

**In the Supreme Court of the United States**

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KRISTI NOEM, SECRETARY OF HOMELAND SECURITY,  
ET AL., PETITIONERS

*v.*

AL OTRO LADO, A CALIFORNIA CORPORATION, ET AL.

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ON WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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**JOINT APPENDIX**

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D. JOHN SAUER  
*Solicitor General*  
*Department of Justice*  
*Washington, D.C. 20530-0001*  
*SupremeCtBriefs@usdoj.gov*  
*(202) 514-2217*  
*Counsel of Record*  
*for Petitioners*

KELSI BROWN CORKRAN  
*Institute for Constitutional*  
*Advocacy & Protection,*  
*Georgetown Law*  
*600 New Jersey Ave., N.W.*  
*Washington, D.C. 20001*  
*kbc74@georgetown.edu*  
*(202) 661-6728*  
*Counsel of Record*  
*for Respondents*

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UNITED STATES COURT OF APPEALS  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

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No. 3:17-cv-02366-BAS-KSC

AL OTRO LADO, INC., A CALIFORNIA CORPORATION;  
ABIGAIL DOE, BEATRICE DOE, CAROLINA DOE, DINORA  
DOE, INGRID DOE, ROBERTO DOE, MARIA DOE,  
JUAN DOE, URSULA DOE, VICTORIA DOE, BIANCA DOE,  
EMILIANA DOE, AND CÉSAR DOE INDIVIDUALLY AND  
ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,  
PLAINTIFFS

*v.*

KIRSTJEN M. NIELSEN, SECRETARY UNITED STATES  
DEPARTMENT OF HOMELAND SECURITY, IN HER  
OFFICIAL CAPACITY; KEVIN K. MCALEENAN,  
COMMISSIONER, UNITED STATES CUSTOMS AND  
BORDER PROTECTION, IN HIS OFFICIAL CAPACITY; TODD  
C. OWEN, EXECUTIVE ASSISTANT COMMISSIONER,  
OFFICE OF FIELD OPERATIONS, UNITED STATES  
CUSTOMS AND BORDER PROTECTION, IN HIS OFFICIAL  
CAPACITY; AND DOES 1-25, INCLUSIVE, DEFENDANTS

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Filed: Nov. 13, 2018

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**SECOND AMENDED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE RELIEF FOR:**

- (1) **VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. § 1101, *ET SEQ.***
- (2) **VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 551 *ET SEQ.***
- (3) **VIOLATION OF THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION (PROCEDURAL DUE PROCESS)**

(4) VIOLATION OF THE *NON-REFOULEMENT*  
DOCTRINE

CLASS ACTION

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I. INTRODUCTION

Plaintiff Al Otro Lado, Inc. (“Al Otro Lado”), a non-profit legal services organization, and Plaintiffs Abigail Doe, Beatrice Doe, Carolina Doe, Dinora Doe, Ingrid Doe, Roberto Doe, Maria Doe, Juan Doe, Úrsula Doe, Victoria Doe, Bianca Doe, Emiliana Doe, and César Doe (“Class Plaintiffs”), acting on their own behalf and on behalf of all similarly situated individuals, allege as follows:

1. Class Plaintiffs are noncitizens who have fled grave harm in their countries to seek protection in the United States. All of them sought to access the U.S. asylum process by presenting themselves at official ports of entry (“POEs,” or individually, “POE”) along the U.S.-Mexico border, but were denied such access by or at the instruction of U.S. Customs and Border Protection (“CBP”) officials pursuant to a policy initiated by Defendants or practices effectively ratified by Defendants in contravention of U.S. and international law.

2. Since 2016 and continuing to this day, CBP has engaged in an unlawful, widespread pattern and practice of denying asylum seekers access to the asylum process at POEs on the U.S.-Mexico border through a variety of illegal tactics. These tactics include lying; using threats, intimidation and coercion; employing verbal abuse and applying physical force; physically obstructing access to the POE building; imposing unreasonable delays before granting access to the asylum process;

denying outright access to the asylum process; and denying access to the asylum process in a racially discriminatory manner. Since the presidential election, CBP officials have, for example, misinformed asylum seekers that they could not apply for asylum because “Donald Trump just signed new laws saying there is no asylum for anyone,” coerced asylum seekers into signing forms abandoning their asylum claims by threatening to take their children away, threatened to deport asylum seekers back to their home countries (where they face persecution) if they persisted in their attempts to seek asylum, and even forcefully removed asylum seekers from POEs. In March 2018, four Guatemalan asylum seekers at an El Paso POE, were denied access to the asylum process after CBP officials told them that “Guatemalans make us sick.” As recently as September 2018, CBP denied access to an asylum seeker who was four months pregnant and a victim of sexual violence. These practices all violate U.S. law, which requires that asylum seekers “shall” have access to the asylum process.

3. In addition, beginning around 2016, high-level CBP officials, under the direction or with the knowledge or authorization of the named Defendants (the “Defendants”), adopted a formal policy to restrict access to the asylum process at POEs by mandating that lower-level officials directly or constructively turn back asylum seekers at the border (the “Turnback Policy”) contrary to U.S. law. In accordance with the Turnback Policy, CBP officials have used and are continuing to use various methods to unlawfully deny asylum seekers access to the asylum process based on purported—but ultimately untrue—assertions that there is a lack of “capacity” to process them. These methods include coordi-

nating with Mexican immigration authorities and other third parties to implement a “metering,” or waitlist, system that creates unreasonable and life-threatening delays in processing asylum seekers; instructing asylum seekers to wait on the bridge, in the pre-inspection area, or at a shelter until there is adequate space at the POE; or simply asserting to asylum seekers that they cannot be processed because the POE is “full” or “at capacity.” On information and belief, the claims of a lack of capacity are false.

4. Both Defendants’ widespread practice of denying access to the asylum process and their formal Turnback Policy are designed to serve the Trump administration’s broader, publicly proclaimed goal of deterring individuals from seeking access to the asylum process. Rather than changing existing law, the Administration is simply not following it. The Turnback Policy also reflects the Trump administration’s significant antipathy to the fundamental humanitarian principles embodied in asylum laws, as well as to the Central and South American populations seeking access to the asylum process in the United States.

5. In the spring of 2018, and in response to the anticipated arrival of a sizeable number of asylum seekers who had traveled together on the dangerous journey North in a so-called “caravan,” high-level Trump administration officials publicly and unambiguously proclaimed the existence of their policy to intentionally restrict access to the asylum process at POEs in violation of U.S. law. Attorney General Jefferson B. Sessions pledged that asylum seekers would not “stampede” our borders and announced a related “Zero Tolerance” policy to prosecute all who enter the country unlawfully, and thereby to separate them from their children (the

very threat a number of Plaintiffs received when attempting to seek asylum). Around the same time, United States Department of Homeland Security (“DHS”) Secretary Kirstjen Nielsen characterized the asylum process—mandated by U.S. statute and international law—as a legal “loophole” and publicly announced a “metering” process designed to restrict—and to constructively deny—access to the asylum process through unreasonable and dangerous delay.

6. Indeed, President Trump offered a public, full-throated and racially-discriminatory defense of his administration’s aggressive implementation of the Turnback Policy and the related, widespread CBP practice of denying access to the asylum process, by referring to asylum seekers as “criminals” and “animals” seeking to “infest” and “invade” the United States, and by specifically stating, via tweet, that the United States “must bring them back from where they came” and must “escort them back without going through years of legal maneuvering.”

7. Soon afterward, CBP officials implemented the Turnback Policy through a tactic of asserting a “lack of capacity” to process asylum-seekers and by coordinating with Mexican officials to prevent or delay asylum seekers from reaching inspection points at POEs, even as CBP officials knew or should have known of the dangerous conditions of rampant crime and violence by gangs and cartels on the Mexican side of the border. The unreasonable delays imposed on asylum seekers—which are done pursuant to the Trump administration’s broader goal of deterring future asylum seekers from presenting at the border at all—also amount to a constructive denial of access to the asylum process.



8. As detailed more fully below, the Turnback Policy comes from high-level U.S. government officials and is having the intended effect of severely restricting—and constructively denying—access to the asylum process at POEs. Indeed, an October 2018 report by DHS’s Office of Inspector General (“OIG”) concluded that CBP has been “regulating the flow of asylum-seekers at ports of entry,” and that by limiting the volume of asylum seekers entering at POEs, the government has prompted some individuals “who would otherwise seek legal entry into the United States to cross the border illegally.”<sup>1</sup>

9. Many desperate asylum seekers, faced with the consequences of the Turnback Policy and unlawful CBP practices, have felt compelled to enter the United States outside of POEs, often by swimming across the Rio Grande or paying smugglers exorbitant sums to transport them, to reach safety as quickly as possible.

10. On information and belief, CBP’s conduct pursuant to the Turnback Policy and other unlawful practices were and continue to be performed at the instigation, under the control or authority of, or with the direction, knowledge, consent or acquiescence of Defendants. By refusing to follow the law, Defendants have caused, and will continue to cause, Class Plaintiffs and Al Otro Lado concrete and demonstrable injuries and irreparable harm.

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<sup>1</sup> U.S. Dep’t of Homeland Sec., Office of the Inspector Gen., *OIG-18-84, Special Review—Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy* 5-6 (2018), <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-84-Sep18.pdf> [hereinafter *OIG Report*].

11. Each of the Class Plaintiffs has been subject to Defendants' pattern and practice of denying access to the asylum process and/or to the Turnback Policy.

12. Defendants have deprived Class Plaintiffs and similarly situated individuals of their statutory and international-law rights to apply for asylum, violated their due process rights under the Fifth Amendment to the United States Constitution, and violated the United States' obligations under international law to uphold the principle of *non-refoulement*. Defendants' Turnback Policy and other unlawful practices also constitute unlawful agency action that should be set aside and enjoined pursuant to the Administrative Procedure Act, 5 U.S.C. § 706. Each Class Plaintiff has attempted to access the asylum process and would seek to do so again, but for Defendants' systematic, illegal Turnback Policy and other unlawful practices at issue in this action, which have impeded their access.

13. Defendants have caused injury to Plaintiff Al Otro Lado by frustrating its ability to advance and maintain its central institutional mission and forcing the organization to divert substantial portions of its limited time and resources away from its various programs in Los Angeles, California, and Tijuana, Mexico, to counteract the effects of the Turnback Policy and Defendants' other unlawful practices.

14. Despite persistent advocacy by Al Otro Lado and other advocates, and despite Class Plaintiffs' desperate need and right to seek asylum without delay in the United States, CBP shows no signs of abating its illegal policy and practices. Accordingly, Al Otro Lado and Class Plaintiffs require the intervention of this Court to declare that Defendants' conduct violates U.S. and in-

ternational law, to enjoin Defendants from continuing to violate the law, and to order Defendants to implement procedures to ensure effective compliance with the law, including, without limitation, oversight and accountability in the inspection and processing of asylum seekers. Absent the Court's intervention, CBP's unlawful conduct will continue to imperil the lives and safety of countless vulnerable asylum seekers.

## **II. JURISDICTION AND VENUE**

15. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1346, and 1350. Defendants have waived sovereign immunity for purposes of this suit pursuant to 5 U.S.C. § 702. The Court has authority to grant declaratory relief under 28 U.S.C. §§ 2201 and 2202.

16. Venue is proper in this district under 28 U.S.C. § 1391(e) because a substantial part of the events or omissions giving rise to the claim occurred at or in the vicinity of the San Ysidro POE. All Defendants are sued in their official capacity.

## **III. PARTIES**

### **A. Plaintiffs**

17. Plaintiff Al Otro Lado is a non-profit, non-partisan organization incorporated in California and established in 2014. Al Otro Lado is a legal services organization serving indigent deportees, migrants, refugees and their families, principally in Los Angeles, California, and Tijuana, Mexico. Al Otro Lado's mission is to coordinate and to provide screening, advocacy, and legal representation for individuals in asylum and other immigration proceedings, to seek redress for civil rights violations, and to provide assistance with other legal

and social service needs. Defendants have frustrated Al Otro Lado's mission and have forced Al Otro Lado to divert significant resources away from its other programs to counteract CBP's illegal practice of turning back asylum seekers at POEs.

18. Through its Border Rights Project in Tijuana, Mexico, Al Otro Lado assists individuals seeking protection from persecution in the United States. In response to CBP's unlawful policy and practices, Al Otro Lado has had to expend significant organizational time and resources and alter entirely its previously used large-scale clinic model. For example, Al Otro Lado previously held large-scale, mass-advisal legal clinics in Tijuana that provided a general overview on asylum laws and procedures. This type of assistance (similar to the Legal Orientation Program of the Executive Office for Immigration Review) only was workable when CBP allowed asylum seekers into the United States in accordance with the law.

19. Since 2016, however, CBP's illegal conduct has compelled Al Otro Lado to expend significant time and resources to send representatives to Tijuana from Los Angeles multiple times per month for extended periods to provide more individualized assistance and coordination of legal and social services, including individual screenings and in-depth trainings to educate volunteer attorneys and asylum seekers regarding CBP's unlawful policy and practices and potential strategies to pursue asylum in the face of CBP's tactics. Whereas Al Otro Lado previously was able to accommodate several dozen attorneys and over 100 clients at a time in its large-scale clinics, Al Otro Lado has been forced to transition to an individualized representation model where attorneys are required to work with asylum seek-

ers one-on-one and provide direct representation. Al Otro Lado has expended (and continues to expend) significantly more resources recruiting, training and mentoring pro bono attorneys to help counteract CBP's unlawful policy and practices. Nevertheless, even asylum seekers provided with such individualized pro bono representation are being turned back by CBP in violation of the law.

20. Al Otro Lado also has spent time and resources advocating that CBP provide asylum seekers with access to the asylum process and cease using unlawful tactics to circumvent its legal obligations. For example, Al Otro Lado representatives have filed numerous complaints with the U.S. government detailing examples of CBP's unlawful policy and practices depriving asylum seekers of access to the asylum process.

21. Such diversion of Al Otro Lado's time and resources negatively impacts its other programs. For example, Al Otro Lado has not been able to pursue funding for or otherwise advance the following programs: (1) its Deportee Reintegration Program through which Al Otro Lado assists deportees who struggle to survive in Tijuana, many of whom have no Mexican identity documents or health coverage, and may not even speak Spanish; and (2) its Cross-Border Family Support Program through which Al Otro Lado assists families with cross-border custody issues, and helps connect family members residing in the United States to social, legal, medical and mental health services. Al Otro Lado has all but ceased its programmatic work with deportees and families separated by deportation due to the diversion of resources caused by CBP's unlawful actions.

22. In addition, the constraints on Al Otro Lado’s limited time and resources have negatively impacted its operations in Los Angeles, including delaying the opening and expansion of its Los Angeles office through which it coordinates “Wraparound” services for low-income immigrants in Los Angeles. The increased need for on-the-ground support in Tijuana has impacted Al Otro Lado’s ability to satisfy its clinical obligations for low-income immigrants at the Wellness Center, located on the grounds of the Los Angeles County+USC Medical Center, and to conduct outreach to provide free legal assistance to homeless individuals in Los Angeles to allow them to better access permanent supportive housing, employment and educational opportunities.

23. Al Otro Lado continues to be harmed by Defendants because CBP’s illegal conduct at or in the vicinity of the border frustrates its organizational mission and forces Al Otro Lado to divert resources from its other objectives. If Al Otro Lado had not been compelled to divert resources to address CBP’s unlawful conduct at the U.S.-Mexico border, it would have directed these resources toward its other programs to further the advancement of its core mission.

24. Plaintiff Abigail Doe is a female native and citizen of Mexico. She is the mother of two children under the age of ten.<sup>2</sup> Abigail and her family have been targeted and threatened with death or severe harm in Mexico by a large drug cartel that had previously targeted her husband, leaving her certain she would not be protected by local officials. Abigail fled with her two

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<sup>2</sup> The ages listed for children of Abigail Doe, Beatrice Doe, Carolina Doe, and Dinora Doe are as they were at the time the initial Complaint was filed.

children to Tijuana, where they presented themselves at the San Ysidro POE. On behalf of herself and her children, Abigail expressed her fear of returning to Mexico and her desire to seek asylum in the United States. CBP officials coerced Abigail into recanting her fear and signing a form withdrawing her application for admission to the United States. As a result of this coercion, the form falsely states that Abigail does not have a credible fear of returning to Mexico. As a result of Defendants' conduct, Abigail and her children were unable to access the asylum process and were forced to return to Tijuana, where at the time the initial Complaint was filed, they remained in fear for their lives. Following the filing of the initial Complaint in this case, Defendants made arrangements to facilitate the entry of Abigail and her children into the United States.

25. Plaintiff Beatrice Doe is a female native and citizen of Mexico. She is the mother of three children under the age of sixteen. Beatrice and her family have been targeted and threatened with death or severe harm in Mexico by a dangerous drug cartel; she was also subject to severe domestic violence. Beatrice fled with her children and her nephew to Tijuana, where they presented themselves once at the Otay Mesa POE and twice at the San Ysidro POE. On behalf of herself and her children, Beatrice expressed her fear of returning to Mexico and her desire to seek asylum in the United States. CBP officials coerced Beatrice into recanting her fear and signing a form withdrawing her application for admission to the United States. As a result of this coercion, the form falsely states that Beatrice and her children have no fear of returning to Mexico. As a result of Defendants' conduct, Beatrice and her children were unable to access the asylum process and were forced to

return to Tijuana, where at the time the initial Complaint was filed, they remained in fear for their lives. While she was sheltered in Tijuana, her abusive spouse located her and coerced her and her children to return home with him.

26. Plaintiff Carolina Doe is a female native and citizen of Mexico. She is the mother of three children. Carolina's brother-in-law was kidnapped and dismembered by a dangerous drug cartel in Mexico, and after the murder, her family also was targeted and threatened with death or severe harm. Carolina fled with her children to Tijuana, where they presented themselves at the San Ysidro, POE. On behalf of herself and her children, Carolina expressed her fear of returning to Mexico and her desire to seek asylum in the United States. CBP officials coerced Carolina into recanting her fear on video and signing a form withdrawing her application for admission to the United States. As a result of this coercion, the form falsely states that Carolina and her children have no fear of returning to Mexico. As a result of Defendants' conduct, Carolina and her children were unable to access the asylum process and were forced to return to Tijuana, where at the time the initial Complaint was filed, they remained in fear for their lives. Following the filing of the initial Complaint in this case, Defendants made arrangements to facilitate the entry of Carolina and her children into the United States.

27. Plaintiff Dinora Doe is a female native and citizen of Honduras. Dinora and her eighteen-year-old daughter have been targeted, threatened with death or severe harm, and repeatedly raped by MS-13 gang members. Dinora fled with her daughter to Tijuana, where they presented themselves at the Otay Mesa,



POE on three occasions. Dinora expressed her fear of returning to Honduras and her desire to seek asylum in the United States. CBP officials misinformed Dinora about her rights under U.S. law and denied her the opportunity to access the asylum process. As a result of Defendants' conduct, Dinora and her daughter were forced to return to Tijuana, where at the time the initial Complaint was filed, they remained in fear for their lives. Following the filing of the initial Complaint in this case, Defendants made arrangements to facilitate the entry of Dinora and her daughter into the United States.

28. Plaintiff Ingrid Doe is a female native and citizen of Honduras. At the time the initial Complaint was filed, she had two children and was pregnant with her third child. Ingrid's mother and three siblings were murdered by 18th Street gang members in Honduras. After the murders, 18th Street gang members threatened to kill Ingrid. Ingrid and her children were also subject to severe domestic violence. Ingrid fled with her children to Tijuana, where they presented themselves at the Otay Mesa POE and at the San Ysidro POE. On behalf of herself and her children, Ingrid expressed her fear of returning to Honduras and her desire to seek asylum in the United States. CBP officials misinformed Ingrid about her rights under U.S. law and denied her the opportunity to access the asylum process. As a result of Defendants' conduct, Ingrid and her children were forced to return to Tijuana, where at the time the initial Complaint was filed, they remained in fear for their lives. Following the filing of the initial Complaint in this case, Defendants made arrangements to facilitate the entry of Ingrid and her children into the United States.

29. Plaintiff Roberto Doe is a male native and citizen of Nicaragua. Fearing for his life and the lives of his family members, Roberto fled Nicaragua due to threats of violence from the Nicaraguan government and paramilitaries allied with the government. Roberto sought access to the asylum process by presenting himself at the Hidalgo, Texas POE. When he encountered CBP officials in the middle of the bridge, he told them that he wanted to seek asylum in the United States. CBP officials denied Roberto access to the asylum process by telling him the POE was full and that he could not enter. Mexican officials then escorted Roberto back to Mexico. At the time of the filing of the First Amended Complaint, Roberto desired to return immediately to the Hidalgo POE to seek asylum, but based on his experiences and the experiences of others with CBP's practices at the U.S.-Mexico border, he understood that he would likely be turned away again. After the filing of the First Amended Complaint, Roberto did return to the Hidalgo POE, where Mexican officials detained him as he was walking onto the international bridge to seek access to the asylum process in the United States. Roberto remains in the custody of the Mexican government. On information and belief, his refoulement to Nicaragua is imminent. He can no longer remain in Mexico and has no place else to turn for safety but the United States.

30. Plaintiff Maria Doe is a female native and citizen of Guatemala and a permanent resident of Mexico. She was married to a Mexican citizen, with whom she has two children who were both born in Mexico. Since Maria left her husband, who was abusive and is involved with cartels, two different cartels have been tracking and threatening her. Maria and her children fled and sought access to the asylum process by presenting

themselves at the Laredo, Texas POE. When Maria encountered CBP officials in the middle of the bridge, she told them that she and her children wanted to seek asylum in the United States. CBP officials told them to wait on the Mexican side of the bridge. There, two Mexican officials told Maria that U.S. officials would not let her and her children cross the bridge, but that they could help her if she paid a bribe. Having no money to pay the bribe, Maria traveled with her children to Reynosa, Mexico. There, accompanied by an American lawyer, they sought access to the asylum process by presenting themselves at the Hidalgo POE. On the Mexican side of the bridge leading to the Hidalgo POE, a Mexican official threatened to destroy Maria's identity documents if she and her children did not leave the bridge. Two weeks later, Maria and her children, accompanied by the same American lawyer, again sought access to the asylum process by presenting themselves at the Hidalgo POE. When Maria encountered CBP agents at the middle of the bridge, she told them that she and her children wanted to seek asylum in the United States. Mexican officials then forced Maria and her children off the bridge. Although Maria and her lawyer repeatedly told CBP officials that she and her children wanted to seek asylum in the United States, the CBP officials denied Maria and her children access to the asylum process. At the time the First Amended Complaint was filed, Maria and her children desired to return immediately to a POE to seek asylum, but based on their experience and the experiences of others with CBP's practices at the U.S.-Mexico border, she understood that they would likely be turned away again. Maria and her children remained in Mexico, where their lives were in danger. They could no longer remain in Mexico and had no place else to turn for safety but the

United States. Following the filing of the First Amended Complaint in this case, Defendants made arrangements to facilitate the entry of Maria and her children into the United States.

31. Plaintiff Juan Doe is a male native and citizen of Honduras. Plaintiff Úrsula Doe is a female native and citizen of Honduras. Juan and Úrsula are husband and wife and together have two children, twin thirteen-year-old boys. They fled Honduras with their sons after receiving death threats from gangs. Juan, Úrsula, and their children sought access to the asylum process by presenting themselves at the Laredo POE. When Juan, Úrsula, and their children reached the middle of the bridge to the POE, CBP officials denied them access to the asylum process by telling them the POE was closed and that they could not enter. Juan, Úrsula, and their children subsequently tried to seek access to the asylum process by presenting themselves at the Hidalgo POE, but Mexican officials stopped them just as they were entering the pedestrian walkway on the Reynosa bridge and threatened to deport them to Honduras if they did not leave. At the time the First Amended Complaint was filed, Juan, Úrsula, and their children desired to return immediately to the Hidalgo POE to seek asylum, but based on their experience and the experiences of others with CBP's practices at the U.S.-Mexico border, they understood that they would likely be turned away again. At that time, Juan, Úrsula, and their children resided in Reynosa, Mexico, where they remained in fear for their lives. They could no longer remain in Mexico and had no place else to turn for safety but the United States. Following the filing of the First Amended Complaint in this case, Defendants made arrangements

to facilitate the entry of Juan, Úrsula, and their children into the United States.

32. Plaintiff Victoria Doe is a sixteen-year old female native and citizen of Honduras. Victoria has been threatened with severe harm and death by members of the 18th Street gang for refusing to become the girlfriend of one of the gang's leaders. Fearing for her life, Victoria fled to Mexico where she gave birth to her son. Victoria and her son sought access to the asylum process by presenting themselves at the San Ysidro POE. When Victoria expressed her desire to seek asylum in the United States, CBP officers denied her access to the asylum process by stating that she could not apply for asylum at that time and telling her to speak to a Mexican official without providing any additional information. At the time the First Amended Complaint was filed, Victoria desired to return immediately to the San Ysidro POE to seek asylum on behalf of herself and her son, but based on her experience and the experience of others with CBP's practices at the U.S.-Mexico border, she understood that she would likely be turned away again. At that time, Victoria and her son were residing in a shelter in Tijuana, but could no longer remain in Mexico because of threats from gangs who continued to target them in Mexico. They had no place else to turn for safety but the United States. Following the filing of the First Amended Complaint in this case, Defendants made arrangements to facilitate the entry of Victoria and her child into the United States.

33. Plaintiff Bianca Doe is a transgender woman who is a native and citizen of Honduras. Bianca has been subjected to extreme and persistent physical and sexual assault, as well as discrimination and ongoing threats of violence in Honduras and Mexico City, where she sub-

sequently moved, because she is a transgender woman. Fearing for her safety based on numerous threats and harassment, including at the hands of Mexican police, Bianca fled to Tijuana and sought access to the asylum process by presenting herself at the San Ysidro POE. CBP officers denied Bianca access to the asylum process by stating that she could not apply at that time because they were at capacity. Bianca returned to the POE the next day. She was given a piece of paper with the number “919,” placed on a waiting list, and told that she would have to wait several weeks to proceed to the POE. Feeling desperate and unsafe, Bianca attempted to enter the United States without inspection by climbing a fence on a beach in Tijuana. Once over the fence, a U.S. Border Patrol officer stopped Bianca, who expressed her desire to seek asylum in the United States. The U.S. Border Patrol officer told Bianca that there was no capacity in U.S. detention centers and threatened to call Mexican police if Bianca did not climb the fence back into Mexico. Terrified, Bianca returned to Mexico. Bianca subsequently sought access to the asylum process by again presenting herself at the San Ysidro POE. She was told, once again, that CBP had no capacity for asylum seekers. At the time the First Amended Complaint was filed, Bianca desired like to return immediately to the San Ysidro POE to seek asylum, but based on her experience and the experience of others with CBP’s practice at the U.S.-Mexico border, she understood that she would likely be turned away again. At that time, Bianca was residing in a shelter in Tijuana where she feared further violence as a transgender woman. She could no longer remain in Mexico and had no place else to turn for safety but the United States. Following the filing of the First Amended Com-

plaint in this case, Defendants made arrangements to facilitate Bianca's entry into the United States.

34. Plaintiff Emiliana Doe is a transgender woman and a native and citizen of Honduras. Emiliana was subjected to multiple sexual and physical assaults, kidnapping, discrimination, as well as threats of severe harm and violence in Honduras because she is a transgender woman. Fearing for her life, she made an arduous and dangerous journey to Mexico, where she was raped repeatedly and threatened with death. After arriving in Tijuana, Emiliana sought access to the asylum process by presenting herself at the San Ysidro POE and stating her intention to apply for asylum in the United States. She was given a piece of paper with the number "1014" on it, placed on a waiting list, and told to return in six weeks. Feeling desperate and unsafe, Emiliana returned to the POE just a few weeks later. CBP officers denied Emiliana access to the asylum process by telling her that there was no capacity for asylum seekers and instructing her to wait for Mexican officials. At the time the First Amended Complaint was filed, Emiliana desired like to return immediately to the San Ysidro POE to seek asylum, but based on her past experience with CBP's practice at the U.S.-Mexico border, she understood that she would likely be turned away again. At that time, Emiliana was residing in a hotel in Tijuana where she feared further violence as a transgender woman. She suffers from serious health issues caused by a stroke two years ago, could no longer remain in Mexico, and had no place else to turn for safety but the United States. Following the filing of the First Amended Complaint in this case, Defendants made arrangements to facilitate Emiliana's entry into the United States.

35. Plaintiff César Doe is an eighteen-year old male native and citizen of Honduras. César has been threatened numerous times with severe harm and death and kidnapped by members of the 18th Street gang. Fearing for his life, César fled Honduras and traveled to Tijuana. César sought access to the asylum process by presenting himself at the San Ysidro POE, but was intercepted by individuals belonging to “Grupo Beta.” César was told he would be placed on a waitlist, but instead was detained for twelve days by Mexican immigration under threat of deportation to Honduras. After an individual at a local shelter secured César’s release from detention, he returned to the San Ysidro POE and was placed on a waitlist. After a few weeks, César again sought access to the asylum process by presenting himself at the San Ysidro POE, but CBP officers refused to accept him. A few weeks later, he returned to the San Ysidro POE, but members of Grupo Beta intercepted him and threatened to call Mexican immigration officials and child protective services. A staff member from Plaintiff Al Otro Lado intervened and escorted César back to the shelter. At the time the First Amended Complaint was filed, César desired to return immediately to the San Ysidro POE to seek asylum, but based on his experience and the experiences of others with CBP’s practices at the U.S.-Mexico border, he understood that he would likely be turned away again. At that time, César was residing in a shelter in Tijuana, could no longer remain in Mexico because of crime, violence and threats from gangs, and had no place else to turn for safety but the United States. Following the filing of the First Amended Complaint in this case, Defendants made arrangements to facilitate César’s entry into the United States.



**B. Defendants**

36. Defendant Kirstjen Nielsen is the Secretary of DHS. In this capacity, she is charged with enforcing and administering U.S. immigration laws. She oversees each of the component agencies within DHS, including CBP, and has ultimate authority over all CBP policies, procedures and practices. She is responsible for ensuring that all CBP officials perform their duties in accordance with the Constitution and all relevant laws.

37. Defendant Kevin K. McAleenan is the Commissioner of CBP. In this capacity, he has direct authority over all CBP policies, procedures and practices, and is responsible for ensuring that all CBP interactions with asylum seekers are performed in accordance with the Constitution and all relevant laws. Defendant McAleenan oversees a staff of more than 60,000 employees, manages a budget of more than \$13 billion, and exercises authority over all CBP operations.

38. Defendant Todd C. Owen is the Executive Assistant Commissioner of CBP's Office of Field Operations ("OFO"). OFO is the largest component of CBP and is responsible for border security, including immigration and travel through U.S. POEs. Defendant Owen exercises authority over 20 major field offices and 328 POEs. Defendant Owen oversees a staff of more than 29,000 employees, including more than 24,000 CBP officials and specialists, and manages a budget of more than \$5.2 billion. Defendant Owen is responsible for ensuring that all OFO officials perform their duties in accordance with the Constitution and all relevant laws.

39. Does 1 through 25, inclusive, are sued herein under fictitious names inasmuch as their true names and capacities are presently unknown to Al Otro Lado and

Class Plaintiffs. Al Otro Lado and Class Plaintiffs will amend this complaint to designate the true names and capacities of these parties when the same have been ascertained. Al Otro Lado and Class Plaintiffs are informed and believe, and on that basis allege, that Does 1 through 25, inclusive, were agents or alter egos of Defendants, or are otherwise responsible for all of the acts hereinafter alleged. Al Otro Lado and Class Plaintiffs are informed and believe, and on that basis allege, that the actions of Does 1 through 25, inclusive, as alleged herein, were duly ratified by Defendants, with each Doe acting as the agent or alter ego of Defendants, within the scope, course, and authority of the agency. Defendants and Does 1 through 25, inclusive, are collectively referred to herein as “Defendants.”

#### IV. FACTUAL BACKGROUND

##### A. Humanitarian Crisis South of the U.S.-Mexico Border

40. In recent years, children and adults have fled horrendous persecution in their home countries and arrived at POEs along the U.S.-Mexico border to seek protection in the United States through the asylum process. While asylum seekers travel to the U.S.-Mexico border from all across the world, including from Haiti, Cuba, Venezuela and Iraq, the vast majority of these individuals come from Guatemala, Honduras and El Salvador, an area often termed Central America’s “Northern Triangle.”

41. The Northern Triangle governments are known for corruption,<sup>3</sup> including having corrupt police forces

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<sup>3</sup> See Christina Eguizábal et al., Woodrow Wilson Center Reports on the Americas No. 34, *Crime and Violence in Central Amer-*

filled with gang-related members.<sup>4</sup> Furthermore, the “penetration of the state by criminal groups” is responsible, at least in part, for the fact that as many as 95% of crimes go unpunished in those countries.<sup>5</sup>

42. The “pervasive and systematic levels of violence” associated with the increasing reach and power of gangs in the Northern Triangle have been well documented.<sup>6</sup> Those fleeing the Northern Triangle cite “violence [from] criminal armed groups, including assaults, extor-

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*ica’s Northern Triangle: How U.S. Policy Responses are Helping, Hurting, and Can be Improved* 2 (2015), [https://www.wilsoncenter.org/sites/default/files/FINAL%20PDF\\_CARSI%20REPORT\\_0.pdf](https://www.wilsoncenter.org/sites/default/files/FINAL%20PDF_CARSI%20REPORT_0.pdf) +; see also U.S. Dep’t of State, Bureau of Democracy, Human Rights & Labor, *Country Reports on Human Rights Practices* for 2017, <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper> (noting “widespread government corruption” is a significant human rights issue in El Salvador, Guatemala, and Honduras).

<sup>4</sup> “Over the past five years, at least 435 members of the [Salvadoran] armed forces were fired for being gang members or having ties to gangs . . . . Another 39 aspiring police officers were expelled from the National Public Security Academy over the same period, of which 25 ‘belonged to’ the Mara Salvatrucha, or MS13, while 13 were from the Barrio 18 gang. Nine more active police officers were also dismissed for alleged gang ties over the five years.” Mimi Yagoub, *480 Gang Members Infiltrated El Salvador Security Forces: Report*, InSight Crime (Feb. 22, 2016), <https://www.insight-crime.org/news/brief/did-480-gang-members-infiltrate-el-salvador-security-forces/> (citation omitted).

<sup>5</sup> Eguizábal et al., *supra* note 3, at 2.

<sup>6</sup> UNHCR, *Women on the Run: First-Hand Accounts of Refugees Fleeing El Salvador, Guatemala, Honduras, and Mexico* 15 (2015), <http://www.unhcr.org/en-us/publications/operations/5630f24c6/women-run.html> [hereinafter *Women on the Run*]; see also Int’l Crisis Grp., Latin America Report No. 64, *El Salvador’s Politics of Perpetual Violence* 8-11 (2017), <https://d2071andvip0wj.cloudfront.net/064-el-salvador-s-politics-of-perpetual-violence.pdf>.

tion, and disappearances or murder of family members,”<sup>7</sup> as reasons for their flight. These armed groups operate with impunity due to their influence and control over the governments of Northern Triangle countries, which have repeatedly proven to be unable or unwilling to protect their citizens.<sup>8</sup> The degree of violence suffered by people in the Northern Triangle has been compared to that experienced in war zones.<sup>9</sup>

43. In addition, Central American women and children often flee severe domestic violence and sexual abuse.<sup>10</sup> Women report prolonged instances of physical,

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<sup>7</sup> *Women on the Run*, *supra* note 6, at 15; see Refugees Int’l, *Closing Off Asylum at the U.S.-Mexico Border* 7 (2018), <https://static1.squarespace.com/static/506c8ea1e4b01d9450dd53f5/t/5b86d0a188251bbfd495ca3b/1535561890743/U.S.-Mexico+Border+Report+-+August+2018+-+FINAL.pdf> [hereinafter *Closing Off Asylum*]; Int’l Crisis Grp., Latin America Report No. 62, *Mafia of the Poor: Gang Violence and Extortion in Central America* 2 (2017), [https://d2071andvip0wj.cloudfront.net/062-mafia-of-the-poor\\_0.pdf](https://d2071andvip0wj.cloudfront.net/062-mafia-of-the-poor_0.pdf).

<sup>8</sup> *Women on the Run*, *supra* note 6, at 16 (finding that citizens of Northern Triangle countries are “murdered with impunity”); *id.* at 23 (finding that 69% of women interviewed tried relocating within their own countries at least once before fleeing and indicating that 10% “stated that the police or other authorities were the direct source of their harm”); *Closing off Asylum*, *supra* note 7, at 7 (“[T]here is considerable evidence that officials in each of the Northern Triangle countries have extremely limited capacity—and in many cases limited will—to protect those at grave risk.”).

<sup>9</sup> Médecins Sans Frontières (Doctors Without Borders), *Forced to Flee Central America’s Northern Triangle: A Neglected Humanitarian Crisis* 6 (2017), [https://www.msf.org/sites/msf.org/files/msf\\_forced-to-flee-central-american-northern-triangle\\_e.pdf](https://www.msf.org/sites/msf.org/files/msf_forced-to-flee-central-american-northern-triangle_e.pdf) [hereinafter *Forced to Flee*].

<sup>10</sup> Kids in Need of Def. & Human Rights Ctr. Fray Matías de Córdova, *Childhood Cut Short: Sexual and Gender-based Violence*

sexual, and psychological domestic violence, and most of their accounts demonstrate that the authorities in their home countries were either unable or unwilling to provide meaningful assistance.<sup>11</sup> Abusive partners are often members or associates of criminal armed groups.<sup>12</sup> Abusers frequently threaten women with harm to their parents, siblings or children if they try to leave.<sup>13</sup> Some women who fled their countries have heard from family members back home that their abusers continue to look for them.<sup>14</sup> In addition, “[s]exual harassment and the threat of sexual violence by gangs shapes the everyday lives of women and girls,” in the Northern Triangle, and experts estimate that rape and torture of girls is “extremely widespread.”<sup>15</sup>

44. After fleeing their home countries, children and adults face an arduous and dangerous journey to the United States.<sup>16</sup> The situation along the popular migra-

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*Against Central American Migrant and Refugee Children* 12-20 (2017), [https://supportkind.org/wpcontent/uploads/2017/06/Childhood-Cut-Short-KIND-SGBVReport\\_June2017.pdf](https://supportkind.org/wpcontent/uploads/2017/06/Childhood-Cut-Short-KIND-SGBVReport_June2017.pdf) [hereinafter *Childhood Cut Short*] (describing sexual and gender-based violence against children and young women in the Northern Triangle).

<sup>11</sup> *Women on the Run*, *supra* note 6, at 25. The women interviewed described repeated rapes and sexual assaults as well as violent physical abuse that included: “beatings with hands, a baseball bat and other weapons; kicking; threats to do bodily harm with knives; and repeatedly being thrown against walls and the ground.” *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 27.

<sup>14</sup> *Id.*

<sup>15</sup> *Childhood Cut Short*, *supra* note 10, at 17.

<sup>16</sup> *See Women on the Run*, *supra* note 6, at 43-45 (describing extortion, sexual violence, and physical violence); *see also* Rodrigo

tion routes to the United States has been termed a “humanitarian crisis” because of the extraordinary violence faced by those making the journey.<sup>17</sup> In 2015 and 2016, 68% of migrants from the Northern Triangle region experienced violence, including sexual assault, on their journeys through Central America and Mexico.<sup>18</sup> Mexico has faced a drastic rise in criminal activity since the early 2000s that is attributed to cartels and has been accompanied by increases in violence and corruption.<sup>19</sup> The rate of violence continues to rise; 2017 was the

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Dominguez Villegas, *Central American Migrants and “La Bestia”: The Route, Dangers, and Government Responses*, Migration Info. Source (Sept. 10, 2014), <https://www.migrationpolicy.org/article/central-american-migrants-and-%E2%80%99La-bestia%E2%80%9D-route-dangers-and-government-responses> (listing “injury or death from unsafe travelling conditions, gang violence, sexual assault, extortion, kidnapping, and recruitment by organized crime” as dangers faced on the journey to the United States).

<sup>17</sup> See Eguizábal et al., *supra* note 3, at 3.

<sup>18</sup> See *Forced to Flee*, *supra* note 9, at 11. Close to half (44%) of the migrants reported being hit, 40% said they had been pushed, grabbed or asphyxiated, and 7% said they had been shot. *Id.* Nearly one-third (31.4%) of women and 17.2% of men surveyed during that same time period had been sexually abused during their journeys. *Id.* at 12.

<sup>19</sup> Dominic Joseph Pera, *Drugs Violence and Public [In]Security: Mexico’s Federal Police and Human Rights Abuse*, 2-4, 7 (Justice in Mex. Working Paper Ser. Vol. 14, No. 1, 2015), [https://justiceinmexico.org/wp-content/uploads/2015/12/151204\\_PERA\\_DOMINIC\\_DrugViolenceandPublicInsecurity\\_FINAL.pdf](https://justiceinmexico.org/wp-content/uploads/2015/12/151204_PERA_DOMINIC_DrugViolenceandPublicInsecurity_FINAL.pdf); see U.S. Dep’t of State, Bureau of Democracy, Human Rights & Labor, *Country Reports on Human Rights Practices for 2017 (Mexico)*, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2017&dliid=277345>.

deadliest year on record in Mexico.<sup>20</sup> Although the northern half of Mexico was often considered the most dangerous, recent reports reveal an increase in violence in the central and southern states of Mexico, particularly in Guerrero, Michoacán, and the State of Mexico.<sup>21</sup> The U.S. State Department currently advises “no travel”—its highest level of travel warning, which also applies in active war zones like Syria, Afghanistan, and Yemen—to five Mexican states due to high crime rates.<sup>22</sup> Human rights groups report that since mid-2017, “the dangers facing refugees and migrants in Mexico have escalated.”<sup>23</sup> Perpetrators of violence against migrants “include[] members of gangs and

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<sup>20</sup> Human Rights First, *Mexico: Still Not Safe for Refugees and Migrants* 1 (2018), [https://www.humanrightsfirst.org/sites/default/files/Mexico\\_Not\\_Safe.pdf](https://www.humanrightsfirst.org/sites/default/files/Mexico_Not_Safe.pdf) [hereinafter *Mexico: Still Not Safe*].

<sup>21</sup> See, e.g., U.S. Dep’t of State, Bureau of Diplomatic Sec., *Mexico 2015 Crime and Safety Report: Mexico City*, <https://www.osac.gov/pages/ContentReportDetails.aspx?cid=17114> (reporting that a “common practice is for gangs to charge ‘protection fees’ or add their own tax to products and services with the threat of violence for those who fail to pay”); see also Human Rights First, *Dangerous Territory: Mexico Still Not Safe for Refugees* 4 (2017), <http://www.humanrightsfirst.org/sites/default/files/HRF-Mexico-Asylum-System-rep.pdf> [hereinafter *Dangerous Territory*] (“Human rights monitors stressed that there is a large presence of transnational gangs in southern Mexico, which have easy access to those fleeing gang persecution in the Northern Triangle.”) (citations omitted).

<sup>22</sup> U.S. Dep’t of State, Bureau of Consular Affairs, *Mexico Travel Advisory* (Aug. 22, 2018), <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/mexico-travel-advisory.html> [hereinafter *Mexico Travel Advisory*].

<sup>23</sup> *Mexico: Still Not Safe*, *supra* note 20, at 1; see also *Dangerous Territory*, *supra* note 21, at 3 (“Human rights monitors report an increase in kidnappings, disappearances, and executions of migrants and refugees in recent years.”).

other criminal organizations, as well as members of the Mexican security forces.”<sup>24</sup> Along with the increase in violence and organized criminal activity, it is well documented that the police and armed forces operate with impunity in Mexico, leaving victims unable to resort to the government for protection.<sup>25</sup> Indeed, “[i]n some regions of Mexico the state has become so closely identified with criminal gangs and drug cartels that these criminal organizations do not need to corrupt the state—they essentially ‘are’ part of the state.”<sup>26</sup> Thus, the initial mistrust and inability to rely upon government authorities for protection that leads many to flee their home countries accompanies them along their journeys through Mexico.<sup>27</sup>

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<sup>24</sup> *Forced to Flee*, *supra* note 9, at 5; see also *Closing Off Asylum*, *supra* note 7, at 9 (explaining that when crossing Mexico, migrants suffer “abuses at the hands of organized crime, exploitative smugglers, and predatory state security and police”).

<sup>25</sup> See Pera, *supra* note 19, at 4 (“Drug trafficking organizations have infiltrated government positions in many areas, and their influence over state personnel has dramatic implications.”); Ximena Suárez et al., Wash. Office on Latin Am., *Access to Justice for Migrants in Mexico: A Right That Exists Only on the Books*, 24-27, 30-31 (2017), [https://www.wola.org/wp-content/uploads/2017/07/Access-to-Justice-for-Migrants\\_July-2017.pdf](https://www.wola.org/wp-content/uploads/2017/07/Access-to-Justice-for-Migrants_July-2017.pdf) [hereinafter *Access to Justice*] (documenting Mexican authorities’ unwillingness to investigate crimes against migrants).

<sup>26</sup> *Access to Justice*, *supra* note 25, at 30-31; Alberto Díaz-Cayeros et al., *Caught in the Crossfire: The Geography of Extortion and Police Corruption in Mexico*, 3-4 (Stanford Ctr. for Int’l Dev., Working Paper No. 545, 2015), [https://globalpoverty.stanford.edu/sites/default/files/publications/545wp\\_0.pdf](https://globalpoverty.stanford.edu/sites/default/files/publications/545wp_0.pdf).

<sup>27</sup> See, e.g., Villegas, *supra* note 16 (referencing documentation of “the abuse of power by various Mexican authorities, including agents from the National Migration Institute, municipal govern-



45. Furthermore, migrants seeking international protection have a small chance of receiving it in Mexico. Amnesty International reports that “the Mexican government is routinely failing in its obligations under international law to protect those who are in need of international protection, as well as repeatedly violating the *non-refoulement* principle.”<sup>28</sup>

46. In addition, Mexico’s northern border region is particularly plagued with crime and violence, presenting renewed dangers for asylum seekers just as they approach their destination.<sup>29</sup> The state of Tamaulipas,

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ments, and state police” against individuals traveling to the U.S. border).

<sup>28</sup> Amnesty Int’l, *Overlooked, Under-Protected, Mexico’s Deadly Refoulement of Central Americans Seeking Asylum* 2 (2018), <https://www.amnesty.org/download/Documents/AMR4176022018ENGLISH.PDF>; *see id.* at 8-20 (describing the multiple layers of institutional failure leaving refugees and asylum seekers vulnerable to *refoulement* in Mexico); accord Francisca Vigaud-Walsh et al., *Refugees Int’l, Putting Lives at Risk: Protection Failures Affecting Hondurans and Salvadorans Deported from the United States and Mexico* 11-12 (2018), <https://static1.squarespace.com/static/506c8ea1e4b01d9450dd53f5/t/5a849f81c830250842098d87/1518641035445/Northern+Triangle+-+Refugees+International.pdf>; *Dangerous Territory*, *supra* note 21, at 4-9.

<sup>29</sup> *See Mexico Travel Advisory*, *supra* note 22 (reporting violent crime and an increase in homicide in the state of Baja California (encompassing border towns Tijuana and Mexicali) compared to 2016; widespread violent crime and gang activity in the state of Chihuahua (encompassing border town Ciudad Juarez); widespread violent crime and limited law enforcement capacity to prevent and respond to crime in the state of Coahuila (particularly in the northern part of the state); that the state of Sonora (encompassing border town Nogales) is a key region in the international and human trafficking trades; and common violent crime, including homicide, armed robbery, carjacking, kidnapping, extortion, and sexual assault in the state of Tamaulipas (encompassing bor-

which borders South Texas cities including Laredo, McAllen, and Brownsville, is on the U.S. State Department's "no travel" list.<sup>30</sup> Most of Mexico's other border states, including Sonora, Chihuahua, Coahuila, and Nuevo León, are classified at Level 3, "Reconsider Travel," due to the prevalence of violent crime and gang activity.<sup>31</sup> The most pervasive problems migrants face in Mexico's northern border states include disappearances, kidnappings, rape, trafficking, extortion, execution and sexual and labor exploitation by state and non-state actors.<sup>32</sup> Recently, the situation at the border has worsened: smugglers have increased their prices, cartel members have increased their surveillance and control of areas around border crossings, and the number of migrants kidnapped and held for ransom has increased.<sup>33</sup> Even migrants in the immediate vicinity of a POE are at risk of violence and exploitation.<sup>34</sup> Those

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der towns Matamoros, Nuevo Laredo, and Reynosa), where law enforcement capacity to respond to violence is limited throughout the state).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> B. Shaw Drake et al., Human Rights First, *Crossing the Line: U.S. Border Agents Illegally Reject Asylum Seekers* 16 (2017), <https://www.humanrightsfirst.org/sites/default/files/hrf-crossing-the-line-report.pdf> [hereinafter *Crossing the Line*].

<sup>33</sup> *Id.*

<sup>34</sup> Josiah Heyman & Jeremy Slack, *Blockading Asylum Seekers at Ports of Entry at the US-Mexico Border Puts Them at Increased Risk of Exploitation, Violence, and Death*, Ctr. for Migration Stud. (June 25, 2018), [http://cmsny.org/publications/heyman-slack-asylum-poe/#\\_ednref11.pdf](http://cmsny.org/publications/heyman-slack-asylum-poe/#_ednref11.pdf) ("When asylum-seekers are turned away by US authorities, they return to areas around the Mexican-side POEs. These are characteristically busy zones of businesses, restaurants, bars, discos, drug sellers, hustlers, and commercial sex work, alt-

who seek refuge in shelters may be in particular danger. Some shelters are infiltrated by organized crime, while others have been the sites of recent vandalism, burglary, threats, and kidnapping.<sup>35</sup>

47. By turning back individuals who seek to access the asylum process by presenting themselves at POEs on the U.S.-Mexico border, Defendants are forcing them to return to the dangerous conditions that drove them to flee their countries in the first place.<sup>36</sup>

**B. Defendants' Policy and Widespread Practices of Denying Asylum Seekers Access to the Asylum Process**

48. Starting in 2016 and continuing to the present, CBP officials, at or under the direction or with the knowledge and acquiescence or authorization of Defendants, have systematically restricted the number of asylum seekers who can access the U.S. asylum process through POEs along the U.S.-Mexico border.<sup>37</sup> That

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though each border port has its own characteristics. They are areas that increase the vulnerability and exploitability of non-Mexican migrants with little knowledge and few resources.”).

<sup>35</sup> *Id.*; Wash. Office on Latin Am. et al., *Situation of Impunity and Violence In14 Mexico's Northern Border Region 2-4* (Mar. 2017), <https://www.wola.org/wp-content/uploads/2017/04/Situation-of-Impunity-and-Violence-in-Mexicos-northern-border-LAWG-WOLA-KBI.pdf>.

<sup>36</sup> *Crossing the Line*, *supra* note 32, at 16; *see also* B. Shaw Drake, Human Rights First, *Violations at the Border: The El Paso Sector 2-3* (2017), <https://www.humanrightsfirst.org/resource/violations-border-el-paso-sector> (explaining the risks facing asylum seekers who are turned back at U.S. POEs, including being deported back to their home countries where they face persecution).

<sup>37</sup> There is anecdotal evidence that CBP officials began unlawfully dissuading asylum seekers from pursuing their claims or flatly refusing them entry to the United States even prior to 2016.

has been accomplished both through the Turnback Policy that seeks to restrict access to the asylum process and also through widespread practices across the U.S.-Mexico border also designed to deny access to the asylum process.

49. Al Otro Lado and Class Plaintiffs, as well as numerous non-governmental organizations<sup>38</sup> and news out-

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See Sara Campos & Joan Friedland, Am. Immigration Council, *Mexican and Central American Asylum and Credible Fear Claims: Background and Context* 10 (2014), [https://www.americanimmigrationcouncil.org/sites/default/files/research/asylum\\_and\\_credible\\_fear\\_claims\\_final\\_0.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/asylum_and_credible_fear_claims_final_0.pdf) (reporting that Mexican asylum seekers arriving in El Paso “expressed a fear of persecution [but] were told by CBP that the U.S. doesn’t give Mexicans asylum, and they [we]re turned back”); see also U.S. Comm’n on Int’l Religious Freedom, *Report on Asylum Seekers in Expedited Removal: Volume I: Findings & Recommendations* 54 (2005), [https://www.uscirf.gov/sites/default/files/resources/stories/pdf/asylum\\_seekers/Volume\\_I.pdf](https://www.uscirf.gov/sites/default/files/resources/stories/pdf/asylum_seekers/Volume_I.pdf) [hereinafter *2005 USCIRF Report*] (reporting that two groups of asylum seekers who arrived at the San Ysidro POE were “improperly refused entry to the United States for . . . lacking proper documentation and [were] ‘pushed back’ . . . without [being] refer[red] . . . to secondary inspection” and without a “record of the primary inspection” being created); see also Human Rights Watch, *“You Don’t Have Rights Here”: US Border Screening and Returns of Central Americans to Risk of Serious Harm* 2, 8 (2014), [https://www.hrw.org/sites/default/files/reports/us1014\\_web\\_0.pdf](https://www.hrw.org/sites/default/files/reports/us1014_web_0.pdf) [hereinafter *“You Don’t Have Rights Here”*] (concluding that the “ cursory screening [conducted by CBP officials] is failing to effectively identify [asylum seekers]” and reporting that some “border officials acknowledged hearing [non-citizens’] expressions of fear but pressured them to abandon their claims”).

<sup>38</sup> See, e.g., *Crossing the Line*, supra note 32; Amnesty Int’l, *Facing Walls: USA and Mexico’s Violation of the Rights of Asylum Seekers* 19-22 (2017), <https://www.amnestyusa.org/wp-content/uploads/2017/06/USA-Mexico-Facing-Walls-REPORT-ENG.pdf> [here-

lets,<sup>39</sup> have documented thousands of cases in which CBP officials have arbitrarily denied and/or unreasonably delayed access to the asylum process to individuals seeking asylum by presenting themselves at POEs along the U.S.-Mexico border.<sup>40</sup> The Turnback Policy and CBP's other widespread, unlawful practices have been documented at POEs spanning the length of the U.S.-Mexico border, including POEs in San Ysidro, California; Otay Mesa, California; Tecate, California; Calexico, California; San Luis, Arizona; Nogales, Arizona; El Paso, Texas; Del Rio, Texas; Eagle Pass, Texas; Laredo,

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inafter *Facing Walls*]; “*You Don’t Have Rights Here*”, *supra* note 37, at 2, 4.

<sup>39</sup> Joshua Partlow, *U.S. Border Officials Are Illegally Turning Away Asylum Seekers, Critics Say*, Wash. Post (Jan. 16, 2017), [https://www.washingtonpost.com/world/the\\_americas/us-border-officials-are-illegally-turning-away-asylum-seekers-critics-say/2017/01/16/f7f5c54a-c6d0-11e6-acda-59924caa2450\\_story.html?noredirect=on&utm\\_term=.ed5c3100d451](https://www.washingtonpost.com/world/the_americas/us-border-officials-are-illegally-turning-away-asylum-seekers-critics-say/2017/01/16/f7f5c54a-c6d0-11e6-acda-59924caa2450_story.html?noredirect=on&utm_term=.ed5c3100d451); Caitlin Dickerson & Miriam Jordan, ‘*No Asylum Here*’: *Some Say U.S. Border Agents Rejected Them*, N.Y. Times (May 3, 2017), <https://www.nytimes.com/2017/05/03/us/asylum-border-customs.html>; Rafael Carranza, *Are Asylum Seekers Being Turned Away at the Border?*, USA Today (May 4, 2017, 10:55 PM), <https://www.azcentral.com/story/news/politics/immigration/2017/05/05/asylum27-seekers-being-turned-away-border/309398001/>.

<sup>40</sup> Amnesty Int’l, *USA: ‘You Don’t Have Any Rights Here’: Illegal Pushbacks, Arbitrary Detention & Ill-Treatment of Asylum-Seekers in the United States* 17 (2018), <https://www.amnesty.org/download/Documents/AMR5191012018ENGLISH.PDF> [hereinafter *You Don’t Have Any Rights Here*] (“While there are no official statistics on how many people CBP has illegally turned away without processing their asylum requests, Amnesty International has received numerous secondary reports from NGOs indicating that CBP has forced thousands of asylum-seekers to wait in Mexico—including families with children, mostly from Central America.”).

Texas; Roma, Texas; Hidalgo, Texas; Los Indios, Texas; and Brownsville, Texas.

### 1. Initiation of the Turnback Policy

50. Internal CBP documents reveal that CBP officials at the highest levels mandated turnbacks at POEs along the U.S.-Mexico border.<sup>41</sup>

51. Evidence of a Turnback Policy, at least regarding the San Ysidro POE, exists starting in May 2016. In an email dated May 29, 2016, the Watch Commander at the San Ysidro POE notes that “[t]he Asylee line in the pedestrian building is not being used at this time, there is a line staged on the Mexican side.” In an email sent roughly a month later, the same individual reiterated that “[i]t’s even more important that when the traffic is free-flowing that the limit line officers ask for and check documents to ensure that groups that may be seeking asylum are directed to remain in the waiting area on the Mexican side.”

52. CBP’s collaboration with the Mexican government to turn back asylum seekers at the San Ysidro POE was formalized in a document issued on an unspecified date after July 15, 2016, which provides:

In coordination with the GoM [Government of Mexico] we have identified two (2) periods throughout the day to intake asylum claims into our custody (8am and 4 pm). At each period, we intake approxi-

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<sup>41</sup> These documents, produced during the limited discovery that took place while this case was pending in the U.S. District Court for the Central District of California, relate exclusively to POEs under the responsibility of the Laredo Field Office and the San Ysidro POE. Additional discovery could reveal further details regarding the contours of the Turnback Policy.

mately [redacted] applicants, with a daily intake total of approximately [redacted] applicants. If an applicant does not meet these intake time periods, they are requested to remain in-line in Mexico until the next intake period. . . . In order to control the flow of asylees in their area, the GoM has instituted a numerical process by giving asylum applicants numbers with intake dates in the order of their arrival. The applicants are also given the locations of humanitarian shelters in Tijuana where they receive food and shelter until their intake date. The implementation of this process was developed by the GoM.

53. On December 6, 2016, the Director of Field Operations at CBP's San Diego Field Office confirmed that the Turnback Policy remained in effect:

Metering continues at both San Ysidro and Calexico POEs the numbers are adjusted based on space availability and ERO [ICE's Office of Enforcement and Removal Operations] movement of detainees from the ports. Mexican immigration is handling the metering process before the OTMs [Other Than Mexicans] arrive at the port of entry; no issues on our end with aliens being turned away.

54. On information and belief, other CBP Field Offices also implemented the Turnback Policy. Although certain port directors periodically suspended the Turnback Policy, they never abandoned it. Moreover, direct turnbacks of asylum seekers—via misrepresentations about the availability of asylum, intimidation, and coercion, among other tactics—continued in practice even during periods of formal suspension of the policy.

55. Evidence that a border-wide Turnback Policy was authorized at the highest levels of CBP, including

by Defendant and now-Commissioner Kevin McAleenan, exists as of November 2016. In an email communication dated November 12, 2016, the Assistant Director Field Operations for the Laredo Field Office instructed all Port Directors under his command to follow the mandate of the then-CBP Commissioner and Deputy Commissioner:

At the request of C-1 [then CBP Commissioner R. Gil Kerlikowski] and C-2 [then CBP Deputy Commissioner Kevin McAleenan], you are to meet with your INM [Instituto Nacional de Migración, Mexico's immigration agency] counterpart and request they control the flow of aliens to the port of entry. For example, if you determine that you can only process 50 aliens at a time, you will request that INM release only 50.

If INM cannot or will not control the flow, your staff is to provide the alien with a piece of paper identifying a date and time for an appointment and return then [sic] to Mexico. This is similar to what San Diego is doing. We understand the alien may express a fear of returning to Mexico and we will address as the situation dictates.<sup>42</sup>

56. This email directive was promptly implemented by the Laredo Field Office, which encompasses the Brownsville, Del Rio, Eagle Pass, Hidalgo, Laredo, Progreso, Rio Grande, and Roma, Texas POEs and covers nearly 400 miles of the Texas-Mexico border. According to an internal email dated November 22, 2016, "Our

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<sup>42</sup> An email sent the following day clarified that this directive was to apply only to Central Americans. In practice, however, individuals of many other nationalities have also been affected.



instructions from Service Headquarters and LFO [Laredo Field Office] is that we will only accept ‘what we can handle/process’. All others will be turned back to Mexico with an appointment date/time if possible.” Other email correspondence from CBP officials at the Laredo, Hidalgo and Roma POEs indicates that individuals turned back did not receive appointment notices.

57. The directive was memorialized in a memorandum from the Laredo Field Office dated January 13, 2017. The memorandum directs that “metering” procedures—i.e. procedures to regulate and restrict the access of asylum seekers to POEs—be implemented once case processing numbers exceed a certain (redacted) number, that such procedures are to be conducted “at the middle of the bridge,” and that “all foreign nationals seeking a benefit are given an appointment window to return for processing.” The Laredo Command Center is required to provide hourly updates to “local upper management,” among others, who must also be notified once normal operations resume.

58. In the months that followed, asylum seekers from Central America and elsewhere continued to seek access to the U.S. asylum process by presenting themselves at POEs along the U.S.-Mexico border, but many were turned back by, at the instruction of, or with the knowledge of CBP officials.

59. On June 13, 2017, in questioning before the House Appropriations Committee, John P. Wagner, the Deputy Executive Assistant Commissioner for OFO, admitted that CBP officials were turning back asylum

applicants at POEs along the U.S.-Mexico border.<sup>43</sup> When asked to comment on the numerous press reports that CBP officers at POEs had been “turning away individuals attempting to claim credible fear,” Mr. Wagner acknowledged that CBP had indeed engaged in turnbacks, and argued the practice was justified by a lack of capacity.<sup>44</sup> Mr. Wagner also stated on the record

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<sup>43</sup> *Department of Homeland Security Appropriations for 2018 Hearings Before a Subcomm. of the H. Comm. on Appropriations*, 115th Cong. 289-90 (2017) (testimony of John P. Wagner, Deputy Executive Assistant Comm’r, Office of Field Operations, Customs and Border Protection), <https://www.gpo.gov/fdsys/pkg/CHRG-115hhrg27050/pdf/CHRG-115hhrg27050.pdf> [hereinafter *Wagner Testimony*].

<sup>44</sup> Congresswoman Roybal-Allard asked:

It is my understanding that CBP is legally required to process credible fear claims when they are presented, and it is not authorized to turn back individuals claiming fear even temporarily. In addition to commenting on those allegations, what steps can be taken or have been taken to ensure this is not occurring or continuing to occur at the ports of entry, such as, is there training or other guidance, reminding CBP personnel how they are required to treat individuals who express fear?

Mr. Wagner responded:

Sure. It was a question really of the space available to process people. And our facilities were at capacity to be able to take more people in, go through the processing, and turn them over to ICE after that. And the building was full, and we could not humanely and safely and securely hold any more people in our space.

The Congresswoman later clarified:

“So it wasn’t an issue of officers not knowing what the law was. It was more of an issue of capacity?” And Mr. Wagner responded: “It was an issue of capacity and being able to put people into the facility without being overrun or having unsafe and unsanitary conditions.”

*Id.*

that because POEs “do not have the kind of space to hold large volumes of people,” CBP “worked a process out with the Mexican authorities to be able to limit how many people a day could come across the border into [CBP’s] facility to be processed.”<sup>45</sup>

60. Following dozens of turnbacks of asylum seekers in San Ysidro in December 2017, the CBP Field Operations Director in charge of the San Ysidro POE acknowledged and defended the turnbacks, stating: “So they weren’t being allowed into the port-of-entry. We said, ‘we’re at capacity, so wait here.’ It’s because of our detention space limitation, we were at capacity.”<sup>46</sup>

## **2. High Level Officials’ Public Confirmation and Escalation of the Turnback Policy and CBP’s Aggressive Implementation**

61. In late April 2018, following an arduous, widely-publicized journey, a group of several hundred asylum seekers—referred to in the press as a “caravan”—arrived at the San Ysidro POE. As they approached the United States, President Trump posted a series of messages on Twitter warning of the dangers posed by the group, including one indicating that he had instructed DHS “not to let these large Caravans of people into our Country.”<sup>47</sup>

62. Thereafter, the highest-ranking officials in the Department of Justice and DHS publicly and unambiguously proclaimed the existence of a Turnback Policy.

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<sup>45</sup> *Id.*

<sup>46</sup> *You Don’t Have Any Rights Here*, *supra* note 40, at 16.

<sup>47</sup> Donald J. Trump (@realDonaldTrump) Twitter (Apr. 2, 2018, 4:02 AM) <https://twitter.com/realDonaldTrump/status/980762392303980544>.

CBP continued to buttress the Turnback Policy through the practices described above, including misrepresentations, threats and intimidation, verbal abuse and physical force, coercion, outright denials of access, and physically obstructing access to POEs.

63. Attorney General Sessions, refusing to acknowledge that some of the caravan members might have legitimate claims to asylum under U.S. law, characterized the caravan’s arrival as “a deliberate attempt to undermine our laws and overwhelm our system.”<sup>48</sup> Upon the caravan’s arrival, CBP officials indicated—in accordance with the Turnback Policy—that they had exhausted their capacity to process individuals traveling without proper documentation.<sup>49</sup>

64. As the caravan was approaching the United States, Attorney General Sessions announced that all individuals who crossed the U.S.-Mexico border illegally would be criminally prosecuted.<sup>50</sup> Following the arrival of the caravan, he pronounced that “[p]eople are not going to caravan or otherwise stampede our bor-

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<sup>48</sup> Press Release, U.S. Dep’t of Justice, Attorney General Jeff Sessions Statement on Central America ‘Caravan’, (Apr. 23, 2018), <https://www.justice.gov/opa/pr/attorney-general-jeff-sessions-statement-central-american-caravan>.

<sup>49</sup> Kirk Semple & Miriam Jordan, *Migrant Caravan of Asylum Seekers Reaches U.S. Border*, N.Y. Times (Apr. 29, 2018), <https://www.nytimes.com/2018/04/29/world/americas/mexico-caravan-trump.html>.

<sup>50</sup> Press Release, U.S. Dep’t of Justice, Attorney General Announces Zero-Tolerance Policy for Criminal Illegal Entry (Apr. 6, 2018), <https://www.justice.gov/opa/pr/attorney-general-announces-zero-tolerance-policy-criminal-illegal-entry>.

der,” and reiterated his commitment to prosecuting illegal border crossers.<sup>51</sup>

65. On May 15, 2018, DHS Secretary Kirstjen Nielsen likewise publicly and unambiguously confirmed the existence of the Turnback Policy, dismissing the United States’ legal obligation to receive and process asylum seekers at U.S. borders as a legal “loophole”:

We are “metering,” which means that if we don’t have the resources to let them [asylum-seekers] in on a particular day, they are going to have to come back. They will have to wait their turn and we will process them as we can, but that’s the way that the law works. Once they come into the United States, we process them. We have asked Congress to fix this loophole. It’s a huge gaping hole that we need to fix because it is so abused.<sup>52</sup>

66. Trump himself continued to publicly pronounce the importance of the Turnback Policy, through tweets, including direct statements that promote the direct violation of the law:

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<sup>51</sup> U.S. Attorney Gen. Jefferson B. Sessions, Remarks Discussing the Immigration Enforcement Actions of the Trump Administration (May 7, 2018), <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-discussing-immigration-enforcement-actions>.

<sup>52</sup> *Secretary Nielsen Talks Immigration, Relationship with Trump*, Fox News (May 15, 2018), <https://video.foxnews.com/v/5785340898001/?#sp=show-clips>.

- June 24, 2018: “When somebody comes in, we must immediately, with no Judges or Court Cases, bring them back from where they came.”<sup>53</sup>
- June 30: “When people come into our Country illegally, we must IMMEDIATELY escort them back out without going through years of legal maneuvering.”<sup>54</sup>
- July 5: “When people, with or without children, enter our Country, they must be told to leave without our Country being forced to endure a long and costly trial. Tell the people, ‘OUT,’ and they must leave, just as they would if they were standing in your front lawn.”<sup>55</sup>

67. Meanwhile, CBP officials continue to turn back asylum seekers who seek access to the U.S. asylum process by presenting themselves at POEs. Predictably, the Turnback Policy has caused and continues to cause many asylum seekers, desperate to avoid danger on the Mexican side of the border, to seek to enter the United States outside POEs and thereafter be arrested and prosecuted for unlawful entry and in many cases forcibly separated from their children.

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<sup>53</sup> Donald J. Trump (@realDonaldTrump) Twitter (Apr. 24, 2018, 8:02 AM) <https://twitter.com/realdonaldtrump/status/1010900865602019329?lang=en>.

<sup>54</sup> Donald J. Trump (@realDonaldTrump) Twitter (June 30, 2018, 12:44 PM) <https://twitter.com/realdonaldtrump/status/1013146187510243328?lang=en>.

<sup>55</sup> Donald J. Trump (@realDonaldTrump) Twitter (July 5, 2018, 7:08 AM) <https://twitter.com/realDonaldTrump/status/1014873774003556354>; Donald J. Trump (@realDonaldTrump) Twitter (July 5, 2018, 7:16 AM) <https://twitter.com/realDonaldTrump/status/1014875575557804034>.

68. In recent months, Commissioner McAleenan and other high-level CBP officials have openly acknowledged that the Turnback Policy remains in effect, and that the United States is actively collaborating with Mexico to reduce the flow of asylum seekers.<sup>56</sup>

69. A high-level CBP officer reiterated the contours of the Turnback Policy in a meeting with immigrant rights groups in El Paso on June 27, 2018 and confirmed that it was being applied border-wide.<sup>57</sup>

70. Notably, a September 27, 2018 report from the OIG (“OIG Report”), attached as Exhibit A, references the policy under which CBP systematically restricts access to the asylum process at POEs and confirms the policy was directed by DHS. The OIG Report states the existence of a “CBP guidance” which indicates that “[w]hen the ports of entry are full . . . [CBP] officers should inform individuals that the port is currently at capacity and that they will be permitted to enter once there is sufficient space and resources to process

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<sup>56</sup> See, e.g., CBP Comm’r Kevin McAleenan, Statement on Operations at San Ysidro Port of Entry (April 29, 2018), <https://www.cbp.gov/newsroom/speeches-and-statements/statement-commissioner-kevin-mcaleenan-operations-san-ysidro-port> (explaining that “individuals [without appropriate entry documentation] may need to wait in Mexico as CBP officers work to process those already within our facilities”); Molly Hennessy-Fiske, *Border Protection Commissioner Talks ‘Zero Tolerance,’ Family Separations and How To Discourage Immigration*, L.A. Times (June 11, 2018) <http://www.latimes.com/nation/la-na-border-patrol-immigration-20180611-htmlstory.html> (“We’re not denying people approaching the U.S. border without documents. We’re asking them to come back when we have the capacity to manage them.”).

<sup>57</sup> *You Don’t Have Any Rights Here*, *supra* note 40, at 17.

them.”<sup>58</sup> Although this “guidance” states that CBP officers “may not discourage individuals from waiting to be processed,” some officers in El Paso informed OIG investigators that they advise asylum seekers to “return later.”<sup>59</sup> Also, according to the report, while “[u]nder the Zero Tolerance Policy, the Government encouraged asylum-seekers to come to U.S. ports of entry[,] . . . [a]t the same time, CBP reported that overcrowding at the ports of entry caused them to limit the flow of people that could enter.”<sup>60</sup> The report elaborates that “CBP was regulating the flow of asylum-seekers at ports of entry through ‘metering,’ a practice CBP has utilized at least as far back as 2016 to regulate the flow of individuals at ports of entry.”<sup>61</sup>

71. DHS’s response to the OIG Report confirms that CBP has engaged in “queue management practices . . . directed by [Defendant Nielsen].”<sup>62</sup> The response also confirms that “CBP’s processes and policies at ports of entry may require some individuals who do not have travel documents to wait at the International Boundary prior to entering the United States.”<sup>63</sup>

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<sup>58</sup> *OIG Report*, *supra* note 1, at 6.

<sup>59</sup> *Id.* at 7.

<sup>60</sup> *Id.* at 5.

<sup>61</sup> *Id.* at 5-6; *see id.* at 6-7 (describing CBP’s “metering” practice at POEs, explaining that “CBP officers stand at the international line out in the middle of the footbridges,” checking pedestrians’ travel documents, and preventing asylum-seekers from crossing the international line until space is “available . . . to hold the individual while being processed”).

<sup>62</sup> *Id.* at 19-20.

<sup>63</sup> *Id.* at 20.



72. In addition, officials from the Mexican immigration agency, *Instituto Nacional de Migración* (“INM”), have confirmed the existence of an agreement with CBP under which INM assists with the Turnback Policy by hindering asylum seekers’ access to POEs. For example, as reported in the Amnesty International report released on October 11, 2018, the INM head delegate in the Mexican state of Baja California reportedly expressed doubt about CBP’s claims of capacity constraints and “voiced his frustration that [CBP was] making INM do [its] dirty work.”<sup>64</sup> The INM delegate stated:

[T]hat CBP requested INM to remove . . . asylum-seekers from the turnstiles [at the San Ysidro POE], as well as the rest of the [April 2018] caravan members from the plaza at El Chaparral, where they were camping on the Mexican side of the port-of-entry. Implicit in the CBP request, the INM delegate said, was that such detentions could result in INM deporting those asylum-seekers who were not legally present in Mexico.<sup>65</sup>

73. Later, on June 14, 2018, a senior Mexican immigration official in Sonora reportedly stated that US officials had requested INM to detain and check the papers of the asylum-seekers whom CBP was pushing back to the Mexican side of the Nogales border crossing. The INM official relayed also that he understood the request by US authorities implicitly to be for INM

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<sup>64</sup> *You Don’t Have Any Rights Here*, *supra* note 40, at 23.

<sup>65</sup> *Id.* at 23.

to deport asylum-seekers without legal status in Mexico to their home countries from which they had fled.<sup>66</sup>

74. Also in June 2018, Mexican immigration officials told human rights researchers that “CBP officers were calling Mexican immigration to collect any individuals at the border line, including asylum seekers, who attempted to approach the port of entry to request protection and did not have visas or other documentation.” As a result, asylum seekers were physically prevented from reaching the POE to request protection.<sup>67</sup>

75. Statements from on-the-ground CBP officials further confirm the continued existence of a high-level Turnback Policy. In El Paso, a CBP official blocking asylum seekers’ path to the POE on the bridge ex-

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<sup>66</sup> *Id.* at 21; see also *id.* at 22 (“On the Mexico side of the bridges in July 2018, three Mexican immigration officials informed [a] US immigration lawyer . . . that they were screening asylum-seekers and preventing their access to US ports-of-entry upon the request of CBP. One of the Mexican officials told her: ‘Yes, it’s a collaborative program that we’re doing with the Americans.’ The immigration officials were detaining non-Mexicans who lacked valid Mexican transit visas, and threatened them with deportation if they returned to the bridge. At the mid-point of the bridge, CBP again screened those who were able to pass through the Mexican immigration filter, and forced them to wait on the half of the bridge closer to Mexico. According to [the U.S. immigration lawyer], the Mexican immigration officers informed her that when asylum seekers crossed onto the bridge without valid Mexican travel documents, CBP officers called on Mexican immigration officials to remove them from the bridge.”).

<sup>67</sup> Human Rights First, *Zero-Tolerance Criminal Prosecutions: Punishing Asylum Seekers and Separating Families* 8 (2018), <https://www.humanrightsfirst.org/resource/zero-tolerance-criminal-prosecutions-punishing-asylum-seekers-and-separating-families> [hereinafter *Zero-Tolerance Criminal Prosecutions*].

plained that he was “following directions. And this is not even local directions.”<sup>68</sup> On a separate occasion, CBP officials in El Paso, including supervisors, told a non-profit worker that they were turning back asylum seekers because they “ha[d] orders not to let anybody in,” that “this is a policy across the border,” and that “[i]t’s an order from [U.S. Attorney General Jeff] Sessions.”<sup>69</sup>

76. Recent official government statements acknowledging the policy assert a “lack of capacity” to process the flow of asylum seekers at the southern border. In fact, and in accordance with a central goal of the Turn-back Policy to deter future asylum seekers from presenting themselves at the U.S. border, CBP’s own statistics indicate that there has not been a particular surge in numbers of asylum seekers coming to POEs. From January through September 2018, the number of people without legal status attempting to enter the United States from Mexico, including asylum seekers, has stayed at roughly the same level as over the previous five years. During those five years, U.S. authorities regularly processed asylum seekers without the delays that CBP has imposed in 2018.<sup>70</sup> Based on available sta-

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<sup>68</sup> Robert Moore, *Border Agents Are Using a New Weapon Against Asylum Seekers*, Tex. Monthly (June 2, 2018), <https://www.texasmonthly.com/politics/immigrant-advocates-question-legality-of-latest-federal-tactics/>.

<sup>69</sup> Declaration of Taylor Levy in Support of the State of Wash. at 8, *Washington v Trump*, No. 18-939-MJP (W.D. Wash. July 2, 2018), [https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Another/News/Press\\_Releases/motion%20declarations%20133.pdf](https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Another/News/Press_Releases/motion%20declarations%20133.pdf).

<sup>70</sup> *Southwest Border Migration FY2018*, U.S. Customs & Border Protection, <https://www.cbp.gov/newsroom/stats/sw-border-migration> (last visited Oct. 10, 2018).

tistics, Amnesty International has characterized the “supposedly unmanageable number of asylum claims” as “a fiction.”<sup>71</sup>

77. In fact, there is substantial evidence that calls into question the claims of a lack of capacity. There is evidence to suggest such claims are false and instead are designed to effectuate the broader policy goal of restricting access to the asylum process, according to governmental and non-governmental sources. In early 2018, senior CBP and ICE officials in San Ysidro, California, stated in interviews that “CBP has only actually reached its detention capacity a couple times per year and during ‘a very short period’ in 2017.”<sup>72</sup> The OIG Report notes that while CBP justifies the official “metering” policy by citing a lack of capacity to process asylum seekers, “the OIG team did not observe severe overcrowding at the ports of entry it visited.”<sup>73</sup> Human rights researchers visiting seven POEs in Texas in June 2018 reported that “[t]he processing rooms visible in the ports of entry . . . appeared to be largely empty.”<sup>74</sup> CBP’s “capacity” excuse appears to be a cover for a “deliberate slowdown” of the rate at which the agency receives asylum seekers at POEs.<sup>75</sup>

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<sup>71</sup> *You Don’t Have Any Rights Here*, *supra* note 40, at 14.

<sup>72</sup> *Id.* at 15 (citing an interview with ICE’s Assistant Field Office Director at Otay Mesa Detention Center on May 1, 2018, and an interview with the CBP Field Officer Director in San Diego on January 5, 2018).

<sup>73</sup> *OIG Report*, *supra* note 1, at 8.

<sup>74</sup> *Zero-Tolerance Criminal Prosecutions*, *supra* note 67, at 9.

<sup>75</sup> Adam Isacson et al., Wash. Office on Latin Am., “*Come Back Later*”: Challenges for Asylum Seekers Waiting at Ports of Entry 3 (2018), <https://www.wola.org/wp-content/uploads/2018/08/Ports->

78. On October 10, 2018, CBP rejected thirty-two asylum seekers including small children and pregnant women at the Córdoba International Bridge between Ciudad Juarez and El Paso, Texas. CBP stopped the individuals and told them that there was no capacity to take them in, including the pregnant women who were some of the most vulnerable people in the group. However, only two or so hours later, CBP officers in the middle of the bridge received orders to let all thirty-two individuals in belying the initial assertion of a lack of capacity. Similarly, in Nogales, Arizona, recently CBP abruptly switched from processing six asylum seekers per day—citing a lack of capacity to take any more—to twenty asylum seekers per day. “The sudden change in processing capability points more to an administrative decision than to an increase in capacity which would more likely happen gradually.”<sup>76</sup>

79. By restricting the number of individuals who can seek access to the asylum process—particularly given manifestly grave dangers asylum seekers face while waiting on the Mexican side of the border—the Turn-back policy operates as a constructive denial of access to the asylum process. The denial threatens grave harm to vulnerable individuals waiting in very dangerous conditions on the Mexican side of the border.

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of-Entry-Report\_PDFvers-3.pdf [hereinafter *Come Back Later*]; Debbie Nathan, *Desperate Asylum-Seekers Are Being Turned Away by U.S. Border Agents Claiming There’s “No Room”*, The Intercept (June 16, 2018, 8:37 AM), <https://theintercept.com/2018/06/16/immigration-border-asylum-central-america/> (reporting that a shelter manager in the El Paso area familiar with CBP’s and ICE’s local processing facilities “can’t imagine they are overtaxed”).

<sup>76</sup> *Come Back Later*, *supra* note 75, at 5.

80. In addition, an assertion of a lack of capacity is not a lawful basis to deny the non-discretionary duty to provide access to the asylum process.

81. Other U.S. government entities have raised concerns about CBP’s treatment of asylum seekers. In 2016, for example, the bipartisan U.S. Commission on International Religious Freedom noted some CBP officers’ “outright skepticism, if not hostility, toward asylum claims.”<sup>77</sup>

82. Congress has also signaled concern over CBP’s treatment of asylum seekers at the border. “While proposing over \$58 billion in federal funding for DHS agencies, the House Appropriations Committee in July 2018 called on DHS to ‘ensure that the United States is meeting its legal obligations, to include reminding field officers and agents about CBP’s legal responsibilities to ensure that asylum-seekers can enter at POEs [ports-of-entry].’”<sup>78</sup>

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<sup>77</sup> See U.S. Comm’n on Int’l Religious Freedom, *Barriers to Protection: The Treatment of Asylum Seekers in Expedited Removal* 2 (2016) (reporting that despite findings and recommendations in a 2005 study relating to primary inspection, USCIRF observers in 2016 continued to find “several examples of non-compliance with required procedures” in CBP primary inspection interviews); see also 2005 USCIRF Report, *supra* note 37, at 54 (finding that, in approximately half of the inspections observed, inspectors failed to read the proper advisals regarding asylum to the non-citizen and that “in 15 percent of [the] cases [ ] where an arriving [non-citizen] expressed a fear of return to the inspector, that [non-citizen] was not referred” for a credible fear interview).

<sup>78</sup> *You Don’t Have Any Rights Here*, *supra* note 40, at 11 (citing Staff of H.R. Comm. on Appropriations, 115th Cong., Rep. on Department of Homeland Security Appropriations Bill, 2019 4, 26 (Comm. Print 2018), <https://docs.house.gov/meetings/AP/AP00/20>

83. As detailed below, Plaintiffs Bianca, Emiliana, César, Roberto, Maria, Úrsula, and Juan were each subject to the Turnback Policy when CBP officials told them there was no capacity to process them and/or that they had to wait an unreasonable or indeterminate amount of time in very dangerous conditions on the Mexican side of the border before they could access the asylum process. Plaintiffs Victoria, César, Maria, Úrsula, and Juan were each subject to the Turnback Policy when CBP officials told them to speak to a Mexican official (Victoria) or when Mexican officials intercepted them (César, Maria, Úrsula, Juan) and interfered with their ability to access the U.S. asylum process.

**C. CBP Officials' Unlawful Practices Have Denied Hundreds of Asylum Seekers Access to the Asylum Process**

84. Starting in or around mid-2016 and continuing to the present, CBP officials also have been engaging in other unlawful, widespread practices to deny asylum seekers access to the asylum process—independently or as a part of or incident to the Turnback Policy. These practices include the use of misrepresentations; threats and intimidation; coercion; and verbal and physical abuse; denying outright access to the asylum process; physically obstructing access to the POE; forcing asylum seekers to wait unreasonable or indeterminate amounts of time before being processed; and racially discriminatory denials of access. Asylum seekers and advocates have experienced and/or witnessed firsthand CBP's illegal conduct.

### 1. Misrepresentations

85. CBP officials misinform asylum seekers with the following misrepresentations, among others: that the United States is no longer providing asylum; that President Trump signed a new law that ended asylum in the United States; that the law providing asylum to Central Americans ended; that Mexicans are no longer eligible for asylum; that the United States is no longer accepting mothers with children; that the United States got rid of the law that allowed for asylum for children; that asylum seekers cannot seek asylum at the POE, but must go to the U.S. Consulate in Mexico instead; that visas are required to cross at a POE; that asylum seekers must first speak with Mexican immigration officials before they will be allowed to enter the United States to seek asylum; that there is not “space” for additional asylum seekers to enter; that there are “too many people”; that the port is “full”; that the shelters or detention centers where asylum seekers will be held are “full”; that there are too few officials in the port to process asylum seekers; that asylum seekers must wait for people to leave before they can enter; and that by coming to the POE, asylum seekers are in a “federal zone” and therefore they must leave.

86. Class Plaintiffs Abigail, Beatrice, Dinora, Ingrid, Victoria, Bianca, Emiliana, Roberto, Úrsula, and Juan each experienced this practice. Dinora and Ingrid both were told asylum was no longer available in the United States. Abigail was told that only the Mexican government could help her. Beatrice was told that the U.S. government had no obligation to help her and that she had no right to enter the United States. Victoria and Bianca were told they needed to speak with Mexican officials. When Bianca, Emiliana, and Roberto ap-



proached CBP officials to apply for asylum, they were told they could not apply because the ports were “full.” Úrsula and Juan were told that the POE was “closed” even though it was mid-afternoon.

## **2. Threats and Intimidation**

87. CBP officials threaten and intimidate asylum seekers in the following ways: threatening to take asylum seekers’ children away from them if they did not leave the POE; threatening to separate children from parents if they did not accept voluntary departure; threatening to detain and to deport asylum seekers to their home countries if they persisted in their claims; threatening to ban asylum seekers from the United States for life if they continued to pursue asylum; threatening to bring criminal charges against asylum seekers if they refused to leave the POE; threatening to use a taser or let dogs loose if asylum seekers refused to go back to Mexico; and threatening to call Mexican immigration officers if asylum seekers did not leave the POE.

88. Class Plaintiffs Abigail, Beatrice, and Carolina each experienced this practice and were threatened that if they tried to cross and pursue their asylum claims, U.S. government officials would take their children away or separate their families. Additionally, Dinora was threatened that if she and her daughter returned to the POE, they would be deported to Honduras. Beatrice was told that if she returned to the POE, she would be put in jail for three years.

## **3. Verbal and Physical Abuse**

89. As part of their systematic practice of denying asylum seekers arriving at POEs access to the U.S. asy-

lum process, CBP officials also regularly resort to verbal and even physical abuse, including, for example, by: grabbing an asylum seeker's six-year-old daughter's arm and throwing her down onto the ground; holding a gun to an asylum seeker's back and forcing her out of the POE; knocking a transgender asylum seeker to the ground and stepping on her neck; telling an asylum seeker she was scaring her five-year-old son by persisting in her request for asylum and accusing her of being a bad mother; laughing at an asylum-seeking mother and her three children and mocking the asylum seeker's thirteen-year-old son who has cerebral palsy; yelling profanities at an asylum-seeking mother and her five-year-old son, throwing her to the ground, and forcefully pressing her cheek into the pavement; making very derogatory comments about an asylum seeker's country of origin ("Fuck Honduras"); denying four asylum seekers on five consecutive days because "Guatemalans make us sick"; repeatedly and angrily yelling at asylum seekers to make them leave the POE; inquiring whether an asylum seeker was pregnant, and when the answer was negative, saying "that was good because they did not want more children in the United States"; grabbing the arms of an asylum seeker hard enough to leave bruises, bending them behind her back in order to drag her back to Mexico, and also physically dragging her child back to Mexico; grabbing another asylum seeker by the shoulders hard enough to leave bruises and dragging her out of the POE with her seven-year-old watching and yelling "leave my mommy alone!"; pushing an asylum seeker while she was holding her infant daughter; and pushing another asylum seeker while she was holding her three-year-old son. One asylum seeker reported that she sought mental health treatment to process how

she was treated after being forcibly dragged out of the POE and back to Mexico with her two children.

90. Class Plaintiffs Dinora and Beatrice both experienced this practice. One CBP official pulled Dinora inside a gate at the POE to try to separate her from her daughter. Later, as CBP officials escorted Dinora and her daughter out of the POE, one of the CBP officials tried to drag Dinora by her arm. Beatrice also experienced rough treatment and cried out in pain when a CBP official forcefully searched her for drugs.

#### **4. Coercion**

91. CBP officials resort to coercion to deny asylum seekers arriving at POEs access to the U.S. asylum process, including: coercing asylum seekers into recanting their fear on video; and coercing asylum seekers into withdrawing their applications for admission to the United States.

92. Class Plaintiffs Abigail, Beatrice and Carolina each experienced this practice of coercion. Each was coerced to sign a form, written in English and not translated, which they did not understand, that stated they were voluntarily withdrawing their claims for asylum on the ground that they did not fear returning to Mexico. The forms CBP officials coerced them to sign were and still are false. At the time the initial Complaint in this case was filed, Abigail, Beatrice and Carolina still had a grave fear of persecution in Mexico.

#### **5. Outright Denial of Access**

93. In some cases, CBP officials simply turn asylum seekers away from POEs without any substantive explanation. For example, CBP officials have indicated that a particular POE is not receiving any asylum seek-

ers; that asylum seekers should “*vete*” (go away); that asylum seekers must leave; that asylum seekers will not be allowed to enter the United States; that there is no help for asylum seekers at the POE; and that asylum seekers simply must “move aside” to allow other pedestrian traffic to pass. In other cases, CBP officials simply ignore people who indicate a desire to seek asylum, or flatly refuse to look at their identity documents.

94. Victoria and César both experienced this practice. When Victoria told a CBP official she wanted to seek asylum, the official responded that she could not do so at that time. When César tried to present himself at a POE and stated his intent to apply for asylum, CBP officials refused to let him proceed to the POE.

## 6. Physically Blocking Access to the POE

95. In recent months, CBP officials at numerous POEs have begun preliminarily checking pedestrian travelers’ documents at makeshift or permanent “pre-checkpoints” housed under tarps or in tents at or near the U.S.-Mexico border.<sup>79</sup> The CBP officials do not per-

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<sup>79</sup> See, e.g., Hannah Wiley, *Critics Say New Barriers on Border Bridge Are Meant to Deter Asylum-Seekers*, Tex. Trib. (Oct. 1, 2018), <https://www.texastribune.org/2018/10/01/border-asylum-port-of-entry-texas-mexico/>; Meredith Hoffman, *The Horrible Conditions Endured by Migrants Hoping to Enter the US Legally*, VICE (July 3, 2018), [https://www.vice.com/en\\_us/article/59qny3/migrants-hoping-to-get-us-asylum-forced-to-wait-on-bridge](https://www.vice.com/en_us/article/59qny3/migrants-hoping-to-get-us-asylum-forced-to-wait-on-bridge); John Burnett, *After Traveling 2,000 Miles for Asylum, This Family’s Journey Halts at a Bridge*, NPR (June 15, 2018), <https://www.npr.org/2018/06/15/620310589/after-a-2-000-mile-asylum-journey-family-is-turned-away-before-reaching-u-s-soil>; Molly Hennessy-Fiske, *Caught in Limbo, Central American Asylum-Seekers Are Left Waiting on a Bridge Over the Rio Grande*, L.A. Times (June 7, 2018), <http://>

mit asylum seekers to walk past the pre-checkpoint to enter the POE building, forcing them to remain on the Mexican side of the border just inches away from the United States.

96. On information and belief, CBP sometimes enlists Mexican officials to act as their agents in blocking asylum seekers' access to POEs. In the Rio Grande Valley, for example, Mexican officials have intercepted asylum seekers as they were approaching turnstiles at bridge entrances on the Mexican side. Without passing through the turnstile, an asylum seeker cannot walk across the bridge to the POE to seek protection in the United States. Mexican officials also reportedly meet CBP officials in the middle of bridges to escort asylum seekers away from the border and back into Mexico, where they are often detained or deported to dangerous conditions in their home countries.

97. CBP physically blocked Roberto, Maria, Úrsula, and Juan from accessing the asylum process by stopping them at pre-checkpoints at the border and refusing to let them pass. In addition, César was intercepted by Mexican officials outside the POE and pushed into a corner to prevent him from approaching the POE. Mexican officials physically escorted Roberto and Maria away from CBP officials stationed at the border and detained them to block their access to the POE. Mexican officials also blocked Maria, Juan, and Úrsula from reaching the POE by preventing them from walking onto the sidewalk leading to the POE. CBP officials witnessed Mexican officials block Maria's access and, when

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[www.latimes.com/nation/la-na-asylum-seeking-families-border-bridges-20180605-story.html](http://www.latimes.com/nation/la-na-asylum-seeking-families-border-bridges-20180605-story.html); Moore, *supra* note 68.

Maria's lawyer questioned them about it, CBP officials refused to intervene.

## **7. Waitlists and Unreasonable Delays**

98. By its own admission, CBP officials force asylum seekers to wait for days, weeks or indefinitely in Mexico before allowing them to access the asylum process.

99. CBP officials process a limited number of asylum seekers per day, even when dozens are waiting. At some POEs, CBP appears to process a fixed number of asylum seekers—often two, three, or four. On some days, CBP officials do not process any asylum seekers.

100. CBP officials also routinely tell asylum seekers approaching POEs that in order to apply for asylum, they must get on a list or get a number. The lists are typically managed by Mexican immigration officials or other third parties based in Mexico. CBP officials will not permit asylum seekers to enter the United States until their number is called, which can take days, weeks or longer. Often, the people managing the lists only give out new numbers during particular hours of the day, and so are inaccessible to asylum seekers who are unable to locate them. Despite diligent efforts, some individuals have reportedly been unable to get their names on the lists due to the list managers' biases against the individuals' ethnicity, sexual orientation or gender identity.

101. As a result of these practices, asylum-seeking men, women and children wait endlessly on or near bridges leading to POEs in rain, cold, and blistering heat, without sufficient food or water and with limited bathroom access. They sleep outside for many nights in a row, sometimes for a week or more. The entire time

they are waiting to be processed, the asylum seekers are at risk of harm from either persecutors that have followed them from their home countries, or from gang violence and other criminal threats prevalent along the Mexico side of the U.S.-Mexico border.

102. Bianca, Emiliana, and César experienced this practice because they were required to get on a list in order to access the asylum process. Bianca, Emiliana, and Roberto were told they would have to wait an indeterminate and unreasonable amount of time before they could seek asylum—Bianca was told she would have to wait “multiple weeks”; Emiliana was told to come back in six weeks; Roberto was told he would have to wait for “hours, days, or weeks”. In addition, Bianca, Emiliana, and Maria were merely told to stand aside and wait for an indeterminate period of time. Úrsula and Juan were told they had to “wait their turn,” without any indication of what that meant.

#### **8. Racially Discriminatory Denials of Access**

103. In March 2018, CBP officials at the midpoint of the Paso Del Norte Bridge separating Ciudad Juarez, Mexico and El Paso, Texas, rejected four Guatemalan asylum seekers’ requests to access the asylum process on five consecutive days because according to CBP, “Guatemalans make us sick.”

104. On information and belief CBP agents racially profile individuals crossing on bridges, stopping and asking for identification documents from darker-skinned Central American-appearing individuals while allowing lighter-skinned individuals to pass.

105. César was subject to this practice. When he approached the POE to apply for asylum, he was placed

in a group with only other Central Americans, away from the Africans and Mexicans, after which he was arrested, detained, and threatened with deportation.

106. All of the above-referenced tactics served to deny asylum seekers access to the U.S. asylum process.

**D. Documentation from Experts and NGOs Confirms the Prevalence and Persistence of the Turnback Policy and CBP's Other Unlawful Practices**

107. Non-governmental organizations and other experts working in the U.S.-Mexico border region have extensively documented the devastating consequences of CBP's unlawful Turnback Policy and other unlawful practices designed to restrict or deny access to the asylum process.

108. In June 2017, Amnesty International, a non-profit human rights organization, published a report on CBP's ongoing practice of turning back asylum seekers at the U.S.-Mexico border entitled *Facing Walls: USA and Mexico's Violations of the Rights of Asylum-Seekers*.<sup>80</sup> In compiling the report, Amnesty International interviewed more than 120 asylum seekers as well as approximately 25 government officials and 40 civil society organizations. The report documents numerous instances in which CBP officials denied asylum seekers access to the asylum system at five different POEs along the U.S.-Mexico border. The report details the following conduct:

- a. CBP officials coerce asylum seekers into recanting their fear of persecution on videotape

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<sup>80</sup> See *Facing Walls*, *supra* note 38.



and threaten to deport them back to their home countries if they do not comply;

- b. CBP officials tell asylum seekers that they will first have to get a “ticket” from Mexican authorities before seeking asylum;
- c. CBP officials coerce asylum seekers into signing a voluntary return paper under the threat that, if they do not, then they will be deported and will never be allowed into the United States; and
- d. CBP officials tell Mexican asylum seekers that there is no more asylum for Mexicans.

109. In October 2018, Amnesty International issued a subsequent report entitled *USA: ‘You Don’t Have Any Rights Here’: Illegal Pushbacks, Arbitrary Detention & Ill-Treatment of Asylum-Seekers in the United States*,<sup>81</sup> documenting CBP’s continuing practice of turnbacks at POEs in California, Arizona and Texas, and concluding that, in 2017 and 2018, the U.S. government had “intensified a systematic and dangerous *de facto* policy of illegal pushbacks against asylum seekers, in order to prevent them from requesting protection at official U.S. ports-of-entry.” In addition to the conduct outlined above, the report details the following:

- a. CBP used “slowdown” tactics to force asylum seekers to wait for days or weeks in Mexico before allowing them to seek protection at POEs;

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<sup>81</sup> *You Don’t Have Any Rights Here*, *supra* note 40.

- b. At several POEs, CBP officials temporarily stopped receiving any asylum seekers;
- c. CBP erected temporary checkpoints in the centers of international bridges to Mexico at various POEs, where CBP officers instructed pedestrians without valid Mexican travel documents to return to Mexico or called Mexican officials to remove such individuals from the bridge.

110. In August 2018, the Washington Office on Latin America (“WOLA”), a non-profit human rights research and advocacy organization, published a thorough report entitled *‘Come Back Later’: Challenges for Asylum Seekers Waiting at Ports of Entry*.<sup>82</sup> WOLA’s report, based on years of documentary research and a visit to the U.S.-Mexico border in June 2018, details the following developments:

- a. There has recently been “a marked slowdown” in CBP’s processing of asylum seekers at POEs, leading to long lines of individuals and families waiting to present themselves to seek asylum;
- b. In June 2018, CBP officials at the Nogales POE had allowed a backlog of 113 people, including 48 families, who were waiting in Nogales, Mexico to present themselves to seek asylum;
- c. CBP officials “have positioned themselves on the [physical] border, pre-screening people before they are allowed to enter U.S. territory

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<sup>82</sup> *Come Back Later*, *supra* note 75.

and repeatedly denying asylum-seekers entry into the country, forcing them to wait days or even weeks in hot and in some areas dangerous Mexican border towns”;

- d. CBP officials at smaller POEs tell asylum seekers that they no longer process asylum claims at those POEs, and that the migrants must travel to larger POEs many miles away; and
- e. Mexican government officials block access to the McAllen POE on the Reynosa side, and detain asylum seekers who lack the proper travel documents to be in Mexico.

111. In May 2017, Human Rights First, a respected non-governmental organization, published an exhaustive report entitled, “Crossing the Line: U.S. Border Agents Illegally Reject Asylum Seekers.”<sup>83</sup> In that report, Human Rights First details firsthand accounts of CBP officials turning back asylum seekers without referring them for further screening or immigration court proceedings at POEs across the U.S.-Mexico border. The report details the following conduct:

- a. CBP officials simply ignore requests by individuals to seek asylum;
- b. CBP officials give false information about U.S. laws and procedures, such as saying that “the United States is not giving asylum anymore” and “[President] Trump says we don’t have to let you in”;

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<sup>83</sup> See *Crossing the Line*, *supra* note 32.

- c. CBP officials mock and intimidate asylum seekers;
- d. CBP officials impose a “gauntlet” and “charade” of procedures, including a “ticketing” system, to discourage asylum seekers; and
- e. CBP officials coerce asylum seekers into denouncing any fear of persecution.

112. Despite the complete lack of statistics or recordkeeping on CBP’s failure to comply with the law, Human Rights First’s Report references more than 125 cases of CBP turning back individuals and families seeking asylum at POEs along the U.S.-Mexico border between November 2016 and April 2017. This is likely a small fraction of the number of asylum seekers who were illegally denied access to the asylum process during that period.

113. In July 2018, Human Rights First supplemented its 2017 report with an issue brief documenting researchers’ visits to seven international bridges in June 2018, at Hidalgo, Texas; Brownsville, Texas; Roma, Texas; Progreso, Texas; Laredo, Texas; and El Paso, Texas. The researchers found:

- a. At all seven bridges visited, “CBP installed new checkpoints at the international border line” where “agents conduct document screening ahead of the processing center” and regularly turn back asylum seekers;
- b. CBP agents tell asylum seekers at the bridges that the POE is “full” or “at capacity,” which leaves asylum seekers “stranded for days or weeks in dangerous or difficult conditions”;

- c. Asylum seekers whom CBP fails to process “face extreme heat, lack of food, water, and bathroom facilities, [and] in some areas, they also face grave dangers and risks,” particularly kidnapping;
- d. A shelter in Tijuana, Mexico, was broken into and set on fire “likely because a group of transgender women were seeking refuge there after being turned away several times by [CBP]”; and
- e. CBP officers tell asylum seekers that they cannot cross at the Stanton Street Bridge POE in El Paso, Texas.<sup>84</sup>

114. From December 2016 to the present, the Women’s Refugee Commission, a non-profit organization that advocates for women and children fleeing violence and persecution, has investigated and documented numerous instances in which CBP officials have turned asylum seekers away and refused to process them at various POEs along the U.S.-Mexico border, including POEs in San Ysidro and Calexico, California; Nogales and San Luis, Arizona; Santa Teresa, New Mexico; and El Paso, Laredo, and McAllen, Texas. The Women’s Refugee Commission has documented the following conduct:

- a. CBP officials tell asylum seekers there is no space for them;
- b. CBP officials tell asylum seekers that the policies have changed and that they no longer qualify for asylum;

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<sup>84</sup> *Zero-Tolerance Criminal Prosecutions*, *supra* note 67, at 8-9.

- c. CBP officials threaten to call Mexican immigration authorities to remove asylum seekers from the POEs;
- d. CBP officials threaten asylum seekers with prolonged detention in the U.S. if they pursue their asylum claims;
- e. CBP officials threaten physical force to remove asylum seekers from the POEs;
- f. CBP officials forcibly remove asylum seekers from the POEs;
- g. CBP officials tell asylum seekers to go away;
- h. CBP officials tell asylum seekers that they must coordinate with Mexican immigration authorities in order to be processed;
- i. CBP officials, in coordination with Mexican officials and agents, filter out asylum seekers who lack valid travel documents;
- j. CBP officials deny asylum seekers the right to apply for asylum at certain POEs; and
- k. CBP places officials, and sometimes semi-permanent structures, at the middle of international bridges to pre-screen migrants.

115. From October 2016 through the present, the Project in Dilley, which provides pro bono legal services to mothers and children detained at the South Texas Family Residential Center in Dilley, Texas, has identified more than 100 asylum-seeking mothers who were turned back by CBP officials at POEs along the U.S.-Mexico border, including POEs in San Ysidro, California; Calexico, California; San Luis, Arizona; Nogales, Arizona; El Paso, Texas; Del Rio, Texas; Eagle Pass,

Texas; Laredo, Texas; Roma, Texas; McAllen, Texas; Los Indios, Texas; and Brownsville, Texas. The Project in Dilley has documented the following conduct:

- a. CBP officials tell asylum seekers that asylum law is no longer in effect;
- b. CBP officials tell asylum seekers that they have orders to send away everyone who is seeking asylum;
- c. CBP officials tell asylum seekers that the POE is full and that they must wait to be processed, causing some asylum seekers to wait days or weeks without access to shelter, food, water, or bathrooms;
- d. CBP officials threaten to deport asylum seekers to their home countries; and
- e. CBP officials use physical force to remove asylum seekers from POEs, including by handcuffing them, throwing them to the ground, shoving them and dragging them out of the POEs.

116. Since December 2015, representatives of Plaintiff Al Otro Lado have accompanied more than 160 asylum seekers to the San Ysidro POE. Several representatives have witnessed firsthand and/or otherwise documented the tactics employed by CBP to prevent asylum seekers from accessing the U.S. asylum process. Al Otro Lado representatives have documented the following conduct:

- a. CBP officials tell asylum seekers they have to apply for asylum at the U.S. Consulate in Mexico or the U.S. Embassy in their home countries;

- b. CBP officials tell asylum seekers that they must first obtain a “ticket” from Mexican immigration in order to seek asylum;
- c. CBP officials tell asylum seekers that they are not processing asylum seekers at that POE and they must go to another POE to be processed;
- d. CBP officials tell asylum seekers that they cannot seek asylum at that time and must be put on a waiting list;
- e. CBP officials require asylum seekers to register with migrant shelters in Mexico which control the flow of asylum seekers to the POEs;
- f. CBP officials tell asylum seekers that they do not qualify for asylum;
- g. CBP officials coerce asylum seekers into withdrawing their asylum claims, including by threatening that they will be deported if they do not do so;
- h. CBP officials threaten asylum seekers with forced separation from their children, prolonged detention, and eventual deportation;
- i. CBP officials subject asylum seekers to verbal abuse and degradation during the inspection process;
- j. CBP officials ask asylum seekers to present paperwork they are not required to present; and
- k. CBP officials threaten U.S. attorneys attempting to assist asylum seekers with *ultra vires* removal to Mexico.



117. On January 13, 2017, various non-governmental organizations submitted an administrative complaint to DHS' Office for Civil Rights and Civil Liberties ("CRCL") and the OIG.<sup>85</sup> The administrative complaint provided specific examples of CBP turning back asylum seekers at POEs along the U.S.-Mexico border and urged CRCL and OIG to conduct a prompt and thorough investigation into this illegal practice and take swift corrective action.

118. Meanwhile, Defendants' illegal turnbacks continue. In fact, as previously noted, CBP has acknowledged its Turnback Policy in sworn testimony before Congress.<sup>86</sup>

**E. Defendants' Policy and Practices Have Denied Each of the Class Plaintiffs Access to the Asylum Process**

***Plaintiff Abigail Doe***

119. Abigail is a native and citizen of Mexico. She is the mother of two children under the age of ten, with whom she previously lived in Central Mexico. In May 2017, Abigail's husband disappeared after he refused to allow drug cartel members to use his tractor-trailer to transport drugs.

120. When Abigail reported her husband's disappearance to governmental authorities, members of the

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<sup>85</sup> See Am. Immigration Council at al., Complaint Re: U.S. Customs and Border Protection's Systemic Denial of Entry to Asylum Seekers at Ports of Entry on U.S.-Mexico Border 1-2 (Jan. 13, 2017), [https://www.americanimmigrationcouncil.org/sites/default/files/general\\_litigation/cbp\\_systemic\\_denial\\_of\\_entry\\_to\\_asylum\\_seekers\\_advocacy\\_document.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/cbp_systemic_denial_of_entry_to_asylum_seekers_advocacy_document.pdf).

<sup>86</sup> *Wagner Testimony*, *supra* note 43, at 289-90.

drug cartel abducted her, held her at gunpoint, and threatened to kill her and her children if she continued to investigate her husband's disappearance. One cartel member told Abigail that she had to leave if she wanted to live. Fearing for her life, Abigail fled to Tijuana with her children to seek asylum in the United States.

121. After arriving in Tijuana, Abigail and her children immediately sought access to the asylum process by presenting themselves at the San Ysidro POE. At the POE, Abigail informed CBP officials of her intent to apply for asylum and her fear of returning to Mexico. CBP officials repeatedly misinformed Abigail that she did not qualify for asylum. One CBP official threatened that her children would be taken away from her if they allowed her to cross the border and again misinformed her that only the Mexican government could help her.

122. CBP officials coerced Abigail into signing a document in English which she could not read and did not understand. The document stated that she did not have a fear of returning to Mexico and was withdrawing her application for admission. CBP officials then instructed Abigail to say that she had agreed to accept the assistance of the Mexican government and used a video camera to record her statement. A CBP official then took Abigail and her children back to Mexico and left them to fend for themselves.

123. The statements CBP coercively obtained from Abigail were and are still false; Abigail does fear returning to and staying in Mexico and believes seeking assistance from the Mexican government would be futile.

124. Following the filing of the initial Complaint in this case, Defendants made arrangements to facilitate

the entry of Abigail and her children into the United States.

***Plaintiff Beatrice Doe***

125. Beatrice is a native and citizen of Mexico. In May 2017, Beatrice fled her hometown in Mexico with her three children, ages seven, eleven and fifteen, and her nephew. Beatrice's nephew was targeted by the Zetas, a Mexican drug cartel that controls most of Southern Mexico, for failing to pay a fee that the Zetas demanded from all individuals who worked in the market. The Zetas threatened to kill Beatrice's nephew and to harm his family if he did not pay the fees. The cartel also pressured Beatrice's nephew to join their forces and threatened to increase the fee if he refused. On two occasions when Beatrice's nephew failed to pay the fees, the Zetas beat him up.

126. Beatrice herself suffered severe domestic violence at the hands of her husband. In May 2017, she reported his abuse to two government agencies. When Mexican government officials subsequently requested that Beatrice's husband meet with them, he responded that he would continue to do what he wanted with Beatrice and his children. Terrified, Beatrice left their house the same day.

127. Beatrice fled with her children and nephew and traveled to Tijuana in order to seek access to the asylum process in the United States. Initially, Beatrice and her family sought access to the asylum process by presenting themselves at the Otay Mesa POE. When Beatrice expressed their intent to seek asylum, a CBP official told her that asylum-related services were not provided at that port, and directed her to go to the San Ysidro POE. Beatrice and her family then attempted

twice to seek access to the asylum process at the San Ysidro POE, but CBP officials turned them away both times.

128. The first time Beatrice and her family presented themselves at the San Ysidro POE, she explained that their lives were at risk in Mexico and that she was afraid of her husband. CBP officials misinformed her that the U.S. government had no obligation to help her or her family, that they did not have a right to enter the United States because they were not born there, and that she should seek help from the Mexican government.

129. Another CBP official then threatened to take Beatrice's nephew away from her and to put her in jail if she refused to sign an English document which she did not understand. Believing that she had no other option, she signed the document. CBP officials then escorted Beatrice and her family out of the POE.

130. The statements CBP coercively obtained from Beatrice were and are still false; Beatrice and her children fear returning to and staying in Mexico.

131. The next day, Beatrice and her family returned to seek access to the asylum process by presenting themselves at the San Ysidro POE. A CBP official who recognized Beatrice from the day before misinformed her that she had no right to enter the United States or seek asylum, and that she would be put in jail for three years if she returned to the POE. After another CBP official separately threatened to transfer Beatrice's nephew to Mexican authorities and return him to Southern Mexico, CBP officials again escorted Beatrice and her family out of the San Ysidro POE.

132. Following the filing of the initial Complaint in this case, Defendants made arrangements to facilitate the entry of Beatrice and her children into the United States.

***Plaintiff Carolina Doe***

133. Carolina is a native and citizen of Mexico. In May 2017, Carolina fled her hometown in Mexico with her three children, ages nine, fifteen and eighteen, after her brother-in-law, a high-ranking police official, was kidnapped, tortured and killed by members of a drug trafficking cartel. His dismembered body was found in garbage bags in a cemetery. Carolina's husband witnessed the kidnapping and showed Carolina a picture of one of the men who was involved. Drug cartel members threatened Carolina's husband after the murder, and Carolina and her husband saw the van used in the kidnapping drive by their house twice. Two men followed Carolina and her daughters on her way home from work, and several men came to their home at night. Carolina was terrified and hid with her daughters in the bathroom because she feared for her life and the lives of her daughters.

134. In May 2017, Carolina fled in the middle of the night with her daughters and traveled to Tijuana in order to seek access to the asylum process in the United States. Carolina and her daughters presented themselves at the San Ysidro POE, and Carolina explained that they were afraid of returning to Mexico and wanted to seek asylum. CBP officials locked them in a room overnight at the San Ysidro POE. In the morning, a CBP official told Carolina that she would not be granted asylum and misinformed her that the protection she was seeking in the United States could be provided by the

Mexican authorities. The CBP official threatened to take away Carolina's fifteen-year-old U.S. citizen daughter and put her in foster care, and told Carolina that if she did not want her daughter taken away from her, then she had to make a statement on video that she was not afraid of returning to Mexico

135. The CBP officials coerced Carolina into recanting her fear on video. Carolina initially did not respond as the CBP officials instructed her to do because the responses they told her to say were not true. Carolina was afraid and wanted to respond that she was very scared to return to Mexico. One of the CBP officials repeated that the only way Carolina and her daughters would be able to leave voluntarily without her U.S. citizen daughter being taken away from her was if Carolina stated on video that she was not scared. Having been locked in a room overnight, Carolina was tired and scared and felt like she was in jail. The CBP officials continued to coerce her until she finally did what they told her to do, believing she had no choice.

136. The CBP officials also coerced Carolina into signing a document in English which she could not read and did not understand. The document stated that she did not have a fear of returning to Mexico and was withdrawing her application for admission. The statements CBP coercively obtained from Carolina were and are still false; Carolina does fear returning to and staying in Mexico.

137. Several days after CBP turned back Carolina and her daughters at the POE, Carolina made arrangements for her U.S. citizen daughter to cross into the United States. Following the filing of the initial Complaint in this case, Defendants made arrangements to

facilitate the entry of Carolina and her other children into the United States.

***Plaintiff Dinora Doe***

138. Dinora is a native and citizen of Honduras. MS-13 gang members repeatedly threatened to kill Dinora and her then-seventeen-year-old daughter if they did not leave their house. After receiving the third threat, they fled to another city where they remained in hiding.

139. When Dinora and her daughter subsequently returned home, three MS-13 members held them captive for three days and repeatedly raped each of them in front of the other.

140. When Dinora and her daughter finally escaped, they fled to a shelter in Mexico. However, after being threatened by MS-13 gang members again in Mexico, they knew they had to leave.

141. On three separate occasions in August 2016, Dinora and her daughter sought access to the asylum process by presenting themselves at the Otay Mesa POE and expressing their intent to seek asylum in the United States. Each time, CBP officials turned them away

142. During Dinora's first attempt, CBP officials misinformed her that there was no asylum in the United States and escorted Dinora and her daughter outside the POE.

143. During her second attempt later the same day, one CBP official misinformed Dinora that there was no asylum available in the United States for Central Americans and that if they returned to the POE, they would

be handed over to Mexican authorities and deported to Honduras.

144. During her third attempt the next morning, a CBP official misinformed Dinora that she could pass through the POE, but would have to leave her daughter behind. When Dinora insisted that she and her daughter had a right to apply for asylum, CBP officials escorted them out of the POE.

145. Following the filing of the initial Complaint in this case, Defendants made arrangements to facilitate the entry of Dinora and her daughter into the United States.

***Plaintiff Ingrid Doe***

146. Ingrid is a native and citizen of Honduras. At the time the initial Complaint was filed, Ingrid had two children and was pregnant with her third child.

147. 18th Street gang members murdered Ingrid's mother and three siblings. They also threatened to kill Ingrid.

148. For several years, Ingrid and her children were subject to severe abuse by her partner and the father of her son and the child that she was expecting. Ingrid's partner regularly raped Ingrid, sometimes in front of her children. He would also burn and beat Ingrid. One day, Ingrid's partner put a gun to Ingrid's head and threatened to kill her.

149. In June 2017, Ingrid fled with her children to Tijuana, where they sought access to the asylum process by presenting themselves at the Otay Mesa POE.

150. When they arrived at the Otay Mesa POE, Ingrid approached CBP officials and expressed her intent



to seek asylum. The CBP officials misinformed Ingrid that they could not help her at the Otay Mesa POE and that she must go to the San Ysidro POE.

151. Ingrid immediately went to the San Ysidro POE with her children to present herself and seek access to the asylum process. She approached several CBP officials, and expressed her intent to seek asylum. One of the officials misinformed Ingrid that there was no asylum and that she could not pass through the POE because she did not have any documents. Ingrid again stated that she wanted to seek asylum and that she could not go back to Honduras because she and her children would be killed. The CBP official responded that there was a new law in the United States that meant that there was no more asylum. Another CBP official then escorted Ingrid and her children out of the port.

152. Following the filing of the initial Complaint in this case, Defendants made arrangements to facilitate the entry of Ingrid and her children into the United States.

***Plaintiff Roberto Doe***

153. Roberto is a native and citizen of Nicaragua. Roberto fled Nicaragua in early September 2018 after receiving targeted threats of violence from the Nicaraguan government and paramilitaries allied with the government.

154. Roberto traveled through Mexico and arrived in Reynosa, Tamaulipas on September 29, 2018. On October 2, 2018, he sought access to the asylum process by presenting himself at the Hidalgo POE. Roberto was part of a group of six Nicaraguan nationals and one Honduran who were waiting in line. The group ap-

proached the U.S. immigration officials who were standing at the middle point of the bridge that divides the United States from Mexico, and told the U.S. officials that they wanted to seek asylum in the United States.

155. One of the U.S. officials responded that he had to talk to his office and made a call on his radio in English. He then directed Roberto and the rest of the group to stand to one side. After that, the U.S. official informed the group that they could not enter the POE, which was “all full.” The U.S. official indicated that the group might have to wait for “hours, days, or weeks” before he could seek asylum.

156. A short while later, a female U.S. official made another call, and Roberto heard her say in Spanish that someone would come and pick up some people. A few minutes later, a Mexican immigration official arrived and asked to see the group members’ papers. After Roberto and the rest of the group handed over their papers, the Mexican official instructed them to come with him. One of the Nicaraguans asked the U.S. official to help them, saying that the Mexican immigration officials would deport them. The U.S. official responded that he did not care and did nothing.

157. The Mexican immigration official took Roberto and the rest of the group to the Mexican side of the bridge, where he left them in an office with Mexican immigration officials. While the group waited, various officials spoke on the phone. Roberto heard one of the officials say that they needed seven or eight spaces for the next deportation transport.

158. Eventually, the Mexican officials confiscated the asylum seekers’ phones and escorted them to a small bathroom, where they were forced to wait,

crowded together, for about an hour. While they were waiting, a Mexican official entered the bathroom and told them that they did not have the right to apply for asylum in the United States, and that it was a crime to try to do so. The Mexican official indicated that he was in communication with the U.S. authorities and that if they came back to the bridge and attempted to seek asylum, the U.S. officials would turn them over to the Mexican authorities and they would be deported to Nicaragua. The Mexican officials subsequently returned their papers and directed them to leave.

159. At the time the First Amended Complaint was filed, Roberto desired to return immediately to the Hidalgo POE to seek access to the asylum process, but based on his past experience with CBP's practices at the U.S.-Mexico border, he feared that he would be turned away again and deported to Nicaragua. Defendants subsequently agreed to allow Roberto to access the asylum process if he returned to the Hidalgo POE. Roberto returned to the bridge on October 18, 2018, and as he was about to walk onto the pedestrian footbridge to walk to the POE, Mexican immigration officials detained him. Roberto has been in Mexican government custody since that date, and on information and belief, his *refoulement* to Nicaragua is imminent.

***Plaintiff Maria Doe***

160. Maria is a citizen of Guatemala and a permanent resident of Mexico. She was married to a Mexican man and has two children who were born in Mexico.

161. Maria lived in Chiapas, Mexico for seven years with her husband and children. Maria left her husband, who was very abusive toward her and her children, after learning that he was involved with cartels. After she

left, the cartels began searching for Maria and her children. For about two years, Maria and her children searched for a safe place to live, in Guatemala and in Mexico, but the cartels invariably found them and went after them. Maria's ex-husband remains involved with cartels and continues to threaten Maria and her children.

162. In September 2018, Maria traveled with her children to Nuevo Laredo, Mexico. On September 10, 2018, Maria and her children sought access to the asylum process by presenting themselves at the Laredo POE around 8:00 p.m. As they approached the midpoint of the bridge to the United States, CBP officials stopped Maria and her children and asked to see their identification. Maria told the U.S. officials that she wanted to seek asylum in the United States. The U.S. officials told her to wait on the Mexican side of the bridge until they called her.

163. After a few minutes, two Mexican officials walked toward her from the Mexican side of the bridge. The Mexican officials told Maria that the United States officials would not let her cross the bridge, but that they could help if she paid them \$1,500 for herself and her children. Maria did not have money to pay the bribe, and instead traveled with her children to Reynosa, Mexico, to try to cross a different bridge to the United States.

164. After Maria arrived in Reynosa, she did not feel safe going to the bridge immediately. While staying at a shelter in Reynosa, Maria met an American lawyer who agreed to accompany her to the Hidalgo POE.

165. On September 19, 2018, Maria and her children, accompanied by the American lawyer, sought ac-

cess to the asylum process by presenting themselves at the Hidalgo POE. They walked up to the bridge in Reynosa. They were at the turnstile at the entrance to the bridge and had only taken a few steps when a Mexican immigration official demanded to see their identification documents. After Maria gave him their documents, the Mexican official started screaming that Maria was abusing her Mexican residence by trying to cross the bridge to seek asylum. He warned her that he would rip up her identity documents if she did not leave the bridge. Although Maria and her lawyer maintained that she had the right to seek asylum, she and her children left the bridge for fear that the Mexican official would hurt them or destroy their documents and deport them to Guatemala.

166. Maria and her children returned to the shelter for two weeks before attempting to seek access to the asylum process again. On October 9, 2018, Maria and her children, again accompanied by the American lawyer, sought access to the asylum process by presenting themselves at the Hidalgo POE for the second time. When they arrived at the middle of the bridge, Maria started to tell the U.S. officials that she sought asylum. At that moment, however, a Mexican immigration officer grabbed Maria's arm and demanded to see her papers. Maria told the Mexican officer that she was a legal resident of Mexico with two Mexican children and showed him her papers. The officer told her that the Mexican residency permit did not allow her to go to the United States, and he ordered her to go to a station on the Mexican side of the border. Although Maria and the lawyer insisted that Maria had a right to seek asylum in the United States, the Mexican official called for backup.

167. Meanwhile, the American lawyer explained to the U.S. officials standing at the bridge that Maria wanted to seek asylum and that she and her children were in danger. The U.S. officials said that what was happening had nothing to do with them.

168. The Mexican officials took Maria to an office at the foot of the bridge and separated her from her children and the lawyer. They took Maria into a small room and told her that if she came back to the Hidalgo POE, they would revoke her Mexican residency.

169. At the time the First Amended Complaint was filed, Maria feared for her life in Mexico and desired to return to a POE to seek access to the asylum process, but based on her past experiences with CBP's practices at the U.S-Mexico border, she feared that she and her children would be turned away again or deported to Guatemala. Maria and her children feared for their lives in Mexico. After they arrived in Reynosa, they received multiple phone calls from blocked numbers, which Maria believes were from cartel members trying to track her location. On or around October 8, 2018, Maria's ex-husband called her directly and threatened her.

170. Following the filing of the First Amended Complaint in this case, Defendants made arrangements to facilitate the entry of Maria and her children into the United States.

***Plaintiffs Úrsula Doe and Juan Doe***

171. Úrsula and Juan are natives and citizens of Honduras. They are a married couple with two children. They left Honduras with their children in August 2018 out of fear for their lives and the lives of their children.

172. Úrsula saw members of a Honduran gang kill her brother in 2014. The gang knows she witnessed the murder and have repeatedly warned Úrsula and Juan of harm to their family. Gang members have called the family, gone to their house, and threatened to hurt their children.

173. Úrsula and Juan fled Honduras with their children to seek access to the asylum process in the United States. They traveled to Mexico, where they were robbed at gunpoint by three men who took all their money. Eventually they made it to Nuevo Laredo, Mexico, in late September 2018.

174. The day after they arrived in Nuevo Laredo, Úrsula, Juan, and their children went to the international bridge around 2:00 pm and sought access to the asylum process by presenting themselves at the Laredo POE. When they arrived at the middle of the bridge, U.S. officials told them they could not pass because the port was closed. Although Juan insisted that they wanted to request asylum, one of the officials said that they had to wait their turn, the port was closed, and they could not pass.

175. Úrsula, Juan, and their children subsequently traveled to Reynosa to seek access to the asylum process by presenting themselves at the Hidalgo POE. They went to the bridge in Reynosa with their children around 5:00 a.m. Shortly after they passed through the turnstile, a Mexican official grabbed their documents and ordered them to walk with him back to Mexico.

176. The Mexican official took Úrsula and Juan to a waiting room. A different Mexican official took Juan aside and warned him that he and his family could be deported. Úrsula, Juan, and their children were forced

to wait all day without much food or water. Around 6:00 or 7:00 p.m., they were allowed to leave.

177. At the time the First Amended Complaint was filed, Úrsula and Juan desired to seek access to the asylum process in the United States, but based on their past experience with CBP's practice at the U.S.-Mexico border, they feared that they would be turned away again or deported to Honduras. At that time, they feared for their lives in Reynosa.

178. Defendants subsequently made arrangements to facilitate the entry of Juan, Úrsula, and their children into the United States.

***Plaintiff Victoria Doe***

179. Victoria is a sixteen-year old female native and citizen of Honduras. She is an unaccompanied minor and the mother of a one-year old child. In 2017, members of the infamous 18<sup>th</sup> Street gang held her at gunpoint and threatened her with death if she did not submit herself sexually to the leader of the gang. Fearful for her life, she was able to flee to a separate part of Honduras. Shortly thereafter, the very same gang members followed her and repeated the same threats, demanding that she submit and become the property of the gang.

180. Victoria came to Tijuana with a refugee caravan in April 2018, intending to seek asylum in the United States. She lived in a migrant shelter for four months but was in constant fear of murder and other crime and was threatened by male strangers on a number of occasions. She was also fearful that she would be forced into sex trafficking as the 18<sup>th</sup> Street Gang had attempted.



181. On October 8, 2018, Victoria sought to access the asylum process by presenting herself at the San Ysidro POE, despite her fears that she and her son would be subject to the U.S. child separation policy. When she arrived, she informed the CBP officials of her intent to apply for asylum and her fear of returning to Honduras. In response, the CBP official told her that she could not apply for asylum at that time, and that she had to speak with a Mexican officer instead. The CBP official did not give further instruction as to which Mexican officer or where to locate the officer.

182. At the time the First Amended Complaint was filed, Victoria desired to return immediately to seek access to the asylum process by presenting herself at the San Ysidro POE, but based on her past experience with CBP's practice at the U.S.-Mexico border, she understood that she would likely be turned away again. Victoria was fearful of remaining in Tijuana, for her life and the life of her son. She could not remain and believed seeking assistance from the Mexican government would be futile.

183. Following the filing of the First Amended Complaint in this case, Defendants made arrangements to facilitate the entry of Victoria and her child into the United States.

***Plaintiff Bianca Doe***

184. Bianca is a native and citizen of Honduras. She is a transgender woman. Bianca suffered physical violence and extreme discrimination while in Honduras because she is transgender. She was targeted by the infamous MS-13 gang who tried to recruit her. Rather than join, and fearing for her life, she fled Honduras on April 2, 2018.

185. Bianca arrived in Tapachula, Mexico and then later Mexico City, where she faced much of the same harassment and discrimination, including by police and federal officials. Eventually she reached Tijuana on September 19, 2018. She proceeded to seek access to the asylum process by presenting herself at the San Ysidro POE. CBP officials informed her that she could not apply for asylum because they were “full.” Instead, they told her to seek assistance from Mexican workers in white shirts. She did not see any and returned to a local shelter where she was staying.

186. Bianca returned the following day to seek access to the asylum process at the San Ysidro POE. She identified the Mexican workers in white shirts who informed her that they handled the asylum “waitlist” process. She was given a number, “919” which reflected her place on the waitlist. The Mexican workers told her that when her number was called she would be able proceed to the POE. She was informed that she would have to wait multiple weeks.

187. Desperate for her life, her safety, and with little resources, on or about September 28th, 2018, at 1:00 a.m. Bianca approached the U.S.-Mexico border fence abutting the beach and climbed over the fence into U.S. territory. Eventually a U.S. Border Patrol guard spotted her on U.S. soil and demanded that she climb back over the fence and into Mexico or else he would call the Mexican authorities.

188. On October 8, 2018, Bianca attempted once again to seek access to the asylum process by presenting herself at the San Ysidro POE. At the POE CBP official “Soto” denied Bianca’s request to seek asylum, again informing her that they were “full.” He in-

structed Bianca to stand aside and wait for a Mexican official. No Mexican official came and she left.

189. At the time the First Amended Complaint was filed, Bianca desired to return immediately to seek access to the asylum process by presenting herself at the San Ysidro POE, but based on her past experience with CBP's practice at the U.S.-Mexico border, she understood that she would likely be turned away again. Bianca was fearful of remaining in Tijuana. She could not remain and believed seeking assistance from the Mexican government would be futile.

190. Following the filing of the First Amended Complaint in this case, Defendants made arrangements to facilitate Bianca's entry into the United States.

***Plaintiff Emiliana Doe***

191. Emiliana is a native and citizen of Honduras. She is a transgender woman. She was threatened with violence and death by transnational drug dealers and gang members in Honduras. She was raped on multiple occasions by police officers. In May 2017, she was kidnapped and held for three days, and eventually thrown out of a moving car. In April 2018, she was abducted by four drug dealers, beaten for over six hours, pistol whipped, thrown out of a moving truck, and ordered to sell drugs. She was refused medical attention because she is transgender.

192. Emiliana fled Honduras on June 5, 2018 and embarked on the arduous journey through Mexico, where she was again repeatedly raped and threatened with death. She eventually reached Tijuana in September 2018. Emiliana intended to seek access to the asylum process in the United States, but was unsure how.

She spoke with a stranger who was also attempting to apply for asylum who informed her that she needed to get on the “waiting list.” She proceeded to seek access to the asylum process by going to the San Ysidro POE and speaking with two women who gave her a number, “1014,” which reflected her place on a waitlist. They told Emiliana to come back in six weeks.

193. Given the dangers in Tijuana, particularly to transgender women, Emiliana could not wait six weeks and instead on October 8, 2018, she sought access to the asylum process by presenting herself at the San Ysidro POE to ask for asylum. When she informed a CBP official that she wished to seek asylum in the United States, he responded that she could not because they were “full,” and instead ordered her to wait off to the side until a Mexican immigration official could come over. No official ever came.

194. At the time the First Amended Complaint was filed, Emiliana desired to return immediately to seek access to the asylum process by presenting herself at the San Ysidro POE, but based on her past experience with CBP’s practice at the U.S.-Mexico border, she understood that she would likely be turned away again. Emiliana was fearful of remaining in Tijuana. She could not remain and believed seeking assistance from the Mexican government would be futile.

195. Following the filing of the First Amended Complaint in this case, Defendants made arrangements to facilitate Emiliana’s entry into the United States.

***Plaintiff César Doe***

196. César is a native and citizen of Honduras. Earlier in 2018, the 18<sup>th</sup> Street gang demanded that he join

the gang at threat of death. He refused. The gang later kidnapped him and kept him in an abandoned house in the mountains. He was able to escape, and fled Honduras the next day.

197. César reached Tijuana on August 1, 2018 with the intention of seeking access to the asylum process in the United States. César approached the plaza immediately before the San Ysidro POE where he was approached by members of “Grupo Beta.” Grupo Beta informed him that he would need to go through them to apply for asylum. They explained that they would put him on a list and give him a number, and only when his number was called could he apply for asylum.

198. Soon thereafter, Grupo Beta began racially segregating individuals into three groups: Africans, Central Americans, and Mexicans. They placed César in the Central America group and then Mexican officials arrested him and placed him into detention. César was detained for twelve days and Mexican officials threatened to deport him on multiple occasions. A local shelter eventually secured César’s release from detention.

199. Continuing to fear for his life in Tijuana, César returned to the San Ysidro POE to seek access to the asylum process, and he spoke with Grupo Beta. He was eventually placed on the waitlist and given number “740.” After waiting a few weeks, César sought access to the asylum process by presenting himself at the San Ysidro POE with two staff members from Al Otro Lado. César informed CBP officials that he intended to seek asylum in the United States and that he feared return to his home country. The CBP officials refused to let him pass or seek asylum.

200. After waiting another few weeks, in September 2018 César sought access to the asylum process once again by presenting himself at the San Ysidro POE. Members of Grupo Beta intercepted him and threatened to call Mexican immigration officials and child protective services on him. The individuals pushed César toward the corner the plaza near the POE and called Mexican immigration. A staff member from Al Otro Lado escorted César back to the shelter.

201. At the time the First Amended Complaint was filed, César desired to return immediately to seek access to the asylum process by presenting himself at the San Ysidro POE, but based on his past experience with CBP's practice at the U.S.-Mexico border, he understood that he would likely be turned away again. César was fearful of remaining in Tijuana. He could not remain and believed seeking assistance from the Mexican government would be futile.

202. Following the filing of the First Amended Complaint in this case, Defendants made arrangements to facilitate César's entry into the United States.

## **V. LEGAL BACKGROUND**

### **A. U.S. Law Requires that Asylum Seekers Who Present Themselves at POEs Have Meaningful Access to the Asylum Process**

203. U.S. law requires CBP to give individuals who present themselves at POEs and express a desire to apply for asylum or a fear of persecution in their home countries the opportunity to seek protection in the United States without unreasonable delay.

204. Specifically, the Immigration and Nationality Act ("INA") and its implementing regulations set forth

a variety of ways in which such individuals may seek protection in the United States. *See, e.g.*, 8 U.S.C. § 1157 (admission of refugees processed overseas); 8 U.S.C. § 1158 (asylum); 8 U.S.C. § 1231(b)(3) (restriction of removal to a country where individual's life or freedom would be threatened); 8 C.F.R. §§ 208.16-18 (protection under the Convention Against Torture).

205. The INA provides that any noncitizen “who is physically present in the United States or who arrives in the United States” has a statutory right to apply for asylum, irrespective of such individual's status. 8 U.S.C. § 1158(a)(1). The INA also specifies processes that must be followed when an individual states a desire to seek asylum or expresses a fear of returning to his or her home country. *See* 8 U.S.C. § 1158(d)(1) (“The Attorney General shall establish a procedure for the consideration of asylum applications filed [by individuals physically present in the United States or who arrive in the United States].”). Under the INA, CBP must either:

- a. Refer the asylum seeker for a credible fear interview (*see* 15 U.S.C. § 1225(b)(1));
- b. Place the asylum seeker directly into regular removal proceedings by issuing a Notice to Appear (“NTA”), which will then allow the asylum seeker to pursue his or her asylum claim before an immigration judge (*see* 8 U.S.C. §§ 1225(b)(2), 1229, 1229a); or
- c. Parole the asylum seeker temporarily into the United States for urgent humanitarian reasons or significant public benefit (*see* 8 U.S.C. § 1182(d)(5)(A)).

206. The U.S. government recognized that the duty to allow a noncitizen access to the asylum process is “not discretionary.” *See, e.g.*, Federal Defendant’s Reply Brief in Support of Motion for Summary Judgment and Dismissal for Lack of Jurisdiction, cited in *Munyua v. United States*, No. 03-4538, 2005 U.S. Dist. LEXIS 11499, at \*16-19 (N.D. Cal. Jan. 10, 2005) (“[D]efendant acknowledges that [the immigration officers] did not have the discretion to ignore a clear expression of fear of return or to coerce an alien into withdrawing an application for admission”).

207. CBP is responsible for the day-to-day operation of POEs along the U.S.-Mexico border. CBP’s obligations include inspecting and processing individuals who present themselves at POEs to enable them to pursue their claims for asylum in the United States. CBP officials themselves are not authorized to evaluate, grant or reject an individual’s asylum claim.

208. All noncitizens arriving at POEs along the U.S.-Mexico border must be inspected by CBP officials. *See* 8 U.S.C. § 1225(a)(3) (“All [noncitizens] . . . who are applicants for admission or otherwise seeking admission . . . **shall be inspected** by immigration officers.”) (emphasis added). During inspection, CBP officials must determine whether a noncitizen may be admitted to the United States. *See* 8 U.S.C. § 1182(a) (specifying grounds of inadmissibility). In order to make this determination, CBP scrutinizes an individual’s entry documents. *See* 8 U.S.C. § 1181(a) (outlining documentation requirements for the admission of noncitizens into the United States). Asylum seekers often flee their countries on very short notice and thus frequently lack valid entry documents. Once a CBP official makes a determination of inadmissibility, the indi-



vidual becomes subject to removal from the United States.

209. CBP officials must then place the noncitizen into either expedited removal proceedings under 8 U.S.C. § 1225(b) or regular removal proceedings under 8 U.S.C. § 1229.

210. Expedited removal proceedings involve a more streamlined process than regular removal proceedings and are reserved for people apprehended at or near the border. *See* 8 U.S.C. § 1225(b)(1)(A)(i) (permitting certain persons who are seeking admission at the border to the United States to be expeditiously removed without a full immigration judge hearing). However, Congress included important safeguards in the expedited removal statute in an effort specifically to protect asylum seekers.

211. The INA unequivocally states that if a noncitizen placed in expedited removal proceedings “indicates either an intention to apply for asylum . . . or a fear of persecution, the [CBP] officer *shall* refer the [noncitizen] for an interview by an asylum officer.” 8 U.S.C. § 1225(b)(1)(A)(ii) (emphasis added). The requirement to refer an asylum seeker placed in expedited removal proceedings to an asylum officer is *mandatory*.

212. Likewise, the applicable regulations promulgated under the INA reinforce that if an individual in expedited removal proceedings asserts an intention to apply for asylum or a fear of persecution, then “the inspecting officer *shall not* proceed further with removal of the [noncitizen] until the [noncitizen] has been referred for an interview by an asylum officer.” 8 C.F.R. § 235.3(b)(4) (emphasis added).

213. Importantly, CBP officials must read a form to noncitizens subject to expedited removal advising them of their right to speak to an asylum officer if they express a desire to apply for asylum or a fear of returning to their home countries. *See* 8 C.F.R. § 235.3(b)(2)(i); DHS Form I-867A.

214. Affirming that the CBP officials themselves are not authorized to adjudicate asylum claims, the regulations specifically charge **asylum officers** from U.S. Citizenship and Immigration Services with making initial determinations as to whether there is a “significant possibility” that an individual can establish eligibility for asylum. *See* 8 C.F.R. § 235.3(b)(4); *see also* 8 U.S.C. § 1225(b)(1)(B)(ii). This is because asylum officers are trained in the often complicated and evolving law surrounding asylum, and thus are uniquely positioned to conduct such interviews, which themselves require particular interviewing and assessment skills as well as comprehension of the social and political contexts from which asylum seekers flee. In fact, the INA specifically defines “asylum officer” as an immigration officer who “has had professional training in country conditions, asylum law, and interview techniques comparable to that provided to full-time adjudicators of applications under section 1158.” 8 U.S.C. § 1225(b)(1)(E).

215. Applicants who establish that they have a “significant possibility” of proving their eligibility for asylum receive positive credible fear determinations. They are taken out of the expedited removal system altogether and placed into regular removal proceedings, where they have the opportunity to submit an asylum application, develop a full record before an Immigration Judge, appeal to the Board of Immigration Appeals, and

seek judicial review of an adverse decision. 8 U.S.C. § 1225(b)(1)(B)(ii); 8 C.F.R. §§ 235.6(a)(1)(ii), (iii).

216. Alternatively, CBP officials may place noncitizens directly into regular removal proceedings by issuing an NTA. 8 U.S.C. §§ 1225(b)(2), 1229(a)(1), 1229a. Once in regular removal proceedings, the asylum seeker can submit an asylum application and must receive a full hearing before an Immigration Judge, file an administrative appeal with the Board of Immigration Appeals, and seek judicial review. 8 U.S.C. § 1229a(a)(1) (“An immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of an alien.”).

217. At the discretion of the DHS Secretary, an individual may also be temporarily paroled into the United States for urgent humanitarian reasons or significant public benefit. When the purposes of such parole have been served, the individual must be returned to the custody from which he was paroled, after which his case will continue to be handled in the same manner as that of any other applicant for admission to the United States. 8 U.S.C. § 1182(d)(5)(A).

218. Despite these prescribed procedures, CBP has implemented a policy and regularly employs a variety of egregious practices (including those described above) that have one unlawful result: directly or constructively depriving Class Plaintiffs, and the asylum seekers they represent, of meaningful access to the asylum process, and thereby violating their right to seek asylum under U.S. law.

219. Acknowledging the illegality of the Trump administration’s ongoing pushbacks of asylum seekers at the border, the House Appropriations Committee called on DHS in July 2018 to “ensure that the United States

is meeting its legal obligations, to include reminding field officers and agents about CBP’s legal responsibilities to ensure that asylum-seekers can enter at POES.”<sup>87</sup>

**B. Defendants Have No Authority Under the INA to Turn Back a Noncitizen Seeking Admission at a POE**

220. CBP’s authority is limited to that granted by Congress in the INA. Nothing in the INA authorizes Defendants, through their officers and employees, to turn back a noncitizen who seeks admission at a POE.

221. When inspecting a noncitizen who arrives at a POE, CBP officials must follow the procedures mandated by Congress in 8 U.S.C. § 1225. Pursuant to this section, CBP officials are limited to the following possible actions with respect to any arriving noncitizen who is not clearly and beyond a doubt entitled to be admitted:

- a. Place arriving noncitizens who are inadmissible under one of two grounds specified by statute in expedited removal proceedings pursuant to 8 U.S.C. § 1225(b)(1)(A)(i);
- b. Refer any noncitizen placed in expedited removal proceedings who expresses either an intent to apply for asylum or a fear of persecution if returned to his or her home country to an asylum officer for a credible fear interview pursuant to 8 U.S.C. §§ 1225(b)(1)(A)(ii), 1225(b)(1)(B);
- c. Place “other” arriving noncitizens (*i.e.*, those who are not placed in expedited removal pro-

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<sup>87</sup> *Bill Report Draft, supra* note 78, at 4.

ceedings under 8 U.S.C. § 1225(b)(1)(A) and who are neither crewmen nor stowaways) in removal proceedings under 8 U.S.C. § 1229a pursuant to 8 U.S.C. § 1225(b)(2);

- d. Follow other removal procedures with respect to noncitizens suspected of being inadmissible on terrorism or related security grounds pursuant to 8 U.S.C. § 1225(c); or
- e. Accept from the noncitizen a voluntary (*i.e.*, non-coerced) withdrawal of her application for admission pursuant to 8 U.S.C. § 1225(a)(4) and 8 C.F.R. § 235.4.

222. Defendants, through their officers, employees, and agents, act without authority and in violation of the law when they directly deny an individual access to the U.S. asylum process at a POE.

223. Defendants, through their officers, employees, and agents, act without authority and in violation of the law when they constructively deny an individual's access to the asylum process by unreasonably delaying their ability to present themselves at a POE.

224. Moreover, Defendants' Turnback Policy is *ultra vires*.

**C. Class Plaintiffs Are Entitled to Procedural Due Process Rights Under the Fifth Amendment to the U.S. Constitution**

225. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V. In addition, where Congress has granted statutory rights and has directed an agency to establish

a procedure for providing such rights, the Constitution requires the government to establish a fair procedure and to abide by that procedure. In the asylum context, U.S. law mandates that asylum seekers be provided with such process. Multiple courts have recognized that such procedural rights are critical in the asylum context and can result in life or death decisions, because applicants wrongly denied asylum can be subject to death or other serious harm in their home countries. *See, e.g., Marincas v. Lewis*, 92 F.3d 195, 203 (3d Cir. 1996) (“The basic procedural rights Congress intended to provide asylum applicants . . . are particularly important because an applicant erroneously denied asylum could be subject to death or persecution if forced to return to his or her home country.”).

226. The INA and its implementing regulations provide Class Plaintiffs with the right to be processed at a POE and granted meaningful access to the asylum process. *See, e.g.*, 8 U.S.C. §§ 1158(a)(1), 1225(a)(3), 1225(b)(1)(A)(ii), 1225(b)(1)(B), 1225(b)(2). By systematically turning away asylum seekers presenting themselves at POEs along the U.S.-Mexico border or unreasonably delaying their inspections—and thus directly or constructively denying them access to the asylum process, Defendants have failed to comply with the due process procedures for processing asylum seekers under the INA and its implementing regulations.

**D. The *Non-Refoulement* Doctrine Under International Law Requires Implementation and Adherence to a Procedure to Ensure Prompt Access to Asylum**

227. The United States is obligated by a number of treaties and protocols to adhere to the duty of *non-*

*refoulement*—a duty that prohibits a country from returning or expelling an individual to a country where he or she has a well-founded fear of persecution and/or torture and that requires processes that ensure fair and efficient administration of the asylum process.

228. The Office of the United Nations High Commissioner for Refugees (“UNHCR”) has described *non-refoulement* as “the cornerstone of international refugee protection,” and notes that it is “of particular relevance to asylum-seekers.”<sup>88</sup> The primary treaty source for the duty of *non-refoulement* is the 1951 Convention on the Rights of Refugees. Article 33 of the Convention prohibits a state from returning “a refugee *in any manner* whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”<sup>89</sup> As UNHCR has explained, the Treaty’s emphasis on “any manner” of *refoulement* reflects a state duty to avoid using direct or indirect ways of subjecting a person to a risk of return to persecution.<sup>90</sup>

229. In addition, the duty of *non-refoulement* extends not only to a person’s country of origin, “but also to any other place where a person has reason to fear threats to his or her life or freedom related to one or more of the grounds set out in the 1951 Convention, or

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<sup>88</sup> *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, UNHCR (Jan. 26, 2007), <http://www.unhcr.org/4d9486929.pdf>.

<sup>89</sup> 1951 Refugee Convention, Art. 33 (emphasis added).

<sup>90</sup> *Id.* at 7.

from where he or she risks being sent to such a risk.”<sup>91</sup> Accordingly, a state must not only prevent return to danger, it must take affirmative measures to prevent a risk of harm by “adopt[ing] a course that does not result in [asylum seekers] removal, directly or indirectly, to a place where their lives or freedom would be in danger.”<sup>92</sup> This includes “access to the territory and to *fair and efficient* asylum procedures.”<sup>93</sup>

230. The United States adopted the protections of Article 33 by signing onto the 1967 Protocol Relating to the Status of Refugees, which incorporated Articles 2-34 of the 1951 Convention.

231. The prohibition against *refoulement* is likewise central to other treaties ratified by the United States, including the International Covenant on Civil and Political Rights (“ICCPR”) and the Convention Against Torture (“CAT”), both of which prohibit returning an individual to harm and obligate the United States to implement and follow legal procedures to protect refugees’ right to *non-refoulement*.<sup>94</sup>

232. In order to effectuate an asylum seeker’s right to *non-refoulement*, the United States is obligated to implement and follow procedures to ensure that his or her request for asylum be duly and efficiently considered. The United States implemented this legal obligation with the passage of the 1980 Refugee Act, which established a procedure for a noncitizen physically pre-

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<sup>91</sup> *Id.* at 3 (citing UNHCR, Note on Non-Refoulement (EC/SCP/2), 1977 ¶4).

<sup>92</sup> *Id.* at ¶ 8.

<sup>93</sup> *Id.* (emphasis added).

<sup>94</sup> See ICCPR, Art. 13; CAT, Art. 3.



sent in the United States or at a land border or POE to apply for asylum.<sup>95</sup>

233. In practice, the duty of *non-refoulement* covers not only those refugees and asylum seekers already present inside the country, but also those who present themselves at POEs along the U.S. border. The duty requires U.S. officials such as Defendants to process those seeking to cross the U.S. border and not to deny or unreasonably delay their access to an efficient, lawful process to present a claim for asylum.

234. The norm of *non-refoulement* is specific, universal and obligatory. It is so widely accepted that it has reached the status of *jus cogens*—a norm not subject to derogation. Indeed, in 1996, the United Nations Executive Committee on the International Protection of Refugees explicitly concluded that the *non-refoulement* principle had achieved the status of a norm “not subject to derogation.”<sup>96</sup> The principle was recognized as such in the 1984 Cartagena Declaration on Refugees; was included in a portion of the Refugee Convention from which derogation is not permitted; and has been recognized by bodies, including the Inter-American Commission on Human Rights and the Organization of American States General Assembly.

235. Defendants’ policy and actions to actively or constructively deny Class Plaintiffs, and the asylum seekers they represent, access to the U.S. asylum pro-

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<sup>95</sup> See Refugee Act of 1980, Pub. L. No. 96-212, § 201(b), 94 Stat. 102 (1980).

<sup>96</sup> Executive Committee Conclusion No. 79, *General Conclusion on International Protection* (1996).

cess violate their binding and enforceable obligations under international law.

## **VI. CLASS ACTION ALLEGATIONS**

236. Class Plaintiffs bring this action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2) on behalf of themselves and all other persons similarly situated. The proposed class is defined as follows:

All noncitizens who seek or will seek to access the U.S. asylum process by presenting themselves at a POE along the U.S.-Mexico border and are denied access to the U.S. asylum process by or at the instruction of CBP officials.

237. The class is so numerous that joinder of all members is impracticable. CBP's misconduct toward asylum seekers at POEs along the U.S.-Mexico border has been the focus of monitoring, reporting and advocacy by numerous well-respected non-governmental organizations. These organizations have investigated and documented thousands of examples of asylum seekers being turned back by CBP officials. Many more asylum seekers likely have been the victims of this unlawful conduct as these abuses often go unreported. Asylum seekers who are turned back at the border are continuously moving and relocating, also making joinder impracticable.

238. There are questions of law and fact that are common to the class. The class alleges common harms: denial of access to the asylum process at POEs along the U.S.-Mexico border and a violation of the right not to be returned to countries where they fear persecution. The class members' entitlement to these rights is based on a common core of facts. All members of the proposed

class have attempted to seek asylum by presenting themselves at a POE along the U.S.-Mexico border. All of them have expressed a fear of persecution or a desire to apply for asylum, or would have done so but for the conduct of Defendants. These facts entitle all of them to the opportunity to seek asylum. Yet each class member has been and likely will again be unlawfully denied access to the U.S. asylum process by CBP. Moreover, all class members raise the same legal claims: that U.S. law requires CBP officials at POEs to give them meaningful access to the asylum process. Their shared common facts will ensure that judicial findings regarding the legality of the challenged practices will be the same for all class members. Should Class Plaintiffs prevail, *all* class members will benefit; each of them will be entitled to a prompt, lawful inspection at a POE along the U.S.-Mexico border and an opportunity to seek asylum.

239. Class Plaintiffs' claims are typical of the claims of the class. Class Plaintiffs and class members raise common legal claims and are united in their interest and injury. All Class Plaintiffs, like all class members, are asylum seekers to whom CBP officials unlawfully denied, whether actively or constructively, access to the U.S. asylum process after they presented themselves at POEs along the U.S.-Mexico border. Class Plaintiffs and class members are thus victims of the same, unlawful course of conduct.

240. Class Plaintiffs are adequate representatives. Class Plaintiffs seek relief on behalf of the class as a whole and have no interest antagonistic to other members of the class. Class Plaintiffs' mutual goal is to declare Defendants' challenged policies and practices unlawful and to obtain declaratory and injunctive relief that would cure this illegality. Class Plaintiffs seek a

remedy for the same injuries as the class members, and all share an interest in having a meaningful opportunity to seek asylum. Thus, the interests of the Class Plaintiffs and of the class members are aligned.

241. Class Plaintiffs are represented by attorneys from the Southern Poverty Law Center, the Center for Constitutional Rights, the American Immigration Council, and Latham & Watkins LLP. Counsel have a demonstrated commitment to protecting the rights and interests of noncitizens and, together, have considerable experience in handling complex and class action litigation in the immigration field. Counsel have represented numerous classes of immigrants and other victims of systematic government misconduct in actions in which they successfully obtained class relief.

242. Defendants have acted or refused to act on grounds that are generally applicable to Class Plaintiffs and the class. Defendants have failed to provide Class Plaintiffs and class members with meaningful access to the U.S. asylum process. Defendants' actions violate Class Plaintiffs' and class members' statutory, regulatory and constitutional rights to access to the asylum process. Declaratory and injunctive relief are appropriate remedies.

243. In the absence of a class action, there is substantial risk that individual actions would be brought in different venues, creating a risk of inconsistent injunctions to address Defendants' common conduct.

**FIRST CLAIM FOR RELIEF****DECLARATORY AND INJUNCTIVE RELIEF  
AGAINST ALL DEFENDANTS (VIOLATION OF THE  
RIGHT TO SEEK ASYLUM UNDER THE IMMIGRA-  
TION AND NATIONALITY ACT)**

244. Al Otro Lado and Class Plaintiffs reallege and incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

245. INA § 208(a)(1) (8 U.S.C. § 1158(a)(1)) gives any noncitizen who is physically present in or who arrives in the United States a statutory right to seek asylum, regardless of such individual's immigration status.

246. When a noncitizen presents himself or herself at a POE and indicates an intention to apply for asylum or a fear of persecution, CBP officials must refer the noncitizen for a credible fear interview under 8 U.S.C. § 1225(b)(1)(A)(ii) and 8 C.F.R. § 235.3(b)(4), or, in accordance with 8 U.S.C. § 1225(b)(2), place the noncitizen directly into regular removal proceedings under 8 U.S.C. § 1229(a)(1).

247. Class Plaintiffs presented themselves at POEs and either asserted an intention to apply for asylum or a fear of persecution in their countries of origin or would have done so but for the Defendants' conduct. Nevertheless, CBP officials did not refer Class Plaintiffs to an asylum officer for credible fear interviews pursuant to 8 U.S.C. § 1225(b)(1)(A)(ii), or, in accordance with 8 U.S.C. § 1225(b)(2), place Class Plaintiffs directly into regular removal proceedings pursuant to 8 U.S.C. § 1229(a)(1).

248. Instead, in direct contravention of the INA, CBP officials engaged in unlawful tactics, including the implementation of the Turnback Policy, that actively or constructively denied Class Plaintiffs' access to the statutorily prescribed asylum process and forced them to return to Mexico.

249. CBP officials' treatment of Class Plaintiffs at the POEs and the U.S.-Mexico border was inflicted at the instigation, under the control or authority, or with the knowledge, consent, direction and/or acquiescence of Defendants.

250. As a result of Defendants' violations of the INA, Class Plaintiffs have been damaged—through the active or constructive denial of access to the asylum process and by being forced to return to Mexico or other countries where they face threats of further persecution.

251. As a result of Defendants' violations of the INA, Plaintiff Al Otro Lado has been damaged—namely its core mission has been frustrated and it has been forced to divert substantial resources away from its programs to counteract CBP's unlawful practices at or near POEs along the U.S.-Mexico border.

252. Defendants' practices have resulted and will continue to result in irreparable injury, including a continued risk of violence and serious harm to Class Plaintiffs and further violations of their statutory rights. Class Plaintiffs and Al Otro Lado do not have an adequate remedy at law to redress the violations alleged herein, and therefore seek injunctive relief restraining Defendants from continuing to engage in the unlawful policy and practices alleged herein.

253. Pursuant to Federal Rule of Civil Procedure 57 and 28 U.S.C. §§ 2201 and 2202, this Court may declare the rights or legal relations of any party in any case involving an actual controversy.

254. An actual controversy has arisen and now exists between Class Plaintiffs and Al Otro Lado, on one hand, and Defendants, on the other. Class Plaintiffs and Al Otro Lado contend that Defendants' Turnback Policy, as well as the conduct and practices carried out in reliance on it, as alleged in this Second Amended Complaint, violate the INA. On information and belief, Defendants contend that their Turnback Policy, conduct and practices are lawful.

255. Class Plaintiffs and Al Otro Lado therefore request and are entitled to a judicial determination as to the rights and obligations of the parties with respect to this controversy, and such a judicial determination of these rights and obligations is necessary and appropriate at this time.

### **SECOND CLAIM FOR RELIEF**

#### **DECLARATORY RELIEF AND INJUNCTIVE RELIEF AGAINST ALL DEFENDANTS (VIOLATION OF SECTION 706(1) OF THE ADMINISTRATIVE PROCEDURE ACT)**

256. Al Otro Lado and Class Plaintiffs reallege and incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

257. The Administrative Procedure Act ("APA") (5 U.S.C. § 551, *et. seq.*) authorizes suits by "[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within

the meaning of a relevant statute.” 5 U.S.C. § 702. The APA also provides relief for a failure to act: “The reviewing court shall . . . compel agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1).

258. CBP officials, at the instigation, under the control or authority of, or with the direction, knowledge, consent, or acquiescence of Defendants, have engaged in an unlawful widespread pattern or practice of denying and unreasonably delaying asylum seekers’ access to the asylum process by, among other tactics: lying; using threats, intimidation and coercion; employing verbal abuse and applying physical force; physically blocking access to POE buildings; imposing unreasonable delays before granting access to the asylum process; denying outright access to the asylum process; and denying access to the asylum process in a racially discriminatory manner.

259. CBP officials, at the instigation, under the control or authority of, or with the direction, knowledge, consent, or acquiescence of Defendants, have also adopted and implemented the Turnback Policy, restricting access to the asylum process at POEs by mandating that CBP officers directly or constructively turn back asylum seekers at the border based on purported “capacity” constraints.

260. Through this conduct, CBP officials have failed, in violation of the APA, to take actions mandated by the following statutes and implementing regulations:

- 8 U.S.C. § 1225(a)(1)(3) (“All aliens . . . who are applicants for admission or otherwise seeking admission or readmission to or transit



through the United States ***shall be inspected by immigration officers.***”) (emphasis added);

- 8 U.S.C. § 1225(b)(1)(A)(ii) (“If an immigration officer determines that an alien . . . who is arriving in the United States . . . is inadmissible . . . and the alien indicates either an intention to apply for asylum under section 1158 of this title or a fear of persecution, ***the officer shall refer the alien for an interview by an asylum officer . . .***”) (emphasis added);
- 8 U.S.C. § 1225(b)(2) (“[I]n the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.”); and
- 8 C.F.R. § 235.3(b)(4) (“If an alien subject to the expedited removal provisions indicates an intention to apply for asylum, or expresses a fear of persecution or torture, or a fear of return to his or her country, the inspecting officer ***shall not proceed further*** with removal of the alien ***until the alien has been referred for an interview by an asylum officer . . .***”) (emphasis added).

261. Through this conduct, CBP officials have also failed, in violation of the APA, to take the above-listed mandated actions without unreasonable delay.

262. Defendants’ repeated and pervasive failures to act, and/or to act within a reasonable time, which denied and/or unreasonably delayed Class Plaintiffs’ access to

the statutorily prescribed asylum process, constitute unlawfully withheld and unreasonably delayed agency action and therefore give rise to federal jurisdiction and mandate relief under the APA.

263. As a result of the acts constituting violations of the APA, Class Plaintiffs have been damaged through the denial and/or unreasonable delay of access to the asylum process and by being forced to return to and/or wait in Mexico, where they face threats of further persecution.

264. As a result of the acts constituting violations of the APA, Plaintiff Al Otro Lado has been damaged—namely, its core mission has been frustrated and it has been forced to divert substantial resources away from its programs to counteract CBP’s unlawful practices at POEs along the U.S.-Mexico border.

265. Defendants’ Turnback Policy and widespread pattern or practice have resulted and will continue to result in irreparable injury, including a continued risk of violence and serious harm to Class Plaintiffs and further violations of their statutory and regulatory rights. Class Plaintiffs and Al Otro Lado do not have an adequate remedy at law to redress the violations alleged herein, and therefore seek injunctive relief restraining Defendants from continuing to engage in the unlawful practices alleged herein.

266. Al Otro Lado and Class Plaintiffs have exhausted all available administrative remedies and have no adequate remedy at law.

267. Pursuant to Federal Rule of Civil Procedure 57 and 28 U.S.C. §§ 2201 and 2202, this Court may declare

the rights or legal relations of any party in any case involving an actual controversy.

268. An actual controversy has arisen and now exists between Class Plaintiffs and Al Otro Lado, on one hand, and Defendants, on the other. Class Plaintiffs and Al Otro Lado contend that Defendants' Turnback Policy and sanctioning of CBP's unlawful widespread pattern or practice at POEs along the U.S.-Mexico border, as alleged in this Complaint, violate the APA. On information and belief, Defendants contend that the Turnback Policy and widespread pattern or practice are lawful.

269. Class Plaintiffs and Al Otro Lado therefore request and are entitled to a judicial determination as to the rights and obligations of the parties with respect to this controversy, and such a judicial determination of these rights and obligations is necessary and appropriate at this time.

### **THIRD CLAIM FOR RELIEF**

#### **DECLARATORY RELIEF AND INJUNCTIVE RELIEF AGAINST ALL DEFENDANTS (VIOLATION OF SECTION 706(2) OF THE ADMINISTRATIVE PROCEDURE ACT—AGENCY ACTION IN EXCESS OF STATUTORY AUTHORITY AND WITHOUT OBSERVANCE OF PROCEDURES REQUIRED BY LAW)**

270. Al Otro Lado and Class Plaintiffs reallege and incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

271. Under the APA, "the reviewing court shall . . . hold unlawful and set aside agency action, finding,

and conclusions found to be . . . in excess of statutory jurisdiction, authority, or limitations, or short of statutory right [and/or] without observance of procedure required by law.” 5 U.S.C. § 706(2)(C), (D).

272. Defendants, through implementation of the Turnback Policy and sanctioning of CBP’s unlawful widespread pattern or practice of denying and unreasonably delaying asylum seekers’ access to the asylum process, have acted in excess of their statutorily prescribed authority and without observance of the procedures required by law in violation of section 706(2) of the APA. *See* 5 U.S.C. §§ 706(2)(C), (D). Congress mandated the various procedures that Defendants and their officers, employees, and agents are authorized and required to follow when inspecting individuals who seek admission at POEs. *See* 8 U.S.C. § 1225. Regulations implementing section 1225 also establish the required procedures for inspection of individuals who seek admission at POEs. *See* 8 C.F.R. § 235.3(b)(4). None of these procedures authorizes a CBP official to turn back a noncitizen seeking asylum at a POE, at the physical U.S.-Mexico border, or any place in between.

273. In turning back Class Plaintiffs and purported class members at POEs or along the U.S.-Mexico border without following the procedures mandated by the INA and its implementing regulations, CBP officials have acted and continue to act in excess of the authority granted to them by Congress and without observance of procedure required by law.

274. The Turnback Policy is a policy authorized by Defendants with the purpose of restricting and unreasonably delaying asylum seekers’ access to the U.S. asylum process on the basis of purported capacity con-

straints at U.S. POEs. Defendants' own statements and communications, as well as a report of the DHS Office of Inspector General, confirm Defendants ordered the Turnback Policy and its implementation by CBP. The Turnback Policy thus constitutes a final agency action under 5 U.S.C. § 704 and a violation of 5 U.S.C. § 706(2).

275. Furthermore, each instance where Defendants, through their officers, employees, and agents, directly or constructively deny Class Plaintiffs or purported class members access to the asylum process constitutes a final agency action under 5 U.S.C. § 704 and a violation of 5 U.S.C. § 706(2).

276. As a result of the acts constituting violations of the APA, Class Plaintiffs have been damaged through the denial, restriction, and/or unreasonable delay of access to the asylum process and by being forced to return to and/or wait in Mexico where they face threats of further persecution and/or other serious harm.

277. As a result of the acts constituting violations of the APA, Plaintiff Al Otro Lado has been damaged—namely, its core mission has been frustrated and it has been forced to divert substantial resources away from its programs to counteract CBP's unlawful practices at POEs along the U.S.-Mexico border.

278. Defendants' Turnback Policy and widespread pattern or practice have resulted and will continue to result in irreparable injury, including a continued risk of violence and serious harm to Class Plaintiffs and further violations of their statutory and regulatory rights. Class Plaintiffs and Al Otro Lado do not have an adequate remedy at law to redress the violations alleged herein, and therefore seek injunctive relief restraining

Defendants from continuing to engage in the unlawful policy alleged herein.

279. Al Otro Lado and Class Plaintiffs have exhausted all available administrative remedies and have no adequate remedy at law.

280. Pursuant to Federal Rule of Civil Procedure 57 and 28 U.S.C. §§ 2201 and 2202, this Court may declare the rights or legal relations of any party in any case involving an actual controversy.

281. An actual controversy has arisen and now exists between Class Plaintiffs and Al Otro Lado, on one hand, and Defendants, on the other. Class Plaintiffs and Al Otro Lado contend that Defendants' Turnback Policy and sanctioning of CBP's unlawful widespread pattern or practice at POEs along the U.S.-Mexico border, as alleged in this Complaint, violate the APA. On information and belief, Defendants contend that the Turnback Policy and widespread pattern or practice are lawful.

282. Class Plaintiffs and Al Otro Lado therefore request and are entitled to a judicial determination as to the rights and obligations of the parties with respect to this controversy, and such a judicial determination of these rights and obligations is necessary and appropriate at this time.

#### **FOURTH CLAIM FOR RELIEF**

#### **DECLARATORY RELIEF AND INJUNCTIVE RELIEF AGAINST ALL DEFENDANTS (VIOLATION OF PROCEDURAL DUE PROCESS)**

283. Al Otro Lado and Class Plaintiffs reallege and incorporate by reference each and every allegation con-

tained in the preceding paragraphs as if set forth fully herein.

284. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of “life, liberty, or property, without due process of law.” U.S. Const. Amend. V.

285. Congress has granted certain statutory rights to asylum seekers, such as Class Plaintiffs and the asylum seekers they represent, and has directed DHS to establish a procedure for providing such rights. The Due Process Clause thus requires the government to establish a fair procedure and to abide by that procedure.

286. As set forth above, the INA and its implementing regulations provide Class Plaintiffs the right to be processed at a POE and granted meaningful access to the asylum process. *See* 8 U.S.C. §§ 1158(a)(1), 1225(a)(3), 1225(b)(1)(A)(ii), 1225(b)(1)(B), 1225(b)(2); *see also* 8 C.F.R. § 235.3(b)(4).

287. By adopting the Turnback Policy and using a variety of tactics to turn back asylum seekers at POEs along the U.S.-Mexico border, CBP officials have denied Class Plaintiffs access to the asylum process and failed to comply with procedures set forth in the INA and its implementing regulations.

288. CBP officials’ treatment of Class Plaintiffs at the U.S.-Mexico border was inflicted at the instigation, under the control or authority, or with the knowledge, consent, or acquiescence of Defendants.

289. By denying Class Plaintiffs’ access to the asylum process, Defendants have violated Class Plaintiffs’

procedural due process rights under the Fifth Amendment to the U.S. Constitution.

290. As a result of the Defendants' violations of the Fifth Amendment to the U.S. Constitution, Class Plaintiffs have been damaged through the denial of access to the asylum process and by being forced to return to Mexico where they face threats of further persecution.

291. Defendants' practices have resulted and will continue to result in irreparable injury, including a continued risk of violence and serious harm to Class Plaintiffs and further violations of their constitutional rights. Class Plaintiffs do not have an adequate remedy at law to redress the violations alleged herein, and therefore seek injunctive relief restraining Defendants from engaging in the unlawful policy, conduct and practices alleged herein.

292. An actual controversy exists between Class Plaintiffs, on one hand, and Defendants, on the other. Class Plaintiffs contend that Defendants' Turnback Policy and sanctioning of CBP's unlawful widespread pattern or practice at POEs along the U.S.-Mexico border, as alleged in the Complaint, violate the Fifth Amendment to the United States Constitution. On information and belief, Defendants contend that the Turnback Policy and widespread pattern or practice are lawful.

293. Class Plaintiffs therefore request and are entitled to a judicial determination as to the rights and obligations of the parties with respect to this controversy, and such a judicial determination of these rights and obligations is necessary and appropriate at this time.



**FIFTH CLAIM FOR RELIEF****DECLARATORY RELIEF AND INJUNCTIVE RELIEF  
AGAINST ALL DEFENDANTS (VIOLATION OF THE  
*NON-REFOULEMENT* DOCTRINE)**

294. Class Plaintiffs reallege and incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

295. CBP officials have systematically denied, or unreasonably delayed, access to the asylum process by Class Plaintiffs, and the asylum seekers they represent, in violation of customary international law reflected in treaties which the United States has ratified and implemented: namely, the specific, universal and obligatory norm of *non-refoulement*, which has also achieved the status of a *jus cogens* norm, and which forbids a country from returning or expelling an individual to a country where he or she has a well-founded fear of persecution and/or torture, whether it is her home country or another country.

296. The duty of *non-refoulement* also requires the adoption of procedures to ensure prompt, efficient, and unbiased access to the asylum process.

297. CBP officials' treatment of Class Plaintiffs at the U.S.-Mexico border was inflicted at the instigation, under the control or authority, or with the knowledge, consent, direction or acquiescence of Defendants.

298. Defendants' conduct is actionable under the Alien Tort Statute, 28 U.S.C. § 1350, which authorizes declaratory and injunctive relief.

299. As a result of the acts constituting violations of the *jus cogens* norm of *non-refoulement*, Class Plaintiffs have been damaged through denial or unreasona-

ble delay of access to the asylum process and by being forced to return to Mexico or other countries where they face threats of further persecution.

300. As a result of the acts constituting violations of the norm of *non-refoulement*, Al Otro Lado has been damaged—namely, its core mission has been frustrated and it has been forced to divert substantial resources away from its programs to counteract CBP’s unlawful practices at POEs along the U.S.-Mexico border.

301. Defendants’ practices have resulted and will continue to result in irreparable injury, including a continued risk of violence and serious harm to Class Plaintiffs and further infringement of the protections afforded to them under international law. Class Plaintiffs and Al Otro Lado do not have an adequate remedy at law to redress the violations alleged herein, and therefore seek injunctive relief restraining Defendants from engaging in the unlawful conduct and practices alleged herein.

302. An actual controversy exists between Class Plaintiffs and Al Otro Lado, on one hand, and Defendants, on the other. Class Plaintiffs and Al Otro Lado contend that Defendants’ Turnback Policy, as well as the widespread pattern or practice carried out in reliance on it, as alleged in this Complaint, violate the norm of *non-refoulement*. On information and belief, Defendants contend that their policy, conduct and practices are lawful.

303. Class Plaintiffs and Al Otro Lado therefore request and are entitled to a judicial determination as to the rights and obligations of the parties with respect to this controversy, and such a judicial determination of these rights and obligations is necessary and appropriate at this time.

**PRAYER FOR RELIEF**

304. WHEREFORE, Plaintiff Al Otro Lado and Class Plaintiffs respectfully request that the Court:

- a. Issue an order certifying a class of individuals pursuant to Federal Rule of Civil Procedure 23(a) and 23(b)(2);
- b. Appoint the undersigned as class counsel pursuant to Federal Rule of Civil Procedure 23(g);
- c. Issue a judgment declaring that Defendants' Turnback Policy, as well as the practices, acts and/or omissions described herein, give rise to federal jurisdiction;
- d. Issue a judgment declaring that Defendants' Turnback Policy, as well as the practices, acts and/or omissions described herein, violate one or more of the following:
  - (1) The Immigration and Nationality Act, based on violations of 8 U.S.C. §§ 1158 and 1225;
  - (2) Section 706(1) of the Administrative Procedure Act, based on the unlawful withholding and unreasonable delay of agency action mandated by 8 U.S.C. § 1225 and 8 C.F.R. § 235.3;
  - (3) Section 706(2) of the Administrative Procedure Act;
  - (4) The Due Process Clause of the Fifth Amendment; and
  - (5) The duty of *non-refoulement* under international law;

- e. Issue injunctive relief requiring Defendants to comply with the laws and regulations cited above;
- f. Issue injunctive relief prohibiting Defendants, and any of their officers, agents, successors, employees, representatives, and any and all persons acting in concert with them or on their behalf, from continuing to implement the Turnback Policy and from engaging in the unlawful practices, acts and/or omissions described herein at POEs along the U.S.-Mexico border;
- g. Issue injunctive relief requiring Defendants to implement procedures to provide effective oversight and accountability in the inspection and processing of individuals who present themselves at POEs along the U.S.-Mexico border for the purpose of seeking asylum;
- h. Award Plaintiffs their reasonable attorneys' fees, costs and other expenses pursuant to 28 U.S.C. § 2412, and other applicable law; and
- (i) Grant any and all such other relief as the Court deems just and equitable.

Dated: November 7, 2018

LATHAM & WATKINS LLP  
 Manuel A. Abascal  
 Michaela R. Laird

By: /s/ MANUEL A. ABASCAL  
MANUEL A. ABASCAL  
*Attorneys for Plaintiffs*

1300 Pennsylvania Avenue NW  
Washington, DC 20229



**U.S. Customs and  
Border Protection**

[Apr. 27, 2018]

MEMORANDUM FOR: See Distribution [**Redacted**]  
FROM: Todd C. Owen  
Executive Assistant  
Commissioner  
Office of Field Operations  
SUBJECT: Metering Guidance

When necessary or appropriate to facilitate orderly processing and maintain the security of the port and safe and sanitary conditions for the traveling public, DFOs may elect to meter the flow of travelers at the land border to take into account the port's processing capacity. Depending on port configuration and operating conditions, the DFO may establish and operate physical access controls at the borderline, including as close to the U.S.-Mexico border as operationally feasible. DFOs may not create a line specifically for asylum-seekers only but could, for instance, create lines based on legitimate operational needs, such as lines for those with appropriate travel documents and those without such documents.

Ports should inform the waiting travelers that processing at the port is currently at capacity and CBP is permitting travelers to enter the port once there is sufficient space and resources to process them. At no point

may an officer discourage a traveler from waiting to be processed claiming fear of return or seeking any other protection. Officers may not provide tickets or appointments or otherwise schedule any person for entry. Once a traveler is in the United States he or she must be fully processed.

INAMI has at times elected to conduct exit controls at some locations in Mexico to limit the throughput of travelers into the United States. DFOs should be particularly aware of any INAMI controls that are preventing U.S. citizens, LPRs or Mexican nationals (some of whom may intend to claim fear) from entering the United States, and should work with INAMI, as appropriate, to address such concerns.

Please ensure that this memorandum is disseminated to all ports of entry within your area of responsibility. Should you have any questions or require additional information, please contact [REDACTED] Executive Director, APP, at [REDACTED]

Distribution: Director, Field Operations, El Paso  
Director, Field Operations, Laredo  
Director, Field Operations, San Diego  
Director Field Operations, Tucson

U.S. Department of Homeland Security  
Washington, DC 20528



**Homeland  
Security**

June 5, 2018

MEMORANDUM FOR: Kevin K. McAleenan  
Commissioner  
U.S. Customs and Border  
Protection

FROM: Kirstjen M. Nielsen  
Secretary

/s/ KIRSTJEN M. NIELSEN

SUBJECT: Prioritization-Based Queue-  
Management

White enhancing border security at and between our Southwest Border ports of entry and increasing our effectiveness at identifying and interdicting threats, apprehensions of those crossing our border illegally between the ports of entry and the number of arriving aliens determined to be inadmissible at ports of entry continue to rise.

At the same time, U.S. Customs and Border Protection's (CBP) resources remain strained along the Southwest Border. Inadmissible arriving aliens presenting at ports of entry, many of whom arrive without possessing appropriate travel and identity documents required by law, such as a visa and passport, require additional processing time that delays the flow of legitimate trade and travel. In many cases, CSP officers must take sworn

statements from those individuals, which requires a substantial amount of time and resources.

CBP must focus on its primary mission: to protect the American public from dangerous people and materials while enhancing our economic competitiveness through facilitating legitimate trade and travel. As we strengthen our screening and vetting across multiple agencies to identify potential threats before they impact the United States, we continue to face a multi-faceted and dispersed terrorist adversary. In Fiscal Year 2017, CSP officers at our land ports of entry found 335 individuals inadmissible who were on the terrorist watchlist, and have already had 70 such encounters in the first quarter of 2018. Furthermore, on a typical day, CSP arrests 21 wanted criminals at our ports of entry. The officers at our ports must be vigilant about identifying national security and public safety threats above all others and denying entry to those who might do us harm.

Particularly, I am concerned by increasing seizures of illicit narcotics across all categories—especially methamphetamine and synthetic opioids such as fentanyl.

	Drug Type (lbs)	FY 2017 (May 16th)	FY 2018 (May 16th)	% Change
<b>Inbound Narcotics Seizures</b>	<b>Methamphetamine</b>	23,318.59	37,584.20	61.18%
	<b>Heroin</b>	1,820.08	2,769.16	52.15%
	<b>Fentanyl</b>	771.22	827.18	7.26%

CBP must prioritize resources to intercept illicit drugs that have no place in a safe society. Security in border



communities and beyond is threatened by transnational criminal organizations transferring drugs and currency across our borders.

We know from experience that seizures of illicit narcotics inbound and the outbound currency that sustains transnational criminal organizations both increase when inadmissible arriving aliens, particularly those without documents, are down. For example, during Fiscal Year 2017, when our ports of entry saw a 25 percent decrease in migrant crossings and processing from the year before seizures of outbound currency increased by 37 percent.

	FY 2016		FY 2017		% Change
Out-bound Currency Inter-dictions	Inci-dents	USD	Inci-dents	USD	
	1,047	\$28,371.089	1,233	\$38,996.437	37.45%

CBP personnel and resources that would otherwise be deployed to process inadmissible arriving aliens can focus on the detection and apprehension of narcotics and currency smugglers.

CBP must protect the economic security of the United States by enforcing trade laws and protecting legitimate commerce. Seizure of shipments that violate intellectual property rights increased by eight percent in Fiscal Year 2017 over the previous fiscal year, and if those seized items had been genuine, the total estimated manufacturer's suggested retail price would have been

more than \$1.2 billion. CBP officers must be able to focus on identifying fake and dangerous goods, as well as invasive pests, through the cargo processing and agriculture inspection efforts that protect the American economy.

Finally, continued efficient transit for vetted trade partners and trusted travelers must be a priority. Approximately 545,000 passengers and pedestrians pass through our Southwest Border ports of entry every day, as well as 214,000 privately owned vehicles. The vast majority of that traffic is legitimate and necessary, and border communities and our larger economy rely on their efficient processing.

The processing of travelers without documentation draws resources away from CBP's fundamental responsibilities. The number of inadmissible persons arriving at ports of entry has risen by 62 percent in the last three months, when compared to the same three months of the previous fiscal year:

Fiscal Period	All Inadmissibles
February 2017	12,078
March 2017	13,079
April 2017	12,531
February 2018	17,862
March 2018	22,513
April 2018	20,956

Moreover, staffing at Southwest Border ports of entry is below our target levels for almost all major ports, and our officers are increasingly working extensive overtime hours each pay period, leading to increased fatigue and stress on the workforce. At several of the largest ports of entry, upwards of 10 percent of the CBP officer workforce are engaged in immigration secondary screening and processing functions, primarily addressing persons presenting without documents sufficient for admission or other lawful entry.

While we address these staffing concerns, we remain focused on accomplishing the mission. In recognition of (1) the continued prevalence of security threat, (2) the dire consequences of illicit narcotics on our communities (especially the devastating opioid epidemic), (3) the staffing and resource challenges summarized above, and (4) the increase of irregular migration flows, I direct you to initiate a 30-day pilot program to prioritize staffing and operation in accordance with the following order of priority at all Southwest Border port of entry:

1. **National security efforts:** detecting public safety and identifying potential security threats, such as known or suspected terrorists, members of transnational criminal organizations, and other violent actors.
2. **Counter-narcotics operations:** targeting and examining increasing numbers of conveyances and travelers for potential smuggling of illicit narcotics.
3. **Economic security:** trade and cargo processing efforts to facilitate lawful commerce into the United States, while enforcing trade laws, protecting ag-

riculture, and addressing anticompetitive elements in the supply chain.

4. **Trade and travel facilitation:** managing flow of people and goods at pedestrian and vehicle lanes of entry for U.S. citizens, lawful permanent residents, Border Crossing Card and visa holders, and others presenting documents sufficient for admission or other lawful entry into the United States, while detecting fraudulent documents.

Processing persons without documents required by law for admission arriving at the Southwest Border remains a component of CBP's mission, but priority should be given to the efforts described above in the prescribed order. Field leaders have the discretion to allocate resources and staffing dedicated to any areas of enforcement and trade facilitation not covered by the above priorities and queue management process based on the availability of resources and holding capacity at the local port level. Depending on port configuration and operating conditions, Directors of Field Operations may establish and operate physical access controls at the borderline, including as close to the U.S.-Mexico border as operationally feasible. DFOs may create lines based on legitimate operational needs, such as lines for those with appropriate travel documents and those without such documents. As in all operations, the safety of employees and the public is paramount in operational decisions.

U.S. Department of Homeland Security  
Washington, DC 20528



**U.S. Customs and  
Border Protection**

[Nov. 27, 2019)

MEMORANDUM FOR: Todd C. Owen  
Executive Assistant  
Commissioner  
Office of Field Operations

FROM: Mark A. Morgan  
Acting Commissioner

/s/ MARK A. MORGAN

SUBJECT: Prioritization-Based Queue-  
Management

**Background and Purpose:**

On June 5, 2018, the Secretary of Homeland Security issued policy memorandum *Prioritization-Based Queue Management*, (attached), which establishes an order of priority for the allocation of resources at the U.S. Southwest Border land ports of entry (POE). This policy directs U.S. Customs and Border Protection (CBP) to focus on its primary mission: to safeguard America's borders thereby protecting the public from dangerous people and materials while enhancing the Nation's global economic competitiveness by enabling legitimate trade and travel.

Over the past several years CBP has seen an increase in the number of inadmissible aliens presenting at POEs without possessing appropriate travel and identi-

fication documents. The processing of these aliens requires a substantial amount of time and resources, which may negatively affect the flow of trade and other travel. CBP must carefully balance its space and resources to ensure that each POE has sufficient capacity to address its mission sets, in order of priority, including the safety and expeditious processing of all travelers accessing the port.

Therefore, to ensure the continued success of the CBP mission, I ask for your continued vigilance in prioritizing staffing and operations in accordance with the order of priority as outlined in the June 5, 2018 memorandum. By prioritizing resource and staffing efforts CBP officers will focus on enhancing border security, increasing CBP's effectiveness in identifying and interdicting threats, and processing individuals presenting themselves for admission into the United States.

More specifically, the Secretary's 2018 memorandum identified the following order of priority at all Southwest Border POEs:

1. **National security efforts:** detecting public safety and identifying potential security threats such as known or suspected terrorists members of transnational criminal organizations (TCOs) and other violent actors.
2. **Counter-narcotics and outbound operations:** targeting and examining increasing numbers of conveyances and travelers for potential smuggling of illicit narcotics, currency, and firearms.
3. **Economic security:** trade and cargo processing efforts to facilitate lawful commerce into the United States, while enforcing trade laws, protecting ag-

riculture, and addressing anticompetitive elements in the supply chain.

4. **Trade and travel facilitation:** managing flows of people and goods at pedestrian and vehicle lanes of entry for U.S. citizens, lawful permanent residents, Border Crossing Card and visa holders, and others presenting documents sufficient for admission or other lawful entry into the United States.

**Current Situation:**

CBP continues to face multi-faceted threats at our Southwest border. As such, the agency needs to position resources appropriately to combat all threats. In Fiscal Year 2019, CBP officers at our Southwest Border land POEs found three individuals inadmissible who were on the terrorist watchlist at the time of encounter. In Fiscal Year 2019, CBP officers have encountered 1,601 Special Interest Aliens along the Southwest Border. Furthermore, in Fiscal Year 2019, CBP officers arrested 1,800 convicted criminals at our Southwest Border land POEs.

Additionally, TCOs are flooding our country with dangerous drugs. Last year, there were over 68,000 deaths in the United States due to illicit narcotic use. Additionally, methamphetamine has seen a resurgence in this country as “super labs” in Mexico are increasing production and are flooding the United States with cheaper and purer forms of methamphetamine. There has been a 19 percent increase in inbound methamphetamine seizures. According to the Drug Enforcement Administration, the overall average purity for the second half of 2018 was 97.5 percent.

	DRUG TYPE	FY 18 (LBS)	FY 19 (LBS)	FY 18 TO FY 19% CHANGE
<b>INBOUND DRUG SEIZURES</b>	Metham- phetamine	53,244.69	64,646.93	19%
	Heroin	4,826.28	4,790.46	-1%
	Fentanyl	1,513.13	2,388.13	58%
	Cocaine	19,937.79	19,255.12	-3%

Finally, in Fiscal Year 2019, CBP outbound seizures of currency along the Southwest Border also increased.

	FY18		FY19	
<b>OUT- BOUND  CUR- RENCY  INDICA- TIONS</b>	Incidents	USD	Incidents	USD
	164	\$7,017,683.61	165	\$9,442,827.38

These demands create an inherent strain on CBP personnel and resources to process an increasing number of inadmissible arriving aliens while simultaneously focusing on the detection and apprehension of narcotics and currency smugglers.

**Action:**

In accordance with the mission of the Office of Field Operations, Operations Directorate to protect the American people, advance the national economy, and safe-



guard our borders, field leaders must continue to balance resources according to the order of priority listed above and are reminded that:

- They have the discretion to allocate resources and staffing to any areas of enforcement and trade facilitation not covered by the priorities and queue management process based on the availability of resources and holding capacity at the local port level.
- Depending on port configuration and operating conditions, Directors of Field Operations may establish and operate physical access controls at the borderline, including as close to the US-Mexico border as operationally feasible.
- Directors of Field Operations may create lines based on legitimate operational needs, such as lines for those with appropriate travel documents and those without such documents.
- As in all operations, the safety of employees and the public is paramount to in operational decisions.

U.S. Department of Homeland Security  
Washington, DC 20528



**Homeland  
Security**

Nov. 1, 2021

MEMORANDUM FOR: Troy A. Miller  
Acting Commissioner  
U.S. Customs and Border  
Protection

FROM: Alejandro N. Mayorkas  
Secretary

/s/ ALEJANDRO N. MAYORKAS

SUBJECT: **Rescission of June 5, 2018,  
*Prioritization-Based Queue  
Management Memorandum***

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Upon the recommendation of Acting Commissioner Troy A. Miller of U.S. Customs and Border Protection, I hereby rescind Secretary Nielsen's June 5, 2018 memorandum, *Prioritization-Based Queue Management*.

1300 Pennsylvania Avenue NW  
Washington, DC 20229



**U.S. Customs and  
Border Protection**

*Commissioner*

Nov. 1, 2021

MEMORANDUM FOR: William A. Ferrara  
FROM: Troy A. Miller  
Acting Commissioner  
U.S. Customs and Border  
Protection  
/s/ TROY A. MILLER  
SUBJECT: **Guidance for Management  
and Processing of Undocu-  
mented Noncitizens at South-  
west Border Land Ports of  
Entry**

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This memorandum provides updated guidance for the management and processing of noncitizens who, without proper documents (“undocumented noncitizens”), present at land ports of entry (POEs) along our Southwest Border, including those who may be seeking humanitarian protection in the United States. This memorandum also rescinds and supersedes the November 27, 2019 memorandum from the former Commissioner, *Prioritization-Based Queue Management*; and CBP Office of Field Operations (OFO) April 27, 2018 and April 30, 2020 memoranda, *Metering Guidance*. Today,

Secretary Mayorkas rescinded Secretary Nielsen's June 5, 2018 memorandum, *Prioritization-Based Queue Management*, upon my recommendation.

The ability to process undocumented noncitizens in a timely manner is impacted by a wide range of factors, including staffing constraints, outdated infrastructure, and significantly at this time, the COVID-19 pandemic. The COVID-19 pandemic specifically has limited processing and holding capacity based on protocols to protect the workforce, the noncitizens whom we encounter at the POEs, and the American public. The Centers for Disease Control and Prevention's August 2, 2021 Public Health Order, which was issued pursuant to Title 42 of the U.S. Code and suspends the introduction of certain non-citizens into the United States for public health reasons, remains in force, and we will continue to implement it as applicable. At all times, the capacity to process undocumented noncitizens must take into account CBP's other vital priorities, including our mission to protect public safety and national security, interdict the flow of narcotics and contraband, and facilitate lawful trade and travel.

Even before the COVID-19 pandemic, processing capacity was limited due to increasingly large volumes of lawful trade and travel. During the five years preceding the pandemic, CBP processed, on average, 326 inadmissible individuals each day at POEs across the Southwest land border. At the same time, CBP apprehended, on average, a much larger number—1,266 individuals each day-between POEs.

As a complement to enforcement efforts between POEs and to incentivize an alternative to such unlawful crossings, I instruct Southwest Border OFO management to

consider and take appropriate measures, as operationally feasible, to increase capacity to process undocumented noncitizens at Southwest Border POEs, including those who may be seeking asylum and other forms of protection. As part of this effort, CBP personnel should continue to employ and should further accelerate ongoing steps to leverage technological and processing efficiencies to streamline POE processing.

Possible additional measures include the innovative use of existing tools such as the CBPOne™ mobile application, which enables noncitizens seeking to cross through land POEs to securely submit certain biographic and biometric information prior to arrival and thus streamline their processing upon arrival. OFO also should accelerate ongoing efforts to digitize processing at POEs and more effectively use data to increase throughput. In developing these solutions, CBP should, as appropriate, collaborate with interested non-governmental organizations and other key partners, consistent with applicable privacy protections and civil rights and civil liberties.

Importantly, however, asylum seekers or others seeking humanitarian protection cannot be required to submit advance information in order to be processed at a Southwest Border land POE. The submission (or lack thereof) of advance information should not influence the outcome of any inspection. CBP will continue to make admissibility and processing determinations on a case-by-case-basis at the POE.

A POE's capacity to process undocumented noncitizens is influenced by operational realities and circumstances that could change day to day and could include unanticipated incidents, emergencies, or challenges. However, POEs must strive to process all travelers, regardless of

documentation status, who are waiting to enter, as expeditiously as possible, based on available resources and capacity. At all times, the capacity to process undocumented noncitizens must take into account CBP's other vital priorities, including our mission to protect public safety and national security, interdict the flow of narcotics and contraband, and facilitate lawful trade and travel.

CBP may manage the intake of undocumented noncitizens at POEs, including by providing staffing at the border line to facilitate and manage safe and orderly travel into the POE. In all cases, however, undocumented noncitizens who are encountered at the border line should be permitted to wait in line, if they choose, and proceed into the POE for processing as operational capacity permits. Absent a POE closure, officers also may not instruct travelers that they must return to the POE at a later time or travel to a different POE for processing. Officers also may not preclude those in line from departing and returning at a later time. Once in the United States, an individual must be inspected and processed by CBP Officers and may not be directed to return across the land border without appropriate processing.

Based on past, current, and expected volumes of individuals seeking entry at Southwest Border land POEs, there may be extended wait times in processing lines.

This Administration has outlined a comprehensive strategy to expand safe, orderly, and humane pathways for migration, including for noncitizens who may be seeking protection to access the United States. *See* Executive Order 14010, 86 FR 8267 (2021). This guidance is issued in furtherance of that strategy and is effective immediately.

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

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Case No. 17-cv-02366-BAS-KSC  
AL OTRO LADO, INC., ET AL., PLAINTIFFS

*v.*

CHAD WOLF,<sup>1</sup> ET AL., DEFENDANTS

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Filed: Jan. 14, 2020

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**EXHIBIT 82 TO PLAINTIFFS' MOTION FOR  
CLASS CERTIFICATION  
CLASS MEMBER DECLARATION**

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Declaration of [REDACTED]

I swear under penalty of perjury of the laws of the United States of America that the following is true and correct.

1. My name is [REDACTED] I was born on [REDACTED] in Guatemala. I am currently detained in the South Texas Family Residential Center with my 1-year old daughter.
2. I fled death threats in Guatemala to seek asylum in the United States. On Friday, April 27, 2018 around 4:10 in the afternoon, I arrived at the port of entry between Piedras Negras, Mexico and

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<sup>1</sup> Acting Secretary Wolf is automatically substituted for former Acting Secretary McAleenan pursuant to Fed. R. Civ. P. 25(d).

Eagle Pass, Texas with my daughter and my 15-year-old sister.

3. We paid coins to enter and crossed the bridge. Before we arrived at the line, four immigration officials with a dog approached us and asked us if we had papers. I said no and that we had come to seek asylum. They told to wait in a corner.
4. All four officials came over. The one that spoke to us was not very tall but was very muscular. He was bald and had glasses. He asked us why we had come. I said I wanted to turn myself in to seek asylum. He asked for my papers and asked our ages. He asked us who the baby belonged to. I said she was mine.
5. My Guatemalan ID had been stolen in Mexico so I only gave him a copy. He said that the copy did not count. I also showed him the original birth certificates of my daughter and sister but he said that those did not count either. I said that they were given to us by our government. Throughout the whole conversation, another official with blue eyes with brown hair who did not speak Spanish was telling the bald official in English what to say to us.
6. The bald official said that we had to go back because there were a lot of people inside so they could not accept us. He asked me how many more people were going to come with us. I said that it was just the three of us. He kept yelling at me how many people had come with us and that he knew we were lying. He said that if I did not tell him the truth, he was going to put me in jail and take away my daughter. I told him that



I was telling him the truth and that we were coming ask for help. The other officials walked away one by one.

7. The official said he did not understand why we came if his country is full of people like us already. He said that we should stop coming and that he did not want us to keep asking because there was no space for us.
8. I said I could not go back because I was out of money. He said I would have to see what I would do because I could not stay there. He walked away very angry. Another official came over and explained that it was not that they did not want to accept us but it was because many people had come and no one had come to get them yet. He told us to stay in a church or another shelter.
9. I left because it was getting to be night and it would be more dangerous for us once it was dark. We had to sleep in the street because we had nowhere else to go.
10. We went back to the port of entry the next morning around 9 in the morning on Saturday April 28. When we had crossed about half of the bridge, a different official that I had not seen the day before said that asylum had ended and that that law did not exist anymore and that we could not pass. He said if I did not go back he would turn me into the Mexican officials and that they would not be patient like him and they would return me to my country. I went back to Mexico because I was afraid for my life if they deported me to Guatemala.

11. We stayed in a migrant shelter that night. On Sunday, April 29, we crossed the river even though we were risking our lives because I felt we had no other choice. I did not want to cross the river because it was very deep and my daughter and sister were sick. None of us know how to swim. The water was very cold and the current was very fast. The three of us sat on one tire and a man pulled us across. We all got completely soaked. I was afraid that my daughter would fall in the water.

I, [REDACTED], swear under the penalties of perjury that the attached declaration is true and correct to the best of my abilities. This declaration was read back to me word for word in Spanish, a language in which I am fluent.

[REDACTED]

Signature

[5/9/18]

Date

I, [Katherine Murdza], certify that I am proficient in both Spanish and English. I read the declaration above in its entirety to [REDACTED] in Spanish.

/s/ KAR MURDZA

[5/9/18]

Date

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

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Case No. 17-cv-02366-BAS-KSC  
AL OTRO LADO, INC., ET AL., PLAINTIFFS  
*v.*  
CHAD WOLF,<sup>1</sup> ET AL., DEFENDANTS

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Filed: Sept. 4, 2020

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**EXHIBIT 1 IN SUPPORT OF PLAINTIFFS'  
MEMORANDUM OF POINTS AND AUTHORITIES  
IN SUPPORT OF THEIR MOTION  
FOR SUMMARY JUDGMENT  
REDACTED VERSION**

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Deposition Taken of [REDACTED], on Thursday, November 21, 2019, at 9:30 a.m., held at the offices of Mayer Brown, 1999 K Street, N.W., Washington, D.C. 20006, before Goldy Gold, a Registered Professional Reporter and a Notary Public within and for District of Columbia.

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<sup>1</sup> Acting Secretary Wolf is automatically substituted for former Acting Secretary McAleenan pursuant to Fed. R. Civ. P. 25(d).

APPEARANCES:

ON BEHALF OF THE PLAINTIFFS:

STEPHEN M. MEDLOCK, ESQUIRE  
Mayer Brown  
1999 K Street, N.W.  
Washington, D.C. 20006  
Telephone: 202.263.3221  
E-mail: smedlock@mayerbrown.com

ON BEHALF OF THE DEFENDANTS:

ALEXANDER J. HALASKA, ESQUIRE  
U.S. Department of Justice  
Office of Immigration Litigation  
Ben Franklin Station, P.O. Box 868  
Washington, D.C. 20044  
Telephone: 202.307.8704  
E-mail: alexander.j.halaska@usdoj.gov

MELISSA CROW, ESQUIRE  
15 Southern Poverty Law Center  
1101 17th Street, N.W., Suite 705  
16 Washington, D.C. 20036  
Telephone: 202.355.4471  
E-mail: melissa.crow@splcenter.org

REBECCA CASSLER, ESQUIRE  
Southern Poverty Law Center  
P.O. Box 1287  
Decatur, Georgia 30031  
Telephone: 404.521.6700  
E-mail: rebecca.cassler@splcenter.org

Also Present:

KRISTINE E. KING, ESQUIRE  
JILLIAN M. CLOUSE, ESQUIRE  
U.S. Department of Homeland Security

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November 21, 2019

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\* \* \* \* \*

[44]

\* \* \* Port of Entry has not been processing asylum seekers is because they're being turned back at the limit line; is that right?

A. Well, we are still taking them. They've been running up the vehicle lanes.

Q. Sure. So outside of instances where people are rushing the vehicle lanes, just normal pedestrians flowing towards the limit line, those individuals who are seeking asylum are being turned back to Mexico; is that right?

A. Yes.

Q. And the officers at the limit line who are turning those asylum seekers back to Mexico, they're doing that because they have orders or instructions to do that, right?

A. Correct.

Q. Where did those orders or instructions to turn back asylum seekers come from?

A. The port director.

Q. Who is the port director that has instructed officers at the limit line to turn back asylum seekers?

A. Ortega.

Q. What's Mr. Ortega—do you know Mr. Ortega's full name?

[45]

A. I think it's Rene Ortega.

Q. So Port Director Rene Ortega has instructed officers at Tecate Port of Entry to turn back asylum seekers at the limit line; is that right?

A. Correct.

Q. During the entire time that you have been posted to the Tecate Port of Entry, have asylum seekers that approach the limit line been turned back?

A. Yes.

Q. And Rene Ortega has not been the port director the entire time that you've been at the Tecate Port of Entry, correct?

A. No.

Q. Who was the port director before Rene Ortega?

A. It was Avila.

Q. Can you spell the last name or just guess at it?

A. I-v-i-l-i-a?

Q. And did Port Director Avila also order or instruct that asylum seekers be turned back at the limit line?

A. Yes.

Q. Do you know whether the port directors [46] received orders or instructions from either the San Diego field office or senior management at OFO to turn back asylum seekers at the limit line?

A. That's what they were telling us.

Q. When you say "they were telling us," what do you mean by that?



A. The supervisors would tell us that they had instructions from higher management.

Q. Do you know what “higher management” means?

A. I don’t.

Q. So is it your impression, based on your work at the Tecate Port of Entry, that there is some sort of broader policy of turning back asylum seekers?

A. What do you mean, “broader policy”?

Q. That either someone at OFO or the San Diego field office, someone higher up, has ordered or instructed that asylum seekers be turned back?

A. Yes.

Q. So I think you said you were sworn in on—oh, I’m sorry.

You were talking earlier about supervisors who have instructed you to turn back [47] asylum seekers. What do you mean by “supervisors”?

A. There was a muster in the morning 3 about—or in the afternoon about what we needed to do when an asylum seeker comes up.

Q. Can you explain what a muster is, in the CBP parlance?

A. It’s kind of like an order of what to do.

Q. And can a muster be written or oral?

A. Yes.

Q. And the muster that you received regarding turning back asylum seekers, was it in writing or was it oral?

A. At first it was oral, and then it became writing months later.

Q. When do you first recall receiving a muster telling you to turn back asylum seekers?

A. Orally or written?

Q. Oral.

A. I—I don't recall. It was months before I did my whistle-blowing.

Q. And this occurred during your time at Tecate or was it another port of entry?

A. At Tecate.

Q. Do you have friends who work at other [48] ports of entry?

A. Yes.

Q. Where do your friends at other ports of entry—where do they work?

A. Otay Mesa and San Ysidro.

Q. Do you know whether your friends who work at other ports of entry have received similar musters?

A. I don't.

Q. Have you ever talked to them about it?

A. No.

Q. So it's possible they have, but you just have discussed it with them?

A. Exactly.

Q. Let's go back for a second.

When you were talking about various training you had on certain processes, and I think the last one we talked about was the asylum process, and the fourth process that you talked about was people running into lanes, people rushing vehicle lanes?

A. Yes.

Q. And when did you receive training on people rushing the lanes?

A. It's almost the same thing as—it's an [49] expedited removal as well. So—yeah. It's the same process. They're called EWIs, entry without inspections.

Q. And individuals who rush the lanes, or EWI, they're put into expedited removal? Is that the case?

A. Yes.

Q. Where did you receive training on individuals who rush the lanes?

A. Same SharePoint.

Q. You received it at the Otay Mesa AEU?

A. Yes.

Q. And then if you wanted materials on that, you'd access the SharePoint site?

A. Yeah, or ask other officers.

Q. Okay. Have you ever asked other officers for further training on the process for inspecting and processing asylum seekers?

A. I have. I have told people I will do them.

Q. Okay.

A. I don't mind. I mean, I just know it's a very time-consuming process.

Q. Do you know how time-consuming?

A. A couple of hours.

\* \* \* \* \*

[93]

Q. In that capacity, that number that you got from GSA, that's an actual number, right?

A. Yes.

Q. It's not something that's, you know, amorphous and unknowable, right? It's an actual number?

A. Yes.

Q. So I want to focus on the next sentence. It says, "Depending on port configuration operating conditions, the DFO may establish and operate physical access controls at the borderline, including as close to the U.S.-Mexico border as operationally feasible."

Did I read that correctly?

A. Yes.

Q. Okay. I want to pick out some parts of that sentence.

Do you have a sense of what the phrase "physical access controls" means?

A. I'm guessing officers?

Q. Could it also be turnstiles as well?

A. Yes.

Q. [REDACTED] there's always been some form of physical access control at the [94] borderline of Tecate; is that right?

A. Wait. Three months before and now?

Q. Yes.

A. Yes, sir.

Q. I want to look at the next sentence, and I'll read it to you: "DFOs may not create a line specifically for asylum seekers only, but could, for instance, create lines based on legitimate operational needs, such as lines for those with appropriate travel documents and those without such documents."

Do you see that?

A. Yes.

Q. At Tecate, are there two different lines of people approaching the port of entry?

A. No.

Q. At San Ysidro, were there?

A. Yes.

Q. And how many lines were there approaching the port of entry?

A. I believe there was four.

Q. Who was in each of those lines? How were they broken down?

A. There was a SENTRI, there was a ready line, there was a general public lane—that just [95] didn't have any—just regular passport, wasn't a ready-lane document—and then there was the handicapped lane.

Q. And these are the lanes of people approaching primary, right?

A. Correct.

Q. Were there lines of people approaching the limit line?

A. Yes.

Q. And how were those lines broken down?

A. They were the same.

Q. The same?

A. Yes.

Q. And how about at Otay Mesa, were there different lines at Otay Mesa?

A. I don't—well, yes, there was a SENTRI line, for sure. I don't remember there because there was no limit line when I was there at Otay Mesa.

Q. I see. Okay.

There's a reference here to the border line. Do you see that in the memorandum?

A. Yes.

Q. Is the border line what you understand to be the limit line?

A. That's—I—what I understand is [96] 1 that's the actual physical line that separates Mexico to the U.S.

Q. And the officers who were posted to the limit line at Tecate, do they stand at the actual border, or do they stand some ways back of it?

A. Some ways back of it.

Q. How far back?

A. Every port is different.

Q. Okay. At Tecate, how far back?

A. Three feet.

Q. Okay. So if an asylum seeker approaches the officer at the limit line and is turned back, they've actually stepped three feet into U.S. soil before being turned back; is that right?

A. There's a possibility.

Q. Where is—when you say there's a possibility—

A. Because they could stop before and talk to the officer.

Q. Okay—

A. So—

Q. So unless they stand a yard away and just yell at the officer, they're going to be on U.S. soil, right?

A. Yes.

[97]

Q. Okay. And in your experience, how often do asylum seekers just stand three feet back to have that conversation from you?

A. Very rare.

Q. In fact, they usually come up a normal speaking distance away, right?

A. Yes.

Q. So we're talking about a foot or so away from you?

A. Correct.

Q. So they're on U.S. soil, most cases, when they come to the limit line at Tecate, right?

A. Yes.

Q. And so they would be—in most cases, asylum seekers would have their feet on U.S. soil and then be turned back to Mexican soil and told to go to another port of entry; is that right?

A. Correct.

Q. During the time that you were at San Ysidro, where were the officers stationed at the limit line with respect to the actual borderline between the U.S. and Mexico?

A. San Ysidro? I don't remember where the actual limit line is at San Ysidro.

Q. And at Otay Mesa, no one was posted to [98] the limit line, so you don't recall?

A. No.

Q. I want to move down to the second paragraph of this memo, that begins with, "Ports should."

Do you see that?

A. Yes.

Q. That sentence reads, "Ports should inform the waiting travelers that processing at the port of entry is currently at capacity. And CBP is permitting travelers to enter the port once there is sufficient space and resources to process them."

Did I read that correctly?

A. Yes.



Q. Have you—at the time you were at Tecate, did officers ever tell individuals that the port was at capacity and turn them back to Mexico?

A. Yes.

Q. And the Tecate port doesn't have an AEU, right?

A. No.

Q. But asylum seekers can be processed at Tecate, right?

A. Yes.

Q. There are individuals, officers at [99] Tecate, who have training that enables them to process asylum seekers, correct?

A. Correct.

Q. And do you know—do you know of instances where asylum seekers have actually been processed at Tecate?

A. Yes.

Q. And do you know what the actual capacity of Tecate is on a daily basis to process asylum seekers?

A. No.

Q. Is it safe to say that it is higher than zero?

A. Yes.

Q. And in most days that you were posted to the limit line, the Tecate port was processing zero asylum seekers per day, correct?

A. Yes.

Q. So it's just simply not true that when officers told asylum seekers that the port was currently at capacity

and turning them back, that the port was actually—that Tecate was actually at capacity, right?

A. Correct.

Q. So you were instructed to lie to people [100] when turning them back; is that right?

A. We were instructed, yes.

Q. How did it make you feel that your management was telling you to lie to people in order to turn them back from U.S. soil to Mexican soil?

A. I didn't do it. I would have the manager come down and they would have to do it.

Q. So the management would lie?

A. Yes.

Q. They would lie for you, essentially; is that right?

A. Well, I wouldn't talk to them. First off, I don't—a lot of time I don't speak the language—

Q. I see.

A. —enough to tell them all that.

Q. But when the supervisor came down, they would give this capacity excuse, correct?

A. Not all the time.

Q. So sometimes they would, though?

A. Yes.

Q. And when they said the port was at capacity, you knew that was a lie, right?

A. Yes.

Q. And it would have been obvious to those [101] supervisors that it was a lie as well, correct?

A. Correct.

Q. In fact, it was obvious to everybody who was implementing this policy at Tecate that the capacity excuse was a lie, right?

A. Correct.

MR. MEDLOCK: We'll mark the next exhibit as Exhibit 4.

[Exhibit 4, a declaration, was marked for identification.]

BY MR. MEDLOCK:

Q. Okay, sir. I put in front of you what we've marked as Exhibit 4 to your deposition. It's a multipage declaration from Mariza Marin, whose name I'm hoping I pronounced correctly, that was filed earlier in this litigation.

Please take a moment to review it, and then let me know verbally on the record when you've finished doing that.

A. This is going to take a while. It looks like a lot of it is not my port of entry.

Q. Yes, that's correct.

You want me to direct you to the place I would like to talk to you about?

A. Sure.

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

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Case No. 17-cv-02366-BAS-KSC  
AL OTRO LADO, INC., ET AL., PLAINTIFFS  
*v.*  
CHAD WOLF,<sup>1</sup> ET AL., DEFENDANTS

---

Filed: Sept. 4, 2020

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**EXHIBIT 2 IN SUPPORT OF PLAINTIFFS'  
MEMORANDUM OF POINTS AND AUTHORITIES  
IN SUPPORT OF THEIR MOTION FOR  
SUMMARY JUDGMENT**

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<sup>1</sup> Acting Secretary Wolf is automatically substituted for former Acting Secretary McAleenan pursuant to Fed. R. Civ. P. 25(d).

**HARALSON, WILLIAM T**

---

**From:** HARALSON, WILLIAM T  
**Sent:** Wednesday, March 15, 2017 12:09 PM  
**To:** HIGGERSON, DAVID P  
**Cc:** ATKINSON, DAVID; CLOUGH, ERIC;  
 PONCE, EDUARDO H  
**Subject:** Step 3 Grievance (Failure to Process  
 ER/CF & Asylum HID 2017)  
**Attachments:** CBP Abuse 1.pdf; Step3Grievance  
 FailureToProcessERCF&AsylumHID  
 2017.pdf

Mr. Higgerson,

During the grievance meetings, Agency Representatives acknowledged that the Agency's unilateral work policies broke CBP mandates, Federal immigration rules and Laws in formally processing persons who seek political asylum and screening for possible terrorists or fugitive status. Which places CBP Officers' safety, integrity and position to be questioned as the Agency lacks candor to the public in stating the true facts that the Agency intentionally placed the changes of denying and blocking asylum to persons and families in order to block the flow of asylum applicants in a chilling affects to all others attempting entry in to the United States.

The Agency's actions caused traumatic and emotional injury to children, persons, and families seeking asylum when: denying and blocking entry, threatening that they would be processed separately, returned to Mexico without processing, kept in unsafe and unsanitary conditions, which placed CBP Officers in a injurious posi-

tion to get sick and affected with the same, emotions, illness and infections as the asylum seekers.

The Agency's ill actions have caused Officers' working conditions, character and credibility to be altered and threaten by public and asylum seekers as the agency lacked candor in defending the CBP officers for their ill implemented practices of denying and blocking asylum seekers to be processed at the Ports of Hidalgo, Texas.

For the reasons above and the back-pay compensation that could not be settled by the parties; the Union is requesting a STEP 3 Grievance with you covering all issues raised in the CBP Form 280 and its attachments.

Please respond within the allotted timeframe with a proposed date and time to meet.

Respectfully submitted,

William T. Haralson  
NTEU Representative  
NTEU Chapter 149  
956-843-5749 Union Office  
956-239-2747 Cell



UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

---

Case No. 17-cv-02366-BAS-KSC  
AL OTRO LADO, INC., ET AL., PLAINTIFFS

*v.*

CHAD WOLF,<sup>1</sup> ET AL., DEFENDANTS

---

Filed: Oct. 13, 2021

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**EXHIBIT 3 IN SUPPORT OF PLAINTIFFS'  
MEMORANDUM OF POINTS AND AUTHORITIES  
IN SUPPORT OF THEIR MOTION FOR  
SUMMARY JUDGMENT  
FILED UNDER SEAL**

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<sup>1</sup> Acting Secretary Wolf is automatically substituted for former Acting Secretary McAleenan pursuant to Fed. R. Civ. P. 25(d).

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

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Civil Action No. 17-cv-02366-BAS-KSC

AL OTRO LADO, INC., ET AL., PLAINTIFFS

*v.*

KEVIN K. MCALEENAN, ET AL., DEFENDANTS

---

Filed: Oct. 13, 2021

---

**ORAL AND VIDEOTAPED CONFIDENTIAL  
DEPOSITION OF DAVID ATKINSON  
JUNE 12, 2020  
TAKEN VIA REMOTE VIDEOCONFERENCE**

---

ORAL AND VIDEOTAPED DEPOSITION OF DAVID ATKINSON, produced as a witness at the instance of the Plaintiffs, and duly sworn, was taken in the above-styled and numbered cause on June 12, 2020, from 9:32 a.m. to 3:19 p.m., before Annette Peltier, CSR, Texas Certified Realtime Reporter, in and for the State of Texas, reported by machine shorthand from Houston, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.



APPEARANCES

FOR THE PLAINTIFFS:

(Appearing via Videoconference)

MR. STEPHEN M. MEDLOCK

MR. ORI LEV

MAYER BROWN

1999 K Street, N.W.

Washington, D.C. 20006

Phone: 202.263.3221

E-Mail: Smedlock@mayerbrown.com

FOR THE DEFENDANTS:

(Appearing via Videoconference)

MR. ALEXANDER HALASKA

MS. KATHERINE J. SHINNERS

U.S. Department of Justice

Office of Immigration Litigation

Ben Franklin Square, P.O. Box 868

Washington, D.C. 20044

Phone: 202.598.8259

E-Mail: Alexander.j.halaska@usdoj.gov

Katherine.j.shinners@usdoj.gov

- and -

MR. BENJAMIN WOLARSKY, CBP

In-House Counsel

FOR THE WITNESS:

(Appearing via Videoconference)

MR. DENIS DOWNEY

Attorney at Law

1185 Ruben Torres Sr. Blvd., Suite 3

Brownsville, Texas 78521-1743

Phone: 956.555.1234

ALSO PRESENT:

(Appearing via Videoconference)

Solange Tran, Videographer

Kevin Cranford, Exhibit Tech

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\* \* \* \* \*

[68]

MR. MEDLOCK: All right. Can we go off the  
 record?

THE VIDEOGRAPHER: The time is 10:53 a.m.  
 We're going off the record.

(Break taken from 10:53 a.m. to 11:08 a.m.)

THE VIDEOGRAPHER: The time is 11:08 a.m.  
 We're back on the record.

Q. (BY MR. MEDLOCK) Welcome back, Mr. Atkin-  
 son.

A. Welcome back.

Q. Prior to 2016, have you seen any searches or  
 spikes in the number of migrants coming to the Hidalgo  
 port of entry?

A. I would say yes.

Q. In the instances where there were surges or  
 spikes in the number of migrants coming to the Hidalgo  
 port of entry, was CBP or its predecessor organizations  
 able to handle those prior surges or spikes without re-  
 sorting to metering or turn-backs?

A. I would say that they had the capability of doing  
 it.

Q. Why would you say they had the capability of processing the spike or surge in migrants without turning back asylum seekers?

A. Oh, because we have a—a—you know, when—[69] when we were having a—a—difficulties in—in processing individuals the second—the second surge, we had a vast amount of—of port of entries that had areas that could have easily created standalone tents and—and detention areas that—in order to handle those—those—those processing and they weren't done.

We proposed them. It just never—never came to be. They had the areas—

Q. So—

A. —and the people to do it, but they didn't.

Q. So there were proposals—

A. Yes.

Q. —to increase the capacity of the Hidalgo port of entry, but management never acted on them; is that right?

A. Yes.

MR. HALASKA: Objection, leading.

Q. (BY MR. MEDLOCK) You can answer, sir.

A. We—we verbally proposed putting up tents in parking lots and—and controlled fence areas from port of entries, and they didn't want to do it.

We came with solutions, and they felt what they implemented was in the best interest of the government at the time.

[70]

Q. When you say “they,” who’s “they”?

A. The port director at the time, David Gonzalez.

Q. So from your perspective, if the metering or turn-back policy did not exist and CBP just processed people in the order that they came to the—to the border at the port of entry, CBP would have the resources to do that; is that right?

A. I would feel like they would.

MR. HALASKA: Objection, leading.

Go ahead.

THE WITNESS: Go ahead?

MR. HALASKA: Go ahead.

A. I felt they did have the resources because we were doing it before.

Q. (BY MR. MEDLOCK) When you say “we were doing it before,” what do you mean by that?

A. Well, we were funneling out detainees at different areas to different points of areas to ensure they got processing. In other words, overtime assignments—there was assignments, there was TDYs, there was—they were using all the ports of entry.

I’ve actually had the opportunity to represent several ports, not just the Port of Hidalgo. I represent the ports from Roma port of entry all the way to Harlingen port of entry that—which includes [71] the airport, Progreso, Donna, Mission, Los Ebanos, Rio Grande City, Roma, Falcon—Falcon Heights port of en-

try. So I have numerous ports of entries that—that I represent.

Q. And thank you for that clarification.

For each of those ports of entry that you represent, are they in the Laredo field office of CBP?

A. Yes.

Q. And based on your representation and observations of those ports of entry in the Laredo field office, do you believe that CBP could process asylum seekers in the order that they came to the port of entry without resorting to metering or turn-backs?

A. I would have to say they've done it before under Obama. I couldn't see a reason why they couldn't do it when it was Trump's administration.

Q. Okay. Sir, I'd like to move on to some documents that will hopefully refresh your recollection about some of the things you testified to before.

What we'll do is we'll put them on the screen. Kevin, who is our exhibit tech, will occasionally blow parts of them up so you can see them better.

But at any point, if you're having trouble looking at a document, just let myself or Kevin know [72] and we'll try to enlarge it and get it in a version that you can see. But today—today is about what you know. It's not a vision test. Okay?

A. Okay. Thank you, sir.

Q. Okay.

MR. MEDLOCK: Kevin, can you please bring up Tab 1, please?

Q. (BY MR. MEDLOCK) Okay, Mr. Atkinson. I've put—

A. I—I surely can't—I surely can't see it.

Q. Okay. Thank you. We'll—we'll make it bigger.

A. I need at least three times as big.

Q. So I'm going to have just some general questions about the exhibits, sir; and then I'll—we can—

A. Can—can you make it bigger, please?

Q. Sure.

EXHIBIT TECH: We'll have to go one by one per e-mail to make them each bigger one at a time.

MR. MEDLOCK: Okay.

THE WITNESS: Okay. I can't—it's still—it's still blurry. I mean, I can't see it.

MR. MEDLOCK: Can you see that, sir?

THE WITNESS: I see part of it.

\* \* \* \* \*

A. It's just—is—is—getting all these documents together.

And, you know, if you figure—figure this out, you've got 2018, 2019, 2020. You know, we've contacted the commissioner, the citizen commissioner, the local management.

You know, now we need the—the President to see if he's going to do anything for us, you know; and it's—it's one of these things that—you know, at what point do—do we exhaust our—our administrative remedy—



remedy until somebody gets—until somebody dies out there.

We've already been hurt out there. There's—just about the whole reason for—for—for all these grievances. Nobody's out there to help us.

Q. So—and I—I appreciate that.

I wanted to focus, if I could, with you on some of the pictures that you attached to this e-mail.

A. Yes, sir.

MR. MEDLOCK: And let's start with the picture on NTEU 113, please, Kevin.

Q. (BY MR. MEDLOCK) I'm sorry for the quality of the photos, sir. I only have this one e-mail in black and white.

[155]

A. Yes, sir.

Q. You write underneath this picture, quote: Chairs reduced to minimize the amount of persons held in the seating area, leaving a huge blank space.

Did I read that correctly?

A. Yes.

Q. Okay. And is—is this the instance—the incident we were talking about earlier where chairs were removed from a secondary inspection area?

A. Well—well, like I said, it happened in—in—in different times. This was happening at one of the worst times. You're saying—there's different—(Talking over each other.)

Q. (BY MR. MEDLOCK)—multiple—

A. —you have to tell them—

(Talking over each other.)

A. —there's multiple times that—this was the worst—worst time it happened.

Q. (BY MR. MEDLOCK) Okay. So there were multiple incidents where CBP decided to remove chairs from the secondary inspection area of the Port of Hidalgo; is that right?

A. Yes.

Q. And you said initially you thought that creating some space there was good for officer safety, [156] correct?

A. Correct, the—at this time—

Q. And—

A. —too many.

Q. Right.

So there—so CBP is actually removing more chairs than is necessary to ensure officer safety; is that right?

MR. HALASKA: Objection, leading.

A. I don't understand.

Can you repeat?

Q. (BY MR. MEDLOCK) Oh, sure.

So you said there were different phases in which CBP removed chairs from the secondary inspection area at the Port of Hidalgo.

And you said that this picture shows the worst time.

A. Yes, sir.

Q. In your opinion, has CBP removed more chairs than is necessary for ensuring officer safety?

MR. HALASKA: Same objection.

A. I still don't understand your—your—your—your question.

Q. (BY MR. MEDLOCK) Okay. Let me see if I can say it a different way.

[157]

You write: (Reading) Chairs reduced to minimize the amount of persons held in the seating area.

What did you mean when you said it—they were reduced to minimize the amount of persons held in the seating area?

A. Well, my understanding at the time, at that time, at this particular time, if we can—my—my—my memory a little bit—is that—is that they're moving the metering point to somewhere else, and they wanted to claim that there was less room to sit people, so they—they reduced the amount of chairs in order to push the people back to the metering points.

Q. I see.

So CBP at this time intentionally removed seats so that they could say that they couldn't process as many people at the Port of Hidalgo; is that right?

A. Yes.

Q. Let's move to the next page, NTEU 114.

A. Uh-huh.

Q. And underneath this—underneath this photo, you write: (Reading) No officers stationed to process work at 10 to 11 p.m. and only for employees to process the family unit credible—credible fear cases.

Did I read that correctly?

[158]

A. Yes.

Q. And I think you meant “credible” fear cases; is that right?

A. Yes.

Q. Okay. What is this picture showing?

A. Well, it shows that management isn’t processing the people from that time to that time. They were shutting down the area for some reason.

Q. So—

A. When I talk—

Q. Go ahead.

A. Go ahead.

Q. Go ahead.

A. No, go ahead.

I think I spoke to David John, and this is before—whoo, when he was acting port director. And he was stating at the time—and I don’t know if it was this time of year or not.

He said that we had sent a total of 80 people to San Diego on TDY and we had all the services open and we’re processing all these people. And it shows that we can do more with less.

So in order to ask for more money and to show how it's interfering with the—with the agency, they started closing services.

[159]

Q. Hmm. So—

A. In reality—

Q. —just so—

A. —in reality they had the people—go ahead.

Q. You said, “in reality they had the people.”

Can you finish that sentence?

A. In reality, they had the people. All they needed was the—was the funding to have them there or their realignment.

Q. So in reality, CBP had the resources to inspect and process the asylum seekers that were coming to the Port of Hidalgo; but it chose to remove seats from the secondary inspection area and at times shut down the secondary inspection area.

Do I understand that correctly?

A. They would shut down certain services, like the one that is—that is pictured.

When you brought that up to Mr. Owens at—at the meeting—and I think he made claim that the south-west border was fully staffed.

Q. Do you think that statement was true?

A. Of course it's true. You can't deploy 80 people from every border—a large amount of people at every port to California, you know, and say—still run full services when they were out there and then come back

[160] and deploy less and say that you don't have enough people.

You know, it's just the—the money was—was—depending on their budgetary, what they felt they had authorized at the time.

Q. Okay. So CBP, to your mind, made a decision to prioritize things other than processing asylum seekers; is that right?

MR. HALASKA: Objection, leading.

A. I—I believed in—in what I was told, that they had to create some kind of disruption in the service in order to get more money to handle the situation because beforehand, when—when they deployed all the people, we had a hundred percent of everything opened up; but they couldn't tell—they couldn't show Congress, they couldn't show anybody that they needed more money if they didn't create some kind of suffrage (phonetics) in—in the orders.

Q. (BY MR. MEDLOCK) So they intentionally slowed down work so that they could get more funding?

A. Yes.

Q. Okay. Let's move to the next page of Exhibit 294. This was an attachment to your e-mail that is a March 6th, 2019, letter from—that was signed by dozens of CBP officers.

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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No. 19-56417

AL OTRO LADO, INC., ET AL., APPELLEES

*v.*

CHAD WOLF, ACTING SECRETARY OF HOMELAND  
SECURITY, ET AL., APPELLANTS

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APPEAL FROM DECISION OF THE UNITED  
STATES DISTRICT COURT FOR THE SOUTHERN  
DISTRICT OF CALIFORNIA  
No. 17-cv-02366-BAS-KSC

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**APPELLEES' SUPPLEMENTAL EXCERPTS OF  
RECORD IN SUPPORT OF OPPOSITION TO  
MOTION FOR STAY PENDING APPEAL**

**VOLUME 5  
PROVISIONALLY FILED UNDER SEAL**

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Melissa Crow  
SOUTHERN POVERTY LAW  
CENTER  
1101 17th Street, N.W.,  
Suite 705  
Washington, DC 20036  
(202) 355-4471

Matthew H. Marmolejo  
Mayer Brown LLP  
350 S. Grand St.,  
25th Floor  
Los Angeles, CA 90071  
(213) 621-9483

Baher Azmy  
 CENTER FOR CONSTITU-  
 TIONAL RIGHTS  
 666 Broadway, 7th Floor  
 New York, NY 10012  
 (212) 614-6464

Sarah Rich  
 Rebecca Cassler  
 SOUTHERN POVERTY LAW  
 CENTER  
 150 E. Ponce de Leon  
 Ave., Suite 340  
 Decatur, GA 30030  
 (404)-521-6700

Ori Lev  
 Stephen M. Medlock  
 MAYER BROWN LLP  
 1999 K Street, N.W.  
 Washington, DC 20006  
 (202) 263-3270

Karolina Walters  
 AMERICAN IMMIGRATION  
 COUNCIL  
 1331 G St. N.W., Suite 200  
 Washington, DC 20005  
 (202) 507-7523

*Counsel for Appellees*



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**HIGHLY CONFIDENTIAL—ATTORNEY EYES ONLY**

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

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Case No. 17-cv-02366-BAS-KSC  
AL OTRO LADO, INC., ET AL., PLAINTIFFS

*v.*

CHAD WOLF, ET AL., DEFENDANTS

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**EXPERT REPORT OF STEPHANIE LEUTERT**

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**I. Introduction and Qualifications**

1. My name is Stephanie Leutert. I am the Director of the Central America & Mexico Policy Initiative (“CAMPI”) at the Strauss Center for International Security and Law at the University of Texas. In this role, I lead the development and programming for CAMPI and conduct original research on the U.S.-Mexico border and Central American migration.

2. I previously submitted declarations in connection with the Plaintiffs’ September 26, 2019 motions for provisional class certification and preliminary injunction.<sup>1</sup>

3. I am an expert on the practices of U.S. Customs and Border Protection (“CBP”) officers and supervisors with respect to arriving asylum seekers at ports of entry (“POEs”) on the U.S.-Mexico border from 2016 to

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<sup>1</sup> ECF Nos. 293-8, 294-5.

the present. I am the lead author of the first-ever border-wide report on the U.S. Customs and Border Protection's ("CBP's") metering policy and the related asylum waitlists in Mexican border cities.

4. I have also led the publication of four subsequent metering updates that document CBP's practices and the conditions faced by asylum seekers waiting in Mexican border cities.

5. In addition to this work, I teach a graduate level course on Mexico's migration policy at the Lyndon B. Johnson School of Public Affairs at the University of Texas.

6. Through my work at CAMPI, I have directly observed CBP's implementation of its turn-back policy at ports of entry ("POEs") on the U.S.-Mexico border. Since October 2018, I have personally conducted fieldwork in eight Mexican border cities<sup>2</sup> where asylum seekers affected by CBP's metering policy are forced to wait. In these cities, I have spoken directly with affected asylum seekers, along with migrant shelter staff, members of civil society organizations, and Mexican federal and local government officials. I have interviewed affected asylum seekers who were waiting on international bridges, affected asylum seekers who were sleeping in encampments near the international bridges, and affected asylum seekers waiting in migrant shelters. I have watched firsthand as asylum seekers arrived at the United States-Mexico international line and were turned back by CBP officers. I have seen cop-

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<sup>2</sup> Those cities are Matamoros, Tamaulipas; Nuevo Progreso, Tamaulipas; Reynosa, Tamaulipas; Ciudad Miguel Aleman, Tamaulipas; Nuevo Laredo, Tamaulipas; Piedras Negras, Coahuila; Ciudad Acuria, Coahuila; Nogales, Sonora.

ies of asylum waitlists in six Mexican border cities<sup>3</sup> and have spoken to eight individuals in charge of running these lists.<sup>4</sup> I have also partnered with colleagues who conducted similar fieldwork in five additional Mexican border cities.<sup>5</sup>

7. A copy of my current curriculum vitae, which includes a list of all publications that I have authored in the prior 10 years, is attached as **Exhibit A** to this report.

8. My typical consulting rate is \$300 an hour. I have elected to waive that fee in this case and will receive no compensation for my work in this litigation.

9. I understand from Plaintiffs' counsel that I have been retained to offer opinions on issues related to class certification in this litigation. This report contains a complete statement of all of my opinions related to class certification and reasons for them. It also contains all of the exhibits that will be used to summarize or support those opinions. I understand that some depositions and document productions will occur after my report is submitted. I reserve the right to amend and revise this re-

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<sup>3</sup> Those cities are Matamoros, Tamaulipas; Nuevo Progreso, Tamaulipas; Reynosa, Tamaulipas; Piedras Negras, Coahuila; Ciudad Acuria, Coahuila; Ciudad Juarez, Chihuahua.

<sup>4</sup> These list managers were in the cities of Matamoros, Tamaulipas; Nuevo Progreso, Tamaulipas; Reynosa, Tamaulipas; Ciudad Miguel Aleman, Tamaulipas; Nuevo Laredo, Tamaulipas; Piedras Negras, Coahuila; and Ciudad Acuria, Coahuila (two list managers: individuals and families).

<sup>5</sup> Those cities are Ciudad Juárez, Chihuahua; Agua Prieta, Sonora; San Luis Rio Colorado, Sonora; Mexicali, Baja California; and Tijuana, Baja California.

port and the exhibits to it if I should be made aware of information relevant to my opinions.<sup>6</sup>

## II. Materials Considered

10. I considered the following facts and data when forming the opinions expressed in this report.

11. Since December 2018, CAMPI has published regular reports on CBP's metering practices and the conditions for asylum seekers in Mexican border cities (the "Reports"). These reports include: (a) *Asylum Processing and Waitlists at the U.S.-Mexico Border* (December 2018), (b) *Metering Update* (February 2019), (c) *Metering Update* (May 2019), (d) *Metering Update* (August 2019), (e) *Metering Update* (November 2019).

12. The Reports are based on information that I, other members of CAMPI, and colleagues from the University of California San Diego and the Migration Policy Centre, have collected directly from field and phone interviews and direct observation on visits to Mexican border cities. These Reports are cited throughout this report.

13. This expert report also references documents produced by the defendants in this litigation during discovery.<sup>7</sup> I considered over 1,500 documents that were

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<sup>6</sup> This is the only case in which I have testified in the previous four years as an expert at trial or by deposition.

<sup>7</sup> I understand from plaintiffs' counsel that the current defendants in this litigation are Chad Wolf, Acting Secretary of Homeland Security; Mark A. Morgan, Acting Commissioner of U.S. Customs and Border Protection; and Todd C. Owen, Executive Assistant Commissioner of the Office of Field Operations of U.S. Customs and Border Protection.

produced by the defendants in this litigation when forming my opinions this case. These documents were provided to me at my request by Plaintiffs' counsel. Plaintiffs' counsel did not refuse to produce any documents or data that I requested.

14. In particular, to form the opinions expressed in this report and the reasons for them, I considered CBP's Southwest Border Daily Operations Reports, Migrant Action Crisis Team ("MCAT") Daily Reports, Queue Management Reports, and Admissibility Reports from CBP's San Diego Field Office. All of these documents provided information regarding the number of individuals being held in CBP custody at POEs. The MCAT Daily Reports and the Queue Management Reports also documented the available capacity at each port of entry.<sup>8</sup>

15. Additionally, I considered CBP's Mass Migration Contingency Plans for the Laredo and San Diego Field Offices, CBP emails regarding port of entry capacity and its metering policy, and other internal CBP memos.

16. When forming the opinions and analysis disclosed in this report, I also considered the transcripts of depositions of CBP officers and officials that have been taken in this litigation. I understand from Plain-

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<sup>8</sup> There were inconsistencies across the data, with different numbers being reported for the same day across the MCAT Daily Reports and the Queue Management Reports. However, both sources reported similar overall port capacity numbers and followed the same general trends. Given these differences, each type of material was treated separately and there were no efforts to combine them.

tiffs' counsel that one deposition has been taken by Plaintiffs thus far in this litigation.

17. When forming the opinions expressed in this report, I also considered various open-source materials, including newspaper articles, reports from nongovernmental organizations, and published legal documents. I did not accept the truth of these documents uncritically. Rather, I used my experience and observations on the ground to determine whether these open source materials were accurate.

18. Finally, when forming the opinions in this report and the reasons for them, I relied upon my direct observation of how the turn back policy is implemented at the U.S.-Mexico border.

### **III. Methodology**

19. This expert report builds on fieldwork and research that I have conducted across the U.S.-Mexico border, both alone and in close collaboration with other researchers who also document turn-backs at POEs on the U.S.-Mexico border. During this fieldwork, I engaged in original data collection and relied on semi-structured interviews, observations, and a review of primary source materials. The opinions expressed in this report draw on recognized standards from the disciplines of political science and public policy. The findings from this fieldwork have been recognized and used in official publications by Mexico's Secretary of Foreign Relations and the Inter-American Human Rights Commission.

20. Specifically, the opinions listed in this report are based on the following methods and techniques. First, I received questions from Plaintiffs' counsel that I was

told to address. Second, I formed preliminary opinions regarding these questions based on my published field-works and research. Third, I analyzed documents and data produced in this litigation, depositions, and open source materials from the time period 2016 to the present to confirm the accuracy of my preliminary opinions.

21. In the course of forming my opinions, I analyzed MCAT Daily Reports and Queue Management Reports produced by the defendants in this case. These reports include daily custody and capacity numbers, which I compiled into an excel spreadsheet for further analysis. The results from this analysis are included in the report and in the Appendix to this report.<sup>9</sup>

#### **IV. Summary of Opinions**

22. Plaintiffs' counsel have asked me to address whether, between 2016 and the present, the United States government engaged in a systemic practice of denying non-citizens access to the asylum process at ports of entry on the U.S.-Mexico border.<sup>10</sup>

23. Based on my analysis to date, I have reached the following opinions:

- a. Beginning in 2016, U.S. Customs and Border Protection ("CBP") adopted a policy and practice of

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<sup>9</sup> I also understand that a copy of the work papers that I used to complete these analyses will be turned over to the defendants along with this report.

<sup>10</sup> I have only been asked to opine on turn-backs as described in Second Amended Complaint. I offer no opinion on other U.S. government policies toward asylum seekers, such as the Migrant Protection Protocols or the regulations purporting to ban asylum for those who entered the United States without inspection or transited through a third country en route to the United States.



turning back asylum seekers that were arriving at ports of entry on the U.S.-Mexico border. Initially, turn-backs occurred at the San Ysidro port of entry, amid an increase in the number of Haitian and other asylum seekers.

b. Between 2016 and April 2018, turn-backs were observed at numerous ports of entry on the U.S.-Mexico border, including in San Ysidro, Tecate, El Paso, Eagle Pass, Laredo, McAllen, and Brownsville.

c. On April 27, 2018, CBP adopted a written “metering” policy that was distributed to all ports of entry on the U.S.-Mexico border. This policy states that the four directors of field operations on the U.S.-Mexico border may decide to meter the flow of asylum seekers processed and inspected at ports of entry on the U.S.-Mexico border. When engaging in metering, CBP officers were instructed to “inform the travelers that processing at the port of entry [was] currently at capacity and CBP is permitting travelers to enter the port once there is sufficient space and resources to process them.”<sup>11</sup> This policy was disseminated to CBP officers at POEs via written and oral musters and standard operating procedures.<sup>12</sup>

d. Since April 27, 2018, all ports of entry on the U.S.-Mexico border that accept pedestrian traffic have engaged in turn-backs or metering. This turn back policy has three prongs. First, the U.S. government has encouraged asylum seekers to arrive at

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<sup>11</sup> ECF No. 283-1 (hereinafter, “Metering Policy”).

<sup>12</sup> [REDACTED] Deposition, November 21, 2019.

POEs on the U.S.-Mexico border instead of entering the United States without inspection between POEs. Second, some smaller POEs redirected asylum seekers to larger POEs despite the fact that these smaller POEs were able to process and inspect asylum seekers. Third, larger POEs engaged in metering—i.e., turning arriving asylum seekers back to Mexico citing capacity constraints.

e. I understand from prior filings in this case that the defendants argue that there may be “legitimate factors” that caused CBP to engage in turn-backs.<sup>13</sup> More specifically, the defendants argue that the capacity of a POE is not knowable because it varies on a day-to-day basis based on several factors.<sup>14</sup> Due to these factors, defendants assert that there is no common method for determining whether the capacity utilization of a port of entry justified turning asylum seekers back to Mexico.<sup>15</sup> This is not the case.

f. Tracking the capacity utilization and daily capacities of POEs was operationally important to CBP.<sup>16</sup> In daily MCAT and Queue Management reports, CBP tracked factors including the capacity utilization of POEs, whether the number of arriving asylum seekers was affecting port operations, and how many people were waiting to be processed at the port. Compiling and analyzing these reports provides a common method for analyzing whether the

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<sup>13</sup> ECF No. 308 at 19.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> [REDACTED] Deposition, November 21, 2019.

capacity of a POE might justify turning back asylum seekers.<sup>17</sup>

g. Furthermore, ports of entry and CBP field offices create contingency plans that explain in detail how POEs can temporarily increase their capacity in response to an increased number of asylum seekers. Comparing these contingency plans to the actual operation of POEs documented in MCAT and Queue Management reports offers a common method for determining whether POEs utilized the capacity available to them under these contingency plans when faced with increased migration numbers.

h. When analyzed using this common methodology, the defendants' justifications of capacity are less convincing. From 2016 to 2019 most ports of entry consistently reported that they were below capacity. Further still, some ports of entry reported being consistently below 50 percent capacity. Similarly, smaller ports of entry also redirected asylum seekers to larger ports, including when they had the capacity to accept and process arriving asylum seekers. According to CBP's own analysis of the Queue Management data, 80 percent of the times when these ports of entry were redirecting asylum seekers, their facilities were completely empty (June 20, 2018 through November 8, 2018).<sup>18</sup> Finally, despite putting in place metering practices in ports of entry along the entire U.S. border, it does not appear that

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<sup>17</sup> I understand from Plaintiffs' counsel that they argue that every turn-back of an asylum seeker at a port of entry on the U.S.-Mexico border is illegal regardless of whether it is justified by the capacity utilization of a port of entry. I express no this legal theory.

<sup>18</sup> AOL-DEF-00210504.

any port of entry activated a contingency plan related to the arrival of large numbers of asylum seekers.<sup>19</sup>

24. This report will cover the first incidents of metering in 2016, the policy’s evolution over the past four years, and how it relates to CBP’s capacity levels at ports of entry. Overall, this report will seek to illustrate how the metering policy has systematically denied non-citizens access to the asylum process when they arrive to the border. Those subjected to metering are often denied access to the asylum process for months, and, for a smaller subset of asylum seekers, metering has resulted in permanent denial.

## **V. Reasons for Opinions**

### **A. Key Terminology**

25. This report references several terms that are endemic to the U.S.-Mexico border. Below I define those terms.

26. “OFO” refers to CBP’s Office of Field Operations, the organization that is directly responsible for the operations of ports of entry.

27. “Class A” POEs are ports of entry that are designated to “process all aliens applying for admission into the United States,” including asylum seekers that arrive on foot.<sup>20</sup>

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<sup>19</sup> There is at least one example of OFO working with Border Patrol to process a large number of asylum seekers that ran through the port’s vehicle lanes. However, this does not appear to represent the activation of a contingency plan. AOL-DEF-00088390.

<sup>20</sup> See [https://www.cbp.gov/sites/default/files/documents/Vol\\_49\\_No\\_50\\_Title.pdf](https://www.cbp.gov/sites/default/files/documents/Vol_49_No_50_Title.pdf).

28. “Limit line” positions are located at or near the boundary line between the United States and Mexico. CBP officers stationed at the limit line are tasked with screening arriving pedestrian’s travel documents before they can enter U.S. territory.<sup>21</sup>

29. “Control stations” are the physical access controls located at the limit line.

30. “Redirecting” is the practice of intercepting asylum seekers at a port’s limit line position and instructing them to go to another port to apply for asylum.

31. “Circumventors” are individuals, frequently asylum seekers, that enter U.S. territory through the vehicle lanes, instead of through the established pedestrian walkways.

#### **B. Ports of Entry**

32. Along the U.S.-Mexico border, each U.S. port of entry has a different architectural design but follows the same general layout. For the portion of the U.S.-Mexico border that is delineated by the Rio Grande river (from Brownsville to El Paso), U.S. ports of entry are located at the north end of an international bridge. The U.S.-Mexico border is located at the midpoint of the Rio Grande, generally marked by a commemorative

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<sup>21</sup> The limit line position is not always located on the exact U.S.-Mexico border. For example, the limit line in Tecate is located roughly 10 feet into U.S. territory. “Investigation of Alleged Violations of immigration Laws at the Tecate, California, Port of Entry by U.S. Customs and Border Protection Personnel, U.S. Department of Homeland Security, Office of the Inspector General, September 26, 2019, [https://www.oig.dhs.gov/sites/default/files/assets/2019-10/OIG-19-65-Sep19\\_0.pdf](https://www.oig.dhs.gov/sites/default/files/assets/2019-10/OIG-19-65-Sep19_0.pdf).

plaque on the bridge. By contrast, ports of entry that are located along land portions of the U.S.-Mexico border often place turnstiles at or near the actual border line, marking the entry into U.S. territory.

33. At Class A POEs—the POES that allow for pedestrian traffic—non-asylum-seekers move freely across the U.S.-Mexico international dividing line and into the United States, either by walking across the bridge midpoints or by passing through a turnstile. These pedestrians then enter the port of entry’s arrival hall, where they encounter a CBP officer at one of several desks. The CBP officer reviews their travel documents—a process known as “primary inspection”—and may admit the pedestrian into the United States or send the pedestrian to secondary inspection for further review.

34. POEs are staffed by CBP officers and supervisors, including Port Directors, Assistant Port Directors, and first and second-level supervisors.<sup>22</sup> Larger POEs also have Admissibility Enforcement Units, or AEUs, that are designed to hold non-citizens requiring additional processing for a short period of time. Some POEs also have Criminal Enforcement Units, or CEUs, that investigate cases of trafficking and the use of fraudulent entry documents.<sup>23</sup>

35. Front-line CBP officers work in shifts at a POE.<sup>24</sup> These officers are assigned to duty stations, including at primary inspection, secondary inspection, and at “limit line” positions at or near the boundary line

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<sup>22</sup> [REDACTED] Deposition, November 21, 2019.

<sup>23</sup> [REDACTED] Deposition, November 21, 2019.

<sup>24</sup> [REDACTED] Deposition, November 21, 2019.

between the United States and Mexico.<sup>25</sup> From time to time, these officers receive written or oral instructions on how to execute their jobs, known as “musters” or “standard operating procedures.”<sup>26</sup>

36. Prior to CBP’s use of turn-backs or metering, asylum seekers approaching CBP’s ports of entry would pass into U.S. territory, walk into the POE’s arrival hall, approach a CBP officer at one of their desks, and request asylum. CBP officers would then send these asylum seekers to the secondary inspection area, where they would then be processed.<sup>27</sup>

37. There is one deviation from this general processing procedure. By March 2016, CBP officers in the San Ysidro port in San Diego had created a separate line for asylum seekers, who had to wait in the line until it was their turn to be processed.<sup>28</sup> This dual line structure would soon become part of the San Diego port of entry’s first metering system.

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<sup>25</sup> [REDACTED] Deposition, November 21, 2019.

<sup>26</sup> [REDACTED] Deposition, November 21, 2019.

<sup>27</sup> OFO processes an asylum seeker by entering them into expedited removal proceedings, after the asylum seeker has been found inadmissible and has claimed credible fear. OFO takes a sworn statement regarding the fear that the asylum seeker has of returning to his or her home country and then refers the person for an interview to UCSIS. This is different than being “inspected”, which is OFO’s process for determining the nationality and identity of an individual, along with their admissibility based on the requirements of U.S. immigration law.

<sup>28</sup> “Re: Denial of Food to Asylum Seekers Awaiting Processing at San Ysidro Port Entry,” American Civil Liberties Union, March 23, 2016, <https://www.aclusandiego.org/wp-content/uploads/2016/03/2016-03-23-Ltr-re-Denial-Food-at-SYS-POE -FINAL.pdf>.

### C. Initial Metering Practices

38. On May 26, 2016, CBP implemented the first iteration of its metering system in the San Ysidro Port of Entry in San Diego. On this date, CBP reported that its facility was at capacity amid an increase in the number of Haitians and other asylum seekers arriving at the port of entry. At the time, local news outlets reported that there were more than 200 asylum seekers waiting in line inside U.S. territory in the port of entry's pedestrian entrance and another dozen on the Mexican side of the turnstile.<sup>29</sup> In response, CBP officers worked with their counterparts at the National Migration Institute (*Instituto Nacional de Migración*, INM) to take the waiting asylum seekers to Tijuana migrant shelters. Asylum seekers were told to return at a certain time for appointments.

39. In the following months, CBP officers continued this process and began streamlining the system. First CBP undertook measures to ensure that asylum seekers stayed in Mexico while they waited. On June 27, 2016, the San Ysidro Port of Entry watch commander wrote in an email "It's even more important that when traffic is free flowing that the limit line officers ask for and check documents to ensure that groups that may be seeking asylum are directed to remain in the waiting area on the Mexican side."<sup>30</sup> Second, CBP also outlined and formalized its metering procedures. A document issued after July 2016 notes that "In coordination with

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<sup>29</sup> Sandra Dibble, "Surge of Haitians at San Ysidro Port of Entry," *The San Diego Union—Tribune*, May 26, 2016, <https://www.sandiegouniontribune.com/news/border-baja-california/sdut-haitians-flood-san-ysidro-port-entry-2016may26-story.html>.

<sup>30</sup> CBPALORT000114.



the GoM [Government of Mexico] we have identified two (2) periods throughout the day to intake asylum claims into our custody (8am and 4 pm). At each period, we intake approximately [redacted] applicants, with a daily intake total of approximately [redacted] applicants. If an applicant does not meet these intake time periods, they are requested to remain in-line in Mexico until the next intake period.”<sup>31</sup>

40. As CBP officers in San Diego implemented this first metering system, individuals arriving at the San Ysidro and Otay Mesa ports of entry began to report being turned back to Mexico. At the Ped-West crossing—a pedestrian crossing for northbound travelers in the San Ysidro port of entry—asylum seekers were told that they had to speak with Mexican immigration officials before their asylum claims could be processed in the United States.<sup>32</sup> In July 2016, the American Immigration Council documented the case of a Mexican man being returned to Tijuana, and the following month another three teenage Guatemalans and a 21 year old Guatemalan man were also turned back.<sup>33</sup>

41. The San Diego metering system soon spread across the border. It first spread to nearby cities, such as Calexico (in the San Diego sector) and Nogales (in the Tucson sector), where metering systems were put

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<sup>31</sup> CBPALORT000103 to 106.

<sup>32</sup> “Re: U.S. Customs and Border Protection’s Systemic Denial of Entry to Asylum Seekers at Ports of Entry on U.S.-Mexico Border, American Immigration Council, January 13, 2017, [https://www.americanimmigrationcouncil.org/sites/default/files/general\\_litigation/cbp\\_systemic\\_denial\\_of\\_entry\\_to\\_asylum\\_seekers\\_advocacy\\_document.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/cbp_systemic_denial_of_entry_to_asylum_seekers_advocacy_document.pdf).

<sup>33</sup> Ibid.

in place after the arrival of a large number of Haitian asylum seekers in a short period of time. In September 2016, large numbers of Haitians arrived in Mexicali (across the border from Calexico) and Grupo Beta, the humanitarian agency inside Mexico's National Migration Institute, began organizing a list for the waiting Haitians as well as providing them with dates for when they should show up at the U.S. port of entry.<sup>34</sup> By October 19, 2016, a line of Haitian asylum seekers was also waiting at the Nogales port of entry. In Nogales, Sonora (across the border from Nogales, Arizona), the municipal government created a waitlist for the asylum seekers.<sup>35</sup> Yet, by December 2016 the list had dissolved, as CBP officers processed the waiting Haitians in the city and stopped metering.

42. Around the same time, metering also expanded to the other end of the border. It first spread to the Laredo sector, which was experiencing an increase in the number of Cubans arriving to Nuevo Laredo in the final months of 2016.<sup>36</sup> On November 12, 2016, the As-

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<sup>34</sup> "Asylum Processing and Waitlists at the U.S.-Mexico Border," Strauss Center for International Security and Law, Center for U.S.-Mexican Studies, & Migration Policy Centre, December 2018, [https://www.strausscenter.org/images/strauss/18-19/MSI/Asylum\\_Report\\_190308.pdf](https://www.strausscenter.org/images/strauss/18-19/MSI/Asylum_Report_190308.pdf); "Mexicans Respond To Haitians, Africans With Unusual Hospitality," September 22, 2016, [https://www.youtube.com/watch?v=UzaCrd8R\\_LA](https://www.youtube.com/watch?v=UzaCrd8R_LA).

<sup>35</sup> Curt Prendergast, "Haitians hoping for US asylum gather at Nogales border crossing," *Arizona Daily Star*, October 26, 2016 [https://tucson.com/news/local/border/haitians-hoping-for-us-asylum-gather-at-nogales-border-crossing/article\\_7c401363-f48e-540b-9cf8-4390b1ce7b55.html](https://tucson.com/news/local/border/haitians-hoping-for-us-asylum-gather-at-nogales-border-crossing/article_7c401363-f48e-540b-9cf8-4390b1ce7b55.html).

<sup>36</sup> "Southwest Border Inadmissibles by Field Office FY2017," U.S. Customs and Border Protection, accessed December 6, 2019,

sistant Director of Field Operations for the Laredo Field Office wrote an email to all Laredo sector port directors,<sup>37</sup> asking them to meet with their INM counterparts and request that INM “control the flow of aliens to the port of entry.”<sup>38</sup> It added that “if INM cannot or will not control the flow, your staff is to provide the alien with a piece of paper identifying a date and time for an appointment and return then [sic] to Mexico. This is similar to what San Diego is doing.”<sup>39</sup> This was followed up by additional internal CBP emails discussing this metering guidance. For example, on November 22, 2016, an internal email noted that the instructions from the Laredo Field Office is that “we will only accept ‘what we can handle/process. All others will be turned back to Mexico with an appointment date/time if possible.’”<sup>40</sup>

43. Soon after these emails circulated in CBP, there was an increase in the number of reported turn-backs in the Laredo sector. On November 24, 2016, a Salvadoran woman and her three year old son reported that they were turned back at the Hidalgo port of entry,<sup>41</sup>

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<https://www.cbp.gov/newsroom/stats/fo-sw-border-inadmissibles-fy2017>.

<sup>37</sup> This includes port directors in Brownsville, Del Rio, Eagle Pass, Hidalgo, Laredo, Progreso, Rio Grande, and Roma.

<sup>38</sup> CBPALORT000034.

<sup>39</sup> CBPALORT000034.

<sup>40</sup> CBPALORT000017.

<sup>41</sup> “Re: U.S. Customs and Border Protection’s Systemic Denial of Entry to Asylum Seekers at Ports of Entry on U.S.-Mexico Border, American Immigration Council, January 13, 2017, [https://www.americanimmigrationcouncil.org/sites/default/files/general\\_litigation/cbp\\_systemic\\_denial\\_of\\_entry\\_to\\_asylum\\_seekers\\_advocacy\\_document.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/cbp_systemic_denial_of_entry_to_asylum_seekers_advocacy_document.pdf).

while on November 30, 2016, a Honduran woman and her four year old daughter reported that they were turned back in Laredo.<sup>42</sup> Additional turn-back reports also began to emerge around this time, including in the El Paso sector on November 20, 2016, expanding the practice of turn-backs into all four Customs and Border Protection sectors.<sup>43</sup> A September 2019 DHS Office of the Inspector General (OIG) Report also notes an interview in which a witness stated that CBP's turn-backs of asylum seekers began in Tecate (in the San Diego sector) in 2016.<sup>44</sup> However, the OIG did not discover any documentation of turn-backs at Tecate until February 2017. None of the asylum seekers turned back from these ports of entry were provided with appointments.

44. During these initial turn-backs, asylum seekers arriving at U.S. ports of entry would generally cross into U.S. territory before CBP officers told them that they had to return to Mexico. According to turned back asylum seekers' testimony, they were generally intercepted by CBP officers while already walking on the U.S. side of the bridge or sent back to Mexico after approaching CBP officers at their desks in the port of entry's main hall. In December 2016, large groups of Cubans arrived to the Brownsville and Hidalgo ports of entry and spent several days waiting on or near the bridge before CBP processed the groups. Photos and video footage show the Cubans entering and lining up in U.S.

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<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

<sup>44</sup> "Investigation of Alleged Violations of immigration Laws at the Tecate, California, Port of Entry by U.S. Customs and Border Protection Personnel, U.S. Department of Homeland Security, Office of the Inspector General, September 26, 2019, [https://www.oig.dhs.gov/sites/default/files/assets/2019-10/OIG-19-65-Sep19\\_0.pdf](https://www.oig.dhs.gov/sites/default/files/assets/2019-10/OIG-19-65-Sep19_0.pdf).

territory on the Hidalgo international bridge.<sup>45</sup> A review of some of the first publicly recorded turn-backs confirms these initial locations.

**Table 1: Data and Location of First Publicly Recorded Turn-back (by Port of Entry)**

Cities	Date of First Publicly Recorded Turn-back	Location of Turn-back
San Ysidro	July 11, 2016 <sup>46</sup>	POE Entry Hall
El Paso	November 20, 2016 <sup>47</sup>	U.S. side of the International Bridge
Hidalgo	November 24, 2016 <sup>48</sup>	POE Entry Hall
Otay Mesa	February 2017 <sup>49</sup>	U.S. territory
Hidalgo	March 2017 <sup>50</sup>	POE Entry Hall

45. The turn-backs were often paired with language explaining why the individual was not going to be allowed to seek asylum into the United States. These explanations were not standardized and included descrip-

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<sup>46</sup> There were prior accusations of Mexican asylum seekers being returned to Mexico. However, this appears to be a separate issue from CBP metering. “Re: U.S. Customs and Border Protection’s Systemic Denial of Entry to Asylum Seekers at Ports of Entry on U.S.-Mexico Border, American Immigration Council, January 13, 2017, [https://www.americanimmigrationcouncil.org/sites/default/files/general\\_litigation/cbp\\_systemic\\_denial\\_of\\_entry\\_to\\_asylum\\_seekers\\_advocacy\\_document.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/cbp_systemic_denial_of_entry_to_asylum_seekers_advocacy_document.pdf).

<sup>47</sup> Ibid.

tions such as “We’re not accepting any more people”<sup>51</sup> and “[CBP wasn’t] receiving people from Honduras.”<sup>52</sup> Despite turn-backs occurring now across the length of the U.S.-Mexico border, CBP officials were not using a uniform explanation for why they were taking place.

46. On January 13, 2017, a memorandum from the Laredo Field Office formalized the sector’s metering policy, stating that officers could conduct metering “at the middle of the bridge” and that “all foreign nationals seeking a benefit are given an appointment window to return for processing.”<sup>53</sup> However, no appointments were ever provided to arriving asylum seekers and it does not appear that CBP officers were regularly stationed at the middle of the bridge. Rather, some asylum seekers continued to be turned back to Mexico after entering the United States throughout 2017 and through the early part of 2018.<sup>54</sup> These turn-backs continued in

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<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

<sup>49</sup> “Crossing the Line: U.S. Border Agents Illegally Reject Asylum Seekers,” Human Rights First, May 2017, <https://www.humanrightsfirst.org/sites/default/files/hrf-crossing-the-line-report.pdf>.

<sup>50</sup> Ibid.

<sup>51</sup> “Re: U.S. Customs and Border Protection’s Systemic Denial of Entry to Asylum Seekers at Ports of Entry on U.S.-Mexico Border, American Immigration Council, January 13, 2017, [https://www.americanimmigrationcouncil.org/sites/default/files/general\\_litigation/cbp\\_systemic\\_denial\\_of\\_entry\\_to\\_asylum\\_seekers\\_advocacy\\_document.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/cbp_systemic_denial_of_entry_to_asylum_seekers_advocacy_document.pdf).

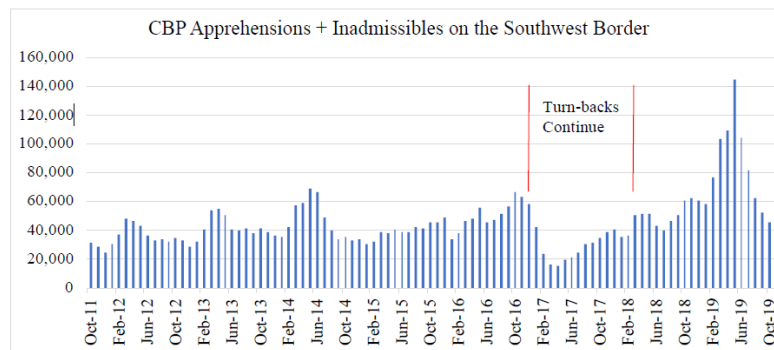
<sup>52</sup> Ibid.

<sup>53</sup> CBPALORT000003.

<sup>54</sup> In December 2017, a line of asylum seekers once again formed in Tijuana. This line would morph into the notebook waitlist in

spite of CBP experiencing “historic lows in illegal immigration,” according to a May 19, 2017 CBP Memorandum.<sup>55</sup> CBP’s publicly available statistics on apprehensions and inadmissibles also reflect the fewer migrants and asylum seekers arriving to the U.S.-Mexico border during this period of continued turn-backs (see Graph 1).

**Graph 1: CBP Apprehensions and Inadmissibles at the Southwest Border**<sup>56</sup>



47. While metering was not standardized during this timeframe, there were continued cases of metering in San Ysidro. A May 2017 Human Rights First report noted that the metering system in San Ysidro continued through early 2017 and that in April 2017 CBP officers

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April 2018. Kate Morrissey, “One year after notebook appears in Tijuana, confusion and anxiety continue in asylum line,” *The San Diego Union Tribune*, April 28, 2019, <https://www.sandiegouniontribune.com/news/immigration/story/2019-04-26/one-year-after-notebook-appears-in-tijuana-confusion-and-anxiety-continue-in-asylum-line>.

<sup>55</sup> AOL-DEF-00090108.

<sup>56</sup> Data comes from apprehensions and inadmissibles: “Southwest Border Migration FY 2020,” U.S. Customs and Border Protection, accessed December 6, 2019, <https://www.cbp.gov/newsroom/stats/sw-border-migration>.

at the port of entry were continuing to tell arriving asylum seekers to first go to Grupo Beta for an appointment.<sup>57</sup> A CBP email from December 8, 2017 noted that in the San Diego sector, “we have been metering on and off the past couple days based on our numbers hitting capacity.”<sup>58</sup>

#### **D. Current Metering Practices**

48. On April 27, 2018, the Executive Assistant Commissioner of the Office of Field Operations issued a “Metering Guidance” memo to the agency’s four Field Office Directors on the U.S.-Mexico border. The guidance allowed directors to “meter the flow of travelers at the land border,” and said that they could “establish and operate physical access controls at the borderline, including as close to the U.S.-Mexico border as operationally feasible.”<sup>59</sup> While the memo noted that CBP could not create a separate line for asylum seekers, it does allow for “lines for those with appropriate travel documents and those without such documents,” which operationally creates the same outcome. It also noted that ports should “inform the waiting travelers that processing at the port is currently at capacity,” finally providing CBP officers with a standardized explanation.<sup>60</sup> However, there appears to be widespread

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<sup>57</sup> “Crossing the Line: U.S. Border Agents Illegally Reject Asylum Seekers,” Human Rights First, May 2017, <https://www.humanrightsfirst.org/sites/default/files/hrf-crossing-the-line-report.pdf>.

<sup>58</sup> AOL-DEF-00071011.

<sup>59</sup> “Metering Guidance,” Office of Field Operations, April 27, 2018. AOL-DEF-00196460.

<sup>60</sup> Ibid.



acknowledgement among CBP officers that this guidance was aimed to specifically target asylum seekers.<sup>61</sup>

49. The context surrounding the timing of the Metering Guidance memo is relevant to understanding its purpose. The memo was introduced as a caravan of hundreds<sup>62</sup> of asylum seekers traveled through Mexico to the United States border and was sent to port directors with the written message that it served as “processing guidance during surge events.”<sup>63</sup> However, in the weeks following the Metering Guidance memo’s issuance, CBP began implementing the guidance across the entire U.S.-Mexico border, and not only at the San Ysidro and Calexico port of entries (which had been designated as OFO’s “processing hubs for caravan aliens”).<sup>64</sup> This was different from the previous metering instances, which were geographically limited and generally appeared to be responding to a sudden increase in migration numbers.

50. During the summer months of 2018, CBP officers set up control stations<sup>65</sup> at or near the limit line in ports of entry. While other pedestrians could still travel freely over the international line or through the turnstiles with their travel documents in hand, CBP began systematically blocking asylum seekers from ever

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<sup>61</sup> [REDACTED] Deposition, November 21, 2019.

<sup>62</sup> The caravan reached a size of 1,450 to 1,550 participants from March 31, 2018 to April 1, 2018. It then splintered into smaller groups of several hundred individuals. AOL-DEF-00196741.

<sup>63</sup> CBP email correspondence. AOL-DEF-00011883.

<sup>64</sup> AOL-DEF-00196723.

<sup>65</sup> In these controls, CBP officers are generally stationed in pairs at the midpoint and they may have additional mobile infrastructure, such as fans or something to cover them from the sun.

reaching the U.S. side of the bridge or the port of entry's entrance hall.

51. When a pedestrian approaches the U.S.-Mexico dividing line, CBP officers stand at the "control stations" on the international line or right behind it and ask for the individual's migration paperwork. If the pedestrian does not have a U.S. passport or visa to enter the United States, CBP officers often physically block their passage into U.S. territory by standing in the center of the pedestrian walkway. CBP officers then tell arriving asylum seekers<sup>66</sup> that there is no capacity at the port of entry and the asylum seekers cannot currently be processed, which is also the explanation laid out in the "Metering Guidance." At times, these stationed CBP officers may also instruct the arriving asylum seekers to contact officials on the Mexican side of the border, to go to local Mexican shelters, or to first get on an asylum waitlist.

52. After being turned away from the U.S. port of entry, asylum seekers must figure out where to stay in the Mexican border city and how to get in line to ask for asylum in the United States. In the weeks and months after the "Metering Guidance" memo, asylum seekers generally held their place in line by waiting in physical lines on international bridges or outside the ports of entry. These initial lines were reported on the bridges

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<sup>66</sup> The CBP officers know that the person is an asylum seeker based on their lack of appropriate migratory documents or if they preemptively announce that they would like to seek asylum to the CBP officers stationed at the limit line.

outside ports of entry in Brownsville<sup>67</sup>, Hidalgo<sup>68</sup>, Roma<sup>69</sup>, Laredo<sup>70</sup>, Eagle Pass<sup>71</sup>, Nogales<sup>72</sup>, El Paso<sup>73</sup>,

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<sup>67</sup> Aurora Orozco, "Familias de inmigrantes esperan bajo inclemencias en puentes internacionales," *El Nuevo Herald*, June 19, 2018, [http://www.elnuevoheraldo.com/el\\_valle/noticias\\_locales/familias-de-inmigrantes-esperan-bajo-inclemencias-en-puentes-internacionales/article\\_69abbd70-73dc-11e8-aa87-4b8d72916648.html](http://www.elnuevoheraldo.com/el_valle/noticias_locales/familias-de-inmigrantes-esperan-bajo-inclemencias-en-puentes-internacionales/article_69abbd70-73dc-11e8-aa87-4b8d72916648.html).

<sup>68</sup> Sandra Tovar, "Toman' migrantes Puente en busca de asilo en EU," *El Mañana*, May 22, 2018, <https://www.elmanana.com/toman-migrantes-puente-busca-asilo-eu-puente-internacional-migrantes-asilo-politico/4415659>.

<sup>69</sup> Silvia Foster-Frau, "Asylum seekers denied legal entry into U.S. are camping out on bridges," *San Antonio Express News*, June 6, 2018, <https://www.expressnews.com/news/local/article/Asylum-seekers-denied-legal-entry-into-U-S-are-12973965.php>.

<sup>70</sup> Meredith Hoffman, "The Horrible Conditions Endured by Migrants Hoping to Enter the US Legally," *Vice News*, July 3, 2018, [https://www.vice.com/en\\_us/article/59qny3/migrants-hoping-to-get-us-asylum-forced-to-wait-on-bridge](https://www.vice.com/en_us/article/59qny3/migrants-hoping-to-get-us-asylum-forced-to-wait-on-bridge).

<sup>71</sup> "Incomoda a automovilistas y peatones presencia de migrantes en puentes internacionales de Piedras Negras," *La Rancherita del Aire*, July 26, 2018, <https://www.rancherita.com.mx/noticias/detalles/53790/incomoda-a-automovilistas-y-peatones-presencia-de-migrantes-en-puentes-internacionales-de-piedras-negras.html#.XcjttudKjGJ>.

<sup>72</sup> "Simon Romero & Miriam Jordan, "On the Border, a Discouraging New Message for Asylum Seekers: Wait," *New York Times*, June 12, 2018, <https://www.nytimes.com/2018/06/12/us/asylum-seekers-mexico-border.html>.

<sup>73</sup> Silvia Foster-Frau, "Asylum seekers denied legal entry into U.S. are camping out on bridges," *San Antonio Express-News*, June 6, 2018, <https://www.expressnews.com/news/local/article/Asylum-seekers-denied-legal-entry-into-U-S-are-12973965.php#photo-15680354>.

and San Diego<sup>74</sup>. In the following months, due to local residents' concerns, hygiene issues, inclement weather, or disputes regarding fairness, Mexican officials, non-governmental organizations, or asylum seekers themselves began waitlists to allow people to hold their place in line with their name instead of physical presence. These asylum waitlists have no standardized procedure or structure. These waitlists are still in place in every city with waiting asylum seekers, and may be managed by the asylum seekers themselves, Mexican government officials, or humanitarian workers.

**Table 2: Groups that Run the Asylum Waitlist (November 2019)<sup>75</sup>**

List Managers	Number of Lists	Lists by City
Non-governmental organization	9	Nuevo Laredo (6), Reynosa, Agua Prieta, San Luis Río Colorado
Grupo Beta	3	Tijuana, Mexicali, Ciudad Acuña

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<sup>74</sup> "Asylum seekers wait days and weeks at U.S.-Mexico border," *Associated Press*, June 7, 2018, <https://www.cbsnews.com/news/asylum-seekers-wait-days-and-weeks-at-u-s-mexico-border/>.

<sup>75</sup> Cities may be listed in multiple categories if the city contains multiple waitlists. For example, in Ciudad Juárez, there are currently three Mexican asylum waitlists (one at each international bridge) and a non-Mexican asylum waitlist.

Asylum Seekers	5	Ciudad Juárez (3), Brownsville (2)
National Migration Institute	1	Brownsville
Civil Protection	2	Ciudad Acuña, Nogales
State Population Agency	1	Ciudad Juárez
Municipal Govern- ment	1	Piedras Negras

53. Similarly, there is no standardized Mexican or U.S. regulation of the asylum waitlists nor their managers.<sup>76</sup> There are also no controls to guarantee that these waitlists are being run transparently or without corruption. Due to this lack of oversight, asylum seekers and civil society organizations have alleged that some list managers charge asylum seekers to get on the asylum waitlist, including in Piedras Negras<sup>77</sup>, Reynosa<sup>78</sup>, and

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<sup>76</sup> Despite Mexican government entities managing the lists in certain cities, there does not appear to be any standardized guidance. This is evidenced by the different list formats and processes in different cities even when the same federal government agency is running the asylum waitlist.

<sup>77</sup> “Metering Update,” Strauss Center for International Security and Law and the Center for U.S.-Mexican Studies, November 2019, [https://www.strausscenter.org/images/strauss/18-19/MSI/MeteringUpdate\\_191107.pdf](https://www.strausscenter.org/images/strauss/18-19/MSI/MeteringUpdate_191107.pdf).

<sup>78</sup> Emily Green, “Mexican officials are extorting thousands of dollars from migrants applying for asylum,” *Vice News*, May 13, 2019, [https://www.vice.com/en\\_us/article/kzdy4e/exclusive-mexican-officials-are-extorting-thousands-of-dollars-from-migrants-to-apply-for-asylum](https://www.vice.com/en_us/article/kzdy4e/exclusive-mexican-officials-are-extorting-thousands-of-dollars-from-migrants-to-apply-for-asylum); Carolina Garza, “Cubanos denuncian a INM de

Matamoros<sup>79</sup>. This makes seeking asylum at a U.S. port of entry dependent on whether asylum seekers and their loved ones can pay hundreds or thousands of dollars.

54. Additionally, the lack of regulations means that some cities can stop asylum seekers from joining waitlists altogether. For example, in Ciudad Acuña—opposite from Del Rio, Texas—the asylum waitlists for both individuals and families have been “closed” since March 2019.<sup>80</sup> This means that list managers (Civil Protection for adults and Grupo Beta for families) are not accepting any additional asylum seekers onto the waitlists. While CBP officers are not involved in managing these lists, in certain cities such as Reynosa<sup>81</sup>, Piedras

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corrupción en trámite de asilo humanitario,” *Milenio*, June 5, 2019, <https://www.milenio.com/politica/cubanos-denuncian-inm-corrupcion-tramite-asilo-humanitario>.

<sup>79</sup> Molly Hennessy-Fiske, “Asylum seeker blocked at Texas border bridges say Mexican officials are demanding money to let them pass,” *Los Angeles Times*, November 22, 2018, <https://www.latimes.com/nation/la-fg-asylum-list-border-2018-story.html>.

<sup>80</sup> There were also reports that the Piedras Negras was periodically closed throughout 2019. “Metering Update,” Strauss Center for International Security and Law and the Center for U.S.-Mexican Studies, November 2019, [https://www.strausscenter.org/images/strauss/18-19/MSI/MeteringUpdate\\_191107.pdf](https://www.strausscenter.org/images/strauss/18-19/MSI/MeteringUpdate_191107.pdf).

<sup>81</sup> “Metering Update,” Strauss Center for International Security and Law and the Center for U.S.-Mexican Studies, November 2019, [https://www.strausscenter.org/images/strauss/18-19/MSI/MeteringUpdate\\_191107.pdf](https://www.strausscenter.org/images/strauss/18-19/MSI/MeteringUpdate_191107.pdf).

Negras<sup>82</sup>, and Mexicali<sup>83</sup>, the list managers reportedly share asylum seekers' information with CBP officers before the asylum seekers return to the U.S. border to seek asylum.

55. Once asylum seekers get on a waitlist, they have to wait until their number is called. Every day, a CBP official communicates the number of people that they will receive that day to an individual in Mexico. This exact process depends on the port of entry and the waitlist structure in each Mexican city. According to list managers in cities such as Ciudad Juárez, Ciudad Acuña, and Piedras Negras, CBP officers directly call the Mexican individuals who manage the lists.<sup>84</sup> In other cities, CBP officers provide their numbers directly to waiting asylum seekers. This was the case in the Roma and Progreso ports of entry, where asylum seekers waited on the international bridges because those Mexican cities do not have any migrant shelters. (As of November 2019, there were no longer asylum seekers waiting at these two ports of entry.) More recently, Mexican asylum seekers have also created their

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<sup>82</sup> "Barred at the Border," Human Rights First, April 2019, [https://www.humanrightsfirst.org/sites/default/files/BARRED\\_AT\\_THE\\_BORDER\\_R.pdf](https://www.humanrightsfirst.org/sites/default/files/BARRED_AT_THE_BORDER_R.pdf).

<sup>83</sup> "Asylum Processing and Waitlists at the U.S.-Mexico Border," Strauss Center for International Security and Law, Center for U.S.-Mexican Studies, & Migration Policy Centre, December 2018, [https://www.strausscenter.org/images/strauss/18-19/MSI/Asylum\\_Report\\_190308.pdf](https://www.strausscenter.org/images/strauss/18-19/MSI/Asylum_Report_190308.pdf).

<sup>84</sup> In Ciudad Juárez, the list manager is a representative from the State Population Council (*Consejo Estatal de Población*, COESPO); in Ciudad Acuña, it is a representative from the city's Civil Protection agency (Protección Civil); and in Piedras Negras, it is a representative of the municipal government.

own lists in Matamoros and Ciudad Juárez and communicate directly with CBP officers stationed at the international line.

56. In specific circumstances, there are cases of asylum seekers who are able to circumvent the official list. These include unaccompanied minors and individuals who were able to pay a bribe to corrupt list managers. There are also a small number of asylum seekers who are able to avoid metering by appearing at the limit line with a severe medical need or after being accompanied by an advocate. Similarly, a small number of asylum seekers have made it past the limit line and into U.S. territory by evading stationed CBP officers' detection or by running into U.S. territory through the port of entry's vehicle lanes. However, most asylum seekers are forced to put their names on an asylum waitlist and wait until their number is called.

57. Asylum seekers may have to wait for months on asylum waitlists. Over the last year, the Reports have documented the wait times on asylum waitlists. From December to August 2019, wait times continuously increased, and most of these lists reached their peak levels around August 2019 (as seen in Table 3). However, as of November 2019, asylum seekers were still waiting for months in Mexican cities to cross at the ports of entry in Brownsville, Eagle Pass, El Paso, Douglas, Nogales, Yuma, Calexico, and San Diego.



**Table 3: Peak Wait Times (August 2019)**

Ports of Entry	Average Wait Time
Brownsville	1 to 2 months
Hidalgo	2 to 3 months
Roma	9 days
Laredo	1 month
Eagle Pass	2 months
Del Rio	4 months (adults) / 2 months (families)
El Paso	3.5 to 6 months
Douglas	2 months
Nogales	2 to 3 months
San Luis	3 months
Calexico	6 to 12 months
San Ysidro	6 to 9 months

58. To skip these wait times, some individuals or groups of asylum seekers have sought alternative ways to enter U.S. territory. Some asylum seekers cross between ports of entry<sup>85</sup> and others enter U.S. territory

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<sup>85</sup> “Special Review—Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy,” Department of Homeland Security, Office of the Inspector General, September

by running down the vehicle lanes at ports of entry (as previously referenced). CBP refers to the individuals who run through vehicle lanes as “circumventors,” and they are processed for expedited removal and as individuals who entered without inspection (EWI).<sup>86</sup> There are published reports of circumventors in multiple ports of entry, including in Rio Grande City<sup>87</sup>, Tecate<sup>88</sup>, Eagle Pass<sup>89</sup>, Nogales<sup>90</sup>, and Hidalgo<sup>91</sup>. These actions are a direct result of turn-backs and metering.

59. On November 8, 2018, CBP operated controls at or near the midpoint of international bridges and turnstiles in at least 24 ports of entry along the U.S.-Mexico border that allow for pedestrian traffic.<sup>92</sup> One year later, in early November 2019, the November Metering

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27, 2018, <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-84-Sep18.pdf>.

<sup>86</sup> [REDACTED] Deposition, November 21, 2019.

<sup>87</sup> “Metering Update,” Strauss Center for International Security and Law and the Center for U.S.-Mexican Studies, November 2019, [https://www.strausscenter.org/images/strauss/18-19/MSI/MeteringUpdate\\_191107.pdf](https://www.strausscenter.org/images/strauss/18-19/MSI/MeteringUpdate_191107.pdf).

<sup>88</sup> [REDACTED] Deposition, November 21, 2019.

<sup>89</sup> “Podrían cerrar puentes internacionales, si migrantes intentan cruzar de forma irregular a EU: Enlace municipal,” *La Rancherita del Aire*, May 13, 2019, <https://rancherita.com.mx/noticias/detalles/66407/podrian-cerrar-puentes-internacionales-si-migrantes-intentan-cruzar-de-forma-irregular-a-eu-enlace-municipal.html#.Xef45TJKjGI>.

<sup>90</sup> Astrid Galvan, “Asylum seekers jam US border crossings to evade Trump policy,” *Associated Press*, December 3, 2019, [https://www.washingtonpost.com/business/asylum-seekers-jam-us-border-crossings-to-evade-trump-policy/2019/12/03/24d6d30c-160f-11ea-80d6-d0ca7007273f\\_story.html](https://www.washingtonpost.com/business/asylum-seekers-jam-us-border-crossings-to-evade-trump-policy/2019/12/03/24d6d30c-160f-11ea-80d6-d0ca7007273f_story.html).

<sup>91</sup> AOL-DEF-00088390.

<sup>92</sup> AOL-DEF-00210508.

Update report confirmed that these controls remained in place at every port of entry covered in the report (totaling 14 ports of entry).

60. The presence of these controls is constant, regardless of the numbers of asylum seekers waiting at the international line or arriving at the port. For example, in November 2019, asylum seekers arriving in Reynosa, Tamaulipas—which had a low number of waiting asylum seekers—still had to first go to the local migrant shelter to put their name on the asylum waitlist instead of traveling directly to the Hidalgo port of entry to ask for asylum.<sup>93</sup> Other ports of entry such as Progreso and Roma no longer have any asylum seekers waiting on the international bridges (and have not for months), but CBP officials remain stationed at the midpoint. While the email introducing CBP’s metering guidelines to port directors describes the limit line position and metering as a response to “surge events”<sup>94</sup>, the policy has remained in place even when there are no waiting asylum seekers.

**E. CBP’s MCAT and Queue Management Reports Provide a Common Method For Analyzing Defendants’ Capacity Explanation**

61. Since May 2016, CBP has justified its turn-back and metering policy as necessary due to a lack of capacity within ports of entry. Port capacity is a fluid num-

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<sup>93</sup> Given the low numbers, shelter staff noted that most arriving asylum seekers were processed the following day (after the shelter registered them and sent their information to CBP). “Metering Update,” Strauss Center for International Security and Law and the Center for U.S.-Mexican Studies, November 2019, [https://www.strausscenter.org/images/strauss/18-19/MSI/MeteringUpdate\\_191107.pdf](https://www.strausscenter.org/images/strauss/18-19/MSI/MeteringUpdate_191107.pdf).

<sup>94</sup> AOL-DEF-00196458.

ber, both since CBP could allocate more personnel and other resources to process asylum seekers and thereby increase capacity,<sup>95</sup> and since other incidents at the port could pull some of these resources away from asylum processing. Changes to port infrastructure may also increase or decrease capacity, and certain groups of asylum seekers or other individuals may need to be held in distinct areas, limiting capacity. Indeed, within MCAT Reports, the stated capacity levels for ports of entry shifted multiple times from 2016 through 2019. (See Table 8 in the Appendix.)

62. However, despite this fluidity, there is a common method for analyzing whether the capacity of a port of entry might justify turning back asylum seekers. CBP's MCAT and Queue Management Reports<sup>96</sup> were compiled daily to measure capacity at ports of entry along the border. These reports record operationally important information, such as the number of people in custody, the percent capacity being utilized at of each port of entry, and the number of people waiting to enter the port of entry. Using this data, it is possible to see a port of entry's capacity levels over time and to track whether this capacity might justify turning back asylum seekers.

63. The first finding from reviewing CBP's MCAT and Queue Management Reports is that most ports of entry consistently reported that they were below capacity from 2016 to 2019. Further still, some ports of entry

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<sup>95</sup> This is discussed is noted in CBP's Mass Migration Contingency documents and in additional CBP documents. *See* AOL-DEF-00196723; AOL-DEF-00057105.

<sup>96</sup> The requirement to submit daily Queue Management Reports began on June 18, 2018. *See* AOL-DEF-00053604.

reported being consistently below 50 percent capacity. For example, from June 18, 2018 to July 15, 2019,<sup>97</sup> Queue Management Reports showed that 18 of the 24 ports of entry were at or below 50 percent capacity for more than half of the days for which there was data. Cities such as Otay Mesa, Tecate, Calexico East, and Andrade all reported that the ports of entry were at or below 50 percent capacity for every single day with available data.<sup>98</sup>

64. The second finding was that there is a wide variation in utilized capacity levels among ports of entry. While in 2019, there was a group of ports of entry that were consistently at or below 50 percent capacity, there was also a smaller number of ports of entry that were often near or above capacity. According to the Queue Management Data, the ports of entry in Eagle Pass, El Paso, Hidalgo, and Douglas were most frequently at or above capacity.<sup>99</sup> Both Eagle Pass and Douglas are non-redirecting small ports of entry with capacities of 16 and 4, respectively. However, the El Paso and Hidalgo ports of entry are larger.

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<sup>97</sup> June 18, 2018 is the first day with available data. July 15, 2019 is the last day with available data.

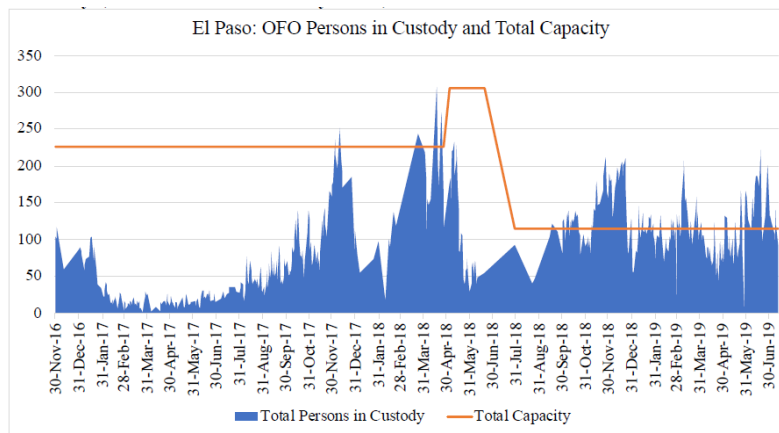
<sup>98</sup> I reviewed the MCAT and Queue Management Reports that were provided to me. Table 4 provides the total number with relevant data by port of entry.

<sup>99</sup> In June 2018, CBP in Eagle Pass specified a reason why metering was affecting port capacity in the Queue Management Reports, writing: “Recurring Issue: EGP is now staffing queue management point at POE#1 during non-operational hours (2300-700hrs) to prevent additional groups claiming CF [credible fear] from entering the US. This has caused additional staffing/OT expenditures for EGP. Staffing requires 2 CBPO officer / 1 CBP vehicle.” AOL-DEF-00095740.

65. El Paso's high utilized capacity numbers in 2018 and 2019 appear to be related to the port of entry's varying total capacity levels. From November 30, 2016 through July 13, 2019, MCAT Reports listed three different capacity numbers for El Paso: 226 (November 30, 2016 – April 27, 2018), 306 (May 4, 2018 – June 10, 2018, and 115 (June 5, 2018 – July 13, 2019). The majority of the days where the El Paso port of entry's capacity exceeded 100 percent took place after the stated capacity numbers decreased to 115. For example, on May 15, 2018, El Paso OFO reported that 170 people were in custody, which totaled a 56 percent utilized capacity.<sup>100</sup> A little more than a year later, on June 17, 2019, El Paso OFO also reported that 170 people were in custody, but this time it reported that it was at 148 percent capacity.<sup>101</sup>

**Graph 2: El Paso's Total Capacity Levels and Number of Persons in OFO Custody (November 2016 – July 2019)**

El Paso: OFO Persons in Custody and Total Capacity

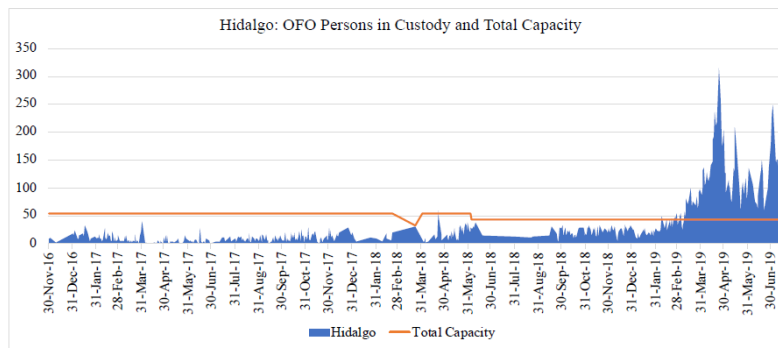


<sup>100</sup> AOL-DEF-00102654.

<sup>101</sup> AOL-DEF-00082489.

66. At the Hidalgo port of entry, it is possible that the high utilized capacity numbers are related to an increase in circumventors entering U.S. territory via the port's vehicle lanes, given that the port of entry's numbers peaked from March 2019 to July 2019 (in the available data), and CBP emails confirm that there were large numbers of circumventors entering the port of entry during that time period.<sup>102</sup>

**Graph 3: Number of People in Custody in the Hidalgo Port of Entry (MCAT)**



67. Table 4 shows the capacity levels at each port of entry, using Queue Management Reports from June 2018 to July 2019. (MCAT data from 2016 through 2019 is in the Appendix).

<sup>102</sup> This was discussed as a contributing factor for high capacity numbers in a March 2019 CBP email. AOL-DEF-00088390.

**Table 4: Field Queue Management Reports (2018-2019)**

Sector	Port of Entry	Days with Data	0-50% Capacity	51-100% Capacity	>100% Capacity
Laredo	Brownsville	314	86%	14%	0%
	Progreso	314	93%	6%	1%
	Hidalgo	314	46%	26%	28%
	Rio Grande	314	96%	4%	0%
	Roma	314	88%	12%	0%
	Laredo	314	89%	11%	0%
	Eagle Pass	314	9%	47%	44%
	Del Rio	312	82%	17%	0%
El Paso	Port of El Paso	213	6%	66%	28%
	Santa Teresa	213	74%	20%	6%
	Columbus	212	97%	3%	0%
	Tornillo	213	99%	1%	0%
	Presidia	213	91%	8%	1%
Tucson	Douglas	213	60%	19%	21%

	Lukerville	213	80%	9%	11%
	Naco	213	92%	4%	4%
	Nogales	213	25%	61%	14%
	San Luis	214	62%	38%	0%
San Diego	San Ysidro	219	5%	89%	5%
	Otay Mesa	219	100%	0%	0%
	Tecate	219	100%	0%	0%
	Calexico West	219	29%	69%	1%
	Calexico East	218	100%	0%	0%
	Andrade	219	100%	0%	0%

*Total percent may not equal 100% due to rounding.*

68. This finding is consistent with CBP's own evaluation of its Queue Management data from June 2018 through November 2018. In this evaluation, CBP followed a similar methodology to the one that was used to create this expert report: CBP extracted its Queue Management Reports from emails within senior CBP personnel's official email accounts and entered the data into an excel spreadsheet.<sup>103</sup> Using this methodology,

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<sup>103</sup> Also, similar to CBP, I also calculated the POE capacity based on the stated percent at capacity of each port of entry and using



CBP's first conclusion was also that there exists a large deviation among the ports of entry, writing that "some ports are never close to capacity but still have aliens waiting and a few other ports (Eagle Pass, El Paso, and Santa Teresa<sup>104</sup>) routinely exceed capacity."<sup>105</sup>

69. The Queue Management Reports also include the number of people waiting at the "limit line," which is at or near the international boundary. This number serves to show that CBP was aware that asylum seekers were waiting in Mexican border cities. However, despite this recognition, multiple ports of entry continued to operate with capacity levels at or below 50 percent. For example, in the 313 Queue Management Reports from June 18, 2018 through July 15, 2019 that provide data for the Laredo port of entry, 227 of them noted that CBP was aware that there was a line of asylum seekers waiting in Nuevo Laredo. However, in 201 of those days (89 percent), the Laredo port of entry both reported that it had a line of asylum seekers waiting to enter the United States and that its utilized port capacity was at or below 50 percent. Table 5 contains the information

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MCAT's reported capacity numbers. Similar to CBP, I also discovered multiple errors in CBP's capacity percentages, which often stated 100 percent capacity despite reporting low numbers of individuals in custody. I did not attempt to fix these errors in my calculations. AOL-DEF-00210504.

<sup>104</sup> In the reviewed data, CBP calculated that Santa Teresa's average capacity was 48 percent for the period in question. Its data shows that Santa Teresa exceeded full capacity (defined as greater than 100 percent) in 10 out of the 95 days. This means that the Santa Teresa POE exceeded its capacity 10.5 percent of the time. By comparison, the Eagle Pass port of entry exceeded capacity 42.1 percent of the time and the El Paso port of entry exceeded capacity 22 percent of the time.

<sup>105</sup> AOL-DEF-00210504.

for each port of entry. (Table 9 in the Appendix contains the percent of days at each port of entry where there was a reported line and the port capacity was at or below 75 percent).

**Table 5: Days with Reported Queues at the Limit Line and Port of Entry Capacity Levels Below 50 Percent**

City	# of Days with Data	# of Days with Reported Line	# of Days with Reported Line & Port Capacity at or Below 50%	Percent of Days with Reported Line Where Port Capacity at or Below 50%
Laredo	313	227	201	89%
Rio Grande	312	17	15	88%
Progreso	313	105	90	86%
Brownsville	313	247	207	84%
Roma	313	95	65	68%
Del Rio	312	92	48	52%
Nogales	214	76	24	32%
Douglas	214	13	4	31%
Eagle Pass	313	145	13	9%
Hidalgo	313	117	10	9%
El Paso	214	123	7	6%

70. Additionally, despite uniformly implementing turn-backs and metering, no port of entry appears to have activated a contingency plan for addressing mass migration or used OFO triggers to process additional people.<sup>106</sup> These contingency plans exist to provide roadmaps

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<sup>106</sup> In an April 18, 2018 email, an Assistant Port Director in the San Diego Field Office sent an email outlining San Ysidro's Mass Migration Plan and the triggers in place to double OFO's daily processing capacity from 70 to 140. It appears that on April 18, 2018, this plan was beginning to be put in place, with the first trigger of eight people being reshuffled within the port to increase capacity after 307 asylum seekers arrived at the port of entry. After the Metering Guidance issuance, there were no additional docu-

for ports of entry when they experience larger than normal migration numbers, allowing the ports to be flexible in their capacity and response.

71. For example, the April 5, 2018 DHS Integrated Concept of Operations report—which is a document that was created for the Southern California Region to lay out a plan for addressing an arriving refugee caravan—notes that in an “ideal implementation, processing (2) maintains sufficient throughput to match the input of arrival and interdiction (1). Similarly, transfer (4) from CBP custody maintains sufficient throughput to manage established CBP detention tolerances (3).”<sup>107</sup> In other words, the DHS Integrated Concept of Operations report was created to allow processing capacities to accelerate and match higher than normal migration numbers.

72. To accomplish this objective, the document lays out a series of stages: arrival, processing, detention and transportation, and transfer. For the arrival, the Integrated Concept of Operations notes that local OFO offices and OFO within Imperial and San Diego counties would shift, assign, and/or combine local or regional resources in response to arrivals. Regarding processing numbers, the document states that “if processing capacities at any given Border Patrol Station or OFO Processing Hub are exceeded, caravan aliens will be dispersed to CBP facilities in the local area to increase processing capacity.”<sup>108</sup> If that did not work, the Concept of Operations noted that “caravan aliens would be dis-

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ments discussing measures to increase capacity. AOL-DEF-00196691; AOL-DEF-00196695; AOL-DEF-00196745.

<sup>107</sup> AOL-DEF-00196723.

<sup>108</sup> AOL-DEF-00196723.

persed to CBP facilities within the region and/or regional virtual processing capabilities will be utilized to increase processing capacity.” And lastly, if even that was not enough, “national virtual processing capacities will be requested.”<sup>109</sup> These measures show that CBP has the structures in place to increase capacity at a port of entry or across all ports of entry to allow for additional processing if necessary. These measures were never activated.<sup>110</sup>

73. Instead, it appears that there were conscious decisions at times to not expand capacity at ports of entry. On April 21, 2018, the Executive Director for Operations in the Office of Field Operations wrote an email regarding “high capacity in Laredo.”<sup>111</sup> On that day the MCAT Reports noted that there were 119 people in custody, putting the port of entry at 132 percent capacity according to CBP’s measurements.<sup>112</sup> However, the Laredo Field Office did not activate its Contingency Plan<sup>113</sup> to increase capacity.<sup>114</sup> Instead, the Executive Director noted, “Remember that we should not convert space to

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<sup>109</sup> AOL-DEF-00196723.

<sup>110</sup> There are isolated examples in the CBP documents that show OFO cooperating with Border Patrol to create space. However, these do not appear to be part of a larger activation of a contingency plan. AOL-DEF-00088390.

<sup>111</sup> AOL-DEF-00196623.

<sup>112</sup> AOL-DEF-00196624.

<sup>113</sup> AOL-DEF-00011011.

<sup>114</sup> The email from the Executive Director did ask if the Laredo port of entry was able to use Border Patrol space, which is listed in the Laredo Contingency Plan as a step to take when the port’s capacity is strained. It does not appear that any other part of the Contingency Plan was activated.

accommodate . . . and should hold at the line if necessary.”<sup>115</sup>

74. Lastly, the third finding was that certain ports of entry in the Laredo and San Diego sectors appear to have redirected or to be currently redirecting asylum seekers to nearby larger ports. According to the Queue Management Reports, these ports of entry include the Progreso, Rio Grande, and Roma ports in the Laredo sector and the Otay Mesa, Tecate, Calexico East, and Andrade ports of entry in the San Diego sector. Some of this redirecting appears to have been outlined in musters. For example, a September 4, 2018 muster in Tecate formalized this practice, noting “Due to the facility and operating hour limitations, this necessitates that we redirect asylum seekers to our processing hubs in Calexico West or San Ysidro PedWest.”<sup>116</sup>

75. The POEs engaging in redirecting and the recipient POEs are listed in Table 6. The date ranges are based on the availability of written confirmation of the redirecting practice—generally from Queue Management Reports—and should not be viewed as the exact dates that redirecting occurred. For example, despite Queue Management Reports from June 22, 2019 through July 15, 2019<sup>117</sup> that noted that no ports of entry were redirecting asylum seekers, the Otay Mesa, Tecate, Calexico East, and Andrade ports of entry all continued to report that they had zero individuals in custody. Similarly, the September 2019 DHS Office of the Inspector General Report and [REDACTED] deposition both affirm that the redirecting practice contin-

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<sup>115</sup> AOL-DEF-00196623.

<sup>116</sup> [REDACTED] Deposition, November 21, 2019.

<sup>117</sup> The July 15, 2019 report was the latest available report.

ued in Tecate through September 2019 and December 2019, respectively.<sup>118</sup>

**Table 6: Redirecting Ports of Entry and their Recipient Ports of Entry**

<b>Date<sup>119</sup></b>	<b>Redirecting POE</b>	<b>Recipient POE</b>
June 20, 2018 – May 8, 2019	Progreso	Brownsville
June 20, 2018 – May 8, 2019	Rio Grande	Hidalgo
June 20, 2018 – May 8, 2019	Roma	Hidalgo
June 20, 2018 – June 21, 2019	Otay Mesa	San Ysidro
July 9, 2019 – June 21, 2019	Tecate	San Ysidro or Calexico West
June 20, 2018 – June 21, 2019	Calexico East	Calexico West
June 20, 2018 – June 21, 2019	Andrade	Calexico West

76. However, there is variation among the redirecting ports of entry. In the Laredo sector, the Queue Management Reports from June 20, 2018 through May 8, 2019 noted that the redirecting ports continued to ac-

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<sup>118</sup> [REDACTED] Deposition, November 21, 2019.

<sup>119</sup> The start dates are from AOL-DEF-00210508 and the end dates are from Queue Management Reports. May 8, 2019: AOL-DEF-00087047 and June 21, 2019: AOL-DEF-00086326.

cept asylum seekers and noted that they redirected “when necessary.” By comparison, the ports of entry in the San Diego sector continuously reported that they had zero intakes of asylum seekers. According to CBP’s own analysis of the Queue Management Reports, between June 20, 2018 and November 8, 2018, the redirecting ports continuously turned away arriving asylum seekers despite their detention facilities being completely empty on 80 percent of the days.<sup>120</sup> This finding corresponds with [REDACTED] deposition, where he confirmed that CBP officers in Tecate were instructed to tell arriving asylum seekers that the port of entry was at capacity even when they were aware that the port had sufficient capacity to process asylum seekers.<sup>121</sup>

#### **F. Scope of Population Affected by Turn-backs and Metering**

77. From May 2016 through April 2018, asylum seekers were metered at the San Diego port of entry, and periodically at ports of entry along the entire border. However, since April 2018, turn-backs and metering have applied to the vast majority of asylum seekers arriving at the U.S.-Mexico border without a visa to enter the United States.<sup>122</sup>

78. It is not possible to provide a precise figure regarding the total number of people who have been

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<sup>120</sup> AOL-DEF-00210504.

<sup>121</sup> [REDACTED] Deposition, November 21, 2019.

<sup>122</sup> The exemptions include unaccompanied minors, individuals who were able to pay a bribe to corrupt list managers and circumvent the asylum waitlist, or asylum seekers who are able to avoid metering by appearing at the limit line with a severe medical need or after being accompanied by an advocate.

turned back and metered since the policy began. CBP does not document when it turns people away from ports of entry or when it tells them that the port of entry is at capacity. However, it is possible to provide rough estimates for certain cities in specific time frames. For example, from October 2018 through November 26, 2019, at least 22,000 people signed up on asylum waitlists in Ciudad Juárez.<sup>123</sup> From April 2018 through December 6, 2019, 35,640 people had been processed through the Tijuana waiting list.<sup>124</sup>

79. The Reports also document periodic snapshots of the number of people who had been metered and were waiting on asylum waiting lists at the time of each Report's publication. The November 2018 report counted 6,000 people<sup>125</sup> on metering waitlists in 6 cities; the Feb-

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<sup>123</sup> 19,180 people have signed up on the asylum waitlists in Ciudad Juárez, and 3,000 Mexicans in the city created their own waitlists at each international bridge. Hérika Martínez Prado, "No se presentan a llamado de EU," *El Diario de Juárez*, December 2, 2019, <https://diario.mx/juarez/no-se-presentan-a-llamado-de-eu-20191201-1594784.html>; "Metering Update," Strauss Center for International Security and Law and the Center for U.S.-Mexican Studies, November 2019, [https://www.strausscenter.org/images/strauss/18-19/MSI/MeteringUpdate\\_191107.pdf](https://www.strausscenter.org/images/strauss/18-19/MSI/MeteringUpdate_191107.pdf).

<sup>124</sup> The latest list number in Tijuana is published on "elnumerodelalista.com". On Friday, December 6, 2019, the latest number was 3,564. There are 10 people for each number, totaling 35,640. The total number of people on the list is even larger. <http://www.elnumerodelalista.com/>.

<sup>125</sup> "Asylum Processing and Waitlists at the U.S.-Mexico Border," Strauss Center for International Security and Law, Center for U.S.-Mexican Studies, & Migration Policy Centre, December 2018, [https://www.strausscenter.org/images/strauss/18-19/MSI/AsylumReport\\_190308.pdf](https://www.strausscenter.org/images/strauss/18-19/MSI/AsylumReport_190308.pdf).



ruary 2019 update counted 4,800 people<sup>126</sup> in 8 cities; the May 2019 update counted 19,000 people<sup>127</sup> in 13 cities, the August 2019 update counted 26,000<sup>128</sup> in 12 cities, and the November report counted 21,400 people<sup>129</sup> in 11 cities. This creates a combined total of 77,200 people counted on asylum waitlists, although these numbers only capture snapshots of various lists and do not cover all ports of entry. Additionally, the number is further complicated since some of these individuals may be repeated in multiple updates, given the long wait times. Overall, it's clear that tens of thousands of people have been metered along the U.S.-Mexico border.

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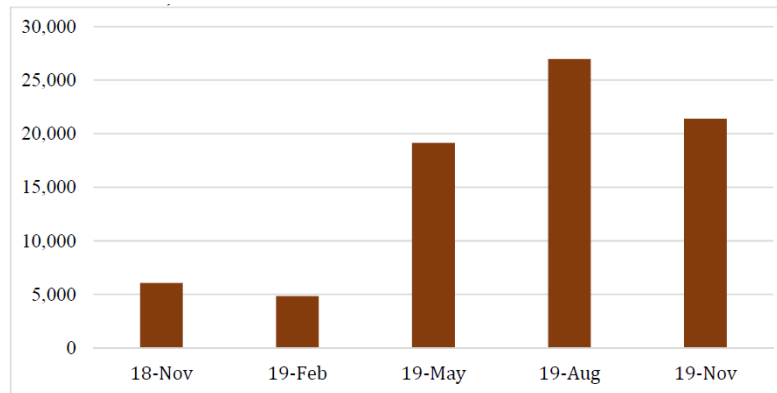
<sup>126</sup> “Metering Update,” Strauss Center for International Security and Law and the Center for U.S.-Mexican Studies, February 2019, [https://www.strausscenter.org/images/MSI/MeteringUpdate\\_190808.pdf](https://www.strausscenter.org/images/MSI/MeteringUpdate_190808.pdf).

<sup>127</sup> “Metering Update,” Strauss Center for International Security and Law and the Center for U.S.-Mexican Studies, May 2019, [https://www.strausscenter.org/images/strauss/18-19/MSI/Metering-Report-May-2019-MSI\\_5.20.pdf](https://www.strausscenter.org/images/strauss/18-19/MSI/Metering-Report-May-2019-MSI_5.20.pdf).

<sup>128</sup> “Metering Update,” Strauss Center for International Security and Law and the Center for U.S.-Mexican Studies, August 2019, [https://www.strausscenter.org/images/strauss/18-19/MSI/MSI\\_MeteringUpdate\\_190215.pdf](https://www.strausscenter.org/images/strauss/18-19/MSI/MSI_MeteringUpdate_190215.pdf).

<sup>129</sup> “Metering Update,” Strauss Center for International Security and Law and the Center for U.S.-Mexican Studies, November 2019, [https://www.strausscenter.org/images/strauss/18-19/MSI/MeteringUpdate\\_191107.pdf](https://www.strausscenter.org/images/strauss/18-19/MSI/MeteringUpdate_191107.pdf).

**Graph 4: Number of People on Asylum Waitlists (November 2018 – November 2019)**



*Data from the Reports.*

80. Additionally, the asylum waitlists and the Reports' counts of individuals waiting in Mexico only include the asylum seekers who signed up on a waitlist. They do not count unaccompanied minors, who are often excluded from waitlists and are at times allowed to bypass CBP's metering policy. They also do not include asylum seekers who were turned back to Mexico after seeking asylum at port of entry and never joined a list.

81. Some of these individuals crossed between ports of entry. In January 2017, the American Immigration Council provided three examples from 2016 of turnbacks that led to asylum seekers crossing into the United States between ports of entry near Laredo, Reynosa, and El Paso (during that time period, there were no asylum waitlists in the corresponding Mexican cities).<sup>130</sup> And the Department of Homeland Security's Of-

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<sup>130</sup> "Re: U.S. Customs and Border Protection's Systemic Denial of Entry to Asylum Seekers at Ports of Entry on U.S.-Mexico Border, American Immigration Council, January 13, 2017, <https://www.aic-immigration.org/2017/01/13/re-us-customs-and-border-protection-systemic-denial-of-entry-to-asylum-seekers-at-ports-of-entry-on-us-mexico-border/>

fice of the Inspector General published a report in September 2018 that covered metering, writing “OIG saw evidence that limiting the volume of asylum-seekers entering at ports of entry leads some aliens who would otherwise seek legal entry into the United States to cross the border illegally.”<sup>131</sup> These asylum seekers’ experiences with turn-backs and metering are not recorded, and their number is unknown. Similarly, there have been allegations in Tijuana that black asylum seekers were at times excluded from waitlists, and as such would not be counted.

### G. Systematic Denial

82. Metering serves as a denial of access to the United States’ asylum process at the moment that an asylum seeker is sent back to Mexico. This initial denial can become permanent. As mentioned earlier, in order to be gain access to the U.S. asylum process, asylum seekers in many Mexican cities must join asylum waitlists that are run by unregulated list managers. At least two of these lists have been “closed” since March 2019 and have not allowed arriving asylum seekers to join.<sup>132</sup> Other lists have required the payment of hundreds or thousands of dollars for asylum seekers to access them.

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[www.americanimmigrationcouncil.org/sites/default/files/general\\_litigation/cbp\\_systemic\\_denial\\_of\\_entry\\_to\\_asylum\\_seekers\\_advocacy\\_document.pdf](http://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/cbp_systemic_denial_of_entry_to_asylum_seekers_advocacy_document.pdf).

<sup>131</sup> “Special Review—Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy,” Department of Homeland Security, Office of the Inspector General, September 27, 2018, <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-84-Sep18.pdf>.

<sup>132</sup> These include the individual and family lists in Ciudad Acuña. There have been reports that the Piedras Negras list was periodically closed in 2019.

This means that accessing the U.S. asylum process in these locations has become dependent on the structure of an unregulated list system in Mexico or the ability to pay large sums of money to a third party.

83. Second, due to metering, asylum seekers are now waiting weeks or months in precarious or dangerous conditions before even having a chance to ask for asylum. The cities of Matamoros, Nuevo Progreso, Reynosa, Ciudad Miguel Alemán, and Nuevo Laredo are all located in the Mexican state of Tamaulipas, which the U.S. State Department has given a Level 4 advisory of “Do Not Travel.” The U.S. travel advisory warns that in Tamaulipas “Violent crime, such as murder, armed robbery, carjacking, kidnapping, extortion, and sexual assault, is common.”<sup>133</sup> Three other Mexican border states—Coahuila, Chihuahua, and Sonora—have a Level 3 State Department travel advisory of “Reconsider Travel.”<sup>134</sup> Baja California has a Level 2 travel advisory of “Exercise Increased Caution.”<sup>135</sup>

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<sup>133</sup> It also notes that “Gang activity, including gun battles and blockades, is widespread. Armed criminal groups target public and private passenger buses as well as private automobiles traveling through Tamaulipas, often taking passengers hostage and demanding ransom payments. Federal and state security forces have limited capability to respond to violence in many parts of the state.” “Mexico Travel Advisory,” U.S. State Department, accessed November 11, 2019, <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/mexico-travel-advisory.html>.

<sup>134</sup> The ports of entry in Coahuila are Eagle Pass and Del Rio. The ports of entry in Chihuahua are El Paso, Santa Teresa, Tornillo, and Columbus. The ports of entry in Sonora are Douglas, Lukeville, Naco, Nogales, and San Luis.

<sup>135</sup> The ports of entry in Baja California are Andrade, Calexico East, Calexico West, Tecate, Otay Mesa, and San Ysidro.

84. While asylum seekers wait in Mexican border cities, some have been targeted for crimes, such as robberies, assault, and frequently kidnappings. In 2019, Human Rights First documented a case in Nuevo Laredo where a Guatemalan man on the asylum waitlist was kidnapped after leaving a migrant shelter to search for temporary employment.<sup>136</sup> In January 2019, I also documented a case where a Salvadoran family was kidnapped in Piedras Negras in July 2018 while waiting for their number to be called on the waitlist. When this family was released by Coahuila State Police, they were sent to the National Migration Institute, which began deportation proceedings to send them back to El Salvador.<sup>137</sup>

85. Given that Mexican law enforcement are legally mandated to channel anyone in the country without migratory paperwork to the National Migration Institute (regardless of whether or not they are waiting on an asylum waitlist), there are surely other cases where kidnapped asylum seekers were channeled into deportation proceedings.<sup>138</sup> Additionally, asylum seekers wait-

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<sup>136</sup> “Barred at the Border,” Human Rights First, April 2019, [https://www.humanrightsfirst.org/sites/default/files/BARRED\\_AT\\_THE\\_BORDER.pdf](https://www.humanrightsfirst.org/sites/default/files/BARRED_AT_THE_BORDER.pdf).

<sup>137</sup> Stephanie Leutert and Shaw Drake, “‘We are Full’: What Asylum Seekers Are Told,” *The New York Times*, January 28, 2019, <https://www.nytimes.com/2019/01/28/opinion/asylum-border-immigrants-trump-.html>.

<sup>138</sup> Only the National Migration Institute is authorized to check an individual’s migratory paperwork. The 2011 Migratory Law outlines that the Federal Police (and now the National Guard) can assist the National Migration Institute in its migration enforcement efforts when their assistance is requested. However, unauthorized migrants that are discovered during routine law enforce-

ing on metering lists are not provided any legal documents to remain in Mexico, and, according to Article 98 of Mexico's 2011 Migratory Law, any foreigner detected that does not have the documents accrediting their regular migratory status in the country will be subject to apprehension.<sup>139</sup>

86. Third, there are also cases of turn-backs and metering that have led to an effective end to asylum seekers' claims, and even their lives. In June 25, 2019, Oscar and Valerie Martinez made headlines when they drowned in the Rio Grande river in Matamoros. The family had been living in a camp of asylum seekers near the international bridge, waiting for their asylum numbers to be called.<sup>140</sup> After a month of waiting, they grew discouraged and decided to cross the river to ask for asylum from Border Patrol agents, which is when they drowned in the swift current. Similarly, a Honduran woman and her two year old son also drowned in the Rio Grande near Ciudad Acuña after waiting in a tent camp in that city and then attempting to cross.<sup>141</sup> There are

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ment work are generally channeled to the National Migration Institute.

<sup>139</sup> Ley de Migración, Congreso General de los Estados Unidos Mexicanos, May 2011, [http://www.diputados.gob.mx/LeyesBiblio/ref/lmigra/LMigra\\_orig\\_25may11.pdf](http://www.diputados.gob.mx/LeyesBiblio/ref/lmigra/LMigra_orig_25may11.pdf).

<sup>140</sup> Julia Le Duc, "Migrante salvadoreño y su hija mueren en el intent de cruzar a EU," *La Jornada*, June 25, 2019, <https://www.jornada.com.mx/sin-fronteras/2019/06/24/migrante-salvadoreno-y-su-hija-mueren-en-el-intento-de-cruzar-a-eu-9107.html>.

<sup>141</sup> Andy Torres, "Honduran migrant and her two year old son drown while attempting to swim across the Rio Grande from Mexico to reunite with her husband and two daughters in the US," *Daily Mail*, September 17, 2019, <https://www.dailymail.co.uk/news/article-7473969/Honduran-migrant-two-year-old-son-drown-attempting-swim-Mexico.html>.

additional cases of individuals and children dying after being metered.<sup>142</sup> These asylum seekers were unable to access the U.S. asylum process in the moment when they arrived to the U.S.-Mexico border, and died before ever being able to access it.

87. Finally, CBP has increasingly denied access to the U.S. asylum process for Mexican nationals. CBP's April 2018 Metering Guidance explicitly names Mexican nationals as a group that should not be stopped from entering U.S. territory, writing "DFOs should be particularly aware of any INAMI controls that are preventing U.S. citizens, LPRs, or Mexican nationals (some of whom may intend to claim fear) from entering the United States."<sup>143</sup> However, the November 2019 Metering Report Update counted 11,040 Mexicans who had been turned back from U.S. ports of entry and were waiting at the U.S.-Mexico border, making up 52 percent of people then on asylum waitlists.<sup>144</sup> These asylum seekers were forced to wait in the very country that they are attempting to flee. In Ciudad Juárez and Matamoros, these asylum seekers have created their own

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<sup>142</sup> Riane Roldan, "Border Patrol searches for missing 2-year-old girl in Rio Grande," Texas Tribune, July 3, 2019, <https://www.texastribune.org/2019/07/03/border-patrol-searches-missing-2-year-old-girl-rio-grande/>.

<sup>143</sup> AOL-DEF-00196460.

<sup>144</sup> "Metering Update," Strauss Center for International Security and Law and the Center for U.S.-Mexican Studies, November 2019, [https://www.strausscenter.org/images/strauss/18-19/MSI/Metering\\_Update\\_191107.pdf](https://www.strausscenter.org/images/strauss/18-19/MSI/Metering_Update_191107.pdf).

separate waitlists, so as not to be in contact with Mexican government officials.<sup>145</sup>

## VI. Conclusion

88. Beginning in May 2016, the U.S. government began turning back asylum seekers who were arriving at ports of entry on the U.S.-Mexico border. This practice began at the San Ysidro port of entry and spread relatively rapidly to the rest of the U.S.-Mexico border. By April 2018, CBP formally established this policy in a formal Metering Guidance memo that was then disseminated to CBP officers via a series of written and oral musters and standard operating procedures. Today, turn-backs on the U.S.-Mexico border are ubiquitous and systemic. Smaller ports of entry redirect asylum seekers to larger ports of entry, even though the smaller ports of entry have the ability to process asylum seekers. Larger ports of entry turn back asylum seekers, directing them to shelters and waitlists maintained on the Mexican side of the border.

89. Due to these turn-backs, asylum seekers wait for weeks, if not months, to access the U.S. asylum process, often times in dangerous conditions. CBP's MCAT and Queue Management Reports offer a common method for determining whether capacity constraints prevented a port of entry from inspecting and processing an asylum seeker without resorting to turn-backs. Using this method, I have determined that the standardized use of turn-backs cannot be justified by capacity constraints at the majority of ports of entry.

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<sup>145</sup> In Matamoros, the National Migration Institute runs the asylum waitlist at the Gateway Bridge. In El Paso, the State Population Council runs the asylum waitlist.



90. The data includes many instances when ports of entry reach capacity but since April 2018, these ports of entry have never used their previously-approved contingency plans that would have temporarily expanded capacity within the port of entry during times of increased migration. Additionally, metering practices and turn-backs have remained in place regardless of the migration level at the port of entry.

91. If metering and turn-backs were only a response to greater numbers of arriving asylum seekers, then we could expect that the limit line positions, turn-backs, and metering processes would disappear in ports of entry that were experiencing low migration numbers or had no individuals waiting in Mexico to seek entry. Yet, CBP's documents, extensive fieldwork, the September 2019 OIG report regarding Tecate, and [REDACTED] testimony all illustrate that these policies continue to be in place at pedestrian ports of entry along the entire U.S. border, unchanged by the ebbs and flows of migration numbers.

Signed this 10th day of December, 2019:

/s/ STEPHANIE LEUTERT  
STEPHANIE LEUTERT

**Exhibits/Attachments/Figures Table 7: CBP Documents  
Containing Data on Capacity**

<b>Report Name</b>	<b>Number of Reports</b>	<b>Date Range</b>
MCAT Daily Reports	547	11/30/2016 – 7/13/2019
Field Queue Management Reports	314	6/18/2018 – 7/15/2019

**Table 8: Port Capacity Over Time (MCAT Reports)**

City	Date Range				
	11/30/2016 - 3/23/2018	4/2/2018 – 4/27/2018	5/4/2018 – 6/4/2018	6/5/2018 – 7/13/2019	7/7/2019 – 7/13/09
Brownsville	137	137	137	69	69
Hidalgo	54 <sup>146</sup>	54	54	42	42
Roma				16	16
Laredo	90	90	90	125	125
Eagle Pass				14	28
El Paso	226	226	306	306 / 115 <sup>147</sup>	115
Tornillo		70	85	85	85
Nogales	74	66	66	66	66
San Luis	48	48	48	48 / 35 <sup>148</sup>	35
Calexico	66	121	121	121 / 67 <sup>149</sup>	67
San Ysidro	316	316	316	316	316
Otay Mesa	.	51	51	51	51

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<sup>146</sup> The capacity drops to 32 on March 23, 2018. Since this only occurs for one day, it could be an error.

<sup>147</sup> The capacity switched from to 115 on July 30, 2018.

<sup>148</sup> The capacity switched from 48 to 35 on October 31, 2018.

<sup>149</sup> The capacity switched from 121 to 67 on June 19, 2018.

**Table 9: Days with Reported Queues at the Limit Line and Port of Entry Capacity Levels at or Below 75 Percent**

City	# of Days with Data	# of Days with Reported Line	# of Days with Reported Line & Port Capacity at or Below 75%	Percent of Days with Reported Line & Port Capacity at or Below 75%
Laredo	313	227	226	100%
Rio Grande	312	17	17	100%
Brownsville	313	247	244	99%
Roma	313	95	94	99%
Progreso	313	105	99	94%
Del Rio	312	92	77	84%
Nogales	214	76	47	62%
Douglas	214	13	7	54%
Hidalgo	313	117	45	38%
Port of El Paso	214	123	40	33%
Eagle Pass	313	145	30	21%

**Table 10: MCAT Capacity Data (November 30, 2016 – July 19, 2019)**

	<b>Days with Data</b>	<b>0-50% Capacity</b>	<b>51-100% Capacity</b>	<b>&gt;100% Capacity</b>
Brownsville	483	92%	7%	1%
Calexico, CA	536	61%	34%	5%
El Paso	537	52%	27%	21%
Hidalgo	521	66%	17%	17%
Laredo	530	93%	7%	0%
Nogales	530	55%	41%	4%
San Luis	497	87%	13%	0%
San Ysidro	537	44%	53%	3%
Eagle Pass	220	5%	38%	57%
Otay Mesa	265	87%	11%	2%
Roma	220	73%	26%	0%
Tornillo	232	96%	3%	1%

*Total percent may not equal 100% due to rounding.*

**Exhibit A: Current Curriculum Vitae**

**STEPHANIE LEUTERT**stephanie.leutert@utexas.edu | 239.595.1726


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<b>YALE UNIVERSITY</b>	<b>New Haven, CT</b>
MA Global Affairs	2016

<b>SKIDMORE COLLEGE</b>	<b>Saratoga Springs, NY</b>
BA International Affairs   Spanish Literature	2011

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**STRAUSS CENTER FOR INTERNATIONAL  
SECURITY AND LAW** **Austin, TX**  
*Director, Central America & Mexico Policy Initiative  
(CAMPI)* 2017-2019

- Lead the development and programming for CAMPI and conduct original research on the U.S.-Mexico border and Central American migration.
- Head author for the first-ever border-wide report on the U.S. Customs and Border Protection's (CBP) metering policy and asylum waitlists. Co-author on subsequent metering updates that document CBP metering practices and conditions for asylum seekers waiting in 13 Mexican border cities.
- Head researcher for a joint project with the Brooks County Sheriff's Office in South Texas that documents migrant deaths in the area and aims to improve rescue and recovery operations for migrants who become ill or pass away while attempting to circumvent the county's CBP checkpoint.
- Conducted original research on migrant smuggling along Mexico's highway system and migrant kidnapping in Mexico, both of which were pre-

sented to the United Nations Office of Drugs and Crime.

- Developed a year-long research partnership with five members of Mexico's National Security Commission about regulating Mexico's private security sector. The results were published and presented in May 2018.
- Instructor for a MA Policy Research Project (PRP) course on Mexico's migratory policy at the Lyndon B. Johnson School of Public Affairs. Client for 2018-2019 and 2019-2020 courses: FM4 migrant shelter in Guadalajara, Jalisco; Clients for 2017-2018 course: Sin Fronteras and the Mexican Federal Police.

*Fellow, Mexico Security Initiative* 2016-2017

- Co-instructor for a year-long PRP class on Mexico's security policy; organized a trip to Mexico City for MA students to visit and interview government officials, civil society organizations, and journalists.
- Principal writer for "Beyond the Border" on the *Lawfare Blog*, covering migration and security policies in Mexico and Central America.

**HILLARY FOR AMERICA** Austin, TX  
*Administrator, Latin America Policy*  
*Working Group* 2015-2016

- Coordinated more than 80 working group members on talking points, memos, and briefings related to political and economic developments in Latin America, U.S.-Latin America relations, and Central American migration.



- Wrote talking points, policy memos, and social media posts on current events and long-term social, economic, and political trends in Latin America and potential campaign responses.
- Gathered information on Latin America and Caribbean diaspora communities for targeted messaging.

**YALE UNIVERSITY**  
*Teaching Fellow*

**New Haven, CT**  
**2015**

- Head Teaching Fellow for International Challenges in the Twenty-First Century with Dr. Jolyon Howorth in the Political Science department. Taught one section of eighteen students (Fall 2015).
- American Economic History in the Economics department with Dr. Eric Hilt. Taught two sections of fourteen students (Spring 2015).
- International Challenges in the Twenty-First Century with Dr. Jolyon Howorth in the Political Science department. Taught two sections of nineteen students (Fall 2014).

**COCA-COLA WORLD FUND** **Estado de Mexico, Mexico**  
**| Chihuahua, Mexico | Sonora, Mexico**  
*Fellow* **2015**

- Conducted independent field research across Estado de Mexico, Chihuahua, and Sonora on the development of Mexico's automotive industry, supplier networks, and the ties to the United States.
- Interviewed automotive sector participants from multinational companies, suppliers, industry as-

sociations, university programs, and state governments.

**UKRAINIAN PARLIAMENT** **Kyiv, Ukraine**  
*Legislative Assistant to MP Olga Bielkova,*  
*Deputy Head of the Energy Committee* **2015**

- Conducted over 20 interviews on production sharing agreements (PSAs) in Ukraine's natural gas sector as part of the country's ongoing energy reform.
- Wrote a policy memo that formed the basis of a Ukrainian congressional review of PSAs.
- Served as the representative of the Ukrainian Parliament's Energy Committee in the U.S. Winter Action Plan meetings and reported the developments to high-ranking members of Parliament.

**FREELANCE** **Mexico City, Mexico |**  
**New Haven, CT**  
*Writer & Researcher* **2014-2017**

- Writer for op-eds and briefings on energy, economic development, and rule of law in Latin America.
- Researcher for projects related to Mexico's 2013 energy reform for a U.S.-based boutique consulting firm.
- Conducted five weeks of independent research in Queret ro and Guanajuato on Mexico's aerospace industry in July-August 2014.

**COUNCIL ON FOREIGN RELATIONS (CFR)**  
**New York, NY**

*Research Associate, Latin America Studies Program*  
 2012-2014

- Researched and drafted publications on security, energy, economic, and political issues in North America and Latin America.
- Acted as the lead researcher for the 2014 CFR Task Force on North America, chaired by Ambassador Robert Zoellick and General David Petraeus. Participated in five-person research trips to Ottawa and Mexico City.
- Managed programmatic responsibilities for the Latin America Studies Program.

**ASYLUM ACCESS ECUADOR** **Quito, Ecuador**  
*Visiting Researcher* 2011

- Led a three-month research project on Ecuador's evolving refugee policy amid tensions with Colombia.
- Organized a three-day conference in partnership with Asylum Access Ecuador, the Norwegian Refugee Council, and the UNHCR, for Colombian refugee women who experienced gender-based violence.

**VERITÉ** **Amherst, MA**  
*Research Intern, International Labor Law* 2010

- Researched and wrote reports on workers' rights, labor law, and contract labor issues in Mexico, Peru, Chile, Colombia, Morocco, and Thailand.

**AFRICAN CENTER FOR TREATMENT OF TORTURE  
VICTIMS (ACTV)**

**Gulu, Uganda**

*Affiliated Researcher*

**2009**

- Independently designed and conducted field research on war torture perpetrated by the Ugandan military and the Lord's Resistance Army (LRA) through interviews with NGOs and torture victims.

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**CONFERENCES & MEDIA**

- Panelist, "Dying to Be Here," Texas Tribune Festival, September 28, 2019.
- Briefer, "Visit to the Southern Border," Inter-American Commission on Human Rights, Laredo, August 22, 2019.
- Podcast, "Understanding Mexico in the Migration Crisis," *Trumpcast, Slate*, June 25, 2019.
- Speaker, "The Migration Disconnect," Wichita Committee on Foreign Relations, Wichita, March 2019.
- Panelist, "Conversatorio: Rumbo a una Política Migratoria de Estado en México," Guadalajara, Jalisco, December 2018.
- Podcast, "The Migrant Caravan and Its Dissenters," *Lawfare Podcast*, October 27, 2018.
- Panelist, "U.S. Immigration Policy and Family Separation," RAICES, San Antonio, July 2018.
- Podcast, "The Other Southern Border," *Lawfare Podcast*, June 26, 2018.

- Presenter, “Regulating Private Security in Mexico,” University of Texas at Austin, May 9, 2018.
- Presenter, “Migrant Smuggling along Mexico’s Highways,” UNODC, Florence, October 2017.
- Panelist, “Violence and Migration in Mexico,” University of Texas at Austin, September 25, 2017.
- Speaker, “Seminario Sobre Seguridad, Ciudadanía y Violencia en América Latina,” ITAM, Mexico City, April 21, 2017.
- Panelist, “Social Innovation and Humanitarian Responses,” Yale University, February 22, 2017.
- Editor in Chief, *Yale Journal of International Affairs* (2015-2016).

#### PUBLICATIONS

- Stephanie Leutert, et al. “Metering Update: November,” Strauss Center, November 2019.
- Stephanie Leutert, “In the Brush in Brooks County: Who’s Dying in South Texas?” *Lawfare Blog*, September 2019.
- Stephanie Leutert, “One County, 650 Migrant Deaths: An Introduction,” *Lawfare Blog*, September 2019.
- Stephanie Leutert, “What ‘Metering’ Really Looks Like in South Texas,” *Lawfare Blog*, July 2019.
- Stephanie Leutert, et al. “Metering Update: May,” Strauss Center, May 2019.
- Stephanie Leutert, “How Many Central Americans are Traveling North?” *Lawfare Blog*, March 2019.

- Stephanie Leutert, et al. “Metering Update: February,” Strauss Center, February 2019.
- Stephanie Leutert & Shaw Drake, “What Asylum Seekers Are Told,” *New York Times*, January 2019.
- Stephanie Leutert, et al. “Asylum Processing and Waitlists at the U.S.-Mexico Border,” Strauss Center, December 2018.
- Stephanie Leutert “The Migration Disconnect,” *Foreign Affairs*, November 2018.
- Stephanie Leutert, “Many Migrants are Victims of Crime,” *New York Times*, September 2018.
- Stephanie Leutert, “How Climate Change is Affecting Rural Hondurans,” *Washington Post*, November 2018.
- Stephanie Leutert, “Why Are So Many Migrants Leaving Guatemala? A Crisis in the Coffee Industry is One Reason,” *Time Magazine*, July 2018.
- Stephanie Leutert & Caitlyn Yates, “Migrant Kidnapping in Mexico: Regional Differences,” Strauss Center, October 2018.
- Stephanie Leutert, “The Invisible Caravans,” *Lawfare Blog*, October 2018.
- Stephanie Leutert, “Who’s Really Crossing the U.S. Border, and Why They’re Coming,” *Lawfare Blog*, July 1, 2018.
- Mexico Security Initiative and La Comisión Nacional de Seguridad de México, “Regulating the Private Security Sector in Mexico,” Strauss Center, April 2018.

- Stephanie Leutert, “The Current State of U.S.-Mexico Security Cooperation,” Strauss Center, February 2018.
- Stephanie Leutert and Caitlyn Yates, “Migrant Smuggling along Mexico’s Highway System,” Strauss Center, November 2017.
- Stephanie Leutert, “Fleeing the Storms,” Berkeley Review of Latin America Studies, Fall 2017.
- Stephanie Leutert, “Climate Change Induced Migration from Central America,” *Lawfare Blog*, June 21, 2017.
- Stephanie Leutert, “Border Ambassador: Rebeca Vargas,” *Americas Quarterly*, Summer 2017.
- Stephanie Leutert, “Building the Border Wall: An Update,” *Lawfare Blog*, April 19, 2017.
- Stephanie Leutert & Savitri Arvey, “Mexico’s Next Move,” *Lawfare Blog*, February 7, 2017.
- Stephanie Leutert & Savitri Arvey, “What Comes Next for Trump’s Border Wall,” *Lawfare Blog*, January 26, 2017.
- Stephanie Leutert & Antonio Garza, “Opioid-Stoked Mexican Drug Violence Again Flares Alarming,” *Dallas Morning News*, December 22, 2016.
- Stephanie Leutert, “Donald Trump and the Non-Existent Two Million Criminal Immigrants,” *Lawfare Blog*, November 22, 2016.
- Stephanie Leutert, “The Migrant Kidnapping Epidemic Next Door,” *Lawfare Blog*, November 30, 2016.

- Stephanie Leutert, “Donald Trump and the Non-Existent Two Million Criminal Immigrants,” *Lawfare Blog*, November 22, 2016.
- Stephanie Leutert, “Fewer Drugs Doesn’t Necessarily Mean Less Violence,” *Lawfare Blog*, October 20, 2016.
- Stephanie Leutert, “Colombia’s Brexit Vote,” *Lawfare Blog*, October 4, 2016.
- Stephanie Leutert, “Why Central Americans Keep Coming,” *Lawfare Blog*, September 13, 2016.
- Stephanie Leutert, “Mexico’s Resurging Violence,” *Lawfare Blog*, August 29, 2016.
- Stephanie Leutert, “Homicides in Mexico: What Goes Up Does Not Necessarily Come Down,” *Lawfare Blog*, August 4, 2016.
- Stephanie Leutert, “Who’s Killing Whom in Mexico and Central America,” *Lawfare Blog*, July 27, 2016.
- Stephanie Leutert, “What is Beyond the Border,” *Lawfare Blog*, July 20, 2016.
- Stephanie Leutert, “Kyiv Dispatch: Ukraine’s Volunteer Battalions,” *Lawfare Blog*, September 1, 2015.
- Stephanie Leutert, “Kyiv Dispatch: Displaced!” *Lawfare Blog*, August 3, 2015.
- Stephanie Leutert, “Kyiv Dispatch: The View from Ukraine,” *Lawfare Blog*, July 13, 2015.
- Stephanie Leutert, “Undocumented in the Ivy League,” *Americas Quarterly*, May 2015.



- Stephanie Leutert and Alfredo Corchado, “Open Season,” *Audubon*, February 2015.
- Stephanie Leutert, “Deported or Supported,” *Princeton Journal of Public and International Affairs*, 2015.
- Stephanie Leutert, “How Many People Are We Really Deporting,” *Lawfare Blog*, January 20, 2015.
- Stephanie Leutert, “Mexico’s Aerospace Sector Takes Flight,” *CFR.org*, August 2014.
- Stephanie Leutert, “U.S. Students Are Heading to Latin America, Just Not to Mexico,” *CFR.org*, February 10, 2014.
- Stephanie Leutert & Benjamin Wittes, “On Wikipedia, Lawfare, Blogs, and Sources,” *Harvard Law School National Security Journal*, May 12, 2013.
- Stephanie Leutert, “Negotiating Peace for Displaced Persons in Colombia,” *Americas Quarterly Blog*, February 14, 2013.
- Stephanie Leutert, “Rafael Correa’s Smooth Road to Victory,” *CFR.org*, January 24, 2013.
- Stephanie Leutert, “Correa is No Chávez,” *GPS CNN*, July 31, 2012.
- Stephanie Leutert, “Ecuador’s Invisible Refugee Population,” *Americas Quarterly*, February 2012.

**Exhibit B: Prior testimony**

In the last four years, I have not testified as an expert at trial or deposition.

**Exhibit C: Materials Considered**

In addition to the materials cited in the body of my report, I considered the following materials when forming the opinions expressed in my report.

**Pleadings**

- Plaintiffs' Second Amended Complaint
- Defendants' Answer to Second Amended Complaint
- Exhibit 1 to Defendants' Answer to Second Amended Complaint

**Court Orders**

- Order Denying in Part and Granting in Part Defendants' Motion to Dismiss Second Amended Complaint
- Amended Order Denying in Part and Granting in Part Defendants' Motion to Dismiss Second Amended Complaint

**Discovery Requests**

- Plaintiffs' First Set of Requests for Production
- Defendants' Responses and Objections to Plaintiffs' First Set of Requests for Production
- Plaintiffs' Second Set of Requests for Production
- Defendants' Responses and Objections to Plaintiffs' Second Set of Requests for Production
- Plaintiffs' Third Set of Requests for Production
- Defendants' Responses and Objections to Plaintiffs' Third Set of Requests for Production
- Plaintiffs' Fourth Set of Requests for Production

- Defendants' Responses and Objections to Plaintiffs' Fourth Set of Requests for Production
- Plaintiffs' Fifth Set of Requests for Production
- Defendants' Responses and Objections to Plaintiffs' Fifth Set of Requests for Production
- Plaintiffs' First Set of Interrogatories
- Defendants' Responses and Objections to Plaintiffs' First Set of Interrogatories
- Plaintiffs' Second Set of Interrogatories
- Defendants' Responses and Objections to Plaintiffs' Second Set of Interrogatories
- Plaintiffs' First Deposition Notice
- Plaintiffs' Rule 30(b)(6) Deposition Notice to CBP

#### **Briefs**

- Plaintiffs' Motion for Preliminary Injunction, Brief, and Supporting Exhibits
- Defendants' Opposition to Motion for Preliminary Injunction and Supporting Exhibits
- Plaintiffs Reply in Support of their Motion for Preliminary Injunction and Supporting Exhibits
- Plaintiffs' Motion for Provisional Class Certification, Brief, and Supporting Exhibits
- Defendants' Opposition to Motion for Provisional Class Certification and Supporting Exhibits
- Plaintiffs' Reply in Support of their Motion for Provisional Class Certification and Supporting Exhibits

**Depositions and Exhibits to Depositions**

- [REDACTED] [REDACTED] November 21, 2019

**Documents**

- AOL-DEF-00010309
- AOL-DEF-00010580
- AOL-DEF-00010628
- AOL-DEF-00010630
- AOL-DEF-00010632
- AOL-DEF-00010634
- AOL-DEF-00010637
- AOL-DEF-00010640
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UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

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Case No. 17-cv-02366-BAS-KSC  
AL OTRO LADO, INC., ET AL., PLAINTIFFS  
*v.*  
CHAD WOLF,<sup>75</sup> ET AL., DEFENDANTS

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Filed: Sept. 4, 2020

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**EXHIBIT 76 IN SUPPORT OF PLAINTIFFS'  
MEMORANDUM OF POINTS AND AUTHORITIES  
IN SUPPORT OF THEIR MOTION FOR  
SUMMARY JUDGMENT**

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<sup>75</sup> Acting Secretary Wolf is automatically substituted for former Acting Secretary McAleenan pursuant to Fed. R. Civ. P. 25(d).



**Tony Reardon**

---

**From:** ATKINSON, DAVID <DAVID.ATKINSON@CBP.DHS.GOV>  
**Sent:** Tuesday, March 19, 2019 4:35 PM  
**To:** Tony Reardon; CADRIEL, DONALD H; GUERRA, RICARDO; FLORES, MIGUEL, M; MUNOZ, RICARDO; VEGA, FRANCISCO; MONAHAN, JOHN F  
**Subject:** FW: Safety Alert/Rule Clarification.  
**Attachments:** Asylees 3192019.pdf

Fyi

**From:** ATKINSON, DAVID  
**Sent:** Tuesday, March 19, 2019 2:55 PM  
**To:** MCALEENAN, KEVIN K. <Kevin.K.MCALEENAN@cbp.dhs.gov>  
**Cc:** HARALSON, WILLIAM <WILLIAM.T.HARALSON@cbp.dhs>; IGLESIAS-JR, ROMUALDO <romualdo.iglesias-jr@cbp.dhs.gov>  
**Subject:** Safety Alert/Rule Clarification.

Mr. Commissioner,

1<sup>st</sup>, The Port of Hidalgo, Texas employees would like a written order provided to them that mirrors their instructions to return individuals who enter the U.S. and request asylum back to Mexico without appointment or system for a future appointment. The Agency is allowing the Mexican officials to create a list and detention area mid bridge to facilitate who would be next to enter the United States from that detention site on the Mexi-

can side, which is under the control and direction of CBP Officers on the U.S. side.

The employees would like you to provide them the proper authority and sections of law that allows them to detain these asylum seekers on the Mexican side, and prevent them from entering the U.S. after presenting themselves for inspection and requesting asylum. The Employees would like something in writing to protect their ordered activities, as the Agency is claiming publicly that the are not conducting these activities when they really are.

2<sup>nd</sup>, the employees are placed at the middle of the bridge out of line of sight of other CBP Staff and outnumbered by the asylum seekers and the possible smugglers who are attempting to enter the U.S. by foot and/or by vehicle. The employees request your intervention in this matter to ensure that they are not injured or killed as Port management is incompetent in assigning the proper amount of or stationing these officers in a safe position. Recently we have had several officers placed in a position of disadvantage without any instant reinforcements as only three are assigned away from the immediate site from all port staff. On one occurrence, an innocent vehicular driver was placed in harm's way of a struggle between a CBP officer and asylum seeker. The driver struck the Officer's holster, mere centimeters away from hitting the body of the Officer and causing grave harm or even death. Furthermore, there are routinely only 3-4 Officers assigned to the Passport Control processing area, thus delaying the wait time of the asylum seekers upwards of three weeks. Again, for this reason along with the others mentioned above, we request your immediate intervention in the matter.

3<sup>rd</sup>, the local U.S. Border Patrol is doing a poor job in picking up the asylum seekers that have already been processed.

It is surprising that local management would stage such a detention area at the middle of the bridge putting the asylum seekers and employees in pest infected areas known to be susceptible to gunshots. As of yesterday, the standing order by Supervisor Lauro Hinojosa, was not to allow any asylum seekers into the U.S. until the Mexican authorities call them up by a list of which they maintain control. They are to be sent back into Mexico, and not allowed to enter for the U.S. for processing.

We respectfully await your immediate response.

David Atkinson, Local President NTEU Chapter 149.



CBP and Mexican detention site, where asylum seekers are returned to Mexico to await without notice by CBP Officers. As per local management, asylum seekers are not to enter, and detained at the middle of the bridge until they are called up by Mexican Officials to enter. CBP calls Mexican officials and they dictate who enters. The problem with this is that CBP has no control who enters, and at times, as per the interviewing CBP Officers, the people selected are the ones that have cash to bribe Mexican Officials. Also, as substantiated by the interviewing CBP Officers that claim that the Port runners are informing them that the Mexican Officials, for the right price (500), are allowed to run the Northside of the bridge.



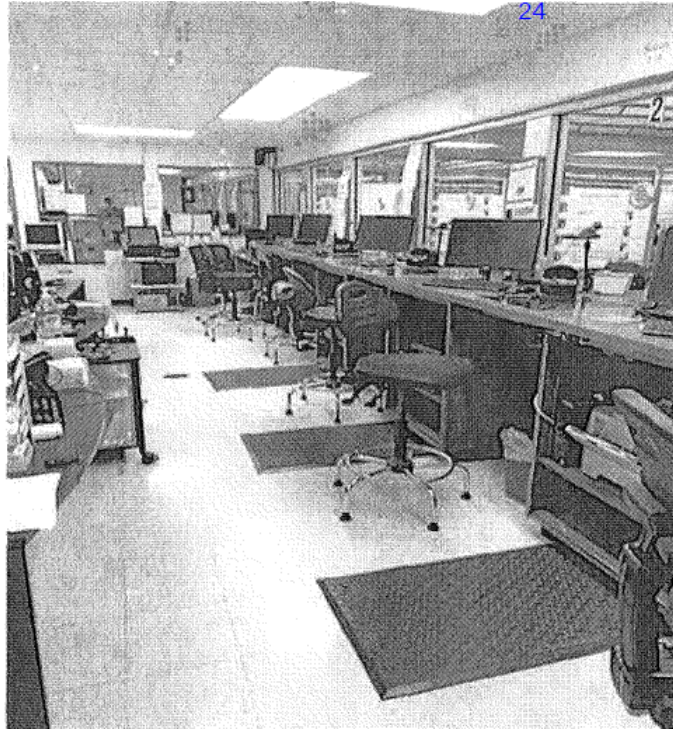
Cannot see the 2 officers on top of the bridge. The problem is when the lanes get filled up during peak times, the officers completely vanish into the surrounding vehicles who park in line right after them.



quarter on top of the bridge / cannot see bridge employees or primary booths for back-up.



Chairs reduced to minimize the amount of persons held in the seating area leaving a huge blank space.



No officers stationed to process work at 10-11 pm, and only 4 employees to process the family unit creditable fear cases.

**CBP Officers**



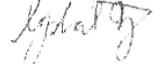

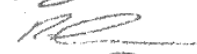
U.S. Customs and Border Protection  
U.S. Port of Hidalgo, Texas

March 6, 2019

To: Whom it may Concern:


We CBP Officers assigned the Port of Hidalgo, Texas have been ordered by CBP Supervisors to inspect persons seeking/requesting asylum status near the middle of the United States/Mexico Bridge in Hidalgo, Texas on the United States side. We are posted mere feet into the U.S. from the US/Mexico borderline and are intercepting and immediately preventing asylees who request asylum from entering the United States. After their immediate request, we are instantly sending them back into Mexico without a date, time or appointment to be allowed into the United States for processing. We are not aware of any process used to inform these asylum seekers to return to the Port for processing into the U.S. and feel there is a need for clarification for the authority or law allowing us to immediately deny entry to these asylum seekers into the United States and returning them back into Mexico. Therefore, we are requesting the person of authority or section of law that grants us the power to act as ordered and mentioned above.

Respectfully Submitted CBP Officers Signed below:

Ramona Torres		Manuel Hernandez	
Danielle Varquez		Laura L. Gonzalez	
Jose Carrasco		Manita E. Davila	
Abrahan Guerra		Fior. Guerrero	
Pat. Lopez		Claudio Barrios	
Roberto Ay		Daniel Longoria	
Gabriel Ortiz		Eduardo Amador	
	Mrs. Hernandez	Ornelas, Juan	
Israel Noguez		I. Salinas	
Leonardo Cantu		R. Castillo	
Federico Martinez		R. Torres	
Victor Pineda			



Juan Garcia 

Christian Castaneda 


Andrea Lopez 

Paul Saig Cortes

Marcus Gonzales


Oscar Molinari


Abigail Lugo

JESUS FLORES 

Amanda Beravides

Javier Rodriguez

John Solor 

Roberto Cheyria 

Ruben R. Bantello 

Gloria S. Charte 

Robert Rojas

Martin Gomez



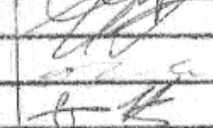
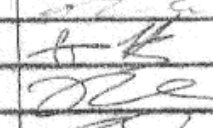


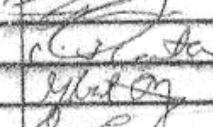
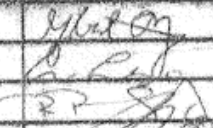
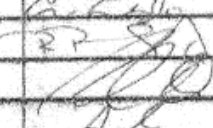
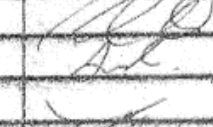
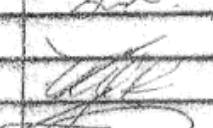



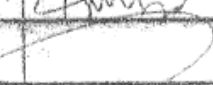






Nidia Gao



Lamiro Rofm Jr.



Jesus Gonzalez

PORT	PRINT NAME	SIGN	DATE
2305	J. GARCIA		9/25/18
2305	E. Rios		9/25/18
2305	M. Fuentes		9/25/18
2305	R. Lano		9/25/18
2305	C. Rodriguez		9-25-18
2305	M. ORTIZ		9/25/18
2305	B. Ramirez		09/25/2018
2305	L. Rodriguez		9/25/18
2305	C. CASTRO		9/25/18
2305	G. Diaz		9/25/18
2305	A. Lugo		9/25/18
2305	R. Rodriguez		9/25/18
2305	P. Rodriguez		9/25/18
2305	S. Cortes		9/25/18
2305	J. Garcia		9/25/18
2305	M. Rodriguez		9/25/18
2305	A. OROZCO		9/25/18
2305	J. Flores		9/25/18
2305	G. Leal		9/25/18
2305	R. Hernandez		9/25/18
2305	A. Cisalla		9/25/18

	Terquino Longoria
	Jose Pina
	Eli Carnates
	Romana Iglesias
	Michael Rodriguez
	Saing Cortes
	Cristina Garcia
	Pedro Hald
	Linelle Vinyard
	Andres Rios
	Abram Gorr
	Reynaldo Tomas Goveas
	Albert Munoz
	Roberto Gonzalez
	Juan Gonzalez
	Gaud Lopez
	Oscar Molon
	Constanza Perez
	Rolando RAMON
	Eduardo Costa
	Manuel Hernandez

Juan Shenks	JA
Jesus Salinas	Jesus Salinas
Oziel Cantu	Oziel Cantu
Jose TARRA	Jose TARRA
IGARRA, DOMINGO	IGARRA, DOMINGO
Noble, Ron	R2W
DAVID BOTUYO	David Botuy
Jesus Mancoske	Jesus Mancoske
Ignacio L. Tijerina, Jr.	Ignacio L. Tijerina, Jr.
Rod Cano	Rod Cano
Gustavo M. L.	Gustavo M. L.
Rod De la Fuente	Rod De la Fuente
JOSE R. LEM	JOSE R. LEM
Juan Esparza	Juan Esparza
Carlos Casares	Carlos Casares
Francisco Vibiana	Francisco Vibiana
Mariela Tejada	Mariela Tejada
Carlos Mendez	Carlos Mendez
Mark Lathin	Mark Lathin
Josue Lopez	Josue Lopez
Jose L. LEM	Jose L. LEM
D. P.	D. P.














NAMES	
1	LUCIO JULIAN
2	BALLI CHARLES
3	CIFUENTES JORGE
4	LOPEZ AZAEL
5	GONZALEZ ENRIQUE
6	THOMAS BRITTANY
7	GUAJARDO ADAN
8	RODRIGUEZ RODRIGO
9	GARCIA MARTIN
10	IBARRA JESSICA
11	ELVIRA ESIQUIO

12. David Longoria

13. Mario Bazaldua

14.

SIGNATURES	
	
	
	
	
	
	
	
	
	
	
	

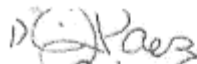

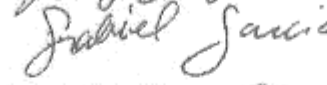




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- Bobby Gomez  
 1) CLAUDE POLIARD  
 Javier Rodriguez  
 SAR SAMATEZ  
 1) Jesus Saez  
 Cristal Ramirez  
 1) Graciela Maza  
 1) Oscar Molano  
 1) Amanda Benavides  
 1) Ricardo Casas JR.  
 1) Andrea Lopez  
 1) Raynel Rodriguez  
 1) Manuel Grijalva  
 1) Abraham Peña  
 1) Victoria Casas  
 1) Claudia Gonzalez  
 1) Fidel Rocio  
 1) Ilse Mercedes  
 1) ~~GT~~  
 1) Ismael Nopez  
 1) SAMUEL G. ESTAMILLA  
 2) Manuel Gonzalez  
 3) Christina Castro  
 4) Aban Rodriguez  
 5) JOAQUIN Castro  
 6)  
 7)  
 8)

- 1)  Paes
- 2)  Roberto José de Moraes
- 3)  Gabriel Garcia
- 4)  Adria D'Aguiar
- 5)  Adria D'Aguiar
- 6) Mario Godinez
7. Roger M. D'Aguiar
8. R. R. A.
9. Heber Trevis
0. S. D'Aguiar

[illegible]

**U.S. Customs and Border Protection  
Department of Homeland Security**

***Memorandum***

March 4, 2019

MEMORANDUM FOR: SCBPO Jorge Rodriguez

FROM: Customs and Border Protection  
Officer Ismael Noguez

SUBJECT: Northbound primary incident

On March 4, 2019 at approximately 1320 hours CBPO Ismael Noguez was instructed to shut down vehicle lane 11 by the duty shift supervisor at the Hidalgo Texas Port of Entry. CBPO Noguez along with CBPO Eli Canales walked to the top of the bridge to close lane 11. While CBPO Noguez was up at the top of the bridge a driver of the GUZMAN bus line informed CBPO Noguez and CBPO Canales that there were several people running northbound along the Sentri lane. CBPO Noguez and CBPO Canales walk towards the Sentri lane where the lane turns to the right at the top of the hill. CBPO Noguez was positioned towards the bottom of the hill because he was closing lane 11. There was a drizzle and the pavement was wet causing a slippery surface.

CBPO Noguez immediately observed a group of approximately 9 individuals approaching him. In his officer experience at the Hidalgo Port of Entry it is not uncommon to see large groups of people running northbound via the vehicle lanes and primary booths in an attempt to enter. CBPO Noguez immediately observed he was outnumbered. CBPO Noguez put his hands out and

instructed them to stop and not to run in English and Spanish. Immediately a male walks from around the group and starts walking towards CBPO Ismael Noguez in a fast manner closing the distance quickly. CBPO Ismael Noguez again give him instructions to stop. CBPO Ismael Noguez was positioned downhill of the group as the man approached CBPO Ismael Noguez. CBPO Ismael Noguez again put his left hand out and signaled the man to stop. The man did not obey the command and immediately came into contact with CBPO Ismael Noguez thus assaulting CBPO Ismael Noguez by pushing thru his arm and hand. This caused CBPO Ismael Noguez to be pushed down hill momentarily until he regained his balance.

CBPO Ismael Noguez attempted to gain control of the male by grabbing one arm and positioning his body against the fence. The male resisted by swinging around to confront CBPO Ismael Noguez. When the man turned towards CBPO Ismael Noguez he assaulted him again by striking CBPO Noguez in the face with his left arm. CBPO Ismael Noguez attempted to gain full control of his arms but the male then again pushed him in an attempt to run thru him. CBPO Ismael Noguez instructed the male to put his hands behind his back but he failed to obey commands and instead continued to resist any attempt to gain control of his hands.

CBPO Eli Canales and CBPO Ismael Noguez then tackled the man to the ground in an attempt to gain control of the male. Once on the ground the male curled up and would not give access to his hands to be secured after he was given commands in Spanish. As this happened CBPO Ismael Noguez observed the rest of the group run northbound towards the primary booths. The man attempted to head bunt CBPO Eli Canales as

he tried to gain control of his arm and hands. Moments later another group of approximately 4 people approached the area where CBPO Ismael Noguez and CBPO Eli Canales were trying to restrain the individual. The group was instructed to stop by CBPO Ismael Noguez but the did not stop and eventually continued running northbound.

CBPO Ismael Noguez positioned his right knee on top of the male's back to secure the movement of his head to the ground while he attempted to gain control of his hands. The man clenched his arms together and would not obey commands to place his hands behind his back. The male actively resisted even when he was on the ground and at no point did he obey the command to stop resisting.

The male was secured in handcuffs and the handcuffs were checked for tightness and were double locked. An immediate pat down was also performed with negative findings. The subject was escorted down the bridge to vehicle secondary for further processing.

The male was later identified as Herbert Asdrubal Soriano Torres (October 22, 1987), nationality of El Salvador. I reserve the right to make any future modifications to this document at any time hereafter.

**ATKINSON, DAVID**

---

**From:** REYNA JR, RAMIRO  
**Sent:** Monday, March 18, 2019 1:38 PM  
**To:** ATKINSON, DAVID; HARALSON, WILLIAM T  
**Subject:** (S/OP) Commitment incident 03/17/2019  
**Attachments:** S-OP Incident Memo.doc

Atkinson/Haralson,

Attached is the memo provided to SCBPO M. Solis about the incident.

**U.S. Customs and Border Protection  
Department of Homeland Security**

***Memorandum***

DATE: March 17, 2019

TO: File

FROM: Ramiro Reynar Jr.

U.S. Customs and Border Protection Officer

On March 17, 2019 I Customs and Border Protection Officer Ramiro Reyna Jr. was assigned to work 0800-1600 HB1A at the Hidalgo, TX. Port of Entry. Between the times of 1200-1600 I Customs and Border Protection Officer Efrain Gonzalez were assigned to commitment (S/OP) as our first time ever covering this commitment CBPO Gonzalez and I were briefed by Customs and Border Protection Jaime Vidal that we were to stand on the bridge or sit inside the unit looking for anyone attempting walk/run down the bridge. At approximately 1552 hours CBPO Gonzalez and I visually saw an adult male carrying a minor male later identified as Adult Subject Rodriguez, Juan Carlos DOB: 02/27/1995 A: 201451668 and Minor Male Subject Rodriguez Lara, Oliver Adelso DOB: 05/14/2014 A: 201451669 walking on the bridge. Subject Rodriguez was spotted walking in and out of different vehicle lanes, at one point he also stayed behind a bus acting in a way as if he was attempting to hide from CBPO's. When subject Rodriguez approach the mid line Mexico/USA and asked to come in, CBPO Gonzalez and I asked for proper documentation for proper travel into the USA in which subject stated he nor his son have any documents to enter the USA. CBPO Gonzalez then informed subject that we would be able to help though would have to turn back around and



enter the pedestrian side of the bridge for assistance. Subject Rodriguez turned around, walked back approximately 10 yards then turned around and ran full speed towards the Senti lane into the USA all while carrying his minor son. I quickly without hesitation ran towards the subject and grabbed him by his jacket, at the same time while this was occurring cars were traveling down the Senti lane at approximately 15-25 miles per hour. Through the momentum of running and grabbing the subject Rodriguez a 2011 Hyundai Tuscon TX CX4T294 driver Lopez, David DOB: 10/02/1978 USC that was traveling down the Senti lane hit the right side of my body the driver door in which by duty issued pistol holster dented/scratched the door of the vehicle. The subject driving the vehicle immediately stopped as I and subject Rodriguez fell in front of the vehicle. I quickly got on top of subject while he was on a prone position, pinned his heel towards his lower back to gain control of the situation. Subject was placed in double lock issued handcuffs and an immediate patdown was conducted for any weapons. While this occurred CBPO Gonzalez and Security Narvaez had control of the minor male, being held by his hand. Subject was then escorted to passport hard secondary for further processing. The vehicle and driver involved asked to speak to a supervisor in regards to the damages on the vehicle. Driver Lopez later spoke with Supervisory and Customs and Border Protection Officer Marco Solis who informed and provided the driver with the TORT claim process. While in the process of detaining subject Rodriguez I cut and scrapped my right knuckles which caused it to bleed, my knee and right shoulder felt soar as well. SCBPO M. Solis was advised of the injury.

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

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Case No. 17-cv-02366-BAS-KSC  
AL OTRO LADO, INC., ET AL., PLAINTIFFS  
*v.*  
CHAD WOLF,<sup>112</sup> ET AL., DEFENDANTS

---

Filed: Sept. 4, 2020

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**EXHIBIT 113 IN SUPPORT OF PLAINTIFFS'  
MEMORANDUM OF POINTS AND AUTHORITIES  
IN SUPPORT OF THEIR MOTION FOR  
SUMMARY JUDGMENT**

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<sup>112</sup> Acting Secretary Wolf is automatically substituted for former Acting Secretary McAleenan pursuant to Fed. R. Civ. P. 25(d).

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
(San Diego)

---

Case No. 3:17-cv-02366-BAS-KSC  
AL OTRO LADO, INC., ET AL., PLAINTIFFS

*v.*

CHAD F. WOLF, ACTING SECRETARY OF HOMELAND  
SECURITY, IN HIS OFFICIAL CAPACITY, ET AL.,  
DEFENDANTS

---

Filed: Sept. 4, 2020

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**VIDEO-RECORDED VIRTUAL DEPOSITION OF  
ERIKA DACRUZ PINHEIRO  
TIJUANA, MEXICO  
THURSDAY, JUNE 18, 2020**

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UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
(San Diego)

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Case No. 3:17-cv-02366-BAS-KSC  
AL OTRO LADO, INC., ET AL., PLAINTIFFS

*v.*

CHAD F. WOLF, ACTING SECRETARY OF HOMELAND  
SECURITY, IN HIS OFFICIAL CAPACITY, ET AL.,  
DEFENDANTS

---

Filed: Sept. 4, 2020

---

APPEARANCES:

FOR PLAINTIFF AL OTRO LADO, INC., ET AL.:

MAYER BROWN  
BY: MICHELLE WEBSTER, ESQ.  
1999 K Street N.W.  
Washington, DC 20006  
202.263.3221  
mwebster@mayerbrown.com  
Via WEBEX

FOR DEFENDANT CHAD F. WOLF, ACTING SECRETARY  
OF HOMELAND SECURITY, IN HIS OFFICIAL CAPACITY,  
ET AL.:

United States Department of Justice  
Civil Division  
Office of Immigration Litigation  
BY: ALEXANDER J. HALASKA, ESQ.  
P.O. Box 868

Ben Franklin Station  
Washington, D.C. 20044  
202.307.8704  
alexander.j.halaska@usdoj.gov  
Via WEBEX

FOR DEFENDANT:

Southern Poverty Law Center  
BY: MELISSA CROW, ESQ.  
1101 17th Street, N.W.  
Suite 705  
Washington, D.C. 20036  
202.355.4471  
melissa.crow@splcenter.org  
Via WEBEX

ALSO PRESENT:

Sol Tran, Video Technician  
Kevin Cranford, Magna Tech

\* \* \* \* \*

[161]

\* \* \* significant growth in revenue?

MS. WEBSTER: Objection, form.

THE WITNESS: Yes.

MR. HALASKA: Kevin, can you go back to Exhibit 6, the second amended complaint, same paragraph, paragraph ten.

BY MR. HALASKA:

Q Just to quote again, four lines down, “By refusing to follow the law, Defendants have caused, and will continue to cause, Class Plaintiffs and Al Otro Lado concrete and demonstrable injuries and irreparable harm,” end quote.

How has Al Otro Lado been irreparably harmed by defendants’ conduct?

MS. WEBSTER: Objection. Calls for a legal conclusion.

THE WITNESS: All right. Well, where do I start? I’ve explained numerous times about diversion of resources and all of what that entails, the specifics of what that entails, how we needed to divert resources toward the border, and how that had concrete effects on both our ability to manage the organization and on our ability to serve extremely vulnerable clients.

We’ve had actually several meter [162] clients—I’m sorry, this is a little bit difficult for me to talk about, but two children who, unaccompanied children who were turned away and subsequently murdered in Ti-

juana. And that was . . . that was really, really difficult, really difficult thing to deal with.

And we've had other clients who were turned away and assaulted, sexually assaulted, some who disappeared.

So you know, there's nothing—there's no donation or anything like that that's going to bring those children back. I don't think that can be repaired.

And I can think to a lot of examples like that, but that's really the one that—those two kids that really stick out in my mind.

I can also think of examples of clients in Los Angeles that really faced some really terrible outcomes because we weren't able to do what I think—you know, what our mission is to do, to help them.

I mentioned the baby in a coma. That's a real case. There's others like that that are horrible. I mean, just really the worst—you can't even believe another person would do that to [163] another human being. The feeling of powerlessness of not being able to actually help someone, because we're—it's like an emergency room at the border all the time.

It's just like every time, you know, with metering policy and Turnback Policy changes, we have to be so on top of it and dealing with all the stuff that comes up. And it's just like—diverting of resources, it has those concrete affects and they really stay with you as a practitioner and as an organization when you come into contact with these clients and you feel a responsibility to help them, and you can't.

Then there's a terrible outcome. I think that's really, to me, what would be the most egregious injury as a result metering policy.

And just, you know, from an—this isn't—feels trivial to mention this after talking about the murder and rape and assault of our clients, but from an administrative perspective, it's incredibly challenging to manage programming when constantly having to pull staff to respond to changes in policy and practice that are never announced by the government.

It's like practicing law in the dark; [164] right? So it's just like the other programs just—they suffer because of it. We can't build them in the same way that we otherwise would.

You know, we've definitely, just from a lack of capacity, probably like damaged some funder relationships or damaged some other coalition relationships, just from like not being able to respond sometimes because we're dealing with some insane, you know, like murder, rape, or something like that at the border, someone has been metered or turned back.

So, yeah, I'd rather not have to do any of those things or see no children who have been murdered brutally, I mean, tortured and murdered, not even talking like shot in the street. I'm talking tortured and murdered and not know those things, or have to have, you know, met and formed a relationship with these clients.

There's no going back from that. There's no—like, there's no way to right these wrongs.

MR. HALASKA: I think I'm near or at the end of my questions. Michelle, do you guys think that you're going to do cross?



MS. WEBSTER: I don't suspect so. You know,  
we can take a little break if you need a \* \* \*

\* \* \* \* \*

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

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Case No. 17-cv-02366-BAS-KSC  
AL OTRO LADO, INC., ET AL., PLAINTIFFS

*v.*

CHAD WOLF,<sup>1</sup> ET AL., DEFENDANTS

---

Filed: Oct. 13, 2021

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**EXHIBIT 118 IN SUPPORT OF PLAINTIFFS'  
MEMORANDUM OF POINTS AND AUTHORITIES  
IN SUPPORT OF THEIR MOTION  
FOR SUMMARY JUDGMENT  
FILED UNDER SEAL**

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<sup>1</sup> Acting Secretary Wolf is automatically substituted for former Acting Secretary McAleenan pursuant to Fed. R. Civ. P. 25(d).

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

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Civil Action No. 17-cv-02366

AL OTRO LADO, INC., ET AL., PLAINTIFFS

*v.*

KEVIN K. MCALEENAN, ET AL., DEFENDANTS

---

Filed: Oct. 13, 2021

---

**DEPOSITION OF JOSEPH JACKSON EASTON IV  
AS 30(b)(6) DESIGNEE OF  
U.S. DEPARTMENT OF HOMELAND SECURITY  
(VIA VIDEOCONFERENCE)  
AUGUST 13, 2020**

---

August 13, 2020  
1:33 p.m.

Deposition of JOSEPH JACKSON EATON IV,  
taken via videoconference with all parties appearing re-  
motely, pursuant to the Federal Rules of Civil Proce-  
dure, subject to such stipulations as may be recited  
herein or attached hereto, before John L. Harmonson,  
a Registered Professional Reporter and Notary Public  
of the District of Columbia, who officiated in adminis-  
tering the oath to the witness.

APPEARANCES

ON BEHALF OF THE PLAINTIFFS:

MAYER BROWN  
1999 K Street, N.W.  
Washington, D.C. 20006  
202.263.3221  
(Via videoconference)

BY: STEPHEN M. MEDLOCK, ESQ.  
smedlock@mayerbrown.com

ON BEHALF OF THE DEFENDANTS:

U.S. Department of Justice  
Office of Immigration Litigation  
Ben Franklin Square, P.O. Box 868  
Washington, D.C. 20044  
202.598.8259  
(Via videoconference)

BY: ARI NAZAROV, ESQ.  
ari.nazarov@usdoj.gov

U.S. Department of Homeland Security  
Office of Inspector General  
395 E Street, SW  
Washington, D.C. 20024  
(Via videoconference)

BY: DAVID YOUNG, ESQ.  
JILLIAN CLOUSE, ESQ  
david.young@oig.dhs.gov  
jillian.clouse@oig.dhs.gov

U.S. Department of Homeland Security  
Office of Inspector General  
245 Murray Lane  
Washington, D.C. 20528  
(Via videoconference)

BY: JOANNE HOWARD, ESQ.  
Joanne.howard@oig.dhs.gov

ALSO PRESENT:

MICHELLE SLACK, ESQ., USDOJ  
Josh Pinkus, Legal Video Specialist

[5]

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Exhibit 348	Note by CBPO [REDACTED]; [48] AOL-DEF-00216886

\* \* \* \* \*

[93]

\* \* \* longer there.”

Did I read that correctly?

A. Yes.

Q. So these conclusions indicate that officers at Otay Mesa were telling travelers that the facility was at capacity but weren’t actually checking on the capacity of the facility; correct?

MR. NAZAROV: Objection; form.

You can answer.

THE WITNESS: That’s how I read it, yes.

MR. MEDLOCK: Okay. Thank you, sir. I have no further questions.

MR. NAZAROV: Can we take ten minutes? Can we be back at 4:10?

MR. MEDLOCK: That’s fine.

MR. NAZAROV: Thank you.

THE VIDEOGRAPHER: The time is 3:56. We’re off the record.

(Recess taken.)

THE VIDEOGRAPHER: The time is 4:09.

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

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Case No. 17-cv-02366-BAS-KSC  
AL OTRO LADO, INC., ET AL., PLAINTIFFS  
*v.*  
CHAD WOLF,<sup>1</sup> ET AL., DEFENDANTS

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Filed: Oct. 30, 2020

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**EXHIBIT 1 IN SUPPORT OF PLAINTIFFS' REPLY  
IN SUPPORT OF THEIR MOTION FOR SUMMARY  
JUDGMENT**

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<sup>1</sup> Acting Secretary Wolf is automatically substituted for former Acting Secretary McAleenan pursuant to Fed. R. Civ. P. 25(d).



**OFFICE OF INSPECTOR GENERAL**

**CBP Has Taken Steps  
to Limit Processing  
of Undocumented Aliens  
at Ports of Entry**



Homeland  
Security

October 27, 2020  
OIG-21-02



**OFFICE OF INSPECTOR GENERAL**  
Department of Homeland Security

Washington, DC 20528 / [www.oig.dhs.gov](http://www.oig.dhs.gov)

October 27, 2020

**MEMORANDUM FOR:** Mark A. Morgan  
Senior Official Performing  
the Duties of the Commissioner  
U.S. Customs and Border  
Protection

**FROM:** Joseph V. Cuffari, Ph.D.  
Inspector General

JOSEPH V  
CUFFARI

Digitally signed by JOSEPH V CUFFARI  
DN: cn=JOSEPH V CUFFARI, o=DHS, ou=OIG, email=jcuffari@dhs.gov

**SUBJECT:** *CBP Has Taken Steps to  
Limit Processing of Undocu-  
mented Aliens at Ports of  
Entry*

For your action is our final report, *CBP Has Taken Steps to Limit Processing of Undocumented Aliens at Ports of Entry*. We incorporated the formal comments provided by U.S. Customs and Border Protection (CBP).

The report contains three recommendations aimed at bringing CBP operations in line with long-established practices and promoting the efficient processing of undocumented aliens. CBP concurred with two of the three recommendations. Based on information provided in the response to the draft report, we consider one recommendation unresolved and open and two recommendations resolved and open. Once your office has fully implemented the recommendations, please submit a formal closeout letter to us within 30 days so that we may close the recommendations. The memorandum should

be accompanied by evidence of completion of agreed-upon corrective actions. Please send your response or closure request to [OIGSREFollowup@oig.dhs.gov](mailto:OIGSREFollowup@oig.dhs.gov).

Consistent with our responsibility under the Inspector General Act, we will provide copies of our report to congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. We will post the report on our website for public dissemination.

Please call me with any questions, or your staff may contact Thomas Kait, Assistant Inspector General for Special Reviews and Evaluations, at (202) 981-6000.

**DHS OIG HIGHLIGHTS**  
***CBP Has Taken Steps to Limit Processing of  
Undocumented Aliens at Ports of Entry***

---

October 27, 2020

**Why We Did This  
Review**

We conducted this review to determine whether U.S. Customs and Border Protection (CBP) was turning away asylum seekers at the Southwest Border ports of entry.

**What We Recommend**

We made three recommendations aimed at bringing CBP operations in line with long-established practices and promoting the efficient processing of undocumented aliens.

**For Further Information:**

Contact our Office of Public Affairs at (202) 981-6000, or email us at [DHS-](mailto:DHS-)


**What We Found**

In May 2018, DHS and CBP leaders anticipated an increase in undocumented aliens seeking entry at the southern border. In response, the leaders urged undocumented aliens seeking protection under U.S. asylum laws (“asylum seekers”) to enter the United States legally at ports of entry rather than illegally between ports. At the same time, the leaders asked CBP for “the number of [undocumented aliens] that would likely be turned away” if all ports conducted “Queue Management,” a practice that posts CBP officers at or near the U.S.-Mexico border to control the number of undocumented aliens entering U.S. ports of entry. After learning that 650 aliens would be prevented from entering ports every day, in June 2018, then-DHS Secretary Kirstjen Nielsen authorized the practice. Nielsen also informed CBP

OIG.OfficePublic  
Affairs@oig.dhs.gov

ports that while processing undocumented aliens is a component of its mission, they should focus on other priorities, including detection and apprehension of narcotics and currency smugglers.

We found CBP took several additional actions to limit the number of undocumented aliens processed each day at Southwest Border land ports of entry. For instance, without prior public notice, seven ports of entry stopped processing virtually all undocumented aliens, including asylum seekers. Instead, CBP redirected them to other port locations. This redirection contravenes CBP's long-standing practice to process all aliens at a "Class A" port of entry or reclassify the port of entry. Moreover, although asylum seekers legally must be processed once physically within the United States, we found CBP staff turned away asylum seekers at four ports after they had already entered the United States. After waiting in Queue Management lines or being redirected



to other ports, some asylum seekers and other undocumented aliens crossed the border illegally between ports of entry.

**CBP Response**

CBP concurred with all recommendations, except one.

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**Abbreviations**

AUSA	Assistant United States Attorney
CBP	U.S. Customs and Border Protection
C.F.R.	Code of Federal Regulations
ICE	U.S. Immigration and Customs Enforcement
INA	Immigration and Nationality Act
MPP	Migrant Protection Protocol
NTA	Notice to Appear
OFO	Office of Field Operations
OIG	Office of Inspector General
POE	Port of Entry
TEDS	CBP National Standards on Transport, Escort, Detention, and Search
U.S.C.	United States Code



### Introduction

From May through June 2018, in response to a surge of undocumented aliens attempting to enter the United States DHS senior leaders publicly urged those seeking asylum to lawfully present themselves at U.S. ports of entry, where U.S. Customs and Border Protection (CBP) Office of Field Operations (OFO) officers would process them. However, DHS and CBP leadership did not take steps to maximize CBP's processing capability at ports of entry. Instead, they instituted policies and took actions that limited the number of undocumented aliens, including asylum seekers, processed at the ports.

### Background

The *Immigration and Nationality Act* (INA) allows individuals who have fled their home countries because of persecution on account of their race, religion, nationality, membership in a particular social group, or political opinion to apply for asylum or other humanitarian protections in the United States.<sup>1</sup> These individuals may express fear of persecution or torture, a fear of return to their country, or an intent to seek asylum to the CBP OFO officers they encounter when they arrive at U.S. ports of entry, or to U.S. Border Patrol agents if these individuals are apprehended after crossing illegally between ports.

### CBP Processing of Asylum Seekers at Southwest Border Ports of Entry

CBP refers to aliens who are not in possession of documents allowing them entry into the United States—e.g., a travel visa—as “undocumented aliens.” This cat-

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<sup>1</sup> See 8 U.S.C. §§ 1158, 1225(b)(1)(A)(ii), 1231(b)(3)(A) & note.

egory of aliens includes asylum seekers,<sup>2</sup> who generally arrive without visas or other legal documentation that authorize entry to the United States.<sup>3</sup> When an undocumented alien arrives at a land port of entry and is processed for expedited removal, CBP OFO officers ask specific questions during processing<sup>4</sup> to determine whether the alien has a fear of persecution or torture in his or her home country or intends to seek asylum, such that the individual should be placed in the asylum adjudication process. In fiscal year 2018, CBP Southwest Border ports processed 38,269 undocumented aliens seeking asylum, representing approximately one-third of the nearly 125,000 undocumented aliens who arrived at U.S. ports of entry that year.

After processing, CBP OFO holds asylum seekers and other undocumented aliens at the port of entry until U.S. Immigration and Customs Enforcement (ICE) takes custody of the aliens and determines whether to place them in immigration detention or release them. ICE maintains detention centers for single adults and families, but transfers unaccompanied or separated al-

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<sup>2</sup> Throughout this report, we refer to undocumented aliens who express a fear of returning to their home country or intention to apply for asylum in the United States as asylum seekers.

<sup>3</sup> Other undocumented aliens could potentially include individuals who seek temporary humanitarian entry to attend a funeral or obtain medical care.

<sup>4</sup> CBP's processing includes verifying the alien's identity, checking databases for outstanding warrants or criminal history, searching the alien for drugs or contraband, taking statements from the alien, and requesting follow-on placement with U.S. Immigration and Customs Enforcement. CBP also refers asylum seekers to U.S. Citizenship and Immigration Services for further processing of their asylum claims.

ien children to the Department of Health and Human Services, Office of Refugee Resettlement, for placement pending adjudication of the asylum claim.

From 2014 through 2018, surges, or “caravans,” of undocumented aliens sought to enter the United States through the Southwest Border. For example, CBP experienced a surge of unaccompanied alien children in 2014, and a surge of Haitian migrants in 2016. Some came through the ports, while others entered illegally, between the ports of entry.<sup>5</sup> In 2018, the caravans consisted of more families and unaccompanied alien children, and a greater number of asylum seekers, than in the past.

At times, these surges created overcrowded conditions at CBP port of entry holding facilities, which presented health and safety concerns to both officers and aliens. The increase in families and unaccompanied children posed additional challenges for ports of entry because CBP national standards require holding vulnerable populations, such as families and children, separately and generally for no longer than 72 hours.<sup>6</sup> Most ports

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<sup>5</sup> CBP’s U.S. Border Patrol is responsible for processing aliens who have crossed into the United States illegally, between the ports of entry, including those who express an intent to seek asylum.

<sup>6</sup> U.S. Customs and Border Protection, *National Standards on Transport, Escort, Detention, and Search* (TEDS), October 2015. For example, TEDS, 5.0, requires CBP to hold families, unaccompanied children, single adults, and transgender individuals in separate spaces. TEDS, 4.1, also provides that “[d]etainees should generally not be held for longer than 72 hours in CBP hold rooms or holding facilities. Every effort must be made to hold detainees for the least amount of time required for their processing, transfer, release, or repatriation as appropriate and as operationally feasible.”

were designed before the standards were established and before CBP OFO experienced surges of asylum seekers, especially families. As a result, many ports do not have enough room to hold vulnerable populations separately.<sup>7</sup> Similarly, ICE has limited detention bed space available to hold families.

In 2016, during the surge of Haitian asylum seekers, CBP's San Ysidro port of entry in California, in cooperation with the Mexican government, developed a new approach for preventing overcrowding and health and safety concerns. CBP officers and Mexican government officials began stopping asylum seekers and other undocumented aliens from crossing the international boundary into the U.S. port of entry. Instead, those aliens were required to put their names on a waiting list until CBP had space and staff to process them. The asylum seekers and other undocumented aliens waited in Mexico until CBP notified the Mexican government of the number of aliens CBP could take, and the Mexican government then delivered that number to the port. This practice became known as "Queue Management," though it is also referred to as "metering" or establishing a "limit line."<sup>8</sup>

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<sup>7</sup> As reported in *Results of Unannounced Inspections of Conditions for Unaccompanied Alien Children in CBP Custody*, OIG-18-87, in the past, some CBP ports converted offices and conference rooms to hold rooms to accommodate more people in the processing areas.

<sup>8</sup> At the time of our fieldwork, CBP OFO was piloting another initiative. On January 28, 2019, the San Diego Field Office started the Migrant Protection Protocol (MPP). Under the MPP, certain undocumented aliens arriving from Mexico are required to stay in Mexico to await future immigration proceedings in the United States (e.g., hearing before a U.S. immigration court).

Since 2016, CBP has used Queue Management at various times to control the flow of undocumented aliens into ports of entry. Most recently, in 2018, as migrant caravans arrived to the Southwest Border and the number of undocumented aliens seeking to enter the United States increased, CBP again began assigning officers to the limit line in an effort to control the number of aliens entering the ports. Since July 2018, Queue Management has become standard practice, with all Southwest Border ports implementing limit lines.

We initiated this review in response to two congressional requests and significant public interest in how CBP processes asylum seekers at ports of entry. Additionally, the U.S. Office of Special Counsel forwarded a whistleblower complaint related to similar issues at one port of entry. In 2018, we conducted unannounced site visits to 12 of the 24 land ports of entry across the four CBP field offices along the Southwest Border, where we interviewed CBP staff and observed port operations.<sup>9</sup> We also evaluated CBP's policies and procedures for processing asylum seekers and other undocumented aliens.<sup>10</sup>

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<sup>9</sup> CBP operates 24 land ports of entry along the Southwest Border comprising 46 crossing points; some ports have multiple crossing points or gates, e.g., the Nogales port of entry has three crossing points: DeConcini, Mariposa, and Morley Gate. Four field offices oversee the ports: San Diego in California; Tucson in Arizona; and El Paso and Laredo in Texas.

<sup>10</sup> Some laws and policies apply specifically to asylum seekers, while others apply to the broader category of undocumented aliens, which includes both asylum seekers and other aliens attempting to enter the country without valid documents. Throughout this report, we refer to asylum seekers and undocumented aliens, both together and separately as appropriate.

Some of the issues we discuss in this report are similar to or the same as issues raised in lawsuits filed by a non-governmental organization and state governments. Specifically, the legality of CBP's Queue Management practice—i.e., the practice of CBP officers standing at a “limit line” position at or near the U.S.-Mexico border to control the number of undocumented aliens entering U.S. ports of entry—currently is being litigated in the court system. See *Al Otro Lado, Inc. v. Nielsen*, 17-cv-2366 (S.D. Cal. 2017).<sup>11</sup>

Accordingly, DHS Office of Inspector General (OIG) does not take a position on the legality of this practice, and will await a final determination by the courts.

### Results of Review

In May 2018, DHS and CBP leaders anticipated an increase in undocumented aliens seeking entry at the southern border. In response, the leaders urged asylum seekers to present their claims at ports of entry rather than presenting the claims after the individuals crossed the border illegally. However, a few weeks later, then-Secretary Kirstjen Nielsen asked CBP for the estimated “number of [undocumented aliens] that would likely be turned away” if all ports conducted “Queue Management.” After learning that CBP could turn away 650 undocumented aliens every day,—the Secretary instructed ports to implement Queue Management. This involved CBP officers standing at a “limit line” position at or near the U.S.-Mexico border to control the flow of undocumented aliens entering

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<sup>11</sup> The plaintiffs allege violations of 8 U.S.C. §§ 1158, 1225, 1229; 8 C.F.R. Parts 208, 235; U.S. Const. Amend. V; the 1951 *Convention on the Rights of Refugees*; and section 706 of the Administrative Procedure Act.

CBP ports for processing. Further, the Secretary told the ports that processing inadmissible aliens (who include asylum seekers) was not one of CBP's main priorities, and they should consider re-assigning staff away from processing such aliens to focus instead on detection and apprehension of narcotics and currency smugglers.<sup>12</sup>

In addition, we found CBP took several actions to limit the number of undocumented aliens who could be processed each day at the Southwest Border land ports of entry. Seven ports effectively stopped processing undocumented aliens, despite being designated as Class A ports, which are "Port[s] of Entry for all aliens," not just those with documents, according to 8 C.F.R. § 100.4. CBP broke with a longstanding practice by changing the categories of aliens it would process at these seven ports without changing the ports' classification. When asylum seekers and other undocumented aliens appeared at these seven ports, CBP officers redirected them to other ports, some of which were more than 30 miles away. We observed CBP officers telling aliens the port was at capacity and did not have the capability to process them, regardless of actual capacity and capability at the time. Further, four CBP ports turned away asylum seekers who had already stepped into the United States, telling them to return to Mexico. Also, at two other ports we visited, CBP had stopped using blocks of available holding cells, allowing those cells to sit empty while asylum seekers and other undocumented aliens waited in the Queue Management lines in Mexico. As the lines grew longer, some asylum

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<sup>12</sup> June 5, 2018 Memorandum from Secretary Nielsen, "Prioritization-Based Queue Management."

seekers and other undocumented aliens may have crossed the border illegally, between ports of entry, where U.S. Border Patrol is responsible for apprehending and holding them.

**DHS Urged Asylum Seekers to Come to Ports of Entry, But Reassigned Staff away from Asylum Processing**

Following the April 2018 announcement of the Zero Tolerance Policy, DHS and CBP began urging asylum seekers in May 2018 to come to ports of entry rather than attempt to enter the United States illegally between ports of entry. At the same time, DHS and CBP directed ports to assign staff away from processing undocumented aliens, including asylum seekers, to other duties at the ports. Appendix C provides a brief timeline of significant events from April to August 2018 related to CBP's asylum processing.

On April 6, 2018, then-Attorney General Jeff Sessions announced a “Zero Tolerance Policy,”<sup>13</sup> which, as implemented by DHS, required CBP to refer for prosecution every adult who entered the United States illegally, in-

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<sup>13</sup> In an April 6, 2018 memo, the Attorney General directed United States Attorney's Offices along the Southwest Border, in consultation with the Department of Homeland Security, to adopt a Zero Tolerance Policy for all Improper Entry by Alien offenses, and refer them for prosecution under 8 United States Code (U.S.C.) § 1325(a). In a press release announcing the “Zero Tolerance Policy,” the Department of Justice said, “The implementation of the Attorney General's zero-tolerance policy comes as the Department of Homeland Security reported a 203 percent increase in illegal border crossings from March 2017 to March 2018, and a 37 percent increase from February 2018 to March 2018—the largest month-to-month increase since 2011.” <https://www.justice.gov/opa/pr/attorney-general-announces-zero-tolerance-policy-criminal-illegal-entry>.



cluding those traveling with their children. As a result, parents who entered illegally were separated from their children upon referral for prosecution.<sup>14</sup>

After implementation of the Zero Tolerance Policy, then-DHS Secretary Nielsen and OFO Executive Assistant Commissioner Todd Owen made several public statements urging asylum seekers to come to the ports of entry instead of crossing illegally and risking separation from family members. For instance, on May 8, 2018, Secretary Nielsen testified before Congress, “Help me message: If you are fleeing and coming to the United States please come to the ports of entry. [We] will process your claim there.”<sup>15</sup> On June 18, 2018, at a White House Press Briefing, Secretary Nielsen also told reporters, “As I said before, if you’re seeking asylum, go to a port of entry. You do not need to break the law of the United States to seek asylum.”<sup>16</sup> When reporters noted media accounts of families turned away at ports of entry, the Secretary described that reporting as “incorrect.” Further, on July 9, 2018, OFO Executive Assistant Commissioner Owen said during a press conference:

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<sup>14</sup> We assessed CBP’s implementation of the policy in our report, *Special Review—Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy*, OIG-18-84, September 27, 2018.

<sup>15</sup> *Homeland Security Secretary Nielsen on Fiscal Year 2019 Budget*. Testimony before the Senate Appropriations Subcommittee on Homeland Security, May 8, 2018.

<sup>16</sup> White House Press Conference, June 18, 2018, “DHS Secretary Nielsen’s Remarks on the Illegal Immigration Crisis.” See transcript at <https://www.dhs.gov/news/2018/06/18/dhs-secretary-nielsens-remarks-illegal-immigration-crisis>.

The lawful way is to claim asylum, present yourself for inspection at the port of entry. We will keep the family unit together, again, absent concerns for the well-being of the child, absent criminal history for the adult.

However, despite encouraging asylum seekers to enter the United States through the ports of entry, DHS and CBP took actions that limited the number of undocumented aliens, including asylum seekers, CBP could process each day at the Southwest Border land ports of entry.<sup>17</sup>

On April 27, 2018, OFO Executive Assistant Commissioner Owen emailed a memorandum authorizing Southwest Border land ports of entry to establish Queue Management lines<sup>18</sup> when appropriate to facilitate “safe and orderly processing of travelers” based on the ports’ processing capacity. Shortly thereafter, on May 24, 2018, DHS Chief of Staff Chad Wolf, on behalf of Secretary Nielsen’s Office, asked CBP officials to determine “the number of [undocumented aliens] that would likely be turned away” every day if ports ran Queue Management operations full-time. Then-CBP Commissioner Kevin McAleenan instructed OFO Executive Assistant Commissioner Owen to report to the Secretary that if CBP assigned 200 officers to work limit lines,

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<sup>17</sup> Numerous factors affect CBP’s ability to process undocumented aliens at ports of entry. The exact number of asylum seekers who were unable to enter the United States because of CBP’s Queue Management actions could not be stated with certainty.

<sup>18</sup> The memorandum specified ports “may not create a line specifically for asylum seekers,” but could create lines “based on legitimate operational needs, such as lines for those with appropriate travel documents and those without such documents.”

they would turn away approximately 650 undocumented aliens per day.

On June 5, 2018, Secretary Nielsen signed a memorandum authorizing port directors to establish Queue Management lines at all the Southwest Border ports.<sup>19</sup> The memorandum also informed port directors that processing inadmissible arriving aliens<sup>20</sup> (which may include asylum seekers) was not a priority,<sup>21</sup> and authorized port directors to reassign staff away from processing inadmissible arriving aliens, stating:

CBP personnel and resources that would otherwise be deployed to process inadmissible arriving aliens can focus on the detection and apprehension of narcotics and currency smugglers.

Following this directive, the number of undocumented aliens waiting in Mexico to enter U.S. ports increased from 942 on June 20, 2018, to more than 2,000 on Octo-

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<sup>19</sup> We made multiple requests to CBP for policies and guidance related to the “Queue Management” program. Despite the memorandum’s title, “Prioritization-Based Queue Management,” and the Secretary’s initiation of an accompanying pilot program, CBP did not provide the document in response to our requests and none of the CBP staff we interviewed informed us of the memorandum’s existence. DHS OIG only learned about the document through forensic email analysis.

<sup>20</sup> Documents we reviewed such as the “Prioritization-Based Queue Management” memorandum and CBP staff with whom we spoke use the term “inadmissible aliens” interchangeably with “undocumented aliens.”

<sup>21</sup> The memorandum reiterated four superseding missions for the ports: 1) National security; 2) Counter-narcotics operations; 3) Economic security; and 4) Trade and travel facilitation.

ber 1, 2018.<sup>22</sup> In an October 5, 2018 email addressing the surge of aliens seeking asylum at the ports, then-DHS Deputy Secretary Claire Grady told senior CBP staff, “Business as usual, no matter how outstanding your officers are[,] isn’t going to be a match for what we are facing.” Nevertheless, CBP officials did not allocate additional resources to increase processing capability at ports of entry. For instance, in response to an October 18, 2018 email suggesting ways for CBP to mitigate the growing surge of undocumented aliens, a CBP executive told his staff that expanding the operating hours of ports was “too resource intensive just to help the migrants.” In the same email, the executive wrote:

We might consider adding officers when the port is closed to help secure against breeches [*sic*], but don’t want to add extra hours to process more migrants.

In other emails, the executive declined to consider establishing temporary detention facilities for undocumented aliens, or increasing the number of aliens released with Notices to Appear (NTA).<sup>23</sup> In a March 2019

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<sup>22</sup> We derived this number from CBP daily Queue Management reports, which list the number of aliens awaiting processing on the Mexican side of the border. During OIG site visits and interviews, we learned CBP officials obtain these numbers from sources such as Mexican government officials, non-governmental organizations, and CBP officers’ estimates of aliens in line. CBP does not track the number of aliens arriving at ports who are redirected to another port or told to place their names on a waiting list in Mexico.

<sup>23</sup> A Notice to Appear (NTA) is a legal document placing an alien in removal proceedings before the U.S. Department of Justice, Executive Office for Immigration Review. Typically, ICE determines whether to release an individual from DHS custody with an NTA. Although CBP OFO also has authority to issue NTAs, according

DHS OIG interview with a senior CBP official on the Southwest Border, the official summarized CBP's response to the surge of undocumented aliens by stating, "We are hoping this thing just goes away."

Thus, while DHS leadership urged asylum seekers to present themselves at ports of entry, the agency took deliberate steps to limit the number of undocumented aliens who could be processed each day at Southwest Border land ports of entry. By October 30, 2018, the number of undocumented aliens waiting outside the ports to be processed grew to more than 3,000.

**Without Notice to the Public, CBP Stopped Routine Processing of Most Undocumented Aliens, Including Asylum Seekers, at Seven Ports and Redirected Them to Other Ports**

During our fieldwork, we learned CBP had stopped the routine processing of most undocumented aliens<sup>24</sup>—including asylum seekers—at 7 of the 24 Southwest Border land ports of entry.<sup>25</sup> At these seven ports, CBP staff at the limit line do not simply control the flow of undocumented aliens into the port facility; rather, they

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to CBP officials, CBP OFO does not exercise that authority routinely.

<sup>24</sup> CBP officials said they make exceptions for some vulnerable populations, such as unaccompanied alien children or pregnant asylum seekers. This exception does not appear to be documented in CBP policy, and OIG did not independently corroborate CBP's claim.

<sup>25</sup> The seven ports are Otay Mesa, Tecate, Calexico East, and Andrade, which fall under the San Diego field office; and Roma, Rio Grande City, and Progreso, which fall under the Laredo field office.

“redirect”<sup>26</sup> undocumented aliens who approach the limit line to different ports, telling the aliens the other port can process them more quickly. “Redirected” aliens must then travel through Mexico to another port and take their place behind others already waiting in the Queue Management line at that port.

The seven ports are designated as Class A ports, “Port[s] of Entry for all aliens,” according to 8 C.F.R. § 100.4.<sup>27</sup> CBP has authority to change a port’s classification<sup>28</sup> and has done so in the past to restrict, expand, open and close specific ports.<sup>29</sup> Designation of a port of entry is a formal DHS action.<sup>30</sup> When changing a port’s

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<sup>26</sup> In this report, “redirect” means the practice of intercepting asylum seekers at a port’s limit line position and instructing them to go to another port to apply for asylum.

<sup>27</sup> 8 C.F.R. § 100.4 regulates the type of individuals and cargo that ports process: “Class A means that the port is a designated Port-of-Entry for all aliens.” The regulation also designates other classes of ports that do not process most undocumented aliens. For example, Class B ports process only certain aliens who are exempt from specific document requirements, in lawful possession of Lawful Permanent Resident cards, or who meet other eligibility requirements.

<sup>28</sup> The Regulation provides, “The designation of such a Port-of-Entry may be withdrawn whenever, in the judgment of the Commissioner, such action is warranted.”

<sup>29</sup> See, e.g., CBP, Closing the Jamieson Line, New York Border Crossing, 79 Fed. Reg. 42,449-01 (July 22, 2014); see also INS, DOJ, *Freedom of Information Act*, 32 Fed. Reg. 9,616, 9,618 (July 4, 1967) (quoting 8 C.F.R. § 100.4 that Class A ports are “for all aliens” and that designation may be withdrawn by Commissioner whenever warranted). CBP has added a Class B port and terminated one, after providing the public with notice and a period for commenting on the proposed changes.

<sup>30</sup> *United States v. Nunez-Soberanis*, 406 F. Supp. 3d. 835, 841 (S.D. Cal. 2019).

classification, CBP has published a final rule in the Federal Register.<sup>31</sup> In a break from these longstanding practices, CBP has redirected undocumented aliens appearing at the seven ports yet has not redesignated those ports from Class A to another classification.

As discussed previously, DHS leadership made public pronouncements encouraging undocumented aliens to arrive at ports of entry, but never notified the public of its decision to stop processing aliens at the seven ports of entry. When DHS OIG asked a senior CBP official at one of the field offices about the lack of notification to the public, the official expressed concern about the legality of the redirection practice. At the Tecate port of entry in California, several officers also questioned the legality of the redirecting practice and said they were unwilling to work the limit line position. These officers addressed their concerns with port management and their union representatives, which in turn led to a modification in the redirecting practice—i.e., port management instituted a protocol allowing limit line officers to contact a supervisor to come to the line and assume responsibility for redirecting aliens. Although Tecate now has this protocol in place, the union representative is still unclear whether the practice is legal.

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<sup>31</sup> Statement of Organization; Ports of Entry for Aliens Arriving by Vessel or by Land Transportation, and by Aircraft, 54 Fed. Reg. 47,673 (Nov. 16, 1989) (redesignating St. Aurelie, Maine, from a “Class A” port of entry to “Class B”); Statement of Organization; Ports of Entry for Aliens Arriving by Vessel or by Land Transportation, 49 Fed. Reg. 31,054 (Aug. 3, 1984) (redesignating Fort Hancock, Texas from a “Class B” port of entry to “Class A”); Statement of Organization; Field Service Realignment, 49 Fed. Reg. 30,057-01 (July 26, 1984) (redesignating Richford, Vermont station to a substation).

At these seven ports, which fall within the Laredo and San Diego field offices, CBP routinely told undocumented aliens at the limit line that the port currently lacked the capacity (holding space) or capability (staffing and resources) to process them, regardless of the port's actual capacity and capability.<sup>32</sup> For instance, CBP's daily Queue Management reports indicated that from June 20, 2018, until November 8, 2018, all seven ports redirected undocumented aliens to other ports every day for which data was available, even though these records also show the ports did not detain a single undocumented alien in their available hold rooms on 80 percent of those days.<sup>33</sup>

Meanwhile, the ports to which CBP staff redirected the undocumented aliens range from a few miles to more than 30 miles away. Often, this required traversing difficult desert terrain and potentially placed undocumented aliens at risk of encountering criminals who may exploit them, as areas in Mexico along the border with the United States are known to be controlled by criminal cartels. Figures 1 and 2 illustrate the distance

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<sup>32</sup> Reports emailed to CBP headquarters indicate the policy of redirecting was known at least to the level of then-CBP Commissioner Kevin McAleenan.

<sup>33</sup> We obtained this data from CBP's daily Queue Management reports, which track how many ports engage in redirecting and how many aliens each port has in its hold rooms. CBP did not provide this data to OIG despite multiple requests, necessitating a forensic analysis of key CBP staff members' emails. CBP OFO did not always generate a daily Queue Management report; however, we were able to obtain and analyze reports for 95 of the 141 days that fall between June 20, 2018, the date of the first report we obtained, and November 8, 2018, the date of the last report we obtained.



redirected undocumented aliens had to travel to a port that might process them.

**Figure 1. San Diego Field Office Redirecting Ports**



Source: OIG depiction of CBP data

**Figure 2. Laredo Field Office Redirecting Ports**



Source: OIG depiction of CBP data

Moreover, because CBP officers at the limit line do not generally ask migrants where they are from before redirecting them to another port, Mexican nationals

seeking asylum may be redirected along with asylum seekers from other countries. Redirected Mexican nationals must therefore remain in and travel through the very country in which they claim they are subject to persecution.

Our fieldwork indicated other destination ports have long lines of undocumented aliens already waiting to be processed. Accordingly, those who are redirected from one port must then go to the end of the Queue Management line at another port. For example, the Otay Mesa and Tecate ports of entry routinely redirected undocumented aliens to the San Ysidro port of entry. Once there, the aliens must enter the Queue Management line by putting their names on a list that often contains thousands of names, meaning they will wait in Mexico for weeks, if not months, before being granted access to the port to be processed by CBP.<sup>34</sup>

As shown in the following examples, creating barriers to entry at ports of entry may incentivize undocumented aliens to attempt to cross into the United States illegally, between ports of entry. For example, we interviewed 17 aliens who either were in detention or were recently released, 5 of whom said after growing frustrated with Queue Management and redirection practices at ports of entry, they decided to enter the United States illegally. We interviewed representatives from several non-profit and non-governmental organizations who stated they had similar concerns. We also learned

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<sup>34</sup> CBP officials said they do not have direct access to the list, which is maintained in Mexico. In order to obtain the number of aliens waiting outside each port, CBP port officials and Mexican government officials communicate regularly to identify and schedule waiting aliens for entry and processing.

of one case in which an asylum seeker crossed the border illegally after waiting in a Queue Management line for 2 days. When U.S. Border Patrol referred the asylum seeker's case to an Assistant United States Attorney (AUSA) for prosecution, the AUSA refused to prosecute given the long wait to which the asylum seeker was subjected.<sup>35</sup>

While temporarily holding aliens at ports of entry, CBP must directly supervise detained aliens and provide access to appropriate medical care, as detailed in TEDS.<sup>36</sup> CBP OFO leadership stated they implemented the redirecting procedure at these seven ports because they are remote ports with few staff and outdated facilities. For example, they said these ports closed at night and are far from medical care. Before implementing the redirecting procedure, CBP staff drove undocumented aliens to other ports for overnight holds and to medical facilities when necessary. We found four of the seven redirecting ports close at night, and one is more than 50 minutes away from medical care. Most of the ports' holding capacity is less than 20, but Tecate and Otay Mesa have capacity for 35 and 31, respectively. Table 1 shows the capacity, distance from a medical center, and hours of operation for each redirecting port.

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<sup>35</sup> We learned about this incident during our forensic email analysis.

<sup>36</sup> See TEDS, 4.6; TEDS, 4.10.

**Table 1. Redirecting Ports of Entry Capacity, Distance to Medical Facilities, and Hours of Operation**

Port	Capacity	Drive Time to Nearest Hospital	Port Hours of Operation
Tecate	35	Sharp Grossmont Hospital (53 min)	5:00 am–11:00 pm, Daily
Calexico East	10	El Centro Medical Center (25 min)	6:00 am–8:00 pm, Mon–Fri 10:00 am–6:00 pm, Sat
Andrade	10	Yuma Regional Medical Center (21 min)	6:00 am–10:00 pm Daily
Otay Mesa	31	Sharp Chula Vista Medical Center (20 min)	24 hours/7 days a week
Roma	16	Star County Memorial Hospital (15 min)	24 hours/7 days a week
Rio Grande	10	Star County Memorial Hospital (10 min)	7:00 am–12:00 am, Daily
Progreso	17	Knapp Medical Center (15 min)	24 hours/7 days a week

Source: OIG analysis of information CBP provided and information we identified from CBP.gov

## **CBP Returned to Mexico Asylum Seekers Who Had Already Entered the United States**

Despite provisions in the INA, CBP guidance, and statements from CBP senior leaders requiring CBP staff to process asylum seekers once they have physically entered the United States, at least four CBP ports returned to Mexico some asylum seekers who had crossed the international border and entered the United States.

The INA states any alien who is physically in the United States may apply for asylum.<sup>37</sup> Consistent with this provision, CBP's April 27, 2018 Queue Management guidance states that once a traveler has entered the United States, he or she must be fully processed by CBP. DHS also communicated its position on this matter to the public when, on June 18, 2018, it posted on its website:

Myth: DHS is turning away asylum seekers at ports of entry; FACT: CBP processes all aliens arriving at

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<sup>37</sup> 8 U.S.C. § 1225 requires CBP to inspect aliens who are seeking admission to the United States and 8 U.S.C. § 1158 states that any alien who is physically present or arrives in the United States may apply for asylum.

all ports of entry without documents as expeditiously as possible. . . .<sup>38</sup>

Similarly, on July 9, 2018, OFO Executive Assistant Commissioner Owen said in a press conference, “. . . despite what you may have heard, we never turn away individuals seeking asylum at port[s] of entry.”

However, we found that, at four ports of entry—Otay Mesa, San Ysidro, Tecate, and Nogales’ Morley Gate—CBP did not process asylum seekers who had entered the United States, returning them to Mexico instead. For instance, our fieldwork indicated, CBP officers at San Ysidro and Tecate ports returned to Mexico asylum seekers who had not only crossed over the international boundary into the United States, but also had entered the ports’ buildings.

In addition, all four ports established their limit lines inside the boundary line on the U.S. side of the international border. As a result, asylum seekers and other undocumented aliens stepped into the United States to reach the Queue Management line, where they were instructed either to go to another port, or to return to Mexico to wait in line.<sup>39</sup> Two of the ports, San Ysidro and Otay Mesa, eventually moved their limit lines to the border, but as of August 2019, the Tecate and Nogales’ Morley Gate limit lines had not moved, and remained inside the United States. Asylum seekers and other undocumented aliens who approach those limit lines are

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<sup>38</sup> <https://www.dhs.gov/news/2018/06/18/myth-vs-fact-dhs-zero-tolerance-policy>.

<sup>39</sup> CBP officers at the San Ysidro Pedestrian East entry would tell asylum seekers they had to put their names on the Queue Management list and wait for their turn to be processed.

physically present in the United States at the time CBP turns them away by redirecting them to another port.

### **CBP Did Not Use All Available Detention Space**

We found two ports had stopped using available detention space, even though undocumented alien families were waiting in Queue Management lines. Management at those ports said staffing was insufficient to monitor the rooms. However, other staff we interviewed disagreed with that assessment. Although CBP is short-staffed at Southwest Border ports, fiscal year 2018 staffing had improved from FY 2016, when larger numbers of aliens were processed.

On June 18, 2018, field offices began sending daily summaries from the ports of entry to CBP headquarters, detailing the number of aliens in custody, the number waiting to be processed, and available holding capacity.<sup>40</sup> The reports show increasing numbers of aliens waiting to be processed on the Mexican side of the border, yet they also indicate the ports were not using all available detention capacity.

For example, we observed this scenario during our visit to the San Luis port of entry in Arizona. At the San Luis port, which has the capacity to hold 48 detainees,

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<sup>40</sup> Available holding capacity does not always reflect the ability of a port to accommodate additional detainees. CBP detention standards mandate aliens be segregated by gender and age, and other factors to protect at risk detainees. For example, if a port has only 2 cells, each able to hold 10 detainees, and CBP encounters 10 adult male aliens and 1 unaccompanied alien child, the adult males will all be placed in one cell, while the unaccompanied alien child will be placed in the other cell. The port is then unable to process more adult male aliens, despite being at only 55 percent capacity.

we found at the time of our visit in October 2018 that CBP was detaining only 5 undocumented aliens while a line of at least 30 more waited along the international border.<sup>41</sup> Yet, we observed several empty holding cells and an empty trailer fully equipped to hold undocumented families, even though there was a line of waiting aliens. We later learned from CBP's daily Queue Management Report that 105 aliens were in the queue to enter the port that day.

When interviewed by DHS OIG, staff at the San Luis port said they could process more asylum seekers than they were processing.<sup>42</sup> When we asked why the San Luis port elected not to process the undocumented aliens waiting at the Queue Management line, we received a range of answers. The senior port official said the undocumented aliens waiting outside were not real asylum seekers, but rather came to seek economic opportunity. However, this assumption on the part of the official is not an appropriate basis for CBP to refuse to process the individuals, as CBP officials do not have the authority to evaluate the credibility of asylum claims and must process all claiming to seek asylum, regardless of the officials' opinions about the strength of their claims. Alternatively, two staff members at the San Luis port of entry said management "above" the port sets limits on the numbers of undocumented aliens the port should process. One of these officers told us, "I know from

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<sup>41</sup> CBP provided us with internal reports stating the port's capacity is 48 aliens. However, in an interview, a senior port official told us the port's capacity was 35 aliens.

<sup>42</sup> We visited the San Luis port of entry on October 30, 2018 to observe operations, including the Queue Management line, and to interview CBP employees familiar with processing undocumented aliens.

what came down from HQ, we are trying to process the least amount of people.”

During our visit in November 2018, we observed a similar situation at the Nogales port of entry, which consists of three separate crossing points close to each other geographically: the Mariposa facility, DeConcini crossing, and Morley Gate. CBP added family unit holding cells to the Mariposa facility when it renovated the port in 2014, but CBP was not using those cells during our fieldwork. We observed at least six hold rooms and office space that were either empty or used for storage. A port official said the staff had used these hold rooms during the 2016 surge of Haitian migrants, but did not recall the last time they were used since then.

According to the official, the port does not use the hold rooms because it does not have enough staff to monitor aliens in the rooms, and the facility closes at night. The official told us when his staff encounter undocumented aliens, they drive them a short distance to the DeConcini crossing. However, on the day of our visit, the DeConcini crossing’s hold rooms were full. As a result, the 20 or more aliens waiting outside the DeConcini facility would not be processed until the DeConcini crossing’s hold rooms became available. In the meantime, the hold rooms in the Mariposa facility, 3 miles away, were empty.

It is unclear why officials at the Nogales port assigned staff to transport undocumented aliens to other CBP facilities rather than assigning the officers to monitor these aliens at the Nogales port. Additionally, by assigning staff to operate the limit line, the port reduced its capability to process undocumented aliens.



Although CBP has been attempting to hire more officers to fill vacant positions, many ports of entry are not at full staffing. According to CBP OFO's port of entry staffing data, shown in Table 2, overall staffing rates at four field offices' ports have improved since FY 2016, when three of four CBP field offices processed more undocumented aliens than in FYs 2017 and 2018.

**Table 2. Southwest Border Land Port of Entry CBP OFO Staffing Levels and Numbers of Undocumented Aliens Processed in FYs 2016 - 2018**

Field Office	FY 16 Staff %	Aliens Processed in FY 2016	FY 17 Staff %	Aliens Processed in FY 2017	FY 18 Staff %	Aliens Processed in FY 2018
El Paso	98.4%	23,787	101.2%	17,308	99.7%	23,509
Laredo	90.0%	68,957	94.5%	48,524	99.2%	48,059
San Diego	83.1%	49,075	86.5%	31,252	90.3%	35,288
Tucson	73.9%	12,105	71.9%	13,885	78.7%	17,303
<b>All Southwest Border</b>	<b>87.1%</b>	<b>153,924</b>	<b>90.0%</b>	<b>110,969</b>	<b>93.6%</b>	<b>124,159</b>

Source: CBP

### Conclusion

In 2018, as surges of undocumented aliens sought asylum in the United States, the DHS Secretary and CBP leadership urged asylum seekers to come to ports of entry to be processed. However, DHS and CBP took actions to reduce the number of asylum seekers CBP processed daily. Under the INA, the U.S. Government must process all those who are physically in the United States and express fear of persecution in their home country or an intention to seek asylum. The law does not set limits as to the number of asylum seekers the Government can or must process. Nevertheless, the Secretary and CBP have effectively limited access for undocumented aliens wishing to claim asylum in the United States, sometimes without notice to the public. As a result, the numbers of asylum seekers in Queue Management lines grew. As the lines grew and asylum seekers were redirected to other ports, some undocu-

mented aliens attempted to enter the United States illegally, exacerbating the very problem DHS sought to solve.

### **Recommendations**

We recommend the CBP Acting Commissioner:

**Recommendation 1:** Resume processing undocumented aliens at the seven ports of entry currently redirecting them to other ports, or formally redesignate the ports to exclude undocumented aliens.

**Recommendation 2:** Provide written guidance and training to CBP personnel at ports of entry relating to the proper handling of aliens who are physically present in the United States and indicate an intention to apply for asylum.

**Recommendation 3:** Evaluate whether CBP can more efficiently use available holding spaces to process undocumented aliens, including asylum seekers.

### **Management Comments and OIG Analysis**

We have included a copy of CBP's Management Response in its entirety in Appendix B. We also received technical comments from CBP and incorporated them into the report where appropriate. CBP did not concur with Recommendation 1, but concurred with Recommendations 2 and 3. We consider Recommendation 1 unresolved and open. Recommendations 2 and 3 are resolved and open. A summary of CBP's responses and our analysis follows.

In its response to our report, CBP expressed concerns that the report "demonstrates a fundamental misunderstanding of Office of Field Operations (OFO) holding capacity holding capacity [*sic*] compared to its operational

capacity.” CBP said its capacity to detain individuals in its short-term facilities depends on many factors, including:

- Demographics of the individual in custody;
- Medical or other needs of individuals in custody;
- Ability of ICE ERO or HHS to transfer individuals out of CBP custody;
- OFO’s available resources to process and hold individuals;
- Competing priority missions; and
- Availability of staff, room, and resources.

In our report, we acknowledge the difference between holding and operational capacity, though we use the terms capacity and capability. The report explains that capacity (holding space) and capability (staffing and resources) were the reasons for CBP’s stated limitations to process undocumented aliens. However, our evidence also indicates that CBP OFO used these reasons regardless of the port’s actual capacity and capability, as detailed on page 10 of the report.

Moreover, throughout the report, we address the confluence of factors that affect the capability/operational capacity of a given port. For example, we explain in footnote 40,

Available holding capacity does not always reflect the ability of a port to accommodate additional detainees. CBP detention standards mandate aliens be segregated by gender and age. For example, if a port has only 2 cells, each able to hold 10 detainees, and CBP encounters 10 adult male aliens and 1 unaccompanied alien child, the adult males will all be

placed in one cell, while the unaccompanied alien child will be placed in another cell. The port is then unable to process more adult male aliens, despite being at only 55 percent capacity.

The report also recognizes the constraints facing CBP. As described on page 12, we detail that while temporarily holding aliens at ports of entry, CBP must directly supervise detained aliens and provide access to appropriate medical care. The report explains how and why CBP OFO leadership implemented the redirecting procedure at some ports. Finally, the report's background provides historical context for how challenging it has been for CBP to manage the surges of undocumented aliens in its facilities given CBP OFO's complex mission.

As the report describes, DHS leadership directed ports to focus resources and staff on all other OFO missions other than processing inadmissible aliens despite improved levels of staffing in every field office since 2016 and available holding capacity. The 2018 queue management reports showed that the redirecting ports rarely reported anyone in custody. Finally, the report details that staff at the ports we visited received instructions to redirect all asylum seekers, and port staff were not checking the port's capability or capacity before doing so. These findings were further corroborated by the OIG's previous review, *Investigation of Alleged Violations of Immigration Laws at the Tecate, California, Port of Entry by U.S. Customs and Border Protection Personnel* (OSC File No. DI-18-5034).

In its response, CBP also raised concerns about OIG's analysis and conclusions regarding 8 CFR § 100.4., stating "... it is not within OIG's mission or authority to provide legal advice to the Department." We note that

the IG is duty-bound to promote efficiency and prevent and detect abuse within agency programs and operations.

**Recommendation 1:** Resume processing undocumented aliens at the seven ports of entry currently redirecting them to other ports, or formally redesignate the ports to exclude undocumented aliens.

**CBP Response:** CBP did not concur with the recommendation. CBP officials said their decision to redirect the processing of undocumented aliens at the seven ports of entry to other ports depended on operational capacity and the resources available to execute its primary mission of securing the border. Additionally, CBP stated that specific dynamics at each port of entry affect the port's capacity to process and hold aliens without documents and each port director must maintain a discretionary balance between processing aliens and facilitating trade, travel, and counter-narcotics missions. CBP requested that OIG consider this recommendation resolved and closed.

**OIG Response:** We consider this recommendation unresolved and open. The intent of the recommendation is for CBP to address the "discretionary balance" of missions at the seven redirecting ports. We understand that port directors consider many factors when prioritizing port resources and missions, however, these seven ports have effectively ceased processing aliens without regard to other missions. The recommendation will remain unresolved and open until CBP can show it is processing undocumented aliens at the seven ports of entry currently redirecting them to other ports, or CBP has formally reclassified those ports consistent with long-established procedures.

**Recommendation 2:** Provide written guidance and training to CBP personnel at ports of entry relating to the proper handling of aliens who are physically present in the United States and indicate an intention to apply for asylum.

**CBP Response:** CBP concurred with the recommendation. In its response, CBP said it has issued the following guidance to its employees:

1. *Processing of Expedited Removal Cases*, October 2, 2014
2. *Metering Guidance*, April 27, 2018
3. *Metering Guidance*, April 30, 2020

CBP requested that OIG consider this recommendation resolved and closed as implemented.

**OIG Analysis:** We consider these actions responsive to the intent of the recommendation, which is resolved and open. CBP issued two of the three documents before we initiated our fieldwork, and based on our findings, those documents alone may be insufficient for training. CBP's April 30, 2020 "Metering Guidance" memorandum restates CBP policy on metering to Directors of Field Offices, however, it does not address officer training or provide any indication the guidance was disseminated to the OFO's line officers. We will close this recommendation when we receive documentation showing that CBP employees have received training on how to follow the metering guidance.

**Recommendation 3:** Evaluate whether CBP can more efficiently use available holding spaces to process undocumented aliens, including asylum seekers.

**CBP Response:** CBP concurred with the recommendation. CBP said its port directors use discretion in balancing mission requirements with respect to activities occurring at the port as well as available resources when evaluating the operational capacity to ensure the most efficient use of resources. CBP requested that OIG consider this recommendation resolved and closed as implemented.

**OIG Analysis:** We consider this action responsive to our recommendation, which is resolved and open. However, the intent of the recommendation is for CBP to assess the use of each port's available holding spaces to identify areas where port directors could address capacity and capability issues to enable more flexibility in balancing mission needs. CBP did not provide any documentation showing that it conducted an evaluation of available holding spaces. We will close this recommendation when we receive documentation that CBP has performed such an evaluation of more efficient use of available holding spaces to process undocumented aliens.

## **Appendix A**

### **Objective, Scope, and Methodology**

The Department of Homeland Security Office of Inspector General was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*.

We initiated this review in response to 2 congressional requests signed by 53 members that our office received in June 2018, with the following objectives, to determine whether CBP's OFO is: (1) turning away those who present themselves for asylum at ports of entry; and (2) separating family units seeking asylum and documenting this practice appropriately. We have split discussion of our findings into two separate reports. This report addresses the first objective, whether CBP's ports of entry are turning away asylum-seeking aliens. We are issuing a second report, which addresses the second objective, separation of family units at CBP OFO ports of entry.

To answer our objectives, we conducted unannounced site visits to 12 land ports of entry across 4 field offices along the Southwest Border, listed below, where we interviewed CBP staff and observed port operations. We also interviewed officials in CBP headquarters, Washington D.C.

#### Laredo, Texas, Field Office and ports of entry:

1. Brownsville
  - a. Brownsville and Matamoros Bridge
  - b. Gateway International Bridge
2. Hidalgo



El Paso, Texas, Field Office and ports of entry:

3. Paso Del Norte Bridge

Tucson, Arizona, Field Office and ports of entry:

4. Nogales
  - a. DeConcini crossing
  - b. Mariposa facility
  - c. Morley Gate
5. Douglas
6. Lukeville
7. Naco
8. San Luis

San Diego, California, Field Office and ports of entry:

9. Calexico
10. Otay Mesa
11. San Ysidro
12. Tecate

To obtain a different perspective of the issues, we spoke with representatives of six non-governmental organizations.

We used forensic means to gather and search CBP emails because we had not received complete and accurate information from CBP during our fieldwork. Early in the review, we asked CBP for policies, procedures, and training related to CBP's asylum processing at the ports of entry, and received few, marginally related documents in response. We did not receive any policies or procedures for conducting Queue Management lines or

redirecting undocumented aliens. During our interviews in the field, we heard conflicting accounts of CBP policies and procedures, and learned of policies CBP had not provided to us, despite their relevance to our work. As a result, we requested the email accounts of 49 senior OFO officials at Headquarters, Field Offices, and ports of entry from April 2018 through November 8, 2018. CBP provided the emails and because of this search, we identified the Secretary's June 5, 2018 announcement of the Prioritization-based Queue Management pilot program, preparations for it, and subsequent actions at the ports, such as Queue Management lines and redirecting procedures.

We conducted the preliminary research for this review between June and October 2018, and conducted fieldwork between November 2018 and April 2019, under the authority of the *Inspector General Act of 1978*, as amended, and according to the *Quality Standards for Inspection and Evaluation* issued by the Council of the Inspectors General on Integrity and Efficiency.

**Appendix B**  
**CBP Comments to the Draft Report**

1300 Pennsylvania Avenue NW  
Washington, DC 20229



**U.S. Customs and  
Border Protection**

September 8, 2020

MEMORANDUM FOR: Joseph V. Cuffari, Ph.D.  
Inspector General

FROM: Henry A. Moak, Jr.  
/s/ HENRY A. MOAK, JR.  
Senior Component Account-  
able Official  
U.S. Customs and Border  
Protection

SUBJECT: Management Response to  
Draft Report: "CBP Has  
Taken Steps to Limit Pro-  
cessing of Undocumented  
Aliens at Ports of Entry"  
(Project No. 18-122-ISP-  
CBP)

Thank you for the opportunity to comment on this draft report. U.S. Customs and Border Protection (CBP) appreciates the work of the Office of Inspector General (OIG) in planning and conducting its review and issuing this report.

CBP is pleased that the OIG's draft report recognizes that CBP has taken disciplinary action against CBP Of-

ficers (CBPO) found, in violation of asylum-processing policies, to have returned individuals physically present in the U.S. and who expressed a fear of return to Mexico. Integrity is one of CBP's Core Values and it is essential to the effective functioning of the Agency. As an Agency charged with law enforcement activities, it is imperative that all CBP employees demonstrate high standards.

CBP is concerned, however, that the draft report demonstrates a fundamental OIG misunderstanding of the Office of Field Operations (OFO) holding capacity *holding capacity* compared to its *operational capacity*. Title 6, United States Code (U.S.C.) Section 211(g), assigns CBP OFO its multifaceted mission set to coordinate enforcement activities at air, land, and sea ports of entry (POEs); safeguard the United States from illegal entry of persons; and facilitate the flow of legitimate travelers and trade. As part of its mission to secure the border and facilitate lawful trade and travel. CBP OFO takes steps, as needed, to regulate the flow of travelers into the POEs. Regulating the flow ensures that each POE has enough operational capacity to safely process all individuals, as well as execute its priority mission sets. In recent years, CBP has seen an increasing number of aliens presenting at POEs who do not possess appropriate travel and identification documents required by law. Processing these aliens requires a substantial amount of time and resources that, if not carefully managed, negatively affects the flow of trade and other travel. Thus, CBP must carefully balance its space and resources to ensure that the POEs have enough capacity to address all aspects of its mission set, including the safety of all travelers accessing the POE.

In 2016, there was a significant influx of aliens, without appropriate documents, seeking entry into the United States along the U.S.-Mexico border. The demographics of the inadmissible applicants for admission also began evolving from single adults to include families. In addition, the number of individuals who presented themselves at the border exceed CBP OFO's operational capacity to safely process, and hold, these individuals in its short-term detention facilities. It also strained the resources of U.S. Immigration and Customs Enforcement (ICE) Enforcement Removal Operations (ERO) long-term custodial facilities. Regardless, upon completion of the inspection of an inadmissible applicant for admission, the U.S. Government is statutorily required to detain the inadmissible applicant for admission in accordance with the provisions of Sections 235(b)(1) and (2) of the Immigration and Nationality Act (INA) [8 U.S.C. 1225(b)(1)-(2)].

CBP's capacity to detain individuals in its short-term facilities depends on many factors, including:

- Demographics of the individuals in custody;
- Medical or other needs of individuals in custody;
- Ability of ICE ERO (or, if an unaccompanied alien child, the U.S. Department of Health and Human Services) to transfer individuals out of CBP custody; and
- OFO's available resources to safely process and hold individuals.

The operational capacity of a POE also depends largely on the resources available to the POE to execute its primary mission of securing the border. CBP's capacity to process and hold aliens without documents sufficient for

lawful entry is dependent on more than the amount of available physical holding space. It is also dependent on other activities occurring at the POE, including:

- Encounters with individuals who have terrorist, criminal, or gang ties;
- Volume of trade and trade enforcement issues;
- Detection of contraband; and
- Volume of other travelers seeking entry into the United States

Regarding OIG's analysis and conclusions that CBP actions were inconsistent with 8 CFR § 100.4, it is important to note that it is not within OIG's mission or authority to provide legal advice to the Department. It is also inappropriate for the OIG to infer that the Department must act in accordance with OIG's conclusions. To ensure that CBP maintains a safe inspectional environment for personnel, as well as all travelers and goods processed at POEs, CBP may engage, as necessary, in steps to regulate the flow of travelers without documents or sufficient for lawful entry. Queue management (also known as "metering") allows CBP to engage in all aspects of its multifaceted mission set at POEs along the U.S.-Mexico border. During queue management, CBPOs are required to stand at, or as close as operationally possible, to the international boundary, also known as the "limit line," to determine whether travelers approaching the POE have documents sufficient for lawful entry to the United States. If an alien does not have the requisite documents to apply for admission to the United States, the alien may be required to wait in Mexico until resources and capacity allows for processing.

CBP must have enough operational capacity, including personnel, space, and technology, to execute its full mission set of protecting national security, interdicting narcotics and other contraband, protecting the country's economic security and facilitating lawful trade and travel. When a POE lacks operational capacity to safely process and hold aliens without documents sufficient for lawful entry and execute its full mission set, queue management, which is consistent with principles of determining when, where, and how aliens may apply for admission to the United States may be required. This ensures CBP resources are efficiently balancing its multifaceted mission set until resources to process aliens without documents sufficient for lawful entry are operationally available.

CBP policy prohibits personnel from taking any steps to discourage travelers from waiting at the international border to be processed from claiming fear of return to another country or from seeking any other protections. On April 27, 2018, CBP's OFO issued guidance on metering, which states in part, "Once a traveler is in the United States, he or she must be fully processed. . . ." Therefore, it is CBP policy that upon an individual's arrival at a POE that individual shall be inspected and processed. If, upon arrival in the United States, an individual (of any nationality) expresses an intention to apply for asylum, a fear of return to their home country, or a fear of persecution or torture in their home country, that individual's claim is referred to an asylum officer or an immigration judge for further consideration. CBP OFO holds its managers, supervisors, and CBPOs accountable to correctly follow the laws, regulations, and procedures in the processing of inadmissible applicants for admission, including those

who express a fear of return or a desire to seek asylum. DHS and CBP have repeatedly provided CBPOs guidance to reinforce the correct laws, regulations, and help ensure procedures are adhered to in the processing of inadmissible applicants for admission. And, as recognized by the OIG, personnel that violate CBP's asylum-processing policies have been disciplined.

The draft report contained three recommendations, including two with which CBP concurs (Recommendations 2 and 3) and one with which CBP non-concurs (Recommendation 1). Attached find our detailed response to each recommendation. CBP previously submitted technical comments under a separate cover for OIG's consideration.

Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions.

Attachment



**Attachment: Management Response to  
Recommendations Contained to 18-122-ISP-CBP**

OIG recommended that the CBP Acting Commissioner:

**Recommendation 1:** Resume processing undocumented aliens at the seven ports of entry currently redirecting them to other ports, or formally redesignate the ports to exclude undocumented aliens.

**Response:** Non-concur. CBP will ensure public notification, as necessary, when POEs make changes to better align with the operational capacity. However, CBP's decision to redirect the processing of undocumented aliens at the seven ports of entry to other posts was dependent on operational capacity, and the resources available to the POEs to execute its primary mission of securing the border. CBP's capacity to process and hold aliens without documents sufficient for lawful entry is dependent on many factors, not just on the amount of available holding space. It is also contingent on other POE specific dynamics, including:

- Operating hours;
- Access to medical facilities/personnel to comply with screening requirements;
- Isolation and quarantine requirements for certain individuals and those with communicable diseases;
- Encounters of individuals with terrorist, criminal, or gang ties;
- Volume of trade and other trade enforcement issues;
- Detection of contraband; and

- Volume of other travelers seeking entry to the United States.

There is a discretionary balance by port directors assessing their mission requirements to process lawful trade and travel, to address CBP's counter-narcotics mission, and to process people arriving without documents. This balance must be maintained.

CBP requests that the OIG consider this recommendation resolved and closed.

**Recommendation 2:** Provide written guidance and training to CBP personnel at ports of entry relating to the proper handling of aliens who are physically present in the United States and indicate an intention to apply for asylum.

**Response:** Concur. On October 2, 2014, CBP OFO issued a memorandum "Processing of Expedited Removal Cases," which has been in effect through the period of OIG's audit and which outlines the requirement that once an alien expresses a fear of return or a desire to apply for asylum, the alien must be processed accordingly. Additionally, on April 27, 2018, CBP OFO issued a memorandum "Metering Guidance," which emphasizes that once a traveler is in the United States, he or she must be processed. CBP OFO reiterated these requirements on April 30, 2020, with the issuance of second memorandum titled "Metering Guidance." Copies of these memorandums were previously provided to the OIG under separate cover.

CBP request that the OIG consider this recommendation resolved and closed, as implemented.

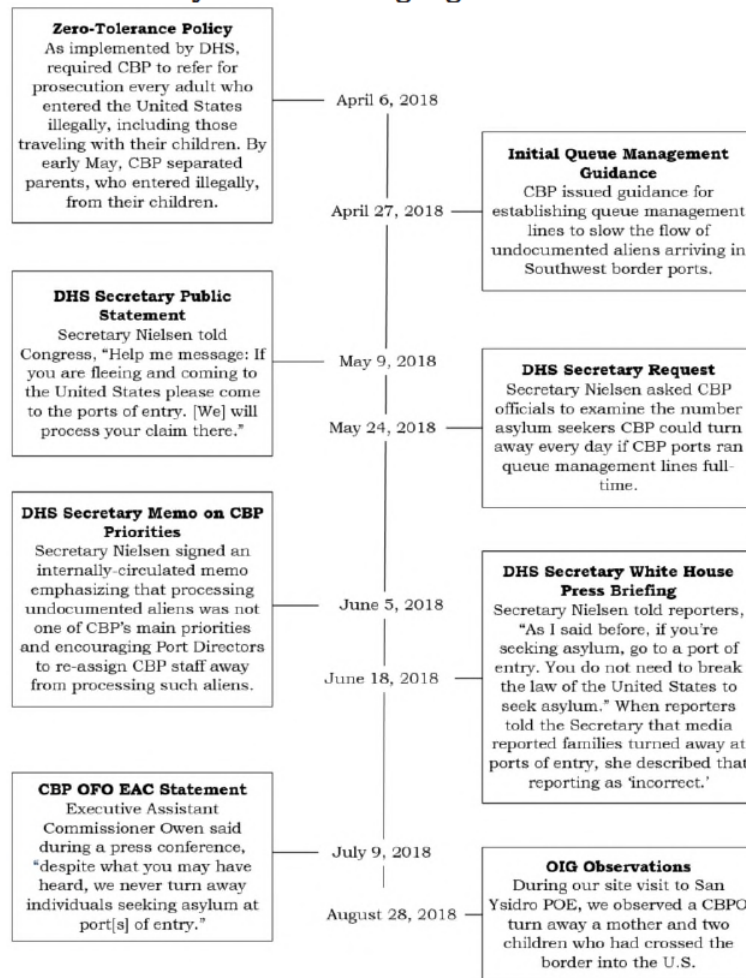
**Recommendation 3:** Evaluate whether CBP can more efficiently use available holding spaces to process undocumented aliens, including asylum seekers.

**Response:** Concur. CBP port directors evaluate operational capacity daily at the POEs to ensure the most efficient use of resources. The assessment of operational capacity is based on the activities occurring at a POE at any given time, as well as the resources necessary to balance national security, and facilitating legitimate travel and trade. There is a discretionary balance by the port director assessing their mission requirements to process lawful trade and travel, to address our counter-narcotics mission, and to process people arriving without documents.

CBP requests that the OIG consider this recommendation resolved and closed, as implemented.

## Appendix C

### Timeline of Asylum Processing Significant Events in 2018



**Appendix D****Office of Special Reviews and Evaluations Major Contributors to This Report**

Tatyana Martell, Chief Inspector

Elizabeth Kingma, Team Lead

Adam Brown, Senior Inspector

Stephen Farrell, Senior Inspector

Paul Lewandowski, Senior Inspector

Jason Wahl, Senior Inspector

Jon Goodrich, Investigative Counsel

Gregory Flatow, Program Analyst

Michael Brooks, Independent Reference Reviewer

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