the Supremacy Clause, ratified treaties require the U.S. government and private actors to protect all enshrined rights.<sup>152</sup> In addition to the obligation under U.S. law, the U.S. has a duty to comply with the ICCPR under the international principle of *pacta sunt servanda*.<sup>153</sup> *Pacta sunt servanda* is a fundamental principle requiring parties to a treaty to comply with its obligations in good

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145. The use of materials created by highly qualified experts is usually accepted as evidence and given the same weight as treaties, customary international law, and general principles of law. *See* Statue Int’l Ct. Just., art. 38(1)(d).

146. INT’L GROUPS EXPERTS, TALLINN MANUAL 2.0 ON THE INTERNATIONAL LAW APPLICABLE TO CYBER OPERATIONS xxiii, 182 (Michael N. Schmitt ed., 2d ed. 2017).

147. International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

148. *See generally* INT’L GROUPS EXPERTS, *supra* note 146 (providing general guidance on how international law should apply to the digital space).

149. *See generally* U.S. CONST. art. VI, cl. 2.

150. Ratification Status for CCPR–International Covenant on Civil and Political Rights, OFF. HIGH COMM’R U.N. HUM. RTS., [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CCPR&Lang=en](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CCPR&Lang=en) (last visited Feb. 22, 2024).

151. *FAQ: The Covenant on Civil & Political Rights (ICCPR)*, ACLU (July 11, 2013), <https://www.aclu.org/documents/faq-covenant-civil-political-rights-iccpr>.

152. *Id.*

153. Nikolaos Sitaropoulos, *States are Bound to Consider UN Human Rights Committee’s Views in Good Faith*, OXFORD HUM. RTS. HUB (Mar. 11, 2015), <https://ohrh.law.ox.ac.uk/states-are-bound-to-consider-the-un-human-rights-committees-views-in-good-faith/>.

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faith.<sup>154</sup> Furthermore, by ratifying the ICCPR, the U.S. has a duty to comply with the agreement in good faith.<sup>155</sup>

The ICCPR Article 17 proffers:

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home, or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.<sup>156</sup>

The treaty vitally applies to the digital age, despite being written in 1966 and enforced in 1976.<sup>157</sup> Noncompliance would be a violation of international law because of the obligations imposed under the ICCPR.<sup>158</sup> Therefore, the U.S. has a duty to protect individuals' data when they are within the country. While there is a clear duty to protect an individual's data within the country, it is still unclear if the U.S. has an obligation to protect data when an individual is located abroad.<sup>159</sup>

Some legal experts believe this protection extends to an individual who is unable to exercise or protect a human right.<sup>160</sup> They explain the obligation to uphold human rights extends beyond State borders when the State preventing the exercise of human rights has control over the individual and the concerned human right.<sup>161</sup> CBP One interferes with an individual's right to seek asylum by requiring the asylum seeker to

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154. ILC, Draft Articles on the Law of Treaties with Commentaries, 2 Y.B. Int'l L. Comm'n 187 (1996). The International Law Commission crafts and presents its draft articles with commentary to the U.N. General Assembly. *Texts, Instruments and Final Reports*, INT'L L. COMM'N, <https://legal.un.org/ilc/texts/texts.shtml> (last updated Aug. 9, 2023). The commentary is then used to help finalize the treaty. *Id.*

155. Charter of the United Nations art. 2, ¶ 2, Oct. 24, 1945, 1 U.N.T.S. XV.

156. ICCPR, *supra* note 147, art. 17.

157. HRC, The Right to Privacy in the Digital Age at 5, U.N. Doc. A/HRC.27/37 (June 30, 2014).

158. *United States v. Ramnath*, 533 F. Supp. 2d 662, 684 (E. D. Tex. 2008); Vienna Convention on the Law of Treaties art. 26, May 23, 1969, 1155 U.N.T.S. 331 (entered into force Jan. 27, 1980).

159. INT'L GROUPS EXPERTS, *supra* note 146, at 185.

160. *Id.*

161. *Id.*

appear at an appointed date and time and provide PII.<sup>162</sup> These requirements give the U.S. complete control over an individual's ability to exercise their right to seek asylum in the U.S.<sup>163</sup>

In addition, legal experts believe the ICCPR applies across borders because of the customary law practice that Article 2(1) does not explicitly limit protections to actions committed within a territory.<sup>164</sup> As a result, a duty to protect the right to privacy arises when the U.S. collects PII across its borders through a third party under the guise of CBP One.<sup>165</sup> This interpretation ensures human rights are protected and the purpose of the ICCPR is upheld.<sup>166</sup> The ICCPR's common interest, which is distilled from its purpose and objective, is to protect human rights.<sup>167</sup> Protecting privacy rights is crucial to upholding human rights.<sup>168</sup> Therefore, the existence of CBP One and its significant privacy concerns, coupled with the discriminatory framework of the app,<sup>169</sup> is an *erga omnes partes* obligation under the ICCPR.<sup>170</sup>

CBP One further discriminates against individuals seeking asylum by requiring them to complete an additional step of advance data collection that is not imposed on other noncitizens.<sup>171</sup> This is not the only form

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162. UDHR, *supra* note 14, art. 14, ¶ 1; PRIVACY IMPACT ASSESSMENT FOR THE COLLECTION OF ADVANCE INFORMATION, *supra* note 71, at 9.

163. UDHR, *supra* note 14, art. 14, ¶ 1; Circumvention of Lawful Pathways, 88 Fed. Reg. at 31340.

164. INT'L GROUPS EXPERTS, *supra* note 146, at 186, 197; ICCPR, *supra* note 147, art. 2.1.

165. INT'L GROUP EXPERTS, *supra* note 146, at 197. LEXISNEXIS RISK SOLUTIONS (LNRS) IDENTITY PROOFING, *supra* note 121, at 6.

166. INT'L GROUP EXPERTS, *supra* note 146, at 186. ICCPR, *supra* note 147, pmbl.

167. ICCPR, *supra* note 147, pmbl.

168. ICCPR, *supra* note 147, art. 17.

169. *Supra* Part I.A.2 (noting discrimination practices in CBP One in the forms of language accessibility and nonrecognition of dark skin complexions).

170. See *Barcelona Traction, Questions relating to the Obligation to Prosecute or Extradite (Belg. v. Sen.)*, Judgment, 2012 I.C.J. Rep. (II) 449, ¶ 68 (July 20). *Erga omnes partes* obligations exist where international cooperation is essential to achieve the treaty's object and purpose. ILC, Draft Articles on State Responsibility with Commentaries, 2 Y.B. Int'l Law Comm'n 117, para. 13 (2001); see also Oona Hathaway et al., *A New Tool for Enforcing Human Rights: Erga Omnes Partes Standing*, 61 *COLOMBIA J. TRANSNAT'L L.* 1, 39 (2023).

171. See generally *Circumvention of Lawful Pathways*, 88 Fed. Reg. at 31316–17 (explaining that CLP only applies to the asylum process at ports of entry).

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of discrimination—CBP One’s technology perpetuates and upholds a systemically racist system. The app does not recognize individuals with darker complexions when they are attempting to meet the facial recognition requirement.<sup>172</sup> Some asylum seekers and migrant shelters have tried to shine bright lights while taking their picture, but this has been unsuccessful in changing the outcome.<sup>173</sup> Thus, individuals with darker complexions are unable to schedule appointments with CBP One.<sup>174</sup> Therefore, the small cohort of individuals who *are* able to receive an appointment—only those who are lucky to encounter a functioning app, are able to read any English error messages, have the data capabilities to use the app, and those with lighter complexioned skin—represent a small percentage of migrants and are an overrepresented proportion of those who are successful in obtaining an appointment.<sup>175</sup> Specifically, in May 2023, data indicated that Russian nationals secured 40% of CBP One appointments despite only representing 10% of Tijuana’s migrant population.<sup>176</sup> Therefore, these requirements are discriminatory and undermine the purpose of ICCPR Article 17 by failing to adequately protect the human right to privacy.<sup>177</sup> The requirements would also not be authorized under the guidance of the *Tallinn Manual 2.0* because privacy rights cannot be restricted in a discriminatory manner.<sup>178</sup>

Moreover, any limit on a human right must be proportionate to the intended outcome by serving a legitimate purpose such as national security.<sup>179</sup> While the U.S. government argues CBP One is a tool for

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172. Class Action Complaint, *supra* note 1, at 31. *See generally* James Cooper & Kashyap Kompella, *AI and Threats to the Criminal Justice System*, L.A. LAWYER 1, 14 (Oct. 2022), <https://lalawyer.advanced-pub.com/?m=69194&i=773849&p=14&issueID=40&pageID=11&ver=html5> (explaining that facial recognition technology is not limited to CBP One).

173. Class Action Complaint, *supra* note 1, at 31.

174. *Id.* *See generally* Cooper & Kompella, *supra* note 172.

175. Class Action Complaint, *supra* note 1, at 32.

176. *Id.* Gustavo Solis, *CBP One App for Asylum Seekers Favors Russians with Strong Wi-Fi Signals over Vulnerable Migrants*, KPBS (May 5, 2023), <https://www.kpbs.org/news/border-immigration/2023/05/05/cbp-one-app-for-asylum-seekers-favors-russians-with-strong-wi-fi-signals-over-vulnerable-migrants>.

177. INT’L GROUPS EXPERTS, *supra* note 146, at 206; ICCPR, *supra* note 147, art. 17.

178. INT’L GROUP EXPERTS, *supra* note 146, at 206.

179. *Id.* at 203–04.



national security,<sup>180</sup> its restriction on privacy rights is not proportionate to serving national security because of the harms asylum seekers face.<sup>181</sup> If the U.S. has alternative practices to collect an individual's data while enforcing national security, then it must follow those practices to prevent infringement upon the right to privacy.<sup>182</sup> A solution to this would be to obtain the PII that CBP One requires after the asylum seeker has entered a port of entry and completed primary or secondary inspections.<sup>183</sup> This alternative is safer than the current use of CBP One because asylum seekers would not be subject to the physical dangers of remaining in an unfamiliar migrant shelter<sup>184</sup> and the financial burdens waiting requires.<sup>185</sup> There are reports that individuals missed their CBP One appointments because they were kidnapped.<sup>186</sup> A gang in Mexico kidnapped one man from Honduras and severely beat him in an attempt to murder him.<sup>187</sup> After escaping, he desperately tried to explain why he missed his CBP One appointment, but the CBP Officer did not offer

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180. PRIVACY POLICY, COMPLIANCE, AND IMPLEMENTATION, *supra* note 17, at 19.

181. *See infra* III.A.1.

182. INT'L GROUPS EXPERTS, *supra* note 146, at 204.

183. PRIVACY IMPACT ASSESSMENT FOR THE COLLECTION OF ADVANCE INFORMATION, *supra* note 71, at 17. PRIVACY POLICY, COMPLIANCE, AND IMPLEMENTATION, *supra* note 17, at 15-16.

184. *E. Bay Sanctuary Covenant v. Biden*, 2023 U.S. Dist. LEXIS 128360, 8, 50-51 (N.D. Cal. 2023).

185. Class Action Complaint, *supra* note 1, at 28.

186. *Id.* at 38; Letter, Comment on the Proposed Rule by the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) on Circumvention of Lawful Pathways, CIS No. 2736-22; Docket No: USCIS 2022-0016; A.G. Order No. 5605-2023, from Joanna Williams, Executive Director, Kino Border Initiative, to Daniel Delgado, Acting Director of Border and Immigration Policy, U.S. Dep't Homeland Sec. & Lauren Alder Reid, Assistant Director Office of Policy, U.S. Dep't Just. (Mar. 24, 2023), retrieved from <https://www.kinoborderinitiative.org/wp-content/uploads/2023/03/KBI-Comment-on-Asylum-Regulation-Mar-2023.pdf>; Yael Schacher, *A Tale of Two Christmas Seasons at the U.S.-Mexico Border*, REFUGEES INT'L (Dec. 28, 2023), <https://www.refugeesinternational.org/perspectives-and-commentaries/a-tale-of-two-christmas-seasons-at-the-u-s-mexico-border/>; *Asylum Ban Strands Asylum Seekers and Migrants in Mexico and Returns Them to Danger*, HUM. RTS. FIRST (Nov. 2023), <https://humanrightsfirst.org/wp-content/uploads/2023/11/Asylum-Ban-Harms-Factsheet-formatted.pdf>.

187. Class Action Complaint, *supra* note 1, at 38.

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any solutions since he did not have a current appointment to seek asylum.<sup>188</sup>

In addition, access to the internet or cellular data can cost up to \$6 per day.<sup>189</sup> As a result, many families are forced to choose between purchasing food or accessing CBP One.<sup>190</sup> Therefore, the U.S. lacks the authority to collect asylum seekers' data through CBP One because the app inflicts disproportionate harm upon asylum seekers attempting to exercise their human right to seek asylum.

The U.S. has extended its authority where it does not belong. The U.S. must not only follow its domestic laws protecting human rights, including data privacy, but must also follow binding international law. The U.S. should return to its original asylum claim practices to meet its obligation under the ICCPR. Continuing the use of CBP One risks the privacy rights of asylum seekers that are protected under international treaties.

### III. THE U.S. MUST UPDATE ITS DATA PRIVACY PROTECTIONS AND SAFEGUARDS FOR ASYLUM SEEKERS

#### A. Expanding Current Policies

Current U.S. policies are not enough to protect the rights of asylum seekers. The U.S. must *immediately* take additional steps to ensure the protection of an already vulnerable group.<sup>191</sup> Specifically, the U.S. must expand the Privacy Act of 1974 and the CFR to protect the privacy interests of asylum seekers.

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188. *Id.*

189. *Id.* at 28; Lorena Ríos, *The new US border wall is an app*, MIT TECH. REV. (June 16, 2023), <https://www.technologyreview.com/2023/06/16/1074039/border-wall-app/>.

190. Class Action Complaint, *supra* note 1, at 28. Moha Ennaji, *Mobile phones: An indispensable tool for migrants*, UNESCO, <https://courier.unesco.org/en/articles/mobile-phones-indispensable-tool-migrants> (last updated June 26, 2023); Circumvention of Lawful Pathways, 88 Fed. Reg. at 31400.

191. *Report Highlights Harm and Injustices of CBP One App for Asylum Seekers*, *supra* note 54.

### 1. *Privacy Act of 1974*

Congress enacted the Privacy Act of 1974 due to data privacy concerns over electronic databases storing PII.<sup>192</sup> Despite the Act's added safeguards, it was not until 2007 when DHS expanded the policy to protect noncitizens' data privacy.<sup>193</sup> The expansion explicitly recognized that providing protection to non-U.S. citizens, including asylum seekers, would build trust and encourage data sharing when required.<sup>194</sup> Despite recognizing the additional benefits of providing data protection, the 2020 edition of the Act does not recognize data protection rights for noncitizens.<sup>195</sup> Expanding the definition of an individual is not where the limits of the Act should end. The Act must also recognize the extreme vulnerabilities and repercussions of third-party data sharing imposed on asylum seekers.

Asylum seekers' right to privacy requires greater protection than U.S. citizens because of the physical harms they may suffer from a data breach. CBP One's use of geolocation, facial recognition, and other PII defeat the purpose of protecting asylum seekers because a data breach could lead their aggressors to them;<sup>196</sup> ultimately allowing aggressors to inflict the harm the asylee ran from. While waiting to secure her CBP One appointment, a woman was raped and threatened with death.<sup>197</sup> A

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192. *The Privacy Act of 1974*, ELECTRONIC PRIV. INFO. CTR., <https://epic.org/the-privacy-act-of-1974/> (last visited Nov. 19, 2023).

193. Memorandum from Jonathan R. Cantor, Acting Chief Privacy Officer, U.S. Dep't Homeland Sec., on Privacy Policy Guidance, Memorandum No.: 2017-0, 2 (Apr. 25, 2017), [https://www.dhs.gov/sites/default/files/publications/PPGM%202017-01%20Signed\\_0.pdf](https://www.dhs.gov/sites/default/files/publications/PPGM%202017-01%20Signed_0.pdf).

194. *Id.* at 9; Esha Bhandari & Neema Singh Guliani, *The Trump Administration is Threatening to Publicly Release the Private Data of Immigrants and Foreign Visitors*, ACLU (Feb. 28, 2017), <https://www.aclu.org/news/privacy-technology/trump-administration-threatening-publicly-release-private-data-immigrants>.

195. *See generally* 5 U.S.C. § 552(a)(2) (2020) (defining an individual as a United States Citizen or Legal Permanent Resident).

196. *Fact Sheet: Federal Regulation Protecting the Confidentiality of Asylum Applicants*, U.S. CUSTOMS & IMMIGR. SERVS. (Oct. 18, 2012), <https://www.uscis.gov/sites/default/files/document/fact-sheets/Asylum-ConfidentialityFactSheet.pdf> [hereinafter *Fact Sheet: Protecting the Confidentiality*].

197. Class Action Complaint, *supra* note 1, at 43; Christina Asencio et al., *Biden Asylum Ban Endangers and Punishes At-Risk Asylum Seekers*, HUM. RTS. FIRST 10 (July 12, 2023), <https://humanrightsfirst.org/library/refugee-protection-travesty/>.

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few nights later, her attacker returned and attempted to rape her again.<sup>198</sup> Luckily, she escaped.<sup>199</sup> Although this instance did not occur because of a data breach,<sup>200</sup> it represents the horrific, realistic possibility of what may happen if there are not enough safeguards in place.

In order to maintain the use of CBP One, there must be safeguards to ensure PII is not improperly collected or shared. This can be achieved by expanding the individuals the Act protects. Not only should the Act be expanded to explicitly incorporate asylum seekers, but it should extend judicial redress<sup>201</sup> to the group. Currently, the Act only allows judicial redress for U.S. citizens, Legal Permanent Residents, and citizens of covered countries.<sup>202</sup> Unfortunately, the Attorney General only designated twenty-six covered countries, all of which are located in Europe.<sup>203</sup> These designated countries do not reflect the diverse countries and backgrounds of asylum seekers.<sup>204</sup> Given the extreme vulnerabilities of asylum seekers and risks of potential data breaches, asylum seekers require protections that reflect their experiences. Without the right to judicial redress, an asylum seeker will not have the opportunity to find peace. Therefore, it is vital the U.S. expands the Privacy Act of 1974 should the use of CBP One continue.

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198. Class Action Complaint, *supra* note 1, at 43; Christina Ascencio, *supra* note 197, at 10.

199. Class Action Complaint, *supra* note 1, at 43; Christina Ascencio, *supra* note 197, at 10.

200. Class Action Complaint, *supra* note 1, at 43; Christina Ascencio, *supra* note 197, at 10.

201. The Judicial Redress Act allows individuals to bring a lawsuit and collect remedies. Judicial Redress Act of 2015, 5 U.S.C. § 552(a) (2016).

202. *Overview of the Privacy Act*, U.S. DEP'T JUST. OFF. PRIV. & CIVIL LIBERTIES 8–14 (2020) <https://www.justice.gov/media/1122281/dl?inline#page29>. The current designated countries are the European Union, Austria, Belgium, Bulgaria, Croatia, the Republic of Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom. *Id.* at 12–13.

203. *Id.* at 12–13.

204. *See, e.g., Yearbook of Immigration Statistics 2022*, U.S. DEP'T HOMELAND SEC. Tables 17(d) & 19(d) (Nov. 14, 2023), [https://www.dhs.gov/sites/default/files/2023-10/2023\\_0818\\_ply\\_yearbook\\_refugees\\_and\\_asylees\\_fy2022.xlsx\\_0.xlsx](https://www.dhs.gov/sites/default/files/2023-10/2023_0818_ply_yearbook_refugees_and_asylees_fy2022.xlsx_0.xlsx) (recognizing the two highest regional areas were Africa and Asia in 2022).

## 2. *Mirroring International Regulations*

Since the U.S. is requiring PII to use CBP One, the scope and purpose of the CFR and the Privacy Act of 1974 must expand to recognize the latest standards and technological innovations in the immigration sector. Specifically, the U.S. must expand the scope of the CFR and the Privacy Act of 1974 to recognize data protection as a fundamental right for all individuals.<sup>205</sup> While the CFR recognizes that disclosure of sensitive information can subject an asylee to retaliation by organizations or individuals in their home country,<sup>206</sup> it must go a step further. European Union (“E.U.”) Regulation 2016/679 took this step by recognizing data privacy as a fundamental right that should be extended to any individual regardless of their nationality or place of residence.<sup>207</sup> The E.U.’s recognition of data protection as a fundamental right influenced how the world, including U.S. corporations, views data privacy.<sup>208</sup> If a corporation, such as Apple, acknowledges data privacy as a fundamental right,<sup>209</sup> the U.S. government must do the same.

The U.S. must implement consistent data retention policies similar to E.U. Regulation 603/2013. This regulation not only recognizes the need for asylum data security, but also regulates how long PII is stored.<sup>210</sup> Currently, the collected information is subject to different retention rates.<sup>211</sup> Specifically, the photograph and PII is stored for one year in the Automated Targeting System (“ATS”) database.<sup>212</sup> Once the

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205. 8 C.F.R. § 208.6(d)(1); 5 U.S.C. § 552(a).

206. *Fact Sheet: Protecting the Confidentiality*, *supra* note 196.

207. 2016 O.J. (L 119) 1, *retrieved from* <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2016:119:FULL>.

208. Paul M. Schwartz, *Global Data Privacy: The EU Way*, 94 N.Y.U. L.R. 771, 771 (2019).

209. *Apple CEO Tim Cook: ‘Privacy is a Fundamental Human Right’*, NPR (Oct. 1, 2015, 6:17 PM), <https://www.npr.org/sections/alltechconsidered/2015/10/01/445026470/apple-ceo-tim-cook-privacy-is-a-fundamental-human-right>.

210. 2013 O.J. (L 180) 1, 11–12, *retrieved from* <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2013:180:FULL&from> (Article 11 explains the type of information collected, including but not limited to fingerprints, date of arrival, and application date; Article 12; Article 16 provides short times for asylum seekers who were apprehended).

211. PRIVACY IMPACT ASSESSMENT FOR THE COLLECTION OF ADVANCE INFORMATION, *supra* note 71, at 13.

212. *Id.*

information is processed, it is stored in the Unified Secondary System (“USEC”) for fifteen years.<sup>213</sup> Then, the data is sent to ICE’s Integrated Database (“EID”) to be stored for seventy-five years.<sup>214</sup> These inconsistencies make it difficult to know exactly how long public and private entities store the data because there is no indication that the times are aggregated.<sup>215</sup> Irregular storage practices increase the likelihood of a data breach and risks the safety of the applicant.<sup>216</sup>

The U.S. needs more stringent and uniform policies which mirror the E.U. Regulation 603/2013.<sup>217</sup> Unlike the U.S.’s practices, the regulation only allows the government to keep the information for ten years or when the asylum seeker becomes an E.U. citizen, whichever comes first.<sup>218</sup> Once the respective period is reached, their information is erased from the system.<sup>219</sup> This practice would provide asylum seekers in the U.S. greater assurances their data is protected and recognize data privacy as a fundamental right they deserve.

### *B. Implementing Safeguards*

Even if the government expands its policies, it is not enough. The app poses other concerns requiring additional safeguards. By continuing CBP One use, safeguards are required to ensure the U.S. protects data privacy rights. Specifically, the U.S. must expand the app’s language availabilities and eliminate the live photo requirement. The U.S. can guarantee its compliance with data protection by eliminating the app entirely.

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213. *Id.*

214. *Id.*

215. *Id.*

216. *See generally* U.S. GOV’T ACCOUNTABILITY OFF., GAO-14-34, INFORMATION SECURITY AGENCY RESPONSE TO BREACHES OF PERSONAL IDENTIFIABLE INFORMATION NEED TO BE MORE CONSISTENT (2013).

217. *See* 2013 O.J. (L 180) 1, 11, *retrieved from* <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2013:180:FULL&from>.

218. *Id.*

219. *Id.*

### 1. *Expanding Language Availabilities*

Under the CFR and the Privacy Act of 1974, a disclosure can occur if the applicant provides written consent.<sup>220</sup> Despite this initial protection, CBP One counteracts it by only being offered in three languages: English, Spanish, and Haitian Creole.<sup>221</sup> This limited language availability inadequately reflects the numerous backgrounds of asylum seekers.<sup>222</sup> It is unreasonable for CBP One to be limited to three languages when the 2022 granted asylum claims show users come from countries with different primary languages.<sup>223</sup>

Meanwhile, CBP provides other materials in Arabic, French, German, Japanese, Korean, Chinese, Russian, and Spanish.<sup>224</sup> These other translated materials demonstrate how CBP has the resources to expand CBP One's language capabilities. Even considering the limited available translations, CBP One makes it challenging for individuals to completely understand the data privacy risks before they consent because of mistranslation.<sup>225</sup> Therefore, the language availability must be expanded.

Although additional translations are required, the current language problems must take priority. There are reports that CBP One translations are inaccurate. For example, in the Haitian Creole version, the word "customs" in "Customs and Border Protection" is translated to the

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220. 8 C.F.R. § 208.6(a) (2023); *Overview of the Privacy Act of 1974*, *supra* note 202, at 64.

221. *CBP One Mobile Application*, *supra* note 10; Letter from Jesús "Chuy" García, Congressman & Raúl Grijalva, Congressman to Alejandro Mayorkas, Secretary, Dep't Homeland Sec. (Mar. 13, 2023), [https://chuygarcia.house.gov/sites/evo-subsites/chuygarcia.house.gov/files/evo-media-document/cbponeletter\\_final.pdf](https://chuygarcia.house.gov/sites/evo-subsites/chuygarcia.house.gov/files/evo-media-document/cbponeletter_final.pdf) [hereinafter Letter to Secretary Mayorkas].

222. *See Yearbook of Immigration Statistics 2022*, *supra* note 204, at tables 17d & 19d.

223. Class Action Complaint, *supra* note 1, at 29 (noting that some individuals speak languages that are not supported by the app, including but not limited to French, Portuguese, Russian, Farsi, Mandarin, and Indigenous languages).

224. U.S. Customs and Border Protection Language Access Plan, U.S. DEP'T HOMELAND SEC. 6 (Nov. 18, 2016), <https://www.dhs.gov/sites/default/files/publications/final-cbp-language-access-plan.pdf> [hereinafter CBP Language Access Plan].

225. Sasani, *supra* note 53.

Haitian Creole word for cultural traditions, rather than goods.<sup>226</sup> In addition, not all error messages are translated to one of the available languages.<sup>227</sup> The government defends its limited translations because (1) there is no indication additional languages are needed, (2) some messages cannot be translated, and (3) it provides fact sheets in English, Portuguese, Spanish, Haitian Creole, and Russian.<sup>228</sup> Although certain messages may lose their intended meaning when translated, it is not permissible to completely omit them. Furthermore, the fact sheets provided do not inform the user of data privacy risks, the extent to which the information will be collected, and/or fail to provide an alternative solution.<sup>229</sup> These mistranslations and limited translations contradict CBP's goal of providing accurate translations regardless of cultural nuances.<sup>230</sup> Most importantly, CBP has a duty to give meaningful access to the services it provides, including the CBP One app.<sup>231</sup>

The Clinton administration issued Executive Order 13166 to ensure individuals with limited English proficiency could access federal government services.<sup>232</sup> This Order is consistent with Title VI of the Civil Rights Act of 1964.<sup>233</sup> The Order required agencies to produce a plan to improve its language availability.<sup>234</sup> In 2016, an astounding

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226. Class Action Complaint, *supra* note 1, at 30; Andrew Deck, *Seeking asylum at the U.S.-Mexico border? You'd better speak English or Spanish*, REST WORLD (June 1, 2023), <https://restofworld.org/2023/migrant-languages-challenge-cbp-one-app-haitian-creole/>.

227. Class Action Complaint, *supra* note 1, at 30; Circumvention of Lawful Pathways, 88 Fed. Reg. 31314, 31403 (May 16, 2023) (to be codified at 8 C.F.R. pts. 1003, 1208).

228. Circumvention of Lawful Pathways, 88 Fed. Reg. at 31403.

229. *See Fact Sheet: Using CBP One to Schedule an Appointment*, *supra* note 62.

230. CBP Language Access Plan, *supra* note 224, at 12.

231. *Language Access*, U.S. CUSTOMS & BORDER PROT., <https://www.cbp.gov/about/language-access> (last modified Oct. 30, 2023); *see also* Exec. Order No. 13166, 65 Fed. Reg. 50121, 50121 (Aug. 16, 2000).

232. *Language Access*, *supra* note 231, at 12; Exec. Order No. 13166, 65 Fed. Reg. at 50121; *see* Title VI of the Civil Rights Act of 1964, 65 Fed. Reg. 52762, 52763 (Aug. 30, 2000) (failing to provide accommodations to someone who speaks another language is discrimination based on national origin).

233. Exec. Order No. 13166, 65 Fed. Reg. at 50121; *see* Title VI of the Civil Rights Act of 1964, 65 Fed. Reg. at 52763.

234. Exec. Order No. 13166, 65 Fed. Reg. at 50121.



sixteen years later, CBP published an updated plan.<sup>235</sup> Under CBP's Language Access Plan ("LAP"), language accessibility applies to all forms of communication, including phone communication.<sup>236</sup> While an argument can be made that "phone communication" was limited to phone calls, the expansion of technology makes this limitation unreasonable.<sup>237</sup> Indeed, the LAP explicitly provides the agency will use current and future technology to offer language services.<sup>238</sup>

CBP is required to provide accurate translations and maximize the language availability. Under the Department of Justice's ("DOJ") guidance, there are four factors an agency should consider when addressing the language assistance needs of a population or individual.<sup>239</sup>

The first factor to consider is the number or proportion of limited English proficiency persons who are likely to be served or encountered.<sup>240</sup> Although predicting the primary languages of asylum seekers comes with challenges, the U.S. Census Bureau reported the number of individuals who speak a language other than English tripled in 2019.<sup>241</sup> This data, combined with the approved asylum applications data, indicate there is a high proportion of individuals who would speak a language other than English.<sup>242</sup> The first factor is satisfied.

The second factor is the frequency at which someone comes in contact with the program.<sup>243</sup> Here, an individual or family can be accessing

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235. See CBP Language Access Plan, *supra* note 224.

236. *Id.* at 2.

237. *Id.* at 11–12.

238. *Id.*

239. *Id.* at 4; *DOJ Final LEP Guidance Signed 6-12-02*, U.S. DEP'T JUST. CIV. RTS. DIV., <https://www.justice.gov/crt/doj-final-lep-guidance-signed-6-12-02> (last updated Aug. 6, 2015) [hereinafter *DOJ Final LEP*].

240. CBP Language Access Plan, *supra* note 224, at 4; *DOJ Final LEP*, *supra* note 239.

241. Dietrich & Hernandez, *supra* note 101.

242. *Id.* *Yearbook of Immigration Statistics 2022*, *supra* note 204, at tables 17d & 19d.

243. CBP Language Access Plan, *supra* note 224, at 4; *DOJ Final LEP*, *supra* note 239.

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the program every day for months until they successfully obtain an appointment.<sup>244</sup> Therefore, the second factor is met.

The third factor is the nature and importance of the program.<sup>245</sup> This program is mandatory for individuals seeking asylum.<sup>246</sup> While CBP claims it allows traditional forms of asylum practices, there are numerous reports of people being turned away because they do not have an appointment.<sup>247</sup> With limited language options available, many individuals cannot use the app and fail to find an alternative to claim asylum. The third factor is achieved.

The final factor encompasses the resources available and cost of the program to the individual.<sup>248</sup> Asylum seekers typically have limited resources.<sup>249</sup> Using CBP One requires the asylum seeker to possess a smartphone with ample storage and the capability to download and run the app.<sup>250</sup> In conjunction, the smartphone must have internet access.<sup>251</sup> Not everyone can access Wi-Fi, even if they are staying at a migrant shelter.<sup>252</sup> If a person is lucky enough to have all of these resources, there is still no guarantee they can afford to purchase a cell phone and cellular data—data that requires stable internet access.<sup>253</sup>

There is ample evidence all four factors are met. Therefore, under the guidance of the DOJ, CBP has a duty to accurately provide translated material and expand its language accessibility. Without these services, individuals cannot properly consent to data collection and sharing because they are unable to clearly understand why they are

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244. See Class Action Complaint, *supra* note 1, at 33 (drawing on the experiences of families and individual who used the app every day to try and schedule an appointment); Christina Asencio, *supra* note 197, at 30–31.

245. CBP Language Access Plan, *supra* note 224, at 4; DOJ Final LEP, *supra* note 239.

246. See *supra* Part I.A.

247. Class Action Complaint, *supra* note 1, at 2.

248. CBP Language Access Plan, *supra* note 224, at 4; DOJ Final LEP, *supra* note 239.

249. See generally Class Action Complaint, *supra* note 1, at 36, 44; Ennaji, *supra* note 190.

250. Class Action Complaint, *supra* note 1, at 27.

251. *Id.* at 27.

252. *Id.* at 28.

253. *Id.*

providing PII.<sup>254</sup> Therefore, additional translated material allows asylum seekers to understand the risks and effectively utilize CBP One.

## 2. Ensuring Equity—Removing the Live Photo Requirement

CBP One’s live photo requirement presents an additional barrier to asylum seekers.<sup>255</sup> Individuals with darker complexions cannot provide acceptable live photos, which impacts their ability to secure an appointment to claim asylum.<sup>256</sup> CBP should not have implemented this requirement because it is an unjustified barrier.<sup>257</sup> The Office of Inspector General completed an evaluation which revealed an internal Slack message shared with personnel at the General Services Administration (“GSA”); the message stated the benefits of using live photos do not outweigh any inequity and should not be used for identity verification.<sup>258</sup> In addition, GSA released an Executive Order stating how facial recognition, liveness detection, or similar technology will not be deployed until a study concludes its implementation will not cause unnecessary harm to vulnerable populations.<sup>259</sup>

The use of a live photo to obtain an appointment to claim asylum is disproportionate to the harm it inflicts upon asylum seekers.<sup>260</sup> Individuals and shelters tried to find a solution by using bright lights—even

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254. See Sasani, *supra* note 53 (explaining mistranslated material); *Fact Sheet: Using CBP One to Schedule an Appointment*, *supra* note 62 (lacking information to inform users of data privacy risks); *CBP One Mobile Application*, *supra* note 10 (showing the app’s limited language availability in English, Spanish, and Haitian Creole).

255. *Fact Sheet: Using CBP One to Schedule an Appointment*, *supra* note 62; Kocher, *supra* note 18, at 8–9.

256. *Fact Sheet: Using CBP One to Schedule an Appointment*, *supra* note 62; Kocher, *supra* note 18, at 8–9; see Class Action Complaint, *supra* note 1, at 31.

257. OFF. INSPECTOR GEN., JE23-003, GSA MISLED CUSTOMERS ON LOGIN.GOV’S COMPLIANCE WITH DIGITAL IDENTITY STANDARDS 9 (2023).

258. *Id.* at 11.

259. U.S. GEN. SERVS. ADMIN., EXEC. ORDER NO. 13985, EQUITY ACTION PLAN, 10 (2022) [hereinafter EXEC. ORDER NO. 13985]. The United States General Services Agency is completing a twelve-week study in the summer and fall of 2023; however, the study will not be peer-reviewed until 2024. *Equity Study on Remote Identity Proofing*, GEN. SERVS. ADMIN., <https://www.gsa.gov/governmentwide-initiatives/diversity-equity-inclusion-and-accessibility/equity-study-on-remote-identity-proofing> (last visited Nov. 19, 2023).

260. *Supra* Part I.A.2 (noting discrimination practices in CBP One in the forms of nonrecognition of dark skin complexions).

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installing construction-grade lights—in hopes of taking acceptable live photos.<sup>261</sup> However, people who do not have access to shelters or satisfactory lighting are unable to even attempt to provide an acceptable live photo.<sup>262</sup> These solutions are rarely successful, even to those who have access to these additional resources.<sup>263</sup> Therefore, the best solution is to eliminate the live photo requirement and follow previously stated government goals. There is not another adequate solution ensuring GSA meets its goal of avoiding unnecessary harm to vulnerable populations.<sup>264</sup>

### C. *Eliminating the Problem by Removing the Mobile App*

In an ideal world, CBP One would not exist. If CBP One did not exist, the need for updated privacy practices would not exist. Banning CBP One is not a novel idea.<sup>265</sup> Members of Congress wrote letters, expressing their concerns about unjust asylum practices, to the Secretary of the Department of Homeland Security Alejandro Mayorkas<sup>266</sup> and President Joseph R. Biden.<sup>267</sup> For example, Senator Edward J. Markey (Mass.) wrote a letter to Secretary Mayorkas expressing his concerns about technological problems and privacy issues on February 21, 2023.<sup>268</sup> Senator Markey also raised concerns about the quick expansion

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261. Class Action Complaint, *supra* note 1, at 31.

262. *Id.*

263. *Id.*

264. EXEC. ORDER NO. 13985, *supra* note 259, at 10; *see Equity Study on Remote Identity Proofing*, *supra* note 259.

265. *Senator Markey Calls on DHS to Ditch Mobile App Riddled with Glitches, Privacy Problems, for Asylum Seekers*, EDWARD MARKEY U.S. SENATOR FOR MASS. (Feb. 21, 2023), <https://www.markey.senate.gov/news/press-releases/senator-markey-calls-on-dhs-to-ditch-mobile-app-riddled-with-glitches-privacy-problems-for-asylum-seekers>.

266. *Alejandro Mayorkas*, U.S. DEP'T HOMELAND SEC., <https://www.dhs.gov/person/alejandro-mayorkas> (last updated May 1, 2023).

267. *See, e.g.*, Letter to Secretary Mayorkas, *supra* note 221; *Senator Markey Calls on DHS to Ditch Mobile App Riddled with Glitches*, *supra* note 265; Letter from Congress, led by Robert Menendez, Congressman to Joseph Biden, President of the U.S. (Jan. 25, 2023), *retrieved from* [https://www.menendez.senate.gov/imo/media/doc/letter\\_to\\_president\\_biden\\_on\\_the\\_administrations\\_border\\_policies.pdf](https://www.menendez.senate.gov/imo/media/doc/letter_to_president_biden_on_the_administrations_border_policies.pdf).

268. *Senator Markey Calls on DHS to Ditch Mobile App Riddled with Glitches*, *supra* note 265.

of CBP One and how facial recognition, biometric, and geolocation collection “is extremely problematic because it is highly invasive and invites serious privacy violations.”<sup>269</sup> He concluded his letter by urging DHS to remove the app and implement “a compassionate, lawful, and human-rights centered approach.”<sup>270</sup> These privacy issues are not the first examples of data privacy concerns Senator Markey has addressed.<sup>271</sup> In 2018 and 2019, Senator Markey voiced his worries around DHS’s quick expansion to use facial recognition software at U.S. airports.<sup>272</sup> It is concerning how CBP One’s expansion mirrors previous privacy concerns. It further indicates the Department has not improved its internal practices despite previous notice of such problems.<sup>273</sup>

CBP One is advertised as humane and efficient.<sup>274</sup> However, the experiences asylum seekers reported indicate the use of the app is inhumane.<sup>275</sup> In May 2023, CBP officers refused to process asylum requests at the San Ysidro Pedestrian East Port of Entry where an individual did not have a prescheduled appointment.<sup>276</sup> As a result, for many days, around 350 individuals waited in line and slept there without food, water, or shelter.<sup>277</sup> In June 2023, at the Paso del Norte Port of Entry, CBP officers refused to process appointments for fourteen days, even though many families waited over fifteen days to seek asylum.<sup>278</sup> In

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269. Letter from Edward Markey, Congressman to Alejandro Mayorkas, Secretary, Dep’t Homeland Sec. at 2 (Feb. 21, 2023), *retrieved from* [https://www.markey.senate.gov/imo/media/doc/senator\\_markey\\_letter\\_to\\_dhs\\_on\\_cbp\\_one\\_app\\_-\\_february\\_2023.pdf](https://www.markey.senate.gov/imo/media/doc/senator_markey_letter_to_dhs_on_cbp_one_app_-_february_2023.pdf).

270. *Id.* at 4.

271. *Statement on Facial Recognition Technology*, *supra* note 113; *Call for Transparency on DHS*, *supra* note 113.

272. *Statement on Facial Recognition Technology*, *supra* note 113; *Call for Transparency on DHS*, *supra* note 113.

273. *See* CUSTOMS AND BORDER PROTECTION ACTIONS NEEDED, *supra* note 114, at 2–3, 21; *Statement on Facial Recognition Technology*, *supra* note 113; *Call for Transparency on DHS*, *supra* note 113.

274. *Fact Sheet: Using CBP One to Schedule an Appointment*, *supra* note 62.

275. *See generally* Class Action Complaint, *supra* note 1, at 1.

276. *Id.* at 36.

277. *Id.*

278. *Id.* at 37

addition to the physical challenges, asylum seekers are extremely vulnerable to exploitation.<sup>279</sup>

Criminal groups are posing as lawyers to help asylum seekers navigate CBP One, selling fake appointments, posing as service providers, or claiming to have special access to the app to charge a fee.<sup>280</sup> Specifically, cartels, through the use of a VPN,<sup>281</sup> are able to secure appointments from anywhere.<sup>282</sup> Smugglers are also using a VPN and advertising their capabilities in southern Mexico and on social media.<sup>283</sup> The fee for fake accounts and appointments was reported to cost up to two thousand dollars.<sup>284</sup> These examples not only show the app is inhumane, but that it also presents severe security issues.

The U.S. government noted the advance collection of PII ensures efficiency.<sup>285</sup> However, the advance collection only saves sixteen minutes of processing time and an individual is still subject to primary and secondary inspections.<sup>286</sup> During primary inspection, a CBP officer is required to take the individual's picture to locate any possible records using facial matching technology.<sup>287</sup> If there is no record, the officer will ask the individual for their birthdate, CBP One confirmation number, and country of citizenship.<sup>288</sup> Secondary inspection is where

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279. *Id.* at 31.

280. *Id.* at 31–32.

281. “VPN” stands for “virtual private network,” which allows users to remotely connect to the Internet through an encrypted connection. *What Is a VPN?*, CLOUDFLARE, INC., <https://www.cloudflare.com/learning/access-management/what-is-a-vpn/> (last visited Feb. 22, 2024). VPNs are used for a variety of reasons, including keeping the user's location private. *Id.*

282. Anna Giaritelli, *Mexican Cartels Exploit US Government's CBP One App*, WASH. EXAM'R (Aug. 4, 2023, 1:46 PM), [https://www.washingtonexaminer.com/policy/immigration/mexican-cartels-exploit-cbp-one-app#google\\_vignette](https://www.washingtonexaminer.com/policy/immigration/mexican-cartels-exploit-cbp-one-app#google_vignette).

283. *Id.*

284. Class Action Complaint, *supra* note 1, at 31–32; *see also* Ayelet Parness, *For Asylum Seekers, CBP One App Poses Major Challenges*, HIAS (Nov. 8, 2023), <https://hias.org/news/asylum-seekers-cbp-one-app-poses-major-challenges/>.

285. *Fact Sheet: Using CBP One to Schedule an Appointment*, *supra* note 62; PRIVACY IMPACT ASSESSMENT FOR THE COLLECTION OF ADVANCE INFORMATION, *supra* note 71, at 17–18.

286. PRIVACY IMPACT ASSESSMENT FOR THE COLLECTION OF ADVANCE INFORMATION, *supra* note 71, at 11–12.

287. *Id.* at 11.

288. *Id.*

providing PII in advance is supposed to make the process more efficient by pre-populating the information in the Unified Secondary System.<sup>289</sup> However, if there is no match, the CBP officer must manually enter the information while in secondary inspection.<sup>290</sup> Therefore, the supposed time efficiency of the app defeats the purpose of providing PII in advance and the argument of efficiency.

Removing CBP One as a requirement would instantly solve these privacy, security, and humanitarian concerns. This solution would address advocates' concerns, ensure asylum seekers are not deprived of their rights, and hold the Biden administration accountable for its humane immigration goals.<sup>291</sup> Eliminating CBP One would prevent CBP from defaulting on improvements in its internal practices.<sup>292</sup> Most importantly, this solution would prevent any future need for improvement and adding additional safeguards as other privacy concerns arise. Therefore, eliminating CBP One would be in the best interest of the government, while also providing asylum seekers with necessary data privacy protection.

#### IV. CONCLUSION

Technology can provide many benefits. However, if its implementation harms an individual or group, it should not be deployed.<sup>293</sup> Implementing technology in the evolving immigration field to improve productivity is not an excuse to ignore potential humanitarian harms. The expansion of CBP One fails to incorporate protections

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289. *Id.* at 11–12.

290. PRIVACY POLICY, COMPLIANCE, AND IMPLEMENTATION, *supra* note 17.

291. *Fact Sheet: The Biden Administration Blueprint for a Fair, Orderly and Humane Immigration System*, WHITE HOUSE (July 27, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/27/fact-sheet-the-biden-administration-blueprint-for-a-fair-orderly-and-humane-immigration-system/>.

292. CUSTOMS AND BORDER PROTECTION ACTIONS NEEDED, *supra* note 114, at 2–3, 21.

293. The principle of “Do No Harm” applies to the deployment and implementation of advancing technology. See Frank Vibert, *The ‘Do No Harm’ Principle: So Simple? So Easy to Misunderstand!*, OXFORD GLOB. SOC’Y (Apr. 2, 2022), <https://oxgs.org/2022/02/04/the-do-no-harm-principle-%3A-so-simple-so-easy-to-misunderstand/>; see also 5. *Do No Harm*, U.N. DEV. PROGRAMME, <https://www.undp.org/digital/standards/5-do-no-harm> (last visited Nov. 27, 2023).

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against the data privacy risks asylum seekers face. To effectively integrate technology into the immigration process, laws and internal departmental practices must prioritize the protection of vulnerable populations from enduring irreversible harm. Asylum seekers must have data privacy rights and have those rights protected if technology continues to be required. Without proper acknowledgement and protection of data privacy, CBP One is inhumane and must be removed from immigration policies and practices.