

ACCESS DENIED

CBP Turnbacks of Asylum Seekers at U.S. Ports of Entry

In October 2018, the SPLC and its partners, the Center for Constitutional Rights and the American Immigration Council, filed an amended complaint in the pending lawsuit, *Al Otro Lado v. Nielsen*, No. 3:17-cv-02366 (S.D. Cal.), which challenges the Trump administration's unlawful policy and practice of turning back asylum seekers who present themselves at ports of entry (POEs) along the U.S.-Mexico border. The filing directly links high-level Trump administration officials to an official "Turnback Policy," ordering U.S. Customs and Border Protection (CBP) to restrict the number of asylum seekers who can access the asylum process.

The "Turnback Policy" compounds other longstanding border-wide tactics that CBP has implemented to prevent migrants from applying for asylum in the U.S., such as lies, intimidation, coercion, verbal abuse, physical force, outright denials of access, unreasonable delay, and threats – including the threat of family separation. The plaintiffs in the case are *Al Otro Lado*, a non-profit legal services organization with offices in Los Angeles and Tijuana, and numerous courageous asylum seekers who experienced CBP's unlawful conduct firsthand.

After receiving death threats, Juan and Úrsula Doe fled Honduras with their 13-year-old twin sons. En route to Mexico, they were robbed at gunpoint by three men who took all their money. In September 2018, they arrived in Nuevo Laredo and sought access to the asylum process by presenting themselves at the Laredo POE. When the family encountered CBP officials in the middle of the bridge, they requested asylum, but were informed that the POE was closed. Juan, Úrsula, and their children subsequently traveled to Reynosa and tried to present themselves at the Hidalgo POE. However, Mexican officials intercepted them on the Reynosa bridge and threatened to deport them to Honduras if they did not leave.

Are CBP officers permitted to turn away asylum seekers who present themselves at POEs?

No. U.S. law requires CBP to give asylum seekers who present themselves at POEs the opportunity to seek protection in the United States without unreasonable delay. Moreover, the U.S. government is obligated by a number of treaties and protocols to adhere to the duty of *non-refoulement*, which prohibits a country from returning or expelling an individual to a country where she has a well-founded fear of persecution, torture or death.

When an individual expresses a desire to apply for asylum or a fear of returning to her home country, CBP must inspect and process the individual in accordance with the procedures mandated by Congress under the Immigration and Nationality Act. CBP officials are not authorized to evaluate, grant, or reject an individual's asylum claim.

How many people are affected by CBP's unlawful conduct?

As far as we know, the government does not keep records of people illegally denied access to the asylum process, but non-governmental organizations and news outlets have documented thousands of cases in which CBP officials have arbitrarily denied or unreasonably delayed asylum seekers' access to the asylum process.

Roberto Doe, a Nicaraguan father in his mid-40s, received death threats after participating in anti-government protests in his hometown in Nicaragua. Fearing for his life, he fled his country, traveling with five or six other Nicaraguans, with a the goal of seeking protection in the United States. Following his arrival in Reynosa, Tamaulipas, Roberto tried to present himself at the Hidalgo port of entry in early October 2018. When he encountered CBP officers in the middle of the Reynosa-Hidalgo bridge, he told them he wanted to seek asylum. CBP officials denied Roberto access to the asylum process on the basis that the port of entry was full. Mexican officials then escorted him back to an office on the Mexican side of the bridge, where he was informed that he did not have the right to apply for asylum in the United States and that it was a crime to try to do so. Before releasing Roberto, a Mexican official told Roberto that if he came back to the bridge and attempted to seek asylum, the U.S. officials would turn him over to the Mexican authorities and he would be deported to Nicaragua.

Why can't people just apply for asylum or wait in Mexico until the U.S. has more capacity to process them?

Asylum seekers are not safe in Mexico. Mexican authorities regularly detain asylum seekers and subject them to *refoulement* — deportation to countries where they face persecution — in violation of international law. Although the states in the northern half of Mexico used to be considered the most dangerous, recent reports reveal an increase in violence in the central and southern states of Mexico. Mexico's northern border region is particularly plagued with crime and violence, presenting renewed dangers for asylum seekers just as they approach their destination. Migrants in border towns are regularly subjected to kidnapping, robbery, extortion, trafficking, rape, and murder.

Recently, the situation at the border has worsened: smugglers have raised their prices, cartel members have expanded their surveillance and control of areas around border crossings, and the number of migrants kidnapped and held for ransom has increased. Indeed, all the Mexican states abutting the U.S. southern border are subject to U.S. Department of State travel warnings.

Plaintiff Beatrice Doe, a Mexican native, suffered severe domestic violence at the hands of her husband. She and other members of her family were also targeted by a dangerous drug cartel and threatened with death. 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. Initially, CBP officials misinformed Beatrice 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. CBP officials subsequently coerced Beatrice into recanting her fear and signing a form withdrawing her application for admission to the United States. The next day, when Beatrice and her family returned to the San Ysidro POE, a CBP official misinformed her that she would be put in jail for three years if she returned to the POE. Beatrice sought refuge at a shelter in Tijuana, where her abusive spouse subsequently located her and coerced her and her children to return home with him.

Has there been a significant increase in the number of people attempting to present themselves at the border to apply for asylum?

CBP's own statistics indicate that there has not been a particular surge in the number 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. While CBP officers at POEs often turn back asylum seekers due to an alleged "lack of capacity," border advocates regularly report that waiting rooms inside ports of entry are near-empty.

What can members of Congress do to prevent CBP from continuing to violate U.S. law?

Members of Congress have a critical role to play in ensuring effective oversight of CBP's inspection and processing of individuals seeking asylum at POEs. Future funding of CBP's Office of Field Operations should be contingent on the agency's compliance with its legal obligations.

For more information, please see splcenter.org/asylum-lawsuit