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Fabio Ivan Lazo Rosales
Javier Alexis Soto Colindres
Lourdes Suyapa Zavala Salgado
Lourdes Patricia Duarte Turcios

onto "hostile terrain," making crossing the US southern border so dangerous that it discourages people from even trying. The policies intentionally funnel migrants into the harsh, mountainous Sonoran Desert, where temperatures fluctuate between searing heat and icy cold, or through the fast-moving currents of the Rio Grande, where their lives could be at risk. Deterrence also includes punitive immigration policies and dangerous infrastructure, such as border walls, razor wire, armed soldiers, river buoys equipped with saw blades, and surveillance technology. Mexican criminal groups and corrupt state officials systematically target migrants for violence, while missing person reports are rarely resolved, and the human remains of migrants – even in known mass graves – remain unidentified.

Below are nine personal accounts provided by family members whose loved ones disappeared or died while attempting to join them in the United States. The accounts span the three decades of US border deterrence and are the result of a collaboration between Human Rights Watch and the Colibrí Center for Human Rights, which uses DNA testing to help identify the remains of missing migrants and supports families searching for missing loved ones. Some accounts use pseudonyms or first names to protect the families from retaliation.

While every story is unique, they share important commonalities. Each person who tried crossing the border without US authorization felt it was the only way to reunite with loved ones, achieve financial stability, or flee violence and seek safety. It took purpose, hope, and courage to make the journey. When people disappeared, the US Border Patrol provided families with little to no support. Indeed, there is no coordinated US government response to locate missing people in the borderlands. Additionally, after people disappeared, families were often targeted by extortionists, falsely claiming they captured or had information about missing family members, demanding ransom money.

Over the 30 years, groups estimate that between 10,000 and 80,000 people died at the border – the wide-ranging figure highlights the lack of information – with thousands more disappeared, mostly Brown, Indigenous, and Black migrants from Latin America. Deaths and disappearances have hit record highs under President Joe Biden's administration.

While the deterrence strategy has failed to reduce migration numbers, it has enriched criminal groups, including smugglers and kidnappers, and wasted billions of taxpayer dollars. For some border agents, tasked with carrying out these policies, the work has led to moral injury and even suicide.

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“I’ve had dreams where he returns,” Angélica Pérez said. “In these dreams, I see him, and I get so excited that I wake up and ask for it to be true.”

The last time Angélica spoke to her younger brother, Danny Pérez, was on November 25, 2015, one day before Thanksgiving. Danny was getting ready to cross the border from Mexico into the United States, to come home. He would never arrive.

Danny was born in Mexico, and he and his family migrated to Northern California in 2000 when he was 5 years old to reunite with their father and to seek a better quality of life. Angélica remembers dark,

Still in high school, Danny skateboarded, played soccer with a local team, and wrote and performed rap music with his friends. He was close to Angélica's oldest son, Alexander. In school, Alexander would proudly say he had a big brother who was also his uncle.

When he turned 18, Danny decided to go to Mexico. In 2012, he rejoined his parents in Guanajuato, Mexico. When he arrived, he was full of ideas and energy. But after a failed attempt to launch an ice cream business with his father, and after struggling to get by in Mexico on low wages as a middle school English teacher, he decided to return to the United States.

He hired smugglers who said they would guide him through the desert mountains between the cities of Tecate and Tijuana.

"In his desperation, Danny thought that that was his only way in," Angélica said, "He called … and I asked, 'Are you sure it's safe? I'm scared.'"

Angélica remembers his answer: "Don't worry, I will go prepared," he said. "I will take food and energy bars with me. I'll even take medicine and ointment. I'm strong enough to do this."

She began to panic when, the following day, she had heard nothing from her little brother. He had promised to let her know when he started crossing. She called him, but he didn't pick up. The family began searching for Danny, calling US Immigration and Customs Enforcement (ICE), sharing Danny's last known GPS coordinates with Mexican authorities, and reporting Danny as a missing person. Angélica repeatedly typed in her brother's identifying information on government websites and searched through databases of the missing.

"It was ugly, having to see all of the unidentified bodies while at the same time asking God that we don't find him there," she said. "We did everything we possibly could to find him." They submitted DNA samples in both the United States and Mexico.

Like so many other loved ones who go missing in the borderlands, it may be impossible to know what happened to Danny.

"How do I say goodbye when we don't know anything about what happened?" Angélica asked.

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Hugo Patricio Tenezaca, 19, called his mother, Romelia Yuqui, in New York City to ask for her blessing. He was going to cross the Sonoran Desert into the US. He went missing on June 17, 2012.

Hugo had first crossed the desert in October 2009, the first time he left Ecuador to be with her in New York.

Romelia, who is a US lawful permanent resident, had left Ecuador when Hugo was a child in search of a better life after her then-husband—a police officer—abused her.

For two years, Hugo worked at a bookstore in Manhattan, helping to pay off the debt of his previous crossing. He spent his free time playing with his much younger brother and sister, painting, drawing,

me. I got down on the floor and cried. I told him, 'Hugo, don't go,' but he left."

In Quito, things didn't go as planned. Now that he'd lived in another country, his friends saw him as having money, began to take advantage of him, and ultimately beat him and stole from him. Meanwhile, Mayra was able to get a visa and went to the United States.

Hugo went to the US consulate and was at first approved for a visa to travel safely back to his mother. But then, Romelia recalled, his Ecuadorian passport was taken and US visa revoked for reasons the family do not understand. Without a legal way to migrate, Hugo became desperate. He and his mother contacted the same Guatemalan smuggler who had guided them across the first time and paid him US$14,000.

The journey was difficult, and he called Romelia often.

"Mom, we've arrived in Mexico, [and] it's not like when I crossed the first time," Hugo said. "The road is complete terrorism. The drug traffickers assaulted the group we were traveling with, and I got under the car and didn't allow anything to be stolen." It took Hugo nearly a month to reach the border.

Hugo called her from near Altar, Sonora, to let her know he was going to cross and to ask her to say a blessing for him. He would be walking for about five days, he said, and would arrive in about eight days. He said he loved her very much.

That was the last time she spoke to him.

Eight days passed, and Romelia started making phone calls to locate her son. No one gave her a straight answer. She was told he had disappeared, that he'd gotten lost looking for water, that he took off running, that he fell asleep and didn't wake up. She spoke to an Ecuadorian woman Hugo had met and befriended on the journey, who said she preferred to tell Romelia what had happened in person. She never did.

Romelia posted about Hugo on Facebook and lobbied the Ecuadorian consulates in New York and Arizona to help investigate. They were of no help.

man called to say he couldn't come because the area was "too hot" with police activity. But there were no police.

Romelia said, "If they had told me, 'Your life in exchange for your son's, I would have given my life."

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In 1998, 17-year-old Bairon Fabrizzio Banegas Flores fled Honduras after his life had been threatened by a criminal group, leaving behind a note for his mother, Myrna: "Mommy, I'm going to the United States. Don't worry about me, I'm going to get there. When I do, I'll let you know."

because [as a pastor] I heal wounded hearts," he said.

Bairon gained trust in the immigrant community and, over time, became not only a faith leader but a counselor for those facing deportation or other immigration issues. When the church sent him to Louisville, Kentucky, he continued to advise members in his congregation on immigration issues.

When one member of the congregation was detained by Immigration and Customs Enforcement (ICE) in 2013, Bairon, who was also unauthorized, went to the office to advocate for the fellow immigrant. While he'd never had a problem with ICE in Bowling Green, the ICE officials in Louisville had a completely different attitude. ICE officials asked him to show proof of his legal status. When he couldn't produce any, they detained him and quickly deported him.

Myrna said. "I went to pick him up from the airport [in San Pedro Sula, Honduras,] and they arrived as if they were prisoners, as if they were criminals, chained up and all that...It was a terrible way [to treat them]."

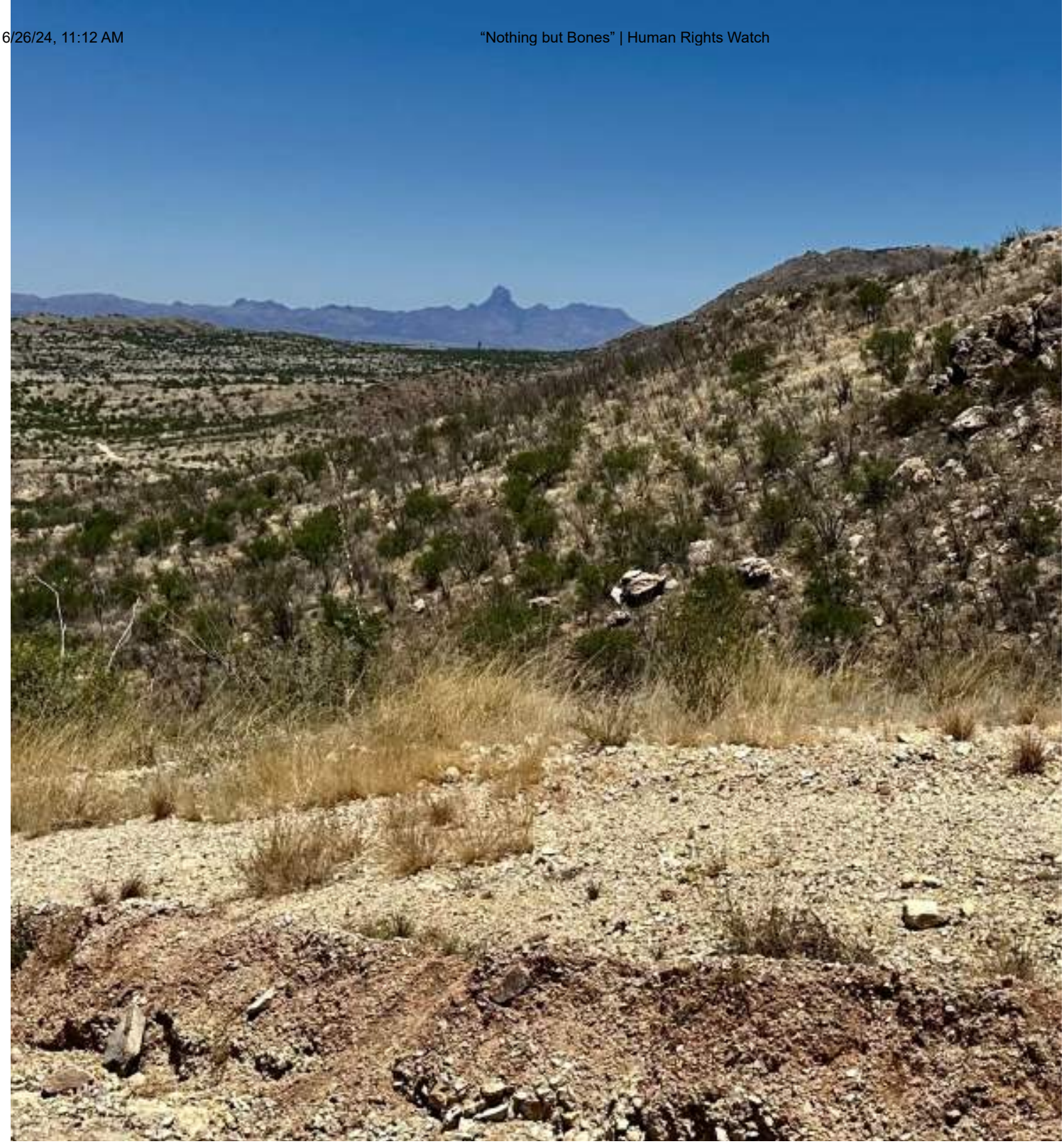
He stayed in Honduras for six months, founding another church and working with local youth. But when one of his young daughters back in Kentucky became depressed, refusing to eat or come out of her room, he decided to go back to his family.

"I put my life in the hands of God, and I know he will help me and that I will make it to my daughter," Myrna remembers he said when she asked him if he was sure about making the journey.

The last time Myrna spoke to her son, he told her he had already made it across the border into Arizona and that the following day the smugglers would pick him up at an agreed upon meeting place. She counted the days. She waited 8 days, then 10 days.

His family looked for him everywhere, but no one has heard from Bairon since. "At first it was very painful because he was always there—there wasn't a day in his life that he didn't call me or send a little text," Myrna said.

Bairon's absence has impacted his whole family, but especially his daughters. The oldest stopped going to church.



Maya L. shared an apartment in Mexico City with her family—her husband, mother, sisters, and their children. Although they didn't have a lot of money, they had one another.

"Everything was OK until the pandemic came," Maya's sister, Bianca, said.

Like more than 100 million people around the world, Maya's husband, Marcus, lost his job when the city entered lockdown. The streets in one of the world's largest cities were suddenly empty. Marcus struggled to find work, even chasing down a "promising" opportunity in a nearby state only to be scammed. The family had less money than ever.

Marcus sold his car and used the money to cross the Sonoran Desert. He arrived in the United States without incident, quickly found work in Arizona, and began sending money home. But he and Maya missed one another, and they soon decided Maya would also go to the United States.

"Mom, I'm leaving," Maya said. "I'm going to build you a little house and we're not going to suffer anymore. I promise you I'll be back soon." She said she would come back in a couple of years.

Her mother was worried and wanted Maya to stay, but Maya had made up her mind. The day she left, her sister Bianca hugged Maya, squeezing her tight.

They knew from the news that crossing the border was dangerous, although they didn't know of anyone who had disappeared.

Once Maya arrived in Sonora, close to the border, she had to stay inside a safehouse and wait. Maya said the coyote seemed like a good person. That he was with his wife surprised her – migrating women experience a disproportionate level of sexual abuse, and having a woman around helped Maya feel safer.

Marcus had paid the smuggler US$2,000 and was to pay another $3,000 once Maya made it across into the United States. After seven days in the safehouse, Maya told her family that she would be crossing and that they would talk when she arrived.

"What happened is migration grabbed us and she ran with one of the guides and a cousin. The three of them took off."

The last time they called, the coyote said that Maya had died. Then he stopped picking up the phone.

Her family called the Mexican consulate, US immigration authorities, medical examiners' offices, and hospitals. No one could tell them what had happened to Maya. "It has been nine months without hearing from my sister, and it is like being dead, lifeless, because thinking about whether she is dead, whether they are prostituting her, whether someone has her . . . It is very exhausting to live with this daily," Bianca said.

Marcus, suffering due to her disappearance, was eventually hospitalized in a behavioral healthcare facility.

Extortionists targeted the family. One of the guides from the group hired to take Maya across the border contacted the family, promising to send a few coyotes out in search of her remains in exchange for almost $5,000. The smugglers promised to carry any remains to the highway so that Border Patrol agents could be called to collect them.

"We gave in," Bianca said. "The money was paid, [but] at the end of the day there was no response."

In a separate incident, not long after posting a notice about Maya on Facebook, some people contacted her family to tell them they'd kidnapped her and demanded a ransom of $1,170. They sent a doctored photo, splicing Maya's face from Facebook onto someone else's body. The family never sent any money.

"They started telling us that if [we didn't pay], they were going to kill her," Bianca said.

But Maya's family already suspects she is dead.

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Mateo Dolores Salazar Hernández had experience crossing the US-Mexico border. With family on both sides, Mateo, who lived in New Jersey and was known for his work ethic and optimism, had gone back and forth several times.

According to Mateo’s wife, Gloria Benítez, Mateo came to the United States to build a better life for the family. He wanted to be able to save up enough money so that they would not have to rely on their children in old age.

Mateo set out for Mexico again in May 2018 to meet his new great-granddaughter and to see his granddaughter, Diana Salazar, who calls Mateo “Dad.” He also went to attend the wedding of his daughter, Virginia.

“When he was coming, I told myself, ‘Finally, my little girl is going to meet my dad,’” Diana, who lived in Mexico at the time, said through tears.

Playas, but we could never find him," Gloria said.

The family drove down from New Jersey to search swathes of the desert, which spans hundreds of miles, situated between mountain peaks on either side. They met up with Ángeles del Desierto. "Where are you?" Diana asked the desert of Mateo.

After three days of searching, they called it off. A few months later, the Salazar family searched again for three days, still finding nothing. They submitted their DNA to Colibrí in case it could be matched with someone's unidentified remains.

"My life changed, radically changed, when my husband went missing," Gloria said. "We had 42 years of marriage, and I remember that my children used to tell us, 'When you reach 50 years of marriage, we are going to throw you a party.' Now time goes on, those 50 years are going to arrive. Let's see if between now and our wedding anniversary we learn anything about what happened to him."

Gloria thinks about what would have happened if she'd gone with Mateo to Mexico as he'd suggested, that maybe he wouldn't have attempted to come back to the United States. But she has needed to be strong for her children, who have also struggled with what-ifs and accepting the loss of their father.

"I have another baby, now I have two," said Diana, who remembers waking up early on summer mornings to the sound of Mateo cutting the grass and singing. "My son is named Mateo, and the truth is, I don't lose hope that they will find him."

Virginia, who was grateful to have seen her father at her wedding, recalled a song her father used to sing when he would come over – "Después de Tanto," by José María Napoleón – often enlisting her now-husband to play the guitar in an impromptu karaoke session.

Today after so many years of not seeing you, I found you/Today when I saw you among the people without you realizing it, I knew that you live in me/I don't know, I don't know if I can go on, far from you.

[*Hoy después de tantos años de no verte, te encontré/Hoy al verte entre la gente sin que tú te dieras cuenta supe que vives en mí/No sé, no sé si pueda continuar lejos de ti*]

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Ofelia Muñoz Valenzuela was from a small town, Ignacio de la Llave, in the coastal Mexican state of Veracruz. She disappeared at the US-Mexico border in 1997, when her daughter, Elena Gonzales, who today lives in New York, was just 14 years old.

Ofelia was locally famous as the “Güera Musiquera,” a nickname that came from her love of music. “She did not play any instrument, nor did she dance, but she had music in her veins,” Elena said about her mother. Not being able to dance or carry a tune did not stop Ofelia from trying. She would organize frequent dance parties in the town and stiffly move about on the dance floor.

“My dad was an alcoholic, he drank too much, and he always came home drunk and hit us,” Elena said. “First he started with me and ended with my mom.... I think that was one of the reasons that caused her to decide to leave and emigrate.”

When Elena was just two weeks old, her father ordered Ofelia to send their new baby away because of the sound of Elena’s cries. From then on, Elena split her time between her grandmother’s house in Veracruz City and her parents’ home.

work and save money for Elena's quince. "'No matter what I have to do, I'm going to make sure your [quinceañera] happens,'" Elena remembers her mother said before Ofelia set out for the US.

When Elena's 15th birthday came on October 22, she remembers sitting on a piece of furniture outside her grandmother's house and waiting for hours for her mother. She thought maybe her mom hadn't been in touch because she wanted to surprise her. But Ofelia never came.

Later, Elena met with a man named Misael, who was among the migrants from her town who returned after failing to reach the US. Misael gave her Ofelia's identification documents. Misael told Elena that when her mother was first detained in the US, her hair was long and curly, like Elena's. But the detention center guards shaved her head because Ofelia wouldn't stop pulling out her own hair because of the stress. Presumably her mother was deported back to Mexico.

Years passed, and Elena eventually migrated to the US. She searched for her mother by word of mouth and on social media to no avail. Eventually someone told her to contact the Colibrí Center for Human Rights. In 2017, staff with Colibrí's Missing Migrants Program went to New York, where Elena lives, and collected a sample of her DNA to compare with DNA found from people who died crossing the US-Mexico border.

Twenty-one years after her mother disappeared, Elena learned her DNA was a match with that of a human skull found in Webb County, Texas.

Today, Elena is a musician. Like her mother, she has gravitated towards singing.

"I felt that singing was not my thing, but suddenly I took refuge in that, [in] singing," she said. When she sings, Elena remembers how her mother looked at her with pride and with joy. "That image is the one that I always sing to now. It's the one that I always see in front of me when I'm singing."

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The brothers grew up in Chiapas, a southern Mexican state bordering Guatemala. Wagner studied at a university in Chiapas for a couple of semesters but stopped his studies because he lacked economic support and couldn't find work. He wanted decent-paying work and a better standard of living, something he said he saw in Hollywood movies, and decided to journey to the US.

When Wagner left Chiapas, Rony was still a small child, so he stayed behind.

Wagner's trip to Tucson, Arizona, was a harsh and dangerous one, he said, even though he was in good physical shape from working long hours in the mountains of Chiapas. He walked for eight days and nights in the desert with a group of other migrants. He knew he was one wrong move, a bad fall or twisted ankle, away from death. During the last two days, they went without water and food except for one can of tuna and one flour tortilla shared among the group.

A decade later, when Rony was 20 years old, he began making plans to also head north. In September, some boys he knew from town called him to ask if he wanted to cross with them. They were already in Sonora, a Mexican state bordering the US. And just like that, Rony left, traveling through Mexico alone, a nearly 2,000-mile journey that poses serious risks.

Rony made it safely to Sonora and prepared to cross the US-Mexico border near where his brother had crossed.

"You have to be healthy, mentally," Wagner told Rony over the phone. "You must make a good go of it, decisively, without worrying or something, because that also takes its toll on you. It's not easy to come – for example, if you have problems, your mind is elsewhere, then something bad will for sure happen to you." Wagner explained the risks. "This is not a game," Wagner told him.

"Yes, it's OK, brother," Rony responded. "We'll see each other over there."

They never spoke again.

As the days passed, Wagner and Rony's other family members started to worry. Rony's traveling companions provided differing accounts of what happened when Rony was left behind. They said that

Wagner said he prays, asking God where Rony is. "I can't believe a person is lost just like that and disappears into nowhere. That can't be possible."

Wagner and his family still hold out hope that Rony is alive. From both sides of the US-Mexico border, they say they dream about seeing him smiling and musing, grateful to have seen him somehow. Then they feel the pain of loss all over again as they realize the dreams are not reality.

"I asked God to give me those dreams," Wagner said. "I wish that this dream would last forever and continue. Like a lifetime."

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chronic illnesses. Rosita wanted to join her aunts, Rosa and Lili, in the United States to work to cover her parents' medical expenses. Her aunts are both legal permanent residents.

In April 2021, Rosita decided to make the journey with a neighbor and a cousin. They agreed to pay a smuggler US$7,500 to guide them.

In June, Rosita crossed the border into South Texas with a group of people, including her cousin. When the group arrived in Odessa, Texas, three days later, Rosita was not with them. "It's just that she couldn't stand walking anymore and so she stayed [behind]," Rosita's cousin said. "She said that she was going to turn herself in to immigration."

The aunts started calling Border Patrol, providing the approximate location for where their niece was last seen and asking if they would go find her. When Border Patrol answered, they said they would look later or that they had already looked. Dozens of calls and visits to the Mexican consulate also proved fruitless. It would take a local sheriff, who picked up the phone when Rosita's aunts called, going above and beyond to track down Rosita's remains.

"Here in Texas, no one is going to help, ma'am," Rosa remembers the sheriff saying. "That Border Patrol told you they were going to look for her, that is a lie. They don't do it. . .The body was found because a rancher alerted us that the body was there. When did [Border Patrol] go to pick it up? Not until they got around to feeling like it."

Lili and Rosa believe that if the Border Patrol had searched, agents may have found their niece alive.

Before her remains were found, the aunts traveled twice to Odessa, Texas, based on false sightings of their niece. They called or visited the Mexican consulate daily. They posted on Facebook and other social media. And they called organizations performing search and rescue at the border.

People tried to take advantage of their situation. On eight occasions, they received calls from people claiming they had kidnapped Rosita and demanding ransom. The scammers sent doctored photographs using Rosita's face from the missing person posts on Facebook.

travel to Tabasco to collect DNA from Rosita's mother. Their DNA was a match.

Lili and Rosa went to San Marcos, Texas, to see Rosita's remains. The coroner welcomed them and explained that they had tried to respect and care for the remains of their niece. She also gave the aunts Rosita's belongings.

"The only thing I can tell you is that my niece is fine," Lili said. "Wherever God has her, she is good. Because even though she has experienced something very difficult, when I entered [the room] I felt that peace, that tranquility."

Now, all the family have are memories, photos, and an altar in the house where Rosita grew up. Her little brother pours her a cup of Coca-Cola at mealtime and leaves it at the altar, along with her favorite pastry.

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currency, trading it for other necessities sold by their neighbors.

One of his three daughters, María, used to help him in the kitchen. ″He never wrote down any recipe or anything like that," she said. "In fact, he had it all in his head."

Those recipes are lost now.

For more than 15 years, Gualberto's children have wondered if their father is alive or dead. "It's like we're never going to have answers," María said.

Gualberto decided to cross the desert to accompany his youngest daughter, Tania, on the journey after the person who was supposed to accompany her backed out. He planned to join his three older children who were already living in Los Angeles.

The siblings were apprehensive about their father's arrival. They hadn't seen him in a long time, and he hadn't always been the easiest person to get along with—his daughters María, Yesenia, and Tania remember him being a rigid disciplinarian and not allowing the girls out of the house much or permitting them to see their boyfriends without their parents and siblings chaperoning.

On June 2, 2007, after walking three days and three nights through the Sonoran Desert, Gualberto and Tania crossed the US-Mexico border and were in Arizona, just a 5-minute walk from the highway near Nogales and Tucson, along with a large group of migrants. It was Gualberto's birthday.

The smugglers split the group into two, Tania in one and Gualberto in another. Tania's group walked about 10 feet ahead.

"I turned around because he wasn't that far behind me, and [saw] he was coming," Tania said. "My dad was in perfect condition." Five minutes later, Tania turned to look again, and he was gone.

"I tried helplessly to go back to look for him, but they wouldn't let me," she said. A friend of her father's traveling in the second group said Gualberto ran off after someone hit him. "From then on, I never saw my dad again," Tania said.

call the family were scammers who claimed to hold Gualberto captive. They asked for US$3,000. But when they refused to let one of Gualberto's daughters, Yesenia, speak to him, she refused to pay.

"It's a fraud," Yesenia said. "It's sad for the families, because you don't know if they really [have your loved one]."

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This feature was written and researched by Ari Sawyer. Interviews with families were conducted by Perla Torres from the Colibrí Center. The website was designed by Maggie Svoboda. We thank the families for sharing their grief and their love with us.

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Beyond a Border Solution

How to Build a Humanitarian Protection System That Won't Break

American Immigration Council

MAY 2023

Beyond a Border Solution

How to Build a Humanitarian Protection System That Won't Break

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Executive Summary and Introduction

For generations, the United States has been a place of safe haven for people seeking freedom and safety. In 1980, Congress passed the Refugee Act, codifying basic refugee protections into law and enshrining a global commitment to asylum which emerged from the tragedy of the Holocaust. In the decades since then, hundreds of thousands of refugees and asylees have been granted status, strengthening communities around the nation, contributing economically, and enriching the national fabric.

But in the 21st century, a global displacement crisis is affecting nearly every country in the world. Multiple nations across the Western Hemisphere have become destabilized due to a wide variety of factors, including rising authoritarianism, political assassinations, natural disasters, powerful transnational criminal organizations, climate change, and the global socioeconomic shocks of the COVID-19 pandemic. The end result is humanitarian migration at levels far above what the 20th-century system can handle.

Presidential administrations of both parties have failed to meet this challenge. Instead of an orderly, humane, and consistent approach to humanitarian protection and border management, we have been left with a dysfunctional system that serves the needs of no one: not the government, border communities, or asylum seekers themselves.

Today, the U.S. government faces an enormous challenge. The number of asylum seekers seeking to enter each day is significantly higher than the number the United States can process at official border crossings. The location and manner of crossings varies widely across the border, often changing unpredictably based on misinformation, rumor, or the demands of powerful transnational criminal organizations which maintain control over many of the migration routes with a bloody fist. The system is constantly at risk of bottlenecks and overcrowding, building the perception of chaos at the border. And inside the United States, underfunding, neglect, and deliberate sabotage have left the adjudicatory process in shambles.

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1.3M

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4.25 years

from start through a final hearing.

The failure to build a modern and functional system of humanitarian protection extends throughout the asylum process. There are currently over 1.3 million pending asylum applications, including roughly 750,000 in immigration courts and over 600,000 at U.S. Citizenship and Immigration Services (USCIS). The average asylum case in immigration court now takes 4.25 years from start through a final asylum hearing, leaving those with meritorious claims stuck in legal limbo and those whose claims are denied facing the prospect of deportation after they have already put down roots in the United States. Decades-old laws require asylum seekers to wait months to gain work authorization, leaving communities inside the United States to step in and help people get on their feet.

Rather than making a sustained investment into building a better system, past presidential administrations have attempted over and over again to instead use aggressive enforcement- and deterrence-based policies in hopes of reducing the number of people who are permitted to apply. The failure of this approach is manifest: No one thinks that the problem has been solved or even alleviated. Making matters worse, constant shifts in policy due to international negotiations, federal litigation, and border agents' own discretion make it virtually impossible to articulate what the current policy towards asylum seekers at the southern border actually *is*.

Crucially, there is still hope. Restoring our humanitarian protection systems and breaking the cycle of crises and crackdowns is not only possible, but within reach. However, to do so, we need a major shift in thinking and policymaking. Politicians must abandon a fantasy of short-term solutionism and acknowledge that only sustained investment over a period of time can realistically address these 21st century challenges. **Therefore, short-term action must focus on establishing a viable path towards a better system. In the long term, with significant investment, we can create a flexible, orderly, and safe asylum process.**

Rebuilding a functional system does not require a radical overhaul of U.S. immigration law. Nor will it lead to open borders. Even if every recommendation in this report is implemented, those without meritorious claims will still be deemed ineligible for relief and ordered deported. But taking that reality seriously also obligates the government to get it right — and ensure that no one is deported to a country where they will be persecuted. Adherence to the rule of law means both that those who seek to live here agree to abide by the government's rulings, and in return that the government upholds our longstanding commitment to respect human rights and international humanitarian agreements as well as provide a fair day in court for all those who seek it.

Creating and funding a flexible, orderly, and safe asylum system will reduce both irregular entries and unjust outcomes. Investment in dedicated humanitarian processing infrastructure at the border and in receiving communities will reduce unexpected fiscal burdens, limit strain on law enforcement resources, and improve human rights. Moreover, a humanitarian protection system that is purged of arbitrary delays and inconsistent outcomes will produce fairer and more expeditious results. Asylum seekers with meritorious claims will be more likely to prevail when provided with a meaningful opportunity to present them. Conversely, a fair, transparent, and expeditious asylum process may reduce claims from those without meritorious cases, and those who are denied will be more likely to accept negative results from a fair and transparent process.

A revitalized modern humanitarian protection system will also dampen political backlash to the concept of asylum in a time of rising anti-migrant sentiment. While overall support for providing asylum continues to poll above 50 percent, chaotic scenes at the border have dampened public support for asylum. And while some critics will oppose any measures that permit asylum seekers to enter the country, the right to seek asylum is central to this country's historical commitment to welcoming those fleeing persecution and to most Americans' understanding of their nation as a global and moral leader. Turning away from asylum seekers would be a more radical break than improving the system to support them.

RECOMMENDATIONS

To begin the work on creating a viable path towards a better system, we provide the following recommendations:

1. **Expand Customs and Border Protection's (CBP) Office of Field Operations' capacity to process asylum seekers** at ports of entry in a timely, orderly, and fair manner, and publicize this route.

2. **Surge resources to U.S. Border Patrol** to improve humanitarian processing and transportation of migrants, to reduce overcrowding and abuses, and to free up agents to carry out other law enforcement duties.

3. **Establish a Center for Migrant Coordination** to coordinate federal, state, and local efforts to support newly arrived migrants and reduce impacts on local communities.

4. **Grow federal support** for case management alternatives to detention to help migrants navigate the asylum system.

5. **Revamp asylum processing at USCIS** to keep up with both affirmative asylum backlogs and the new border processing rule.

6. **Begin clearing immigration court asylum backlogs** through the use of prosecutorial discretion.

7. **Construct noncustodial regional processing centers** where federal agencies are co-located with nongovernmental organizations (NGOs) to carry out processing, coordinate release, and provide effective case management for newly-arrived migrants.

8 **Execute the termination of Title 42** once legally permitted, allowing a return to normal immigration law.

9 **Fund a right to counsel** in immigration court to ensure a fair process for individuals seeking asylum.

10 **Create a Federal Emergency Management Agency (FEMA)-based Emergency Migration Fund** to provide for a flexible and durable response during times of high migration.

11 **Increase legal immigration pathways** through congressional overhaul of immigration laws and executive expansion of existing pathways.

12 **Build domestic and international refugee and asylum processing capacity in Latin America** with the support of the United Nations High Commissioner for Refugees (UNHCR) and the international community.

13 **Bring asylum law into the 21st century**, lifting harmful anti-immigrant laws passed in the 1990s and moving past a post-World War II framework for asylum.

Through these recommendations, we believe the United States government can create a system for asylum processing that is flexible, orderly, and durable, respects the rights of asylum seekers, inspires confidence in the American public, and ensures that the United States remains a beacon of safety. Such a system will not only ensure that the United States lives up to its promises, but also ensure greater stability across Latin America by reducing the power of gangs and cartels and promoting human rights throughout the region.

This is undoubtedly an enormous challenge. There is no perfect solution. It will require compromises. However, the last decade of inhumane and failed deterrence policies has shown us there is no real alternative. Only through bolstering meaningful access to humanitarian protection can we move forward towards a more just, humane, and fair future. This is the only way to ensure that both migrants and the United States remain safe and free.

We cannot fix the whole system tomorrow. But what we do tomorrow can help set up a future in which the asylum system is not broken again in three, ten, or twenty years.

Principles and Beliefs Behind These Recommendations

We believe that solutions must be practical, flexible, and rooted in the lived reality of the previous decades of border policies. The United States' humanitarian obligations are nonnegotiable. Therefore, these recommendations are predicated on certain bedrock principles and understandings:

- The creation and maintenance of a flexible, modern, humanitarian protection system that must respect the right to seek asylum, serve U.S. national interests and promote human rights globally.
- There is no simple solution to address irregular migration, as people migrate for a wide variety of reasons, both voluntary and involuntary.
- All people have the right to seek asylum and are entitled to due process and a meaningful opportunity to present a claim for relief.
- A fair asylum system should provide meaningful legal and integration support to migrants seeking protection to reduce the risk of an erroneous denial leading to persecution.
- The United States has a responsibility to maintain border security. However, migration at the border should not be viewed solely through the lens of enforcement, but rather through a broader lens that also considers U.S. foreign policy interests and domestic commitments to the rule of law.
- The best proven methods of achieving a long-term reduction in irregular crossings involve increasing access to legal immigration pathways and addressing the root causes of migration.

RECOMMENDATION 1

Expand CBP Office of Field Operations' Capacity to Process Asylum Seekers at Ports of Entry

Background

When a person seeking asylum arrives at the border, they are often faced with a choice: attempt to seek asylum at a port of entry or attempt to seek asylum by crossing between ports of entry and presenting to a Border Patrol agent. Crucially, neither of these options is the "right way" or the "wrong way" to seek asylum. The Immigration and Nationality Act is clear that any person who is "physically present in the United States, or who arrives in the United States (whether or not at a designated port of arrival …), irrespective of [their] status, may apply for asylum."[1] Similarly, the 1951 United Nations Refugee Convention provides that "The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened [by persecution], enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence."[2]

As a practical matter, however, seeking asylum is generally better for all parties when done at a port of entry. Individuals who present themselves at a port of entry can be more expeditiously processed by the government without requiring the redirection of law enforcement resources. Those who present at a port of entry generally face fewer risks than those who cross the border between ports of entry and are more likely to avoid cartel smugglers. And travel through ports of entry reduces potential impacts on border communities and limits perceptions of chaos associated with crossings between ports of entry. Yet despite this clear benefit, accessing asylum at ports of entry remains highly difficult for many migrants, even after the Biden administration reversed many of the Trump-era policies restricting access to asylum, as demand for access has been consistently above supply for years.

For the last five years, migrants have been unable to consistently walk to a port of entry and request asylum. From April 2018 to March 2020, the Trump

administration imposed border-wide "metering" at ports of entry,[3] artificially and unlawfully[4] restricting the number of migrants who could access the asylum process each day. While metering originally began in 2016 under President Obama at the Tijuana/San Ysidro port of entry and was briefly imposed across the border in winter 2016, the use of metering declined in 2017 following a significant drop in the number of people seeking asylum in the first months of the Trump administration.[5] The reinstitution of metering in April 2018 led to the growth of haphazard "waitlists" in Mexican border cities, with thousands of people waiting, some upwards of six months, just to begin the asylum process.[6]

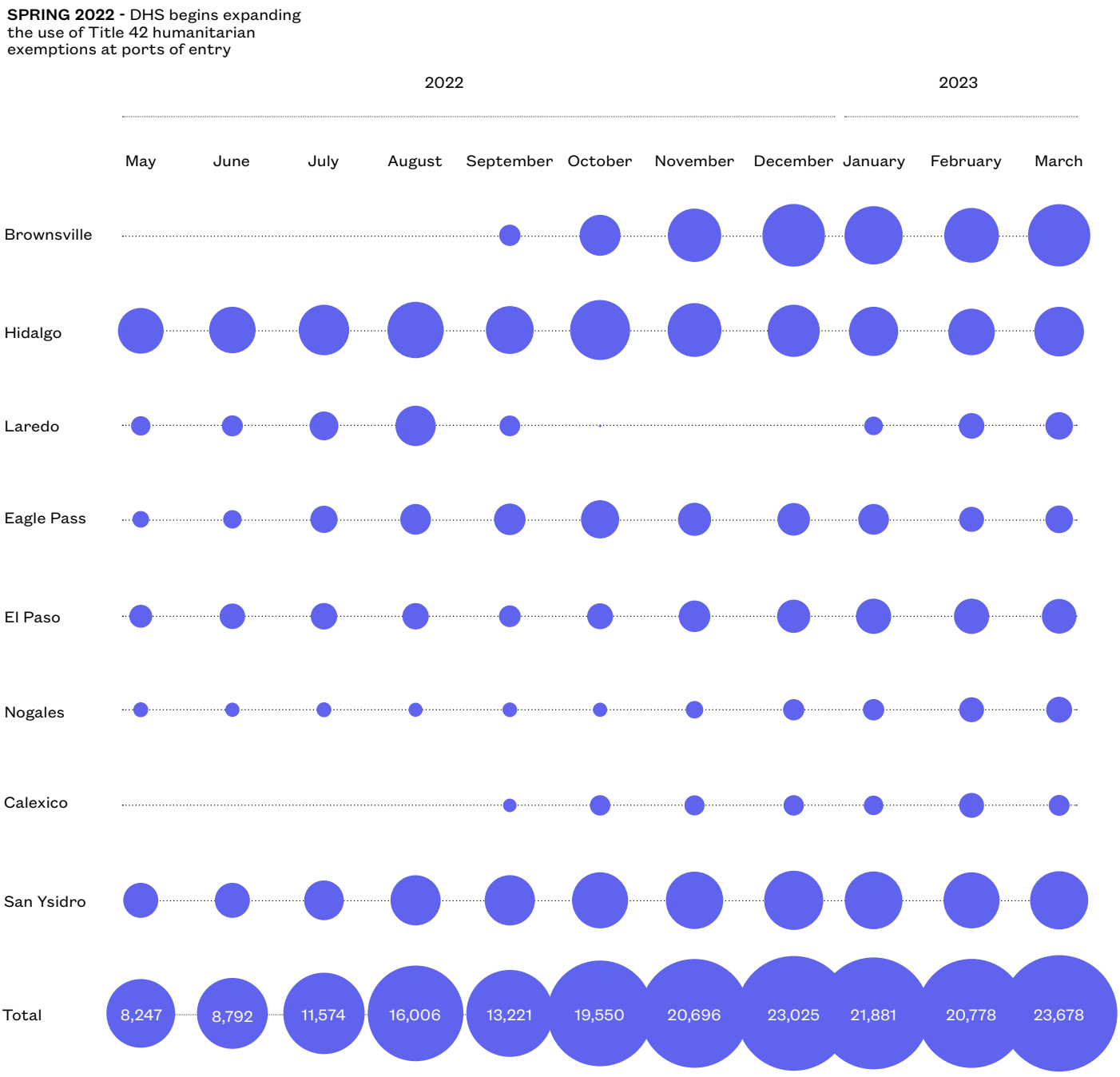
While CBP often publicly justified metering on limited capacity, in 2020, the Department of Homeland Security (DHS) Office of Inspector General (OIG) reported that Customs and Border Protection officers had repeatedly misrepresented the processing capacity of ports of entry across the border, with officers observed falsely telling migrants that the port was at capacity even though there were multiple empty processing rooms available.[7] The report further found that in 2018, DHS Secretary Kirstjen Nielsen secretly authorized CBP to artificially limit the number of individuals able to seek asylum each day.[8] Despite signing this memo, Secretary Nielsen subsequently falsely testified to Congress that the agency had made no changes to asylum processing at ports of entry and in fact was engaged in efforts to increase processing capacity.[9]

After the pandemic hit and the Trump administration implemented Title 42 in March 2020,[10] asylum processing at ports of entry ground to a virtual halt for two years as metering waitlists froze in place and CBP began refusing to take almost any migrants at ports of entry. As a result, the asylum system became nearly impossible to access without crossing the border between ports of entry and seeking out a Border Patrol agent—and even then, many asylum seekers were expelled under Title 42 without asylum processing. This had the counterproductive effect of incentivizing irregular border crossings and encouraging some migrants to try to evade detection.

In November 2021, DHS Secretary Alejandro Mayorkas formally rescinded Secretary Nielsen's memorandum authorizing metering.[11] The same day, Acting CBP Commissioner Troy Miller formally rescinded similar CBP guidance and directed ports of entry along the southern border to "consider and take 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."[12]

As of 2023, the ports of entry have reopened to migrants—somewhat. Under Title 42, DHS has always had the ability to exempt migrants from Title 42 for humanitarian reasons.[13] This authority was rarely used for the first two years of Title 42, except for on a limited basis through a partnership with a small number of NGOs in summer 2021.[14] But starting in spring 2022, DHS began expanding the use of these Title 42 humanitarian exemptions at ports of entry in order to gradually restart the asylum process. The number of individuals exempted from Title 42 at ports of entry rose from an average of 266 per day in May[15] to 743 per day in December[16]—a 159 percent increase (see Figure 1). Throughout 2022, this exemption process was largely operated through NGOs and lawyers in Mexico and the United States acting as intermediaries to submit humanitarian requests to CBP.[17]

FIGURE 1: TITLE 42 HUMANITARIAN EXEMPTIONS BY PORT OF ENTRY, MAY 2022 TO MARCH 2023

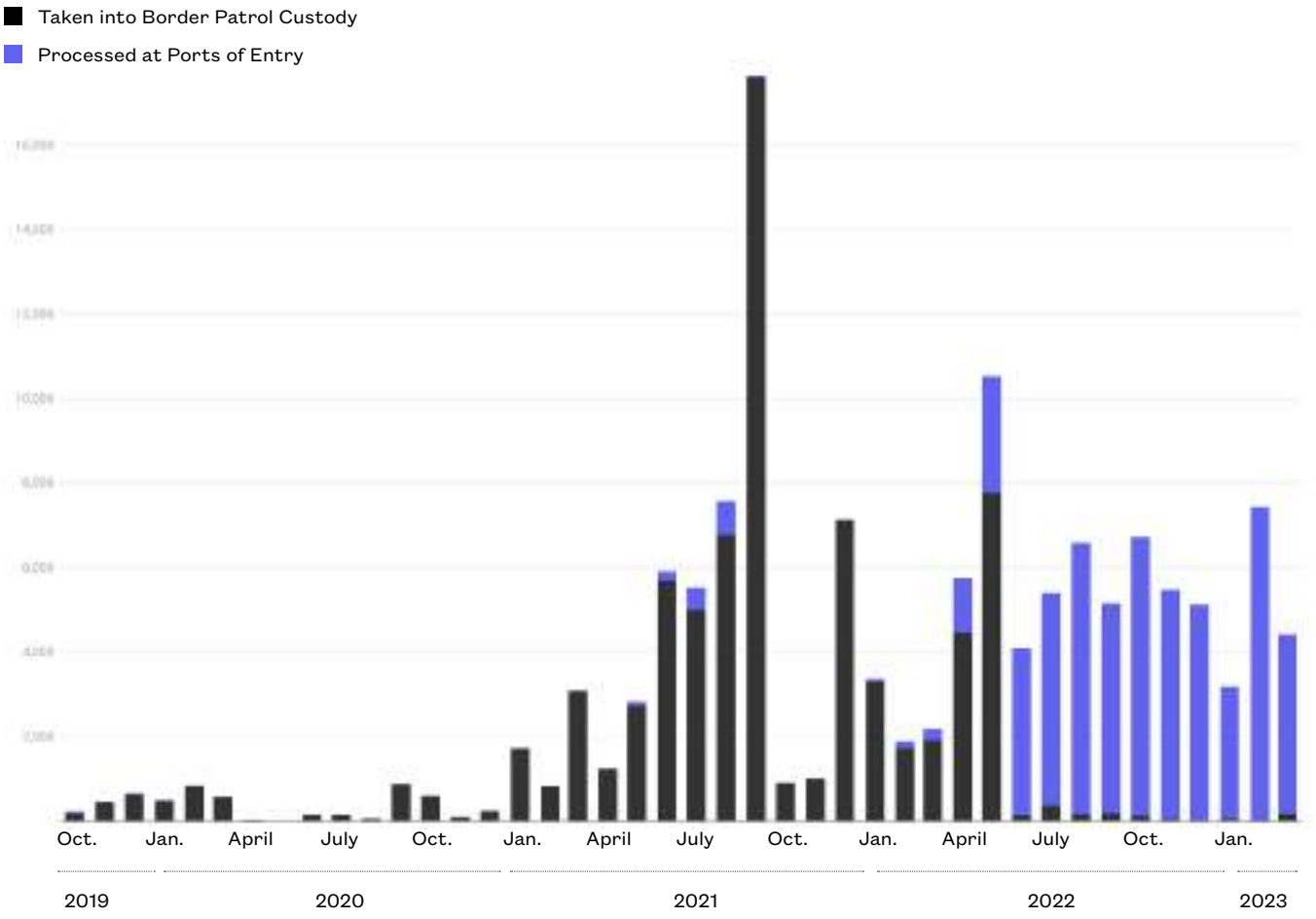


Source: Defendants Monthly Status Reports, Louisiana v. Centers for Disease Control & Prevention, No. 6:22-cv-00885 (W.D. La, filed Apr. 9, 2022).

The effect of this exemption process has been dramatic. Its impact on one nationality in particular—Haitians—has shown enormous success and provided hard evidence that increased asylum capacity at ports of entry can reduce the number of people crossing between ports of entry.

Since the exemption process began expanding in 2022, Haitians have been among the most likely to receive humanitarian exemptions at ports of entry. Throughout the spring, the number of Haitians processed under Title 8 at ports of entry rose from 268 in March to a peak of 6,591 in October.[18] This increased ability to access asylum at the ports of entry dramatically shifted Haitian migration patterns. The number of Haitians taken into Border Patrol custody dropped over 99 percent in a matter of months, falling from a high of 7,762 in May 2022 to just 21 in February 2023 (see Figure 2).[19]

FIGURE 2: HAITIAN MIGRANTS PROCESSED AT PORTS OF ENTRY VS. TAKEN INTO BORDER PATROL CUSTODY, FISCAL YEAR 2020 THROUGH MARCH 2023



Source: U.S. Customs and Border Protection, "Nationwide Encounters," https://www.cbp.gov/newsroom/stats/nationwide-encounters.

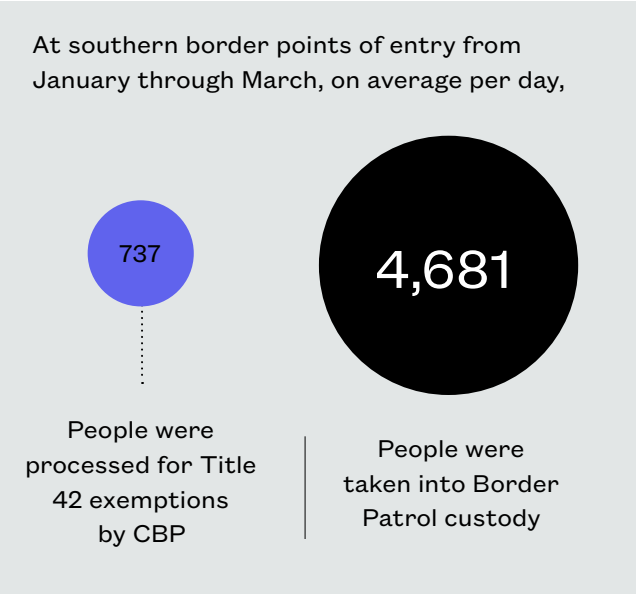
In January 2023, CBP replaced the NGO-led exemption process with the use of a mobile application known as "CBP One" that requires migrants to schedule appointments at select ports of entry across the border to be considered for an exemption to Title 42.[20] CBP One is intended to be the primary method by which migrants can seek such exemptions at ports of entry while Title 42 remains in place.

Through March 2023, CBP One appointments were available at eight different ports of entry along the U.S.-Mexico border: San Ysidro and Calexico in California, Nogales in Arizona, and El Paso, Eagle Pass, Laredo, Hidalgo, and Brownsville in Texas.[21] Use of the app to schedule appointments is also restricted to individuals who are within a limited geographic area that currently extends south to Mexico City but no further.[22]

The initial rollout of CBP One has been plagued with technical glitches and design flaws. Demand for appointments has far outpaced supply, forcing migrants to compete for rare appointment slots—while abundant technical glitches[23] put individuals without consistent Wi-Fi at a marked disadvantage.[24] In the initial weeks of the program, the app was only available in English and Spanish, causing difficulty for speakers of other languages.[25] Individuals over the age of five making appointments are required to take a photo through the app as part of a "liveness test," but at least initially, the app had difficulty recognizing the faces of darker-skinned migrants, affecting Haitian migrants in particular.[26] Those lucky enough to evade all these pitfalls still have to wait weeks for their appointments.[27] CBP has notably made many technical fixes and adjustments to the app in the first two months of its use, but at least one migrant has already been murdered while waiting.[28]

The new exemption process has in some cases prompted families to self-separate, as larger families struggle to obtain an appointment when slots are limited. Limited availability of appointments at certain ports of entry have led some individuals to take appointments in other locations potentially thousands of miles away, requiring migrants to travel through dangerous territory along northern Mexico where kidnappings are common. And for those individuals without a functioning smartphone, there are few if any options other than begging for help.

Today, more asylum seekers are being admitted through southern border ports of entry than any time in the last decade. However, capacity for port of entry processing remains far below demand. From January to March, CBP processed an average of 737 people per day for Title 42 exemptions.[29] During that same period, an average of 4,681 people were taken into Border Patrol custody per day.[30] Many migrants have reported that they have been waiting fruitlessly for months to obtain an appointment through CBP One.[31] There is growing frustration in Mexico over the lack of appointments, and some migrants have given up hope and decided to cross between ports of entry instead.[32] As a result, CBP's efforts to channel migrants to ports of entry risks a significant setback if the agency cannot rapidly increase processing capacity and reduce the inequities involved with an appointment system that resembles a lottery system.



Recommendations for Executive Action

The federal government should take all measures necessary to rapidly increase processing capacity at ports of entry, fix the serious problems within the CBP One app, re-institute an alternate, non-app-based path to access the asylum process at ports of entry along the southern border, and continue to heavily advertise the availability of a safer and easier method of accessing protection at ports of entry. By offering a safe, legal, and accessible method of entry to migrants, the government can reduce irregular entries, limit the exploitation of migrants by profit-seeking transnational criminal organizations (TCOs) and local gangs which often require migrants to pay crossing fees, and provide a more orderly process for the U.S. government itself.

The initial effort should address infrastructure and logistics needs. To meet the growing demand for CBP One and access to asylum at ports of entry, DHS should redirect as many available resources and as much personnel as possible to the Office of Field Operations in order to expand available appointments and reinstate processing at more ports of entry along the southern border beyond the eight that are currently available through the CBP One app process.

Considering CBP One's technical flaws, limited availability, and privacy concerns,[33] and consistent with Acting CBP Commissioner Miller's November 2021 memo providing that "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,"[34] the use of CBP One must not become the sole required tool in order to access asylum.[35] DHS must ensure that alternate methods of accessing the asylum process at ports of entry exist beyond CBP One, including physical access for asylum seekers who arrive at the ports of entry in urgent need. To the extent that NGOs are involved in any alternate process, DHS should seek to provide direct funding to mitigate the very high costs of safe operation in northern Mexico.

As CBP prepares for the transition away from Title 42 in May 2023, it should gradually resume alternate forms of asylum processing at all ports of entry for individuals who cannot access the CBP One appointment process. By the time Title 42 ends and the government resumes processing of all arriving asylum seekers under Title 8 (normal immigration law), CBP should already have a process in place to respond to asylum seekers physically arriving at ports of entry without an appointment. This could include everything from working with the Mexican government to expand physical port-of-entry infrastructure on the Mexican side of the border, to kiosks installed at the port of entry which migrants could use to schedule an appointment or begin pre-processing if CBP is at full capacity.

In the immediate future the agency should prioritize technical and policy fixes to the CBP One app. This includes addressing any remaining issues the app has with accepting darker-skinned migrants, expanding the number of languages in which the app is available, and expanding appointment slots so that families can avoid any need to self-separate.

Given DHS OIG's 2020 report that CBP has in the past falsely represented its processing capacity at ports of entry, the Secretary should task both DHS OIG and the DHS Office for Civil Rights and Civil Liberties (CRCL) with closely monitoring this expansion of asylum processing capacity, to ensure that the agency is using all available resources to carry out this mission.

DHS should focus its additional resources first on the ports of entry where exemption processing is already highest: San Ysidro, El Paso, Brownsville, and Hidalgo (see Figure 1).

As DHS ramps up processing at ports of entry, it should simultaneously continue and expand its ongoing messaging campaign encouraging people seeking asylum to come to the ports of entry rather than crossing between them. Note that messaging is a component—not a solution in itself. No amount of encouragement to seek asylum at ports of entry will be sufficient if the process remains slow and inaccessible to the average migrant.

Simultaneously, the State Department should coordinate with the government of Mexico, UNHCR, and the International Organization for Migration to further increase shelter capacity on the Mexican side of the border through competitive grants, additional

funding sources, municipal resources, and security assurances. Safe housing options on the Mexican side of the border would also reduce the pressure on individuals who feel compelled to cross between ports of entry.

In addition, the State Department should work with Mexico to increase security around the ports of entry, with a focus on preventing cartels from usurping or controlling any part of this process and protecting vulnerable asylum seekers.

Recommendations for Congressional Action

To ensure that CBP's Office of Field Operations can carry out these recommendations, Congress should provide significant emergency funding for CBP to hire sufficient new permanent or contract staff to ensure that expansive asylum processing at ports of entry is viable, scalable, and not disruptive to other CBP business at ports of entry. Such funding should come with sufficient oversight to ensure the funds are not used for enforcement purposes, such as "hardening" ports of entry to make them physically inaccessible to asylum seekers or turning away asylum seekers at the "limit line" before they reach U.S. soil.

Congress must also invest in the agency's permanent physical infrastructure at ports of entry. This includes both increased use of technology to minimize overall processing time and increase overall throughput of individuals seeking asylum at ports of entry, as well as expanded physical infrastructure at ports of entry, including holding areas, waiting rooms, and other locations where CBP can carry out any individualized screening and processing requirements.

RECOMMENDATION 2

Improve Border Patrol's Capacity for Humanitarian Processing

Background

Given the restrictions on access to ports of entry described above, over the last decade the vast majority of asylum seekers arriving at the U.S.-Mexico border have instead crossed between ports of entry and turned themselves in to Border Patrol agents. This has posed a significant challenge for the federal government, and in particular the Border Patrol. The agency has traditionally viewed itself as a national security and law enforcement agency, not a humanitarian processing agency.[36] The majority of the agency's physical infrastructure was designed for processing Mexican adult migrants who could be rapidly transferred out of Border Patrol custody, not families and children. And as exemplified by a 2019 Facebook group scandal where Border Patrol agents were discovered to be posting dehumanizing and vile content about migrants,[37] the agency's shift towards a more humanitarian mission has engendered backlash among some agents who are hostile towards migrants.

Over the last decade, the Border Patrol has consistently failed to process high numbers of asylum seekers in a humane manner while simultaneously carrying out the agency's law enforcement mission without disruption. This situation has proven unacceptable to all sides of the debate.

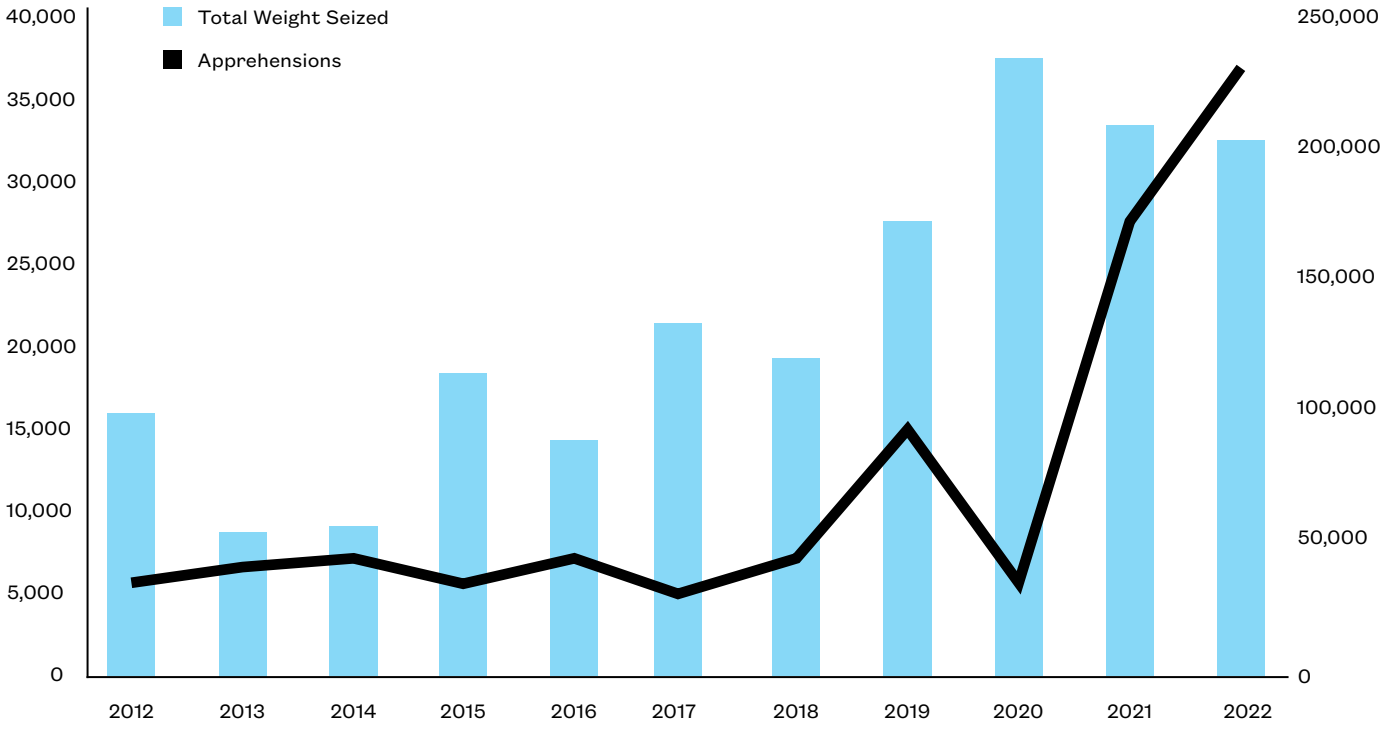
Those who focus on the Border Patrol's duty to process arriving asylum seekers highlight Border Patrol's failure to process applicants for humanitarian protection in a humane and orderly fashion. For example, overcrowding and mistreatment of asylum seekers in Border Patrol facilities has been common for years, leading to multiple children dying in Border Patrol custody in 2019.[38] Until the late 2010s, nearly all individuals held in Border Patrol custody were routinely denied access to basic hygienic needs such as soap and toothbrushes[39] and often forced to sleep in crowded cells nicknamed *hieleras* (iceboxes)[40] or *perreras* (dog kennels).[41]

After outrage and successful litigation,[42] conditions have improved significantly in recent years, although problems remain and overcrowding continues to be a concern during times of high arrivals.[43] Today, most migrants taken into custody by the Border Patrol are sent to dedicated "processing centers" or "soft-sided facilities" that offer a higher level of care than in the past.

Those who focus on the Border Patrol's law enforcement duties argue that the agency has been stretched thin due to the significant amount of processing required by humanitarian migration, as compared to those who are not seeking asylum. For example, Border Patrol sources have indicated that completing court appearance paperwork for a single individual or family can take 60-90 minutes per person or family group,[44] meaning that thousands of agents are spending significant time completing paperwork and managing coordination with Immigration and Customs Enforcement (ICE), transportation, and release of migrants rather than patrolling in the field. Border Patrol sources also frequently assert that increased humanitarian processing is a cause of increased "got-aways"[45] and leak this non-public data to the media on a regular basis.

Others, including the Border Patrol's own union, have argued that processing asylum seekers has led to a reduction in the agency's ability to seize drugs coming across the border. Anecdotal evidence suggests that the cartels have used large migrant crossings to distract agents in at least some circumstances.[46] However, as Figure 3 demonstrates, there is no clear correlation between migrant apprehensions and overall hard drug seizure weight, suggesting any such impact is limited. The overwhelming majority of hard drugs come through ports of entry, often smuggled in passenger vehicles and commercial traffic.

FIGURE 3: HARD DRUG* SEIZURES BY BORDER PATROL, COMPARED WITH BORDER PATROL APPREHENSIONS, FISCAL YEARS 2012 THROUGH 2022



** "Hard drugs" refers to cocaine, methamphetamine, heroin, and fentanyl*

Source: U.S. Customs and Border Protection, "Nationwide Encounters," https://www.cbp.gov/newsroom/stats/nationwide-encounters; U.S. Customs and Border Protection, "Drug Seizure Statistics," https://www.cbp.gov/newsroom/stats/drug-seizure-statistics.

*The overwhelming majority of hard drugs come through **ports of entry**, often smuggled in passenger vehicles and commercial traffic.*

After taking office, the Biden administration prioritized policies and measures that are intended to reduce the possibility of the kind of dangerous overcrowding that occurred in 2019. This has led CBP to prioritize the creation of programs which allow for shortened processing at the border, including the short-lived and disastrous "Notice to Report" process under which individuals were released from CBP custody with only a notice asking them to appear at any ICE office for further processing.[47] This was later replaced with "Parole + [Alternatives to Detention]," which allowed Border Patrol agents to release individuals on parole rather than issuing them a notice to appear in court whenever Border Patrol detention centers reached certain measures of overcrowding.[48] The use of Parole + ATD largely ended in early 2023 following an agreement with Mexico that permitted the expulsion of certain nationalities back to Mexico, and in March 2023 the Parole + ATD program was vacated by a federal court in Florida.[49]

Both programs, while arguably successful in reducing overcrowding, have created other processing difficulties inside the United States. ICE does not have procedures in place to expeditiously issue notices to appear for hundreds of thousands of people released at the border, and as a result there are more people required to check in with ICE than ICE can check in. Through February 2023, "nearly 600,000" migrants released at the border since March 2021 still had not been issued a notice to appear in court.[50] And as of March 2023, the ICE office in New York City was reportedly "fully booked through October 2032" for ICE check-in appointments, meaning some migrants may be forced to wait years just to begin the court process.[51]

Recommendations for Executive Action

Increasing humanitarian processing capacity is an important way to prevent migrants from being deprived of their rights in Border Patrol custody and to permit agents to specialize in specific law enforcement tasks distinct from humanitarian processing. Just as Border Patrol today has specialized search and rescue units and specialized tactical units, it could stand up specialized humanitarian processing units, supported by Border Patrol Processing Coordinators, while other agents specialize in detection and apprehension of migrants and smugglers who seek to evade authorities.

If adequately funded, increasing processing capacity can be done in a variety of ways. First, CBP should hire more Border Patrol Processing Coordinators, a new civilian position created in recent years.[52] Processing coordinators carry out non-law-enforcement duties which were previously carried out by Border Patrol agents themselves, including:[53]

- Receiving and processing migrants taken into custody from the arresting Border Patrol agent.
- Transporting migrants from the field to a processing center and keeping track of their personal property through inventorying and tagging.
- Carrying out mandatory welfare checks on individuals held in Border Patrol custody and maintaining administrative paperwork relating to anyone held in Border Patrol custody.
- Facilitating Border Patrol contacts with other federal components and agencies.

The first processing coordinators were deployed in April 2021.[54] By September 2021, there were 160 Border Patrol Processing Coordinators deployed across the entire border.[55] This grew to "nearly 1,000" by December 2022.[56]

The agency still struggles with overcrowding, most recently experiencing significant overcrowding in December 2022.[57] This suggests there are still not enough processing coordinators deployed across the border to process the current number of arriving asylum seekers in an efficient and humane manner.

In the immediate term, during times of high arrivals, DHS should actively cross-detail as many people as possible to be processing coordinators, while increasing hiring. CBP should consider increasing the wages paid to processing coordinators to boost hiring, retention, and professionalism, since processing coordinators are paid at a GS 05-06 level ($35,000-$51,000).[58] Similar changes may be necessary for the position of Border Patrol Agent itself, where hiring has consistently been difficult for years.

DHS should also ensure that it identifies locations for additional temporary soft-sided facilities that can be operational by May 11, 2023, when Title 42 is set to end, to avoid overcrowding should the number of arriving migrants increase substantially.

DHS should also prioritize efforts to lower the amount of time required to process arriving migrants. This can be done through a full shift to electronic processing for migrants taken into Border Patrol custody including the long-anticipated switch to electronic A-Files and in-transit processing of I-213s and notices to appear. Ensuring that all individuals who are encountered by CBP have their initial notices to appear issued by that agency will also reduce pressure on ICE offices inside the country which have been forced to take on a far greater initial processing role than in the past.

Finally, DHS should also work to ensure that any transportation contracts for lateral decompression and community release are in place prior to the May 11 date on which Title 42 is set to end. The agency should be prepared for a wide variety of scenarios to ensure that they can respond flexibly should migration increase beyond expected levels.

Recommendations for Congressional Action

In order to increase the overall number of processing coordinators, Congress should fund a substantial increase in the agency's humanitarian processing budget. However, given the Border Patrol's problematic history when it comes to allocating spending—and watchdog reports that CBP spent millions of dollars allocated by Congress for humanitarian "consumables" (such as food, bedding, and hygiene items) on things like new ATVs and HVAC repairs[59]—any increase in funding and support to the agency must also come with effective oversight. Congress should not provide a blank check to the agency for "migrant processing," and any appropriations should come with mechanisms to ensure that the agency properly manages any funding and personnel increases.

Specifically, Congress should task the Government Accountability Office (GAO) with auditing the Border Patrol's use of any funds directed specifically towards humanitarian processing of migrants, as well as the agency's ongoing use of funding for new Border Patrol Processing Coordinators. The funding should come with specific restrictions preventing the agency from redirecting it to other line items. As part of any agreement to provide these funds, Congress should direct CBP to carry out a study on further ways to make long-term policy and infrastructure improvements to the front end of humanitarian processing.

Congress should continue to appropriate funding specific to other aspects of CBP's humanitarian processing responsibilities, including the further hiring of contract or permanent medical personnel to ensure that individuals taken into Border Patrol custody are in good health and do not need emergency medical assistance. To the extent that the agency needs some new physical infrastructure and transportation capacity, Congress should work to provide specific, targeted funding towards those requests, ultimately reducing the agency's reliance on costly contractors with poor track records of migrant care.[60]

RECOMMENDATION 3

Establish a Center for Migrant Coordination

To Bring Together Federal, State, and Local Resources and Support and Facilitate Migrant Integration

Background

When migrants arrive in the United States and are taken into custody by CBP, and then released at the border or from a detention center, they often need immediate assistance in obtaining transportation to their ultimate destination. In some relatively rare circumstances, migrants may not have an ultimate destination and need support finding a place to live while they go through the asylum process. And once migrants arrive at their ultimate destination, they often lack local knowledge of how to navigate their ICE check-ins, court dates, and other responsibilities.

Over the last decade, the responsibility for assisting migrants in these circumstances has fallen almost exclusively to nonprofit organizations and receiving communities. At the border, a network of shelter providers has assisted hundreds of thousands of people released from CBP and ICE custody. In some locations, NGOs operate in close conjunction with local CBP and ICE officials to coordinate releases. At other times, ICE and CBP have released people at gas stations, bus stops, and other locations far from shelters, forcing NGOs and state and local officials to scramble to respond and ensure that people are not left on the streets without resources or assistance. Coordination between NGOs and state and local officials is often the sole responsibility of local CBP and ICE field offices and is not centralized in any way.

In 2022, the need for a federal response became particularly apparent following the arrival of thousands of migrants who did not know anyone in the United States and were in acute need of emergency shelter. This was exacerbated by politically-motivated actions taken by the states of Texas, Arizona, and Florida to transport tens of thousands of migrants to Democratic-led cities such as New York, Chicago, Philadelphia, and Washington, D.C.[61] Mayors of these cities have subsequently called for federal help.[62]

Congress has responded to some of this need through the provision of funding to assist NGOs and state and local governments which have had to expend resources to assist migrants, initially through the Federal Emergency Management Agency (FEMA) Emergency Food and Shelter Program (EFSP).[63] In December 2022, Congress created a new "Shelter and Services Program" to replace EFSP sometime in 2023 and provided $800 million for "grants or cooperative agreements with state and local governments and nongovernmental organizations."[64]

The provision of money alone will be insufficient to resolve the larger coordination needs of responding to high levels of migration. State and local governments want more than just funding, they want the federal government to lead a centralized response.[65]

State and local governments want more than just funding, they want the federal government to lead a ***centralized response****.*

This is not the first time that DHS has recognized the need to centralize a response to the situation at the border. DHS created the "Southwest Border Coordination Center" in 2022,[66] which brings together headquarters officials from across the agency to standardize processing and improve coordination among different field offices and Border Patrol sectors. The official purpose of this center is to "coordinate planning, operations, engagement, and interagency support."[67] The Southwest Border Coordination Center has produced an extensive planning document for interagency coordination of responses to increased numbers of border crossings through 2022.[68]

Recommendations for Executive Action

The current situation at the border requires an all-of-government approach that includes direct coordination with external stakeholders and impacted communities. We propose the creation of a Center for Migrant Coordination housed within DHS that is designed to bring together DHS components, the Office of Refugee Resettlement (ORR), state and local governments, and NGOs across the border and in receiving communities, with the goal of standardizing practices and procedures for migrant release, transport, and assistance.

Communities at the border and inside the United States should have a single point of contact within DHS and ORR to answer questions about migrant assistance, learn about and apply for any affirmative grants or reimbursement programs to assist migrants, and obtain information and guidance about the asylum process. DHS and ORR should proactively reach out to receiving communities and arrange regular listening sessions to further understand the needs of each community and help them apply for any available assistance.

The Center for Migrant Coordination could also work directly with refugee resettlement organizations and existing nonprofit organizations serving new immigrants (which often have extensive local experience in integrating individuals into their communities), in developing strategies around integration and post-arrival support. Initial funding for the center should come from DHS general funds, with the agency seeking Congressional appropriations for future operations. Any funds should come with restrictions ensuring that they are used solely for the purposes of this center and cannot be reprogrammed for enforcement purposes.

The creation of this center would assuage concerns from state and local officials that they have been left out of the loop about migration and encourage enhanced coordination between stakeholders throughout the system, reducing inefficiencies and further bolstering support for the asylum system.

Recommendations for Congressional Action

Congress should provide funding in the FY 2024 budget, and on an ongoing basis in future years, to support the work of the Center for Migrant Coordination. In its initial year of funding, Congress should provide at least $10,000,000 to hire new staff, establish initial priorities and procedures, and begin outreach and coordination between DHS and receiving communities.

Congress should also consider passing authorizing language to formalize the role of the Center for Migrant Coordination. It could place the center within the DHS

Office of the Secretary and provide authorization for a Director of Migrant Coordination who will oversee the center's mission: coordination and support for DHS's work to standardize release policies, education and collaboration with stakeholders in receiving communities, coordination with ORR and other agencies, and any other duties as may prove necessary.

Congress should also consider funding the Center for Migration Coordination to work with nonprofit organizations and local governments to establish local outreach centers for migrants going through the asylum process. These local outreach centers could be modeled off European integration and reception centers, which offer classes in local languages, assist migrants in obtaining employment authorization, and provide guidance in the asylum process for those that need it. If properly funded, these local outreach centers could bridge the gap between expanding case management programs operated by ICE (which generally provide referrals only) and the limited capacity of some support programs to accommodate increased demand without additional funding.

RECOMMENDATION 4

Revamp Asylum Processing at USCIS

Through Targeted Funding and Modifications to the New Asylum Rule

Background

Since Congress created the modern expedited removal system in 1996, asylum officers have had a key role in processing asylum seekers. Initial "credible fear" and "reasonable fear" interviews for asylum seekers processed under expedited removal are statutorily assigned to specialized adjudicators trained in asylum law, known as asylum officers.[69] These same officers, who today are part of USCIS's Refugee, Asylum, and International Operations Directorate (RAIO), are also responsible for adjudicating so-called "affirmative" asylum applications that are filed directly with USCIS for individuals who (with the notable exception of unaccompanied children) are not going through the removal process.[70]

The Trump administration attempted to systematically tear down and rebuild RAIO into a core component of its anti-asylum policies. These actions including firing RAIO's Obama-era leader John Lafferty,[71] setting the refugee cap to its lowest level in history,[72] replacing USCIS asylum officers with Border Patrol agents given a single course in asylum law,[73] and pushing out conscientious asylum officers, some of whom resigned in protest when asked to carry out policies they believe violated human rights.[74] Today, despite increased hiring from the Biden administration, it is widely understood that there are still not enough asylum officers to carry out both credible fear interviews and affirmative asylum interviews.

Throughout FY 2022, the affirmative asylum backlog grew by more than

16k cases per month,

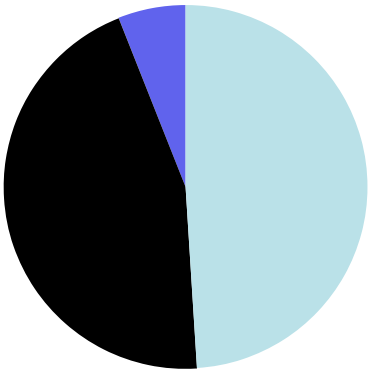
topping **600k** for the first time.[75]

In May 2022, the Biden administration began piloting an alternate asylum process that first refers most asylum seekers to asylum merits interviews with USCIS asylum officers instead of immigration court. Under this rule, the administration will treat a credible fear interview as a full application for asylum, rather than forcing individuals to separately file a formal asylum application with the immigration court to begin the asylum process. Individuals who pass this credible fear interview under

the new rule would then be referred to an asylum officer at USCIS for an "asylum merits interview" that is supposed to occur within 60 days of the credible fear interview. At the asylum merits interview, the asylum officer could grant or deny asylum. If the asylum officer grants asylum, then the person would receive asylum immediately. If the asylum officer denies asylum, the individual would be referred to an immigration judge for an expedited form of removal proceedings which are intended to be completed in a timeframe between 60 to 135 days.

The results of this initial pilot have been mixed. Of the 3,825 people put through the alternative asylum process from June 2022 through January 2023, just 253 (6.6 percent) were granted asylum at either the asylum merits interview or in front of an immigration judge, whereas 1,871 (48.8 percent) were ordered removed after failing a credible fear interview.[75] The remaining 1,711 people either had their cases temporarily suspended or dismissed, or were still waiting for at least one part of the process.

ALTERNATE ASYLUM PROCESS PILOT RESULTS



ORDERED REMOVED. 48.8%
TEMPORARILY SUSPENDED, DISMISSED, OR WAITING 44.6%
GRANTED ASYLUM 6.6%

As currently promulgated, these regulations are highly concerning.[76] Early evidence with the program shows that rapid adjudication timelines push asylum seekers through the process too fast, often without adequate access to counsel.[77] Nevertheless, we believe that many components of the rule are worth keeping, such that the rule can be salvaged and made a core part of future asylum processing should the agency makes the required changes.

Recommendations for Executive Action

DHS should respond to comments submitted following the interim final rule implemented in May 2022 by extending the timeline for adjudication of asylum claims under the rule. As currently envisioned, the rule is designed to put people through the entire asylum process within six months, including an asylum merits interview and immigration court review of a denial. In the current environment of overstressed legal services and limited integration support, six months is insufficient time for most people to find a lawyer and prepare for an asylum claim, especially given the inability to obtain work authorization during this period. Whether the new asylum rule can comport with due process is entirely contingent on an extension of the time period to a more reasonable length, such as at a minimum one year.

In a fair and transparent system where asylum seekers can more readily obtain legal support and don't have to choose between basic needs and their asylum claims, cases may well take less than a year—and potentially even less than six months. But that is not the system under which this rule was issued. Therefore, unless these concerns are addressed in the final version of the rule, the rule will likely fail in its attempt to balance due process with expediency.

We support the provision of the regulation which eliminates the requirement that individuals file a separate application for asylum (Form I-589)—a process which can take a significant amount of time, and which confuses many people who believe they have already applied for asylum. Similarly, the asylum hearing process, under which individuals who pass a credible

fear interview have their initial asylum claims reviewed by USCIS rather than the immigration court system, could permit USCIS to adjudicate asylum cases from the border much more rapidly, reducing immigration court backlogs and permitting people to obtain permanent status in a much more rapid timeframe.

Given that USCIS faced a 605,000-case affirmative asylum backlog through the end of Fiscal Year 2022,[78] to make this new process work, the government should focus on staffing the RAIO with sufficient asylum officers to carry out this new rule. With the $250 million that Congress provided to USCIS for backlog reduction in the FY 2022 budget,[79] USCIS should focus significant resources on hiring enough asylum officers to ensure that individuals put through the asylum hearing process receive an initial decision in their asylum case within a year or less.

In carrying out the asylum rule, USCIS must ensure fair and consistent processing of asylum claims through a system that ensures applicants are educated about the process and able to fully participate. As a result, access to counsel and to legal orientation is essential.

USCIS should also explore the possibility of carrying out asylum merits interviews at locations other than the 12 Asylum Offices located around the country, such as USCIS Field Offices. Applicants should not be forced to travel hundreds of miles to have their claims heard. For individuals with counsel, USCIS should consider the possible use of video teleconferencing for asylum hearings, but only with the explicit consent of the applicant.

Recommendations for Congressional Action

Congress should explore a permanent funding stream for USCIS asylum adjudication.

At the time that USCIS was created as a purely fee-funded agency in 2003, the agency's humanitarian mission only constituted a small fraction of its overall work. Today, the significant costs of operating the agency's humanitarian programs are almost entirely subsidized by those applying for other immigration benefits.

The Biden administration indicated in its January 2023 USCIS fee rule that the full cost of funding the asylum processing rule would be over $425 million.[80] The fee rule proposes funding this program, as well as addressing existing asylum backlogs, by levying a $600 Asylum Program Fee surcharge over 700,000 employment-based visa petitioners and beneficiaries each year.

Because humanitarian programs operated by USCIS are in the national interest, these adjudications are best funded by Congress, not those seeking another immigration benefit from the agency. Given the ongoing need to fund asylum processing at USCIS and make this new program work, Congress should continue to appropriate funds for USCIS that permit it to fund the asylum program without drawing on the Immigration Examination Fees Account, thereby allowing the agency to avoid imposing an Asylum Program Fee.

RECOMMENDATION 5

Grow Federal Support for Case Management Alternatives to Detention

To Help Migrants Navigate the Asylum System

Background

Since the Reagan administration, the number of people held in immigration detention centers nationwide has risen from nearly zero to a peak of over 55,000 in FY 2019. Yet despite this massive increase, there are still more noncitizens that DHS could detain in any given month than there are detention beds to hold them. As a result, immigration agencies have long exercised their discretion to establish policies allowing for the release of some individuals on orders of supervision, release on their own recognizance, or through alternate programs.[81]

Since the late 1990s, immigration enforcement agencies have increasingly developed additional so-called "alternatives to detention" (ATD) programming for individuals who the agencies determined did not need to be detained. The first of these programs, the Appearance Assistance Program, was operated by the Vera Institute of Justice beginning in 1997 and continuing through to 2000.[82] This pilot program revealed that noncitizens placed into an ATD program were not only likely to appear in court, but also that the government could save significant money through ATD programs, which were significantly cheaper than full detention.[83]

In 2004, ICE began the Intensive Supervision Appearance Program (ISAP).[84] From the beginning, this program has been operated through a contract with BI Inc., a wholly-owned subsidiary of private prison company GEO Group.[85] Today, the ISAP program is on its fourth iteration (known as ISAP IV), still operated by BI Inc. Over the last two decades, ISAP has expanded from a few thousand people on its docket to over 375,000 in December 2022.[86]

Despite this growth, ATD services still cost the federal government a fraction of what it pays for immigration detention. In FY 2023, Congress provided ICE's ATD program $442 million to carry out its programming for hundreds of thousands of people, while ICE's Custody Operations division received $2.9 billion (over 550 percent more) to operate a detention system to hold an average of 34,000 people a day.[87] According to ICE itself,

the current ISAP program costs the US government $4.01 per day for each person enrolled,[88] compared to $192.65 per day to hold someone in a contract detention facility.[89]

For every person sent to an ICE detention center, ICE can enroll 48 people in an ATD program.

The majority of people placed through ISAP IV are enrolled in a program known as "SmartLINK," in which individuals are provided a customized smartphone which contains electronic monitoring software.[90] Individuals on SmartLINK are required to carry their phone with them at all times and use it to check in with ICE, as well as to use the app's facial recognition software to confirm their location. However, not all individuals are enrolled in SmartLINK, and some people are still required to wear GPS ankle bracelets, which many organizations have criticized as invasive, harmful, and stigmatizing.[91]

The ISAP IV contract also provides "extended case management services" in which BI Inc. "case managers" assist noncitizens with finding local services to help them navigate the immigration process. These services were first introduced to ICE's ATD programs following the success of the Family Case Management Program (FCMP), a short-lived pilot program that ran from January 2016 through June 2017.[92] Over a year, FCMP provided over 950 families access to case managers who could help them understand the complicated immigration court and ICE check-in processes, as well as assist them in navigating a new country through referrals to pro bono legal services, housing, medical care, English language classes, and more.[93] By the time the Trump administration shut down the program, 99 percent of FCMP participants had complied with every ICE check-in and court appearance requirement, a resounding success. Within a few years after that, ICE incorporated case management services into the ISAP contract.

Unfortunately, investigations into the case management services provided by BI Inc. under the ISAP IV contract have revealed overwhelmed case managers handling over 300 cases per person, lack of individualized attention, and a system which provides case management in name alone.[94]

Advocates have also criticized the ISAP IV program for failing to act as a true alternative to detention, instead operating to allow a subsidiary of a private prison company to surveil and monitor a population which would be unlikely to be sent to detention in the first place. Others have also critiqued the agency for lacking uniform standards by which ATDs are "escalated" (in which a person is subject to stricter conditions due to lack of compliance or other reasons) or "de-escalated" (in which a person has conditions lifted or is disenrolled from the ATD program entirely).

The United States is not alone in increasing the use of ATDs following an increase in numbers of migrants seeking asylum. Countries across Europe have implemented a variety of different ATD models. Multiple studies carried out internationally have confirmed that case management ATDs are effective at both ensuring compliance and helping stabilize newly arrived migrants in an unfamiliar country.[95] These studies have also shown that community-forward programming can be even more effective than compliance-forward programming, helping individuals to take charge of their own case and navigate the immigration system with confidence.[96]

ATD services continue to evolve and improve. In FY 2021, Congress first funded the creation of a new Case Management Pilot Program (CMPP), to be operated by CRCL within DHS and funded through FEMA, rather than through ICE. The program is also managed by a board made up of CRCL and various nonprofit organizations. CMPP is designed to route case management services directly through community-based nonprofit organizations which are more familiar with the services available to immigrants and better equipped to assist new immigrants.[97]

As Title 42 is set to lift, and more people are likely to be released, there is a critical need for DHS to expand its case management services in response. These services will permit DHS to best ensure compliance with immigration court and ICE check-in requirements while also helping ensure that migrants are able to integrate into new communities with a minimum of disruption.

Recommendations for Executive Action

DHS should establish a universal and consistent standard for escalation and de-escalation to an ATD program and provide clear guidance to the public on the application of those standards. As the agency expands ATD programming, it should carefully study the results of the Case Management Pilot Program, incorporating best practices developed through CMPP into as many other ATD programs as relevant. ICE should also expand access to community-based NGO case management services, ending case management programs operated in close conjunction with ICE and implementing a more flexible system that works with local community organizations to help newly-arrived migrants better navigate the unique challenges presented in each location. Shifting case management support to nonprofit organizations may also alleviate issues with high caseloads by spreading services across a broader coalition of organizations, many of whom have indicated that the primary obstacle they face towards expanding case management services is lack of funding.[98]

DHS should also complete its move away from ankle monitors and the most restrictive forms of compliance-based ATDs which can interfere with integration and trust in case management as a process. While the government undoubtedly has an interest in compliance, FCMP and CMPP have shown that compliance does not require surveillance and in many circumstances can be achieved through community-based intervention and assistance.

Recommendations for Congressional Action

Congress should continue to fund the Case Management Pilot Program as well as increase funding for community-based case management alternatives to detention programs. Currently, CMPP has been funded at a total of $40 million spread over several fiscal years, which is only enough to operate a small pilot program serving a few thousand people as an initial test. In future years, Congress should steadily increase this funding so that CMPP can be built up organically in a robust manner.

Congress should also mandate a GAO study on ATD best practices, which shall include the study of international case management alternatives to detention and the ways in which ICE ATD programs can incorporate the most salient and effective aspects of those models.

Finally, Congress should consider addressing some of the most pressing needs of individuals going through case management services, which includes lifting the restrictions on asylum seeker work authorization. Individuals are most likely to be able to successfully comply with government reporting requirements when they can support themselves, and that includes the ability to work.

RECOMMENDATION 6

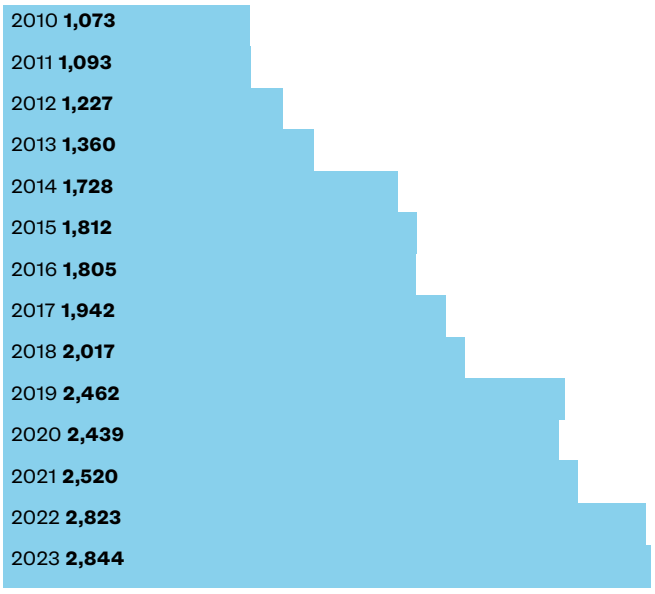
Begin Clearing Immigration Court Backlogs

Through the Use of Prosecutorial Discretion and Administrative Closure

Background

Over the last decade, the immigration court backlog has grown over 530 percent, rising from 327,693 cases through September 2012 to 1,874,336 cases through January 2023.[99] During that period, the number of immigration judges adjudicating cases only rose 137 percent, from 267 to 659.[100] There are now over 2,840 cases per immigration judge, compared to less than 1,250 per judge in 2013 (see Figure 4). With the current pace of arrivals at the U.S.-Mexico border, the immigration court backlog will likely continue to grow unless radical new action is taken.

FIGURE 4: PENDING CASES PER IMMIGRATION JUDGE, BY FISCAL YEAR



Source: Executive Office for Immigration Review, "Pending Cases, New Cases and Total Completions," https://www.justice.gov/eoir/page/file/1242166/download (Washington, DC: U.S. Department of Justice, data generated January 2023); Executive Office for Immigration Review, "Immigration Judge (IJ) Hiring," in Adjudication Statistics (Washington, DC: U.S. Department of Justice, data generated January 2023), https://www.justice.gov/eoir/page/file/1242156/download.

In FY 2022, immigration judges completed 313,849 cases, an all-time record.[101] However, that year 706,640 new cases were filed in immigration court, increasing the overall backlog by nearly 400,000 despite record completions.[102] Even if completions continued at the current rate, and even if the pace of new arrivals plummeted and new cases dropped to their lowest level in the last 15 years (193,006 in FY 2015), it would still take 16 years to clear the backlog. Even if not a single new case was added to the system, it would take more than five and a half years for the backlog to be cleared.

This is why, although hiring judges and streamlining proceedings will help to slow the growth of the backlog, these incremental measures alone will not shrink the backlog in any reasonable period of time. To increase efficiency, reduce the amount of time that it takes for asylum claims to be resolved, and make a better use of taxpayer resources, the federal government can and must consider policies to clear the current backlog of cases without individualized adjudication of every single claim.

As of January 2023, the immigration court backlog was more than

1.87M cases

and even if no new cases were added, it would take more than **five years** to clear at the current rate.

Recommendations for Executive Action

Despite court decisions restricting Secretary Mayorkas' authority to set enforcement priorities for DHS, the executive branch retains significant authority to implement policies that could help to reduce the backlog in a timely manner. These include the use of prosecutorial discretion to terminate or administratively close nonpriority cases. The Biden administration has announced that it is rethinking regulations promulgated by the Trump administration (and struck down in court) that ended administrative closure,[103] and should implement those proposed changes as soon as possible.

The ICE Office of the Principal Legal Advisor (OPLA) should create a process accessible to all people—represented or not—through which individuals can request ICE OPLA consent to the administrative closure or termination of their case. Such requests should be considered in the interest of justice or where the respondent is prima facie eligible for a benefit with USCIS—even if that benefit can only be obtained years in the future, such as through a visa petition with a multi-year wait.

This process could help the immigration courts focus on priority cases and reduce waiting times in immigration court, thereby reducing the amount of time that it takes to adjudicate new cases. The administration should proactively initiate prosecutorial discretion whenever possible, rather than requiring respondents to initiate the request. Notably, the administration's ease in carrying this out will depend significantly on the result of the Supreme Court's decision in a case challenging Secretary Mayorkas' enforcement priorities memorandum.[104]

In exercising prosecutorial discretion, the government should ensure that individuals have a say in whether they want to proceed with their cases. The April 2022 memo[105] from ICE Principle Legal Advisor Kerry Doyle endorsed dismissing thousands of low-priority cases, instead of administrative closure. This has left some individuals in a worse state, causing the loss of work authorization and requiring the refiling of asylum applications at USCIS. Efforts to reduce backlogs by terminating cases over the objection of respondents who

wish to proceed with their cases have the potential to do significant harm, while exacerbating backlogs elsewhere in the system.

The use of administrative closure for prosecutorial discretion could also come with an individualized grant of deferred action in appropriate humanitarian cases, including where the closure would jeopardize an individual's ability to provide for themselves. However, given the litigation risks surrounding major changes to deferred action, DHS should also explore the creation of a regulation under which individuals whose cases are administratively closed can apply for work authorization.

Simultaneously, the Executive Office for Immigration Review (EOIR) should encourage immigration judges to administratively close or terminate cases in the interest of justice where the respondent is prima facie eligible for another form of relief granted by USCIS.

Recommendations for Congressional Action

With an immigration court backlog nearing two million, it may be time to admit that there is no way to resolve the immigration court backlogs through executive action alone. The best and fastest way to clear the backlogs and reset the immigration court system is to pass a path to permanent legal status for undocumented immigrants present in the United States. Absent congressional action, there is no short-term means to clear the immigration court's bloated backlogs.

However, Congress can still take actions to restore integrity to the immigration court system and fix some of the systemic issues which led to the backlog's explosive growth over the last decade. This includes systematic underfunding. The Trump administration spent over $14 billion on border wall construction ($4.47 billion of which came from direct Congressional appropriations and the rest was diverted from other agencies)[106] at a time when entire immigration courts were only given $2.18 billion (from FY 2017 through FY 2020). In other words, the federal government spent over six times the amount it spent on adjudication of asylum claims to build a border wall which did nothing to deter asylum seekers. Therefore, if Congress does not create a path to legal status, it should at the very least massively increase the resources available for the asylum adjudication system.

The best and fastest way to clear the backlogs and reset the immigration court system is to pass a ***path to permanent legal status*** *for undocumented immigrants present in the United States.*

RECOMMENDATION 7

Construct New Regional Processing Centers for Migrants

Background

Prior recommendations have focused on expanding organizational capacity for border agencies as well as creating new policies and systems to expedite processing. However, processing at the border must occur at a physical location, and there is widespread agreement that the current physical infrastructure in place at the border is insufficient to address modern humanitarian flows. This is largely because much of the border infrastructure was designed for the primary challenge of processing Mexican single adults migrating to the United States for work, who could historically be processed and returned to Mexico within a matter of hours. Today, much of this physical infrastructure is out of date.

When Central American families first began seeking asylum in large numbers in 2014, they were nearly all taken to Border Patrol facilities not designed for children and asylum seekers. Overcrowding in Border Patrol stations has been a frequent problem during times of high migration and has persisted across multiple presidential administrations.[107]

In response to these concerns, litigation, and Congressional exhortation in early 2019 to adopt "more permanent plans" to improve the treatment of migrants in custody,[108] CBP has made changes. The agency has invested in the construction of multiple "soft-sided" facilities, temporary structures designed to alleviate overcrowding without requiring new permanent construction.[109] However, the temporary nature of these facilities makes them at best a stopgap measure, and soft-sided facilities are not a substitute for permanent infrastructure which is custom-designed to address challenges relating to the efficient, safe, and humane processing of protection claimants.

Today, Border Patrol facilities still operate largely outside the public eye, without any right of access for lawyers, loved ones, or organizations that assist migrants. There is not even a way for people outside of a Border Patrol facility to know if a specific person is held inside,[110] leaving some people out of contact with their loved ones for days at a time.[111] For many migrants, Border Patrol custody is still the place where a dream of freedom becomes a world of jail cells — where a single legal error, a word mistranslated, or a procedure not followed can mean the difference between safety or harm.

Current border infrastructure is also designed to respond only to the needs of Customs and Border Protection, and there is often no physical space permitting systematic collaboration with other agencies

that play a role in border processing, such as ORR or ICE, or with nonprofit organizations which can assist migrants after release. Other agencies that play a role in migrant processing often do not have any interactions with migrants until after they have already left CBP custody. This can have a negative impact not just on migration management, but also on migrants, and especially unaccompanied children who arrive at the border with an accompanying non-parental relative. Advocates have long called on the government to embed ORR caseworkers in CBP facilities so that the agency can ensure that accompanying non-parental relatives can be designated as a child's formal legal sponsor, avoiding costly and harmful separations.[112]

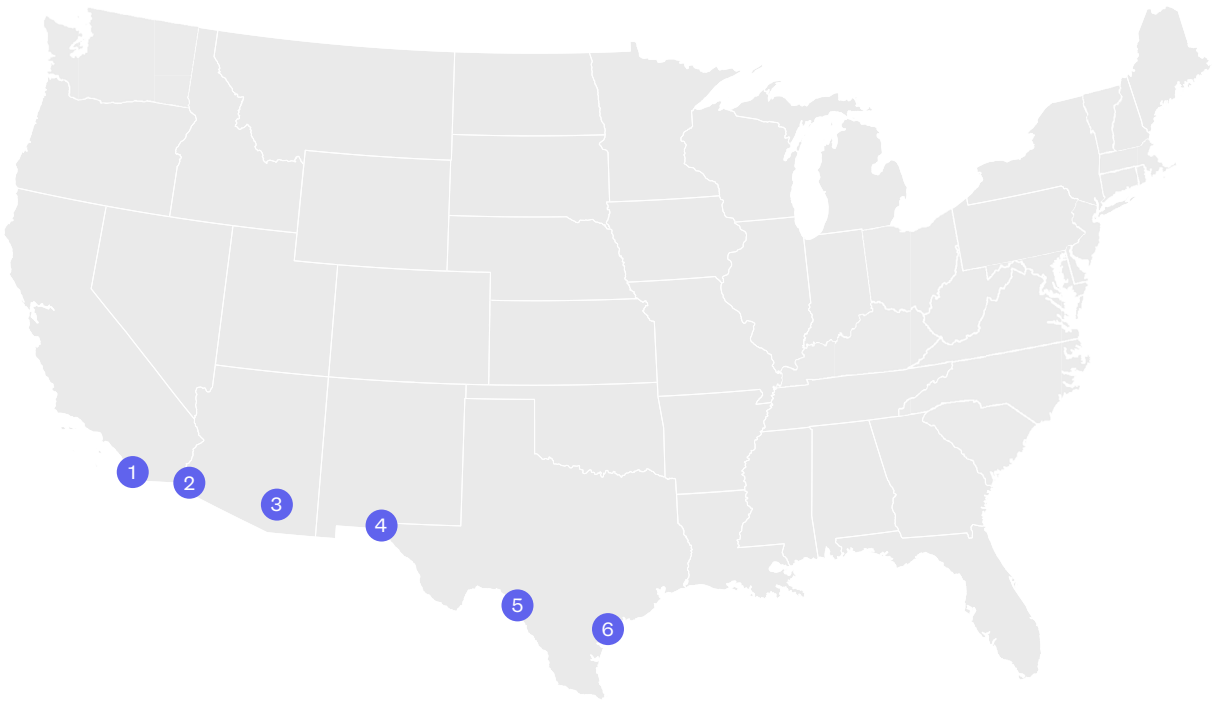
In recognition of the value of multi-agency processing, the FY 2022 omnibus appropriations bill provided $150 million to DHS to construct two permanent facilities near the border. This allocation provides an opportunity to design facilities that can help CBP and ICE better integrate their operations, thereby reducing costs and time spent in CBP custody for individuals while returning agents to other critical duties.[113] It remains unclear where DHS intends to build these new permanent facilities.

Recommendations for Executive Action

Congress's acknowledgment that new permanent infrastructure is needed is a positive development. However, two facilities alone are likely insufficient for current migratory flows. Therefore, we propose that CBP build at least six new facilities in the following Border Patrol sectors:

1. San Diego Sector
2. Yuma Sector
3. Tucson Sector
4. El Paso Sector
5. Del Rio Sector
6. Rio Grande Valley

PROPOSED SIX NEW FACILITIES IN BORDER PATROL SECTORS



Once migrants are taken into CBP custody, the agency should transfer them to one of these regional processing centers for the first step in their journey through the asylum process. These processing centers should be semi-custodial facilities designed to centralize DHS processing of migrants and provide critical education for migrants on the U.S. asylum process and their compliance obligations. Individuals would only be held in custody for necessary initial CBP and ICE processing, and then be released to the non-custodial portions of the facilities for the provision of services and further support.

These facilities must be constructed in a way that provides dignity and humane conditions for all who go through them, with beds, showers, access to phones, hot food, and other similar essentials built into the facility. When a migrant first arrives at a regional processing center, they would be kept in CBP custody for initial processing, including the collection of biometrics, database checks, and the initial interview process by CBP (creation of an I-213). Individuals could be held in DHS custody at this point for a maximum period of 72 hours, or no longer than is necessary to complete initial processing, whichever is shorter. After CBP identifies a person as an unaccompanied child, ORR (co-located at the facility) would carry out any required trafficking screening and begin the sponsorship and placement process for unaccompanied children as soon as possible. Should any child arrive with a family member who is not a parent or legal guardian (thus requiring the child to be designated as unaccompanied), ORR could work to ensure that the accompanying adult is designated the child's sponsor, thereby ensuring no family is separated.

If the person or family indicates a desire to seek asylum, they would be transferred to the non-custodial side of the facility after processing is complete for an orientation about the asylum process, to be carried out by nonprofit organizations. Although this portion of the process would be optional, families and others seeking asylum would be strongly encouraged to remain at the facilities for at least 48 to 72 hours to provide sufficient time for orientation to the U.S. immigration and asylum systems.

Ideally, nonprofits co-located on site would assist people in finding transportation to their ultimate destinations and begin the process of case management. If no such nonprofit can be located, then officials at the center should establish a transportation and case management protocol to assist the most vulnerable to travel to their ultimate destination. For those migrants who do not have an intended location, the federal government should coordinate with receiving communities to ensure that a person can travel to a location where they will be able to get on their feet in a short period of time through the provision of emergency direct assistance. Any contracts issued through this process should be open and go through a standard procurement process, like the process by which Legal Orientation Program providers in ICE detention are contracted.

Notably, if there is no political will for entirely non-custodial processing options post-CBP, under the new asylum procedures regulation some individuals may go through the credible fear process in these facilities. We believe that credible fear screenings carried out at the border are inherently flawed and will likely lead to many individuals with strong asylum claims being prevented from accessing the asylum process. However, if the government should nonetheless move forward with an expansion of credible fear processing at the border in a regional processing center, DHS should at the very minimum ensure that:

- Life and death legal interviews must not take place without counsel. Therefore, all those given credible fear interviews must be provided full counsel for their interview at the earliest moment in the process, not just access to legal orientation. Any person who cannot afford their own counsel should be provided one by the federal government. Attorneys must be permitted in-person access if requested, and virtual access otherwise.
- No credible fear interviews should be carried out without providing the asylum seeker an orientation to the credible fear process and sufficient time to physically and mentally prepare for the interview, which should be at minimum 72 hours.
- If immigration judge review is also carried out at the facilities by EOIR, judges must be physically located at the regional processing centers and carry out the review in person.

- Individuals must be permitted to wear their own clothing and present themselves with dignity throughout the process. CBP should also make every effort to ensure that individuals are not separated from their belongings (within reasonable limits and excluding contraband), given that many migrants arrive at the border while carrying physical evidence relating to their asylum claims.
- DHS must implement a screening process to ensure that individuals with heightened vulnerabilities or mental competency concerns are not forced to go through the credible fear process at the border and are instead given alternate options to access the asylum process.

In the FY 2022 omnibus spending bill, Congress appropriated $150 million for two Joint Processing Centers to be operated by DHS.[114] These facilities are currently intended to be opened in the Del Rio and Yuma sectors. We believe that DHS should model these Joint Processing Centers on the principles we have laid out in this section.

Importantly, in building and operating these facilities, the administration must ensure robust oversight of these facilities and their operations. DHS should task the Office of Immigration Detention Oversight (OIDO) to establish a permanent oversight position at each facility. Similarly, DHS should ensure that OIDO and CRCL are able to provide recommendations during the initial planning phase, and that CRCL continues to monitor the facility.

Recommendations for Congressional Action

The $150 million included in the FY 2022 omnibus required DHS to develop "Department-wide requirements and operating procedures for Joint Processing Centers" and to "design facilities that can help CBP and ICE better integrate their operations." Congress should follow up on this appropriation in subsequent appropriations bills by clarifying the purpose of these joint processing centers to align with the recommendations included in this section, expanding their use beyond CBP and ICE.

In authorizing the construction of these processing centers, Congress must ensure that there is robust oversight of the procurement process and the operation of these facilities. This should include, at a minimum, a requirement that the GAO audit the process of designing and building these facilities and study the operation for the first year. Congress should also require that DHS OIG actively monitor the operation of the facilities in their first year and during subsequent periods, including unannounced inspections. Congress should consider the creation of a formal DHS/NGO working group on regional processing centers to formalize the role of NGO feedback in the planning, construction, and operation of these facilities.

RECOMMENDATION 8

Execute the Termination of Title 42 Once Legally Permitted

Background

Since March 2020, the United States has carried out over 2.5 million expulsions under Title 42,[115] an obscure 1893 public health law that the Trump administration invoked in response to the COVID-19 pandemic.[116] Individuals who are expelled under Title 42 are almost entirely denied a chance to seek asylum or any humanitarian protection, barring a limited exception for individuals who affirmatively and spontaneously assert a fear of torture in the country to which they would be expelled that is deemed reasonable by the processing Border Patrol agent.[117]

Individuals who are expelled under Title 42 are almost entirely denied a chance to seek asylum or any humanitarian protection.

Title 42 has not only had a deleterious impact on the right to asylum, it has also failed as a border management policy. As senior government officials (including the Border Patrol Chief) have acknowledged, Title 42 has led to a massive increase in repeat border crossings.[118] Since Title 42 began, nearly one in every three border encounters was of a person on their second or higher failed attempt to cross the border, accounting for more than 1.25 million repeat border encounters in total.[119] Some individuals have crossed the border dozens of times. Data produced under the Freedom of Information Act reveals that one person was caught and expelled 71 times in 2021, including one 24-hour period where the person was expelled four times.[120] As a result, "encounter" numbers inflated by Title 42 paint a distorted picture of the number of people crossing the border.

Title 42 has also severely impacted the ability of migrants to seek asylum in a safe and orderly manner by restricting access to the ports of entry as a method to seek asylum. Many asylum seekers, facing an indefinite wait for Title 42 to end and unable to remain in dangerous conditions in northern Mexico, choose instead to cross the border and turn themselves in to the Border Patrol. This further increases the strain on DHS and drives up perceptions of chaos.

La Joya, TX, USA - May 26, 2021: A Central American woman and her son who crossed the Rio Grande River to request asylum wait with other families to be processed by the Border Patrol. Photo by Vic Hinterlang.

Ending Title 42 will not only reduce the overall number of repeat crossings, but it will also help restore a functional asylum system that is accessible at the ports of entry. Further extending Title 42, on the other hand, is a guarantee of continued border chaos.

Currently, Title 42 will sunset on May 11, the date on which the COVID-19 public health emergency is set to expire.[121] However, the GOP states whose lawsuit kept Title 42 in effect have indicated that they intend to take legal action to prevent the Title 42 from terminating on that date.[122]

The Biden administration has indicated that, when Title 42 terminates (on May 11 or a future date), it intends to surge resources to the border to increase Title 8 processing of asylum seekers. Specifically, the administration plans to significantly increase the use of expedited removal, and institute a new regulation creating a "rebuttable presumption" against asylum for any individual (1) who does not enter (a) at a port of entry via CBP One or (b) through a parole program and (2) who has not previously applied for and been denied asylum in a transit country.[123] Although the administration has repeatedly rejected parallels to the Trump administration's unlawful 2019 "asylum transit ban," the proposed regulation mirrors the Trump-era ban in many significant ways.[124]

In January 2023, the Border Patrol conducted a test of post-Title 42 processing for Mexican nationals which involved the resumption of pre-expedited removal "voluntary return" practices from the 1990s, in which "approximately 11,000" Mexican nationals were offered the option of being placed into full removal proceedings (likely while detained) or the chance to voluntarily return to Mexico without receiving a deportation order.[125] Reportedly, only 292 individuals declined voluntary return.[126] CBP has previously labeled voluntary returns a "least effective and efficient" deterrence policy,[127] yet in practice it would allow the administration to mostly replicate the effect of Title 42 for Mexican nationals.

Recommendations for Executive Action

Despite the impending end to Title 42, there is bipartisan concern that DHS is not ready for its termination, which has led members of Congress to offer legislation delaying the end of Title 42 until DHS is operationally

ready to transition back to normal immigration processing.[128] While not all concerns may have been offered in good faith, the administration should work to address any lingering concerns by pursuing and allocating further funding through the FEMA EFSP and Shelter and Services Program to provide critical humanitarian and logistical support in receiving communities and at the border and beyond.

In preparation for Title 42's end, the administration should expand international actions taken against smuggling networks and other bad actors who prey on vulnerable migrants, as well as step up work to address dis- and misinformation. It will also be imperative to implement the previous recommendations for increased processing capacity at the ports of entry and elsewhere, to ensure that overcrowding is kept to a minimum and CBP's normal operations are not disrupted.

Once Title 42 is lifted, there may be a significant but temporary increase in arrivals, given the current number of migrants waiting south of the border. To prepare for this temporary increase, DHS should arrange for decompression flights and buses away from the border to receiving communities, engaging in full and transparent coordination with those communities.

Importantly, asylum must not be sacrificed on the altar of "bringing numbers down." The Biden administration must not adopt the proposed asylum transit ban or any other harsh anti-asylum measure in response to the end of Title 42. Similarly, the Biden administration should not return to rapid asylum adjudication while in detention at the border (including any version of the Trump-era Prompt Asylum Claim Review or Humanitarian Asylum Review Programs), something which began on a pilot basis in April 2023.[129] Nor should it restart family detention, as other reports have indicated it is considering.[130]

Recommendations for Congressional Action

Congress should consider providing supplemental appropriations to CBP, with appropriate safeguards, to address resource constraints faced by the Biden administration in the leadup to Title 42's termination. The resource demand on the agency is likely to be significant, and DHS's finances are reportedly strained already.[131] The agency will likely need to hire a significant number of contractors for transportation, medical care, and other necessities, at considerable cost. A supplemental funding bill could ensure that CBP can afford these measures without a disruption to other vital agency missions.

RECOMMENDATION 9

Fund Representation

For Individuals Facing Deportation Who Cannot Afford to Pay a Lawyer

Background

The asylum process is complicated and difficult even for the most well-educated layperson to understand. Asylum seekers themselves often struggle to navigate the system. Many individuals with meritorious claims are denied asylum solely because they were forced to proceed without legal representation. Representation alone can significantly increase the chance that a person wins their case.[132] Unfortunately, as of February 2023 just 40.6 percent of respondents in removal proceedings were represented by a lawyer.[133] And while increased case management services for asylum seekers may help those who can't afford a lawyer find pro bono or nonprofit attorneys, referrals aren't helpful if those lawyers have no capacity to take additional cases.

40.6%

of respondents in removal proceedings were represented by a lawyer as of February 2023.

Even the act of filing an asylum application itself can be difficult without a lawyer. For individuals who are not placed through the Biden administration's new asylum program, filing an application requires completing Form I-589, Application for Asylum and/or Withholding of Removal, in English, and generally within the first year of arrival. The difficulty of completing this task without a lawyer is indicated by the fact that 78 percent of individuals who successfully file an asylum application in removal proceedings are represented by counsel.[134]

Access to counsel also serves important governmental interests. It has been shown to ensure compliance with obligations imposed on individuals released at the border, such as appearing in court.[135] It can reduce costs to the government by decreasing the need for continuances while immigrants seek counsel or prepare applications, reducing the overall number of hearings necessary to bring a case to completion.[136] Access to counsel can also help migrants and receiving communities, by providing people a powerful advocate on their side who can help them navigate unfamiliar bureaucratic systems. When combined with increased case management services as discussed above, access to counsel will help migrants participate fully in the asylum process while maintaining a higher level of stability in their personal lives.

Recommendations for Executive Action

In 2022, the Biden administration announced that it would expand grants through ORR for direct legal representation for unaccompanied children released from custody. These grants will allow the administration to ensure that thousands of children who might otherwise be unable to find a lawyer will be able to obtain one. As this program ramps up through 2023 and beyond, the government should carefully study its empirical effects and ensure that any successes are tracked and incorporated into future counsel programs.

The Biden administration should consider a similar pilot program for vulnerable individuals in immigration court. This could potentially occur through an expansion of the National Qualified Representation Program which currently provides limited representation for individuals held in detention who have mental capacity issues. The goal should be to build greater support for direct representation in immigration court through a meaningful study of the benefits and costs of providing such representation. We anticipate that it will cost the federal government less money in the long term to provide funded counsel for indigent immigrants than to have cases pending for long periods of time and requiring multiple hearings before any ultimate decision is made.

DHS and the Department of Justice should consider proactively reaching out to the private sector to build support for pro bono counsel models. Similarly, the agencies should work to support state and local governments which are considering adopting their own paid counsel programs.

Recommendations for Congressional Action

Unfortunately, there are simply not enough immigration lawyers currently available to take cases of newly arrived asylum seekers, especially pro bono or low bono.[137] Government-funded counsel for indigent immigrants is the only viable option to both increase the available supply of immigration lawyers and ensure that asylum seekers are able to navigate the complicated asylum system effectively. Congress should, at minimum, create a pilot program to provide vulnerable individuals in removal proceedings access to counsel.

Once a network of legal services providers has been established through this pilot program, Congress should increase funding for the program to build capacity and eventually create a nationwide access to counsel program for individuals facing removal who cannot afford a lawyer. In the interim, states and local governments should continue to innovate by establishing their own programs guaranteeing a right to counsel, such as in New York City and Colorado.

Government-funded counsel is not a panacea. Structural issues in asylum law and the removal system will continue to impede asylum seekers' ability to achieve safety. However, given the severe consequences of an erroneously denied asylum application (and subsequent removal order), the United States should work to ensure that all individuals have a fair day in court.

RECOMMENDATION 10

Establish a FEMA-Based Emergency Migration Fund

Background

One of the United States' biggest challenges in responding to extraordinary migration events at the border has been a lack of funding, especially regarding transportation and care of asylum seekers and unaccompanied children.[138] Agencies have been required to spend significantly more funding than necessary to build temporary facilities, hire contractors, and respond to increased migration through emergency spending that cuts into the agency's normal budget priorities.

While EFSP and the new Shelter and Services Program provide flexible funding sources for NGOs and state and local governments, no similar fund exists for the federal government itself. This has required DHS to repeatedly shift money from other sources to fund emergency requirements or go to Congress seeking emergency funding. Any additional Congressional funding is often delayed and subject to politicization, and thus less flexible than necessary.

Concern about the agency's consistent trouble accessing funding during times of high migration is not new, and some proposals have already been put forward to address this issue. For example, in 2019, the Bipartisan Policy Center proposed the creation of an "Immigration FEMA," which would not only permit the government to unlock specific funding during times of high migration but would also unlock other immigration-related authorities to expedite asylum processing.[139]

Recommendations for Congressional Action

To address these fiscal uncertainties for DHS and ORR, Congress should create an emergency migration fund that permits FEMA to distribute emergency funds to local governments, NGOs, and possibly DHS or the Department of Health and Human Services itself when necessary. This fund, which should be renewable by Congress, will ensure that the agencies are no longer required to return to Congress for emergency supplemental appropriations on a routine basis. This will promote longer-term stability at DHS for migrant processing and will help agencies switch from a reactive position to a proactive one.

However, unlike the proposed "Immigration FEMA," this fund should have restrictions to ensure that it is not used for detention, enforcement, deportations, or any form of expedited asylum processing. Instead, these funds should only be used for humanitarian processing, transport, and other similar measures. Congress should require DHS to certify that the funds are not used for supplemental enforcement, but instead to respond to increased processing challenges.

RECOMMENDATION 11

Create New Legal Pathways to Immigration

Background

People choose to cross the southern border for a wide variety of reasons. Many are fleeing dangerous situations in their homelands and view this country as a place where they can be safe, even though the asylum system is a narrow one and the protections it offers excludes many people who legitimately fear for their lives. Others may not have a fear of persecution in their home countries, but instead are just seeking a better life and opportunity in the United States—something that has brought tens of millions of people to this country over the last century.

But would those individuals choose to cross the border irregularly if they had another option? Studies have consistently shown that increased access to alternative migration avenues to immigrate through lawful channels will reduce demand to migrate through irregular pathways.[140] However, for the overwhelming majority of migrants seeking to come to the United States, no legal pathways are available.

For the overwhelming majority of migrants seeking to come to the United States, ***no legal pathways are available****.*

Unfortunately, despite the urgent need for reforms, the United States has not made any major changes to the legal immigration system since the Immigration Act of 1990. In the decades since then, backlogs and delays have proliferated throughout the system. As a result, the small number of people who qualify to obtain immigration status in the United States often must spend thousands of dollars and years of effort to obtain permission to immigrate. The United States will not thrive if we continue to use a 20th century immigration system to deal with 21st century problems. Faced with a lack of legal pathways, it is no surprise that many people choose to migrate through other means.

Targeted parole programs and alternate pathways can reduce the need for irregular migration and benefit individuals who are seeking safety or a better life in the United States but do not have any method of accessing the country other than the asylum system at the southern border. This has been demonstrated by the success of programs like Uniting for Ukraine. In the first seven months after the program was unveiled in April 2022, more than 171,000 Americans agreed to sponsor a Ukrainian for parole, 121,000 applications were granted, and 85,000 Ukrainians entered the country as parolees.[141]

Further building on that success, in January 2023 the Biden administration announced a new program with equal promise for the private sponsorship of refugees, known as the Welcome Corps.[142] This concept is not new; since 1979, Canada has run its Private Sponsorship of Refugees program to permit community groups and Canadian citizens to volunteer to provide up to a year of financial and integration support to new refugees.[143] The Welcome Corps will complement the traditional U.S. refugee resettlement process by allowing groups of at least five individuals to individually sponsor a refugee already approved under the U.S. Refugee Admissions Program, agreeing to financially support them and help them adjust to life in the United States during their first year.[144]

However, parole or formal refugee status should not become a substitute for asylum. In January 2023, the Biden administration announced a reciprocal agreement with Mexico allowing DHS to expel up to 30,000 Venezuelans, Cubans, Haitians, and Nicaraguans per month to Mexico under Title 42, in exchange for the United States agreeing to admit 30,000 of those nationals per month through parole.[145] This followed a more limited program aimed specifically at Venezuelan migrants which began in October 2022. Under both programs, any individual who crosses the border of Panama, Mexico, or the United States without permission is barred from seeking parole.[146]

The Biden administration has touted a 97 percent drop in Border Patrol crossings for individuals subject to these new restrictions.[147] It remains to be seen whether this impact will be long-term.

As shown by Figure 5 the impact of this "carrot and stick" approach on Venezuelans has been significant. Border Patrol apprehensions of Venezuelan migrants dropped 96 percent from 33,749 in September 2022 to 1,451 in January 2023. However, the overall number of Venezuelans encountered remained steady at approximately 15,000 from November 2022 through February 2023 as Venezuelans increasingly sought asylum at ports of entry or arrived through the humanitarian parole program. This has largely shown the success of the program at reducing irregular entries, while maintaining alternate paths for arrivals.

UNITING FOR UKRAINE PROGRAM - CASE STUDY

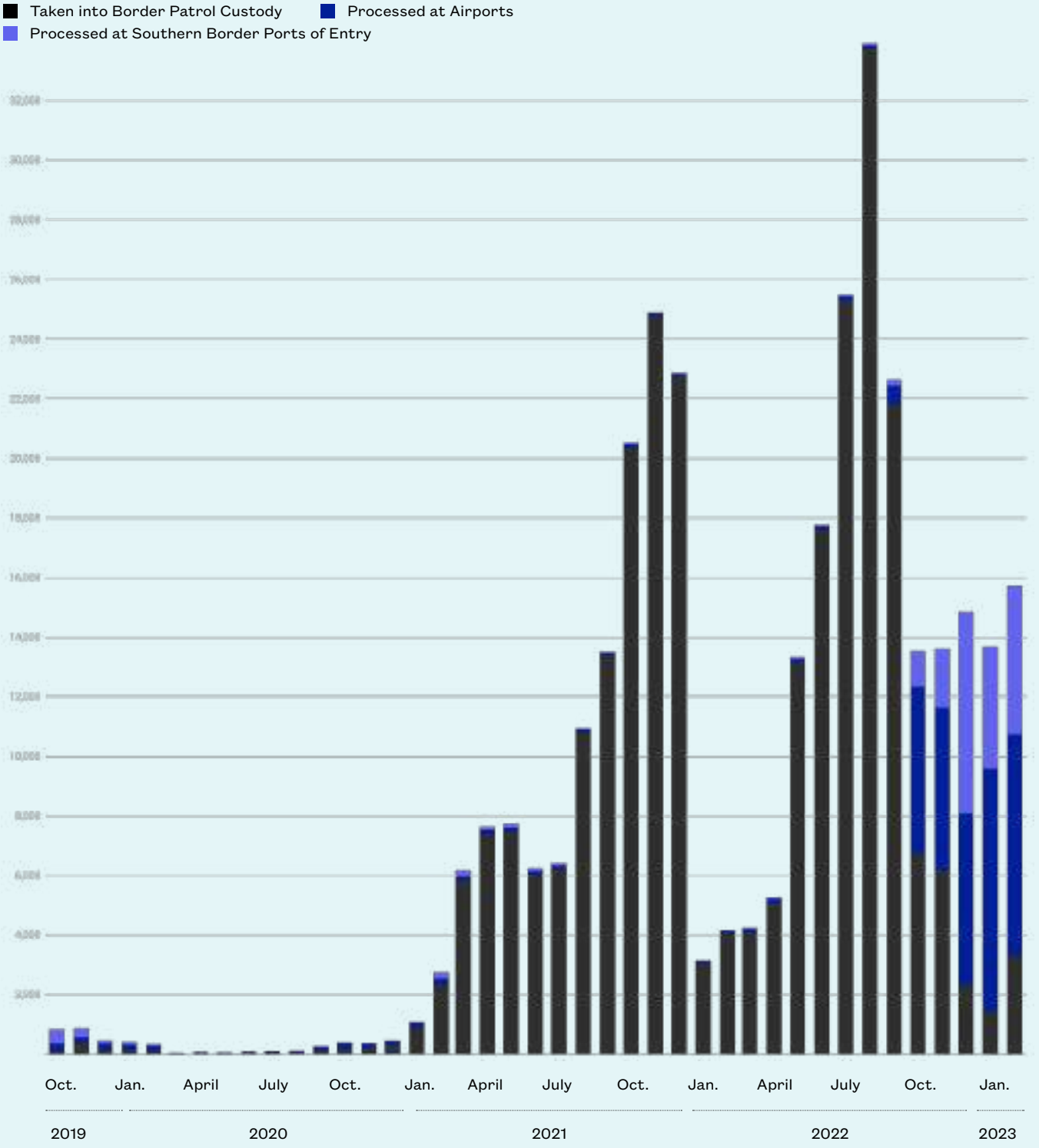
From April through November 2022,

171,000
Americans agreed to sponsor a Ukrainian for parole

121,000
Applications were granted

85,000
Ukrainians entered the country as parolees

FIGURE 5: ENCOUNTERS OF VENEZUELAN MIGRANTS BY LOCATION OF PROCESSING



Source: U.S. Customs and Border Protection, "Nationwide Encounters," https://www.cbp.gov/newsroom/stats/nationwide-encounters.

In January 2023, a coalition of Republican-led states sued the Biden administration, seeking to terminate the program as unlawful.[148] As a result, the long-term health of the program remains considerably uncertain.

Recommendations for Executive Action

The Biden administration should continue to expand and operate humanitarian parole programs to offer individuals alternate paths to enter the United States, without making these pathways contingent on Title 42 or other restrictions on migrants. The Biden administration should consider expanding parole programs for other purposes that provide significant public benefit, which may involve exploring proposals to create dedicated partnerships with state governments to provide opportunities for immigrants to come to the United States in specific areas with legitimate labor needs.[149] By creating options to migrate to the United States without having to travel through incredibly dangerous territories controlled by TCOs, the government can simultaneously starve these organizations of potential revenue while reducing irregular migration and offering a safer and more stable method for individuals to come to the United States to seek protection or simply a better life.

However, parole cannot be the only option, as it is vulnerable to legal and political challenges and can be terminated at any time. DHS should also expand the availability and oversight of temporary work visas, including the H-2B and H-2A visa programs. This would allow more individuals to temporarily migrate to the United States for work prior to returning to their home countries. In December 2022, DHS expanded overall H-2B visas by an additional 64,716 visas for FY 2023.[150]

DHS should continue to increase the overall number of H-2B visas available in FY 2024 and continue to target those visas to countries with the highest levels of arrivals at the U.S.-Mexico border. In doing so, it should develop strategies to educate potential beneficiaries of this legal pathway and provide support for those who wish to come to the United States and who may qualify under the H-2B category to ensure full utilization of any expansion.

Recommendations for Congressional Action

To offer an alternative to irregular migration, the United States should pursue a twofold strategy to increase both temporary and permanent pathways for legal immigration. Congress should create additional temporary worker programs that would permit individuals to travel to the United States temporarily to work legally (and include strong worker protections). Congress should also work to clear longstanding backlogs in the immigrant visa process that prevent individuals from moving permanently to the United States.

Providing viable means for all types of migrants to legally come to the US would reduce irregular migration while also creating conditions for a boost to the U.S. economy.[151] At a time of significant labor shortages in the United States, expanding access to legal immigration would be a strong net benefit to the United States. And without congressional action, there is only so much that any one president can do.

Temporary parole programs should also be replaced with more permanent programs authorized by Congress. Without any kind of path to permanent legal status, those individuals who enter through a temporary program are forced into a state of limbo, at a net cost to the individuals and to the United States. However, parole remains an important flexible authority for any presidential administration in the future to deal with migration issues, so Congress should ensure that this authority remains available to the executive branch and expansive enough to permit the kind of parole programs currently in operation.

Congress should also act to provide a permanent path to legal status for those individuals who are already in the country either undocumented or as part of a temporary humanitarian program. At a minimum, Congress should act to lift the current 180-day waiting time for work authorization for individuals who apply for asylum, as well as provide a statutory means by which any individual in the country on a humanitarian status can apply for work authorization.

RECOMMENDATION 12

Expand Domestic and International Refugee and Asylum Processing Capacity in Latin America

With the Support of UNHCR

Background

The United States is not the only nation that has witnessed a significant expansion of asylum and refugee applications in recent years. In 2021, Mexico recorded the highest number of asylum applications in the history of the country.[152] Similarly, Costa Rica recorded an unprecedented increase in Nicaraguan asylum seekers in 2021, as political oppression in that country has driven thousands to leave and seek safety elsewhere.[153] In South America, more than seven million refugees have left Venezuela in recent years, with millions remaining in surrounding countries under various forms of legal status.[154] Colombia is currently hosting almost 2.5 million Venezuelan refugees, with 700,000 arriving in the last two years alone.[155]

28%

of Venezuelan refugees living in Colombia arrived within the last two years.

In June 2022, the United States signed the Los Angeles Declaration on Migration and Protection, a historic hemispheric agreement reached with 21 different nations.[156] The declaration acknowledges that "irregular international migration requires a regional approach," and emphasizes a "spirit of collaboration, solidarity, and shared responsibility among States."[157] However, despite talk of "a shared approach," on a per capita basis the United States accepts far fewer refugees than many other countries in the region.

Currently, the Biden administration has committed to accepting just 20,000 refugees from Latin America and the Caribbean in FY 2023 and FY 2024.[158] Through funding for the United Nations and the International Organization for Migration, the United States does provide some support to other countries which house migrants and refugees. However, "migration assistance" often takes the form of efforts to enhance border security and immigration enforcement measures in transit countries.

Recommendations for Executive Action

Unlike the United States' deterrence-first policies, other countries have offered temporary residence and a path to legal status for millions of refugees residing in their countries.[159] The State Department, or another relevant government agency such as the U.S. Agency for International Development, should fund and support similar actions in countries throughout the region which would permit millions of people leaving their countries due to displacement to seek protection without having to make the long journey here. The provision of basic shelter and services to refugees in the region would help to maintain the stability of surrounding countries and then allow refugees to return to their original homes more easily when the conditions forcing them to leave have been resolved. The federal government can and should increase funding for refugee integration efforts in countries throughout the region, working with UNHCR to provide viable alternatives to traveling to the United States.

However, these efforts must not detract from the United States' ongoing commitment to accept more refugees. As the Biden administration works to meet its ambitious refugee resettlement goals, the State Department should work with UNHCR to expand access to the U.S. Refugee Admissions Program (USRAP) in Latin America. Because U.S. refugee processing takes years, investing in the expansion of USRAP processing in Latin America will be necessary to increase capacity to carry out refugee determinations in the region.

RECOMMENDATION 13

Bring Asylum Law into the 21st Century

Background

Modern asylum and humanitarian protection laws are built off the framework of the 1951 United Nations Convention Relating to the Status of Refugees.[160] Conceived in the years following the Holocaust, the Refugee Convention and the later 1967 Protocol Relating to the Status of Refugees[161] define asylum and refugee protection narrowly to include only those individuals who are subject to persecution on account of "race, religion, nationality, membership in a particular social group, or political opinion."[162] When the United States codified asylum into law in the Refugee Act of 1980, it adopted this framework, limiting asylum only to individuals who fall within those categories.[163]

In the modern era, there are many people seeking humanitarian protections in the United States who may not qualify under this narrow definition, either because of the identity of their persecutors or because the harms they are fleeing do not fall within this framework (as interpreted by administrative and federal courts). Under domestic asylum law, immigration judges may simultaneously conclude that a person is likely to be killed if deported to their home country, and that the person nevertheless does not qualify for asylum because they will be killed for the wrong reason, or by the wrong person.

Other countries have recognized these gaps and adopted expanded definitions of refugee status. For example, 14 countries, including Mexico, have adopted provisions of the 1984 Cartagena Declaration of Refugees which includes additional grounds for refugee protections for individuals who have "fled their country because their life, safety, or freedom was threatened by generalized violence, foreign aggression, internal conflict, massive human rights violations, or other circumstances that have gravely disturbed public order."[164]

Recommendations for Executive Action

Given the shifting nature of humanitarian protection applicants arriving to the United States in the 21st century, it is time for this country to lead the world once again by expanding its definition of refugee status to include a broader group of people fleeing harm, including survivors of gender-based violence.

A current or future presidential administration could accomplish some of this task through regulations adopting an expanded definition of the term "particular social group," a famously nebulous term of art which incorporates everything from sexual orientation[165] to clan membership[166] to status as a victim of domestic violence unable to leave a marriage.[167]

In February 2021, President Biden issued an executive order calling for DHS to propose within 270 days a regulation to redefine "particular social group" to better align with international standards.[168] Unfortunately, two years later, this regulation has yet to be published. We

strongly urge the Biden administration to finally publish this regulation and expand the definition of particular social group to include grounds of protection for individuals facing gender-based violence, among other groups.

Recommendations for Congressional Action

However, regulatory changes can only go so far. Congress should also act to either expand the qualifications for asylum or adopt alternate forms of humanitarian protections that address growing issues like global climate change. At the same time, Congress should lift procedural obstacles to a fair day in court imposed as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), including provisions of law stripping federal courts of their ability to hear legal challenges to many aspects of the enforcement and removal system that affect asylum seekers.[169]

Current asylum and immigration laws are too narrow and often fail to protect the rights of the most vulnerable. Without major legal changes to address these issues, presidential administrations can only do so much. In order to restore a rights-respecting process at the border and for asylum seekers in general, Congress should expand the 1980 Refugee Act and lift the draconian limitations on judicial review included in IIRIRA.

Conclusion

Over the last decade, the number of people displaced from their homes has grown to record levels throughout the entire world, with 31.7 million refugees and asylum seekers and 53.2 million internally displaced people globally by the end of 2021.[170] Climate change and extreme weather events are more likely than not to further increase the number of displaced people. The United States is far from the only, or even the most common, country in which displaced people are seeking refuge in the 21st century. But despite the tremendous power and wealth of the federal government, and the importance of the country's self-image as a haven for the dispossessed and a "beacon of freedom" to people around the world, the United States has so far abdicated leadership in facing this challenge.

We have spent the last decade doubling down on ineffective and increasingly cruel deterrence-based policies rather than responding to the changing realities at the border. Billions of dollars that could have been spent on building adjudicatory capacity has instead been spent on border walls and other measures which have completely failed to address the underlying problems.

If we change our approach—if the United States abandons the deterrence-focused mindset in favor of managing humanitarian flows in safe, fair, efficient, and predictable ways—we can regain that leadership. Not only will the United States better manage its own borders, but it can demonstrate to other countries what a functional system looks like — in the long run, giving asylum seekers more options to resettle in than they currently have.

Going forward, we must respond to increased migration through a massive increase in asylum processing at ports of entry, additional support to CBP's humanitarian processing between ports of entry, backlog reduction throughout the system, and funding for USCIS and the immigration court system to expand access to counsel and protect due process while providing an orderly and efficient pathway to protection. In the medium and long term, we must focus on building permanent humanitarian processing capacity at the southern border, further expanding asylum processing within USCIS to prevent the growth of new backlogs, creating flexible funding for emergency migration events, increasing legal migration pathways, and addressing the root causes of migration.

Key to all these solutions is a need to be flexible and to respond from a processing-first viewpoint, designed to reduce the arbitrariness and confusion that currently exist at the border. Rather than focus only on temporary reductions of the number of people crossing the border, we need to address the longstanding shortfalls of the system and be prepared to accept higher numbers of migrants in a humane and orderly fashion.

The United States has done much harder things than this. The key is acknowledging the problem we are trying to solve: rebuilding a functional humanitarian system at the border and beyond.

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Mexico 2023 Human Rights Report

Executive Summary

There were no significant changes in the human rights situation in Mexico during the year.

Significant human rights issues included credible reports of: unlawful or arbitrary killings, including extrajudicial killings; enforced disappearance; torture or cruel, inhuman, or degrading treatment or punishment by security forces; harsh and life-threatening prison conditions; arbitrary arrest or detention; serious problems with the independence of the judiciary; serious restrictions on freedom of expression and media freedom, including violence against journalists and enforcement of or threat to enforce criminal libel laws to limit expression; serious government corruption; extensive gender-based violence, including domestic or intimate partner violence, sexual violence, workplace violence, child, early, and forced marriage, femicide, and other forms of such violence; crimes involving violence or threats of violence targeting lesbian, gay, bisexual, transgender, queer, or intersex persons; crimes involving violence or threats of violence targeting persons with disabilities; and significant or systematic restrictions on workers' freedom of association, including crimes of violence and intimidation against workers.

The government generally took credible steps to identify and punish officials who may have committed human rights abuses.

Criminal elements, including local and transnational gangs and narcotics traffickers, were significant perpetrators of violent crimes and committed acts of homicide, torture, kidnapping, extortion, human trafficking, bribery, intimidation, and other threats, resulting in high levels of violence and exploitation. The government investigated and prosecuted some of these crimes, but the majority remained uninvestigated and unprosecuted.

Section 1. Respect for the Integrity of the Person

a. Arbitrary Deprivation of Life and Other Unlawful or Politically Motivated Killings

There were several reports that government entities or their agents committed arbitrary or unlawful killings, including extrajudicial killings, during the year.

On February 26, members of the Secretariat of National Defense's (SEDENA) 16th Motorized Calvary Regiment shot at a vehicle in Nuevo Laredo, Tamaulipas, killing five civilians and wounding one other. On April 10, a civilian federal judge ordered the detention of four SEDENA soldiers on charges of attempted homicide in the incident. Additional SEDENA soldiers could face lesser charges for not preventing the incident.

On June 6, a media outlet published an article and video in which soldiers appeared to commit extrajudicial killings of five civilians in Nuevo Laredo on May 18. According to sources, the civilians, who were members of the transnational criminal organization Cartel del Noreste, shot at the soldiers in a vehicle chase. SEDENA confirmed the soldiers were members of the 3rd Special Forces Section. Sixteen soldiers, including the commanding officer, were confined in a military prison while military and civilian judicial authorities conducted investigations.

On March 18, authorities found the body of Jose Portillo Gil "El Chueco," who had been shot and killed in Sinaloa. Portillo Gil allegedly killed two Jesuit priests and a tour guide in Cerocahui, Chihuahua State, in June 2022. As of October, authorities had not arrested the individuals who killed Portillo Gil, and the investigation continued.

The Mexican Center for Environmental Law 2022 report noted a rise in violence against environmental defenders, who were victims of intimidation, kidnapping, and homicide. In April, attackers kidnapped and killed environmental defender, activist, and legal representative Naua don Eustasio Alcalá in Michoacán State. Alcalá had advocated against mining exploitation in his community San Juan Huitzontla, Michoacán, without prior consultation. The community previously obtained a favorable ruling that suspended mining concessions in 2022.

On October 25, a judge sentenced 11 security officials to 50 years in prison

for the killing of 19 persons, many of whom were migrants, in Camargo, Tamaulipas State, in 2021. The officers were found guilty of aggravated homicide, abuse of authority, and committing crimes while performing administrative duties.

b. Disappearance

There were reports of numerous enforced disappearances by criminal groups, sometimes with allegations of collusion with authorities. Investigations, prosecutions, and convictions of enforced disappearance crimes were rare. Enforced disappearance was a persistent problem throughout the country, especially in areas with high levels of cartel- or gang-related violence.

Federal and state databases tracking enforced disappearances were incomplete and had data-sharing problems; forensic systems were highly fragmented among the local, state, and federal levels; and the volume of unsolved cases was far greater than the forensic systems were capable of handling. In its data collection, the government often merged statistics on forcibly disappeared persons with missing persons not suspected of being victims of enforced disappearance, making it difficult to compile accurate statistics on the extent of the problem.

On August 24, the Interior Secretariat's National Commission for the Search of Persons published the official registry of victims of enforced

disappearance, totaling 113,188 victims between 1964 and August 2023. The registry, published in 2013 by the Enrique Peña Nieto administration, was removed from public access in 2019 after President Andrés Manuel López Obrador classified the information as "reserved." The registry reported police or military members had deprived 733 registered victims of liberty since the registry was first published, including 33 others who were seen in a public ministry agency before their enforced disappearance. The registry also reported 522 migrants disappeared while traveling through the country.

The government made efforts to prevent, investigate, and punish acts of enforced disappearance involving government agents. From January to August 2022, the National Human Rights Commission (CNDH) received seven complaints accusing government agents of enforced disappearances, including three against the army and three against the Attorney General's Office.

In August 2022, Undersecretary of Human Rights Alejandro Encinas released a report confirming the 2014 enforced disappearances of 43 students from the Ayotzinapa Rural Teachers' College in Iguala, in the state of Guerrero, was a "state" crime. The report found various local, state, and federal officials – by commission or omission – were involved in carrying out or covering up crimes in conjunction with the atrocities. Following several arrests in 2022, the Attorney General's Office reissued 17 arrest warrants in

June for additional suspects who were previously suspended in October 2022. Sixteen warrants were issued for military personnel and one for a suspect who had asylum in a neighboring country. On June 25, authorities arrested Gualberto Ramírez, who oversaw the initial investigation of the students' enforced disappearances in 2014 as the former head of the antikidnapping unit of the former Special Prosecutor's Office for Organized Crime Investigation. Ramírez was charged with torture and investigation mismanagement. On July 6, the Attorney General's Office arrested retired General Rafael Hernández Nieto, the second-highest-ranking detainee and former commander of the 41st Infantry Battalion in Iguala, for enforced disappearance and participation in organized crime, but on August 22, a judge released him. As of November, no suspects had been convicted for their involvement.

In July, the Interdisciplinary Group of Independent Experts, appointed by the Inter-American Commission on Human Rights (IACHR), presented its sixth and final report on Ayotzinapa. The report determined the 43 students were not involved with criminal groups and stated members of the former Center for Investigation and National Security, former Prosecutor General's Office antikidnapping unit, SEDENA, and the Secretariat of the Navy withheld key information during the investigation, including their presence at the scene when the students were forcibly disappeared. The report determined SEDENA refused to comply with President López Obrador's order to provide crucial information, including telephone and message

records.

On September 27, Undersecretary Encinas presented the Presidential Ayotzinapa Truth and Justice Commission's second report, which outlined areas controlled by criminal organizations in Guerrero and pointed to possible student locations. Encinas stated there was no evidence linking any of the students to the criminal organization Guerreros Unidos and confirmed SEDENA's involvement in the students' enforced disappearance.

The National Search Commission reported carrying out 5,194 exhumations as of July 21; 2,404 bodies were identified and 1,437 were returned to their families. In May, authorities reported finding 30 clandestine graves in Tecoman, Colima, that contained at least 53 bodies and hundreds of bone fragments.

Since 2020, perpetrators killed seven relatives of disappeared victims in alleged retaliation for their efforts to find family members. On May 2, Teresa Magueyal, who was searching for her son, was killed in Guanajuato. The Attorney General's Office opened an investigation into the case, but no suspects were charged as of October.

On August 21, government authorities reportedly violently removed relatives of disappeared persons who participated in a protest outside the Queretaro Attorney General's Office. The protesters demanded the government allow access to government services, including Forensic

Medical Services and Social Reintegration Centers, to search for the disappeared.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, and Other Related Abuses

Federal law prohibited torture or cruel, inhuman, or degrading treatment or punishment, as well as the admission of confessions obtained through illicit means as evidence in court. Despite these prohibitions, there were reports that security forces tortured detainees.

Civil society groups reported torture was a generalized practice. In 2022, the Mexican Commission for the Defense and Promotion of Human Rights stated that human rights organizations received approximately 9,500 complaints for torture and inhuman treatment. Victims most often accused municipal police, public security, and state attorney general's offices of torture or inhuman treatment. Between January and April, the CNDH registered 20 complaints of torture and 94 of arbitrary detention committed by personnel in the Secretariat of Security, National Guard, Attorney General's Office, armed forces, and the National Migration Institute.

There were accusations of sexual abuse committed by authorities during arrest and detention. In March, authorities published new guidelines for the Mechanism for Monitoring Cases of Sexual Torture against Women, in response to a recommendation from the Inter-American Court of Human

Rights. Civil society organizations reported that despite publishing the new guidelines, the mechanism was not operating sufficiently, administrators had met only once, and no new cases had been reviewed as of July 31.

On July 13, authorities detained Adolfo Karam, the former judicial police director of Puebla, accused of torturing Lydia Cacho, who exposed former Puebla Governor Mario Marín and several business leaders' involvement in a child sex trafficking ring in 2005. Marín remained in detention as of October.

Impunity for torture was prevalent among the security forces. Nongovernmental organizations (NGOs) stated that authorities failed to investigate torture allegations adequately. As of August 14, the Attorney General's Office was investigating more than 2,600 torture-related inquiries and conducting 700 investigations.

Prison and Detention Center Conditions

Conditions in prisons and detention centers were often harsh and life threatening.

Abusive Physical Conditions: According to the NGO Legal Assistance for Human Rights, some federal and state prisons were grossly overcrowded. The state of Mexico had the highest rate of overcrowding at 242 percent capacity.

Authorities reportedly transferred individuals from one prison to another without prior notice and without the possibility of prisoners or family members challenging the transfers. Women inmates said transfers to a prison in the state of Morelos left them without the possibility of receiving visits. The CNDH and the National Mechanism reported human rights abuses of women in that prison, particularly their rights to physical and mental health, and made recommendations to prison authorities to reduce the prison population and provide adequate health, education, work, and exercise resources for inmates. Access to sleeping and medical areas was limited.

Civil society organizations stated that individuals in migratory detention reported cases of threats and degrading treatment, spoiled food, generally bad conditions, and sensory deprivation, deprivation of vital needs, and difficulty sleeping due to lights being turned on full time.

On March 27, 40 migrants died and 27 were seriously injured after a fire at a migrant detention center in Ciudad Juarez, Chihuahua, administered by the National Institute of Migration. The fire allegedly started after detained migrants set fire to their mattresses to protest overcrowded detention conditions, lack of sufficient food, and water shortages. Video footage showed migration agents failed to unlock doors of the holding cell where migrants were trapped.

Criminal groups reportedly continued to oversee illicit activities from within

penitentiaries, and rival drug cartel members often fought in prisons. In January, during a violent prison break, armed criminal gunmen opened fire in a Ciudad Juarez prison, resulting in the deaths of seven prisoners, 10 guards, and two gunmen. During the confrontation, 25 prisoners escaped.

The CNDH found many prisons did not provide sufficient care for elderly persons, women and minors living with them, Indigenous persons, persons with disabilities, persons with HIV or AIDS, and lesbian, gay, bisexual, transgender, queer, or intersex (LGBTQI+) persons.

Administration: Authorities did not always conduct investigations into credible allegations of mistreatment.

Independent Monitoring: The government permitted independent monitoring of prison conditions by the International Committee of the Red Cross, the CNDH, and state human rights commissions.

d. Arbitrary Arrest or Detention

Federal law prohibited arbitrary arrest and detention and provided for the right of any person to challenge the lawfulness of their arrest or detention in court; however, the government sometimes failed to observe these requirements.

Arrest Procedures and Treatment of Detainees

The constitution allowed any person to arrest another if a crime was

committed in their presence. A warrant for arrest was not required if an official detained a person in the act of committing a crime. Bail was available for most crimes, except 22 crimes, including violent offenses, and crimes involving criminal groups. In most cases, the law required detainees to appear before a judge for a custody hearing within 48 hours of arrest, during which authorities had to produce sufficient evidence to justify continued detention. This requirement was not followed in all cases, particularly in remote areas of the country. In cases involving criminal groups, the law allowed authorities to hold suspects up to 96 hours before requiring them to seek judicial review.

The procedure known in Spanish as *arraigo* (a constitutionally permitted form of pretrial detention employed during the investigative phase of a criminal case before probable cause was fully established) allowed, with a judge's approval, for certain suspects to be detained prior to filing formal charges.

Detainees complained police made arrests arbitrarily without a warrant, denied them access to family members and to counsel, and held them in isolation for several days. Police occasionally failed to provide impoverished detainees access to counsel during arrests and investigations as provided for by law.

Arbitrary Arrest: Allegations of arbitrary detentions occurred throughout the year. The IACHR, the UN Working Group on Arbitrary Detention, and

NGOs expressed concerns regarding arbitrary detention and the potential for it to lead to other human rights abuses.

Pretrial Detention: Lengthy pretrial detention was a problem, and authorities did not always promptly release those detained unlawfully. The law provided time limits and conditions on pretrial detention, but federal authorities sometimes failed to comply with them since caseloads far exceeded the capacity of the federal judicial system. Abuses of time limits on pretrial detention were endemic in state judicial systems. In November 2022, the Supreme Court eliminated automatic pretrial detention for fraud and tax crimes. Activists claimed the decision did not go far enough to protect habeas corpus rights, while local legal experts noted the decision could hinder the government's ability to curb financial crimes. The UN Office of the High Commissioner for Human Rights documented cases in the states of Mexico and Chiapas in which detainees remained in pretrial detention for more than 12 years.

In May, authorities rearrested Daniel García Rodríguez, who was accused of murder in 2001. Rodríguez was previously arrested and held in pretrial detention for more than 17 years before being released with an ankle monitor in 2019. He remained in pretrial detention as of October.

As of August 9, Verónica Razo had been in pretrial detention for 12 years, awaiting trial for allegedly kidnapping and participating in criminal group activities. In 2022, the UN Working Group on Arbitrary Detention called for

her release, and the Federal Defense Public Institute maintained that police sexually tortured her and forced her to plead guilty. Brenda Quevedo Cruz remained in pretrial detention as of October, despite a 2020 announcement by authorities they would release her. Quevedo Cruz had been detained without trial since 2007 for allegedly participating in organized crime activities and for kidnapping.

e. Denial of Fair Public Trial

Although the constitution and law provided for an independent judiciary, court decisions were susceptible to improper influence by both private and public entities, particularly at the state and local level, as well as by transnational criminal organizations. Authorities sometimes failed to respect court orders, and arrest warrants were sometimes ignored, consistent with the lack of judicial independence and rule of law throughout the legal system. Across the criminal justice system, many actors lacked the necessary training and capacity to carry out their duties fairly and consistently in line with the principle of equal justice.

President López Obrador and other government actors verbally attacked the judiciary, particularly the Supreme Court, criticizing judges who ruled against the administration on numerous occasions. In March, during a massive rally in Mexico City, government supporters burned an effigy of Chief Justice Norma Piña, accusing her of corruption. In May, Veracruz Governor

Cuitlahuac Garcia led a demonstration in Mexico City where supporters carried coffins with the names of seven of the 11 Supreme Court justices and accused them of siding with conservative opponents and ruling against administration priorities.

On June 16, the National Guard detained Judge Angélica Sánchez Hernández without an arrest warrant in Mexico City for alleged crimes against public faith and influence peddling after she ordered the release of murder suspect Itiel Palacios from pretrial detention. A federal judge ordered her immediate release after concluding local authorities violated the suspension of an injunction Hernández obtained on July 9. Authorities previously arrested Sánchez Hernández on June 5 for allegedly shooting at police officers, which she denied, and was later released. She remained under house arrest while the investigations continued.

Trial Procedures

The law provided for the right to a fair and public trial, and the judiciary generally enforced the right.

Defendants had the right to an attorney of their choice at all stages of criminal proceedings. By law, attorneys were required to meet professional qualifications to represent a defendant. Not all public defenders were qualified, however, and often the state public defender system was understaffed. According to the Center for Economic Research and Teaching,

most criminal suspects did not receive representation until after their first custody hearing, thus making individuals vulnerable to coercion to sign false statements prior to appearing before a judge.

Defendants had the right to free assistance of an interpreter, if needed, although interpretation and translation services for speakers of Indigenous languages were not always available. According to the Indigenous Professional Center for Advice, Advocacy, and Translation, Indigenous defendants who did not speak Spanish sometimes were unaware of the status of their cases and were convicted without fully understanding the documents they were instructed to sign.

Political Prisoners and Detainees

There were no reports of political prisoners or detainees.

f. Transnational Repression

Not applicable.

g. Property Seizure and Restitution

Not applicable.

h. Arbitrary or Unlawful Interference with Privacy, Family,

Home, or Correspondence

The law prohibited arbitrary or unlawful interference with privacy, family, home, or correspondence and required search warrants. There were some complaints that authorities conducted illegal searches or illegal destruction of private property.

Section 2. Respect for Civil Liberties

a. Freedom of Expression, Including for Members of the Press and Other Media

The law provided for freedom of expression, including for members of the press and other media, and the government generally respected this right. The government continued exerting significant pressure due to being a source of advertising revenue for many media organizations, which at times influenced coverage.

Freedom of Expression: Independent media were active and expressed a wide variety of views without restriction but often self-censored due to fear of reprisals from government officials and transnational criminal organizations.

Official discrediting of press workers continued. Politicians, including President López Obrador, publicly discredited and criticized such journalists,

presenting them as biased, partisan, and corrupt. The administration continued to showcase a weekly "Who's Who in Lies" segment in the president's morning press conference to expose journalists who allegedly reported fake news. In 2022, the NGO Article 19 registered at least 176 disparaging comments from the President's Office directed toward media outlets, journalists, and civil society organizations. Several journalists cited constant threats. Reyna Haydee Ramírez, a journalist for the news agency Communication and Information on Women (CIMAC), said the president's discourse caused listeners to interpret his words as an "order to attack." Ramírez was subsequently barred from attending the president's morning conferences.

Violence and Harassment: Journalists were killed or subjected to physical attacks, cyberattacks, harassment, and intimidation (especially by state agents and transnational criminal organizations) in response to their reporting. This limited media's ability to investigate and report, since many of the reporters who were killed covered crime, corruption, and local politics. High levels of impunity, including for killings or attacks on journalists, resulted in self-censorship and reduced freedom of expression and the press.

According to civil society representatives, as of September 25, at least four journalists were killed: Marco Aurelio Ramírez (Puebla), Luis Martín Sánchez (Nayarit), Nelson Matus (Guerrero), and Jesús Gutiérrez Vergara (Sonora).

In addition, on July 8, journalist Luis Marín Sánchez Íñiguez was found dead in Tepic, Nayarit. The correspondent for the daily newspaper *La Jornada* and media site *Crítica Digital Noticias* disappeared from his home on July 5. The state attorney general's office confirmed he was killed possibly due to his work in journalism. Two of his colleagues, who were also reported missing, were found alive on July 8-9.

On July 6, journalist Juan Carlos Hinojosa disappeared in Nanchital, Veracruz; the case remained unsolved as of October.

On July 15, unidentified attackers shot at independent journalist María Luisa Estrada and her daughter in Guadalajara, Jalisco. Estrada and her daughter were unharmed, but Estrada said a police officer at the crime scene cautioned her regarding her crime and corruption reporting and described the attack as a warning.

The Interior Secretariat registered 72 verbal and physical attacks against journalists in 2022, 42 percent of which the secretariat attributed to public servants. The most common aggressions were intimidation and harassment, followed by threats and physical attacks, according to civil society groups. In November 2022, CIMAC reported a 210 percent increase in attacks against women in journalism from January 2019 to July 2022, compared with 2012-18, which CIMAC noted was the period of the previous presidency. CIMAC found most common attacks against women in journalism were stigmatization, intimidation, and harassment online and in person.

Between 2019 and June 2022, the Office of the Special Prosecutor for Crimes against Journalists, a unit in the Attorney General's Office, charged 186 persons with crimes against journalists. As of October, the Attorney General's Office prosecuted only 16 cases. Since its inception, the Special Prosecutor's Office took to trial only 21 percent of the 1,629 cases it opened. Digital media journalists covering stories such as crime, corruption, and human rights violations experienced physical violence and online abuse. Online discrimination, harassment, and threats were problems particularly for women journalists and politicians, as well as any individual and organizations advocating for women's rights.

Censorship or Content Restrictions for Members of the Press and Other Media, Including Online Media: Human rights groups reported that some state and local governments censored media. Journalists reported altering their coverage due to a lack of government protection, attacks against members of media and newsrooms, and threats or retributions against their families, among other reasons. There were reports of journalists practicing self-censorship due to threats from criminal groups and government officials.

Freedom of expression advocacy groups reported the government, despite reductions in its advertising budgets, continued to have a strong financial impact and influence on the largest media companies. The civil society groups Fundar and Article 19 underscored a lack of federal government

transparency in selecting media outlets for public advertising, noting that 55 percent of its budget went to only 10 media outlets in 2022.

Libel/Slander Laws: There were no federal criminal laws against defamation, libel, or slander; however, nine states had criminal laws regarding these three acts. In four states, the crimes of defamation and libel were prosecuted, with penalties ranging from three days to five years in prison and fines for committing defamation or slander, both considered "crimes against honor." Slander was punishable under the criminal laws of five states, with sentences ranging from three months to six years in prison and fines. Twenty-five states had laws protecting authorities from alleged insults. Five states had laws that restricted the publishing of political caricatures or "memes" but seldom enforced them. In addition to criminal libel and defamation laws, civil law defined "moral damage" as similar to defamation concerning harm to a person's "feelings, affections, beliefs, dignity, honor, reputation, and privacy," according to the NGO Committee to Protect Journalists.

On April 25, President López Obrador repealed the 1917 Law on Printing Crimes, which previously increased punishments for insults against the president, congress, army, and other institutions.

Nongovernmental Impact: Criminal groups exercised grave influence over media outlets and reporters, threatening individuals who published critical views of criminal groups. Concerns persisted regarding criminal groups' use

of physical violence in retaliation for information posted online, which exposed journalists, bloggers, and social media users to the same level of violence faced by traditional journalists. According to organizations defending journalists, the number of attacks against the press by organized crime groups continued to increase. A civil society organization registered at least 86 attacks by criminal organizations and reported at least 13 of the 16 journalist homicides from 2022 to July were possibly linked to criminal groups.

In June, Chiapas press outlets reported alleged members of criminal groups hung banners in various places around the state to intimidate media.

Internet Freedom

The government did not restrict or disrupt access to the internet or block or filter online content.

According to Freedom House's *Freedom on the Net Report 2023*, state and nonstate actors increasingly used legal threats and other methods to pressure social media platforms, web-hosting providers, and individual users to remove content. Article 19 recorded 12 removals of journalistic content in 2022. In April, Supreme Court Judge Yasmín Esquivel Mossa filed a complaint against journalist Lourdes Mendoza, who tweeted photographs of Mossa vacationing in Canada, accompanied by critical comments regarding the judge. Mossa asked a court to order the removal of the photographs

and to delete Mendoza's account on X (formerly called Twitter), on the grounds that her minor son appeared in one of them and the comments allegedly incited hatred. The court ordered Mendoza and other journalists to remove or blur the photographs to protect the identity of Mossa's son but did not force Mendoza to delete her account.

NGOs alleged provisions in laws threatened the privacy of internet users by forcing telecommunication companies to retain data for two years, providing real-time geolocation data to police, and allowing authorities to obtain metadata from private communications companies without a court order. While the Supreme Court upheld the provisions, it noted the need for authorities to obtain a judicial warrant to access user metadata.

Unidentified users and bots on X posted threats against journalists who asked "difficult" questions of government officials during press engagements and in some cases disseminated the journalists' identities and media outlets and made veiled threats.

The *Freedom on the Net 2023* reported online campaigns amplified support for President López Obrador and trolled his perceived rivals or users who questioned or criticized him. In March, the digital news site *Animal Político* reported that pro-López Obrador accounts disseminated more than 20,000 tweets in an online smear campaign against the recently elected president of the Supreme Court, Norma Lucía Piña Hernández, who often ruled against López Obrador's government in judicial decisions. Many of the tweets used

the hashtag #PiñaMadrinaDeLosNarcos (#PiñaGodmotherOfTheNarcos) to make unsubstantiated links between Piña and drug trafficking.

b. Freedoms of Peaceful Assembly and Association

The law provided for the freedoms of peaceful assembly and association, and the government generally respected these rights, with some exceptions. Twelve states had laws restricting public demonstrations. There were reports of security forces using excessive force against demonstrators. Government failures to investigate and prosecute attacks on protesters and human rights defenders resulted in impunity for these crimes, consistent with high impunity rates for all crimes. Amnesty International and other NGOs reported that acts of excessive use of force and arbitrary detention occurred against women protesters, especially those protesting gender-based violence.

On August 5, the National Guard allegedly removed and seized property from protesters in front of the Secretariat of the Interior. The protesters had participated in a sit-in for months, and during their removal, police confiscated a protester's camper and a car.

In February, President López Obrador criticized demonstrators who gathered peacefully in Mexico City to protest cuts to election funding. According to news sources, the president called the demonstrators "allies of drug cartels" and accused them of pickpocketing in the capital's main plaza.

c. Freedom of Religion

See the Department of State's *International Religious Freedom Report* at https:www.state.gov/religiousfreedomreport/.

d. Freedom of Movement and the Right to Leave the Country

Federal law provided for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights.

In-country Movement: There were numerous instances of armed groups limiting the movements of migrants, including by threats and acts of kidnapping, extortion, and homicide. Criminal groups dominated migrant smuggling operations and often kidnapped, threatened, and extorted migrants to pay a fee for facilitating northbound travel. On August 17, international organizations in Ciudad Juárez reported an increase in extortion and kidnappings by smugglers.

e. Protection of Refugees

The government cooperated with the Office of the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations in providing protection and assistance to refugees, asylum seekers, and other persons of

concern.

Access to Asylum: Federal law provided for granting asylum, refugee status, or complementary protection to those fleeing persecution or facing possible threats to their life, security, or liberty in their country of origin. The government had an established procedure for determining refugee status and providing protections. The government worked with UNHCR to improve access to refugee status determinations, improve shelter and reception conditions for vulnerable migrants and asylum applicants, and support local integration programs (including access to school, work, and other social services) for those approved for refugee and complementary protection status.

Abuse of Refugees and Asylum Seekers: The press, international organizations, and NGOs reported targeting and victimization of migrants and asylum seekers by criminal groups and in some cases by police, immigration officers, and customs officials. There were numerous instances of criminal groups extorting, threatening, or kidnapping asylum seekers and other migrants. In many parts of the country, human smuggling organizations wielded significant power, and media alleged frequent collusion among local authorities. There were credible reports of gender-based violence against migrants. There were also credible reports of officially recognized asylum seekers being denied movement across the country and detained by migration authorities. Civil society groups reported

migration authorities did not provide information regarding access to request asylum and migratory regularization and, in some cases, dissuaded migrants from pursuing such alternatives.

The government did not detain migrant children and generally exempted accompanying adults from detention to preserve family unity. Child protection authorities lacked sufficient capacity to shelter and process migrant children and families, but the government made progress to improve shelter space for children and strengthen child protection authorities. During the year, the National System for Integral Family Development transferred 1.1 billion pesos ($67 million) to 26 states to strengthen their capacity to respond to child migration. In May, the government declared it had completed the construction of-58 of the 90 shelters planned.

The government increased efforts to target human smuggling organizations, with limited results. In November 2022, the Attorney General's Office arrested the Los Panchos human smuggling leader and main collaborators. The Attorney General's Office carried out arrests in Ciudad Juarez, Chihuahua; Silao, Guanajuato; and the state of Mexico. In May, the Attorney General's Office arrested three alleged smugglers in the state of Nuevo León. Authorities found 17 migrants with the smugglers and identified 11 others at a safe house.

Obstacles to accessing international protection related most closely to

capacity limitations and lack of coordination among the relevant agencies, as opposed to official government policy.

f. Status and Treatment of Internally Displaced Persons (IDPs)

There were 386,000 IDPs as a result of conflict and violence in 2022, according to NGOs. The states of Chiapas, Michoacan, and Zacatecas together accounted for almost 90 percent of the total number of IDPs. Of the IDPs in Chiapas, Indigenous peoples in Chenalhó and Frontera Comalapa represented a significant number.

Land conflicts, social and ethnic violence, or local political disputes also caused significant displacement. Forced internal displacement disproportionately affected Indigenous communities.

The Mexican Commission for the Defense and Promotion of Human Rights recorded the highest incidence of forced internal displacement in 2022 in Frontera Comalapa and La Trinitaria, Chiapas, where 4,250 IDPs across seven communities fled criminal gang violence. On May 25, the news outlet *Aristegui Noticias* reported families fled these regions to escape violence between Sinaloa and Jalisco Nueva Generación cartels vying for control of the border with Guatemala.

The government, in conjunction with international organizations, made

efforts to promote the safe, voluntary return, resettlement, or local integration of IDPs. The National Institute for Indigenous People had a program to assist displaced Indigenous and Afro-Mexican women.

For further information about IDPs in the country, please see the materials of the Internal Displacement Monitoring Center: https://www.internal-displacement.org.

Section 3. Freedom to Participate in the Political Process

Federal law provided citizens the ability to choose their government through free and fair periodic elections held by secret ballot and based on universal and equal suffrage.

Elections and Political Participation

Abuses or Irregularities in Recent Elections: International observers considered the most recent national elections to be generally fair and free of abuses and irregularities.

Section 4. Corruption in Government

The law provided criminal penalties for corruption by officials. The government generally enforced the law effectively, but there were

numerous reports of government corruption.

Corruption: In February, the Federal Commission for the Protection against Sanitary Risks announced it fired 11 public servants for alleged collusion with private entities, after finding they had destroyed evidence and shared confidential information regarding the institution's internal deliberations with outside parties. This resulted from an investigation of allegations against commission officials for corrupt operations awarding pharmaceutical bids alleged to have occurred in 2021.

In June, the Secretariat of Public Administration announced an audit had found irregularities amounting to $550 million regarding transactions by the Mexican Food Security Agency under the Secretariat for Agriculture and Rural Development. The case continued under investigation as of August.

Between December 2018 and June, the Secretariat of Public Administration received more than 127,000 complaints related to failure to comply with regulations and duties, misuse and authority abuse, and negligence or lack of attention in the performance of duties, of which approximately 114,000 were resolved.

For additional information about corruption in the country, please see the Department of State's *Investment Climate Statement* for the country, and the Department of State's *International Narcotics Control Strategy Report*, which includes information on financial crimes.

Section 5. Governmental Posture Towards International and Nongovernmental Monitoring and Investigation of Alleged Abuses of Human Rights

A variety of domestic and international human rights groups generally operated without government restriction to monitor or investigate human rights conditions or cases and publish their findings. Government officials were mostly cooperative and responsive to the views of these groups. President López Obrador, however, chastised civil society groups at the morning press conferences he hosted daily. Some NGOs alleged individuals who organized campaigns to discredit human rights defenders at times acted with tacit support from government officials.

Retribution against Human Rights Defenders: On January 15, human rights defenders Ricardo Lagunes and Antonio Díaz disappeared in Colima after advocating against mining company Ternium. While searching for her brother who disappeared in 2020, Esthela Guadalupe Estrada Ávila, an activist and member of a collective of relatives of disappeared persons, disappeared on March 29 in Tlajomulco de Zúñiga, Jalisco. On April 21, Indigenous human rights defender Alejandro Ortiz Vázquez was forced into a vehicle with four armed men in Metlatónoc, Guerrero; as of October, his whereabouts remained unknown.

Government Human Rights Bodies: The CNDH was a semiautonomous federal agency funded by the legislature to monitor and act on human rights abuses. The CNDH could call on government authorities to impose administrative sanctions or pursue criminal charges against officials, but it was not authorized to impose penalties or legal sanctions. Civil society groups questioned the CNDH's independence and effectiveness. They noted the CNDH failed to speak out regarding pressing concerns such as the role of the military in public security activities.

All states had their own human rights commissions. The state commissions were funded by state legislatures and were semiautonomous. Some civil society groups, however, asserted that state commissions were subservient to the state executive branch. State commissions did not have uniform reporting requirements, making it difficult to compare state data and therefore compile nationwide statistics. The CNDH could take on cases from state-level commissions if it received a complaint that the state commission did not adequately investigate the case. The independence and effectiveness of the commissions varied widely.

Section 6. Discrimination and Societal Abuses

Women

Rape and Domestic Violence: Federal law criminalized the rape of men and women, including spousal rape and domestic or intimate partner rape and

other forms of domestic and sexual violence, as well as so-called corrective rape of LGBTQI+ persons. Conviction carried penalties of up to 20 years' imprisonment. Spousal rape was criminalized in 27 of the 32 states. The government did not enforce the law effectively. There were high rates of impunity for these crimes, consistent with high impunity rates for all crimes.

Federal law prohibited domestic violence, including gender-based violence, and stipulated penalties between six months' and four years' imprisonment. The law included media and digital violence as a form of gender-based violence. Of the 32 states, 29 stipulated similar penalties, although sentences were often more lenient. Federal law criminalized spousal abuse. State and municipal laws addressing domestic violence largely failed to meet the required federal standards and often were unenforced.

The National Commission to Prevent and Eradicate Violence against Women was responsible for leading government programs to combat domestic violence. In addition to shelters, women's external assistance centers provided services including legal, psychological, and protective; however, the number of cases far surpassed institutional capacity. Legal experts said the country lacked sufficient psychological and anthropological experts to issue the appropriate expert reports that judges required in femicide and domestic violence cases. Federal funding assisted the operation of more than 69 shelters, external attention centers, emergency houses, and transition houses. NGOs operated 85 percent of the facilities, and

government organizations operated the remaining 15 percent.

Other Forms of Gender-based Violence or Harassment: Femicide was a federal offense punishable by 40 to 70 years in prison. It was also a criminal offense in all states. The Executive Secretariat of the National Public Security System reported more than 1,290 killings of women, including 426 femicides, from January to June.

On May 27, Guillermo "N" was arrested for burning his girlfriend Guadalupe "N" alive using gasoline in Tonala, Chiapas, and was awaiting trial as of August. According to a report by *Animal Político*, in 2022 at least 90 women were attacked with acid or gasoline. On March 2, Puebla became the first state to approve the "Malena Law," which considered acid attacks as femicide attempts and punishable by up to 40 years in prison.

In the case of the death of Debanhi Escobar in Monterrey, Nuevo León, in 2022, in January authorities arrested two persons who managed the motel where Escobar was found.

In the case of the death of Cecilia Monzón in Cholula, Puebla, in 2022, as of August 8, three of the alleged conspirators were awaiting trial, and one was released due to lack of evidence.

On March 2, Puebla's congress approved the "Monzon Law," in honor of femicide victim Cecilia Monzon. The law suspended parental rights for men under investigation for femicide. The law also introduced penalties for

officials who failed to act or who hindered investigations. Mexico City, Sinaloa, Colima, and Aguascalientes adopted similar laws.

Federal law prohibited sexual harassment and provided for fines from 250 to 5,000 times the minimum daily wage, but the law was not effectively enforced. Of the 32 states, 24 criminalized sexual harassment, and all states had provisions for punishment when the perpetrator was in a position of power.

Discrimination: The law provided women the same legal status and rights as men and "equal pay for equal work performed in equal jobs, hours of work, and conditions of efficiency." The government did not enforce the law effectively. Women tended to earn substantially less than men did for the same work. Women were more likely to experience discrimination in wages, working hours, and benefits. Afro-Mexican and Indigenous women reported structural inequality in their daily lives. Job announcements specifying desired gender, age, marital status, and parental status were common.

Reproductive Rights: There were no confirmed reports of coerced abortion or involuntary sterilization on the part of government authorities.

The CNDH observed recurrent cases of obstetric violence during childbirth in the forms of neglect and physical abuse, sometimes with serious consequences on women's sexual and reproductive health. As of October,

the CNDH issued 51 recommendations to improve or address the denial of health services, including physical and psychological abuse, performance of risky procedures, and inadequate neonatal evaluation, diagnosis, and treatment for diseases.

Federal authorities supported access to contraceptive methods, including for the purpose of family planning, but states' efforts varied widely. Barriers to accessing contraceptives stemmed from lack of knowledge, poverty, lack of access to health services, and sexual violence from family members, strangers, or friends.

Government health service providers in 21 states said they were obligated by law to offer sexual and reproductive emergency health services for survivors of sexual violence within 120 hours of the sexual assault. Emergency contraception and postexposure prophylaxis were available in all states, including for survivors of sexual assault. Nevertheless, women nationwide faced obstacles to accessing emergency services due to health providers' personal objections to emergency contraception or misunderstanding of their legal obligations to provide services.

Authorities reported the cause of most maternal deaths nationwide was obstetric hemorrhage (21 percent), followed by hypertension (15 percent), and abortion (8 percent). Factors associated with maternal deaths included parents with lower levels of education, inadequate hospital infrastructure and human capacity, and lack of access to maternity care, especially for

pregnant women living in rural areas. Southern states reported the lowest access to skilled health care during pregnancy due to geographic, financial, and cultural barriers.

A 2022 report based on a survey in five states pointed out the main barriers to menstrual health were stigma, lack of sanitation, and access to information. It found 69 percent of menstruating persons had little or no information when their first period occurred, and 15 percent lacked access to menstrual products.

The National Population Council reported that in 2022, there were more than 350,000 pregnancies in women younger than age 19, of which approximately 9,200 were in girls ages 15 or younger (98 percent in girls ages 13-14). The states with the majority of cases were Chiapas, Coahuila, Guerrero, and Veracruz. Authorities attributed high adolescent birth rates to low economic status, social inequities, school dropout, low usage of contraceptives, sexual abuse, and child marriages. Sometimes family members arranged marriages for girls younger than 18, although it was illegal nationwide.

Systemic Racial or Ethnic Violence and Discrimination

The constitution prohibited discrimination based on ethnicity, and a federal law prohibited all forms of discrimination. Nonetheless, discrimination was common against racial and ethnic minorities, including Black and Afro-

Mexican persons. All states had additional laws against discrimination. A 2019 constitutional reform recognized Afro-Mexicans as an ethnic group. The government did not enforce the law effectively.

According to a 2021 report by the National Council to Prevent Discrimination (CONAPRED), in Mexico City dark-skinned individuals experienced the most discrimination, followed by Indigenous peoples.

The National Statistical Institute (INEGI) reported that 2 percent of the population (2.5 million) self-identified as Afro-Mexican. INEGI's 2022 National Survey on Discrimination found 36 percent of Afrodescendants older than 12 faced discrimination in the last 12 months. The survey also reported 38 percent of Afrodescendants older than 12 said their rights were respected "little" and 28 percent that their rights were denied in the past five years. A 2022 report from the Black Alliance for Just Immigration found Black migrants faced widespread racial discrimination from individuals and authorities, particularly in accessing employment and services. Black migrants reported migration authorities detained Black migrants for longer periods than other migrants.

Indigenous Peoples

CONAPRED's 2017 national survey on discrimination found 65 percent of Indigenous persons considered their rights were respected "little or not at all." The CNDH reported Indigenous women were among the most

vulnerable groups in society. They often experienced racism and discrimination and were frequently victims of violence. Due at least in part to services offered only in the Spanish language, Indigenous persons generally had limited access to health care, education services, and legal means to seek justice. In 2022, the National Council for the Evaluation of Social Development Policy published a report that found 65 percent of Indigenous peoples lived in poverty and 26 percent in extreme poverty.

In mid-July, the government resumed construction of the Mayan Train, a dual cargo-passenger railroad to cross the Yucatán Peninsula through Indigenous lands, citing a 2021 decree deeming all public infrastructure to be a matter of national security, which limited the ability of civil society and Indigenous groups to use legal avenues to halt the project. Several Indigenous communities brought legal actions to oppose the construction, many of which were dismissed or denied. In December 2022, the United Nations published a press release citing concerns regarding the Mayan Train's construction impact on the rights of Indigenous peoples, land and natural resources, and cultural and health rights. On May 7, the civil society group El Sur Resiste (The South Resists) issued a statement describing how police and military agents threatened them while they raised awareness regarding megaprojects, such as the Isthmus of Tehuantepec Interoceanic Corridor and the Mayan Train.

On January 17, authorities arrested Indigenous leader David Hernández

Salazar for arson and attacks on roads and indicted 17 other Indigenous members of the Binniza community of Puente Madera in Oaxaca. According to civil society groups, including Front Line Defenders, Hernández was prosecuted for his work in opposition of megaprojects in the Isthmus of Tehuantepec, Oaxaca.

On April 23, Hugo Rolando Arévalo Abarca was sentenced to 25 years in prison for the 2021 killing of Simon Pérez, human rights activist and member of the Las Abejas de Acteal civil society organization in Chiapas, but family members continued advocating for authorities to find the suspect who ordered the killing.

The constitution provided Indigenous persons the right to self-determination, autonomy, and education. Conflicts arose from the interpretation of Indigenous communities' self-governing "normative systems." Uses and customs laws applied traditional practices to resolve disputes, choose local officials, and collect taxes, with limited federal or state government involvement. Communities and NGOs representing Indigenous groups criticized the government for failing to consult Indigenous communities adequately when making decisions regarding extractive industry and natural resource development projects on Indigenous lands.

On January 27, Indigenous persons in Xochimilco obtained an injunction to stop the construction of a National Guard base. The court asserted Mexico

City authorities failed to conduct a culturally appropriate consultation and infringed on their right to land and territory, their collective right to a territory free of militarization, and the right to a healthy environment.

On August 8, President López Obrador signed a decree to recognize and protect the sacred sites and pilgrimage routes of Indigenous peoples in the states of Jalisco, Nayarit, Durango, and San Luis Potosí.

Children

Birth Registration: Failure to register births could result in the denial of public services such as education or health care.

Child Abuse: The law provided for protection against child abuse. There were numerous reports of child abuse. The government generally enforced the law effectively. The National Program for the Integral Protection of Children and Adolescents, mandated by law, was responsible for coordinating the protection of children's rights at all levels of government.

Child, Early, and Forced Marriage: The legal minimum marriage age was 18. Enforcement, however, was inconsistent across the states. With a judge's consent, children could marry at younger ages. According to a 2022 investigation by the news outlet *La Lista*, at least 153,000 child marriages took place between 2010 and 2021. On March 15, the senate approved legislation that criminalized forced child marriage and stipulated a penalty of up to 22 years in prison. On April 26, federal law authorities reformed the

federal penal code to prohibit forced cohabitation of minors and persons with intellectual disabilities, with punishments of eight to 15 years' imprisonment and possibly higher penalties if the victim identified as Indigenous or Afro-Mexican.

Sexual Exploitation of Children: The law prohibited the sale, grooming, or use of children for commercial sexual exploitation, including sex trafficking, and authorities generally enforced the law. Nonetheless, NGOs and media reported occurrences of sexual exploitation of minors, including child sex tourism in resort towns and northern border areas. Authorities estimated 21,000 children were kidnapped annually for sexual exploitation. The statute of limitations did not apply for sexual crimes against minors, including child pornography distribution, child sex tourism, corruption of minors, pederasty, sexual abuse, and rape.

Antisemitism

The Jewish population numbered 58,876 (according to the 2020 INEGI survey). The community experienced low levels of antisemitism. In January, civil society organizations and activists protested against the Greek band Der Strumer, accused of being a neo-Nazi group, who was set to perform but later canceled its January 13 show in Guadalajara.

In June, local media reported multiple swastikas and Nazi insignias painted around Morelia, Michoacan.

Between January and June 30, the civil society organization Central Committee (Comité Central) found 3 percent of social media content mentioning Jewish persons was antisemitic.

Jewish community representatives reported good cooperation with the government in addressing instances of antisemitic acts.

For further information on incidents in the country of antisemitism, whether or not those incidents were motivated by religion, and for reporting on the ability of Jews to exercise freedom of religion or belief, please see the Department of State's *International Religious Freedom Report* at https://www.state.gov/religiousfreedomreport/.

Trafficking in Persons

See the Department of State's *Trafficking in Persons Report* at https://www.state.gov/trafficking-in-persons-report/.

Acts of Violence, Criminalization, and Other Abuses Based on Sexual Orientation, Gender Identity or Expression, or Sex Characteristics

Criminalization: No laws criminalized consensual same-sex sexual conduct between adults, cross-dressing, or other sexual or gender characteristic-related behavior. There were no reports that neutral laws (e.g., on statutory

rape, immorality, or loitering) were disproportionately applied to LGBTQI+ persons.

Violence and Harassment: There were reports the government did not always investigate and punish those complicit in abuses against LGBTQI+ persons, especially outside Mexico City. Civil society groups claimed police routinely subjected LGBTQI+ persons to mistreatment while in custody.

In 2022, there were 87 killings of individuals who identified as LGBTQI+, of whom 48 were transgender, that could have been motivated by their sexual identity, according to civil society groups.

On July 15, assailants killed Ulises Nava Juárez, LGBTQI+ rights defender and head of the Department of Sexual Diversity at the Autonomous University of Guerrero, as he left the National Congress of Strategic Litigation for the Defense of Rainbow Quotas, in Aguascalientes. As of July 31, the UN Office of the High Commissioner for Human Rights documented seven killings of human rights activists, two of whom were LGBTQI+ advocates.

According to CONAPRED, the most frequent forms of aggression LGBTQI+ persons experienced were verbal violence; denial of entry, services, and rights; and killings.

Discrimination: Federal law prohibited discrimination against LGBTQI+ individuals. The government generally did not enforce the law. A Mexico City municipal law provided increased penalties for hate crimes based on

sexual orientation and gender identity. As of November 16, Mexico City and the states of Baja California, Campeche, Chiapas, Chihuahua, Coahuila, Colima, Guanajuato, Morelos, Querétaro, San Luis Potosí, and Yucatán allowed LGBTQI+ couples and families adoption rights.

The 2021 National Survey of Sexual Diversity and Gender found that of three million employed LGBTQI+ individuals, one-third reported experiencing discrimination in the past 12 months. In March, a professor who identified as gay was fired for alleged sexual misconduct in Álvaro Obregón, Durango, prompting student protests that the school's director had filed false charges against him. From January to August 23, CONAPRED registered 22 reports of discrimination against LGBTQI+ persons.

Availability of Legal Gender Recognition: Twenty states permitted adult individuals and eight states allowed children 12 years and older to update names and gender markers via a simple administrative process. In May, for the first time, the Secretariat of Foreign Affairs issued passports with "X" as a third sex designation option.

Involuntary or Coercive Medical or Psychological Practices: Sixteen states banned so-called conversion therapy practices. According to INEGI, 14 percent of transgender persons and 10 percent of lesbian, gay, and bisexual persons were subjected to so-called conversion therapy practices. Civil society organizations reported that, as part of the treatment process, LGBTQI+ persons undergoing so-called conversion therapy practices were

often isolated, beaten, given electroshocks, and made to undergo hormone or steroid therapies, among other actions.

Medically unnecessary surgeries and treatment continued to be done on infants and children born with sex characteristics that did not align with either a typical male or female body. There were no reports of such surgeries done on nonconsenting intersex adults.

Restrictions of Freedom of Expression, Association, or Peaceful Assembly: There were no reports of restrictions on freedom of expression, association, or peaceful assembly related to LGBTQI+ matters.

Persons with Disabilities

Public buildings and facilities often did not comply with the law requiring access for persons with disabilities. Federal law prohibited discrimination against persons with physical, sensory, intellectual, and mental disabilities. The government did not effectively enforce the law. According to the 2021 INGEI survey on the dynamics of household relationships, 73 percent of the six million women and girls older than 15 who identified having disabilities reported experiencing violence. On June 7, the government enacted the National Code of Civil and Family Procedures, championed by disability advocacy groups. The legislation established the right to independently decide and make decisions with appropriate support for persons with disabilities older than 18.

The law prohibited discrimination against persons with disabilities, and the government approved the *National Work and Employment Program for People with Disabilities 2021-2024*, aimed at strengthening labor inclusion of persons with disabilities and supporting the employment of persons with disabilities in decent work. Nevertheless, employment discrimination against individuals with disabilities continued.

The education system provided education for students with disabilities nationwide. Nevertheless, children with disabilities attended school at a lower rate than those without disabilities.

Voting centers for federal elections were generally accessible for persons with disabilities, and ballots were available with a braille overlay for federal elections in Mexico City, but these services were inconsistently available for local elections elsewhere in the country.

The law required the Secretariat of Health to promote the creation of long-term institutions for persons with disabilities in distress, and the Secretariat of Social Development was required to establish institutions to care for, protect, and house poor, neglected, or marginalized persons with disabilities. NGOs reported authorities had not implemented programs for community integration.

Abuses occurred in institutions and care facilities housing persons with mental disabilities, including those for children. Abuses included the use of

physical and chemical restraints; physical and sexual abuse; human trafficking, including forced labor; enforced disappearance; and the illegal adoption of institutionalized children. Persons with disabilities were vulnerable to abuse from staff members, other patients, or guests at facilities where there was inadequate supervision. Documentation supporting the identity and origin of those staying in the facilities was lacking, and access to justice was limited, according to NGOs. NGOs reported no changes in the mental health system to create community services or any efforts by authorities to have independent experts monitor human rights abuses in psychiatric institutions.

Institutionalized persons with disabilities often lacked adequate medical care and rehabilitation services, privacy, and clothing. They often ate, slept, and bathed in unhygienic conditions.

Other Societal Violence or Discrimination

The Catholic Multimedia Center reported criminal groups harassed Roman Catholic priests and religious leaders of other denominations in some parts of the country and subjected them to extortion, death threats, and intimidation. On May 22, authorities found Catholic priest Javier Garcia Villafana shot and killed in his car on the Cuitzeo-Huandacareo highway in Michoacán. Government officials stated the harassment of Catholic priests and evangelical Protestant pastors reflected high levels of generalized

violence throughout the country and not targeted attacks based on religious beliefs.

According to Christian Solidarity Worldwide, Catholic-majority communities sometimes discriminated against, harassed, threatened, and displaced individuals who left Catholicism or belonged to other faith communities, in addition to denying them basic services and destroying their property. On August 20, authorities in Simojovel, Chiapas, detained Presbyterian pastor Gilberto Diaz Pérez for his work, and villagers allegedly threatened to set fire to Diaz if he did not pay a fine. Diaz was released on August 26 in exchange for three other members of the Presbyterian Church, including his wife, who were released the same day after the Chiapas Interior Ministry and municipal authorities reached an agreement that Diaz would not preach in the community.

Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

The law provided for the right of workers to form and join independent unions, collectively bargain, and conduct legal strikes, and it prohibited antiunion discrimination. The government continued to strengthen freedom of association protections, promote union democracy, and improve the

ability of workers to bargain collectively. By law, all groups, including agricultural and migrant workers, were protected equally.

Government efforts focused on implementation of the 2019 labor law reform that transformed the labor justice system. The reforms provided workers with the right to freely elect union representatives and approve or reject collective bargaining agreements through a secret ballot process before the agreements were registered. The reforms prevented the registration of collective bargaining agreements that nonrepresentative, undemocratic unions often negotiated and signed without the knowledge of workers as protectionist contracts, which undermined genuine collective bargaining. The reforms called for the creation of independent labor courts to replace the Conciliation and Arbitration Boards (CABs) that favored corporatist nonrepresentative unions in the resolution of disputes and facilitated the registration of protection contracts. The reforms also established an expedited and more transparent judicial process for unions to obtain collective bargaining rights.

In addition to a more impartial and streamlined judicial process for labor disputes, the reforms transferred the registration of unions and collective bargaining agreements from the CABs to a new independent Federal Center for Conciliation and Labor Registration (Federal Center). The Federal Center also carried out mandatory prejudicial conciliations at the federal level, with local conciliation centers performing the same function at the state level.

During the year, the new institutions completed their first year operating in all 32 states. The reforms required unions to amend their bylaws to ensure union democracy and proportional gender equity in their leadership. Most unions at the federal level had amended their bylaws, and the majority of unions at the local level had also done so.

The Federal Center continued to oversee a verification process, called the "legitimization process," which required unions to organize a secret ballot vote for workers to approve or reject existing collective bargaining agreements (CBAs) by July 1.

The Secretariat for Labor and Social Welfare provided support to the Federal Center's verification of legitimization votes. July 31 marked the deadline for the Federal Center to schedule and verify all CBA legitimization votes. The Federal Center reported that as of September 30, 31,186 CBAs had undergone the legitimization process, 30,510 CBAs were legitimized, while 676 CBAs were nullified. The Federal Center noted not all collective bargaining agreements required legitimization because records were duplicated, worksites had closed, work had concluded, or the collective bargaining agreement was an illegal protection contract held by a nonrepresentative union that would not request a legitimization vote.

Federal labor law required a minimum of 20 workers to form a union. To receive government recognition, unions and their leaders were required to file for registration with the Federal Center.

By law, a union could call for a strike or bargain collectively in accordance with its own statutes. Under the labor reform, to negotiate a collective bargaining agreement, the union had to first obtain a certificate of representativeness from the Federal Center demonstrating it had support from at least 30 percent of workers to be covered by the agreement, or 50 percent plus one as part of a secret ballot if there was a competing union. Before a strike could take place, a union had to file a "notice to strike" with the appropriate labor court. Workers, the employer, or an interested third party could request the court to rule on the legality of the strike, which could find the strike illegal.

Federal labor law prohibited antiunion discrimination and prohibited employers from intervening in union affairs or interfering with union activities, including through implicit or explicit reprisals against workers. The law allowed for the reinstatement of workers if the court found the employer fired the worker without just cause and the worker requested reinstatement; however, the law also exempted broad categories of employees from this protection, including so-called trusted employees and workers in the job for less than one year.

The government's failure to enforce labor laws left workers with little recourse for violations of freedom of association, poor working conditions, and other labor provisions. Penalties for these violations were commensurate with similar violations of civil rights. Penalties were rarely

applied against violators. Labor experts reported that sanctions against companies or unions were rarely applied, including in priority sectors covered by the United States-Mexico-Canada Trade Agreement.

According to several NGOs and unions, many workers faced violence and intimidation perpetrated by protection union leaders and employers supporting them, as well as other workers, union leaders, and vigilantes hired by a company to suppress opposition to an existing union in bargaining-rights elections. Some employers attempted to influence these elections through the illegal hiring of temporary or fake employees immediately prior to the election to vote for the company-controlled union. There were also reports of employers firing workers who attempted to organize independent unions.

From January to October, labor officials reviewed cases of alleged denial of freedom of association and collective bargaining rights at 10 facilities as part of the United States-Mexico-Canada Agreement's Rapid Response Mechanism. Some of these were resolved and resulted in the reinstatement of workers with backpay, recognition of an independent union as the legitimate representative of workers, or both.

b. Prohibition of Forced or Compulsory Labor

See the Department of State's *Trafficking in Persons Report* at https://www.state.gov/trafficking-in-persons-report/.

c. Prohibition of Child Labor and Minimum Age for Employment

See the Department of Labor's *Findings on the Worst Forms of Child Labor* at https://www.dol.gov/agencies/ilab/resources/reports/child-labor/findings/.

d. Discrimination (see section 6)

e. Acceptable Conditions of Work

Wage and Hour Laws: The labor law provided for a minimum wage for all sectors, with a tripartite National Minimum Wage Commission responsible for establishing minimum wages. The minimum wage was above the official estimated monthly poverty line's monetary level. More than 70 percent of formal-sector workers received between one and three times the minimum wage.

Federal law set six eight-hour days and 48 hours per week as the legal workweek. Any work of more than eight hours in a day was considered overtime, for which a worker was to receive double pay. After accumulating nine hours of overtime in a week, a worker earned triple the hourly wage. The law prohibited compulsory overtime. The law provided for 10 paid public holidays and one week of paid annual leave after completing one year of work. On January 1, the amount of paid annual leave was increased to 12 days after completion of the first year of work.

According to labor rights NGOs, employers in all sectors sometimes used the illegal "hours bank" approach – requiring long hours when the workload was heavy and cutting down hours when it was light – to avoid compensating workers for overtime. This was a common practice in the maquiladora sector, in which employers forced workers to take leave at low moments in the production cycle and obliged them to work in peak seasons, including the Christmas holiday period, without the corresponding triple pay mandated by law for voluntary overtime on national holidays.

News reports indicated poor working conditions in some factories. These included wages lower than what the law stipulated, contentious labor management, long work hours, unjustified dismissals, a lack of social security benefits, unsafe workplaces, and no freedom of association. Many women working in the industry reported suffering some form of abuse.

Observers from grassroots labor rights groups, international NGOs, and multinational apparel brands reported that employers in export-oriented supply chains increasingly used hiring methods that weakened job security. For example, manufacturers commonly hired workers on one- to three-month contracts and then waited a period of days before rehiring them on new short-term contracts to avoid paying severance and to prevent workers from accruing seniority. This practice violated federal law and restricted workers' rights to freedom of association and collective bargaining. Observers noted it also increased the likelihood of work-related illness and

injury. Outsourcing practices made it difficult for workers to identify their legally registered employer, thus limiting their ability to seek redress of labor grievances.

The situation of agricultural workers remained particularly precarious, with similar patterns of exploitation throughout the sector. Labor recruiters enticed families to work during harvests with verbal promises of decent wages and a good standard of living. Rather than receiving daily wages once a week, as mandated by law, day laborers had to meet certain harvest quotas to receive the promised wage. Wages were illegally withheld until the end of the harvest to ensure workers did not leave. Civil society organizations alleged workers were prohibited from leaving by threats of violence or by nonpayment of wages. Workers had to buy food and other items at the company store at high markups, at times leaving them with no money at the end of the harvest after settling debts. Civil society groups reported families living in inhuman conditions, with inadequate and cramped housing, no access to clean water or bathrooms, insufficient food, and without medical care. With no access to schools or childcare, many workers took their children to work in the fields.

Occupational Safety and Health: The law required employers to observe occupational safety and health (OSH) regulations appropriate for the main industries, issued jointly by the Labor Secretariat and Institute for Social Security. Legally mandated joint management and labor committees set

standards and were responsible for overseeing workplace standards in plants and offices. Individual employees or unions could complain directly to inspectors or safety and health officials. By law, workers could remove themselves from situations that endangered health or safety without jeopardy to their employment.

Wage, Hour, and OSH Enforcement: The government did not effectively enforce the minimum wage, overtime, and OSH laws. Civil society organizations reported the number of labor inspections was not sufficient to secure compliance. Criminal cases related to such violations were rarely carried out. Penalties for violations regarding hours and minimum wage were commensurate with those for other similar laws but were rarely enforced.

A voluntary reporting system allowed formally registered businesses to enroll and self-identify as compliant with the program's requirements related to working conditions. Registered businesses deemed to be complying according to documentation submitted were exempt from routine labor inspections for one year, although this did not prevent the Labor Secretariat from conducting complaint-based labor inspections in these businesses.

The Labor Secretariat had the authority to order labor inspections at any time in the event of labor law violations, imminent risk to employees, or workplace accidents. Penalties for violations of OSH regulations were

commensurate with those for other similar laws but were rarely enforced.

According to INEGI, informal-sector workers represented 55 percent of total workers in the country. The government did not enforce labor laws in this sector.

POLITICS

America's misunderstood border crisis, in 8 charts

For all the attention on the border, the root causes of migration and the most promising solutions to the US's broken immigration system are often overlooked.

by **Nicole Narea**
Jun 3, 2024, 3:10 PM EDT

Migrant people of different nationalities seeking asylum in the United States travel on freight cars of the Mexican train known as "The Beast" as they arrive at the border city of Ciudad Juarez in Chihuahua, Mexico, on April 24, 2024. Herika Martinez/AFP via Getty Images

Nicole Narea covers politics and society for Vox. She first joined Vox in 2019, and her work has also appeared in Politico, Washington Monthly, and the New Republic.

There is a crisis on America's border with Mexico.

The number of people arriving there has skyrocketed in the years since the pandemic, when crossings fell drastically. The scenes coming from the border, and from many US

cities that have been touched by the migrant crisis, have helped elevate the issue in voters' minds.

But for all the attention the topic gets, it is also widely misunderstood. The last few decades have seen a series of surges at the border and political wrangling over how to respond.In the latest effort to stem migration, President Joe Biden is expected to issue a controversial executive order Tuesday to temporarily shut down the border to asylum seekers whenever border crossings exceed 5,000 in a week or 8,500 in a single day.

Even if the policy survives court challenges, however, it will not address the root causes of migration and why the US has long been ill-equipped to deal with it, two issues that have been consistentlyoverlooked. Understanding all of that is key to fixing the problem.

Yes, border crossings are up. But the type of migrants coming, where they're from, and why they're making the often treacherous journey to the southern border has changed over the years. The US's immigration system simply was not designed or resourced to deal with the types of people arriving today: people from a growing variety of countries, fleeing crises and seeking asylum, often with their families. And that's a broader problem that neither Biden, nor any president, can fix on their own.

Here's an explanation of the border crisis, broken down into eight charts.

It's true, more people have been coming

The reality at the border has fundamentally changed in the years since Biden took office.

Former President Donald Trump effectively shut down the border during the pandemic. He instituted the so-called Title 42 policy, which expelled asylum seekers under the pretext of protecting public health.

Why China is losing the microchip war

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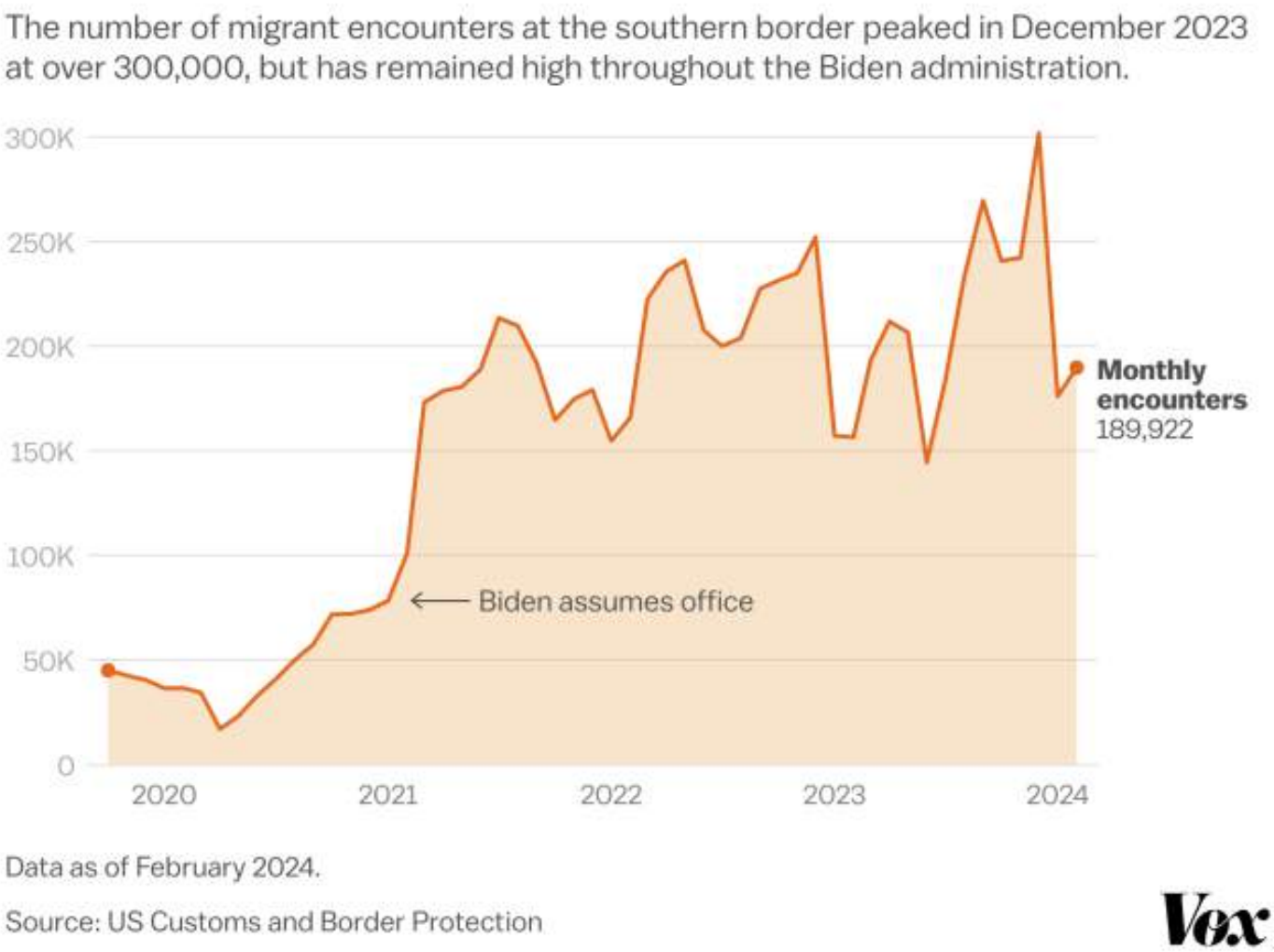
And how its escalated the US-China cold war.

As the pandemic subsided, migrants started attempting anew to cross the border in the last year of Trump's presidency. When Biden won the 2020 election on a pro-immigrant platform, many migrants reportedly assumed (and were advised by smugglers) that his policies would be more welcoming, resulting in a sharp increase in crossings.

That assumption proved faulty. Biden maintained Trump's Title 42 policy for more than two years after taking office, ending it only in May 2023 when he also terminated the national emergency related to the pandemic. Border encounters climbed even higher that fall. By December, immigration authorities recorded a record number of more than 300,000 migrant encounters. The number of encounters has been so high that it's clear more people have been coming under the Biden administration than during the Trump years, even accounting for seasonal fluctuations in migration.

Border crossings are up under Biden



(Note: The same person can account for multiple encounters if they attempt to cross the border and come into contact with officials more than once. While the Title 42 policy was in place, migrants were not penalized for attempting to cross the border multiple times, and many did, though it's hard to say exactly how many.)

In recent months, however, that trend has started to slow for a few reasons.

The Biden administration has instituted its version of Trump's asylum transit ban. That rule allows immigration enforcement officials to turn away migrants for a number of reasons: if they do not have valid travel and identification documents, if they've traveled through another country without applying for asylum, if they don't show up at a port of entry at an appointed time, and more.

More so than Biden's asylum policies, the biggest factor in declining border encounters by far is Mexico's efforts to step up enforcement, said Aaron Reichlin-Melnick, policy director at the American Immigration Council. Mexico has prevented some migrants from traveling north, bused and flown others back to Mexico's southern border with Guatemala, and recently reached an agreement with Venezuela to deport its citizens.

That has made this spring so far the quietest at the US southern border in four years. There is a question, however, of how long this can last — and at what cost to asylum seekers.

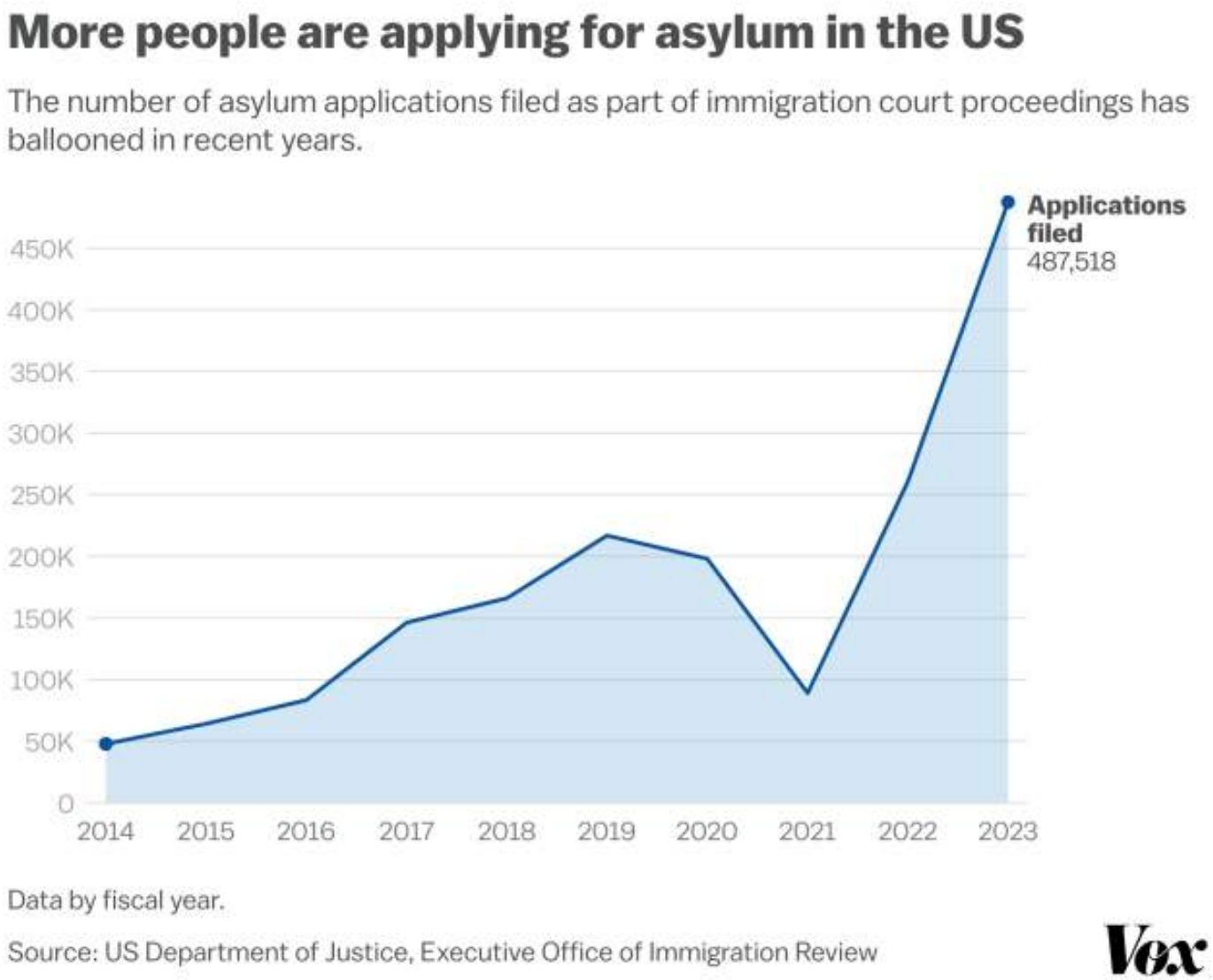
"Despite Mexico going through the cycle of periodic crackdowns, none of them has lasted for longer than a few months or produced sustained, yearslong drops in the number of migrants arriving at the border," Reichlin-Melnick said. "That's why I call it a Band-Aid."

Compared to past surges, different types of migrants are coming from different places and seeking different things

The last time the US immigration system was significantly reformed in the late 1980s, migrants arriving at the border were primarily single adult males from Mexico looking for work. That is no longer the case.

More people are arriving at the US southern border intending to apply for asylum than ever before. That means instead of coming here claiming to look for work, they are seeking refuge because they have what the US government determines is a "credible fear" of persecution in their home countries on account of their race, religion, nationality, political opinions, or membership in a "particular social group," such as a tribe or ethnic group.

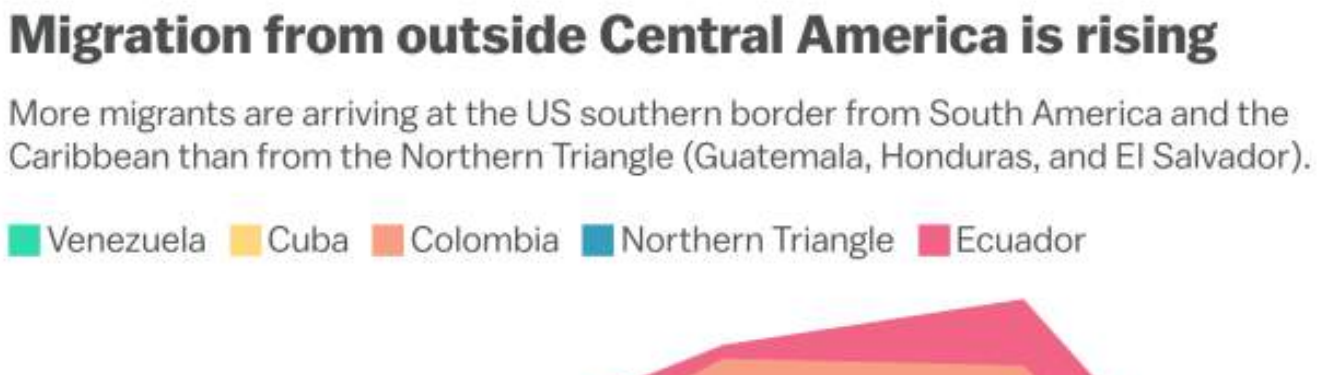
The number of asylum applications filed as part of immigration court proceedings — where migrants encountered at the border are often referred after being found to have credible claims for protection — skyrocketed in recent years through the end of 2023.

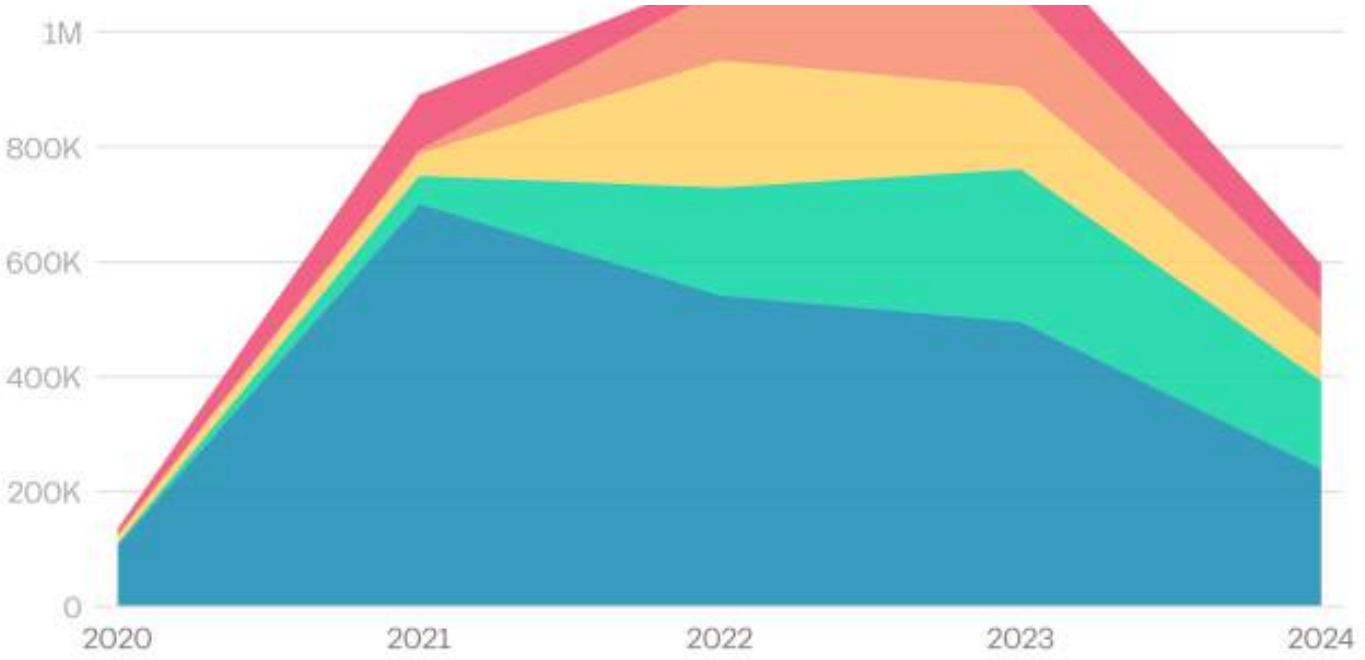


Under the Trump administration, most migrants arriving at the southern border were from Central America's "Northern Triangle": Guatemala, Honduras, and El Salvador.

In the last few years, however, the number of migrants coming from those countries has been eclipsed by those coming from South America — particularly Venezuela, Colombia, and Nicaragua — and the Caribbean, including Haiti and Cuba. They have been driven out by recent compounding political and economic crises and natural disasters in their home countries.

Mexican nationals are still showing up at the border, but rather than coming for economic reasons, they're being driven out by shifting patterns of cartel violence.





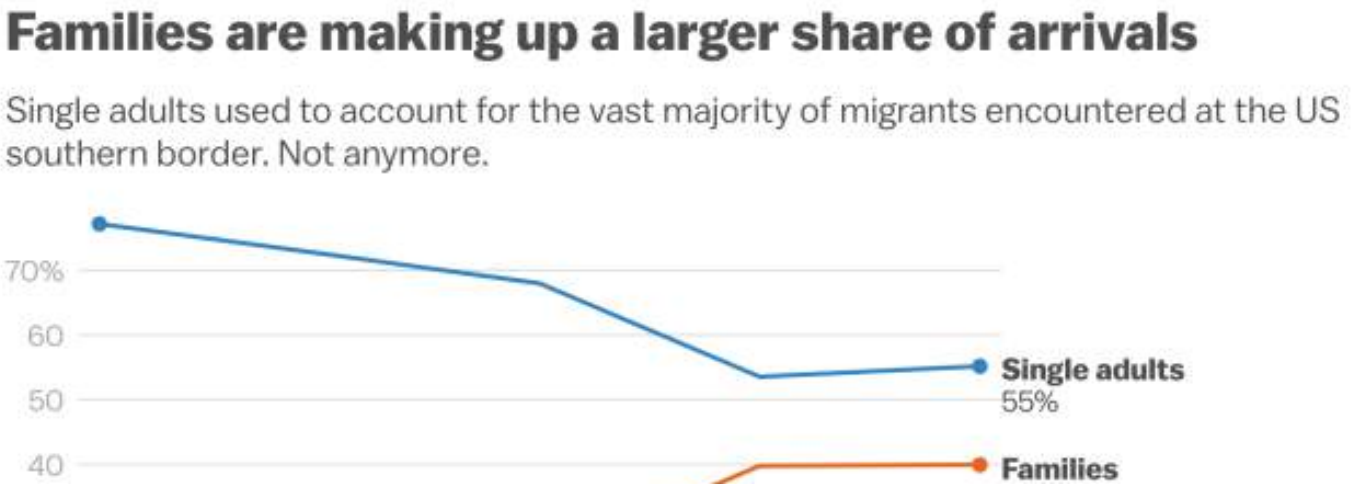
Data by fiscal year. 2024 data is available through February.

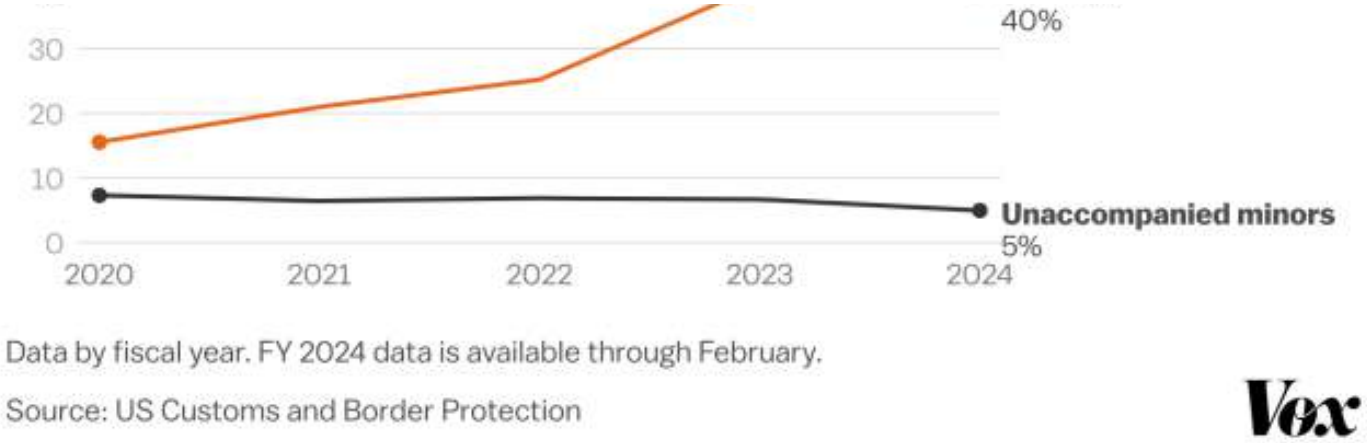
Source: US Customs and Border Protection

Vox

Migrants are increasingly coming from much more far-flung areas of the world. Migrants from China are among the fastest-growing populations at the southern border. There is also rising migration from India and Europe. Smugglers at the southern border have started marketing their services to these populations in a bid to expand their business.

More families are also coming. This might be due to the correct perception that families have a better chance of remaining in the US if they travel together than if they travel separately.





All of this seems to reflect the understanding that, for many of these migrant populations, there are no other good options but to go to the southern border, even if they may qualify to enter the US legally by other means. US refugee resettlement typically takes years. Wait times for some family-based green cards for some countries can take decades.

"There's an increasing number of people that need protection, and they view that the fastest and clearest way to protection is to go to the US-Mexico border," said Ariel Ruiz Soto, a senior policy analyst at the Migration Policy Institute.

The immigration system is struggling to absorb these migrants

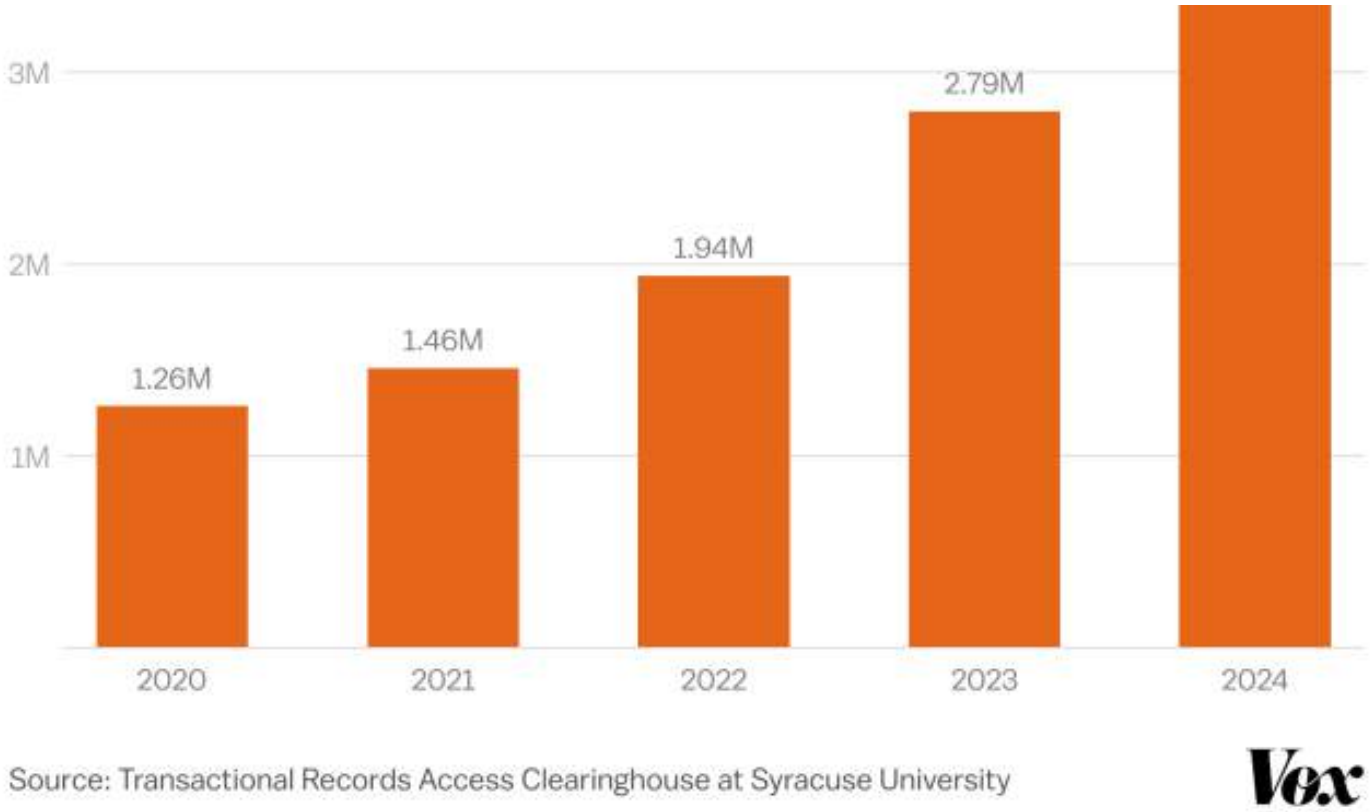
The US immigration system is not designed to process so many people arriving at the southern border, especially not from such a broad array of countries and as part of families.

That has created a variety of new challenges:

- Some countries generating large numbers of migrants, like Venezuela, Cuba, and China, have refused to receive more than a few, if any, of their citizens whom the US wants to deport.
- Processing migrants who don't speak Spanish or English may require bringing in a certified translator who isn't always readily available.
- Families and children are vulnerable populations with a unique set of needs, and the infrastructure does not exist to keep them in government custody long-term. The Biden administration has recently introduced a pilot program to process and monitor families without having to detain them, but like the rest of the immigration system, it is under-resourced and therefore has only covered a fraction of families arriving at the southern border.

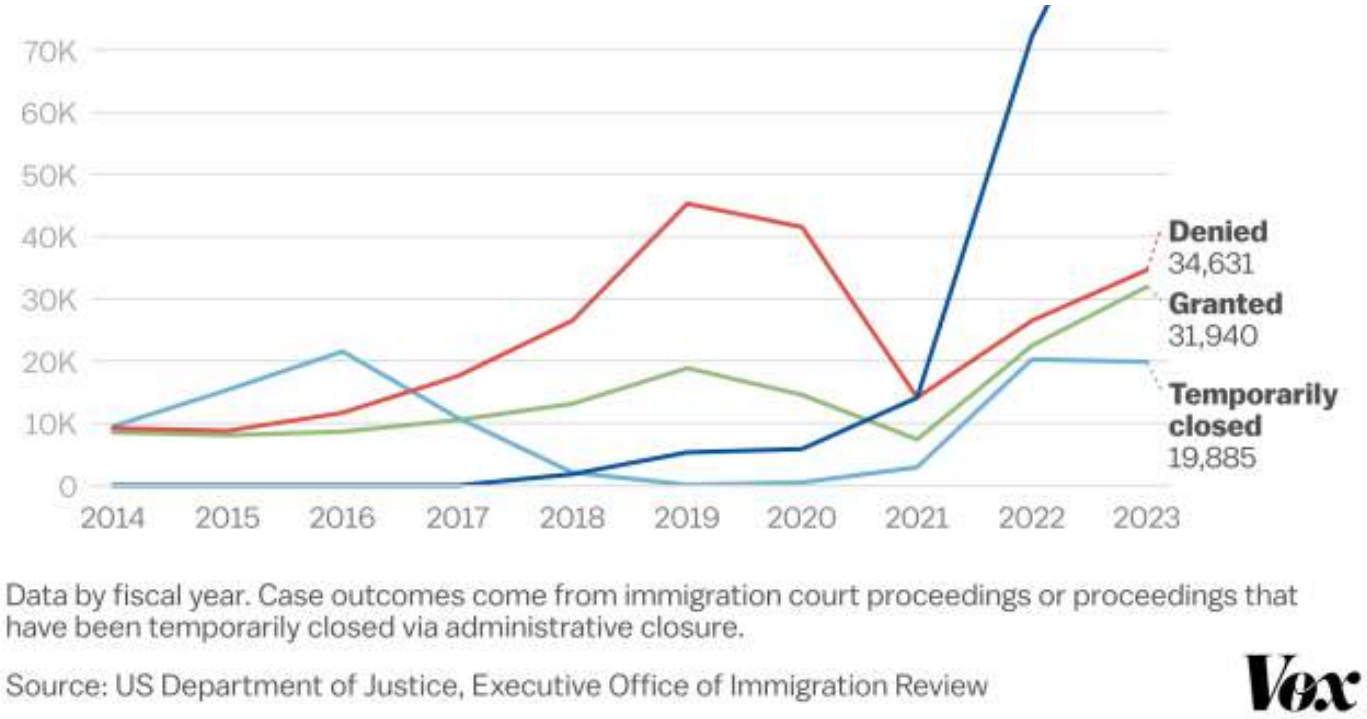
These challenges have deepened the immigration court backlog, which has grown to over 3 million cases. The immigration courts handle cases in which the Department of Homeland Security does not have the authority to deport an immigrant unilaterally, and they consider any potential relief from deportation for which they may qualify, including asylum and protections for victims of torture.

So far this year, resolving those cases has taken more than a year on average, during which time migrants may have been detained or released into the US.



This is despite the Biden administration's efforts to slow the growth of the backlog, including removing cases from the docket that are not a high priority for enforcement and involve people who do not have a criminal record or have been in the US for a long time.

The Biden administration started processing more asylum applications as the pandemic waned, leading to an increase in grants and denials. However, because of a lack of resources in the immigration courts and at US Citizenship and Immigration Services's asylum office, the number of cases that are not adjudicated or temporarily closed has gone up even higher.



Data by fiscal year. Case outcomes come from immigration court proceedings or proceedings that have been temporarily closed via administrative closure.

Source: US Department of Justice, Executive Office of Immigration Review

Vox

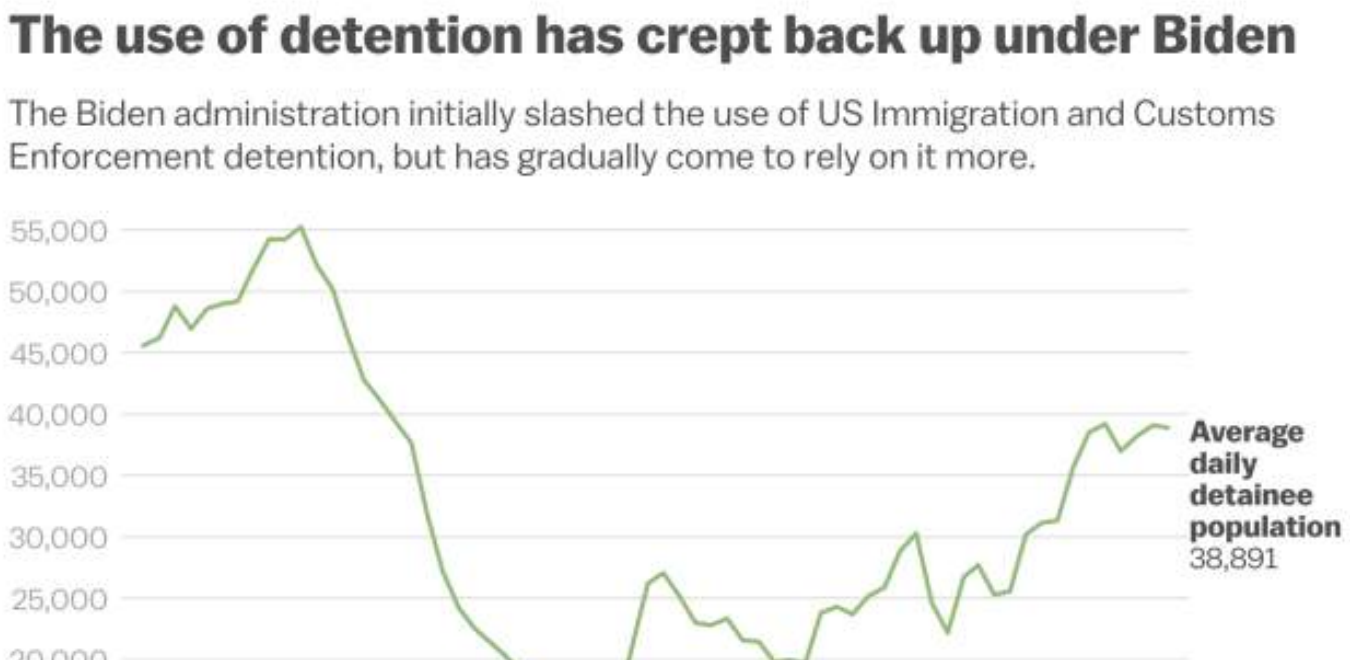
Biden has tried a variety of different approaches to handling the asylum backlog, including marking more cases under that non-adjudicated status and proposing to change the processing rules to allow the government to more quickly expel people who are potentially ineligible to remain in the US. The thinking is that fewer people will be interested in crossing the border if they don't expect to be able to spend years in the US before ever having to litigate their asylum claim.

But it remains to be seen if that's really working.

Absent real solutions to these issues, border states started busing migrants from the border to blue cities in 2022. Some of those cities, many of which have been sanctuaries for undocumented immigrants over the years, have implemented policies to evict migrants from public shelters after a certain period of time due to a lack of capacity. That even these pro-immigrant cities are struggling indicates how stressed the system has become.

Biden has also started sending more migrants, most of whom have no criminal record, to US Immigration and Customs Enforcement detention. The number of immigrants in ICE detention was at historic lows during the pandemic due to public health concerns associated with confining people in close quarters.

But that changed when the pandemic subsided and the number of people arriving at the border increased, creating both real and perceived pressure for the government to increase its capacity to detain migrants, said Tom Jawetz, former deputy general counsel at the Department of Homeland Security. At Biden's urging, Congress raised the number of authorized ICE detention beds from 34,000 in fiscal year 2023 to 41,500 in 2024, close to historical highs.



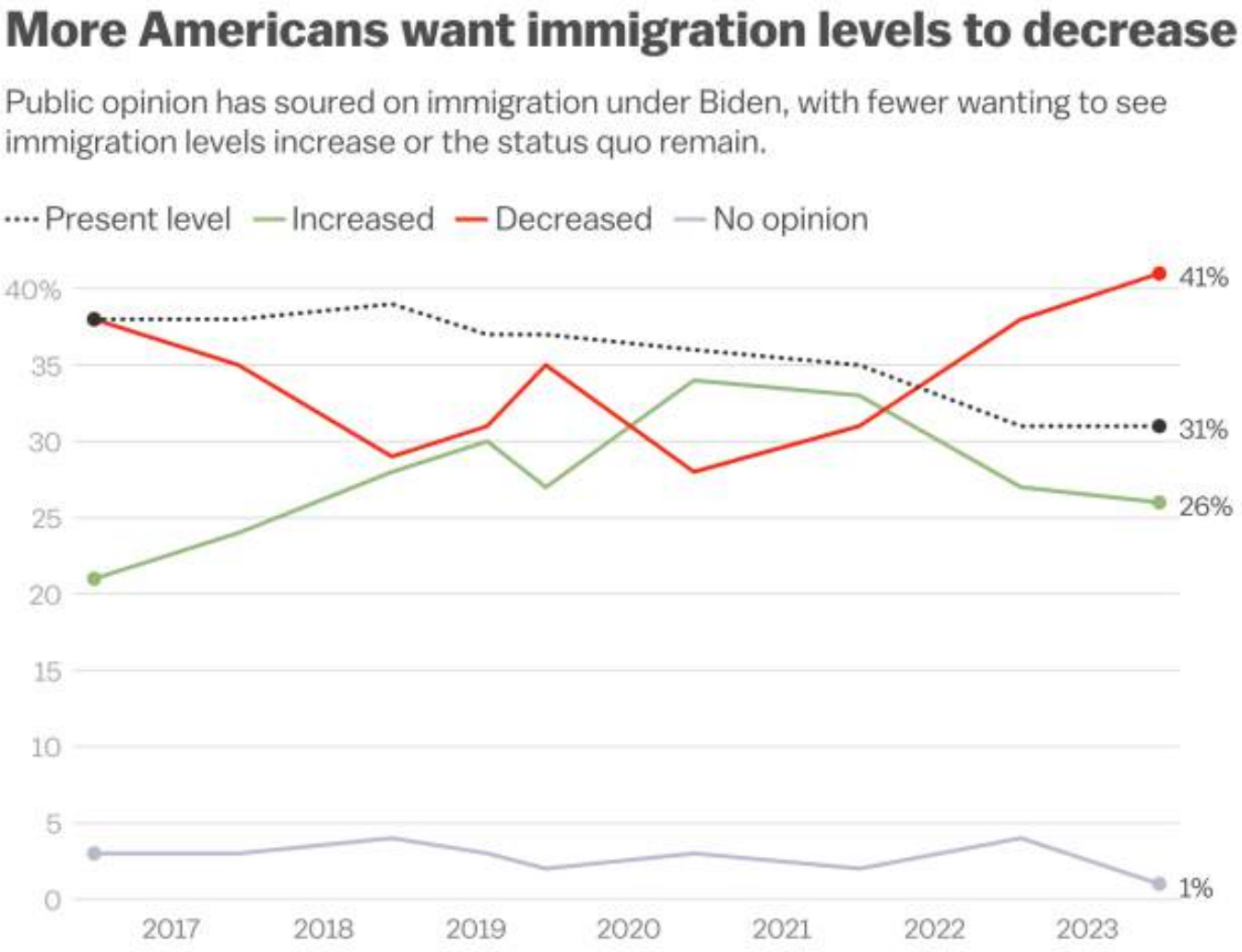
Data up to March 2024.

Source: US Immigration and Customs Enforcement

Vox

Public opinion on immigration has soured

The challenges at the border and throughout the immigration system have led more Americans to sour on immigration itself. A long-running Gallup survey has shown that, of late, Americans increasingly want to see immigration levels decrease.



Source: Gallup

Jawetz said that Americans' dissatisfaction with the immigration system is "totally fair."

"The immigration system is not working as you might want it to work. And that's what people have meant for many, many years when they said the immigration system is broken," he said.

That dysfunction predates Biden, but has now compounded to the point that members of both parties recognize the status quo is untenable. Most recently, a solution seemed within reach when a bipartisan group of lawmakers reached a deal that traded sweeping border security measures for aid for Ukraine, Taiwan, and Israel. But Republicans in the House ultimately tanked the bill so that Donald Trump could keep the issue alive on the campaign trail this year.

The fact is that responding to the global surge of migration requires major reforms that no one president could enact unilaterally. That includes providing adequate resources

to the most overburdened parts of the system, ensuring the Border Patrol officers can perform more inspections, and staffing enough asylum officers and immigration judges to process migrants' claims for protection.

By itself, enforcement is insufficient to resolve the problems at the border, Ruiz Soto said.

"Even the most strict policies of a potential future Trump administration would not be enough if the resources and infrastructure continues to be the same," he said.

Update, June 3, 3:10 pm ET: *This story has been updated with information on Biden's anticipated executive order to shut down the border.*

Correction, May 14, 3:20 pm ET: *This story, originally published May 12, included a chart on the Biden administration's use of detention of migrants that initially underrepresented the policy by only depicting the number of migrants detained who had been arrested by Immigration and Customs Enforcement and not those arrested by other organizations like Customs and Border Protection. The full numbers are now depicted.*

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CBP ONE – A BLESSING OR A TRAP?

AMNESTY INTERNATIONAL

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AMNESTY INTERNATIONAL

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GLOSSARY

WORD	DESCRIPTION
ASYLUM SEEKER	An asylum seeker is someone who has left their country seeking protection but has yet to be recognized as a refugee. During the time that their asylum claim is being examined, the asylum seeker must not be forced to return to their country of origin. Under international law, being a refugee is a fact-based status, and arises before the official, legal granting of asylum.
CBP	US Customs and Border Protection (CBP) is a law enforcement agency of the Department of Homeland Security (DHS), operating in the border area and ports of entry of the United States. The US Border Patrol is part of CBP.
CBP ONE MOBILE APPLICATION	CBP One is a mobile application that serves as a single portal to a variety of CBP services, including scheduling an appointment for migrants and asylum seekers to present themselves at a port-of-entry.
CDC	US Centers for Disease Control and Prevention
CIRCUMVENTION OF LAWFUL PATHWAYS FINAL RULE	Issued on 11 May 2023, under the Final Rule, asylum seekers who cross the southwest land border or adjacent coastal borders without authorization after traveling through another country, and without having (1) availed themselves of an existing lawful process, (2) presented at a port-of-entry at a pre-scheduled time using the CBP One app, or (3) been denied asylum in a third country through which they traveled, are presumed ineligible for asylum unless they meet certain limited exceptions.
CNB	Mexican National Search Commission (*Comisión Nacional de Búsqueda*)
COMAR	Mexican Commission for Refugee Assistance (*Comisión Mexicana de Ayuda a Refugiados*) is the agency of the Mexican Government responsible for processing refugee status determinations.
DHS	US Department of Homeland Security
EXTERNALIZATION	A range of migration management policies that focus on shifting the responsibility of providing international protection to refugees and asylum seekers to other countries, or on enlisting source or transit countries in tightening control over their borders. Externalization policies share the objective of preventing or punishing irregular border crossings by refugees, asylum seekers and migrants, often mobilizing and leveraging international financial aid.
FACIAL RECOGNITION	A computer vision technique – that is, a method of visually identifying objects, people and terrain in computer systems – used to identify the faces of humans. This happens using a reference facial image (for example a picture gathered from CCTV footage), together with an algorithm previously trained to map, identify, and compare images served to it via other databases (for example, drivers' license registries, social media profiles, etc). Facial recognition technology (FRT) for identification (also known as 1:n facial recognition) is a technology of mass surveillance by design, and as such is a violation of the right to privacy. Facial recognition for authentication (commonly known as 1:1 facial recognition) uses a different process, in which two images are directly compared, and usually involves

WORD	DESCRIPTION
	the person in question, for example when an image of a person is directly compared to their passport photo, or when one uses one's face to unlock a phone.
GPS TECHNOLOGIES	Global Positioning System – a navigational system used to identify the longitudinal and latitudinal position of people, objects and places across the planet.
INM	Mexican National Institute of Migration (*Instituto Nacional de Migración*)
IOM	International Organization for Migration
IRREGULAR ENTRY	Crossing into a country without a migration status that complies with requirements of domestic immigration legislation and rules. The term "irregular" refers only to a person's entry or stay.
MIGRANTS	Migrants are people who move from one country to another, either temporarily or permanently, for a variety of reasons.
PORT-OF-ENTRY	Ports-of-entry are official customs border entry points into the USA, where travelers show their identification and travel documents and request entry.
REFOULEMENT	Forcible return of an individual to a country where they would be at risk of serious human rights violations (such as persecution or torture). International law prohibits the return of refugees and asylum seekers to the country they fled without appropriate evaluation of the risk of return – this is known as the principle of *non-refoulement*. Chain refoulement occurs when one country forcibly sends someone to another country that subsequently sends them to a third country where they risk serious harm; this is also prohibited under international law.
REFUGEE	Refugees are defined in the 1951 Convention Relating to the Status of Refugees as individuals who cannot return to their countries of origin because they have a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group, or political opinion. The Cartagena Declaration (adopted by most Latin American countries including Mexico) expands the definition to include individuals fleeing from generalized violence, internal conflicts and massive violations of human rights. Their own government cannot or will not protect them and so they are forced to seek international protection. Asylum procedures are designed to determine whether someone meets the legal definition of a refugee. When a country recognizes an asylum seeker as a refugee, it gives them international protection as a substitute for the protection of their home country.
TITLE 8	The section of the US Code titled "Title 8: Aliens and Nationality" contains all of the US' immigration and asylum laws.
TITLE 42 ORDER	Public health policy issued by the US Centers for Disease Control and Prevention (CDC) under Title 42 (public health code) originally on March 2020 (later replaced by similar orders on October 2020 and August 2021) that allowed the US to immediately expel migrants and asylum seekers crossing its borders during the Covid-19 pandemic to their home country or most recent transit country, without granting them access to the US asylum system.
UNACCOMPANIED CHILDREN	Under US law, unaccompanied children are defined as children under the age of 18 who arrive at the US border without lawful immigration status or a parent or legal guardian, or who do not have a parent or legal guardian in the US available to provide care and custody.
UNHCR	United Nations High Commissioner for Refugees
USCIS	US Citizenship and Immigration Services

1. EXECUTIVE SUMMARY

This report examines the human rights issues associated with the right to seek international protection in the United States, particularly the use of the CBP One mobile application. On 11 May 2023, the Biden Administration introduced the Circumvention of Lawful Pathways Final Rule (also known as the Asylum Ban). The Final Rule imposes a rebuttable presumption of ineligibility for asylum upon individuals who enter the United States from Mexico at the southern land border or adjacent coastal borders "without authorization". The rebuttable presumption does not apply to asylum seekers who are able to meet one of three exceptions:

- They were provided authorization to travel to the United States pursuant to a DHS-approved parole process;
- They used the CBP One mobile application to schedule a time and place to present at a port of entry, or they presented at a port of entry without using the CBP One application and established that it was not possible to access or use the application due to a language barrier, illiteracy, significant technical failure, or other ongoing and serious obstacle; or,
- They applied for and were denied asylum in a third country en route to the United States.

This investigation focuses on the human rights concerns associated with the use of CBP One – a mobile application launched by US Customs and Border Protection (CBP) on 28 October 2020. Following the termination of Title 42 and in accordance with the Final Rule, people seeking asylum are now required to use the CBP One application to schedule a time to arrive at participating ports of entry along the US-Mexico border in order to present their asylum claims, unless they are able to demonstrate "by a preponderance of the evidence that it was not possible to access or use the CBP One app due to language barrier, illiteracy, significant technical failure, or other ongoing and serious obstacle". Asylum seekers who arrive at ports of entry without having previously scheduled an appointment through CBP One and who are unable to prove that it was not possible to access or use the application, or who do not meet one of the two other exceptions in the Final Rule, will be presumed to be ineligible for asylum.

The CBP One application is only available in English, Spanish and Haitian Creole. 1,450 daily appointments are offered at eight ports of entry: Brownsville-Matamoros, Calexico-Mexicali, Eagle Pass-Piedras Negras, El Paso (Paso del Norte)-Ciudad Juárez, Hidalgo-Reynosa, Laredo-Nuevo Laredo, Nogales and San Ysidro-Tijuana. In order to request and schedule appointments via CBP One, individuals must be located in central or northern Mexico. Asylum seekers have up to 12 hours a day (from 11 a.m. CST/GMT-6 to 11 p.m. CST/GMT-6) to sign into CBP One and request an appointment. Requests for appointments are considered the day immediately following the request which means that individuals must log into the application and request an appointment each day until they are allocated an appointment. The application does not allocate appointments in order of registration. Instead, 70% of available appointments are allocated randomly to individuals who requested an appointment the previous day and 30% are allocated to people requesting appointments with the oldest accounts who have been waiting the longest.

Challenges in using the CBP One mobile application to seek asylum

As part of this research, Amnesty International conducted interviews with hundreds of asylum

seekers, service providers and local and international organizations across various locations in Mexico and the US about their experiences using the CBP One application and circumstances while waiting in Mexico for CBP One appointments. The organization found that people seeking asylum experience challenges using the application due to an onerous registration process, technological errors and flaws, and lack of knowledge about the application and how it works. Given that CBP One does not assign appointments based on the order of registration, but essentially operates as a lottery system, individuals using it have vastly different experiences. Some receive appointments relatively quickly, while others end of waiting for months. Moreover, some asylum seekers are unable to use the application for financial, literacy and language proficiency reasons, among others.

Technological considerations and privacy and surveillance concerns

As part of this investigation, Amnesty International performed an analysis of the CBP One Android application with a view to identifying any privacy or security concerns. The application's use of facial recognition, GPS tracking and cloud storage to collect data on asylum seekers prior to their entry into the United States raise serious privacy and non-discrimination concerns. Asylum seekers often lacked understanding of CBP One's privacy policy but agreed to it anyways because it was the only way for them to be able to use the application. Considering that use of CBP One is one of the limited exceptions to not being ineligible for asylum under the Final Rule, it is arguable whether use of the application is truly voluntary. Concerns also extend to the undisclosed sharing of data with third-party services like Google's Firebase and the potential for discriminatory outcomes in facial recognition processes, as evidenced by documented demographic biases. The CBP One application risks violating international human rights standards, particularly regarding privacy and non-discrimination, and reinforce border regimes that disproportionately affect marginalized groups, potentially leading to wrongful identification and denial of asylum rights.

Situation in Mexico while waiting for CBP One appointments

The requirement to use the CBP One application to seek asylum in the United States and the fact that it is only possible to apply for appointments from central to northern Mexico means that asylum seekers must now wait in Mexico for undetermined amounts of time while they apply for CBP One appointments. Amnesty International found that asylum seekers traveling through Mexico are often extorted, kidnapped and experience discrimination and sexual and gender-based violence by both state and non-state actors. The majority stay in shelters or informal encampments with inadequate living conditions. People seeking asylum struggle to access healthcare, education and employment opportunities. The majority of asylum seekers do not have any sort of migratory document issued to them by the Mexican Government which places them at even greater risk. There is no certainty as to when people seeking asylum will receive a CBP One appointment which ends up leaving them exposed to violence and hardship for potentially long periods of time. Asylum seekers who already have CBP One appointments seem to have even worse experiences because people take advantage of the fact that they are desperate to make it to their appointment.

Increasing wait times for CBP One appointments and uncertainty about when people seeking asylum will be given an appointment, compounded by the dangerous and difficult situation in Mexico and Mexican authorities blocking access to ports of entry has forced many asylum seekers to make the difficult decision to cross into the United States without a CBP One appointment.

Mandatory use of CBP One to seek asylum violates the United States' and Mexico's international human rights and refugee law obligations

All individuals have the universal human right to seek and enjoy asylum from persecution and serious human rights violations. All individuals also have the right not to be returned to places where their life or freedom may be endangered or where they would be at risk of torture or cruel, inhuman or degrading treatment or punishment, regardless of their migration status. The United States has both domestic and international obligations to provide access to territory and to individualized and fair assessments of all requests for protection by asylum seekers looking for

safety at the border, in a way that does not discriminate based on migration status, including the manner of entry. Amnesty International considers that the Circumvention of Lawful Pathways Final Rule and the mandatory use of the CBP One application are the newest iteration of migration and asylum policies implemented by the US government at the US-Mexico border which drastically limit access to asylum in violation of international human rights and refugee law. While the organization recognizes that innovations such as electronic entry management systems could potentially provide for safe transit and more orderly border access, programs like CBP One cannot be used as the exclusive manner of entry into the United States to seek international protection. The organization considers that the CBP One mobile application must not be used to create obstacles, but instead should be one of a variety of means to access the right to seek asylum.

Mexico has both domestic and international obligations to ensure the right of individuals to seek asylum. By acquiescing to the use of the CBP One application in Mexico and by enforcing its use by preventing access to US ports of entry on Mexican soil by individuals without CBP One appointments, Mexico is violating international human rights and refugee law. Mexico must also protect the rights of who are in transit to the United States. Amnesty International considers that Mexico is failing to protect, respect and fulfil the rights of people seeking asylum, including by failing to hold state and non-state actors accountable for the acts of violence committed against them.

Taking into consideration the opinions of people seeking asylum, shelters and organizations, as well as the United States' and Mexico's human rights obligations under international law, Amnesty International makes a series of recommendations to the Governments of the United States and Mexico. The organization calls on the Government of the United States to guarantee the right of individuals to seek asylum, including by immediately rescinding the Circumvention of Lawful Pathways Final Rule and abandoning the mandatory use of the CBP One mobile application; guarantee the right of *non-refoulement* of persons in need of international protection; invest in systems to process asylum seekers at the border without delay or detention, including increasing the number of daily CBP One appointments across all ports of entry; immediately cease the deployment of facial recognition technologies for identification (1:n) of asylum seekers; and, increase funding available to humanitarian and community-based organizations that provide shelter and services to asylum seekers on both sides of the US-Mexico border. Amnesty International calls on the Government of Mexico to stop collaborating with the United States in the implementation of policies that violate the human rights of migrants and asylum seekers; guarantee the right of individuals to seek asylum, including by ensuring that asylum seekers are able to access US ports of entry; Immediately implement measures to ensure the safety and security of asylum seekers transiting through Mexico; and, immediately investigate the allegations of violence, extortion, kidnappings, sexual and gender-based violence and disappearances of asylum seekers and when applicable criminal sanctions.

2. METHODOLOGY

This report examines the human rights issues associated with the right to seek international protection in the United States. The report builds upon a policy briefing published by Amnesty International in May 2023 which determined that the use of CBP One as the exclusive manner of entry into the US to seek asylum violates international human rights law.[1] It also builds on the findings of a delegation of human rights organizations led by the Haitian Bridge Alliance and which included Amnesty International, that visited the US-Mexico border to observe the end of Title 42 in May 2023.[2]

To produce this report, in October and November 2023, Amnesty International visited Matamoros, Monterrey, Piedras Negras, Reynosa and Tijuana in Mexico, and Brownsville and San Diego in the US. During these research trips, the organization interviewed people seeking asylum, met with services providers, local and international organizations, and visited shelters and camps where asylum seekers stay while waiting for their CBP One appointments, and where they are released into the United States.

As part of this research, Amnesty International interviewed 55 individuals and 66 families who, based on the size of their families or groups they were travelling with, represent the experiences of approximately 356 asylum seekers[3] (almost half of whom were women), from the following nationalities: Afghanistan, Angola, Brazil, China, Colombia, Cuba, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Peru and Venezuela.[4] Of those interviewed, 79 had a CBP One appointment, while 249 did not, and 28 had entered the US without an appointment. Interviews with people seeking asylum were conducted in-person in October and November 2023.

Amnesty International also interviewed more than 10 local and international organizations in Mexico and the US including Al Otro Lado (AOL), American Friends Service Community, Asylum Access Mexico, Haitian Bridge Alliance, Sidewalk School and the Transgender Law Center, as well as well-known activist and advocate Tom Cartwright. The organization also visited and spoke with those running migrant shelters, including Borderline Crisis Center, Casa Arcoiris, Casa Indi, Casa Monarca, Casa Nicolás, CIM Matamoros, Central Elementary, Frontera Digna, Ictus Hidi, Iglesia Embajadores de Jesús, Kaleo Internacional, Nueva Betania, Pumarejo, Senda de Vida I, Senda de Vida II and Villa Haitiana. Amnesty International also visited and spoke with those providing welcome and reception in the United States, including Good Neighbor Settlement House, Team Brownsville, Haitian Bridge Alliance and Al Otro Lado. Interviews were conducted in-person and

[1] Amnesty International, *United States of America: Mandatory Use of CBP One Application Violates the Right to Seek Asylum* (AMR 51/6754/2023), 7 May 2023, amnesty.org/en/documents/amr51/6754/2023/en/.
[2] Haitian Bridge Alliance et al, *Lives at Risk: Barriers and Harms as Biden Asylum Ban Takes Effect*, May 2023, humanrightsfirst.org/wp-content/uploads/2023/05/Barriers-and-Harms-As-Biden-Asylum-Ban-Takes-Effect31.pdf.
[3] The individuals interviewed by Amnesty International told the organization they planned on seeking asylum in the United States.
[4] Amnesty International interviewed 107 Venezuelans, 71 Haitians, 54 Hondurans, 39 Mexicans, 16 El Salvadorans, 15 Guatemalans, 13 Cubans, 10 Colombians, 8 Peruvians, 6 Afghans, 4 Chinese, 4 Brazilians, 4 Ecuadorians, 3 Nicaraguans and 2 Angolans.

virtually from August to November 2023.

Amnesty International performed an analysis of the CBP One Android application with a view to identifying any privacy or security concerns. This analysis was limited to a static decompilation of the code.[5] A dynamic analysis of CBP One was not performed, as many of the important aspects of the operation of the application are performed server-side –such as appointment allocation, facial recognition, etc.–, and are not possible to analyze by reverse engineering techniques. There were also legal and ethical concerns around performing such analysis.

Researchers reviewed reports published by international and non-governmental organizations on the CBP One mobile application and the Circumvention of Lawful Pathways Final Rule, government documents and statistics from the US and Mexico and legal documents.

Amnesty International requested meetings with US government agencies and relevant Ports of Entry. The organization met with CBP and DHS.[6] Amnesty International provided US and Mexican government agencies with an opportunity to respond to the findings of this research and the responses that were received were incorporated into this report.

Amnesty International would like to express its utmost thanks to the asylum seekers who spoke to the organization as part of this research. At the time of the interviews many were in difficult and dangerous situations yet took the time to entrust their testimonies to the organization. Amnesty International would also like to thank the migrant shelters that allowed the organization to visit and interview asylum seekers, as well as the local and international organizations that met with Amnesty virtually and in person. Amnesty International commends them for their important work in protecting the human rights of asylum seekers in Mexico and the United States.

Various individuals and organizations spoke to Amnesty International on the condition of anonymity. Their names have not been included in this report. In some cases, pseudonyms have been used to refer to some of the individuals interviewed, which is indicated using quotation marks (“”) around their name.

[5] Decompilation is the reconstruction of source code (human intelligible) from compiled machine code (the automatically produced code that runs on a machine, that is not very meaningful to humans). Dynamic analysis involves observing the behavior of the application by interacting with it in a real or realistic way. In the case of the CBP One application, this would be logging in with real credentials, and booking an appointment.

[6] Online meeting with CBP, 14 March 2024; Online meeting with DHS, 20 March 2024; Online meeting with CBP 1 April 2024.

3. SEEKING ASYLUM IN THE UNITED STATES

3.1 MIGRATION TO THE UNITED STATES

According to the United Nations High Commissioner for Refugees (UNHCR), at the end of June 2023, 110 million people worldwide were forcibly displaced from their homes due to persecution, conflict, violence, human rights violations, and events seriously disturbing public order.[7] By mid-2023, the Americas hosted 22.1 million forcibly displaced individuals.[8] UNHCR projects that this number will reach 25 million in 2024.[9]

In 2023, over 2.5 million asylum seekers and migrants entered the United States at the US-Mexico border.[10] The United States was the world's largest recipient of new asylum claims as of June 2023, with 540,600 new individual claims submitted.[11] The majority of asylum claims were made by individuals from Latin America and the Caribbean, notably Venezuela, Cuba, Nicaragua, Colombia, Honduras and Haiti.[12]

Mexico is the last country of transit for thousands of people seeking asylum and migrants on their way to the United States. According to UNHCR, Mexico's southern border has seen a consistent increase in number of arrivals, which grew from around 650 individuals daily in previous months to 4,000 individuals per day during the first weeks of October 2023.[13] From January to September 2023, the National Institute for Migration (*Instituto Nacional de Migración* – INM) recorded almost 1.5 million asylum seekers and migrants from 191 countries in transit in Mexico.[14] In recent years, Mexico has also become a significant destination country for people in need of international protection in the Americas.[15] According to the Mexican Commission for Refugee Assistance (*Comisión Mexicana de Ayuda a Refugiados* – COMAR), 140,948 individuals claimed asylum in the country in 2023, placing Mexico in the top five countries with the highest number of new

[7] Of the 110 million forcibly displaced individuals, there are approximately 36.4 million refugees, 62.5 million internally displaced persons, 6.1 million asylum seekers and 5.3 million other people in need of international protection. UNHCR, *Mid-Year Trends 2023*, 25 October 2023, unhcr.org/mid-year-trends-report-2023, p. 2.
[8] UNHCR, *Americas Operational Update, October to December 2023*, 2023, reporting.unhcr.org/americas-operational-update-7663, p. 2.
[9] UNHCR, "The Americas", reporting.unhcr.org/operational/regions/americas.
[10] CBP, "Southwest Land Border Encounters", 22 March 2024, cbp.gov/newsroom/stats/southwest-land-border-encounters.
[11] UNHCR, *Mid-Year Trends 2023* (previously cited), p. 2; DHS, "Refugees and Asylees Annual Flow Report", dhs.gov/ohss/topics/immigration/refugees-asylees-afr.
[12] UNHCR, *Mid-Year Trends 2023* (previously cited), p. 24; UNHCR, *Global Trends – Forced Displacement in 2022*, 14 June 2023, unhcr.org/global-trends-report-2022, p. 30.
[13] UNHCR, *Fact Sheet: Mexico*, February 2024, reporting.unhcr.org/mexico-factsheet-7428, p. 2.
[14] INM, "Acuerdan INM y Ferromex acciones con los tres niveles de gobierno y CBP para la ruta del sistema ferroviario a fin de que las personas migrantes no arriesguen su vida a bordo", Comunicado 124/23, 22 September 2023, gob.mx/inm/prensa/acuerdan-inm-y-ferromex-acciones-con-los-tres-niveles-de-gobierno-y-cbp-para-la-ruta-del-sistema-ferroviario-a-fin-de-que-las-personas-migrantes-no-arriesguen-su-vida-a-bordo.
[15] UNHCR, "Mexico", unhcr.org/countries/mexico.

asylum claims worldwide.[16] From January to April 2024, 30,230 individuals had claimed asylum.[17] The top nationalities were Haiti, Honduras and Cuba.[18] People seeking asylum in Mexico must lodge their claim at the state-level and remain in that Mexican state until it is resolved.[19] In recent years, the majority of claims have been presented in the state of Chiapas.[20] Amnesty International previously reported on the practice of the INM detaining migrants and asylum seekers who try to leave Chiapas and returning them to the city of Tapachula, Chiapas.[21]

3.2 US MIGRATION AND ASYLUM POLICIES

In accordance with Title 8 of the US Code, any individual who is physically present in the United States or who arrives at the border must be given an opportunity to seek asylum.[22] Nevertheless, in recent years, the United States has implemented a series of migration and asylum policies which have drastically limited access to asylum at the US-Mexico border, resulting in irreparable harm to thousands of individuals seeking safety from persecution or serious human rights violations in their countries of origin.[23] These include "metering", the Migrant Protection Protocols (MPP), Title 42 and currently the Circumvention of Lawful Pathways Final Rule.

> **"Asylum seekers have never not had a racist experience at the border."**
>
> Lawyer, Al Otro Lado (Tijuana, Mexico)[24]

3.2.1 "METERING"

Since as early as February 2016, CBP implemented an illegal de facto policy of pushbacks of asylum seekers (referred to as "metering") at US ports of entry along the US-Mexico border.[25] Thousands of asylum seekers were forced to queue on the Mexican side of the border, sometimes for months, in dangerous conditions before they were permitted to request asylum.[26]

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[16] COMAR, "Cierre Febrero 2024", gob.mx/cms/uploads/attachment/file/896219/Cierre_Febrero-2024__29-Febrero_.pdf; UNHCR, *Mid-Year Trends 2023* (previously cited), p. 2; UNHCR, *Fact Sheet: Mexico* (previously cited), pp. 1-2.
[17] COMAR, "Cierre AbrilMarzo 2024", gob.mx/cms/uploads/attachment/file/913718/Cierre_Abril-2024__1-Mayo_.pdf..
[18] COMAR, "Cierre Abril 2024" (previously cited); UNHCR, *Fact Sheet: Mexico* (previously cited), p. 1.
[19] COMAR, *Guía para las personas solicitantes del reconocimiento de la condición de refugiado*, 2022, help.unhcr.org/mexico/wp-content/uploads/sites/22/2022/04/Guia-solicitante_COMAR_2022.pdf; WOLA, *Struggling to Survive: the Situation of Asylum Seekers in Tapachula, Mexico*, June 2022, wola.org/wp-content/uploads/2022/06/FINAL-Struggling-to-Survive-Asylum-Seekers-in-Tapachula.pdf, p. 9.
[20] COMAR, "Cierre Abril 2024" (previously cited).
[21] Amnesty International, *Not safe anywhere: Haitians on the move need urgent international protection* (AMR 36/4920/2021), 28 October 2021, amnesty.org/en/documents/amr36/4920/2021/en/, p. 6.
[22] 8 U.S.C. § 1158(a); American Immigration Council, *Metering and Asylum Turnbacks*, March 2021, americanimmigrationcouncil.org/sites/default/files/research/metering_and_asylum_turnbacks_0.pdf, p. 1.
[23] Amnesty International, *Americas: Pushback Practices and their Impact on the Human Rights of Migrants and Refugees* (AMR 01/3658/2021) 8 February 2021, amnesty.org/en/documents/amr01/3658/2021/en/, p. 1.
[24] In-person interview with lawyer at Al Otro Lado, Tijuana, Mexico, 28 November 2023.
[25] Amnesty International, *Americas: Pushback Practices* (previously cited), p. 1; Amnesty International, *'You don't have any rights here': Illegal pushbacks, arbitrary detention and ill-treatment of asylum-seekers* (AMR 51/9101/2018), 11 October 2018, amnesty.org/en/documents/amr51/9101/2018/en/, p. 5; American Immigration Council, *Metering and Asylum Turnbacks* (previously cited).
[26] Amnesty International, *Americas: Pushback Practices* (previously cited), p. 1; Amnesty International, *'You don't have any rights here'* (previously cited), pp. 5, 11-14.

3.2.2 MIGRANT PROTECTION PROTOCOLS – "REMAIN IN MEXICO" POLICY

The Migrant Protection Protocols (MPP), better known as the "Remain in Mexico" policy, required asylum seekers at the US-Mexico border to return to and stay in Mexico during the adjudication of their asylum claims, which could take months or years to complete.[27] From January 2019 to December 2020, at least 70,000 asylum seekers were returned to Mexico to await the adjudication of their claims.[28] The Biden Administration suspended and then terminated MPP. However, the policy was reinstated as the result of a federal court order which saw at least 7,500 asylum seekers returned to Mexico from December 2021 to August 2022.[29] The US Supreme Court overturned the federal court order and MPP ended in October 2022.[30]

3.2.3 TITLE 42 PUBLIC HEALTH ORDER

From 20 March 2020 to 11 May 2023, within the context of the COVID-19 pandemic, the Centers for Disease Control and Prevention's (CDC) Order, "Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists," known as Title 42, was in place at the United States' southern border.[31] The Title 42 public health order allowed the Department of Homeland Security (DHS) to expel asylum seekers arriving at the border if there was a "serious danger of the introduction of [a communicable] disease into the United States".[32] Despite agreement from medical experts that there was no real public health basis for the use of Title 42, the pandemic was used as a pretext to block asylum at the US southern border over 2 million times.[33]

3.2.4 CIRCUMVENTION OF LAWFUL PATHWAYS FINAL RULE – THE "ASYLUM BAN"

Title 42 ended on 11 May 2023, in conjunction with the Biden Administration's ending the national emergency related to the COVID-19 pandemic, which meant a return to the processing of

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[27] DHS, "Migrant Protection Protocols", 1 September 2022, dhs.gov/news/2019/01/24/migrant-protection-protocols#:~:text=The%20Migrant%20Protection%20Protocols%20(MPP,of%20their%20immigration%20proceedings%2C%20where; Amnesty International, *Americas: Pushback Practices* (previously cited), p. 1.

[28] American Immigration Council, "The 'Migrant Protection Protocols'", 1 February 2024, americanimmigrationcouncil.org/research/migrant-protection-protocols.

[29] American Immigration Council, "The 'Migrant Protection Protocols'" (previously cited).

[30] American Immigration Council, "The 'Migrant Protection Protocols'" (previously cited).

[31] Health and Human Services Department, "Control of Communicable Diseases; Foreign Quarantine: Suspension of Introduction of Persons into United States from Designated Foreign Countries or Places for Public Health Purposes, 24 March 2020, federalregister.gov/documents/2020/03/24/2020-06238/control-of-communicable-diseases-foreign-quarantine-suspension-of-introduction-of-persons-into.

[32] US Code, Title 42, uscode.house.gov/browse/prelim@title42&edition=prelim; American Immigration Lawyers Association, "Practice Pointer: Title 42 and Asylum Processing at the Southern Border", AILA Doc. No. 22102512, 13 January 2023; aila.org/advo-media/aila-practice-pointers-and-alerts/practice-pointer-title-42-and-asylum-processing.

[33] Physicians for Human Rights, *Neither Safety nor Health: How Title 42 Expulsions Harm Health and Violate Rights*, July 2021, phr.org/wp-content/uploads/2021/07/PHR-Report-United-States-Title-42-Asylum-Expulsions-July-2021.pdf.pdf, p. 3; Amnesty International, "USA: At border, humanitarian delegation witnesses an end of Title 42 without chaos and cruelty of new asylum ban", 12 May 2023, amnesty.org/en/latest/news/2023/05/usa-humanitarian-delegation-end-title-42/; Amnesty International, *Pushed into Harm's Way: forced returns of unaccompanied migrant children to danger by the USA and Mexico* (AMR 51/4200/2021), 11 June 2021, amnesty.org/en/documents/amr51/4200/2021/en/, pp. 15-17; Amnesty International, *Americas: Pushback Practices* (previously cited), pp. 1-2; Amnesty International, "North America: Refugee and migrant rights must be top priority of 'Three Amigos' summit", 9 January 2023, amnesty.org/en/latest/news/2023/01/north-america-refugee-migrant-rights-three-amigos-summit/; Amnesty International, *"They Did Not Treat Us Like People": Race and Migration-related Torture and Other Ill-Treatment of Haitians Seeking Safety in the USA* (AMR 36/5973/2022), 22 September 2022, amnesty.org/en/documents/amr36/5973/2022/en/, pp. 4-5, 19-24.

asylum seekers under Title 8.[34] However, that same day, the Circumvention of Lawful Pathways Final Rule (Final Rule) came into effect.[35] According to the Biden Administration:

> "The [Circumvention of Lawful Pathways Final Rule] is designed to address the current and anticipated surge in migration throughout the hemisphere and further discourage irregular migration by: encouraging migrants to use lawful, safe, and orderly processes for entering the United States and other partner nations; imposing conditions on asylum eligibility for those who fail to do so; and supporting the swift return of migrants who do not have valid protection claims."[36]

The Final Rule (also known as the Asylum Ban) imposes a rebuttable presumption of ineligibility for asylum upon individuals who enter the United States from Mexico at the southern land border or adjacent coastal borders "without authorization".[37] The rebuttable presumption applies only to individuals whose entry to the US was (1) between 11 May 2023 and 11 May 2025; and, (2) after the individual travelled through a country other than their country of citizenship, nationality or, if stateless, last habitual residence, that is party to the 1951 Convention Relating to the Status of Refugees (1951 Refugee Convention) or the 1967 Protocol Relating to the State of Refugees (1967 Protocol).[38]

The rebuttable presumption does not apply to asylum seekers who are able to meet one of three exceptions:

- They were provided authorization to travel to the United States pursuant to a DHS-approved parole process;
- They used the CBP One mobile application to schedule a time and place to present at a port-of-entry, or they presented at a port-of-entry without using the CBP One application and established that it was not possible to access or use the application due to a language barrier, illiteracy, significant technical failure, or other ongoing and serious obstacle; or,
- They applied for and were denied asylum in a third country en route to the United States.[39]

Unaccompanied children are exempted from the rebuttable presumption.[40]

In addition to the three exceptions, individuals can rebut the presumption of asylum ineligibility if they are able to demonstrate that, at the time of their "unauthorized entry" into the US, they or a member of their family with whom they were travelling:

- Faced an acute medical emergency;
- Faced an extreme and imminent threat to their life or safety, such as an imminent threat of rape, kidnapping, torture or murder; or,
- Were a victim of a severe form of trafficking, as defined in 8 CF § 214.11.[41]

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[34] The White House, Bill Signed: H.J.Res. 7, 10 April 2023, whitehouse.gov/briefing-room/legislation/2023/04/10/bill-signed-h-j-res-7/. Under Title 8, non-US nationals can seek asylum when crossing US borders citing a credible fear of persecution and/or torture.

[35] US Federal Register, Circumvention of Lawful Pathways, 88 FR 31314, 2023-10146, 16 May 2023, federalregister.gov/documents/2023/05/16/2023-10146/circumvention-of-lawful-pathways; DHS, "Fact Sheet: Circumvention of Lawful Pathways Final Rule", 11 May 2023, dhs.gov/news/2023/05/11/fact-sheet-circumvention-lawful-pathways-final-rule.

[36] DHS, "Fact Sheet: Circumvention of Lawful Pathways Final Rule" (previously cited).

[37] US Federal Register, Circumvention of Lawful Pathways (previously cited), p. 31321. Adjacent coastal borders mean any coastal border at or near the US-Mexico border reached by an individual after travelling from Mexico and circumventing the US-Mexico land border.

[38] US Federal Register, Circumvention of Lawful Pathways (previously cited), p. 31321.

[39] US Federal Register, Circumvention of Lawful Pathways (previously cited), p. 31322; DHS, "Fact Sheet: Circumvention of Lawful Pathways Final Rule" (previously cited).

[40] US Federal Register, Circumvention of Lawful Pathways (previously cited), p. 31322; DHS, "Fact Sheet: Circumvention of Lawful Pathways Final Rule" (previously cited).

[41] US Federal Register, Circumvention of Lawful Pathways (previously cited), p. 31322; DHS, "Fact Sheet: Circumvention of Lawful Pathways Final Rule" (previously cited).

Individuals who enter the United States "without authorization" and who cannot establish a legal basis to remain in the country may be subject to expedited removal.[42] An asylum officer would evaluate the rebuttable presumption as part of the credible fear interview, which is subject to review by an immigration judge. According to the DHS:

- If an asylum officer determines that the individual is not subject to, is excepted from, or has rebutted the presumption of asylum ineligibility, the asylum officer's credible fear determination would follow existing procedures, including the screening for eligibility for asylum, withholding of removal and Convention Against Torture (CAT) protection under a significant possibility standard.
- If an asylum officer determines that the noncitizen is subject to and has not made a sufficient showing of being excepted from or rebutting the presumption, the asylum officer's screening would be limited to determining whether the individual has demonstrated a reasonable possibility of persecution or torture in the designated country of removal. If a reasonable possibility of persecution or torture is established, the individual will be issued a notice to appear for removal proceedings before an immigration judge.[43]

The rebuttable presumption of asylum eligibility applies in expedited removal proceedings, as well as applications affirmatively filed with the Asylum Office or filed in immigration court proceedings as a defense to removal.[44]

Asylum seekers who are subject to the rebuttable presumption, do not rebut the presumption and do not establish reasonable fear of persecution or torture in the country of removal "will be promptly removed".[45] Individuals who are ordered to be removed will be subject to at least a five-year bar to reentry and potential criminal prosecution if they subsequently re-enter the United States irregularly.[46] Individuals ordered removed will also be ineligible for the parole processes available to Cubans, Haitians, Nicaraguans and Venezuelans.[47]

From 12 May 2023 to 3 April 2024, DHS removed over 660,000 individuals (the majority of whom crossed the US southwest border) who did not establish a legal basis to remain in the United States using the consequences established in the Circumvention of Lawful Pathways Final Rule.[48] Total removals and returns from mid-May 2023 to April 2024 exceeded removals and returns in every full fiscal year since 2011.[49]

Amnesty International considers that the Final Rule violates the United States' international obligations by limiting access to the US asylum system and by returning individuals to places where their lives may be at risk. Further, it is concerning that there are no exemptions for populations with circumstantial vulnerabilities such as LGBTIQ+ individuals, women traveling alone, older persons, families with children, or others such as Black, Brown and Indigenous populations that may face particular risk waiting in Mexico.

LITIGATION AGAINST THE ASYLUM BAN

Since May 2023, various organizations have filed lawsuits against the Circumvention of Lawful Pathways Final Rule. On 25 July 2023, the US District Court for the Northern District of California vacated the regulation.[50] The Biden Administration appealed the decision and the US Court of Appeals for the Ninth Circuit issued a stay on 3 August 2023.[51] This means that the Final Rule remains in place and continues to be applied.[52]

On 27 July 2023, various organizations filed a lawsuit alleging that CBP officers were turning back asylum seekers without CBP One appointments and denying them access to ports of entry.[53] On 13 October 2023, a federal court in California denied the request for a preliminary injunction, meaning that CBP officers can continue to unlawfully turn back individuals seeking safety.[54]

[50] US District Court, Northern District of California, *East Bay Sanctuary Covenant v. Biden*, 25 July 2023, aclu.org/documents/east-bay-sanctuary-covenant-v-biden-summary-judgment-order.
[51] US Court of Appeals for the Ninth Circuit, *East Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 672 (9th Cir. 2021)

3.2.5 CBP ONE MOBILE APPLICATION

CBP One is a mobile application launched by US Customs and Border Protection (CBP) on 28 October 2020.[55] It serves as a single portal to a variety of CBP services. While the application was originally available for specific migration purposes, such as for "land travelers to submit their traveler information in advance prior to their border crossing into the United States [and] air travelers to request an inspection of biological and agriculture products upon their air arrival into the US", additional uses have been added over time.[56] For example, CBP One was previously used by non-governmental organizations to submit information on behalf of individuals seeking humanitarian exemptions to Title 42 and to verify whether individuals were enrolled in the Migrant Protection Protocols. Individuals applying for the humanitarian parole programs for Cubans, Haitians, Nicaraguans and Venezuelans must also do so through CBP One.[57]

In the case of asylum seekers, as of 18 January 2023, individuals seeking international protection in the United States from countries that were subject to Title 42 expulsions were instructed to use CBP One to seek an exemption to Title 42.[58] Asylum seekers, particularly those from Cuba, Haiti, Nicaragua and Venezuela were instructed to use the application to schedule appointments to present themselves at participating ports of entry to request asylum; however, the use of CBP one was not mandatory by policy.[59]

Following the termination of Title 42 and in accordance with the Final Rule, all people seeking asylum through the US-Mexico border are now required to use the CBP One application to schedule a time to arrive at participating ports of entry along the border in order to present their asylum claims, unless they are able to demonstrate "by a preponderance of the evidence that it was not possible to access or use the CBP One app due to language barrier, illiteracy, significant technical failure, or other ongoing and serious obstacle".[60] Asylum seekers who arrive at ports of entry without having previously scheduled an appointment through CBP One and who are unable to prove

cdn.ca9.uscourts.gov/datastore/opinions/2021/03/24/18-17274.pdf.

[44] DHS, "Fact Sheet: Circumvention of Lawful Pathways Final Rule" (previously cited).

[45] DHS, "Fact Sheet: Circumvention of Lawful Pathways Final Rule" (previously cited).

[46] DHS, "Fact Sheet: Circumvention of Lawful Pathways Final Rule" (previously cited).

[47] DHS, "Fact Sheet: Circumvention of Lawful Pathways Final Rule" (previously cited); USCIS, "Processes for Cubans, Haitians, Nicaraguans and Venezuelans", 1 April 2024, uscis.gov/CHNV.

[48] CBP, "CBP Releases March 2024 Monthly Update", 12 April March 2024, cbp.gov/newsroom/national-media-release/cbp-releases-march-2024-monthly-update; National Immigration Project & Together & Free, *Facing an Impossible Choice: Experiences of Asylum Seekers in Matamoros and Reynosa Two Months into the Biden Asylum Ban*, 24 July 2023, nipnlg.org/sites/default/files/2023-07/2023_Facing-An-Impossible-Choice.pdf, p. 1.

[49] CBP, "CBP Releases March 2024 Monthly Update" (previously cited).

[50] US District Court, Northern District of California, *East Bay Sanctuary Covenant v. Biden*, 25 July 2023, aclu.org/documents/east-bay-sanctuary-covenant-v-biden-summary-judgment-order.

[51] US Court of Appeals for the Ninth Circuit, *East Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 672 (9th Cir. 2021) cdn.ca9.uscourts.gov/datastore/opinions/2021/03/24/18-17274.pdf.

[52] USCIS, "Asylum", 12 February 2024, uscis.gov/humanitarian/refugees-and-asylum/asylum.

[53] *AOL et. al v. Mayorkas*, americanimmigrationcouncil.org/sites/default/files/litigation_documents/challenging_cbp_one_turnback_policy_complaint_0.pdf.

[54] American Immigration Council, "Court Allows Turnbacks of Asylum Seekers Without CBP One Appointments to Continue", 13 October 2023, americanimmigrationcouncil.org/news/court-allows-turnbacks-asylum-seekers-without-cbp-one-appointments-continue.

[55] CBP, "CBP One™ Mobile Application", 9 April 2024, cbp.gov/about/mobile-apps-directory/cbpone.

[56] CBP, "CBP One™ Mobile Application" (previously cited).

[57] USCIS, "Processes for Cubans, Haitians, Nicaraguans, and Venezuelans" (previously cited).

[58] DHS, "DHS Scheduling System for Safe, Orderly and Humane Border Processing Goes Live on CBP One™ App", 15 May 2023, dhs.gov/news/2023/01/12/dhs-scheduling-system-safe-orderly-and-humane-border-processing-goes-live-cbp-onetm.

[59] CBP, "CBP One™ Mobile Application" (previously cited); DHS, *Privacy Impact Assessment for the Collection of Advance Information from Certain Undocumented Individuals on the Land Border*, DHS Reference No. DHS/CBP/PIA-076, 19 January 2023, dhs.gov/sites/default/files/2023-01/privacy-pia-cbp076-advance-collection-for-undocumented-individuals-jan2023_0.pdf, p. 5.

[60] US Federal Register, Circumvention of Lawful Pathways (previously cited), p. 31322.

that it was not possible to access or use the application, or do not meet one of the two other exceptions in the Final Rule, will be presumed to be ineligible for asylum.[61]

The CBP One application is only available in English, Spanish and Haitian Creole.[62] Appointments are offered at eight ports of entry: Brownsville-Matamoros, Calexico-Mexicali, Eagle Pass-Piedras Negras, El Paso (Paso del Norte)-Ciudad Juárez, Hidalgo-Reynosa, Laredo-Nuevo Laredo,[63] Nogales and San Ysidro-Tijuana.[64]

When CBP One first became required for asylum seekers in May 2023, 1,000 new appointments were made available across the participating ports of entry for 23 hours each day.[65] In June, CBP increased the number of appointments to 1,450.[66] According to CBP, the number of people who can be processed through the application "will vary by port based on available resources and existing infrastructure".[67]

In order to use the CBP One application, asylum seekers need a mid-to-high-end smart phone, access to good quality internet, an email address and some basic technological knowledge.[68] People seeking asylum can download and register themselves in the application from anywhere. To register themselves, asylum seekers need an email address; must upload facial photographs of all members of the registration group; add an address in the United States that they are travelling to; and add an emergency contact in the US.[69] Registrations that have been submitted cannot be edited. If an asylum seeker needs to change something in their registration, the only way is to delete it and make a new registration.[70]

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[61] US Federal Register, Circumvention of Lawful Pathways (previously cited), p. 31321-31322.
[62] CBP, "CBP One™ Mobile Application" (previously cited). According to CBP, English, Spanish and Haitian Creole are "the primary languages for the nationalities that most frequently use CBP One". Communication from CBP, 9 April 2024.
[63] In June 2023, CBP suspended asylum appointments through the application at the Laredo port-of-entry for a few days because asylum seekers were being extorted. Reuters, "Exclusive: US restarts asylum appointments at Mexico border town despite extortion threat", 28 June 2023, reuters.com/world/americas/us-restarts-asylum-appointments-mexico-border-town-despite-extortion-threat-2023-06-28/.
[64] CBP, "CBP Makes Changes to CBP One™ App", 10 May 2023, cbp.gov/newsroom/national-media-release/cbp-makes-changes-cbp-one-app.
[65] CBP, "CBP Makes Changes to CBP One™ App" (previously cited).
[66] CBP, "CBP One™ Appointments Increased to 1,450 Per Day", 14 July 2023, cbp.gov/newsroom/national-media-release/cbp-one-appointments-increased-1450-day.
[67] CBP, "CBP One™ Mobile Application" (previously cited).
[68] HIAS, *CBP One: Puente hacia el asilo entre México y Estados Unidos*, 25 October 2023, reliefweb.int/report/mexico/cbp-one-puente-hacia-el-asilo-entre-mexico-y-estados-unidos#:~:text=CBP%20One%20es%20una%20aplicaci%C3%B3n,el%20prop%C3%B3sito%20de%20solicitar%20asilo, p. 1; TCRP & CREEC, *CBP One Disability Rights Violations of Section 508 of the Rehabilitation Act*, 25 March 2024, 4b16d9e9-506a-4ada-aeca-7c3e69a4ed29.usrfiles.com/ugd/4b16d9_e98ae77035514157bc1c4c746b5545e6.pdf.
[69] CBP, *CBP One™ Mobile Application Traveler User Guide*, 11 May 2023, cbp.gov/sites/default/files/assets/documents/2023-May/CBP%20One%20-%20User%20Guide%20-%20Traveler%20Land%20Submit%20Advance%20Information%20-%20English.pdf; TCRP, *CBP One Disability Rights Violations of Section 508 of the Rehabilitation Act* (previously cited), p. 4.
[70] CBP, *CBP One™ Mobile Application Traveler User Guide* (previously cited), p. 26.

While as mentioned above registration can be done anywhere, in order to actually request and schedule appointments via CBP One, asylum seekers must be located in central or northern Mexico (including Mexico City and Guadalajara).[71] CBP uses geofencing capabilities to limit use of the application to request and schedule appointments to users within this defined geographical area.[72] When an asylum seeker logs into CBP One to request an appointment, the GPS on their mobile device is pinged by the application which collects and sends the latitude and longitude coordinates to CBP for analytical purposes (i.e., to determine where the user is submitting the advance arrival information from) and to monitor irregularities (i.e., receiving multiple submissions from the same phone).[73]

Asylum seekers have up to 12 hours a day (from 11 a.m. CST/GMT-6 to 11 p.m. CST/GMT-6) to sign into CBP One and request an appointment.[74] Requests for appointments are considered the day immediately following the request which means that individuals must log into the application and request an appointment each day until they are allocated an appointment.[75] Asylum seekers can change the port-of-entry each time they request an appointment.[76]

[71] CBP, "CBP One™ Mobile Application" (previously cited).
[72] DHS, *Privacy Impact Assessment for CBP One™*, DHS Reference No. DHS/CBP/PIA-068, 19 February 2021, dhs.gov/sites/default/files/2023-01/privacy-pia-cbp068-cbpmobileapplication-jan2023.pdf, p. 19; DHS, *Privacy Impact Assessment for the Collection of Advance Information from Certain Undocumented Individuals on the Land Border* (previously cited), p. 6.
[73] DHS, *Privacy Impact Assessment for CBP One™* (previously cited), p. 19; DHS, *Privacy Impact Assessment Update for the Collection of Advance Information from Certain Undocumented Individuals on the Land Border: Post Title 42*, DHS/CBP/PIA-076(a), 19 September 2023, dhs.gov/sites/default/files/2023-12/23_1019_priv_pia-cbp-076%28a%29-advance-collection-appendix-update.pdf, p. 5.
[74] CBP, "CBP One™ Application Update Announcement", 29 February 2024, cbp.gov/sites/default/files/assets/documents/2024-Feb/24_0229_cbpone-app-flyer-english.pdf. Asylum seekers previously had up to 23 hours a day (from 11 am CST to 10 am CST) to sign into CBP One and request an appointment. CBP, *CBP One™ Mobile Application Traveler User Guide* (previously cited).
[75] DHS, *Privacy Impact Assessment Update for the Collection of Advance Information from Certain Undocumented Individuals on the Land Border: Post Title 42* (previously cited), p. 4.
[76] CBP, *CBP One™ Mobile Application Traveler User Guide* (previously cited), p. 24.

Each day at 11 a.m. CST/GMT-6, CBP One allocates 1,450 appointments to a number of people who requested them the previous day. Seventy percent of available appointments are allocated randomly to individuals and 30% are allocated to people with the oldest accounts who have been waiting the longest.[77] CBP has also "imposed a limit in the allocation system to the number of Mexican individuals who may be provided an appointment each day" apparently as a way of "ensuring a more even distribution of appointments across nationalities."[78] Individuals have up to 23 hours (by 11 a.m. CST/GMT-6) to accept the appointment which can only be done by one member of the registration group uploading a video selfie in the application.[79] If an individual is experiencing technical difficulties, they can request a 23-hour extension through the application to accept the appointment. However, if they are still unable to accept the appointment after the additional 23 hours, the appointment offer will expire, and they will have to ask for a new appointment.[80]

Appointments are given 21 days in advance.[81] According to CBP, "appointments do not guarantee admission [to the US] and a determination of admissibility is made on a case-by-case basis by CBP officers".[82] Having a CBP One appointment is not equivalent to making an asylum claim. People seeking asylum who present themselves at a port-of-entry with a CBP One appointment will be paroled into the United States where they can then apply for asylum.[83]

CBP has not shared public information indicating the number of appointments per port-of-entry each day.[84] However, according to border updates published by the Strauss Center for International Security and Law at the University of Texas at Austin the breakdown of appointments at each port-of-entry is as follows:[85]

PORT-OF-ENTRY	NUMBER OF CBP ONE APPOINTMENTS
Brownsville-Matamoros	~ 380 CBP One appointments ~ 20 people via NGO lists
Calexico-Mexicali	~ 75 CBP One appointments ~ 10 people via NGO lists
Eagle Pass-Piedras Negras	~ 60 CBP One appointments
El Paso (Paso Del Norte)-Ciudad Juárez	~ 200 CBP One appointments ~ 5 people via NGO lists
Hidalgo-Reynosa	~ 195 CBP One appointments ~ 16 people via NGO lists

[77] CBP, "CBP Releases January 2024 Monthly Update", 13 February 2024, cbp.gov/newsroom/national-media-release/cbp-releases-january-2024-monthly-update.
[78] Communication from CBP, 9 April 2024.
[79] Asylum seekers can request an additional 23 hours to accept the appointment. CBP, "CBP One™ Application Update Announcement", 10 May 2023, cbp.gov/document/guidance/cbp-one-application-update-announcement-english; CBP, "CBP One™ | Traveler – Land – Submit Advance Information", 11 May 2023, cbp.gov/sites/default/files/assets/documents/2023-May/CBP%20One%20-%20Quick%20Resource%20Guide%20-%20Traveler%20Land%20Submit%20Advance%20Information%20-%20English_old.pdf; CBP, "CBP Makes Changes to CBP One™ App", 5 May 2023, cbp.gov/newsroom/national-media-release/cbp-makes-changes-cbp-one-app; CBP, *CBP One™ Mobile Application Traveler User Guide* (previously cited), p. 31; DHS, *Privacy Impact Assessment Update for the Collection of Advance Information from Certain Undocumented Individuals on the Land Border: Post Title 42* (previously cited), p. 4.
[80] DHS, *Privacy Impact Assessment Update for the Collection of Advance Information from Certain Undocumented Individuals on the Land Border: Post Title 42* (previously cited), p. 4.
[81] CBP, "CBP One™ Mobile Application" (previously cited).
[82] CBP, "CBP One™ Mobile Application" (previously cited).
[83] USCIS, "Asylum" (previously cited).
[84] Communication from CBP, 9 April 2024.
[85] Strauss Center for International Security and Law, University of Texas at Austin, *Asylum Processing at the U.S.-Mexico Border: February 2024*, strausscenter.org/publications/asylum-processing-at-the-u-s-mexico-border-february-2024/, pp. 5-13.

PORT-OF-ENTRY	NUMBER OF CBP ONE APPOINTMENTS
Laredo-Nuevo Laredo	~ 55 CBP One appointments ~ 2 people via NGO lists
Nogales	~ 100 CBP One appointments ~ 10 people via NGO lists
San Ysidro-Tijuana	~ 385 CBP One appointments ~ 10 people via NGO lists
Total number of appointments	**1,450 CBP One appointments** **73 people via NGO lists**

In addition to CBP One appointments, at several ports of entry, CBP processes "walk ups".[86] These walk ups are usually coordinated by lists managed by non-governmental organizations to whom CBP has allocated a specific number of spaces each day.[87] According to the Strauss Center, in Matamoros, Nuevo Laredo, Reynosa and Tijuana, the lists generally prioritize individuals with medical emergencies, while in Mexicali and Nogales, individuals are prioritized by date of arrival.[88] However, it is not clear if individuals who enter the United States on a list are considered as having entered the country with CBP One appointments and how the rebuttable assumption of asylum ineligibility will be applied in these cases.[89] When asked about these lists, CBP stated that it "does not manage or track lists of individuals seeking to present at a POE outside of the CBP One process".[90]

Upon arriving at a port-of-entry with a CBP One appointment, CBP officers will evaluate each individual to determine how they will be processed. CBP does not adjudicate asylum claims.[91] Individuals processed for expedited removal proceedings who express a fear of persecution or torture or a fear of return to their country, or who indicate an intention to apply for asylum, are referred to US Citizenship and Immigration Services (USCIS) for a credible fear interview. Individuals issued a Notice to Appear and placed in removal proceedings will have the opportunity to seek relief, including asylum, or other protection before an immigration judge.[92]

According to CBP, from May 2023 to January 2024, there have been 421,570 CBP One appointments.[93] The top nationalities who have been processed are Venezuela, Mexico and Haiti.[94]

MONTH	NUMBER OF APPOINTMENTS
May 2023	27,460
June 2023	36,900
July 2023	44,450
August 2023	46,180
September 2023	44,480
October 2023	45,490
November 2023	44,210

[86] In-person and virtual interviews with various organizations including Al Otro Lado, Casa Arcoiris and Sidewalk School; Strauss Center, *Asylum Processing at the U.S.-Mexico Border: February 2024* (previously cited), p. 3.
[87] In-person and virtual interviews with various organizations including Al Otro Lado, Casa Arcoiris and Sidewalk School.
[88] Strauss Center, *Asylum Processing at the U.S.-Mexico Border: February 2024* (previously cited), p. 3.
[89] In-person and virtual interviews with organizations, August-November 2023; National Immigration Project, *Facing an Impossible Choice* (previously cited), p. 2.
[90] Communication from CBP, 9 April 2024.
[91] CBP, "CBP One™ Mobile Application" (previously cited).
[92] CBP, "CBP One™ Mobile Application" (previously cited).
[93] CBP, "CBP Releases February 2024 Monthly Update" (previously cited).
[94] DHS, "Immigration Enforcement and Legal Processes Monthly Tables", 5 April 2024, dhs.gov/ohss/topics/immigration/enforcement-and-legal-processes-monthly-tables; CBP, "CBP Releases February 2024 Monthly Update" (previously cited).

MONTH	NUMBER OF APPOINTMENTS
December 2023	45,540
January 2024	45,000
February 2024	42,100
March 2024	44,000
Total	**465,810**[95]

In March 2024, 30 members of Congress expressed serious concerns that the CBP One is contravening the rights of asylum seekers and called on DHS "to take immediate steps to both improve CBP One and resolve accessibility issues to protect the safety of asylum seekers and support border communities and other cities that receive new arrivals."[96]

In accordance with the Final Rule, people seeking asylum will be ineligible for international protection in the United States unless they schedule a CBP One appointment to present themselves at a US port-of-entry (or meet one of the Final Rule's two other exceptions). Consequently, use of the CBP One mobile application has become mandatory for asylum seekers at the US-Mexico border to ensure that they are not considered ineligible to seek asylum in the United States. The Final Rule and mandatory use of CBP One are the newest iteration of migration and asylum policies implemented by the US government at the US-Mexico border which drastically limit access to asylum in violation of international human rights and refugee law.[97]

[95] DHS, "Immigration Enforcement and Legal Processes Monthly Tables – December 2023", 5 April 2024, dhs.gov/ohss/topics/immigration/enforcement-and-legal-processes-monthly-tables; CBP, "CBP Releases March 2024 Monthly Update" (previously cited).

[96] Congress of the United States, Letter to DHS, 21 March 2024, castro.house.gov/imo/media/doc/03212024lettertodhsenglish.pdf, p. 1.

[97] Amnesty International, *Mandatory Use of CBP One Application Violates the Right to Seek Asylum* (previously cited); Communication from CBP, 6 May 2024.

4. MANDATORY USE OF CBP ONE TO SEEK ASYLUM VIOLATES THE UNITED STATES' AND MEXICO'S INTERNATIONAL HUMAN RIGHTS AND REFUGEE LAW OBLIGATIONS

4.1 INTERNATIONAL PROTECTION AND THE PRINCIPLE OF *NON-REFOULEMENT*

All individuals have the universal human right to seek and enjoy asylum from persecution and serious human rights violations.[98] All individuals also have the right not to be returned to places where their life or freedom may be endangered or where they would be at risk of torture or cruel, inhuman or degrading treatment or punishment, regardless of their migration status.[99] This principle, known as *non-refoulement*, is a protection under international human rights, refugee, and humanitarian law, and requires states to refrain from returning, removing or transferring anyone to their countries of origin or any other location where there are substantial grounds to believe they would be at risk of serious human rights abuses.[100] The principle of *non-refoulement* provides protection rights that are absolute and without exception with regards to risk of torture. In order to fulfill the obligation not to refoul individuals, states must have a mechanism with due

[98] Universal Declaration of Human Rights, Article 14; 1951 Convention Relating to the Status of Refugees; 1967 Protocol Relating to the Status of Refugees; Cartagena Declaration on Refugees.
[99] 1951 Convention Relating to the Status of Refugees, Article 33; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 3(1).
[100] OHCHR, "The Principle of Non-refoulement Under International Human Rights Law", 5 July 2018, ohchr.org/sites/default/files/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf.

process to assess individuals for this risk, and often coincides with evaluations for recognition of refugee status and protections against refoulement based on refugee rights.[101]

Both the United States[102] and Mexico[103] have the obligation to ensure the right of individuals to seek asylum, to uphold the principle of *non-refoulement* and to protect and respect the human rights of all people without exception, including asylum seekers and migrants, who are subject to their state's authority by being present in their respective jurisdictions and/or in transit through them. Additionally, the prohibition of refoulement exists "…wherever a state exercises jurisdiction or effective control, even when outside of that State's territory."[104]

4.2 THE UNITED STATES

This report analyses the human rights violations associated with the mandatory use of the CBP One application as the exclusive manner of entry into the United States via the Mexico border to seek asylum. The United States has both domestic and international obligations to provide access to territory and to individualized and fair assessments of all requests for protection by asylum seekers looking for safety at the border, in a way that does not discriminate based on migration status, including the manner of entry.[105] According to the United Nations High Commissioner for Refugees (UNHCR), "access to a fair and efficient refugee status determination procedure is an essential element in the full and inclusive application of the 1951 Convention and its 1967 Protocol, and indeed a safeguard to protect refugees and asylum seekers from *refoulement*".[106]

Access to territory is a necessary requirement for realizing the right to seek asylum.[107] Once asylum seekers have been able to access territory, they must also be able to present their claims by accessing refugee status determination procedures that contain certain basic safeguards.[108] UNHCR has stated that "while it is left to each State to establish the procedure most appropriate

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[101] 1951 Convention Relating to the Status of Refugees, Article 33; Committee against Torture, General Comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, CAT/C/GC/4, 4 September 2018, ohchr.org/en/documents/general-comments-and-recommendations/catcgc4-general-comment-no-4-2017-implementation, para. 13.

[102] The United States is State party to the 1967 United Nations Protocol Relating to the Status of Refugees, and is therefore bound to comply, with the obligations deriving from the 1967 Protocol as well as, by incorporation, articles 2-34 of the 1951 Convention Relating to the Status of Refugees. Congress passed the Refugee Act in 1980 in a sweeping effort to bring the United States' domestic laws in line with its international obligations and thereby provide additional assurances and protections to asylum seekers and refugees. See: Refugee Act of 1980, Pub. L. No. 96-212, § 101(a), 94 Stat. 102 (1980), govinfo.gov/content/pkg/STATUTE-94/pdf/STATUTE-94-Pg102.pdf; *East Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 672 (9th Cir. 2021) ("To … implement the country's new treaty commitments, Congress passed the Refugee Act of 1980"), cdn.ca9.uscourts.gov/datastore/opinions/2021/03/24/18-17274.pdf. The United States is also State party to the Convention against Torture.

[103] Mexico is State party to the 1951 Convention Relating to the Status of Refugees, its 1967 Protocol and the Convention against Torture. Mexico has also signed the Cartagena Declaration on Refugees.

[104] OHCHR, "The Principle of Non-refoulement Under International Human Rights Law" (previously cited).

[105] UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, 26 January 2007, unhcr.org/refworld/docid/45f17a1a4.html, para. 7; UNHCR, "Comments of the United Nations High Commissioner for Refugees on the Proposed Rule from the U.S. Department of Justice (Executive Office for Immigration Review) and the U.S. Department of Homeland Security (U.S. Citizenship and Immigration Services): "Circumvention of Lawful Pathways", CIS No. 2736-22, DHS Docket No. USCIS 2022-0016, A.G. Order No. 5605-2023, 20 March 2023, refworld.org/pdfid/6417e6674.pdf, pp. 4-5; Amnesty International, *Mandatory Use of CBP One Application Violates the Right to Seek Asylum* (previously cited), pp. 7-9; Amnesty International, "They Did Not Treat Us Like People" (previously cited), p. 18.

[106] UNHCR, "Comments of the UNHCR on the Proposed Rule from the U.S. Department of Justice" (previously cited), p. 3.

[107] UN Special Rapporteur on the human rights of migrants, *Report on means to address the human rights impacts of pushbacks of migrants on land and at sea*, 12 May 2021, UN Doc. A/HRC/47/30, documents.un.org/doc/undoc/gen/g21/106/33/pdf/g2110633.pdf?token=j9V9cJKVJCdzyuzsjC&fe=true, para. 43.

[108] UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, UN Doc. HCR/1P/4/ENG/REV.4, February 2019, unhcr.org/media/handbook-procedures-and-criteria-determining-refugee-status-under-1951-convention-and-1967, p. 42.

to that State's constitutional and administrative structure, asylum procedures must be conducted in full respect of due process standards."[109] Through the use of the application, the United States could be considered to be extending its responsibility to ensure that asylum seekers are provided with fair and individualized screenings and due process rights with regards to the refugee status determination procedure –a process which is declaratory and meant to *formally recognize* individuals who are refugees, not to grant status through the procedure– wherever they are located and subject to the requirement to comply with the appointment system administered by the application. Moreover, in situations of large-scale influx (which the US is arguing is occurring at the US-Mexico border)[110] "asylum seekers should be admitted to the State in which they first seek refuge and if that State is unable to admit them on a durable basis, it should always admit them at least on a temporary basis and provide them with protection."[111]

The principle of *non-refoulment* is applicable wherever a State exercises jurisdiction or where individuals are subject to the effective authority or control of the state, including at the border.[112] The way in which the CBP One application works –by requiring asylum seekers to install it on their cellphones and then collecting data about their location through the application– constitutes the United States extending its jurisdiction past its physical land border and exercising state authority over people seeking asylum who are not physically within the boundaries of US territory but instead are waiting in Mexico for CBP One appointments.[113] Further, given that people seeking asylum are only able to approach US ports of entry with a CBP One appointment (except for the Final Rule's limited exceptions), the United States is effectively preventing admittance at the frontier, a form of refoulement, and is not fulfilling its duty to safeguard those in need of international protection nor provide them with due process, in violation of its international obligations.[114]

International human rights law further requires states to ensure that delays or deficiencies in asylum processes do not deter asylum seekers from pursuing their claims.[115] In an explanation of *non-refoulement* obligations under the Convention against Torture (CAT), the UN Committee against Torture stressed that "States parties should not adopt dissuasive measures or policies such as… refusing to process claims for asylum or prolonging them unduly."[116]

UNHCR has also expressed concern that the operation of the presumption of ineligibility established in the Final Rule, in conjunction with the exceptions – parole programs, use of CBP One and applying for asylum in third countries during transit – amounts to a penalization of irregular entry in violation of Article 31(1) of the 1951 Refugee Convention.[117] The 1951 Convention recognizes that the seeking of asylum can require refugees to breach immigration rules and indicates that asylum seekers should not be subject to specific requirements or suffer penalties or discrimination for this reason.[118] Article 31(1) effectively prohibits discrimination between

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[109] UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status* (previously cited), pp. 42-43.
[110] US Federal Register, Circumvention of Lawful Pathways (previously cited), pp. 31314-31316.
[111] UNHCR, *Protection of Asylum-Seekers in Situations of Large-Scale Influx No. 22 (XXXII) – 1981*, 21 October 1981, unhcr.org/publications/protection-asylum-seekers-situations-large-scale-influx, II.A.1-2.
[112] UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations* (previously cited), paras. 24, 26, 32-43; UNHCR, *Submission by the Office of the United Nations High Commissioner for Refugees in the case of Hirsi and Others v. Italy*, March 2010, unhcr.org/refworld/docid/4b97778d2.html, paras. 4(1)(1)-4(2)(3); UNHCR, *Note on the Principle of Non-Refoulement*, November 1997, refworld.org/docid/438c6d972.html, part E; UNHCR, *Executive Committee of the High Commissioner's Programme, Non-Refoulement No. 6 (XXVIII) - 1977*, 12 October 1977, No. 6 (XXVIII), refworld.org/docid/3ae68c43ac.html, para. C.
[113] Amnesty International, *Mandatory Use of CBP One Application Violates the Right to Seek Asylum* (previously cited), p. 8.
[114] UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations* (previously cited), para. 7; Amnesty International, *Mandatory Use of CBP One Application Violates the Right to Seek Asylum* (previously cited), pp. 7-9; Amnesty International, *'You don't have any rights here'* (previously cited), pp. 12-14; UNHCR, "Comments of the UNHCR on the Proposed Rule from the U.S. Department of Justice" (previously cited), pp. 13 & 29.
[115] CAT, General Comment No. 4 (previously cited), para. 14; Amnesty International, *"They Did Not Treat Us Like People"* (previously cited), p. 18.
[116] CAT, General Comment No. 4 (previously cited), para. 14.
[117] UNHCR, "Comments of the UNHCR on the Proposed Rule from the U.S. Department of Justice" (previously cited), p. 13.
[118] 1951 Convention Relating to the Status of Refugees.

groups of asylum seekers based on their manner of entry.[119] According to UNHCR, the differential treatment of groups of asylum seekers, such as those who arrive at ports of entry and those who enter irregularly or who arrive at a port-of-entry without a CBP One appointment, is a denial of the latter group's right to seek asylum.[120] Further, making unlawful entry a possible bar to asylum eligibility is a "penalty that carries potentially serious consequences for someone seeking international protection, undermines the right to asylum and risks violations of the principle of *non-refoulement*".[121] Moreover, states cannot exclude someone from refugee status until their claim has been adequately evaluated and someone cannot be excluded from refugee status based on their manner of entry into the country in which they are seeking international protection.[122]

Considering the foregoing, while Amnesty International recognizes that innovations such as electronic entry management systems could potentially provide for safe transit and more orderly border access, programs like CBP One cannot be used as the exclusive manner of entry into the United States to seek international protection.[123] The organization considers that the CBP One mobile application must not be used to create obstacles, but instead should be one of a variety of means to access the right to seek asylum.

4.3 MEXICO

Mexico has both domestic and international obligations to protect the human rights of asylum seekers who are in transit to the United States.[124] This includes ensuring the right of individuals to seek asylum.

The requirement to use the CBP One application to seek asylum in the United States and the fact that it is only possible to apply for appointments from central to northern Mexico means that asylum seekers must now wait in Mexico for undetermined amounts of time while they apply for CBP One appointments. Mexico has accepted the use of the CBP One application in its territory and has announced that it will allow migrants to transit through the country when they have a CBP One appointment. However, Mexico does not provide them with any type of migratory documentation, such as humanitarian visas, to transit through the country to the US-Mexico border.[125] This lack of documentation places asylum seekers in vulnerable situations in Mexico, where they face the risk of detention and deportation and struggle to access employment, healthcare, education and other services.[126] Consequently, many asylum seekers feel the need to

[119] 1951 Convention Relating to the Status of Refugees.
[120] UNHCR, "Comments of the UNHCR on the Proposed Rule from the U.S. Department of Justice" (previously cited), pp. 13-14.
[121] UNHCR, "Comments of the UNHCR on the Proposed Rule from the U.S. Department of Justice" (previously cited), pp. 13-14.
[122] UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status* (previously cited), p. 17.
[123] Amnesty International, *Mandatory Use of CBP One Application Violates the Right to Seek Asylum* (previously cited), pp. 7-9; UNHCR, "Comments of the UNHCR on the Proposed Rule from the U.S. Department of Justice" (previously cited), p. 5.
[124] 1951 Convention Relating to the Status of Refugees; 1967 Protocol Relating to the Status of Refugees; Universal Declaration of Human Rights; Cartagena Declaration on Refugees; IACHR, *Inter-American Principles on the Human Rights of all Migrants, Refugees, Stateless Persons and Victims of Human Trafficking*, Resolution 04/19 approved by the Commission on December 7, 2019, oas.org/en/iachr/decisions/pdf/Resolution-4-19-en.pdf.
[125] Instituto Nacional de Migración, "Autoriza INM paso a migrantes extranjeros que cuenten con cita confirmada por CBP", Comunicado No. 185, 21 de marzo de 2023, gob.mx/inm/prensa/autoriza-inm-paso-a-migrantes-extranjeros-que-cuenten-con-cita-confirmada-por-cbp-329581; UNHCR, *El impacto del desplazamiento forzado en la movilidad humana: Reporte del monitoreo de protección de Mexico 2023*, February 2024, acnur.org/mx/media/reporte-de-monitoreo-de-proteccion-en-mexico-2023-el-impacto-del-desplazamiento-forzado-en-la, pp. 30-31.
[126] In-person and online interviews with asylum seekers and organizations, August-November 2023; SEGOB, *Boletín Estadísticas sobre Delitos Perpetrados en contra de Personas Migrantes Irregulares en México 2023*, January 2024, portales.segob.gob.mx/work/models/PoliticaMigratoria/CEM/Estadisticas/DelitosMigIrreg/2023/BMigIrregDelitos_2023.pdf, p. 9; IOM, *Migrantes en México: Vulnerabilidad y Riesgos*, 2016, ecampus.iom.int/pluginfile.php/14566/block_html/content/MICIC_Mexico_desk_study.pdf, p. 3; UNHCR, *Fact Sheet:*

apply for asylum in Mexico in order to have documentation that protects them in the country, which has resulted in over-saturating the Mexican Commission for Refugee Assistance (COMAR) with asylum claims of individuals' whose intention is to go to the US.[127]

Amnesty International heard from asylum seekers, service providers and local and international organizations that agents of the Mexican National Institute for Migration (INM) block access to US ports of entry and only allow individuals with CBP One appointments to access them. The organization considers that Mexican authorities are acting as agents of the United States in enforcing the use of CBP One by asylum seekers through their acquiescence to the application being utilized in Mexico and their enforcement of its use by preventing access to US ports of entry on Mexican soil by individuals without CBP One appointments. Mexican authorities blocking individuals access to US ports of entry so they can seek asylum violates international human rights and refugee law. The actions of Mexican authorities also force asylum seekers having to resort to more dangerous ways to irregularly enter the United States which places them at risk.

Mexico's obligations also include protection of the right to life, personal integrity, equality and non-discrimination, movement, and to be free from torture and other cruel, inhuman or degrading treatment or punishment, as well as access to employment, education, healthcare and housing, among other rights.[128] Mexico must also ensure that any alleged violations of the rights of asylum seekers are duly investigated. Amnesty International received testimonies of violations of the rights of asylum seekers in Mexico committed by both state and non-state actors, including extortion, kidnapping, disappearances, sexual and gender-based violence, discrimination and inadequate living conditions.

Mexico (previously cited), p. 2; UNHCR, *El impacto del desplazamiento forzado en la movilidad humana* (previously cited), p. 28.

[127] In-person and online interviews with asylum seekers and organizations, August-November 2023; UNHCR, *Fact Sheet: Mexico* (previously cited), p. 2; Amnesty International, *Not safe anywhere* (previously cited), p. 5; UNHCR, *El impacto del desplazamiento forzado en la movilidad humana* (previously cited), pp. 6 & 35-36.

[128] International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; Convention on the Elimination of all forms of Racial Discrimination; Convention on the Elimination of All Forms of Discrimination against Women; Convention against Torture; American Convention on Human Rights; Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights "Protocol of San Salvador".

MIGRATION AGREEMENTS

External migration policies are not unlawful per se under international law. However, policies focusing on the externalization of border control and/or asylum processing pose significant human rights risks, and their implementation often results in asylum seekers being contained in or returned to countries where they are subjected to serious human rights violations.[129] The US and Mexican governments have continuously implemented common immigration policies aimed at deterring migration, including but not limited to militarization, externalization of borders, widespread use of immigration detention, expedited removals and criminalization of those who advocate for migrants' rights.[130] Specifically, as early as 2016, CBP implemented an illegal de facto policy of pushbacks of asylum seekers (referred to as "metering") at US ports of entry along the US-Mexico border which forced asylum seekers to queue on the Mexican side of the border until they were permitted to approach a US port-of-entry to request asylum.[131] The United States and Mexico jointly implemented the Migrant Protection Protocols that trapped asylum seekers in camps along the US-Mexico border where they were at risk.[132] Similarly, under Title 42, nearly 2.5 million asylum seekers from Central America, Haiti and Venezuela were expelled from the United States to Mexico without the opportunity to effectively seek asylum in the US.[133] The Final Rule and mandatory use of the CBP One application are an additional way in which Mexico and US continue to fail to uphold the rights of asylum seekers. The United States has only been able to implement these policies with the cooperation of Mexico.

[129] Amnesty International, *Primer: Defending the Rights of Refugees and Migrants in the Digital Age* (POL 40/7654/2024) 5 February 2024, amnesty.org/en/documents/pol40/7654/2024/en/, p. 13.
[130] Amnesty International, *Americas: Pushback Practices* (previously cited), pp. 1-2; Amnesty International, "North America: Refugee and migrant rights must be top priority of 'Three Amigos' summit" (previously cited).
[131] Amnesty International, *Americas: Pushback Practices* (previously cited), p. 1; Amnesty International, *'You don't have any rights here'* (previously cited), pp. 5, 11-14.
[132] Amnesty International, *Americas: Pushback Practices* (previously cited), pp. 1-2; Amnesty International, "North America: Refugee and migrant rights must be top priority of 'Three Amigos' summit" (previously cited).
[133] Amnesty International, *Pushed into Harm's Way* (previously cited), pp. 15-17; Amnesty International, *Americas: Pushback Practices* (previously cited), pp. 1-2; Amnesty International, "North America: Refugee and migrant rights must be top priority of 'Three Amigos' summit" (previously cited); Amnesty International, *"They Did Not Treat Us Like People"* (previously cited), pp. 4-5, 19-24.

5. CHALLENGES IN USING THE CBP ONE MOBILE APPLICATION TO SEEK ASYLUM

To prepare this report, Amnesty International interviewed 55 individuals and 66 families who, based on the size of their families or groups they were travelling with, represent the experiences of approximately 356 asylum seekers with the CBP One application in Matamoros, Monterrey, Piedras Negras, Reynosa and Tijuana, Mexico; and, Brownsville and San Diego, US. Of the asylum seekers that the organization spoke with, 79 had a CBP One appointment, while 249 did not.[134] Eighteen asylum seekers had never heard of the application. The organization also spoke with migrant shelters and service providers, and local and international organizations about the CBP One application.

When CBP One became mandatory for seeking asylum in May 2023, many asylum seekers did not know about the application nor how to use it. Amnesty International and other organizations reported a variety of issues surrounding the application, including technological errors; lack of smart phones, internet, language proficiency and technical assistance to use the application; lack of information about the US asylum process; limited number of appointments; US refusals to process asylum seekers without appointments at ports of entry; and Mexican authorities preventing asylum seekers from accessing ports of entry.[135]

> **"It's confusing to understand how the application works. You have to be very patient. The application often doesn't work. It's very frustrating, very difficult. It's not so easy to use."**
>
> Staff, Casa Arcoiris shelter (Tijuana, Mexico)[136]

Although the functioning of the application has improved since May 2023, Amnesty International has observed that people seeking asylum continue to experience challenges using CBP One due to an onerous registration process, technological errors and flaws and lack of knowledge about the

[134] In-person interviews with asylum seekers, October-November 2023.
[135] HBA, *Lives at Risk* (previously cited), p. 2; Amnesty International, *Mandatory Use of CBP One Application Violates the Right to Seek Asylum* (previously cited); Strauss Center for International Security and Law, University of Texas at Austin, *Asylum Processing at the U.S.-Mexico Border: May 2023*, 31 May 2023, strausscenter.org/publications/asylum-processing-at-the-u-s-mexico-border-may-2023/, p. 3; HIAS, *CBP One: Puente hacia el asilo entre México y Estados Unidos* (previously cited), p. 2.
[136] In-person interview with staff at Casa Arcoiris shelter, Tijuana, Mexico, 29 November 2023.

application and how it works.[137] Moreover, some asylum seekers are unable to use the application for financial, literacy and language proficiency reasons, among others.

> **"Using the application is difficult for older people, people who don't know how to use technology well, or depending on your education level or the cellphone that you have. The journey is not the same for everyone; there are kidnappings, rapes and discrimination."**
>
> Honduran asylum seeker (Tijuana, Mexico)[138]

5.1 REGISTERING IN THE CBP ONE APPLICATION

Most of the individuals interviewed by Amnesty International created their CBP One registrations in Tapachula, Mexico. They then began applying for appointments once they reached Mexico City or another place in central Mexico.[139]

> **"Many people register themselves incorrectly in the application. They absolutely need help registering themselves."**
>
> Lawyer, Casa Nicolás shelter (Monterrey, Mexico)[140]

According to asylum seekers with whom Amnesty International spoke, the registration process is the most difficult part of using CBP One.[141] Over half of those interviewed by the organization received error messages during the registration process which resulted in them being kicked out of the application and losing the information that they had entered so far, meaning that they had to log back in and restart the registration process.[142] This was particularly difficult for asylum seekers given the amount of information that is required for each person to be registered, as well as the conditions that they find themselves in while registering themselves including limited and poor internet connections.

Several organizations raised the issue that the application requires people seeking asylum to indicate a contact person and address in the United States.[143] While many of the asylum seekers interviewed by Amnesty International had family or friends already in the US, some did not and

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[137] In-person and online interviews with asylum seekers and organizations, August-November 2023; UNHCR, *El impacto del desplazamiento forzado en la movilidad humana* (previously cited), p. 38; Congress of the United States, Letter to DHS (previously cited), p. 1.
[138] In-person interviews with Honduran asylum seekers, Tijuana, Mexico, 29 November 2023.
[139] In-person interviews with asylum seekers, October-November 2023.
[140] In-person interview with lawyer, Casa Nicolás shelter, Monterrey, Mexico, 30 October 2023.
[141] In-person interviews with asylum seekers, October-November 2023.
[142] In-person interviews with asylum seekers in Monterrey and Piedras Negras; Strauss Center, *Asylum Processing at the U.S.-Mexico Border: February 2024* (previously cited), p. 4; Jesuit Refugee Service, *Accompaniment at the U.S.-Mexico Border: Conditions Report & Policy Recommendations*, September 2023, jrsusa.org/wp-content/uploads/sites/2/2023/09/Advocacy-Report_2023-English-1.pdf, p. 3; TCRP, *CBP One Disability Rights Violations of Section 508 of the Rehabilitation Act* (previously cited), pp. 4-5.
[143] CBP, *CBP One™ Mobile Application Traveler User Guide* (previously cited), p. 16.

therefore, struggled to complete this part of the registration process. Staff at Casa Arcoiris –a shelter for LGBTIQ+ asylum seekers in Tijuana– has indicated that there have been reports of a burgeoning and dangerous black-market business around the requirement to provide a US address, where people have reportedly gained permission to use a US address by paying to do so. Casa Arcoiris raised concerns over reports of individuals being subjected to trafficking and forced sex work as a result of resorting to these networks to gain a usable address for purposes of registration in the application.[144]

Many people seeking asylum shared that they did not know how to properly register themselves in CBP One which resulted in them making mistakes or leaving out essential information during the registration process. Several individuals told Amnesty International that they registered themselves only with their first and last name, not their full names. Others ended up paying people to register them, but they were still sometimes registered incorrectly.[145]

> **"They registered us in Tapachula, but it was done wrong, they didn't include our full names. I had to get a new email address, a new phone number and I only managed to eventually register myself using an iPhone."**
>
> Nicaraguan asylum seeker (Monterrey, Mexico)[146]

Another common issue was asylum seekers not registering their children, and especially babies, in the application because they did not know that they had to or they did not know how to.[147] An organization interviewed by Amnesty International indicated that this was a major problem when CBP One first became mandatory for asylum seekers because, on the one hand, asylum seekers did not know that they had to register minors, and, on the other hand, it was common to receive an error message saying there was no space for additional travelers when trying to add additional people to the registration group. Amnesty International received information that with some cases, CBP has allowed children who were not registered to enter with their parents when they presented themselves for their appointments.[148] However, this is not official policy nor standard practice. As a result, in some cases this has led to family separation as one parent may decide to enter the US while the other remains with the children in Mexico.[149]

> **"Nobody knows about the application where I'm from. The first time I did it wrong because I didn't include my children. Now I've been waiting for three months."**
>
> Mexican asylum seeker (Tijuana, Mexico)[150]

Once a CBP One registration has been submitted, there is no way to edit it.[151] The only option is to create a new registration, resulting in asylum seekers having multiple registrations. Of the asylum seekers that Amnesty International interviewed, at least one in three had registered themselves more than once in CBP One. While some individuals quickly realized that they had made a mistake and created new registrations, the organization spoke with others who had already been requesting appointments for weeks or months at the time they realized that they would have to re-register themselves.[152] When the organization raised this issue with CBP, it was told that "CBP is evaluating whether it will allow individuals to edit their CBP One registration."[153]

In some cases, asylum seekers were unable to delete their registration and simply created a new one, resulting in there being more than one registration for the same person. Some of the

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[144] In-person interview with staff at Casa Arcoiris shelter, Tijuana, Mexico, 29 November 2023. The shelter works with US-based organizations to find addresses in the US.
[145] In-person interview with Honduran asylum seekers, Piedras Negras, Mexico, 2 November 2023.
[146] In-person interview with Nicaraguan asylum seeker, Casa Nicolás shelter, Monterrey, Mexico, 30 October 2023.
[147] MSF, "Se cancela el Título 42 pero la crisis migratoria continúa en la región", 11 May 2023, msf.mx/actualidad/se-cancela-el-titulo-42-pero-la-crisis-migratoria-continua-en-la-region/.
[148] In-person and virtual interviews with organizations & asylum seekers, August-November 2023.
[149] HBA, *Lives at Risk* (previously cited), p. 6.
[150] In-person interview with Mexican asylum seeker, Tijuana, Mexico, 27 November 2023.
[151] CBP, *CBP One™ Mobile Application Traveler User Guide* (previously cited), p. 26.
[152] In-person interviews with asylum seekers, October-November 2023.
[153] Communication from CBP, 9 April 2024.

organizations Amnesty spoke with suggested that this could be one of the causes of error and fraud messages, but Amnesty has not been able to confirm this.[154]

PREGNANT ASYLUM SEEKERS

The inability to edit CBP One registrations is particularly problematic in the case of pregnant asylum seekers. Amnesty International interviewed a Mexican asylum seeker whose baby was born while she was waiting for an appointment. The only option she had was to delete her registration and create a new one.[155] The organization also interviewed several pregnant asylum seekers who were worried about what would happen if their babies were born before they received a CBP One appointment. This created additional stress.

> **"My baby was born while I was waiting for the appointment. I had already been waiting for two months. I had to make a new registration because I had to add my baby. Now I've been waiting for another four months. There is no order; everything is uncertain. I would prefer to know when my turn is."**
>
> Mexican asylum seeker (Tijuana, Mexico)[156]

Several asylum seekers that Amnesty International interviewed shared that the application deleted their registrations and they had to start the process all over again. This was something that various shelters had also observed. Asylum seekers received no notice or information from CBP as to why their registrations had been removed. CBP has stated that "registrations that are identified as fraudulent will be removed" and that it "removes users using multiple registrations to ask for appointments at the same time".[157] Moreover, in March 2024, CBP announced that it would be deactivating all registrations that are in excess of 10 individuals and limited future registrations to 10.[158] However, none of the individuals interviewed by Amnesty International indicated that they were using more than one registration at a time or that they had registration groups of ten people or more.[159]

> **"I was trying to get the appointment for three months and one day my registration was deleted. I had to register myself again. There is no information about how the app works. There are a lot of rumors. On TikTok they're saying that certain registrations were deleted. There are a lot of people who decide to turn themselves in, but I'll feel better if I enter with an appointment."**
>
> Salvadoran asylum seeker (Matamoros, Mexico)[160]

> **"We had been using the application for two months, everything was going well. One day, instead of pressing 'appointment', I pressed 'delete', which is next to it. Everything was deleted. [The application] is not easy to use. It didn't even warn me or ask me if I was sure. It just deleted two months of trying to get the appointment … we just have to wait and try not to despair."**
>
> Salvadoran asylum seeker (Tijuana, Mexico)[161]

[154] In-person interviews with organizations in Monterrey and Tijuana, October-November 2023.
[155] In-person interview with Mexican asylum seeker, Tijuana, Mexico, 27 November 2023.
[156] In-person interview with Mexican asylum seeker, Tijuana, Mexico, 27 November 2023.
[157] CBP, "CBP One™ Application Update Announcement" (previously cited); Communication from CBP, 6 May 2024; National Immigration Project, *Facing an Impossible Choice* (previously cited), p. 7.
[158] CBP, "CBP One Mobile Application" (previously cited).
[159] In-person interviews with asylum seekers, October-November 2023.
[160] In-person interview with Salvadorian asylum seeker, Matamoros, Mexico, 9 November 2023.
[161] In-person interview with Salvadorian asylum seeker, Tijuana, Mexico, 28 November 2023.

5.2 RANDOM ALLOCATION OF APPOINTMENTS – "A LOTTERY SYSTEM"

CBP One randomly allocates 70 percent of appointments to asylum seekers who requested an appointment the previous day, with 30 percent of appointments being allocated to people requesting appointments with the oldest accounts who have been waiting longest for an appointment.[162] The application does not assign appointments based on the order of registration, but essentially operates as a lottery system. The fact that the application functions in this way creates vastly different experiences for individuals using it. For example, Amnesty International interviewed a family of Venezuelan asylum seekers who registered and received an appointment the following day.[163] On the other hand, the organization spoke with at least 60 asylum seekers who had been trying to get appointments for three months or more, including seven individuals who had been waiting four months and one asylum seeker who had been waiting for six.[164] Further, given the manner in which the application allocates appointments, it is possible that some people seeking asylum will never receive a CBP One appointment.

> **"We've been waiting two months for our appointments, but we see how some people pass right away. It would be better if the appointments were in order, so you know when you're going to get your turn."**
>
> Haitian asylum seeker (Reynosa, Mexico)[165]

> **"People are waiting two to three months [for appointments], but it's very variable; sometimes appointments are given in three months, sometimes they're given in two days. There's no criteria for the allocation of appointments."**
>
> Staff, Casa Nicolás shelter (Monterrey, Mexico)[166]

> **"It's luck; it's a lottery. You go fishing every day and you can catch a fish or an empty sack. We suffer a lot. We've been applying for a month. We're expecting a baby."**
>
> Haitian asylum seeker (Reynosa, Mexico)[167]

The fact that CBP One assigns appointments randomly, and not in order, creates unnecessary stress, frustration and worry for asylum seekers as they have no way of knowing how long they will have to wait for appointments. It is also stressful for asylum seekers to see some people receive appointments in very short amounts of time, while others end up waiting months.[168]

> **"My self-esteem goes down because there are people who get an appointment and I've been trying for longer and nothing. The children are missing out on the school year. We had to flee our home. I'm discouraged, but I remember that I can't go back to where I'm from. The appointments should be given to the oldest [registration] numbers so that we don't lose hope."**
>
> Mexican asylum seeker (Tijuana, Mexico)[169]

> **"Some people get an appointment in two days while other have to wait months. Those who have to wait longer became discouraged and depressed."**
>
> Staff, Casa Nicolás shelter (Monterrey, Mexico)[170]

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[162] CBP, "CBP Makes Changes to CBP One™ App" (previously cited); CBP, *CBP One™ Mobile Application Traveler User Guide* (previously cited), p. 31.
[163] In-person interview with Venezuelan asylum seekers, Brownsville, USA, 9 November 2023.
[164] In-person interviews with asylum seekers, October-November 2023.
[165] In-person interview with Haitian asylum seeker, Reynosa, Mexico, 7 November 2023.
[166] In-person interview with staff at Casa Nicolás shelter, Monterrey, Mexico, 30 October 2023.
[167] In-person interview with Haitian asylum seeker, Reynosa, Mexico, 7 November 2023.
[168] National Immigration Project & Together & Free, *Facing an Impossible Choice* (previously cited), p. 9.
[169] In-person interview with Mexican asylum seeker, Tijuana, Mexico, 28 November 2023.
[170] In-person interview with staff at Casa Nicolás shelter, Monterrey, Mexico, 30 October 2023.

"We have to keep waiting. I've been waiting for two months now. Just as it has worked out for others, I trust that it will work out for me."

Honduran asylum seeker (Monterrey, Mexico)[171]

"It's really a matter of luck. It stresses asylum seekers out and frustrates them a lot when it takes too long because they have to support themselves while waiting."

Staff, Casa Indi shelter (Monterrey, Mexico)[172]

The organization HIAS reported that, on 7 August 2023, CBP sent confirmation messages by error to many asylum seekers that turned out to be false. People entered into the application only to find out that their appointments did not exist, which caused frustration and anger.[173]

Almost all of the asylum seekers that Amnesty International interviewed shared that they would much prefer the appointments to be allocated in order of registration as this would provide more certainty and clarity as to when a person could expect to receive their appointment. Amnesty International considers that the way in which CBP One allocates appointments violates the rights of individuals to seek asylum given that there is no certainty as to when or if they will receive an appointment.

5.3 WAIT TIMES FOR APPOINTMENTS

The wait time for appointments has increased since the use of CBP One became mandatory for asylum seekers in May 2023. Organizations interviewed by Amnesty stated that, in the beginning, the majority of asylum seekers were able to secure appointments within one to two months.[174] In October 2023, HIAS reported that people seeking asylum waited on average two months for appointments.[175] However, as of November 2023, the majority of asylum seekers had been waiting three to four months for appointments.[176] According to CBP, "the average wait time for an appointment for a non-Mexican individual is approximately 2-3 months from account creation to presentation at a POE".[177] However, this calculation does not take into account the wait time of individuals who have had to register multiple times.[178]

Organizations interviewed by Amnesty International stated that increasingly long wait times were not uncommon and that there are cases of people who have been waiting for six and seven months.[179] Asylum seekers at a shelter in Tijuana told Amnesty International, "The wait time is getting longer. People used to get appointments in two months, but now it's three or four. Most people in the shelter have been waiting for four months."[180] A Honduran family in Reynosa said, "Before the appointments used to come out after 20 days, no more than two months. Now the appointments are very delayed."[181]

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[171] In-person interview with Honduran asylum seeker, Monterrey, Mexico, 31 October 2023.
[172] In-person interview with staff at Casa Indi shelter, Monterrey, Mexico, 31 October 2023.
[173] HIAS, *CBP One: Puente hacia el asilo entre México y Estados Unidos* (previously cited), p. 3.
[174] In-person interviews with shelters in Matamoros, Monterrey & Tijuana, October-November 2023.
[175] HIAS, *CBP One: Puente hacia el asilo entre México y Estados Unidos* (previously cited), p. 1.
[176] In-person interviews with shelters in Matamoros, Monterrey & Tijuana, October-November 2023.
[177] Communication from CBP, 9 April 2024.
[178] Communication from CBP, 9 April 2024. CBP does not track the number of registrations an individual may have.
[179] In-person and online interviews with asylum seekers and organizations, August-November 2023; Congress of the United States, Letter to DHS (previously cited), p. 2; TCRP, *CBP One Disability Rights Violations of Section 508 of the Rehabilitation Act* (previously cited), p. 5.
[180] In-person interviews with asylum seekers, Tijuana, Mexico, 27 November 2023.
[181] In-person interview with Honduran family, Reynosa, Mexico, 7 November 2023.

> **"From March to May the appointments were very constant, but from May to September we noticed that asylum seekers had to wait longer without any news. People have been waiting four months for appointments. From September to November there have been very few appointments. During this time, only 12 people have left the shelter with appointments. Asylum seekers get discouraged; they don't see any progress."**
>
> Staff, Casa Arcoiris shelter (Tijuana, Mexico)[182]

As explained above, the number of daily appointments is significantly less than the number of asylum seekers waiting for appointments.[183] When CBP One first became mandatory for asylum seekers in May 2023, there were 1,000 daily appointments.[184] In June, the number of daily appointments increased to 1,450.[185] Since that time, CBP has not increased the number of daily appointments. CBP told Amnesty International that it does not plan to increase the number of appointments at this time even though the agency has recognized that the number of daily appointments is insufficient.[186] According to CBP, "without CBP One, CBP would have decreased capacity to process migrants at [southwest border] ports of entry, further increasing wait times and risks of extortion and violence".[187]

However, the number of asylum seekers trying to get appointments continues to increase. According to UNHCR, as of February 2024, there were more than 8,000 people seeking asylum living in shelters and informal settlements along the US-Mexico border.[188] UNHCR has reported that many asylum seekers in Northern Mexico live in private accommodation, making them harder to track, and therefore, the total number of asylum seekers at the border is even higher.[189] The Strauss Center reported that, as of February 2024:[190]

PORT-OF-ENTRY	NUMBER OF CBP ONE APPOINTMENTS	ESTIMATED NUMBER OF ASYLUM SEEKERS WAITING
Brownsville (Texas) – Matamoros (Tamaulipas)	~ 380 CBP One appointments ~ 20 people via NGO lists	~ 2,000 – 2,500 asylum seekers
Calexico (California) – Mexicali (Baja California)	~ 75 CBP One appointments ~ 10 people via NGO lists	~ 1,600 asylum seekers

[182] In-person interview with staff at Casa Arcoiris shelter, Tijuana, Mexico, 29 November 2023.
[183] Strauss Center, *Asylum Processing at the U.S.-Mexico Border: February 2024* (previously cited), p. 4; UNHCR, *El impacto del desplazamiento forzado en la movilidad humana* (previously cited), p. 39.
[184] CBP, "CBP Makes Changes to CBP One™ App" (previously cited).
[185] CBP, "CBP One™ Appointments Increased to 1,450 Per Day" (previously cited).
[186] Communications from CBP, 9 April 2024 & 6 May 2024; WOLA, *Kidnapping of Migrants and Asylum Seekers at the Texas-Tamaulipas Border Reaches Intolerable Levels*, 4 April 2024, wola.org/analysis/kidnapping-migrants-asylum-seekers-texas-tamaulipas-border-intolerable-levels/?emci=9cc1da5a-e5f1-ee11-aaf2-002248223353&emdi=9a8ff0cd-6ef3-ee11-aaf0-7c1e52017038&ceid=14660259; Department of Homeland Security, "Examining CBP One: Functions, Features, Expansion, Risks", 21 March 2024, youtube.com/watch?v=BZzlJW_L0rU.
[187] Communication from CBP, 9 April 2024.
[188] UNHCR, *Fact Sheet: Mexico* (previously cited), p. 2.
[189] UNHCR, *Fact Sheet: Mexico* (previously cited), p. 2; UNHCR, *El impacto del desplazamiento forzado en la movilidad humana* (previously cited), p. 6.
[190] Strauss Center, *Asylum Processing at the U.S.-Mexico Border: February 2024* (previously cited), pp. 5-13.

PORT-OF-ENTRY	NUMBER OF CBP ONE APPOINTMENTS	ESTIMATED NUMBER OF ASYLUM SEEKERS WAITING
Eagle Pass (Texas) – Piedras Negras (Coahuila)	~ 60 CBP One appointments	~ 500 – 700 asylum seekers
Hidalgo (Texas) – Reynosa (Tamaulipas)	~ 195 CBP One appointments ~ 15 people via NGO lists	~ 4,000 asylum seekers
Laredo (Texas) – Nuevo Laredo (Tamaulipas)	~ 55 CBP One appointments ~ 2 people via NGO lists	~ 50 asylum seekers
Nogales (Arizona) – Nogales (Sonora)	~ 100 CBP One appointments ~ 15 people via NGO lists	~ 2,700 asylum seekers

Amnesty International considers the total number of daily CBP One appointments insufficient given the number of asylum seekers already at the US-Mexico border, as well as those arriving to the border and in central Mexico trying to get appointments.[191] As the number of asylum seekers using CBP One continues to rise, the average wait time for appointments will only continue to increase if action is not taken to ensure the availability of appointments is proportionate to the number of people in need of them. Moreover, the manner in which CBP One allocates appointments makes wait times for appointments completely arbitrary. Amnesty International considers that increasing and uncertain wait times violate the rights of individuals to seek asylum.

5.4 TECHNOLOGICAL ISSUES AND FLAWS

When the CBP One application became mandatory for asylum seekers in May 2023 it experienced a variety of technological issues, frequently stopped working and error messages were common.[192] Many of the organizations interviewed by Amnesty International shared that the functioning of the application has improved over time. They indicated that CBP has been open to receiving feedback from them and has made updates to the application accordingly.[193] From January to October 2023, CBP has updated the CBP One application 16 times.[194] UNHCR has reported that, based on a survey of 15,000 asylum seekers in Mexico, during the first and second quarter of 2023, 75% experienced technological difficulties while using the application, but this dropped to 40% in the last quarter of 2023.[195] At the same time, technological issues including error and fraud messages, crashes and glitches continue to regularly occur.[196] These issues complicate individuals' ability to use the application and have psychological, physical and social impacts.

> **"We've been trying to get an appointment for four months now. We try every day and nothing. Sometimes we get a 'fraud' message, sometimes 'error'. Once the phone turned off and didn't turn back on. We're desperate. Our children get sick. Many people lose hope."**
>
> Mexican asylum seeker (Tijuana, Mexico)[197]

[191] Congress of the United States, Letter to DHS (previously cited), pp. 1-2.
[192] UNHCR, *El impacto del desplazamiento forzado en la movilidad humana* (previously cited), p. 39.
[193] In-person and online interviews with organizations, August-November 2023; HIAS, *CBP One: Puente hacia el asilo entre México y Estados Unidos* (previously cited), p. 2.
[194] HIAS, *CBP One: Puente hacia el asilo entre México y Estados Unidos* (previously cited), p. 3.
[195] UNHCR, *El impacto del desplazamiento forzado en la movilidad humana* (previously cited), p. 39.
[196] In-person and online interviews with asylum seekers and organizations, August-November 2023; HIAS, *CBP One: Puente hacia el asilo entre México y Estados Unidos* (previously cited), p. 2; UNHCR, *El impacto del desplazamiento forzado en la movilidad humana* (previously cited), p. 39.
[197] In-person interview with Mexican asylum seeker, Tijuana, Mexico, 27 November 2023.

▪ Application crashes or stops working

People seeking asylum stated that the CBP One application frequently crashes or stops working.[198] Crashes most frequently occur when many people try to use the application at the same time, such as in the mornings when everyone is attempting to apply for appointments.[199] Sometimes the crashes prevent individuals from being able to request an appointment, as well as from being able to accept an appointment that has been allocated to them. A Venezuelan asylum seeker told Amnesty, "Yesterday we applied for an appointment. Today we couldn't because the application froze. That happens when a lot of people log in at the same time."[200]

> **"Lately the app has been glitchy. No one knows why. It doesn't go in order. [Using the app] becomes complicated and maddening. There are people who get [an appointment] in five days and others that have to wait a long time."**
>
> Honduran asylum seeker (Tijuana, Mexico)[201]

▪ Error and fraud messages

Asylum seekers continue to frequently receive error and fraud messages when using CBP One.[202] These messages usually kick users out of the application, but asylum seekers stated that they can often log back in without any issues.[203] However, some shared that these messages have prevented them from being able to apply for appointments. Almost all of the asylum seekers interviewed by Amnesty International had received an error or fraud message at least once while using the application. The error messages do not indicate what the specific error is. Moreover, even if an asylum seeker is using the application in Spanish or Haitian Creole, the error and fraud messages appear in English.[204]

> **"We've been asking for the appointment for two months. Sometimes we receive 'fraud' messages. We think it's when the app is over saturated. You click to ask for an appointment and the app doesn't work. We watch videos on TikTok that guide us."**
>
> Venezuelan asylum seeker (Reynosa, Mexico)[205]

> **"We'd been waiting for three months. A 'fraud' message appeared, I pressed something and everything was erased. We had to start all over again. It's maddening."**
>
> Mexican asylum seeker (Tijuana, Mexico)[206]

▪ Updates to the application

Updates to the CBP One application result in it not functioning well for a period of time following the update.[207] Guatemalan asylum seekers stated that "app updates cause many problems" and that "updates to the app cause errors."[208]

> **"I'd been applying for a month. One day, I had to update the application. I did the update and the app worked**

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[198] In-person interviews with asylum seekers, October-November 2023; UNHCR, *El impacto del desplazamiento forzado en la movilidad humana* (previously cited), p. 39.
[199] In-person interviews with asylum seekers, October-November 2023; UNHCR, *El impacto del desplazamiento forzado en la movilidad humana* (previously cited), p. 39.
[200] In-person interview with Venezuelan asylum seeker, Monterrey, Mexico, 1 November 2023.
[201] In-person interview with Honduran asylum seeker, Tijuana, Mexico, 29 November 2023.
[202] In-person interviews with asylum seekers, October-November 2023; Strauss Center, *Asylum Processing at the U.S.-Mexico Border: February 2024* (previously cited), p. 4.
[203] In-person interviews with asylum seekers, October-November 2023.
[204] In-person interviews with asylum seekers, October-November 2023.
[205] In-person interview with Venezuelan asylum seeker, Reynosa, Mexico, 6 November 2023.
[206] In-person interview with Mexican asylum seeker, Tijuana, Mexico, 27 November 2023.
[207] In-person interviews with asylum seekers and organizations, October-November 2023.
[208] In-person interview with Guatemalan asylum seekers, Monterrey, Mexico, 30 October 2023; In-person interview with Guatemalan asylum seekers, Piedras Negras, Mexico, 3 November 2023.

fine for a day, but the next day my registration was deleted. I've had the new registration for 5 days. I feel really sad about what happened."

Venezuelan asylum seeker (Matamoros, Mexico)[209]

Organizations indicated that updates to CBP One generate fear, confusion and worry amongst people seeking asylum, and that asylum seekers often struggle to understand updates and changes to the application. One change that created many issues for individuals was the introduction of a "captcha code" when logging into the application. Organizations and asylum seekers told Amnesty International that CBP One has become more difficult to use since the "captcha code" was introduced because it often does not work or generates error messages which results in asylum seekers not being able to log into their accounts to request appointments.

"They wanted to kill my son in Michoacán, that's why we had to leave. In Tijuana, they explained the application to us and how it works. When they introduced the captcha, we got confused. Before it was just numbers and now it's more confusing. We get errors and fraud. We'd like it to be faster. It's maddening. We're afraid to be here. Three weeks ago, someone threw a dead body into the shelter."

Mexican asylum seeker, (Tijuana, Mexico)[210]

"With the recent updates there's an extra step that involves identifying figures by color. I have a visual disability and can't figure this part out. Before this step didn't exist. Without support I would never be able to apply for an appointment."

Honduran asylum seeker, (Tijuana, Mexico)[211]

- **Photographs and video selfies**

Asylum seekers must take and upload a photograph when they register themselves in the CBP One application.[212] In order to confirm an appointment that is being offered to them, one member of the registration group must upload a video selfie to the application.[213] This video selfie is compared to the photograph that the individual uploaded during their registration.

When CBP One first became mandatory for asylum seekers, many struggled with this part of the process.[214] Flaws with the photographs and video selfies have a disproportionate impact on racialized asylum seekers.[215] Amnesty International and other organizations documented that Black asylum seekers were unable to upload photographs which resulted in them being unable to register themselves.[216]

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[209] In-person interview with Venezuelan asylum seeker, Matamoros, Mexico, 9 November 2023.
[210] In-person interview with Mexican asylum seeker, Tijuana, Mexico, 27 November 2023.
[211] In-person interview with Honduran asylum seeker, Tijuana, Mexico, 29 November 2023.
[212] CBP, *CBP One™ Mobile Application Traveler User Guide* (previously cited), p. 13.
[213] CBP, *CBP One™ Mobile Application Traveler User Guide* (previously cited), p. 31.
[214] HBA, *Lives at Risk* (previously cited), pp. 9-11.
[215] Amnesty International, *Mandatory Use of CBP One Application Violates the Right to Seek Asylum* (previously cited), p. 11; The Guardian, "Facial recognition bias frustrates Black asylum applicants to US, advocates say", 8 February 2023, theguardian.com/us-news/2023/feb/08/us-immigration-cbp-one-app-facial-recognition-bias; HIAS, *CBP One: Puente hacia el asilo entre México y Estados Unidos* (previously cited), p. 2.
[216] HIAS, *CBP One: Puente hacia el asilo entre México y Estados Unidos* (previously cited), p. 2; Amnesty International, *Mandatory Use of CBP One Application Violates the Right to Seek Asylum* (previously cited), p. 11; HBA, *Lives at Risk* (previously cited).

While organizations interviewed by Amnesty International indicated that photographs and video selfies are now working better, there continue to be problems.[217] Whether or not people seeking asylum are able to upload photographs and/or videos depends on the quality of the cellphone that they are using. For example, many people told the organization that the photo and video selfie work better on iPhones. The conditions and surroundings in which asylum seekers are taking the photograph and video also impacts their quality.[218] Thousands of people are in shelters with inadequate conditions to upload high quality photos and have poor and unstable internet connections.

According to CBP, if the video selfie fails, asylum seekers should delete their registration and re-register with a higher quality photograph.[219] Amnesty International considers it extremely problematic that CBP expects asylum seekers, who are fleeing dangerous situations in search of international protection and who have potentially been waiting for an appointment for months, to delete their registration and begin the process all over again because of problems with the video selfie or quality of the original photo which are likely due to weak internet or inadequate conditions for taking the video or photo. Moreover, it ignores the limited financial resources of many people seeking asylum and again puts the burden on asylum seekers and conditions their access to international protection on expensive technology.

- **Incompatibility with certain phones**

The CBP One application does not work on certain cellphones. Frequent problems have been reported with older models of Samsung phones and incompatibly with Huawei cellphones.[220] Organizations indicated that it is not uncommon for asylum seekers to have had to purchase new cellphones because the application did not work on the one they had.[221] Requiring individuals to have specific equipment, such as cellphones, cannot be a requirement to seek asylum.

- **Lack of troubleshooting support**

People seeking asylum and the organizations assisting them encounter difficulties in contacting CBP for technical or troubleshooting support.[222] A Honduran asylum seeker said, "When you have problems, they stay up in the air."[223]

> **"We don't know what the maximum waiting time is for an appointment, how many appointments are given daily, if the application is going to expire. There are many rumors. We wish there was a customer service that could clear up these doubts for us."**

[217] In-person interviews with asylum seekers and organizations, October-November 2023.
[218] In-person interviews with asylum seekers and organizations, October-November 2023.
[219] CBP, *CBP One™ Mobile Application Traveler User Guide* (previously cited), p. 47.
[220] In-person interviews with asylum seekers and shelters, October-November 2023.
[221] In-person and online interviews with organizations, August-November 2023.
[222] Congress of the United States, Letter to DHS (previously cited), pp. 3-4.
[223] In-person interview with Honduran asylum seeker, Monterrey, Mexico, 31 October 2023.

Guatemalan asylum seeker (Piedras Negras, Mexico)[224]

CBP does have an email address that asylum seekers can write to if they have questions or are experiencing issues with the application. However, organizations that Amnesty International spoke with indicated that this requires asylum seekers to be able to write an email in English, which many are unable to do, and any response received from CBP One would also be in English.[225] Many asylum seekers were not aware of this email address or that they could write to CBP for assistance.[226] Those who were not staying in shelters or who did not have access to organizations found themselves in an even more difficult situation. CBP told Amnesty International that it is "considering additional ways to provide users multiple ways to seek assistance" and that it "engages with local NGOs and International Organizations to provide information and forums to discuss common questions and issues."[227]

The fact that people seeking asylum are unable to resolve questions and problems with CBP leaves them in a state of uncertainty and adds an additional level of stress and worry.

> **"Someone did me the favor of registering me but spelt my last name wrong. I'm depressed. I've been waiting three months for my appointment and I'm afraid I'll be rejected because of this. There's no one to ask, no one understands, and I don't know if I'm waiting in vain."**
>
> Nicaraguan asylum seeker (Reynosa, Mexico)[228]

Although the functioning of the CBP One application has improved since May 2023, asylum seekers continue to regularly experience technological issues while using the application. This results in them being unable to apply for appointments and therefore, unable to access asylum in the US in violation of their human rights.

5.5 MISINFORMATION AND LACK OF KNOWLEDGE OF THE CBP ONE APPLICATION

Many of the asylum seekers interviewed by Amnesty International knew about the CBP One application before they got to Mexico.[229] While this was especially the case for asylum seekers travelling from Central and South America to the US-Mexico, the organization observed that individuals from Mexico often did not know about the application until they arrived at the border. Many asylum seekers from outside of the Americas had never heard of CBP One at all. In some cases, asylum seekers had heard of the application but thought that it was only for people from specific countries.[230]

Interestingly, almost all of the asylum seekers Amnesty spoke with found out about the application and received information on how to use it from other asylum seekers or on social media, particularly

[224] In-person interview with Guatemalan asylum seeker, Piedras Negras, Mexico, 3 November 2023.
[225] In-person interviews with organizations, October-November 2023.
[226] In-person interviews with asylum seekers, October-November 2023.
[227] Communication from CBP, 9 April 2024.
[228] In-person interview with Nicaraguan asylum seeker, Reynosa, Mexico, 7 November 2023.
[229] In-person interviews with asylum seekers, October-November 2023.
[230] In-person interviews with asylum seekers, October-November 2023.

TikTok, Facebook and YouTube.[231] While CBP has published information and user guides in multiple languages, not one asylum seeker told Amnesty that they had consulted official information from CBP about the application.[232] In Mexico, shelters and organizations such as HIAS play an important role in providing information about CBP One and assisting people seeking asylum to resolve doubts and issues with the application.[233]

> **"After 7 days of using the application, we got our appointment. We flew from Mexico City to Tijuana. What we did was watch videos on YouTube explaining how to use the app and we were changing ports [of entry] every day. Once we got it, we had 18 days to get to the appointment. Now our nerves are on edge. We would recommend other migrants not to jump into the river."**
>
> Cuban asylum seekers (Tijuana, Mexico)[234]

Even if many of the asylum seekers interviewed by Amnesty International knew about CBP One, the majority did not know how the application works.[235]

> **"[The shelter] teaches us how to use the app, but we don't all understand it well; it can be tedious to understand it. There is a significant backlog, and we would prefer it to go in order. The code [the app] asks for to log in makes it difficult to use. The information isn't clear. People get desperate. We get 'error' or 'fraud' [messages] and there's no one to clarify these doubts with. The uncertainty makes you think it's better to turn yourself in [cross irregularly into the US]."**
>
> Honduran asylum seeker (Tijuana, Mexico)[236]

> **"What I want to know is if this is a lottery. I want to understand how it works, when it's going to be my turn. We thought that coming to Reynosa was better because we would get [the appointment] faster, but it's not like that."**
>
> Haitian asylum seeker (Reynosa, Mexico)[237]

The biggest misunderstanding about how CBP One works amongst asylum seekers is that appointments are assigned randomly.[238] Countless asylum seekers told the organization that they did not understand why they had not yet received an appointment when others who had registered after them had. As indicated above, the fact that CBP One does not allocate appointments in order of registration causes stress, worry and uncertainty for people seeking asylum.

> **"My fear is that the application will shut down. I don't know how the appointments are given. So many doubts generate a lot of emotions like stress and the desire to turn myself in and throw in the towel."**
>
> Guatemalan asylum seeker (Monterrey, Mexico)[239]

> **"I've been trying to get the appointment for three months. I thought that the appointments were going in order. It's maddening. I'm distraught with the situation. Someone tried to kill me. I don't want to leave my Mexico, but I can't stay."**
>
> Mexican asylum seeker (Matamoros, Mexico)[240]

Lack of knowledge about how CBP One works has resulted in the spreading of misinformation and

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[231] In-person interviews with asylum seekers, October-November 2023.
[232] CBP, *CBP One™ Mobile Application Traveler User Guide* (previously cited).
[233] HIAS, *CBP One: Puente hacia el asilo entre México y Estados Unidos* (previously cited).
[234] In-person interview with Cuban asylum seekers, Tijuana, Mexico, 29 November 2023.
[235] Human Rights First, *Inhumane and Counterproductive: Asylum Ban Inflicts Mounting Harm*, October 2023, humanrightsfirst.org/wp-content/uploads/2023/10/Inhumane-and-Counterproductive-final-report.pdf, pp. 7, 27-29; HBA, *Lives at Risk* (previously cited), p. 19.
[236] In-person interview with Honduran asylum seeker, Tijuana, Mexico, 29 November 2023.
[237] In-person interview with Haitian asylum seeker, Reynosa, Mexico, 7 November 2023.
[238] National Immigration Project, *Facing an Impossible Choice* (previously cited), p. 7.
[239] In-person interview with Guatemalan asylum seeker, Monterrey, Mexico, 30 October 2023.
[240] In-person interview with Mexican asylum seeker, Matamoros, Mexico, 9 November 2023.

rumors about how the application works. It also places asylum seekers at risk for scams and extortion.[241] According to HIAS, the information on social media "generate misinformation, false rumors and are used to extort people or promote dangerous entries into the United States."[242] Rumors that Amnesty International heard include that CBP One will cease to exist; that certain registrations had been deleted; and, that applying in a group or writing your name in all capital letters gives a better chance of getting an appointment.[243] HIAS has reported that, following updates to the application, a rumor started that appointments were allocated more quickly to groups, which caused many asylum seekers to search for others in groups on social media to create registration groups. Some people took advantage of these publications to obtain personal information for the purpose of extorting or committing fraud against asylum seekers.[244]

Mexican asylum seekers seem to have even less knowledge and information about CBP One which puts them at greater risk for fraud, scams and extortion.[245]

> **"Everything about [the application] affects them emotionally. In the end it's one more obstacle for people. There are many Facebook groups where [asylum seekers] support each other but they run the risk of being extorted and [these groups] can do more harm than help. Social networks are very popular for seeking information. They are also very popular for disinformation and a place for fraud and extortion."**
>
> Casa Arcoiris shelter (Tijuana, Mexico)[246]

According to CBP, "since the expansion of CBP One, the number of migrants reported to be waiting in Mexican Northen Border cities has decreased as individuals are able to instead request an appointment throughout Central and Northern Mexico."[247] However, Amnesty International's research reveals that asylum seekers' lack of knowledge of CBP One results in them making uninformed decisions that may place them in more dangerous situations or even impact their eventual asylum claims in the United States.[248] For example, there is a general sense amongst asylum seekers that the closer you are to the US-Mexico border, the better your chance is of getting a CBP One appointment. This rumor is fueled by a lack of understanding about how the application allocates appointments. Instead of remaining in cities such as Mexico City or Monterrey where there are more services and opportunities, people seeking asylum chose to travel to the border before getting their appointment and end up having to wait in border cities that are more dangerous and have limited resources for people seeking asylum.[249] There are also often rumors that appointments are allocated faster at certain ports of entry which ends up impacting migration routes and flows.

In this same sense, asylum seekers who end up crossing into the United States without an appointment, either because they have never heard of CBP One or because they are unable to wait in Mexico any longer, may not be aware that this could have implications for an eventual asylum claim that they make in the US. Many asylum seekers had never heard of the Final Rule and were not aware that using CBP One was necessary to rebut the presumption of asylum ineligibility.[250] Amnesty International interviewed 18 asylum seekers who had never heard of CBP One and consequently, all entered the United States without appointments resulting in them being ineligible for asylum in accordance with the Final Rule (unless they are able to establish one of

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[241] Congress of the United States, Letter to DHS (previously cited), p. 2.
[242] HIAS, *CBP One: Puente hacia el asilo entre México y Estados Unidos* (previously cited), p. 3.
[243] In-person interviews with asylum seekers, October-November 2023.
[244] HIAS, *CBP One: Puente hacia el asilo entre México y Estados Unidos* (previously cited), p. 3.
[245] In-person interviews with asylum seekers, October-November 2023.
[246] In-person interview with staff at Casa Arcoiris shelter, Tijuana, Mexico, 29 November 2023.
[247] Communication from CBP, 6 May 2024.
[248] HBA, *Lives at Risk* (previously cited), p. 19.
[249] US Department of State, "Mexico Travel Advisory", 22 August 2023, travel.state.gov/content/travel/en/traveladvisories/traveladvisories/mexico-travel-advisory.html#Tamaulipas%20state.
[250] In-person interviews with asylum seekers, October-November 2023; HBA, *Lives at Risk* (previously cited), p. 4.

the limited exceptions).[251]

5.6 INABILITY TO USE THE CBP ONE APPLICATION

Not everyone has the same ability to use the CBP One application and understand how it works. Asylum seekers need to have some understanding of technology, a newer cellphone, access to internet, an email address and know how to take and upload pictures and videos to the application. People seeking asylum need to be able to read and write in English, Haitian Creole or Spanish.[252] CBP One assumes that all asylum seekers are in the same situation and ends up conditioning an individual's ability to seek asylum on their ability to use the application.[253] However, some asylum seekers are unable to use the CBP One application for various reasons including that they do not have a cellphone; they do not understand English, Haitian Creole or Spanish; they are unable to read or write; they have limited technological knowledge and skills; or they have visual or other disabilities.[254] In March 2024, the Texas Civil Rights Project and the Civil Rights Education and Enforcement Center filed an administrative complaint with DHS's Office of Civil Rights and Civil Liberties alleging that the CBP One application violates the rights of people seeking asylum with disabilities.[255]

Amnesty International has also observed that, while the Final Rule includes an exception for individuals who are not able to access or use the application due to a language barrier, illiteracy, significant technical failure or other ongoing or serious obstacle, in reality, it is difficult for asylum seekers to enter the United States under one of these exceptions.

▪ No smartphone

Not all asylum seekers have cellphones let alone smartphones. Or the cellphone that they do have might not be compatible with CBP One. The majority of asylum seekers that Amnesty met with had cellphones, but at least two families did not. Asylum seekers who do not have cellphones will sometimes buy a sim card and will use other people's phones to use the application. Many shelters that the organization visited have purchased cellphones or have had them donated and allow those without phones to use them. However, neither of these options are ideal because asylum seekers must enter into the application every day to request an appointment.

> **"I have problems with the application. I can't download it because I don't have a cellphone. I'm trying to get a phone, if not, I'll have to turn myself in [cross irregularly]."**
>
> Honduran asylum seeker, (Piedras Negras, Mexico)[256]

▪ Language proficiency

CBP One is only available in English, Haitian Creole and Spanish, making it very difficult for asylum seekers who do not speak these languages to use the application.[257] Moreover, sometimes the error or fraud messages only appear in English, even if the individual is using the application in one of

[251] The 18 asylum seekers interviewed by Amnesty International had recently entered the United States and therefore, the organization does not know whether they were deemed ineligible to seek asylum in accordance with the Circumvention of Lawful Pathways Final Rule. In-person interviews with asylum seekers in San Diego and Jacumba, United States, 28 & 29 November 2023; HRF, *Inhumane and Counterproductive* (previously cited), pp. 27-29.
[252] Strauss Center, *Asylum Processing at the U.S.-Mexico Border: February 2024* (previously cited), p. 4.
[253] HRF, *Inhumane and Counterproductive* (previously cited), p. 29.
[254] Strauss Center, *Asylum Processing at the U.S.-Mexico Border: February 2024* (previously cited), p. 4; HIAS, *CBP One: Puente hacia el asilo entre México y Estados Unidos* (previously cited), p. 2; HBA, *Lives at Risk* (previously cited), p. 9.
[255] TCRP, *CBP One Disability Rights Violations of Section 508 of the Rehabilitation Act* (previously cited).
[256] In-person interview with Honduran asylum seeker, Piedras Negras, Mexico, 2 November 2023.
[257] Congress of the United States, Letter to DHS (previously cited), p. 2.

the other two languages.[258] The nationalities of those arriving at the US-Mexico border include Indigenous asylum seekers from Central America and French-speaking African asylum seekers who struggle to use CBP One.[259] In June 2023, organizations wrote to DHS to highlight the insurmountable barriers that Indigenous asylum seekers face in accessing and using the application.[260]

CBP told Amnesty International that it is "consistently evaluating whether to add additional languages within CBP One."[261] Reference guides are available in 12 languages to improve language access.[262]

> **"CBP One is a complete non-starter for Black French-speaking Africans in Sonora."**
>
> Emem Maurus, Transgender Law Center[263]

- **Literacy**

People seeking asylum who do not know how to read or write are unable to use the application. A Guatemalan asylum seeker told Amnesty International that she accidentally deleted her registration because she cannot read and did not know what button she was pressing.[264]

- **Financial considerations**

In order to use CBP One to apply for appointments daily, not only do asylum seekers need a cellphone that supports the application, they also need to have access to a strong and stable internet connection.[265] Asylum seekers told Amnesty International that it is very costly to constantly be purchasing internet data packages in order to be able to use the application.[266] A UNHCR survey found that throughout 2023 between 15-21% of asylum seekers in Mexico reported not having access to internet which impacted their ability to use CBP One.[267] Others noted that while many shelters have installed wifi to help asylum seekers use the application, given the large number of people using the wifi at the same time, it sometimes does not work well enough and they need to purchase data.[268] Access to internet is even more difficult and expensive for asylum seekers who have not been able to access shelters and are staying in informal settlements, encampments or on the street.[269]

Sometimes asylum seekers will not eat in order to be able to purchase a higher quality cellphone or data packages.[270] Amnesty interviewed a Honduran asylum seeker who did not have enough money to purchase internet and therefore, had not yet been able to download CBP One and apply for appointments.[271]

> **"I'm travelling with my daughter. Her dream is to be a veterinarian. We walked for three days and spent 13**

[258] In-person and online interviews with asylum seekers & organizations, August-November 2023; HBA, *Lives at Risk* (previously cited), p. 11; Congress of the United States, Letter to DHS (previously cited), p. 2.
[259] In-person and online interviews with asylum seekers & organizations, August-November 2023; HRF, *Inhumane and Counterproductive* (previously cited), pp. 30-31; Congress of the United States, Letter to DHS (previously cited), p. 2.
[260] National Immigration Project, "The 'Circumvention of Lawful Pathways' Rule Leaves Indigenous Peoples with No Pathway to Seek Asylum", 5 June 2023, nipnlg.org/sites/default/files/2023-06/2023_June-Indigenous-Peoples-Asylum-Letter.pdf; HRF, *Inhumane and Counterproductive* (previously cited), pp. 37-38.
[261] Communication from CBP, 9 April 2024.
[262] Communication from CBP, 9 April 2024.
[263] Online interview with Emem Maurus, Transgender Law Center, 25 October 2023.
[264] In-person interview with Guatemalan asylum seeker, Tijuana, Mexico, 27 November 2023.
[265] MSF, "'La salud de personas migrantes está gravemente afectada por aumento de secuestros y violencia sexual en el noreste de México': MSF", 15 February 2024, msf.mx/actualidad/la-salud-de-personas-migrantes-esta-gravemente-afectada-por-aumento-de-secuestros-y-violencia-sexual-en-el-noreste-de-mexico-msf/.
[266] In-person interviews with asylum seekers, October-November 2023.
[267] UNHCR, *El impacto del desplazamiento forzado en la movilidad humana* (previously cited), p. 39.
[268] In-person interviews with asylum seekers, Matamoros, Mexico, 9 November 2023.
[269] In-person interviews with asylum seekers, Matamoros, Mexico, 8 November 2023.
[270] In-person interviews with organizations, Reynosa, Mexico, 7 November 2023.
[271] In-person interview with Honduran asylum seeker, Monterrey, Mexico, 1 November 2023.

hours on the train. I haven't had internet to be able to apply for the appointment. I don't have any money. I'm wondering if I should just turn myself in to the United States."

Honduran asylum seeker (Monterrey, Mexico)[272]

"You have to have an Android or an iPhone and activate [internet data] packages for five days. It's too expensive."

Venezuelan asylum seeker (Monterrey, Mexico)[273]

In contrast, individuals with more resources who, for instance, are able to stay in hotels, have better and more consistent access to internet, which likely plays a role in them getting CBP One appointments more easily.[274]

- **Technical failures**

Some asylum seekers have cellphones but either they are unable to download CBP One onto their phone or they are able to download the application, but for some reason it does not work. Amnesty International interviewed a Colombian asylum seeker who had tried to register himself at least five times in CBP One from different cities in Mexico. He was only able to actually open the application once but was kicked out before he was able to finish the registration process. He ended up crossing into the United States without a CBP One appointment.[275]

THE CASE OF "PAUL" AND "PAULO"[276]

"We've been trying to get an appointment for three months. We've made 8 registrations. We always get fraud messages. Sometimes we log into the application and our registrations have been deleted. We can't use the app.

The thing is, we're identical twins. My name is "Paul", and his name is "Paulo". The problem is that they made a mistake on our Haitian passports and put "Paulo" for both of us.

We're twins. We have the same date and place of birth. Surely the application thinks we're the same person and that is why we always get fraud messages.

We would like to be able to explain our case to the United States because we don't know what to do and no one has been able to help us.

We had to pass through the Darién. I hope this route isn't used anymore. The jungle is very dangerous. I think about it and tears come to my eyes."

5.6.1 EXCEPTIONS TO THE CIRCUMVENTION OF LAWFUL PATHWAYS FINAL RULE

The Final Rule requires asylum seekers to use the CBP One application to schedule a time to present themselves at a port-of-entry otherwise they could be ineligible for asylum. However, they will be exempted from the mandatory use of CBP One if they are able to demonstrate "by a preponderance of the evidence that it was not possible to access or use the CBP One app due to language barrier, illiteracy, significant technical failure, or other ongoing and serious obstacle."[277] Amnesty International considers that the situations of many of the asylum seekers set out above could fall under these exceptions. However, it is unclear how these exceptions are being

[272] In-person interview with Honduran asylum seeker, Monterrey, Mexico, 1 November 2023.
[273] In-person interview with Venezuelan asylum seeker, Monterrey, Mexico, 30 October 2023.
[274] In-person and online interviews with organizations, August-November 2023.
[275] In-person interview with Colombian asylum seeker, San Diego, USA, 28 November 2023.
[276] In-person interviews with Haitian asylum seekers, Reynosa, Mexico, 6 November 2023.
[277] US Federal Register, Circumvention of Lawful Pathways (previously cited), pp. 31321-31322.

determined at the border and if border agents will have discretion in these decisions. Some organizations have reported that CBP officers have asked people seeking asylum who were unable to use the application why they did not use someone else's phone or ask someone who was literate or spoke the requisite languages for help.[278]

Regardless of the existence of these exceptions, the reality on the ground is that asylum seekers are unable to approach CBP officers to explain why they might meet one of the exceptions to the mandatory use of the application because INM agents in Mexico control asylum seekers' access to the bridges and ports of entry.[279] INM will check asylum seekers' documents and only allow those on the bridge who have a CBP One appointment.[280] The organization Al Otro Lado had documented that, even in cases where people seeking asylum may make it past INM agents, "CBP has a consistent practice of turning individuals away from POEs if they do not have [CBP One] appointments."[281]

The Strauss Center has reported that in Ciudad Juárez, Chihuahua, "members of Fideicomiso –a part of the Chihuahua state government– and at times the Mexican National Guard (*Guardia Nacional*) stop asylum seekers before they can enter the city's international bridges."[282] In Piedras Negras, Coahuila, Amnesty International heard from asylum seekers and organizations about the "Grupo Enlace", a group set up by the municipality, which controls access to the bridge. Amnesty met with several asylum seekers who had attempted to approach CBP to explain their specific circumstances, however, Grupo Enlace prevented them from approaching CBP. A Honduran asylum seeker said, "INM agents tell us that we can go and cross by the river, but that we can't cross on the bridge."[283] The Strauss Center has reported that, "If the group detects an asylum seeker, they stop the individual from entering the bridge."[284] In Tijuana, Baja California, INM agents verify asylum seekers' CBP One appointments and only permit those with appointments to enter one of the two ports of entry.[285] According to the National Immigration Project, INM officers in Matamoros and Reynosa have referred to "CBP orders" when preventing asylum seekers from approaching US ports of entry.[286]

> **"When we wanted to explain why we missed our appointment the Grupo Enlace told us to either go back to the shelter or back to our country. Sometimes I think about crossing irregularly, just to be heard, just to have a chance."**
>
> Guatemalan asylum seeker (Piedras Negras, Mexico)[287]

> **"The Grupo Enlace won't let us near the bridge. They tell us to cross the river and that everything will be fine. It's maddening. We wish there was a representative in Mexico who would listen to us".**
>
> Honduran asylum seeker (Piedras Negras, Mexico)[288]

When asked about these allegations, CBP told the organization:

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[278] Houston Immigration Legal Services Collaborative, "The New Asylum Rule – CBP One", houstonimmigration.org/the-new-asylum-rule-cbp-one/.
[279] In-person and online interviews with asylum seekers & organizations, August-November 2023; WOLA, *Kidnapping of Migrants and Asylum Seekers at the Texas-Tamaulipas Border Reaches Intolerable Levels* (previously cited); TCRP, *CBP One Disability Rights Violations of Section 508 of the Rehabilitation Act* (previously cited), p. 3.
[280] In-person and online interviews with asylum seekers & organizations, August-November 2023; Strauss Center, *Asylum Processing at the U.S.-Mexico Border: February 2024* (previously cited), pp. 5-13; HRF, *Inhumane and Counterproductive* (previously cited), pp. 6-7, 37-38; National Immigration Project, *Facing an Impossible Choice* (previously cited), pp. 2 & 6.
[281] TCRP, *CBP One Disability Rights Violations of Section 508 of the Rehabilitation Act* (previously cited), p. 3.
[282] Strauss Center, *Asylum Processing at the U.S.-Mexico Border: February 2024* (previously cited), p. 9.
[283] In-person interview with Honduran asylum seeker, Piedras Negras, Mexico, 3 November 2023.
[284] Strauss Center, *Asylum Processing at the U.S.-Mexico Border: February 2024* (previously cited), p. 8.
[285] Visit to San Ysidro port-of-entry, Tijuana, Mexico, 29 November 2023; Strauss Center, *Asylum Processing at the U.S.-Mexico Border: February 2024* (previously cited), p. 13.
[286] National Immigration Project, *Facing an Impossible Choice* (previously cited), p. 2.
[287] In-person interview with Guatemalan asylum seeker, Piedras Negras, Mexico, 3 November 2023.
[288] In-person interview with Honduran asylum seeker, Piedras Negras, Mexico, 3 November 2023.

> "CBP is committed to allowing access to ports of entry and works to ensure individuals are able to access a port-of-entry while at the same time ensuring that the POEs operate in a manner that is safe for noncitizens, travelers and officers. CBP communicates closely with the Government of Mexico regarding our border operations including the need for individuals without appointments to be able to access POEs. CBP continues to process hundreds of individuals per day at SWB POEs who present both without appropriate travel documents and without CBP One appointments."[289]

Amnesty International considers that placing the burden on asylum seekers to demonstrate that they were unable to access or use the application could preclude those individuals' access to international protection and ultimately result in *refoulement*. Moreover, even though exceptions to the use of CBP One exist, the information received by Amnesty International demonstrates that these exceptions are not an effective means to access asylum because asylum seekers are blocked by Mexican officials and are unable to access US ports of entry unless they have an appointment. There is no way for asylum seekers to demonstrate that they were unable to utilize the application as there is no way to access US CBP officers. This forces asylum seekers to cross irregularly into the United States in the most dangerous ways and drives them into the hands of smugglers who control irregular crossings.[290]

[289] Communication from CBP, 9 April 2024.
[290] In-person and online interviews with asylum seekers & organizations, August-November 2023.

6. TECHNOLOGICAL CONSIDERATIONS AND PRIVACY AND SURVEILLANCE CONCERNS

Digital technologies and tools are increasingly shaping and delivering State's asylum policies.[291] Border externalization policies are increasingly enacted through the deployment of sophisticated and invasive digital technologies, raising serious privacy, non-discrimination and surveillance concerns.[292] The former United Nations Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, E. Tendayi Achiume, has expressed that CBP One's use of facial recognition and GPS technologies, and cloud storage, to collect data on asylum seekers prior to their entry into the United States raises serious privacy and non-discrimination concerns.[293]

The application's Privacy Impact Assessment indicates that CBP One "contains a privacy policy that appears every time a user logs in" and that "users must consent to the terms of using the application prior to being authorized to use it".[294] Asylum seekers interviewed by Amnesty International stated that they did not understand the privacy policy or who their information could potentially be shared with and that they agreed to the policy because it was the only way for them to be able to use the application.[295] The privacy assessment further states that the application collects information "on a voluntary basis for the purpose of facilitating and implementing CBP's mission."[296] However, considering that use of CBP One is one of the limited exceptions to not being ineligible for asylum under the Final Rule, it is arguable whether use of the application is truly voluntary. As indicated above, at the time an asylum seeker requests an appointment through

[291] Amnesty International, *Primer: Defending the Rights of Refugees and Migrants in the Digital Age* (previously cited), p. 4.
[292] Amnesty International, *Primer: Defending the Rights of Refugees and Migrants in the Digital Age* (previously cited), p. 12.
[293] UNGA, Racial and xenophobic discrimination and the use of digital technologies in border and immigration enforcement, Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, E. Tendayi Achiume, A/HRC/48/76, 17 December 2021, ohchr.org/en/documents/thematic-reports/ahrc4876-racial-and-xenophobic-discrimination-and-use-digital, para. 47.
[294] DHS, *Privacy Impact Assessment for CBP One™* (previously cited), p. 6; DHS, *Privacy Impact Assessment Update for the Collection of Advance Information from Certain Undocumented Individuals on the Land Border: Post Title 42* (previously cited).
[295] In-person interviews with asylum seekers, October-November 2023.
[296] DHS, *Privacy Impact Assessment Update for the Collection of Advance Information from Certain Undocumented Individuals on the Land Border: Post Title 42* (previously cited), p. 6.

the application, the GPS on their device is pinged by the application and the location of the device is sent to CBP for analytical purposes such as determining the individual's location or if multiple appointment requests are being sent from the same phone.[297] CBP stores this data for one year within the CBP Amazon Web Services (AWS) Cloud East (CACE) environment.[298]

Amnesty International's static decompilation of CBP One revealed that the application registers device information and unique identifiers with Google's Firebase service. While this could have legitimate use cases, such as solving bugs that only occur on certain hardware configurations, the application does not disclose to the user the use of Google's services as a sub-processor and an opt-out option is not offered. Further, the privacy impact assessments of the application make no reference to the sharing of information with Google's Firebase service.

Asylum seekers must upload a photograph when registering themselves in the application and must upload a video selfie in order to confirm an appointment that has been allocated to them. According to CBP, the application uses the selfie photograph for five distinct purposes:

> (1) to conduct one-to-one (1:1) facial comparison against the passport photograph previously uploaded to the [CBP Advance Travel Authorization (ATA)] mobile application from the eChip;
>
> (2) to conduct one-to-many (1:n) vetting against derogatory photographic holdings for law enforcement and national security concerns as part of the ATA vetting process;
>
> (3) to generate a new gallery of ATA participants for facial comparison when ATA participants arrive at a port-of-entry;
>
> (4) to conduct 1:n identity verification once the participants arrive at the port-of-entry; and
>
> (5) to conduct 1:n vetting against known derogatory photographs for assistance in CBP's admissibility determination.[299]

Further, prior to an asylum seeker's arrival at a port-of-entry, CBP "may use the information submitted by the individual to conduct system checks to identify individuals who may pose a risk to national security, border security or public safety".[300] These checks are identical to the checks conducted by CBP during the primary or, in some cases, secondary inspection process.

From purpose 2 and 5 listed under CBP One's privacy assessment, it is clear that "derogatory photographic holdings" is not a specific categorization, failing to disclose what agencies are the holders of the photographic holdings, and under which specific concerns.[301] It is concerning that the privacy assessment does not clarify what threshold must be met for such a comparison to occur. It neither clarifies whether the people whose photographs are kept within these holdings have consented to having their faces scanned against input facial images of asylum seekers. Similarly, it is entirely unclear whether asylum seekers have consented to having their faces transferred between various agencies. While law enforcement and national security concerns can be legitimate, the criteria under which possible infringements on the right to privacy can occur must be legitimate, necessary and proportional.[302]

It is also currently unclear from the privacy assessment how 1:n facial recognition functionally assists in CBP's admissibility determination, i.e., what are the conditions that dictates that 1:n facial recognition is strictly necessary and proportional to achieving these goals. The privacy assessment also remains unclear about whether ATA participants are simply compared against

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[297] DHS, *Privacy Impact Assessment Update for the Collection of Advance Information from Certain Undocumented Individuals on the Land Border: Post Title 42* (previously cited), p. 5.
[298] DHS, *Privacy Impact Assessment Update for the Collection of Advance Information from Certain Undocumented Individuals on the Land Border: Post Title 42* (previously cited), p. 5.
[299] DHS, *Privacy Impact Assessment for CBP One™* (previously cited), p. 24.
[300] DHS, *Privacy Impact Assessment for CBP One™* (previously cited), pp. 19-20.
[301] DHS, *Privacy Impact Assessment for CBP One™* (previously cited), p. 24.
[302] Amnesty International, *Primer: Defending the Rights of Refugees and Migrants in the Digital Age* (previously cited), pp. 20-21.

existing images taken of them upon first arrival, or whether this is compared against larger "derogatory photographic holdings".

Facial recognition technology for identification entails widespread bulk monitoring, collection, storage, analysis or other use of material and collection of sensitive personal data (biometric data). Moreover, facial recognition systems are trained with image recognition algorithms that rely on vast amounts of individuals' faces as input data to improve the system's 'success rate', without the individuals' knowledge or consent, and such an action cannot be 'undone'. Even where input data or training data is deleted, the faces captured by the system have been used to train a facial recognition system, likely without the individual's knowledge or control. Such practices cannot satisfy the requirements of necessity and proportionality under international human rights law and as such violate the right to privacy.[303]

The United States must ensure that it is not engaging in mass surveillance and discriminatory targeted surveillance, which 1:n facial recognition constitutes.[304] As Amnesty International has documented previously, this constitutes a violation of the right to privacy, and the right to equality and non-discrimination in particular.[305]

Amnesty International has found that digital technologies are reinforcing border regimes that discriminate based on race, ethnicity and national origin.[306] The human rights harms of facial recognition technology are not experienced equally and raise well-known discrimination risks. For instance, certain groups may be disproportionately represented in facial image datasets due to discriminatory policing or other practices. Moreover, it is well-established that facial recognition technology systems perform unequally depending on key characteristics including skin color, ethnicity and gender. These discrimination risks have been highlighted by various UN experts,[307] as well as agencies of the US Government. The US Department of Commerce's National Institute of Standards and Technology (NIST) measured the effects of race, age and sex on leading facial recognition technology systems used in the US and found that "the majority of face recognition algorithms exhibit demographic differentials".[308] The agency "found empirical evidence for the existence of demographic differentials in face recognition algorithms that [it] evaluated". Echoing the Gender Shades results, "the NIST study measured higher false positives rates in women, African Americans, and particularly in African American women."[309] Such discrepancies mean that certain groups of asylum seekers may be at higher risk of being incorrectly misidentified or matched against "derogatory" photographs and consequently refused the right to asylum. CBP informed Amnesty International it "works closely with the NIST to ensure high-performing algorithms for the use of facial comparison technology" and that a "recent NIST test showed the algorithm used by CBP has an accuracy of 99.88 percent and CBP's data analysis also indicates virtually no demographic impact with high technical match rates across the globe".[310]

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[303] Amnesty International, *Primer: Defending the Rights of Refugees and Migrants in the Digital Age* (previously cited), p. 17.
[304] Amnesty International, *Primer: Defending the Rights of Refugees and Migrants in the Digital Age* (previously cited), p. 21.
[305] Amnesty International, Ban the Scan, banthescan.amnesty.org/nyc/; Amnesty International, *Digitally Divided: Technology, Inequality and Human Rights* (POL 40/7108/2023), 2 October 2023, amnestyusa.org/wp-content/uploads/2023/09/Amnesty-Tech-and-Inequality-Report-Digitally-Divided.pdf, p. 16.
[306] Amnesty International, *Primer: Defending the Rights of Refugees and Migrants in the Digital Age* (previously cited), p. 4.
[307] Committee on the Elimination of Racial Discrimination (CERD), General Recommendation No. 36 (2020) on preventing and combating racial profiling by law enforcement officials, 17 December 2020, ohchr.org/en/documents/general-comments-and-recommendations/general-recommendation-no-36-2020-preventing-and, para. 23.
[308] US National Institute of Standards and Technology, *Face Recognition Vendor Test (FRVT) Part 3: Demographic Effects*, December 2019, nvlpubs.nist.gov/nistpubs/ir/2019/nist.ir.8280.pdf.
[309] Testimony from Dr Charles H. Romine, Director of the National Institute of Standards and Technology, before US Congress Committee on Oversight and Reform, 15 January 2020, nist.gov/speech-testimony/facial-recognition-technology-part-iii-ensuring-commercial-transparency-accuracy.
[310] Communication from CBP, 6 May 2024.

7. SITUATION IN MEXICO WHILE WAITING FOR CBP ONE APPOINTMENTS

It is important to understand the conditions in which asylum seekers are awaiting appointments via the CBP One application. Of deep concern, the conditions in Mexico have become ever more dangerous for those seeking asylum.[311] Asylum seekers travelling through the country face the serious risk of being extorted, kidnapped and experiencing discrimination and sexual and gender-based violence by both state and non-state actors.[312]

According to a survey conducted by UNHCR and its partners in Mexico in 2023, 56% of those interviewed had been victims of violence during their transit through Mexico, while 42% experienced a violent incident on their journey prior to arriving in Mexico.[313] Eighty-five percent of the migrants Doctors Without Borders (MSF) attended to in the first half of 2023 had been victims of intentional violence on their journey through Mexico.[314] Almost all of the asylum seekers that Amnesty International interviewed had experienced at least one violent incident on their way through Mexico. Many asylum seekers who had crossed through the Darién jungle, which has been documented extensively as being very dangerous for asylum seekers, told Amnesty that, in their opinion, their experiences in Mexico were worse.[315]

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[311] HRF, *Inhumane and Counterproductive* (previously cited), p. 14: MSF, "Migración en América: un camino de violencia desbordada en 2023", 18 December 2023, msf.mx/actualidad/migracion-en-america-un-camino-de-violencia-desbordada-en-2023/; UNHCR, *El impacto del desplazamiento forzado en la movilidad humana* (previously cited), pp. 28-30; WOLA, *Kidnapping of Migrants and Asylum Seekers at the Texas-Tamaulipas Border Reaches Intolerable Levels* (previously cited).
[312] Strauss Center, *Asylum Processing at the U.S.-Mexico Border: February 2024* (previously cited), p. 4; HIAS, *CBP One: Puente hacia el asilo entre México y Estados Unidos* (previously cited), p. 2; MSF, "Se recrudece la violencia contra mujeres, niños y niñas migrantes entre Chiapas y Oaxaca", 30 November 2023, msf.mx/actualidad/se-recrudece-la-violencia-contra-mujeres-ninos-y-ninas-migrantes-entre-chiapas-y-oaxaca/; HRF, *Inhumane and Counterproductive* (previously cited), pp. 5, 21; JRS, *Accompaniment at the U.S.-Mexico Border* (previously cited), p. 1; UNHCR, *El impacto del desplazamiento forzado en la movilidad humana* (previously cited), pp. 28-29; WOLA, *Kidnapping of Migrants and Asylum Seekers at the Texas-Tamaulipas Border Reaches Intolerable Levels* (previously cited); Congress of the United States, Letter to DHS (previously cited), pp. 1-2.
[313] UNHCR, *El impacto del desplazamiento forzado en la movilidad humana* (previously cited), pp. 5-6, 26, 28-29.
[314] Twitter, MSF, 5 October 2023, twitter.com/MSF_Colombia/status/1709969645006893313; MSF, "La salud de personas migrantes está gravemente afectada" (previously cited).
[315] In-person interviews with asylum seekers, October-November 2023; UNHCR, *El impacto del desplazamiento forzado en la movilidad humana* (previously cited), pp. 6 & 28; Mixed Migration Centre, *Safety risks in the Darien Gap and assistance needed among refugees and migrants*, October 2022, r4v.info/en/document/safety-risks-darien-gap-mixed-migration-centre-october-2022.

> **"Mexico is the worst thing we went through. It's a mafia. They take money from us everywhere. In Tierra Blanca, Veracruz, we were kidnapped for three days and then released. We were blindfolded and they beat us several times. We were taken off the buses several times and were forced to pay. We were sold tickets at double the price. So many things happened to us that make you want to cry. If we don't get the appointment quickly, we'll throw ourselves into the river."**
>
> Venezuelan asylum seeker (Piedras Negras, Mexico)[316]

7.1 EXTORTION

Over two-thirds of the asylum seekers interviewed by Amnesty International were extorted at least once on their journey through Mexico.[317] Many were forced to pay Mexican authorities, members of criminal groups or unknown individuals at roadblocks throughout the country. Others were charged more for bus tickets or were not sold tickets at all because they are migrants.

"It would seem like migrants carry an ATM on their backs."

Venezuelan asylum seeker (Monterrey, Mexico)[318]

"In Mexico you can keep going as long as you pay, but there comes a time when you run out [of money]. They always want to take advantage of us. There's a lot of kidnapping and violence."

Guatemalan asylum seeker (Piedras Negras, Mexico)[319]

- **Checkpoints**

People seeking asylum are systematically extorted as they travel from southern Mexico to the US-Mexico border.[320]

> **"We were extorted every time we took a bus."**
>
> Venezuelan asylum seeker (Monterrey, Mexico)[321]

Asylum seekers explained to Amnesty International that they are stopped at checkpoints by members of state police, National Guard, INM, criminal groups or sometimes unknown individuals who have their faces covered. Asylum seekers are removed from the buses they are travelling on and forced to pay a fee in order to continue their journey.[322] Many stated that they believed the

[316] In-person interview with Venezuelan asylum seeker, Piedras Negras, Mexico, 2 November 2023.
[317] In-person interviews with asylum seekers, October-November 2023.
[318] In-person interview with Venezuelan asylum seeker, Monterrey, Mexico, 1 November 2023.
[319] In-person interview with Guatemalan asylum seeker, Piedras Negras, Mexico, 3 November 2023.
[320] JRS, *Accompaniment at the U.S.-Mexico Border* (previously cited), p. 2.
[321] In-person interview with Venezuelan asylum seeker, Piedras Negras, Mexico, 2 November 2023.
[322] In-person and online interviews with asylum seekers and organizations, August-November 2023.

drivers worked with those operating the checkpoints because it seemed like they would purposely stop or do nothing to avoid them.[323] Asylum seekers who do not pay are threatened with deportation or being sent back to Tapachula.[324] INM and police officers threaten to rip up asylum seekers' documents.[325] Asylum seekers are left at these checkpoints by the buses they are travelling on, meaning that they lose their bus fare (which they were usually charged more for), as well as the money that they had to pay at the checkpoint. They then have no option but to walk.[326]

> **"We've been trying to get the appointment for 20 days. It's been a very bad experience. We feel very desperate because we haven't got [the appointment] yet. We were taken off the bus from Oaxaca to Mexico City; you don't get back any of the money you spent. The buses are very dangerous, and a lot of money is taken from you. The jungle [the Darién] was nothing compared to Mexico."**
>
> Venezuelan asylum seeker (Piedras Negras, Mexico)[327]

> **"I've been asking for the appointment for two months. I feel frustration, desperation. My three children suffer a lot. I've run out of money and there's a lot of risk if one goes out, even to the doctor. We have a permanent resident card because COMAR recognized us as refugees. Even so, they would take me off of the buses and tell me that my document was not real, [ask me] how much I paid for it. I know my rights, but here they want to take advantage of you all the time."**
>
> Honduran asylum seeker (Monterrey, Mexico)[328]

Asylum seekers are typically forced to pay between $200-$5,000 MXN ($11-$295 USD) per person at each checkpoint.[329] A Venezuelan asylum seeker in Monterrey told Amnesty that INM agents asked her for $1,000 MXN ($59 USD).[330] A Venezuelan couple in Matamoros paid the INM $3,500 MXN ($207 USD) after being threatened to be returned to Tapachula if they did not pay.[331] A Salvadorean asylum seeker had to pay the police $800 MXN ($47 USD) in Reynosa.[332] A Guatemalan family of four had paid around $15,000 MXN ($884 USD) in total to the police from southern Mexico to Monterrey.[333]

> **"They took us off the bus 3 times, the police, the INM and the National Guard. They told us that we were 'illegal' and that they were asking for collaboration. They wanted $200 [MXN] per person."**
>
> Venezuelan asylum seeker (Monterrey, Mexico)[334]

People seeking asylum are likely to be stopped at least three times in southern Mexico before arriving to Mexico City and several times from Mexico City northwards depending on which port-of-entry they are traveling to.[335]

> **"It's been a very long trip. From Juchitán to Oaxaca, the police and the INM got on the bus four times and asked us for $200 pesos per person or they would return us to Tapachula. In Mexico City, they took us off the bus because we didn't have an appointment and we had to walk for hours. When we got back on the bus, they stopped and took us off four more times. Sometimes they asked for up to $500 pesos per person. If**

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[323] In-person and online interviews with asylum seekers and organizations, August-November 2023; HRF, *Inhumane and Counterproductive* (previously cited), p. 13.
[323] In-person and online interviews with asylum seekers & organizations, August-November 2023; WOLA, *Kidnapping of Migrants and Asylum Seekers at the Texas-Tamaulipas Border Reaches Intolerable Levels* (previously cited).
[324] In-person and online interviews with asylum seekers & organizations, August-November 2023.
[325] In-person and online interviews with asylum seekers & organizations, August-November 2023; JRS, *Accompaniment at the U.S.-Mexico Border* (previously cited), p. 2.
[326] In-person and online interviews with asylum seekers & organizations, August-November 2023.
[327] In-person interview with Venezuelan asylum seeker, Piedras Negras, 2 November 2023.
[328] In-person interview with Honduran asylum seeker, Monterrey, Mexico, 6 November 2023.
[329] In-person and online interviews with asylum seekers & organizations, August-November 2023.
[330] In-person interview with Venezuelan asylum seeker, Monterrey, Mexico, 1 November 2023.
[331] In-person interview with Venezuelan asylum seekers, Matamoros, Mexico, 9 November 2023.
[332] In-person interview with Salvadoran asylum seeker, Matamoros, Mexico, 9 November 2023.
[333] In-person interview with Guatemalan asylum seekers, Monterrey, Mexico, 30 October 2023.
[334] In-person interview with Venezuelan asylum seeker, Monterrey, Mexico, 1 November 2023.
[335] In-person and online interviews with asylum seekers & organizations, August-November 2023.

Mexico doesn't want us here, it should let us leave easily."

Venezuelan asylum seeker (Monterrey, Mexico)[336]

"We have our appointment tomorrow. We got it in 7 days. We know this place is dangerous. Yesterday a friend was almost kidnapped outside the shelter. From Monterrey to here there's a lot of extortion. You have to hand over all the money you have. At one migration checkpoint they asked us for up to $1,000 [MXN] per person."

Honduran asylum seeker (Reynosa, Mexico)[337]

Staff at the Frontera Digna shelter in Piedras Negras told Amnesty International about police checkpoints in Nueva Rosita and Allende, Coahuila, where asylum seekers are not only forced to pay large amounts of money to police (up to $4,500 MXN / $266 USD) but are also at risk of violence and sexual assault.[338] The Strauss Center reported that, at the end of December 2023, Mexican authorities "increased their enforcement efforts to reduce the number of migrants arriving in Piedras Negras, including increasing the number of highway checkpoints and bussing apprehended migrants to southern Mexico."[339] These enforcement efforts caused some asylum seekers to miss their CBP One appointments.[340]

Many asylum seekers were told by INM agents that if they did not pay, they would be returned to Tapachula. A Venezuelan family was threatened by state police that if they did not pay $800 MXN ($47 USD) each, the police would call the INM.[341]

"They took me off a bus in the middle of the desert in Sonora. They only took foreigners [off the bus]. They let me go because I have documents, but they put the others in a truck and took them away. I was terrified."

Honduran asylum seeker (Tijuana, Mexico)[342]

"Sometimes INM gets [on the bus], sometimes other people who are maybe from the mafia. The buses are dangerous. They grope you. They take you off the bus. It's very hard for migrants. We're Mexican, but we saw what they did to them. They even pointed a gun at them and asked them for money."

Mexican asylum seeker (Tijuana, Mexico)[343]

▪ Charged more for transportation

Asylum seekers are often charged more, sometimes up to double the price, for bus tickets. In many cases, bus companies would refuse to sell asylum seekers bus tickets unless they were willing to pay more for them.[344] A Venezuelan family in Monterrey said, "They charged us more for bus tickets. For example, if the ticket cost $10 MXN, we had to pay $20 MXN. We always had to pay more."[345] A Haitian asylum seeker said, "The bus companies charged us $1,400 MXN per person, but Mexicans only had to pay $500 MXN."[346]

"Tickets normally cost $220 pesos, but we were charged $3,000 per person. That's why so many people decide to throw themselves into the river. No one has any money left."

Guatemalan asylum seeker (Piedras Negras, Mexico)[347]

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[336] In-person interview with Venezuelan asylum seeker, Monterrey, Mexico, 1 November 2023.
[337] In-person interview with Honduran asylum seeker, Reynosa, Mexico, 6 November 2023.
[338] In-person interview with staff at Frontera Digna shelter, Piedras Negras, 2 November 2023.
[339] Strauss Center, *Asylum Processing at the U.S.-Mexico Border: February 2024* (previously cited), p. 8.
[340] Strauss Center, *Asylum Processing at the U.S.-Mexico Border: February 2024* (previously cited), p. 8.
[341] In-person interview with Venezuelan asylum seekers, Piedras Negras, Mexico, 3 November 2023.
[342] In-person interview with Honduran asylum seeker, Tijuana, Mexico, 29 November 2023.
[343] In-person interview with Mexican asylum seeker, Tijuana, Mexico, 27 November 2023.
[344] In-person and online interviews with asylum seekers & organizations, August-November 2023.
[345] In-person interview with Venezuelan asylum seekers, Monterrey, Mexico, 1 November 2023.
[346] In-person interview with Haitian asylum seeker, Reynosa, Mexico, 7 November 2023.
[347] In-person interview with Guatemalan asylum seeker, Piedras Negras, Mexico, 3 November 2023.

▪ Not being sold bus tickets

People seeking asylum sometimes struggle to buy bus tickets as bus companies refuse to sell them tickets because they are asylum seekers or migrants.[348] They would have to rely on Mexicans to purchase bus tickets for them.[349] Others were forced to walk long distances because no one would sell them tickets.[350] Some asylum seekers had only been able to purchase tickets by showing that they had registered in CBP One or in some cases, by showing the confirmation of their CBP One appointment.[351] While it may be easier for asylum seekers with CBP One appointments to travel in Mexico, having an approved appointment puts them at more risk for extortion and kidnappings.[352] For example, a Venezuelan family said that in Juchitán, Oaxaca, they were asked to show a printed copy of their CBP One registrations in order to get on buses.[353]

> **"Everyone tries to make a business out of migrants. In Mexico, they didn't want to sell us tickets. They charge migrants more. They discriminate against us."**
>
> Guatemalan asylum seeker (Monterrey, Mexico)[354]

Amnesty International interviewed some individuals who already had CBP One appointments but were told by Mexican police officers or bus companies that they were not allowed to travel by bus.[355] In some cases, asylum seekers have missed their CBP One appointments because bus companies have refused to sell them tickets or they have been stopped at a checkpoint.

> **"We got our appointment after a month, but they wouldn't sell us [bus] tickets even with the scheduled appointment. We missed our appointment. We wanted to approach CBP to explain our case but Grupo Enlace wouldn't let us approach them. [Grupo Enlace] told us that there was no other option but to delete our registration and ask for a new appointment until we got it."**
>
> Guatemalan asylum seekers (Piedras Negras, Mexico)[356]

▪ More dangerous routes – "*La Bestia*"

The levels of extortion and violence that people seeking asylum who travel by bus throughout Mexico experience has resulted in some resorting to more dangerous means of travel because they do not have enough money to pay at checkpoints. Several asylum seekers interviewed by Amnesty International told the organization that they decided to travel by train (known as "*La Bestia*" – the beast) even if they knew it was more dangerous but because they would not be extorted.[357] *La Bestia* is a cargo train that asylum seekers use to cross Mexico; it is not designed or authorized for passengers. As a result, many people suffer injuries while riding or attempting to board the train.[358]

> **"Before arriving in Mexico City, police asked us for $800 pesos per person with the threat that if we did not pay, we would be deported. We had to give the money and we had no choice but to get on "*la bestia*". There we were cold, hot; they stole everything from us."**
>
> Honduran asylum seeker (Piedras Negras, Mexico)[359]

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[348] In-person and online interviews with asylum seekers & organizations, August-November 2023.
[349] In-person interviews with asylum seekers, Monterrey & Piedras Negras, Mexico, 1 & 3 November 2023.
[350] In-person interviews with asylum seekers, Piedras Negras, Mexico, 2 & 3 November 2023.
[351] In-person and online interviews with asylum seekers & organizations, August-November 2023.
[352] In-person and online interviews with asylum seekers & organizations, August-November 2023.
[353] In-person interview with Venezuelan asylum seekers, Monterrey, Mexico, 1 November 2023.
[354] In-person interview with Guatemalan asylum seeker, Monterrey, Mexico, 30 October 2023.
[355] In-person interview with Venezuelan asylum seekers, Piedras Negras, Mexico, 2 November 2023.
[356] In-person interview with Guatemalan asylum seekers, Piedras Negras, 3 November 2023.
[357] In-person interviews with asylum seekers, Monterrey & Piedras Negras, October-November 2023.
[358] El País, "Return of The Beast, the train that mutilates migrants' dreams", 10 December 2023, english.elpais.com/international/2023-12-10/return-of-the-beast-the-train-that-mutilates-migrants-dreams.html; EFE, "Miles de migrantes desafían los operativos en los trenes de México para llegar a EE.UU.", 3 October 2023, efe.com/mundo/2023-10-03/miles-de-migrantes-desafian-los-operativos-en-los-trenes-de-mexico-para-llegar-a-ee-uu/.
[359] In-person interview with Honduran asylum seeker, Piedras Negras, Mexico, 3 November 2023.

7.2 KIDNAPPINGS

Following the end of Title 42, there has been an increase in kidnappings of asylum seekers, especially on the routes to Matamoros, Reynosa and Piedras Negras, as well as in these cities.[360] Amnesty International was told of asylum seekers who were kidnapped right outside of shelters, at bus terminals and from apartments that they were renting.[361] Of the 356 asylum seekers that Amnesty International interviewed, 32 (almost one in ten) had been kidnapped. In Matamoros and Reynosa, Doctors Without Borders (MSF) attended to 129 cases of individuals who had been kidnapped in the last quarter of 2023 and January 2024.[362] Human Rights First has also extensively documented an increase in kidnappings of asylum seekers in Chihuahua, Matamoros and Reynosa.[363] A 2024 study by WOLA found that "the kidnapping and extortion of migrants has increased notably since late 2023" with "many describ[ing] this moment as the worst period of violence they've seen, both in numbers and brutality."[364] According to official data from the Mexican government, in 2023, 65 migrants and asylum seekers (of 540 who presented complaints about being victims of violence) were kidnapped, of which 13 were children.[365] However, these numbers are likely much less than the actual number of migrants and asylum seekers kidnapped (as well as the total number of migrants who were victims of crime and violence in Mexico) given that the majority do not file complaints with the authorities for reasons that will be set out in more detail below.

Kidnapped individuals typically have to pay between $1000 and $10,000 USD per person in order to be released.[366] Amnesty was told that those who are unable to pay are forced to work for the cartels.[367] Many people were robbed of their personal belongings but were usually allowed to keep the cellphone that they were using to apply for CBP One appointments.[368]

> **"There's is a checkpoint in Nueva Rosita. If you don't give money, they beat you horribly. When they kidnapped us, they called our relatives and gave them an account to deposit money. Then they took us to the Elektra to get 40,000 pesos ransom. We panicked. We heard how they abused another migrant. The United States probably wonders why we don't make the appointments, it's because of the dangers on the way. You live a trauma in your country and here it ends up being worse."**
>
> Honduran asylum seeker (Piedras Negras, Mexico)[369]

> **"We got our appointment after two months. I've paid about 10,000 dollars in total in extortions from Guatemala to here. I don't have anything left. I'm broken, traumatized. We were kidnapped for 5 days here in Reynosa. We had to pay to get out. My legs still hurt from the beatings they gave us. At least they let me keep my cellphone to get the appointment. We just want to cross."**
>
> Ecuadorian asylum seeker (Reynosa, Mexico)[370]

Although criminal groups are mainly responsible for the kidnappings, people interviewed by

[360] In-person and online interviews with asylum seekers & organizations, August-November 2023; Strauss Center, *Asylum Processing at the U.S.-Mexico Border: November 2023* (previously cited), p. 6; HRF, *Inhumane and Counterproductive* (previously cited), pp. 5, 14-19; JRS, *Accompaniment at the U.S.-Mexico Border* (previously cited), p. 2; WOLA, *Kidnapping of Migrants and Asylum Seekers at the Texas-Tamaulipas Border Reaches Intolerable Levels* (previously cited).
[361] In-person and online interviews with asylum seekers and organizations, August-November 2023.
[362] MSF, "La salud de personas migrantes está gravemente afectada por aumento de secuestros y violencia sexual en el noreste de México': MSF" (previously cited).
[363] HRF, *Inhumane and Counterproductive* (previously cited), pp. 14-19, 20-21.
[364] WOLA, *Kidnapping of Migrants and Asylum Seekers at the Texas-Tamaulipas Border Reaches Intolerable Levels* (previously cited).
[365] SEGOB, *Boletín Estadísticas sobre Delitos Perpetrados en contra de Personas Migrantes Irregulares en México 2023* (previously cited), p. 14.
[366] In-person and online interviews with asylum seekers & organizations, August-November 2023; WOLA, *Kidnapping of Migrants and Asylum Seekers at the Texas-Tamaulipas Border Reaches Intolerable Levels* (previously cited).
[367] In-person interviews with asylum seekers, Reynosa & Piedras Negras, 2, 3 & 6 November 2023; WOLA, *Kidnapping of Migrants and Asylum Seekers at the Texas-Tamaulipas Border Reaches Intolerable Levels* (previously cited).
[368] In-person and online interviews with asylum seekers & organizations, August-November 2023.
[369] In-person interview with Honduran asylum seeker, Piedras Negras, Mexico, 3 November 2023.
[370] In-person interview with Ecuadorian asylum seeker, Reynosa, Mexico, 6 November 2023.

Amnesty International stated that Mexican authorities are also involved, either by actively participating or doing nothing to stop them.[371] Criminal groups used to give asylum seekers who were kidnapped bracelets so that they would not be kidnapped again.[372] In July 2023, 154 African, Asian and South American migrants and asylum seekers were kidnapped in Sonoyta, Sonora.[373] On 30 December 2023, armed individuals boarded a bus that was travelling from Monterrey to Matamoros and kidnapped approximately 32 asylum seekers and migrants from Colombia, Ecuador, Honduras, Mexico and Venezuela.[374]

> **"We were kidnapped in Reynosa. We were renting a house and the state police broke into it. They detained us and handed us over to the mafia. They kept us from Tuesday to Friday. They asked for $1,800 [USD] dollars per person. They took everything from us, but they left us the phone that we were using for the appointment. If you don't pay within 24 hours, they move you to another warehouse and they beat you and treat you worse. When they released us, the taxis tried to kidnap us again. You can't trust anyone here. Anyone will try to sell you."**
>
> Honduran asylum seeker (Reynosa, Mexico)[375]

> **"When we were on our way from Monterrey to Nuevo Laredo, we were kidnapped by the New Generation Cartel. They released us in Nueva Rosita, and we had to walk here [Piedras Negras] with two children. In Mexico you have to pay immigration, the police, the cartel. Nobody cares that you're carrying a 5-month-old child. The same government screws you over and rips up your papers in your face. The police are the ones who hand you over [to the cartel] and they screw you even more if you say you already have your appointment."**
>
> Venezuelan asylum seeker (Piedras Negras, Mexico)[376]

People seeking asylum are at a greater risk when they already have their CBP One appointment.[377] Many people have missed their appointments because they were kidnapped.[378] Several asylum seekers told Amnesty International that they tried to avoid telling others that they had an appointment for fear of being kidnapped.[379] However, this was often difficult as individuals are often asked to show their appointments in order to buy bus tickets.

> **"They kidnapped us one day before our appointment in Reynosa. They kept us there for 17 days. We're terrified to leave [the shelter]. The taxi drivers are accomplices. They took all our documents, clothes. We had to pay $10,000 [USD]."**
>
> Venezuelan asylum seeker (Reynosa, Mexico)[380]

Amnesty International was told by CBP that, "if an individual misses their appointment, the Port-of-entry and Officer evaluate the circumstances on a case-by-case basis if a person will be permitted to enter as if they were arriving for their CBP One appointment time. In some circumstances, individuals may have to create a new registration and request a new appointment."[381] However, the bigger problem is INM officials preventing asylum seekers from

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[371] In-person and online interviews with asylum seekers & organizations, August-November 2023; WOLA, *Kidnapping of Migrants and Asylum Seekers at the Texas-Tamaulipas Border Reaches Intolerable Levels* (previously cited).
[372] In-person and online interviews with asylum seekers & organizations, August-November 2023.
[373] HRF, *Inhumane and Counterproductive* (previously cited), p. 22; El País, "Halladas 126 migrantes ecuatorianos en una casa de seguridad en Sonora", 11 August 2023, elpais.com/mexico/2023-08-11/hallados-126-migrantes-ecuatorianos-en-una-casa-de-seguridad-de-sonora.html.
[374] Strauss Center, *Asylum Processing at the U.S.-Mexico Border: February 2024* (previously cited), p. 7; BBC, "Rescatan a los 31 migrantes secuestrados en México durante su viaje en autobús a la frontera con Estados Unidos", 3 January 2024, bbc.com/mundo/articles/c84282pd9z4o.
[375] In-person interview with Honduran asylum seeker, Reynosa, Mexico, 6 November 2023.
[376] In-person interview with Venezuelan asylum seeker, Piedras Negras, 2 November 2023.
[377] HRF, *Inhumane and Counterproductive* (previously cited), pp. 24-26.
[378] In-person and online interviews with asylum seekers & organizations, August-November 2023.; HRF, *Inhumane and Counterproductive* (previously cited), pp. 6, 24-26; WOLA, *Kidnapping of Migrants and Asylum Seekers at the Texas-Tamaulipas Border Reaches Intolerable Levels* (previously cited).
[379] In-person interview with asylum seekers, Piedras Negras, Mexico, 2 November 2023.
[380] In-person interview with Venezuelan asylum seeker, Reynosa, Mexico, 6 November 2023.
[381] Communication from CBP, 9 April 2024.

being able to approach CBP to explain that they missed an appointment.[382]

One of the exceptions to the rebuttable presumption of asylum eligibility in the Final Rule is that an asylum seeker has "faced an extreme and imminent threat to their life or safety, such as an imminent threat of rape, kidnapping, torture or murder".[383] However, it is unclear how this will be applied to asylum cases and the problem remains in asylum seekers' ability to access the bridge to cross into the United States because of the presence of INM.

> **"Nine of us were renting a house and were kidnapped. Three people dressed as state agents arrived at 9 pm and stayed until 12 am. They said we were going to the National Migration Institute. They put us in a van and handed us over to the kidnappers. They forced us to call our family and asked for $1,800 [USD] per person. They told us we had 24 hours. The family did the impossible and within 8 hours they had made the deposit. They did not beat us physically, but we were affected mentally. We had to wait another 24 hours. They just gave us bread and water. We heard how they abused a woman there. Then they released us and took us to the shelter in a taxi. Here we're very afraid to leave."**
>
> Honduran asylum seeker (Reynosa, Mexico)[384]

7.3 DISAPPEARANCES

Many people seeking asylum go missing on their journey throughout Mexico to the US-Mexico border. According to the Mexican National Search Commission (CNB – *Comisión Nacional de Búsqueda*) 87 migrants were registered as missing between January 2023 and March 2024.[385] However, civil society organizations have indicated that there is an alarming under-registration of missing migrants, indicating that the CNB only publishes 9.6% of the total number of reported missing migrants and that at least 1,270 migrants have been reported as disappeared to local prosecutor's officers.[386] Staff at the Frontera Digna shelter in Piedras Negras told Amnesty

[382] In-person and online interviews with asylum seekers & organizations, August-November 2023.
[383] US Federal Register, Circumvention of Lawful Pathways (previously cited).
[384] In-person interview with Honduran asylum seekers, Reynosa, Mexico, 7 November 2023.
[385] Comisión Nacional de Búsqueda, versionpublicarnpdno.segob.gob.mx/Dashboard/Index.
[386] Distintas Latitudes, "Migrar y desaparecer (IV): Morgues colapsadas y un subregistro de personas desparecidas en M[exico", 21 September 2023, distintaslatitudes.net/historias/reportaje/migrar-y-desaparecer-iv; HRF, *Inhumane and Counterproductive* (previously cited), pp. 23-24; OHCHR, "Relatives of disappeared migrants seek answers and justice", 2 February 2024, ohchr.org/en/stories/2024/02/relatives-disappeared-migrants-seek-answers-and-justice; ohchr.org/en/stories/2024/02/relatives-disappeared-migrants-seek-answers-and-justice; Forbes, "ONG denuncia que México registra más de 1,800 migrantes desaparecidos", 30 August 2023, forbes.com.mx/ong-denuncian-1800-migrantes-desaparecidos-mexico/.

International that they have reported missing asylum seekers to the authorities.[387]

7.4 SCAMS AND FRAUD

There are scams and fraud related to CBP One. People charge to register asylum seekers in the application and others sell fake appointments.[388] HIAS has observed asylum seekers paying between $5,000-$20,000 MXN ($295-$1,178 USD) for services to help them with the application that usually end up being scams or fake appointments.[389] Amnesty interviewed a Honduran family who had paid $100 MXN (approximately $5 USD) per person for someone to register them in CBP One in Tapachula.[390] A Venezuelan asylum seeker told the organization that there are people yelling "approved appointments" around the northern bus terminal in Mexico City.[391] Some asylum seekers end up purchasing fake appointments and only find this out when they arrive at the port-of-entry. People take advantage of asylum seekers' lack of knowledge about the application and the vulnerable circumstances that they find themselves in.

> **"I was extorted. I was charged $900 [USD] by lawyers and it was all a scam. When I showed up for my 'appointment', I was told that the time I had been given didn't exist. I was devastated. I'm trying again. Let's see when I get a new appointment."**
>
> Honduran asylum seeker (Reynosa, Mexico)[392]

7.5 SEXUAL AND GENDER-BASED VIOLENCE

There has been an increase in sexual and gender-based violence committed against asylum seekers in Mexico.[393] Médecins Sans Frontières (MSF) reported a 70% increase in consultations for sexual violence in Reynosa and Matamoros in the last quarter of 2023 compared with the third quarter of the same year.[394] In January 2024, the organization attended 28 cases of sexual violence, a figure which exceeds the amount for each month in 2023.[395] In Piedras Negras, MSF attended to 95 cases of sexual violence in 2023.[396] At the same time, MSF has indicated that there is major underreporting of cases of sexual and gender-based violence mainly due to the many barriers for

[387] In-person interview with staff at Frontera Digna shelter, Piedras Negras, Mexico, 2 November 2023.
[388] Congress of the United States, Letter to DHS (previously cited), p. 2.
[389] HIAS, *CBP One: Puente hacia el asilo entre México y Estados Unidos* (previously cited), p. 2.
[390] In-person interview with Honduran asylum seekers, Piedras Negras, Mexico, 2 November 2023.
[391] In-person interview with Venezuelan asylum seeker, Monterrey, Mexico, 1 November 2023.
[392] In-person interview with Honduran asylum seeker, Reynosa, Mexico, 6 November 2023.
[393] In-person and online interviews with asylum seekers & organizations, August-November 2023; MSF, "La salud de personas migrantes está gravemente afectada" (previously cited); HRF, *Inhumane and Counterproductive* (previously cited), pp. 5, 19-20; Reuters, "Migrants are being raped at Mexico border as they await entry to US", 29 September 2023, reuters.com/world/migrants-are-being-raped-mexico-border-they-await-entry-us-2023-09-29/; WOLA, *Kidnapping of Migrants and Asylum Seekers at the Texas-Tamaulipas Border Reaches Intolerable Levels* (previously cited).
[394] MSF, "La salud de personas migrantes está gravemente afectada" (previously cited).
[395] MSF, "La salud de personas migrantes está gravemente afectada" (previously cited).
[396] MSF, "La salud de personas migrantes está gravemente afectada" (previously cited); MSF, "MSF México reporta más violencia sexual hacia migrantes en 2024 que en todo 2023", 18 April 2024, swissinfo.ch/spa/msf-m%C3%A9xico-reporta-m%C3%A1s-violencia-sexual-hacia-migrantes-en-2024-que-en-todo-2023/75995259.

survivors to seek and obtain assistance.[397]

People seeking asylum have a higher chance of suffering sexual and gender-based violence when they are kidnapped.[398] Nearly half of the cases of sexual violence identified by MSF from April to June 2023 occurred during kidnappings in Reynosa, while others occurred in the encampment in Matamoros and in the Darién jungle.[399] The route through Mexico has become particularly dangerous for women asylum seekers travelling alone.

Staff at the Frontera Digna shelter in Piedras Negras told the organization that have heard accounts of police officers and members of the National Guard assaulting and raping asylum seekers in Nueva Rosita and Ciudad Acuña, Coahuila.[400] A group of Honduran asylum seekers told Amnesty International that the Coahuila State Police (*Policía Estatal Coahuila*) stopped them and threatened to remove their clothes.[401] A group of female Venezuelan asylum seekers stated that they were stopped and sexually assaulted by the police in Nueva Rosita.[402]

> **"Recently 6 people from Honduras arrived at the shelter. They told us that the police took them off the bus and beat them. Two women were stripped naked; the children were left in the car. Six police officers raped a 19-year-old girl. They wanted to enter the United States using the app, but they couldn't bear to stay in Piedras Negras and crossed the river. When they arrived at the shelter, they were badly beaten."**
>
> Honduran asylum seeker (Piedras Negras, Mexico)[403]

7.6 LIVING CONDITIONS

Mexico has not ensured the right to dignified living conditions for asylum seekers within its territory. Although Mexico is cooperating with the US in the implementation of its migration and asylum policies, the State has left it in the hands of civil society and international organizations to solve the living conditions of asylum seekers and migrants with very little, or no, support. Despite this almost complete lack of support, shelters, service providers and organizations on the ground are doing significant and essential work to guarantee the living conditions of asylum seekers.[404]

Many asylum seekers stay in shelters or informal encampments with inadequate living conditions,

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[397] MSF, "Violencia sexual: una realidad cada vez más recurrente en las crisis migratorias", 25 November 2023, msf.mx/actualidad/violencia-sexual-una-realidad-cada-vez-mas-recurrente-en-las-crisis-migratorias/.
[398] MSF, "La salud de personas migrantes está gravemente afectada" (previously cited); WOLA, *Kidnapping of Migrants and Asylum Seekers at the Texas-Tamaulipas Border Reaches Intolerable Levels* (previously cited).
[399] HRF, *Inhumane and Counterproductive* (previously cited), p. 19.
[400] In-person interview with staff at Frontera Digna shelter, Piedras Negras, Mexico, 2 November 2023.
[401] In-person interview with Honduran asylum seekers, Piedras Negras, Mexico, 2 November 2023.
[402] In-person interview with Venezuelan asylum seekers, Piedras Negras, Mexico, 2 November 2023.
[403] In-person interview with Honduran asylum seeker, Piedras Negras, Mexico, 3 November 2023.
[404] UNHCR, *Fact Sheet: Mexico* (previously cited), p. 4; UNHCR, *El impacto del desplazamiento forzado en la movilidad humana* (previously cited), p. 32-34; Comisión Nacional de Derechos Humanos, *Los desafíos de la migración y los albergues como oasis*, Encuesta Nacional de Personas Migrantes en Tránsito por México, 2018, cndh.org.mx/sites/default/files/doc/Informes/Especiales/InformeEspecial-Desafios-migracion.pdf.

while some live in private accommodation.[405] According to a 2023 UNHCR survey, 15% of asylum seekers that responded were homeless.[406] While conditions vary greatly, many asylum seekers are staying in tents with inadequate access to food, water and sanitation, as well as limited medical and psychological care.[407] Nevertheless, given the security situation in many border cities, asylum seekers prefer to stay in shelters even if the living conditions are inadequate. UNHCR has underscored the strong need for information services and legal support, medical attention, food assistance, shelter capacity and equipment, and mental health and psychological support.[408] These circumstances are made more difficult by the fact that people seeking asylum do not know how long they will have to wait in Mexico for their CBP One appointments which not only impacts their well-being, but also irregular crossings into the United States.

UNHCR has stated that the "humanitarian situation on the Mexican side of the US-Mexico border continues to be serious" and that "the capacity to receive and provide assistance to refugees and migrants has been exceeded for months."[409] The majority of the shelters that Amnesty visited were at or had exceeded their capacity. This was largely due to the insufficient number of CBP One appointments and the increasing number of asylum seekers attempting to obtain an appointment.[410] Given the large numbers of people seeking asylum who arrive to border cities each day, some shelters have limits on the amount of time that asylum seekers could stay for, unless they had a CBP One appointment in which case they could stay until their appointment. This placed additional stress on asylum seekers who worried not only about getting an appointment so that they can enter the United States but also whether they would have a place to stay until that time.

> **"I feel very vulnerable. The five days we have in the shelter are running out and then what? I panic at the thought that we could be kidnapped."**
>
> Colombian asylum seeker (Monterrey, Mexico)[411]

> **"They wanted to kidnap us here in the shelter. There were vans that watched and surveilled us for 20 days. We don't let the children near the door. We've called the police, but they never come."**
>
> Guatemalan asylum seeker (Piedras Negras, Mexico)[412]

Haitian asylum seekers shared that they feel particularly uncomfortable and at risk in shelters and informal encampments. Some shelters have specific areas designated for Haitians which results in separating them from the rest of asylum seekers.

7.6.1 HEALTHCARE

Although Mexico's Migration Law recognizes the right to health of all individuals regardless of their migratory status, this is not always respected.[413] Asylum seekers have trouble accessing medical

[405] HBA, *Lives at Risk* (previously cited), p. 4; UNHCR, *Fact Sheet: Mexico* (previously cited), p. 2; UNHCR, *El impacto del desplazamiento forzado en la movilidad humana* (previously cited), pp. 6, 32-34; TCRP, *CBP One Disability Rights Violations of Section 508 of the Rehabilitation Act* (previously cited), pp. 5-6.
[406] UNHCR, *El impacto del desplazamiento forzado en la movilidad humana* (previously cited), p. 32.
[407] MSF, "La salud de personas migrantes está gravemente afectada" (previously cited); HRF, *Inhumane and Counterproductive* (previously cited), pp. 38-40.
[408] UN News, "UN refugee agency concerned about situation at Mexico-US border", 8 August 2023, news.un.org/en/story/2023/08/1139552#:~:text=UN%20refugee%20agency%20concerned%20about%20situation%20at%20Mexico%2DUS%20border,-8%20August%202023&text=The%20UN%20Refugee%20Agency%2C%20UNHCR,shelters%2C%20exposed%20to%20multiple%20risks; UNHCR, *Fact Sheet: Mexico* (previously cited), p. 2.
[409] UN News, "UN refugee agency concerned about situation at Mexico-US border" (previously cited).
[410] In-person interviews with shelters, October-November 2023.
[411] In-person interview with Colombian asylum seeker, Monterrey, Mexico, 30 October 2023.
[412] In-person interview with Guatemalan asylum seeker, Piedras Negras, Mexico, 3 November 2023.
[413] Mexico, Migration Law, diputados.gob.mx/LeyesBiblio/pdf/LMigra.pdf, Art. 8.

care in Mexico. It is expensive and asylum seekers are usually not able to cover the costs.[414] The majority of asylum seekers with whom Amnesty International spoke had not tried to access medical care. However, of those that did, some stated that they were denied entry to hospitals because they were migrants.[415] A few who were able to receive medical care stated that they felt discriminated against by medical professionals.[416]

> **"Doctors in Mexico don't treat us well. I feel discriminated against everywhere. We've been to the hospital three times to get more medication for my son who has epilepsy, but they always cancel my appointment. Sometimes I feel like throwing myself into the river. I want to enter [with the appointment], but there are no options. I don't feel protected."**
>
> Honduran asylum seeker (Piedras Negras, Mexico)[417]

> **"In Ciudad Hidalgo we tried to receive medical support but [the people at the hospital] told us that the hospital was not for us because we're migrants."**
>
> Venezuelan asylum seeker (Monterrey, Mexico)[418]

7.6.2 EDUCATION

Mexico's Migration Law also recognizes the right to education regardless of migratory status.[419] Nevertheless, children seeking asylum struggle to attend formal schooling. Some schools will not admit them because they do not have documents.[420] Many shelters and local organizations try to offer classes to children so that they do not fall behind on their studies.

> **"It would be better if we could ask for appointments from our homes. Here [in the shelter] we feel sad. The situation makes us feel bad. We've been here for three months now. I'm desperate. I cry a lot. My daughter wants to go back but we can't. There are no classes. The children are at risk. We fled our home from one day to the next. My children weren't admitted to school here. I can't work either because I can't leave my children alone anywhere."**
>
> Mexican asylum seeker (Tijuana, Mexico)[421]

Amnesty International heard from Mexican asylum seekers who struggled to register their children for school in other parts of the country especially when they did not have certain documents with them. Asylum seekers from outside Mexico experienced even greater challenges.[422]

7.6.3 EMPLOYMENT

Many asylum seekers struggle to find work in Mexico because they lack Mexican documents providing them with the right to work.[423] Due to the security situation in many of the cities in which asylum seekers are waiting for their CBP One appointments, asylum seekers are afraid to leave the shelters and therefore, are unable to work.[424] This was especially common in Piedras Negras and Reynosa.[425] A group of people at the Casa Betania shelter in Piedras Negras said, "It's impossible

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[414] In-person and online interviews with asylum seekers & organizations, August-November 2023; JRS, *Accompaniment at the U.S.-Mexico Border* (previously cited), p. 2.
[415] In-person interviews with shelters, October-November 2023.
[416] In-person and online interviews with asylum seekers & organizations, August-November 2023.
[417] In-person interview with Honduran asylum seeker, Piedras Negras, Mexico, 3 November 2023.
[418] In-person interview with Venezuelan asylum seeker, Monterrey, Mexico, 30 October 2023.
[419] Mexico, Migration Law (previously cited), Art. 8.
[420] JRS, *Accompaniment at the U.S.-Mexico Border* (previously cited), p. 2.
[421] In-person interview with Mexican asylum seeker, Tijuana, Mexico, 27 November 2023.
[422] In-person interviews with asylum seekers, October-November 2023.
[423] JRS, *Accompaniment at the U.S.-Mexico Border* (previously cited), p. 2.
[424] In-person and online interviews with asylum seekers & organizations, August-November 2023; JRS, *Accompaniment at the U.S.-Mexico Border* (previously cited), p. 2.
[425] In-person and online interviews with asylum seekers & organizations, August-November 2023.

to work here because you can't go out on the street."[426] A Nicaraguan asylum seeker in Reynosa told the organization that he has not looked for work because he is afraid to leave the shelter he is staying in.[427] In Tijuana, where asylum seekers felt safer, they indicated that it was difficult for them to find work.[428] On the other hand, Amnesty International heard of positive initiatives promoted by the state of Nuevo León and the city of Monterrey which provide asylum seekers with employment, housing and access to education.[429] Asylum seekers stressed that they need to work to be able to support themselves while they wait for the appointment, as well as to be able to purchase internet to apply for the appointment.[430]

7.7 DISCRIMINATION

Black, LGBTIQ+, Indigenous and non-Spanish speaking asylum seekers face targeted discrimination and violence while waiting in Mexican border cities for their CBP One appointments.[431] Haitian asylum seekers interviewed by Amnesty International shared that they are discriminated against in Mexico and feel that they are treated differently from asylum seekers from other places.[432] A group of Chinese asylum seekers told the organization that there is a lot of discrimination in Mexico and they also felt that they were treated differently.[433]

Black asylum seekers are often targets of anti-Black violence and discrimination.[434] Black asylum seekers are often deprived of equal access to medical treatment, housing, safer shelters, humanitarian services, language access and protection from law enforcement.[435] Haitian Bridge Alliance has identified hundreds of Haitians seeking asylum arriving to the US-Mexico border with significant medical vulnerabilities which have at times resulted in preventable deaths.[436]

> **"Discrimination and racism are things that will always be there."**
>
> Haitian asylum seeker (Reynosa, Mexico)[437]

LGBTIQ+ individuals face widespread violence and discrimination in Mexico.[438] Under the Final Rule, LGBTIQ+ asylum seekers must now wait for CBP One appointments for undetermined amounts of time in Mexico where they are likely to face the same dangers that they are fleeing from.[439] LGBTIQ+ asylum seekers interviewed by Amnesty International in Tijuana shared that they experience discrimination Mexico which impacts their well-being and access to healthcare and

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[426] In-person interviews with asylum seekers, Piedras Negras, Mexico, 3 November 2023.
[427] In-person interview with Nicaraguan asylum seeker, Reynosa, Mexico, 7 November 2023.
[428] In-person interviews with asylum seekers, Tijuana, Mexico, 28 November 2023.
[429] In-person interviews with staff at Casa Monarca shelter, Monterrey, Mexico, 1 November 2023; El Financiero, "Migrantes, opción para cubrir demanda de mano de obra en Nuevo León", 12 May 2022, elfinanciero.com.mx/monterrey/2022/05/12/migrantes-opcion-para-cubrir-demanda-de-mano-de-obra-en-nuevo-leon/.
[430] In-person interviews with asylum seekers, October-November 2023.
[431] Strauss Center, *Asylum Processing at the U.S.-Mexico Border: February 2024* (previously cited), p. 4; HRF, *Inhumane and Counterproductive* (previously cited), pp. 31-32; HBA, *Lives at Risk* (previously cited), p. 3; Human Rights First, *Refugee Protection Travesty: Biden Asylum Ban Endangers and Punishes At-Risk Asylum Seekers*, July 2023, humanrightsfirst.org/wp-content/uploads/2023/07/Refugee-Protection-Travesty_Asylum-Ban-Report_July-2023-1.pdf, pp. 37-42.
[432] In-person interviews with Haitian asylum seekers, Matamoros, Reynosa & Tijuana, Mexico, 7, 9 & 27 November 2023.
[433] In-person interview with Chinse asylum seekers, San Diego, USA, 28 November 2023.
[434] HRF, *Inhumane and Counterproductive* (previously cited), pp. 31-32; HRF, *Refugee Protection Travesty* (previously cited), pp. 38-39; Black Alliance for Just Immigration, *"There is a Target on Us" – The Impact of Anti-Black Racism on African Migrants at Mexico's Southern Border*, 2021, baji.org/wp-content/uploads/2021/01/The-Impact-of-Anti-Black-Racism-on-African-Migrants-at-Mexico.pdf.
[435] HBA, *Lives at Risk* (previously cited), p. 3.
[436] HRF, *Inhumane and Counterproductive* (previously cited), p. 31.
[437] In-person interview with Haitian asylum seeker, Reynosa, Mexico, 6 November 2023.
[438] HRF, *Refugee Protection Travesty* (previously cited), p. 41.
[439] HRF, *Refugee Protection Travesty* (previously cited), p. 41.

employment opportunities.[440] Staff at the Casa Arcoiris shelter said that the impact is that many LGBTIQ+ asylum seekers do not leave the shelter because there is so much discrimination.[441]

7.8 ACCOUNTABILITY AND ACCESS TO JUSTICE

Most people seeking asylum do not present complaints about the human rights violations that they experience in Mexico because in many cases the police, INM or other state authorities are involved or do not take actions to protect them.[442] They fear retaliation, deportation or further human rights violations. Further, they normally encounter other barriers to access justice, such as lack of knowledge of the law, language barriers and lack of legal advice.

> **"Mexico is the worst because of the roadblocks. At every checkpoint uniformed people ask you for money … We haven't filed complaints about anything we've been through because there's no way to do so. In Mexico there should be more protection for migrants."**
>
> Venezuelan asylum seeker (Monterrey, Mexico)[443]

> **"You can't even file a complaint, the police themselves are corrupt. How are we going to do it?"**
>
> Ecuadorian asylum seeker (Reynosa, Mexico)[444]

In 2017, WOLA reported a 99% impunity rate for crimes committed against migrants in Mexico.[445] While this statistic is dated, the situation has not changed.

Mexico has the obligation to protect the human rights of asylum seekers in transit through the country. The information collected by Amnesty International, as well as numerous reports by local and international organizations, demonstrate that Mexico is extremely dangerous for asylum seekers and that violent and discriminatory acts are often committed against them by both state and non-state actors. Mexico has failed to protect and guarantee the human rights of asylum seekers within its territory, as well as to effectively investigate and hold responsible the perpetrators of these violations.

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[440] In-person interviews with asylum seekers, Tijuana, Mexico, 29 November 2023; HRF, *Inhumane and Counterproductive* (previously cited), pp. 33-35.
[441] In-person interview with staff at Casa Arcoiris, Tijuana, Mexico, 29 November 2023.
[442] In-person and online interviews with asylum seekers & organizations, August-November 2023; JRS, *Accompaniment at the U.S.-Mexico Border* (previously cited), p. 2.
[443] In-person interview with Venezuelan asylum seeker, Monterrey, Mexico, 1 November 2023.
[444] In-person interview with Ecuadorian asylum seeker, Reynosa, Mexico, 6 November 2023.
[445] WOLA, *Access to Justice for Migrants in Mexico: A Right That Exists Only on the Books*, July 2017, wola.org/wp-content/uploads/2017/07/Access-to-Justice-for-Migrants_July-2017.pdf, p. 4.

8. IMPACTS ON ASYLUM SEEKERS

The mandatory use of the CBP One application forces people seeking asylum to wait in Mexico in precarious and often dangerous situations for undetermined amounts of time while waiting to be allocated a CBP One appointment. As indicated above, the uncertainty about when asylum seekers will receive an appointment causes them a great deal of stress, frustration and worry, impacting their physical and mental wellbeing.[446] The physical and psychological impacts on asylum seekers are compounded by the extreme violence they experience while travelling through Mexico and while waiting at the border for their CBP One appointments.[447]

Mexican asylum seekers find themselves at even greater risk. While the Final Rule's rebuttable presumption of asylum ineligibility does not apply to them, the fact that Mexican officials block access to ports of entry results in Mexican asylum seekers having to wait in the country they are fleeing persecution from for CBP One appointments.[448] Moreover, CBP has imposed a limit on the daily number of available appointments for Mexicans creating additional challenges for them in securing CBP One appointments.[449]

Increasing wait times for CBP One appointments and uncertainty about when people seeking asylum will be given an appointment, compounded by the dangerous and difficult situation in Mexico and Mexican authorities blocking access to ports of entry has forced many asylum seekers to make the decision to cross into the United States without CBP One appointments.[450] It has also resulted in family separation as some parents have sent their children to enter the United States as unaccompanied children, rather than having them wait in unsafe conditions at the border.[451]

> **"There are people who decide to cross irregularly into the United States after waiting months for a CBP One appointment."**
>
> Staff, Borderline Crisis Center (Tijuana, Mexico)[452]

> **"It's maddening but you have to hang in there. Some people get desperate and go and turn themselves in."**
>
> Mexican asylum seekers (Tijuana, Mexico)[453]

CBP indicated that "the appointment process provides a safe, orderly and humane process for

[446] In-person interviews with asylum seekers, October-November 2023; HBA, *Lives at Risk* (previously cited), pp. 10-11.
[447] MSF, "La salud de personas migrantes está gravemente afectada" (previously cited).
[448] US Federal Register, Circumvention of Lawful Pathways (previously cited).
[449] Communication from CBP, 9 April 2024.
[450] Strauss Center, *Asylum Processing at the U.S.-Mexico Border: February 2024* (previously cited), p. 5; HRF, *Inhumane and Counterproductive* (previously cited), pp. 38-43.
[451] HBA, *Lives at Risk* (previously cited), p. 9.
[452] In-person interview with staff at Borderline Crisis Center, Tijuana, Mexico, 27 November 2023.
[453] In-person interview with Mexican asylum seekers, Tijuana, Mexico, 27 November 2023.

people to access the United States instead of taking the dangerous journey to cross between ports of entry."[454] However, according to Human Rights First, "like other strategies at metering and blocking access to ports of entry, the asylum ban spurs irregular crossings by at-risk people who cannot safely wait."[455] According to CBP, the irregular crossing of asylum seekers into the United States steadily rose at the end of 2023, with over 242,000 encounters in November and more than 301,000 encounters in December.[456] While one of the stated objectives of the Final Rule is to stop irregular crossings and ensure that asylum seekers enter the United States safely via ports of entry, CBP statistics demonstrate that the Final Rule has not been overly effective in achieving this. The number of irregular crossings from May 2023 to February 2024 only decreased by around 6% compared to the ten preceding months (July 2022 to April 2023).[457] The provisions of the Final Rule, including the mandatory use of the CBP One application, continue to force asylum seekers to take difficult and dangerous routes to enter the United States because their access to US ports of entry is conditioned upon having a CBP One appointments and they are not safe in Mexico. Members of Congress have stated that "the difficulties with CBP One increase the likelihood that asylum seekers will rely on cartel-backed smugglers to enter the United States instead of applying through legal pathways."[458]

> **"We were in Mexico City for two months. We did the CBP One registration and tried daily for the appointment. We decided to cross into the United States because we no longer had the money to keep waiting in Mexico. We didn't have any other option. We knew it was risky, but we couldn't stay on the streets anymore."**
>
> Afghan asylum seeker (San Diego, USA)[459]

According to the Missing Migrants Project:

> Over the past two decades, the border crossing between Mexico and the US has become the site of a grave human rights crisis, where thousands of people have gone missing and lost their lives during migration. From crossing the Sonoran Desert in the Southwestern U.S. and North-western Mexico, with its scorching heat and few water sources, to attempts to cross the deep Rio Grande / Río Bravo (demarcating the border between Mexico and Texas) and its often-strong currents, there are numerous physical and environmental factors which pose risks to people's lives.[460]

Asylum seekers in Tijuana are forced to cross between ports of entry and sometimes become "stuck" between the border walls or in the desert for multiple days in extremely harsh conditions without access to food or water.[461] On the US side of the border in Brownsville, Texas (border with Matamoros), the Texas National Guard has placed multiple rows of concertina wire. Asylum seekers who cross the Rio Grande become stuck between the river and the wire.[462] On 4 October 2023, more than 2,000 mostly Venezuelan asylum seekers attempted to cross the river near Ciudad

[454] Communication from CBP, 9 April 2024.
[455] HRF, *Inhumane and Counterproductive* (previously cited), p. 8.
[456] CBP, "Southwest Land Border Encounters" (previously cited).
[457] CBP, "Southwest Land Border Encounters" (previously cited).
[458] Congress of the United States, Letter to DHS (previously cited), p. 2.
[459] In-person interview with Afghan asylum seekers, San Diego, USA, 28 November 2023.
[460] Missing Migrants Project, "Migration Within the Americas", missingmigrants.iom.int/region/americas; No More Deaths, *El Paso Sector Migrant Death Database*, 2024, elpasomigrantdeathdatabase.org/wp-content/uploads/2024/03/El-Paso-Sector-Migrant-Death-Database.pdf.
[461] In-person and online interviews with asylum seekers & organizations, August-November 2023.
[462] Strauss Center, *Asylum Processing at the U.S.-Mexico Border: February 2024* (previously cited), p. 5.

Juárez and were stranded for hours between the river and US border wall.[463] In Piedras Negras, Coahuila, approximately 200 to 300 people attempt to cross the Rio Grande each day.[464] Asylum seekers used to cross the river right below the international bridge between Mexico and the United States, however, the municipalities came to an agreement and asylum seekers are now forced to cross the river at a more dangerous spot. The "Grupo Enlace" brings people seeking asylum to the place where they can cross. There are criminal groups in the area that charge asylum seekers a fee to cross the river.[465] In January 2024, MSF reported that a woman and two boys drowned attempting to cross the river.[466] Since it started recording in 2014, the Missing Migrants Project has recorded the deaths of over 2,980 people who have died trying to cross the border from Mexico into the United States.[467] In 2024, 46 individuals have drowned trying to cross to US-Mexico border and two individuals have died from harsh environmental conditions or lack of food and water close to the border wall in Tijuana.[468]

> **"My sister crossed by the river. She almost drowned. She went with her two daughters. She waited four months for the appointment but never got it."**
>
> Honduran asylum seeker (Piedras Negras, Mexico)[469]

Amnesty International heard from many service providers and organizations that, as a result of the extortions, scams and kidnappings that asylum seekers suffer on their journey to and throughout Mexico, as well as having to financially support themselves in Mexico for undetermined periods of time, by the time they eventually enter into the United States, their finances have been completely exhausted.[470]

Not only do asylum seekers crossing irregularly into the United States put themselves in dangerous situations to do so, but they are also likely to be presumed to be ineligible for asylum in accordance with the Final Rule.[471] Many asylum seekers do not know about the Final Rule and the impacts that their manner of entry into the United States will have on their eventual asylum claim. Even when they do know about the consequences of the ban, their decisions are driven by urgent safety and protection needs. The United States must uphold the right of all individuals to seek asylum, cannot penalize asylum seekers for their manner of entry into the country and must ensure that asylum seekers are not returned to places where their lives may be at risk.

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[463] EFE, "Operation in northern Mexico strands 2,000 migrants at Rio Grande border", 4 October 2023, efe.com/en/latest-news/2023-10-04/operation-in-northern-mexico-strands-2000-migrants-at-rio-grande-border/.
[464] In-person interview with staff at Frontera Digna shelter, Piedras Negras, Mexico, 2 November 2023; Strauss Center, *Asylum Processing at the U.S.-Mexico Border: February 2024* (previously cited), p. 8.
[465] In-person interview with staff at Frontera Digna shelter, Piedras Negras, Mexico, 2 November 2023.
[466] MSF, "Norte de México: MSF aboga por medidas que respeten la vida de las personas migrantes", 17 January 2024, msf.mx/actualidad/norte-de-mexico-msf-aboga-por-medidas-que-respeten-la-vida-de-las-personas-migrantes/.
[467] Missing Migrants Project, "Migration Within the Americas" (previously cited).
[468] Missing Migrants Project, "Missing Migrants Project Data", missingmigrants.iom.int/downloads; CBP, "Father and daughter die after they are found floating in the Rio Grande near Eagle Pass, Texas", 13 February 2024, cbp.gov/newsroom/national-media-release/father-and-daughter-die-after-they-are-found-floating-rio-grande; CBP, "Woman dies after fall from International Border Fence near Otay Mesa Port-of-entry", 29 March 2024, cbp.gov/newsroom/national-media-release/woman-dies-after-fall-international-border-fence-near-otay-mesa.
[469] In-person interview with Honduran asylum seeker, Piedras Negras, 2 November 2023.
[470] In-person and online interviews with asylum seekers and organizations, August-November 2023.
[471] US Federal Register, Circumvention of Lawful Pathways (previously cited).

9. CONCLUSIONS AND RECOMMENDATIONS

Following the end of Title 42, using the CBP One mobile application became mandatory for people seeking international protection in the United States, otherwise they will be considered ineligible for asylum in accordance with the Circumvention of Lawful Pathways Final Rule. CBP has stated that CBP One is a "key component of DHS's efforts to incentivize noncitizens to use lawful, safe, humane, and orderly pathways and disincentivize attempts to cross between ports of entry."[472] As well as that the "use of the CBP One app to schedule appointments at land ports of entry has increased CBP's capacity to process migrants more efficiently and orderly while cutting out unscrupulous smugglers who endanger and profit from vulnerable migrants."[473] However, Amnesty International has determined that the introduction of CBP One has not achieved the Final Rule's objective of reducing irregular border crossings.

Most asylum seekers Amnesty International interviewed were attempting to use the application to schedule appointments to enter into the United States. However, wait times continue to increase as there are more asylum seekers than available daily appointments. Uncertainty about how long it will take for asylum seekers to be allocated CBP One appointments causes them unnecessary stress, worry and frustration. The long delays and lack of information have resulted in some people crossing irregularly into the United States. Despite multiple updates to the application, asylum seekers continue to experience technological errors and crashes. The mandatory use of CBP One conditions the ability to seek asylum on having a cellphone, consistent access to stable internet, proficiency in English, Spanish or Haitian Creole, the ability to read and write, and having some technological skills. People seeking asylum with circumstantial vulnerabilities experience even greater challenges to use the application. Not all asylum seekers are able to use the CBP One application. Consequently, some asylum seekers decide to cross irregularly into the United States where they will likely be ineligible for asylum in accordance with the Final Rule, unless they can meet one of its limited exceptions.

While Amnesty International welcomes the Biden Administration's interest in adopting measures to ensure more efficient processing of asylum claims, the mandatory use of the CBP One application as the exclusive manner of entry into the United States to seek international protection violates international human rights and refugee law. Everyone has the right to seek asylum and states must adopt measures to guarantee this right.

The mandatory use of the CBP One application to seek asylum in the United States has also resulted in asylum seekers having to wait for undetermined amounts of time in dangerous and difficult situations in Mexico. People seeking asylum travelling through the country and waiting for appointments are subject to violence, extortion, kidnapping, discrimination and sexual and gender-

[472] CBP, "CBP Releases January 2024 Monthly Update" (previously cited).
[473] CBP, "CBP One™ Mobile Application" (previously cited).

based violence perpetrated by both state and non-state actors. Most asylum seekers stay in shelters and informal encampments with inadequate living conditions, and they have limited access to healthcare, education and employment. Mexican authorities control access to US ports of entry and only let those with CBP One appointments cross. Mexico must uphold the right of individuals to seek international protection. Mexico must also protect the rights of asylum seekers as they travel through the country and while waiting at the US-Mexico border. Amnesty International has determined that Mexico is failing to protect, respect and fulfil the rights of asylum seekers, including by failing to hold state and non-state actors accountable for the acts of violence committed against them.

Taking into consideration the opinions of people seeking asylum, shelters and organizations, as well as the United States' and Mexico's human rights obligations under international law, Amnesty International makes the following recommendations.

9.1 RECOMMENDATIONS

9.1.1 TO THE UNITED STATES

Guarantee the right of individuals to seek asylum, including by immediately rescinding the Circumvention of Lawful Pathways Final Rule and abandoning the mandatory use of the CBP One mobile application.

Guarantee the right of *non-refoulement* of persons in need of international protection. Invest in systems to process asylum seekers at the border without delay or detention, including increasing the number of daily CBP One appointments across all ports of entry.

Make the following changes to the CBP One mobile application: allocate appointments in order of registration; add additional languages; address translation errors in Haitian Creole and Spanish versions; address recurring technological issues and errors; create a more accessible mechanism to respond to questions; and permit the editing of registrations.

Provide up-to-date information about the CBP One application and the Circumvention of Lawful Pathways Final Rule in multiple forms and languages to ensure that all people seeking asylum have meaningful access to information on how to use the application.

Immediately cease the deployment of facial recognition technologies for identification (1:n) of asylum seekers.

Ensure that any rights violations stemming from the use of unnecessary and disproportionate artificial intelligence-driven surveillance tools, such as facial recognition, are investigated and remedied effectively.

End any agreements with the Government of Mexico that allow or facilitate the return of asylum seekers to persecution without meaningful access to asylum assessments.

Ensure that access to US ports of entry is not restricted and refrain from requesting or encouraging Mexican authorities to block access to ports of entry.

Provide asylum seekers with support to pursue their asylum claims in US communities with access to housing, social services, legal supports and interpretation services.

Increase funding available to humanitarian and community-based organizations that provide shelter and services to asylum seekers on both sides of the US-Mexico border.

9.1.2 TO MEXICO

Stop collaborating with the United States Government in the implementation of policies that violate the human rights of migrants and asylum seekers.

Guarantee the right of individuals to seek asylum, including by ensuring that asylum seekers are able to access US ports of entry.

Guarantee the right of *non-refoulement* of persons in need of international protection.

Immediately implement measures to ensure the safety and security of asylum seekers transiting through Mexico. This should include public policies to prevent crimes against them, such as providing security to migrants in high-risk areas and ending impunity. Immediately implement measures to ensure that asylum seekers are able to move freely throughout Mexico.

Strengthen the mechanisms to combat corruption and promote accountability of public servants through investigations and, when applicable, administrative, disciplinary or criminal sanctions.

Immediately investigate the allegations of violence, extortion, kidnappings, sexual and gender-based violence and disappearances of asylum seekers and when applicable criminal sanctions.

Ensure asylum seekers have access to education and to healthcare, including victims of sexual and gender-based violence without discrimination nor fear of deportation.

Guarantee the right to access to justice for migrants without discrimination nor fear of deportation. Ensure that they are provided with humanitarian visas according to the Mexican Migration Law.

Prosecute and punish bus companies implementing discriminatory practices in the sale of bus tickets.

Take measures to guarantee dignified living conditions while migrants are waiting in Mexico.

Develop and provide permanent training programs to public servants regarding the rights of migrants.

Establish public programs which raise awareness of the rights of migrants to prevent and combat discrimination and xenophobia.

Increase funding available to humanitarian and community-based organizations that provide shelter and services to migrants in Mexico.

AMNESTY INTERNATIONAL IS A GLOBAL MOVEMENT FOR HUMAN RIGHTS. WHEN INJUSTICE HAPPENS TO ONE PERSON, IT MATTERS TO US ALL.

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CBP ONE – A BLESSING OR A TRAP?

Following the termination of Title 42 and in accordance with the Circumvention of Lawful Pathways Final Rule, people seeking asylum are now required to use the CBP One mobile application to schedule a time to arrive at participating ports of entry along the US-Mexico border in order to present their asylum claims. The mandatory use of CBP One in order to seek asylum in the United States violates the rights of asylum seekers. The application poses significant obstacles for individuals who do not have access to mobile devices or the internet, or who are otherwise unable to access or use the application. Asylum seekers are now forced to wait in Mexico for prolonged and undetermined lengths of time where they are at serious risk of kidnapping, extortion, sexual and gender-based violence and discrimination.

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Asylum Essentials:
The U.S. Asylum Program Needs More Resources, Not Restrictions

By Walter A. Ewing, Ph.D.
and Benjamin Johnson*

The efficiency of the asylum program depends in large part on a fully staffed and adequately funded Asylum Corps that evaluates asylum claims thoroughly and expeditiously.

The public debate surrounding passage of the REAL ID Act by the House of Representatives on February 10 has raised the question of whether or not the U.S. asylum system is vulnerable to infiltration by foreign terrorists. Sponsors of the legislation, which now moves to the Senate for consideration, claim the Act would enhance security by making it more difficult for asylum seekers to prove their cases. However, the realities of asylum processing and the impact of reforms to the asylum system over the past decade point to a need for more resources rather than new restrictions. Abuses of the asylum system, including the most notorious cases cited by supporters of the REAL ID Act, have resulted primarily from applicants getting lost in bureaucratic backlogs or from over-worked Asylum Officers not having sufficient time to closely scrutinize the stories and evidence presented by asylum seekers.

The integrity of the asylum system is enhanced by sufficient staffing and funding to allow the thorough and timely adjudication of asylum cases, and adequate training of the immigration inspectors who first come into contact with asylum seekers. Current law already denies asylum to individuals who have engaged in terrorist activity, committed serious crimes, or who may pose a danger to national security.[1] And asylum applicants already undergo extensive security checks. The critical issue is whether or not the Asylum Officers who are assigned to review asylum claims have the time and resources they need to efficiently and effectively determine who is a legitimate refugee. The provisions of the REAL ID Act that would raise the bar for all asylum applicants do nothing to enhance the ability of Asylum Officers to identify applicants who may pose a risk to national security.

The Asylum Corps[2]

A critical element in the U.S. asylum program is the Asylum Officer Corps, a professional cadre of officers, specially trained in refugee and human rights law, who are responsible for conducting in-depth interviews of individuals who apply for the particular form of refugee protection known as "asylum." The modern concept of a "refugee" was incorporated into U.S. immigration law by the Refugee Act of 1980, which modified the Immigration and Nationality Act to define a refugee as someone who is unable or unwilling to return to their country of nationality "because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion."[3] U.S. immigration law mandates different procedures for dealing with those refugees who apply for protection while outside of the United States and those who apply after arriving in the country. Individuals belonging to the latter group apply for asylum, which – if granted – earns them the designation "asylee."

There is broad recognition that "asylum adjudication may be the most difficult adjudication known to administrative law, owing both to the high stakes involved and the unique elusiveness of the facts."[4] Nevertheless, prior to the creation of the Asylum Corps, asylum applications were simply one of the many applications that INS examiners decided. The examiners were provided no special training in interviewing refugees and had little access to asylum-related legal or other information. After years of debate, the decision was made to create a specialized group of adjudicators, backed by a resource center that could collect detailed human rights information on the countries from which asylum applicants come. The goal was to create a stable of experts who would be able to gather the relevant facts and conduct the in-depth interviews necessary to make informed decisions in these unique cases.

The Asylum Corps was created in 1990 when the federal government issued final regulations implementing the Refugee Act in its entirety. These regulations took responsibility for asylum cases away from the District Offices of the Immigration and Naturalization Service (INS) and placed it in the hands of the INS Asylum Corps, which on March 1, 2003, became part of the Department of Homeland Security (DHS). Seven asylum offices became operational in 1991, followed by an eighth in 1994. Currently there are about 300 Asylum Officers working at eight offices in Arlington (Virginia), Chicago, Houston, Los Angeles, Miami, New York City, Newark (New Jersey), and San Francisco. The regulations implementing the Refugee Act also created a Resource Information Center to keep Asylum Officers informed of human rights conditions in countries around the world. The Center became operational in 1991.

"Gaming" the System

The creation of the Asylum Corps significantly improved the quality of decisions on asylum applications. Despite the benefits of the Asylum Corps, however, the asylum process was slow and cumbersome and the Corps itself inadequately staffed.[5] It soon became apparent that the asylum program suffered from two major flaws which made it vulnerable to abuse. First of all, the relatively small Corps was quickly overwhelmed by far more asylum applications than expected and lengthy backlogs developed. As a result, individuals who had exhausted all other options for remaining in the United States could stay in the country for a prolonged period of time simply by filing an asylum application and becoming lost in the backlog, even if they had no valid claim to asylum. Secondly, employment authorization was granted to asylum applicants at the time they applied, meaning that any immigrant who wanted to work in the United States could immediately obtain permission to do so by filing an asylum application.

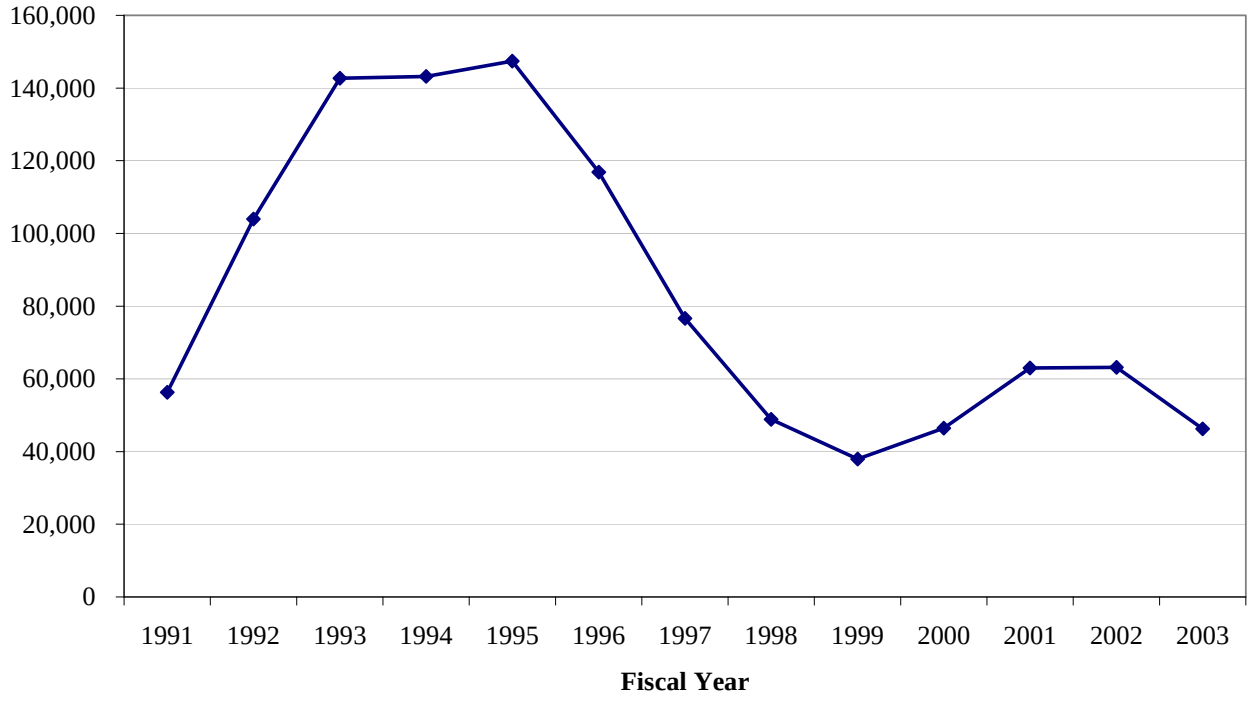
These two factors – enormous backlogs and the incentive of work authorization – resulted in a dramatic increase in the number of asylum applications filed, as more and more weak or fraudulent claims were submitted by individuals who wanted to stay in the United States or obtain work authorization while their cases were lost in the backlog. In 1993, political and public attention was focused on these flaws in the asylum program when it was widely reported that Mir Aimal Kansi, who killed two CIA agents in front of the agency's headquarters, and Ramzi Yousef, who was involved in the first World Trade Center bombing, had been allowed to remain in the United States while their applications for asylum were pending.

Reforming the System[6]

By 1995, the federal government began implementing reforms to remedy the problems in the asylum system by reducing the backlogs through funding increases and improvements to the asylum process. The number of officers in the Asylum Corps was more than doubled to its current level and the number of Immigration Judges was increased as well. The reforms set a target of 180 days for the processing of asylum applications which has been largely met. In Fiscal Year (FY) 2003, Immigration Judges completed 91 percent of their asylum cases within 180 days.[7] In addition, employment authorization was no longer issued at the time an asylum application was filed, and could only be applied for if asylum was granted or in the increasingly rare cases that had been pending for longer than 150 days.[8] The asylum process itself was also streamlined so that a final

decision was reached in a far shorter period of time. Prior to 1995, an asylum officer who wished to deny an application would file a Notice of Intent to Deny, allow the applicant to rebut the proposed decision, and then issue a denial if not persuaded by the rebuttal. The applicant could then file a new asylum claim with an Immigration Judge. Under the new rules, if the asylum officer decides an applicant is ineligible for asylum, the case is automatically referred to an Immigration Judge. As a result of these reforms, not only did the backlog fall dramatically over the ensuing years, but so did the number of new asylum applications as fewer individuals filed frivolous claims. New cases declined from over 147,000 in FY 1995 to just over 46,000 in FY 2003.[9]

Asylum Applications Received by Immigration Service (USCIS/INS) District Directors & Asylum Officers, FY 1991-2003



Source: Office of Immigration Statistics, Department of Homeland Security, *2003 Yearbook of Immigration Statistics,* September 2004.

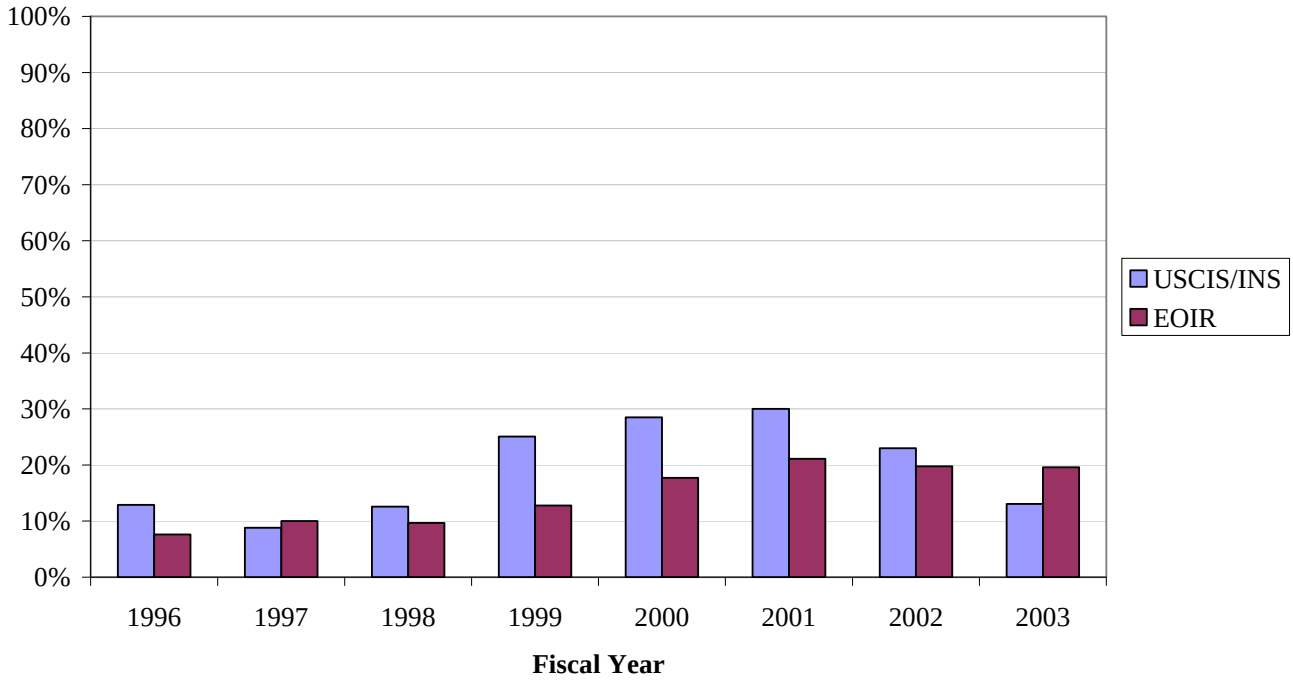
Beyond the reforms implemented in 1995, subsequent statutory changes heightened the security requirements of the asylum program as well. The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 required that the identities of asylum applicants be checked against all databases maintained by the Attorney General and Secretary of State. Among the databases consulted in the screening of asylum applicants are the Central Index System (CIS), Deportable Alien Control System (DACS), National Automated Immigration Lookout System (NAILS), Interagency Border Inspection System (IBIS), Automated Biometric Identification System (IDENT), and FBIQuery. Moreover, the Act called for the screening of asylum applicants at ports of entry by immigration officers with some training in asylum procedures. The USA Patriot Act of 2001 expanded the definition of "terrorist activity" under which asylum can be denied to an applicant. Improved coordination and information sharing among law enforcement and intelligence agencies since the terrorist attacks of September 11, 2001, have also greatly improved the efficiency and scope of the background checks conducted on asylum applicants.

A Difficult Claim to Make

It has never been easy to receive asylum, even before the regulatory reforms of 1995 and the statutory changes of 1996. The very nature of the asylum process, in which an applicant is subjected to multiple security checks

and interviewed in depth, is highly effective in weeding out individuals and stories that are not credible. As a result, Asylum Officers and Immigration Judges grant asylum in very few of the cases that cross their desks. For instance, only 15.8 percent of the asylum applications filed with the immigration service in FY 1993 were successful. Similarly, 13.1 percent of applications were successful in FY 2003.[10] The linchpin of security in the asylum program, therefore, is the presence of a fully staffed and adequately funded Asylum Corps that evaluates asylum claims thoroughly and expeditiously. The system breaks down when Asylum Officers are forced to handle too many cases in too short a span of time, or when there are so many cases pending that applications – and applicants – become lost in a backlog.

Percent of Asylum Applications Filed with the Immigration Service (USCIS/INS) & Executive Office for Immigration Review (EOIR) that Were Successful, FY 1996-2003



Source: Office of Immigration Statistics, Department of Homeland Security, *2003 Yearbook of Immigration Statistics*, September 2004 & Executive Office for Immigration Review, Department of Justice, *FY 2003 Statistical Year Book*, April 2004.

Note: Success rate equals cases approved as a percentage of cases completed. Unsuccessful cases include those that were denied, withdrawn, abandoned, otherwise closed, or – in the case of applications filed with USCIS/INS – referred to an Immigration Judge.

Insufficient Resources and Inadequate Training

Despite the enormous benefits in terms of security and efficiency that come with investing in the Asylum Corps, at present the Corps is neither staffed nor funded at the levels needed to perform its job most effectively. Asylum Officers are required to conduct 18 asylum interviews each two-week pay period. Taking into account the officers' other job responsibilities, this means that each asylum case must be completely adjudicated in about 3.5 hours, including review of the application, researching country conditions, interviewing the applicant, evaluating the applicant's credibility, performing the necessary security checks, and writing a final decision. The impossibility of doing a thorough job is such a small span of time is illustrated by the results of an anonymous survey conducted in 2004 by the American Federation of Government Employees (AFGE), which represents Asylum Officers. The survey elicited responses from 177 Asylum Officers (47 percent of the Asylum Corps) at seven of the eight asylum offices. Among the respondents, 93 percent routinely worked unpaid overtime even though that is prohibited by agency

regulations. Among the reasons most commonly cited for doing so were that there is insufficient time to do quality work during a 40-hour week (100 percent of respondents), unpaid overtime is necessary to complete cases in compliance with timeliness standards (92 percent), and unpaid overtime is necessary to avoid creating a case backlog (91 percent). As a result of these time constraints, a number of Asylum Officers were not confident in some of their decisions, fearing they may have turned away a legitimate asylum seeker or granted asylum to someone who didn't deserve it. Complicating this situation even further, translation services are inadequate to meet the needs of asylum seekers from dozens of different countries. These strenuous working conditions have contributed to a high turnover rate in the Asylum Corps.

The efficiency of the asylum program is also undermined by the inadequate training of immigration inspectors outside of the Asylum Corps who first have contact with asylum seekers. According to the U.S. Commission on International Religious Freedom, the records kept by immigration inspectors of their initial interviews with asylum applicants are often incomplete, inaccurate, and not read back to and verified by the applicant, as is required. Moreover, the Inspector Field Manual instructs inspectors to not ask about the details of an applicant's claim for asylum, yet Immigration Judges sometimes deny a claim because the applicant has "added detail" not included in the initial interview.[11]

Resources, Not Restrictions

The reforms to the asylum process instituted since the early 1990s ameliorated the most serious flaws and shortcomings that previously made the system vulnerable to misuse and abuse. Simply filing an application for asylum no longer guarantees permission to remain or work in the United States for any significant length of time. Most importantly from a national security standpoint, the identities of asylum applicants are checked against the databases of the Department of Homeland Security, Department of State, FBI, and CIA. Proposals such as the REAL ID Act, which place more bureaucratic hurdles in the path of asylum seekers and unnecessarily add to the workload of already over-worked Asylum Officers, represent a pointless diversion from those measures that actually would improve the security of the asylum system. To the extent that vulnerabilities still exist in the system, they lay with inadequate staffing and funding of the Asylum Corps and inadequate training of immigration inspectors. Raising the standards of evidence demanded of asylum applicants, or insisting that they tell their stories in a certain way, would do nothing to address these underlying problems, while needlessly placing victims of persecution in harm's way.

February 2005

*Benjamin Johnson is Director of the Immigration Policy Center and Walter Ewing is a Research Associate with the Center.

Endnotes

[1] INA § 208(b)(2)(A)(ii) – (iv).
[2] See U.S. Citizenship and Immigration Services, "History of the United States Asylum Officer Corp," September 9, 2003 (http://uscis.gov/graphics/services/asylum/history.htm); U.S. Immigration and Naturalization Service, "Asylum Reform: 5 Years Later," 2000 (http://uscis.gov/graphics/services/asylum/asylum_brochure.pdf).
[3] INA § 101(a)(42)(A).
[4] David A. Martin (former INS General Counsel, 1995-1997), "Asylum Reform: A Global Perspective," Immigration and Naturalization Service symposium in celebration of the fifth anniversary of the 1995 asylum reforms, February 1, 2000. See also, Gregg A. Beyer (former Director of the INS Asylum Program, 1990-1994), "Striking a Balance: The 1995 Asylum Reforms," Immigration and Naturalization Service symposium in celebration of the fifth anniversary of the 1995 asylum reforms, February 1, 2000. These papers are available at http://uscis.gov/graphics/services/asylum/symposia.htm.
[5] *ibid*.
[6] U.S. Citizenship and Immigration Services 2003; U.S. Immigration and Naturalization Service 2000.
[7] Executive Office for Immigration Review, Department of Justice, *FY 2003 Statistical Year Book*, April 2004.

[8] The Enhanced Border Security and Visa Entry Reform Act of 2002 required that Employment Authorization Documents (EADs) be issued immediately upon the granting of asylum.
[9] Office of Immigration Statistics, Department of Homeland Security, *2003 Yearbook of Immigration Statistics*, September 2004.
[10] *ibid*. Success rate equals cases approved as a percentage of cases completed. Unsuccessful cases include those that were denied, withdrawn, abandoned, otherwise closed, or referred to an Immigration Judge.
[11] U.S. Commission on International Religious Freedom, *Report on Asylum Seekers in Expedited Removal – Volume 1: Findings and Recommendations*, February 2005.

BLOG / NEWS / DIGNITY

A New Pathway Forward for the United States:

Why Building Working Legal Pathways Is the Best Policy and Politics Approach to Forced Migration - And Upholds The Best of America's Promise

APRIL 14TH, 2023

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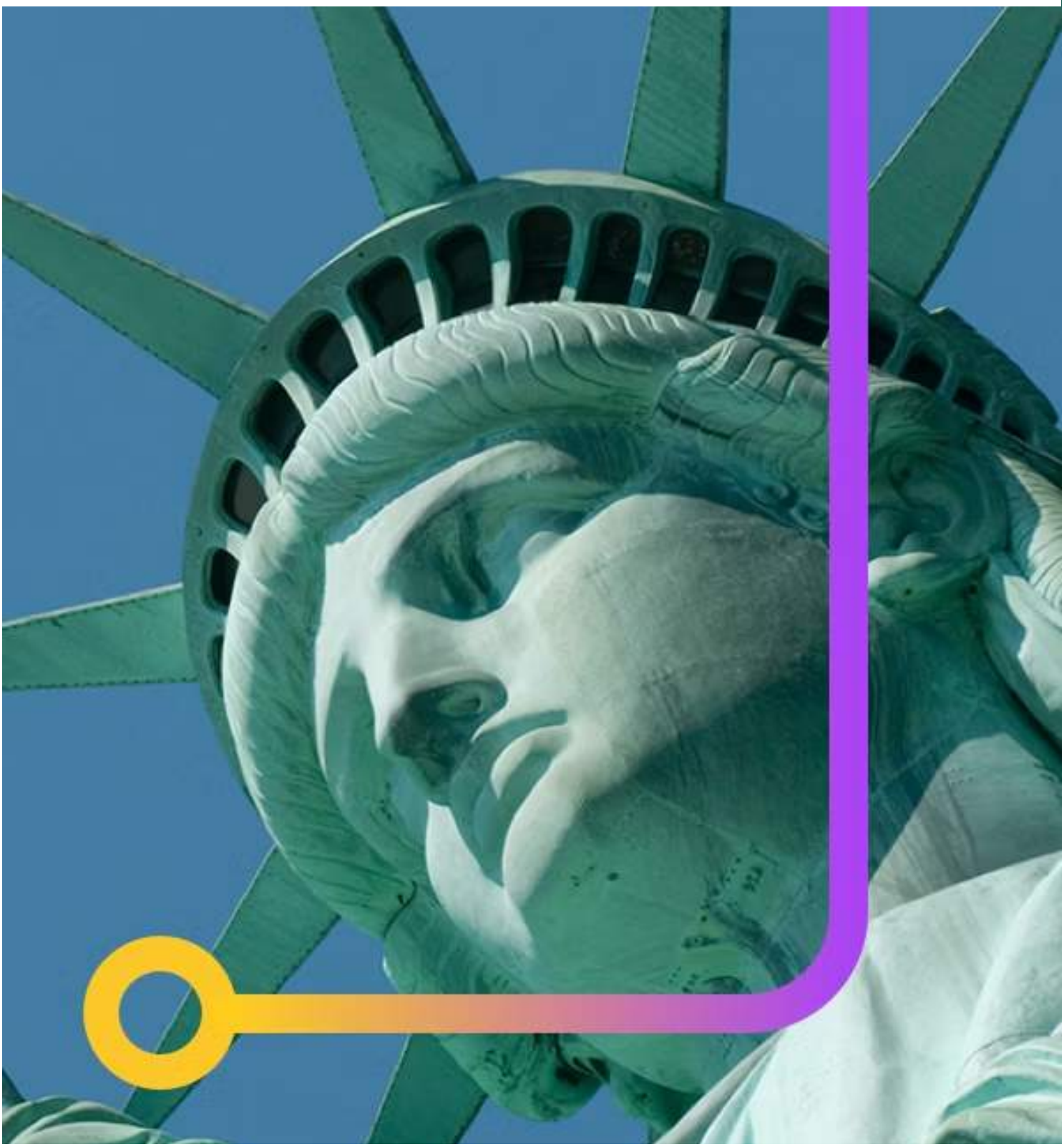

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The United States has a fundamentally failed approach to immigration, one without working legal immigration channels and a system that pushes people into cruel options that spur chaos.

With less than a month until the chaotic and cruel Title 42 policy ends on May 11, we are at an inflection point. The Biden administration should use its authority to take action to create a diverse set of legal immigration pathways, as well as work with Congress where needed to build a prosperous, secure, orderly, and humane approach to migration. In the ongoing debates over how the U.S. should seize the opportunities and meet challenges around migration and at the U.S.-Mexico border, a massive component is missing from this conversation: the critical need to build legal pathways – *even though it's the key to solving many of our border problems.*

The American public supports immigration and pro-immigrant policies, but most Americans do not understand that there are in fact vanishingly few legal avenues for most people in the Western Hemisphere – and that what few pathways existed prior

refuge, asylum, family-based immigration and more – is best for Americans here today, best for immigrants, and the single most important step to cut down on the very pressure and perception of chaos at the border that Americans say they want to see change.

The current system built so heavily upon deterrence and disqualification, and without real pathways, is the wrong approach. We've seen that when individuals and families are given the option of a legal and orderly channel, they consistently choose it over crossing without authorization. Overwhelming evidence proves that legal channels work to decrease chaos and improve order.

America is at its best when we welcome those in need of protection, and those who want to come to our country to work, study, or be reunited with their families – regardless of where they're born, their religion, or their race. There is an incredible opportunity to seize. That means building real working legal immigration avenues, a refugee system for the Western Hemisphere, safe and robust in-country processing, avenues so that people can come temporarily to work or for longer-term employment, and clearing backlogs so that people can reunite with family members who are U.S. citizens or residents, all while

While actually creating legal pathways is the most important thing this administration can and must do, it alone will not solve all of the immigration issues our country faces. But without this step, there will be only bad options. This memo lays out the problems with this fundamentally failed approach and the proposed solutions.

The Problem: A Failed System, With Effectively No Legal Pathways

The United States has a fundamentally failed system when it comes to managing forced global migration, border security, and immigration broadly – a system that for decades has relied upon the use and threat of deterrence, detention, and deportation as the primary or at times *only* tactic. Despite the myth that there are plentiful legal ways to come to the U.S., for the overwhelming majority of people in the Western Hemisphere, there are effectively *no* working, available, safe and legal pathways. The few legal pathways that existed prior to the Trump administration have become even more restricted and insufficient as the number of displaced people has continued to rise.

decline in the coming decades due to an increase in war and armed conflict, political instability, violence, persecution, and the climate crisis. In the Americas, deep instability in countries including Venezuela and Haiti has driven forced migration – with nearly 20 million people displaced – yet the region accounts for less than 10% of all global refugee resettlement.

In a time in which authoritarianism around the globe is fueled by anti-immigrant demagogues who seek to weaponize the plight of immigrants and those seeking refuge for their own political gain, we can either find humane *and* politically resilient approaches to the challenges presented by forced migration to build legal pathways, or xenophobia will only become a more potent weapon. Within our fundamentally failed paradigm, the images of people forced to cross between ports of entry will not only be used to fuel more crackdowns on immigrants, but will be used to attack the legitimacy of any government whose approach is not the near-complete elimination of all immigration avenues and attacks on the basic dignity of immigrants.

This cycle extends even to the plight of children in need. For the last decade, every single time there has been a crackdown on the ability for adults and families to access legal migration channels, there has also been a subsequent surge in children crossing the border between ports of entry the following year – a

apply for asylum is the only viable option, but where every attempt to cross the border is treated by the political class as an inherent negative and failure, the result is a system in which governments will only pursue increasingly hardline deterrent policies designed to make life so difficult, and migration so impossible, that even people facing the most severe threats will not attempt to come. That is a tragedy for them and for America.

Today, exceedingly few temporary and seasonal work permits are available to anyone not from Mexico, and permanent employment options are incredibly limited. Our family-based visa system is functionally unusable with backlogs that mean people have to wait as long as a decade to have any chance. Until January of this year, in-country processing did not exist on a meaningful scale. The entire Western Hemisphere refugee program is dwarfed by the realities on the ground, having never resettled more than 10,000 people in an entire year. All the while, U.S. ports of entry have been nearly entirely closed off for processing for over three years.

These restrictions are part of a broader pattern in which the United States' current immigration system is substantially more restricted than it has been historically. Compared to our historical averages, the U.S. actually currently naturalizes at a much lower per capita population than we have at many times in

actually below their average. We are falling behind. We are losing out.

In the absence of these legal channels, what remains has been an exceedingly restricted, cruel, and chaos-causing asylum system that largely exists only for those able and willing to attempt the dangerous journey of crossing *between* ports of entry. We have created a system – through bad policy design and a cruel status quo – in which the *only* option for nearly everyone seeking the legal right to apply for asylum is to force them to do so between ports of entry. Title 42 has been the foundational border policy for the last three years and has super-charged this awful dynamic. This is bad policy and awful politics. Title 42's chaotic deterrence policies have provided over the past three years: treating vulnerable individuals and families cruelly, and creating huge incentives for them to pay the cartels, while causing political headaches and a constant stream of negative news coverage for this Administration.

The Biden administration's failure to make a clean break from Title 42 immediately upon taking office in 2021 was a tragic mistake; today, the Administration faces real operational challenges at the border while *also* fending off constant partisan attacks. At the same time, many people who are focused on the humanitarian plight of vulnerable populations seeking refuge

Title 42 policy, the Biden administration is losing on both the policy *and* the politics. And as we approach May 11th and the end of Title 42 and beginning of their new asylum disqualification rule and transit ban, this dynamic will remain, and could become even worse, for as long as the United States fails to focus seriously on solutions that include more safe and legal pathways.

Evidence makes clear this chaos and political turmoil can be prevented. During the harsh enforcement of Title 42, exceptions to the policy allowed certain demographics to seek access to legal migration channels at ports of entry in an orderly and safe way. Unsurprisingly, the data makes clear that people chose the safe and legal path when given the opportunity to do so. These new parole programs serve as a painful reminder that people *want* to come into our country through legal channels above all else. Yet unfortunately, until January of 2023 and the very welcome creation of the new parole programs, they had taken exceedingly few steps to build legal immigration pathways affirmatively.

The right to apply for asylum is an absolutely essential emergency protection enshrined in domestic and international law, and we must protect it. But today, we have created an

This is both misguided and entirely unsuited for our current realities, where people who are forced to flee their homes may not meet the strict criteria for asylum but want, need, and deserve to come to the U.S. We should welcome them and pursue policies that keep people safe, while keeping families together.

A Better Path Forward: Building a Diverse System of Legal Migration Pathways

If the United States commits to creating working, legal migration pathways, we can build a more humane immigration system, reduce pressures at the border, produce better outcomes for immigrants as well as Americans, and be much more politically resilient. This will not solve every migration challenge or seize every opportunity – be it the need for a pathway to citizenship for those in the U.S., or the need to provide greater regional stability and address root causes for forced migration. And no system will be perfect; and various parties will disagree with the parameters, but our country should start by implementing programs that allow people to qualify for different migration channels.

crossings, often rapidly and substantially. Guest worker programs from Mexico – which are also in need of substantial reform – led to a substantial decrease in unauthorized crossings of Mexican nationals. Similarly, the recent announcement of in-country parole pathways for Venezuelans led to a decrease in the number of Venezuelans attempting to cross between ports of entry.

This new approach to building working legal pathways should include:

Create Modern, Working Migration Pathways for Employment

The Administration has the ability to ensure that seasonal and temporary work respects workers' rights, is easily accessible for employers, operates across the hemisphere, and can operate at an expanded scale to match demand with increased labor needs in the United States. This will not only reduce pressure at the border, but can also help to fill gaps in the U.S. labor force and help to reduce inflation.

Improve Family-Based Immigration

Our family-based visa categories for most countries in the Western Hemisphere are backlogged, and the Administration and Congress must make additional efforts to both reform our immigration laws and improve the implementation of existing programs, including through the creation of new administrative pathways for family

Expand Parole Pathways and In-Country Processing

The Administration's recent announcements for parole pathways for people from Cuba, Haiti, Nicaragua, and Venezuela (and previously Afghanistan and Ukraine) are a critical step in the right direction, both for those in need and to reduce pressure at the border. These programs are not perfect, but they could provide up to 500,000 people with an orderly and humane process to apply for relief in the U.S. The Administration should vigorously defend these existing programs, improve their function, and build upon this foundation to expand to other populations in need. Moreover, the Administration should ensure that people who settle in the U.S. through sponsorship are supported. The United States should build and successfully implement the Central American Minors (CAM) program.

Build a Robust Refugee Program for the Western Hemisphere

For those who cannot stay in their country for fear of persecution, we must have a safe third-country option. The United States should dramatically expand the formal refugee program, as well as private-sector sponsorship, for people from the region. This would allow for protections for those in transit as well.

Substantial Processing and Operational Improvements at Ports of Entry

For the past three years, ports of entry have been closed for all but the most urgent humanitarian processing for migration pathways. The Administration should not only

Congressional funding.

Protect Asylum as a Legal Pathway
With the above steps, we can reduce pressure at the border to ensure people have a right to due process when applying for asylum. The United States must ensure people have legal representation and protections in the U.S. during this critical time. This ensures a timely adjudication process with a fair and final decision.

Support and Welcome People Upon Arrival
We should seek ways to ensure people's success once they are in the United States. That includes rejecting incarceration as a tool and instead better resourcing NGOs to welcome people and support them at their destinations in the interior using proven methods like family case management and legal representation. Those awaiting their hearing should get a timely work permit and the ability to support themselves and work legally.

The vast majority of these reforms can be achieved in the short- and medium-term using the Administration's authority; a small number require Congressional changes. No system will be perfect, but until we build a set of diverse channels for people to seek legal entry into the U.S. (and many people may apply through multiple channels), we will be stuck in this failed dynamic where the U.S.' only policy lever is to try to further deter people from applying for asylum on U.S. soil.

including addressing in-country conditions, which this framework doesn't address. **But no single part of the debate has been missing as much as the failure for policymakers to drive forth a robust plan to actually create a diverse set of legal pathways.** This paradigm shift would create a truly functional system – one with the real incentives and opportunities we should want, and meaningful results.

Building these pathways will not happen by default; we need strong public pressure and action to create the conditions for new pathways to thrive and succeed. This holistic approach – which provides better, safer options to many people than a dangerous journey – will reduce pressure at the border. It provides people channels for which they will qualify, ensures due process, and will represent a system with incentives that work for all Americans. No system will be perfect, but this is one that can ensure people have clear pathways and a timely and fair ability to apply for asylum – and the ability to make sure the final result of that decision is respected and implemented.

A modern and humane immigration system goes hand-in-hand with an orderly one, and this is the best pathway forward.

Congress of the United States

Washington, DC 20515

March 21, 2024

The Honorable Alejandro Mayorkas
Department of Homeland Security
300 7th St. SW
Washington, D.C. 20024

Dear Secretary Mayorkas,

We write to follow up on our previous correspondence expressing serious concerns that the Biden administration's expanded use of the Customs and Border Protection mobile application (CBP One) is contravening the rights of asylum seekers and contributing to dysfunction within our immigration system. We call on the Department of Homeland Security (DHS) to take immediate steps to both improve CBP One and resolve accessibility issues to protect the safety of asylum seekers and support border communities and other cities that receive new arrivals.

A year has passed since the implementation of CBP One as the primary mechanism for managing asylum interview requests. While CBP has implemented minor changes to address serious glitches within the app, there are still several critical issues that require immediate attention and resolution. As asylum seekers remain in danger, CBP must address these access issues to ensure safe and humane asylum processing and relief for those at risk.

CBP One Application Limits Access to Asylum

First and foremost, CBP's decision to require asylum seekers to use the still-faulty CBP One app fundamentally undermines the accessibility of the asylum process. Because individuals seeking asylum at our southern border are required to pre-schedule an appointment through the app, the current process obstructs the right to seek asylum by forcing individuals to remain in Mexico while waiting for their asylum cases to be heard. CBP One itself is technologically complex and has significant language limitations, creating inherent barriers for applicants who are not familiar with mobile devices or who speak a language other than the three currently offered in the app. We strongly believe the requirement to use CBP One to apply for asylum contradicts President Biden's Executive Order 14012 directive to "ensure full participation by immigrants and eliminate barriers to accessing government services."

Emboldening Criminal Actors and Endangering Asylum Seekers

To date, many vulnerable individuals have been forced to wait in unsafe and impoverished Mexican border regions for an appointment through CBP One.[1] The appointment system operates like a lottery system, with far fewer appointments than needed. Individuals are only permitted to present their cases at ports of entry that can be hundreds of miles apart. For example, the DeConcini Port of Entry in Nogales, Arizona is the only port that accepts CBP One appointments in the 700 miles between Calexico, California, and El Paso, Texas, and it only

[1] *Inhumane and Counterproductive: The Expansion of Expedited Removal to the Interior and its Impact*, Human Rights First (October 2023), https://humanrightsfirst.org/wp-content/uploads/2023/10/Inhumane-and-Counterproductive-final-report.pdf

accepts 100 appointments a day.[2] This limitation has resulted in prolonged waiting periods, sometimes extending up to six months, forcing families to wait in Mexico in areas rife with criminal activities, including kidnapping, extortion, robbery, and assaults. Requiring asylum seekers to wait for a rare CBP One appointment, available only in a limited number of ports of entry, inadvertently fuels gang violence as criminal groups exploit these vulnerable individuals for financial gain.

The difficulties with CBP One increase the likelihood that asylum seekers will rely on cartel-backed smugglers to enter the United States instead of applying through legal pathways. If these challenges continue, our country could see more tragedies like the June 2022 mass death incident in San Antonio, Texas, where 53 people died after being trapped in the back of a sweltering tractor-trailer. There is also strong evidence that smugglers themselves have been actively spreading misinformation to capitalize on CBP One's faulty implementation. Multiple organizations have reported that smugglers falsely claim that the app will soon be discontinued and suggest that crossing between ports of entry is quicker and more straightforward than waiting for an appointment. There have also been reports of unscrupulous shadow businesses that charge asylum seekers to register for appointments outside of eligible geographic areas in northern or central Mexico. Such deceptive practices, combined with insufficient CBP One appointment availability, confuse asylum seekers about their place in line. At minimum, CBP needs to improve agency communications and outreach to help asylum seekers avoid misinformation and exploitation and reliably navigate the CBP One app.

Language Barriers

Another significant issue with CBP One is the language and technological barriers asylum seekers face. As you are well aware, the demographics of asylum seekers have diversified, including rises in extra-continental asylum seekers arriving at our southern border from Ukraine and Nepal among other countries. Notably, since its launch, CBP One has only been offered in English, Spanish, and Haitian Creole. Many asylum seekers who do not speak these languages find themselves at a significant disadvantage, struggling to access critical information and navigate our complex asylum process. One recent report identified that many African asylum seekers are completely unaware of the CBP One application, and those who are aware are unable to use it due to language barriers.[3]

Even for individuals who do speak one of the three main operating languages, the app can be difficult to understand. For example, accessing the Haitian Creole version of the app requires navigating initial questions in English or Spanish, and there are poor translations for critical and contextual words like "Customs." Moreover, the Spanish version of the app is not fully or accurately translated. While there have been additions to Russian and Portuguese language factsheets, these languages are not integrated into the app's core sections.[4] These limitations are extremely problematic because the app is the only way for arriving asylum seekers to schedule an appointment and get screened for asylum. Individuals who cannot use CBP One due to language barriers, technical failures, or other obstacles and present at a port of entry must demonstrate to often-skeptical CBP officials that it was not possible to apply through the app.[5]

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[2] *A Line that Barely Budges: Nogales, Arizona,* Human Rights First (June 2023), https://humanrightsfirst.org/wp-content/uploads/2023/06/A-Line-That-Barely-Budges_Nogales-Arizona-1.pdf

[3] *Asylum Policies Harm Black Asylum Seekers,* Human Rights First (February 2024), https://humanrightsfirst.org/wp-content/uploads/2024/02/Asylum-Policies-Harm-Black-Asylum-Seekers-FACTSHEET-formatted.pdf

[4] *CBP One – Ficha Técnica (Portguguês),* U.S. Customs and Border Protection, https://www.cbp.gov/document/fact-sheets/cbp-one-ficha-tecnica-portugues

There are real consequences for individuals who cannot use the app to schedule an appointment. Under the Circumvention of Lawful Pathways (CLP) final rule issued by DHS on May 11, 2023, noncitizens who cross the border outside of a port of entry are presumed ineligible for asylum by immigration authorities.[6] This rule, along with the challenges associated with accessing CBP One, was found arbitrary and capricious by the U.S. District Court in *East Bay Sanctuary Covenant v. Biden*, because exceptions for not using the app are not meaningfully available. [7] Despite that, the East Bay ruling has yet to be fully implemented, as the U.S. Court of Appeals for the Ninth Circuit decided on August 3, 2023, to continue the enforcement of the CLP rule. [8]

The final rule issued by DHS and the DOJ in 2023, which states that asylum seekers who arrive at the southern border without any authorization will face a "rebuttable presumption," is deeply concerning given the serious concerns we have outlined and adds another layer of complexity, danger, and potential exclusion. [9] The system's reliance on exceptions, which appear neither meaningful nor accessible, arbitrarily excludes people from accessing the asylum system because of the language they speak or their limited technological literacy.

Accessibility Barriers to the CBP One App

Finally, we urge CBP to address the heavy burden that has been placed on Non-Governmental Organizations (NGOs) to compensate for the federal government's shortcomings. In border communities, humanitarian organizations that already face funding and resource constraints are additionally providing technical and physical support for CBP One, including access to internet, smartphones, and chargers. This situation underscores the urgent need for CBP to enhance its support mechanisms and ensure that all individuals seeking asylum can do so without undue hindrance. Furthermore, CBP must fulfill its duties and ensure prompt processing of asylum requests and adherence to the National Standards on Transport, Escort, Detention, and Search (TEDS) standards on language access at ports to guarantee that technical and language barriers do not impede an individual's right to seek protection.

Given the listed challenges, we urge CBP and DHS to implement the following changes:

- **Expansion of Languages:** CBP One should be expanded to include a greater number of languages for all sections of the app, including preliminary questions.
- **Improvement of Translation:** CBP One's reliance on machine translation has led to mistranslations that jeopardize asylum seekers' ability to accurately represent their cases. CBP must review and correct these errors, which are particularly prevalent in both the Haitian Creole version of the app and the Russian factsheet. All translations should rely primarily on human translators to ensure that the information is conveyed correctly in an accurate and culturally competent manner.

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[5] *United States of America: Mandatory Use of CBP One Application Violates the Right to Seek Asylum*, Amnesty International, https://www.amnesty.org/en/wp-content/uploads/2023/05/AMR5167542023ENGLISH.pdf

[6] *Fact Sheet: Circumvention of Lawful Pathways Final Rule,* Department of Homeland Security (May 11, 2023), https://www.dhs.gov/news/2023/05/11/fact-sheet-circumvention-lawful-pathways-final-rule.

[7] *East Bay Sanctuary Covenant v. Biden, Summary Judgement Order,* ACLU, https://www.aclu.org/documents/east-bay-sanctuary-covenant-v-biden-summary-judgment-order

[8] *Obtaining Asylum in the United States*, U.S. Citizenship and Immigration Services (August 3, 2023), https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/obtaining-asylum-in-the-united-states

[9] *Department of Homeland Security and Department of Justice Executive Office for Immigration Review. "Circumvention of Lawful Pathways.* The Federal Register 88, no. 94 (May 16, 2023). https://www.govinfo.gov/content/pkg/FR-2023-05-16/pdf/2023-10146.pdf.

- **Increase in Appointment Availability:** We recommend increasing CBP One appointment slots to address high demand and other access issues outlined in this letter.
- **Removal of Rebuttable Presumption of Asylum Ineligibility:** This policy severely limits access to asylum and has exposed the most vulnerable of individuals to refoulement, insecurity, and violence. We ask that you publish updated data on all cases of asylum seekers who have been able to meet the standards necessary to overturn the presumption of asylum ineligibility.
- **Accounting for Variations in Language Literacy, Digital Literacy, and Reading Comprehension:** It is crucial to accommodate diverse levels of literacy (including digital literacy) and reading comprehension among asylum seekers. Should the administration decide to continue using CBP One as a tool of access to asylum, the agency should strive to make the guidance in the app more accessible and provide visual aids or audio options for those who may have difficulty reading or understanding text, as well as those with limited literacy.
- **Establishment of Clear Pathways for Troubleshooting:** CBP should develop accessible channels (including linguistically accessible channels) for both asylum seekers and supporting organizations to report issues with CBP One and ensure timely resolutions to technological issues.
- **Consistent Information Dissemination:** CBP should prioritize the dispersion of accurate and consistent information about CBP One and the asylum process in border communities and shelters and through supporting NGOs to dispel rumors and misinformation.

We believe these measures are essential to ensure that CBP One meets the balance between efficiency, access, and transparency while also addressing language access issues for asylum-seekers. Additionally, we request that DHS provide and/or make public current data on how frequently the language/other barrier exception is being established in both credible fear interviews (CFIs) and affirmative asylum interviews under the rule. We seek responses to the actions CBP is taking to address the issues outlined above and ask if any of the recommendations have been recently implemented no later than April 15, 2024.

Thank you for your attention to this serious matter, and we look forward to your timely response.

Sincerely,

Raúl M. Grijalva
Member of Congress

Jesús G. "Chuy" García
Member of Congress

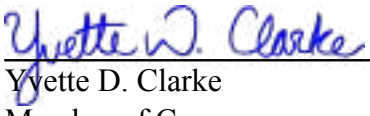
Joaquin Castro
Member of Congress

Grace Meng
Member of Congress

Adriano Espaillat
Member of Congress

Jamaal Bowman, Ed.D.
Member of Congress

Alexandria Ocasio-Cortez
Member of Congress



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Barbara Lee
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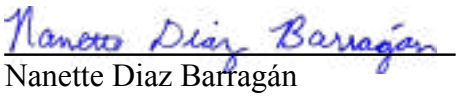

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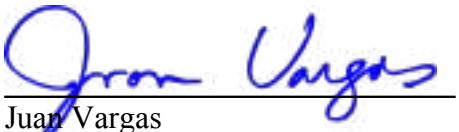

Juan Vargas
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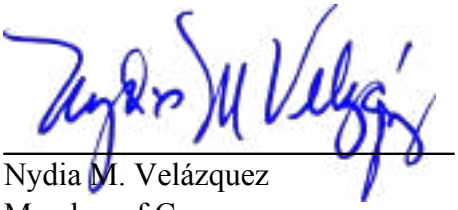

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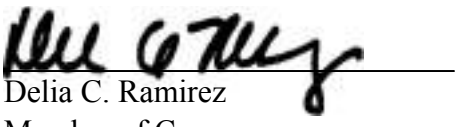

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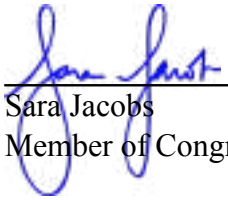

Sara Jacobs
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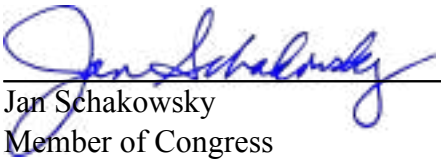

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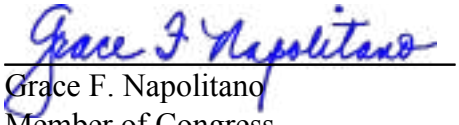

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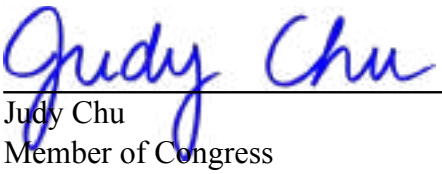
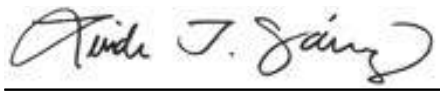


Judy Chu
Member of Congress



Linda T. Sánchez
Member of Congress

CATO INSTITUTE® BLOG

MARCH 4, 2024 2:59PM

Border Patrol: 70 Percent Drop in Successful Evasions Since Title 42 Ended

By **David J. Bier**

This updates an earlier post. The figures in this post were updated with March 2024 numbers, which show this trend continued.

Border Patrol Chief Jason Owens confirmed last week that the number of known successful evasions of Border Patrol ("gotaways") have fallen to just 800 per day in fiscal year 2024—down 70 percent from 2,671 the week before the Title 42 expulsion authority ended on May 11. A decline in gotaways this large and fast is unprecedented in Border Patrol's history, and even as the administration faces unrelenting criticism, this stands as a major immigration win.

I have previously written about this phenomenon, using numbers leaked by Border Patrol to friendly journalists who report them without the context of the broader trend. But this update confirms that the low numbers continued into January and February. Figure 1 shows the monthly data using the chief's update and media reporting for more recent numbers and a Freedom of Information Act for the older numbers. Gotaways fell from a high of 73,463 in April 2023 just before Title 42 ended to about 21,758 in February 2024. Ending Title 42 appears to have been the biggest single benefit to border security in its history.

Interestingly, the decline in gotaways has persisted even when the number of arrests has increased. Getting rid of Title 42 without letting people come legally was never going to change every aspect of the situation, but it has

not made the situation worse. From the standpoint of border security, the situation has improved dramatically because fewer people are escaping screening by the Border Patrol. This means Border Patrol can more effectively screen out criminals. Moreover, contrary to the apocalyptic claims about ending Title 42, the average number of Border Patrol arrests has not increased.

Figure 3 shows the "gotaway" rate—that is, the share of gotaways out of all arrests and gotaways. This is a rough approximation of Border Patrol effectiveness, controlling for the total inflow. As it shows, since Title 42

ended, the gotaway rate has fallen dramatically to below 14 percent, the lowest level outside of a couple months in 2019. This is a return to the trend under the Obama administration in reducing the rate of successful crossings. Every month since August 2023 has been below 15 percent—the longest such period on record. According to the Rio Grande Valley sector chief, this trend of low gotaway rates **continued** in that sector into March, and Fox News is **reporting** a low rate nationwide in March as well.

None of this should be a surprise. In **our amicus brief** outlining reasons to be skeptical of claims that Title 42 would cause a surge in illegal crossings, we explained that Border Patrol's practice of placing people back on the other side of the border incentivized illegal crossings by giving individuals repeated chances to enter illegally. It also motivated people who would otherwise turn themselves in for asylum to slip in covertly.

Gotaway data have become more reliable over the past decade because border surveillance has increased dramatically from 2005 to 2023. Now, nearly the entire border has some form of electronic surveillance at all times. Moreover, the Obama administration **made efforts** to systematize

the criteria for recording a gotaway to make the measure more consistent and reliable in 2014. Additionally, communication between stations was improved to remove double counting.

CBP also estimates the successful crossing rate using surveys of deportees. It first estimates the total flow of deportees returning to the US border based on surveys conducted by Colegio de la Frontera Norte International Border Survey. It then subtracts the number of deportees that it arrested and assumes the remainder escaped detection. Of course, some do attempt to reenter when they initially indicated no intention to do so, and some do not attempt to reenter when they said they did. CBP has made additional efforts to account for individual characteristics of crossers to resolve some of this problem.

While the model-based estimates are certainly not perfect, these data show that CBP's observational data (gotaways) are improving compared to the models. Figure 4 compares the observational apprehension rates to the model-based rates. It shows that the observational data converged with the model-based data around 2014. From that point on, the observational gotaway data accounted for between 75 percent and 100 percent of modeled gotaways.

Although the gap between observational and modeled estimates was the largest in 2020 since 2014, observational gotaways still accounted for about 75 percent of modeled gotaways. 2020's decline in modeled effectiveness likely reflects that people's intentions changed in response to the pandemic and fewer people tried to enter illegally than the model predicted. There was no observed increase in gotaways during fiscal year 2020, which ended in October (though there was a dramatic increase by December 2020).

The United States has a legitimate interest in regulating the entry of serious criminals and other threats to Americans, and border security is a significant component of that effort. Ending Title 42 improved border security and reduced successful illegal entries. This should force the many members of Congress and the administration who opposed ending Title 42 to rethink their position.

RELATED TAGS

Immigration

1300 Pennsylvania Avenue, NW
Washington, DC 20229

U.S. Customs and Border Protection

Commissioner

November 1, 2021

MEMORANDUM FOR: William A. Ferrara
Executive Assistant Commissioner
Office of Field Operations

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

SUBJECT: **Guidance for Management and Processing of Undocumented Noncitizens at Southwest Border Land Ports of Entry**

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.

POLITICS & POLICY

Fleeing for Your Life? There's An App for That.

The Biden administration has replaced key elements of our 50-year-old asylum system with "CBP One," a smartphone application. It looks like the future—but potentially a dystopian one.

By Jack Herrera

March 2, 2023

Texas Monthly; Migrants: John Moore/Getty; Phone: Getty

When Jairon Abraham Cruz left Cuba in early January, he had already spent years looking north toward the United States, telling his mother about his dreams of living in Florida, where his grandmother already resided. In October, the seventeen-year-old had posted a photo of himself on Facebook dancing with an American flag, the Havana skyline silhouetted in the sunset behind him. He hoped to become a dance influencer on YouTube and TikTok in the states. Then, around New Year's Day, as Cuba had slipped into a historic economic crisis and the government cracked down on protesters, Cruz's mother and her husband decided it was finally time for them, Cruz, and their daughter to leave. When the family's journey to the U.S. began, it felt to Cruz like the start of a new life. In reality, the teenager was living out his final days.

For generations, Cubans have fled the country, pushing off from the island in inner tubes, on Styrofoam boats, and even in **old trucks outfitted with propellers**. Rather than make the traditional voyage across the Atlantic to the U.S., however, Cruz and his family left in a way that's become more common in recent years, as the U.S. Coast Guard has increased enforcement and repatriation of Cubans intercepted at sea. They traveled first to Monterrey, nestled in the steep peaks of the Sierra Madre range in northeastern Mexico, with the intention of traveling nearly 150 miles north upon arrival and requesting asylum in the U.S. at the official port of entry in Laredo.

The family planned to travel quickly and avoid spending time in the notoriously dangerous Mexican border city of Nuevo Laredo, but in Monterrey, they learned about a new requirement for asylum seekers arriving on the U.S. border. Talking with their relatives already living in the U.S. with citizenship, the family learned that, if they simply arrived in Texas and attempted to request asylum, agents with Customs and Border Protection (CBP) would immediately deport them, no matter what. "My family and I were on our way to the border when the new law came up," Cruz's mother, Yamisleidys González, said over text.

Seeking to crack down on border crossings, both legal and illegal, President Biden **announced** on January 5 a new requirement to greatly limit the number of migrants who can officially request asylum. Today, those fleeing persecution need to first use an official CBP app, CBP One, to make an appointment at the border. (CBP One was **first rolled out in limited cases in 2021** but was not a broad requirement until January.) Unlike many asylum seekers, González had a smartphone, and she managed to use the new system. But, while CBP was releasing dozens of new appointments every morning, thousands of asylum seekers were waiting to cross and slots filled up almost instantly, so the earliest that González could schedule one for her family was weeks away, on February 3.

The family booked a hotel in Monterrey, a relatively prosperous industrial city that's considered one of the safer places in northern Mexico. Their downtown dwelling, Hotel La Silla, had seen better days. But the accommodations were far better than those of thousands of asylum seekers who sleep on the streets in border towns, where their foreign accents betray their vulnerability to cartels and kidnappers.

Two weeks later, in the early morning, the family heard shouting in the hotel hallway—at least two men were screaming something about Colombians. Someone suddenly began trying to force open their hotel room, and Cruz, closest to the door, rushed to hold it shut as González picked up her four-year-old daughter and ran to the bathroom. She heard two gunshots fired through the door. The men grabbed her husband, Gabriel Fernández, and pulled him out of the hotel, though he eventually fought them off. When González came out of the bathroom, she saw Cruz lying on the ground. He passed away in front of his mother and sister. He was the first asylum seeker to die while waiting for an appointment on CBP's app.

"He loved to dance and make everyone laugh," González, said. "He was so young."

News about Cruz's death reached Priscilla Orta, an asylum attorney in Brownsville, the morning after the teenager died. It broke her down. For weeks, Orta and her nonprofit, Lawyers for Good Government's 'Project Corazon' initiative, which provides aid to immigrants, had worked with asylum seekers on the Mexico side of the Rio Grande Valley, helping them use the new app. At first, she'd been optimistic about the technology. CBP One had the chance to introduce some order to the immigration system and to finally give asylum seekers the basic information they all craved: how to do things the *right* way.

For most of the past fifty years, U.S. law has guaranteed that any foreigners who present themselves to authorities on U.S. soil have a right to seek asylum; our country will let them in as long as they can prove they were fleeing persecution or danger. For decades, CBP agents would interview newly arrived asylum seekers on the border and, if their claims were deemed credible, allow them to stay in the U.S. until their court hearings to prove their cases. But in March 2020, when the COVID-19 pandemic first forced shutdowns in the U.S., the Trump administration began summarily expelling almost every asylum seeker who arrived on the border, invoking Title 42, a once-obscure federal statute that allows the president to halt immigration during public health emergencies.

The policy continued under the Biden administration, which has expelled more than 2.4 million would-be asylum seekers. The administration **tried to end the policy** in May 2022, but it remains in effect as it winds through the courts. But the administration has allowed more than 2.5 million migrants into the country, at least temporarily, under normal immigration procedures. Many of these were asylum seekers whom agents deemed "particularly vulnerable," and who were granted Title 42 exemptions, and have been permitted to cross into the country to pursue their claims in court.

CBP One has massively narrowed the pool of asylum seekers allowed to seek these Title 42 exemptions. Orta got a vivid window into how the new policy works in Reynosa, one of the most notoriously dangerous cities in Mexico, across the river from McAllen. Since the new regulations went into place, Orta and her team have seen multiple torture victims—some with clear

evidence of physical injuries—turned away at the port. CBP officials told them they'd have to use app. "I do not think this happened because our local officers are heartless," Orta said. "I do not—I think this is a conscious decision by the administration."

The process of using the app is theoretically straightforward. On CBP One, asylum seekers first certify they meet certain "vulnerability criteria." Then, they enter biographical information and take a facial photo, using the selfie camera in video mode (a CBP spokesperson said this video-selfie feature is to ensure "liveness"—in other words, that a real person is taking the photo). Finally, they book official appointments to meet with CBP agents to review their cases at one of eight ports along the border. (Five of these ports are in Texas: from the easternmost entry point in Brownsville, upriver to Hidalgo, Laredo, Eagle Pass, and El Paso.) If all goes well at these appointments, asylum seekers are released on official parole, with a date to appear in immigration court to make a formal asylum claim, or otherwise make a case against their deportation.

In Reynosa and in Matamoros, across the border from Brownsville, Orta and her team have advised dozens of asylum seekers on how to get appointments through CBP One. When the app works, the system is orderly, and CBP agents at the ports are respectful and efficient. But Orta has found that in many ways CBP One has functioned more like a deterrence mechanism to reject travelers than like a mode of entry. It's closer to razor wire than to an open gate. Where once the basic requirement for seeking asylum was "fleeing persecution," now there's a whole host of additional requirements, among them: having a working smartphone; internet connection to use the app; and the ability to read and write in English, Spanish, or, only recently, Haitian Creole, the only languages the app offers. Many of the most vulnerable do not meet these criteria.

When asylum seekers began using CBP One in January, they also discovered a finicky app plagued with bugs that would often crash. It felt like the digital equivalent of visiting the DMV. Aid workers also quickly noticed a troubling pattern. The photo scan feature struggled to take photos of most users (when I used it at home in Austin, it crashed multiple times, and didn't recognize my face at first). For users who were Black, especially, it repeatedly failed to work, unable to recognize differences in contrast on dark skin. Speaking on background, a CBP spokesperson acknowledged the bugs, but denied that the photo scan is not working for those with dark skin.

CBP One also has muddled the asylum process. At no point does the app ask users "Are you seeking asylum?" Those arriving for the CBP One appointments are given no interviews and asked no questions about vulnerabilities they listed in the app or about why they're seeking asylum in the U.S.—they're simply released into the country on official parole. Their court dates, in immigration court, aren't even necessarily asylum trials: they're often deportation hearings, where defendants can make arguments for remaining in the country, including through our asylum system. "That's the crazy part: nothing in the new [CBP One] parole program requires that you seek asylum," Orta said. "Somehow, we've decided to punish those who arrive on the border, without the app, actually seeking asylum, but we're

going to let in those who may or may not have any particular reason to seek asylum, [including some] who feel safe in their home country."

Orta added, with a laugh, that she sometimes feels more frustrated with Biden than Trump—under whom policies made more sense: they were all obviously deterrence measures. "At least under Trump, I knew how to work the system," Orta said.

During the Trump administration, as family separation dominated the headlines, a lesser-known Trump policy later dubbed "Remain in Mexico" affected thousands of migrant families, forcing them to wait for asylum hearings for months, sometimes years, in Mexico, rather than north of the border as was standard practice for decades. CBP began a "metering" policy: at each port, agents only accepted a small number of asylum seekers each day and told the rest to wait. Stuck in cities such as Tijuana with nowhere to go, asylum seekers coordinated among themselves and created "La Lista"—an unofficial, but quite formal, list jotted down in college-ruled notebooks that tracked where each migrant stood in the line to ask for asylum. Almost every week, asylum seekers waiting for their turn reported getting **raped, robbed, kidnapped, and extorted** in northern Mexico.

CBP One looks like a brave new future, but, in many ways, it's simply a digital version of those notebooks. Advocates such as Guerline Jozef, cofounder and executive director of the Haitian Bridge Alliance, one of the main nonprofits guiding asylum seekers through CBP One, worries that the app is simply an extension of Remain in Mexico, a Kafkaesque bureaucratic mechanism—like when a pilot says "We'll be moving in about a half hour" to keep passengers calm during an indefinite delay. She sees it as a way to encourage asylum seekers to wait patiently in dangerous areas for an opportunity that may never come. Jozef has met some families who have tried for weeks to get appointments, to no avail. "If people have to wait a week, two weeks, a month, that's a problem," Jozef said. "They are not safe in northern Mexico—people are going to die."

In Monterrey, Jairon Abraham Cruz did die. In desperation, his grandmother, a U.S. citizen in Miami, reached out to a local immigration lawyer, Wilfredo Allen, for help. As they grieved the death of Cruz and worked to get his body repatriated to Cuba, the family struggled mightily to get the app to work for them. "We got them a new phone; we tried re-downloading the app; nothing worked," Allen told me, adding that the experience of struggling with the app taught him something. "If you're in northern Mexico, [the app] will give you a lot of hope. But it's going to be a difficult road."

Eventually, Allen contacted CBP, and agents guided him through how to make the app work; the solution involved completely deleting the family's existing profile and starting again from scratch. In late February, Cruz's mother and young sister finally made it into the U.S. through a new parole program for Cuban asylum seekers, which Biden had announced at the same time as CBP One in early January.

González's husband did not cross with his wife and daughter. Two months after fleeing for a better life, he returned to Cuba, to await the return of Cruz's body.

***Correction 3/4/2023**: A previous version of this article conflated the experiences of multiple asylum seekers in a paragraph about a Haitian migrant who was turned back at the border. This article has been updated to note that Priscilla Orta and her team members encountered multiple torture victims in Reynosa, who were then each turned away at the port.*

IMMIGRATION

Asylum seekers in Tijuana are scrambling through mobile app error messages for few appointments into the U.S.

A Tijuana official assists a migrant woman with the CBP One app at Palacio Municipal on the first morning that the mobile application was available for migrants. (Alejandro Tamayo/The San Diego Union-Tribune)

CBP One is the new and only way for asylum seekers to request to enter the United States through official ports of entry, but not everyone has been able to use it successfully

BY KATE MORRISSEY

JAN. 22, 2023 6 AM PT

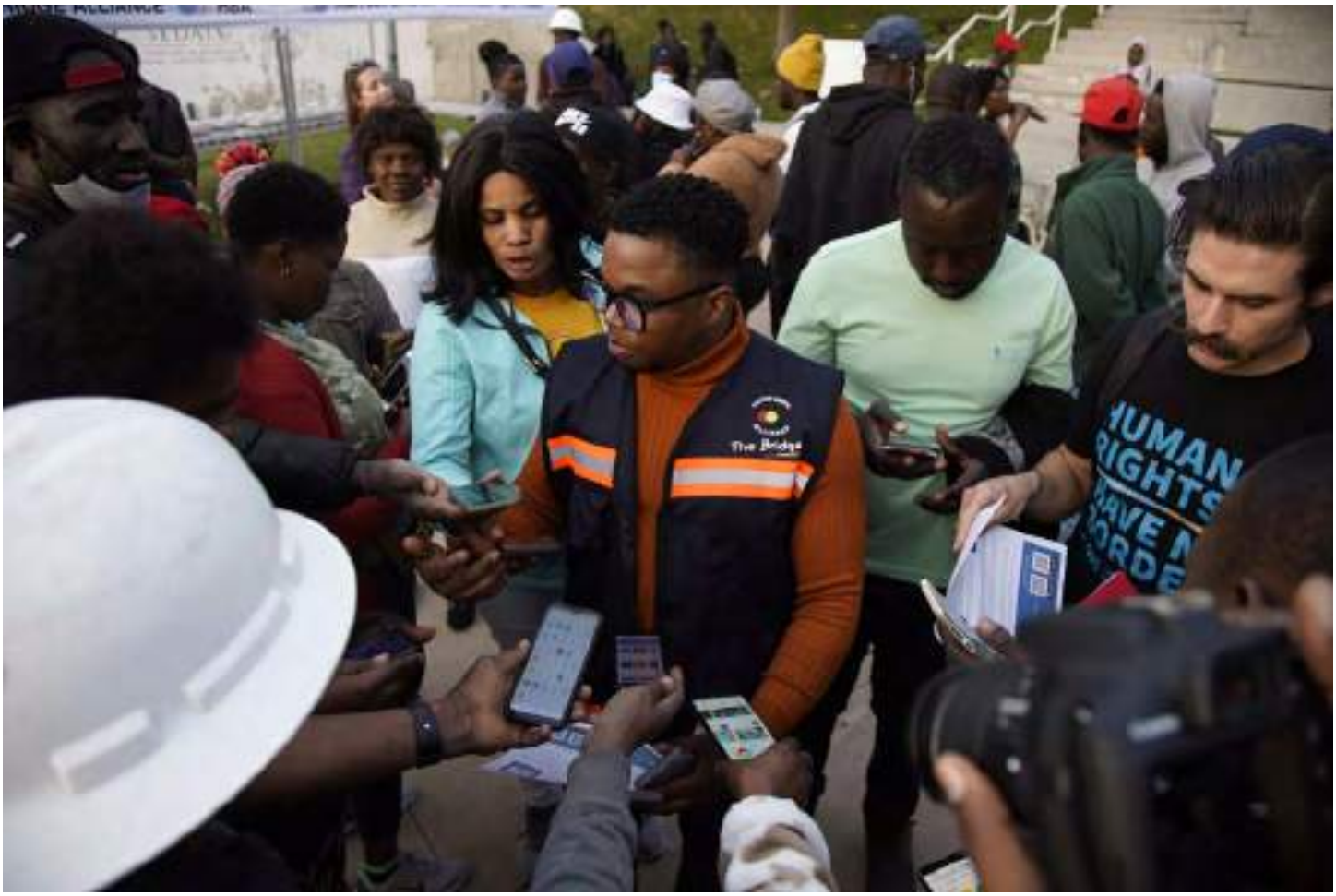
TIJUANA — On a recent morning, a woman from central Mexico held a phone up to her face outside of the Tijuana municipal building and took a picture. It was the first day that a U.S. government phone app offered port of entry appointments to migrants hoping to request asylum.

Error, the app said.

A city official rushed to help her. Together, they took another photo close to her face. Error again.

The official moved her to spot where the splotchy shadows from the trees didn't reach her face. They took another picture. Another error.

The woman's experience was similar to that of many migrants across the city who have been trying to use the app, called CBP One, now the only way to walk into a port of entry to request protection in the United States. The facial recognition technology used to submit a photo to the app has been particularly prone to error since it launched on Jan. 12, and it is one of many issues that migrants and their advocates have noted since the app's rollout.



During an event to pay tribute to the victims of the 2010 earthquake in Haiti, Jean Jeef Nelson of Haitian Bridge Alliance shares information about the CBP One app. (Alejandro Tamayo/The San Diego Union-Tribune)

CBP One is part of a series of border policy changes that continue to shift the United States away from the international norm of migrants being allowed to apply for asylum once they're on the soil of the country where they plan to seek protection. Many of these changes, including CBP One, have meant that those with more resources have easier access to asylum screenings while many of the most vulnerable cases are left out.

Lack of reliable Internet and limited digital savvy, as well as language barriers, are among the issues that are already separating who can get appointments in the new process and who cannot.

The application is now the only way for migrants to request exemptions to Title 42, a policy that blocks asylum seekers and other undocumented migrants from coming onto U.S. soil and instructs border officials to expel those who do so without

permission, skipping the generally legally-required screening to see if they qualify for protection.

The exemptions are supposed to be for particularly vulnerable migrants, such as those who have immediate medical or safety concerns while waiting in Mexico. Asylum seekers have to attest that they meet at least one vulnerability category when they submit their applications, but they do not know until they get to CBP at the port of entry whether they will be accepted.

No more appointments

A Tijuana official shows information about the CBP One application to a woman from Michoacán. (Alejandro Tamayo/The San Diego Union-Tribune)

On the first day that migrants could request appointments in the CBP One app, Tijuana's Office of Migrant Services set up a Wi-Fi zone outside of the municipal

building with officials ready to help migrants submit their information to Customs and Border Protection.

A small number of migrants found the support tent, and officials walked them through the process. Officials even took their height and weight measurements to be as accurate as possible.

By mid-afternoon, the officials had managed to finish the process for three families, a total of nine people, according to Enrique Lucero, the head of the office.

But the appointments quickly filled.

A 22-year-old woman who had fled the Mexican state of Michoacán started the process with city officials that morning, but by the time they had gotten the application to accept photos for her and all of her three children, there were no more appointments, she said.

Over a week later, she still hadn't been able to book one. She said that in the shelter where she's staying, the app moves very slowly, likely a result of poor Internet quality.

The city of Tijuana has turned the Unidad Deportiva Reforma, a sports complex, into a temporary migrant shelter. (Alejandro Tamayo/The San Diego Union-Tribune)

When it launched the app as a way for migrants to request entry, CBP said that it would offer two weeks of appointments at a time. That means that every morning at 6 a.m., one more day of appointments opens up.

There are 200 appointments per day at the San Ysidro Port of Entry, according to CBP. The agency declined to say how many were available borderwide.

Further complicating matters, as appointments on the app filled up, some migrants only saw available slots at far away ports of entry, according to Marcos Tamariz, deputy head of mission in Mexico for Doctors Without Borders. That meant that some of the Tijuana appointments were booked by migrants in Matamoros, a city on the eastern end of the border across from Brownsville, Texas.

Routes along the border from Matamoros to Tijuana are among the most dangerous in Mexico, he said, "so asking them to move from one place to another is not as easy as it seems."

"There is lots of frustration behind this and not sufficient guidance or information that would allow people to make the best decision," he said.

Inequity and Internet

A child plays with a plastic toy outside the migrant shelter at Templo Embajadores de Jesus. His mother fled Michoacán with him to request asylum in the United States. (Alejandro Tamayo/The San Diego Union-Tribune)

The use of the app, especially when coupled with the quick disappearance of appointments, has led to disparities.

People who have weak Internet connections struggle to get the app to work. While the city of Tijuana reinforced the Wi-Fi network at a city-run shelter it opened up late last year to receive expelled Venezuelans, migrants in other shelters or on the street often have little access to reliable Internet. Some don't have cellphones.

The first appointments offered by the app were Thursday.

On that morning, the Union-Tribune observed mostly groups of Russians showing up for appointments as migrants arrived at El Chaparral plaza on the south side of the port of entry and walked up to the special entrance for CBP One processing.

Russian asylum seekers tend to have the financial resources to stay in hotels in Tijuana rather than shelters, meaning they have access to better Internet.

As the Russians walked by, a man, his wife and four children who had recently fled Michoacán sat on the sidewalk. The man held two phones, trying to navigate the app. The first several pages were in English.

Once he managed to get past those, he still struggled even though the rest of the app was in Spanish. After missing the link to create an account for several minutes, he finally managed to input an email address. He waited for the confirmation email, but it never came. He tried again, still no email. It was not clear what the man needed to do differently.

That same day, at Templo Embajadores de Jesus migrant shelter, where well over 1,000 migrants are waiting to request asylum in the United States, only one of the people interviewed by the Union-Tribune had heard of the app — and only because she had been at the city building.

The shelter had had more immediate issues to deal with besides the app. The rains that flooded much of San Diego and Tijuana shortly after the app's launch had

destroyed the road leading up to the canyon shelter.

Recent rains washed over the main road leading to the migrant shelter at Templo Embajadores de Jesús, destroying water pipes and cutting off vehicle access to the shelter. (Alejandro Tamayo/The San Diego Union-Tribune)

Those storms also created more difficult conditions for the migrants waiting inside. New arrivals to the Embajadores shelter sleep on mats on the floor until beds open up. They shared stories of the building flooding, soaking them and their bedding. Many had gotten sick as a result.

Since then, none of those interviewed by the Union-Tribune have succeeded in booking appointments. They try every morning at 6 a.m., but it is always full.

The app is even more complicated for those who don't speak English or Spanish. Even though Haitians are one of the nationalities recently included in expulsions, the app is not available in Haitian Creole.

"We are already seeing rampant misinformation and scams around this program, and the lack of equity around language access is opening yet another avenue for the exploitation of Haitian migrants who are left confused, frustrated and in limbo," said Guerline Jozef, executive director of Haitian Bridge Alliance. "We are extremely disappointed that once again the system continues to fail Black migrants in search of protection."

Erika Pinheiro, executive director of legal services nonprofit Al Otro Lado, said she was concerned about reports from migrants in Tijuana that those with darker skin, including both Black and Indigenous migrants, were having a particularly hard time getting the photo portion of the app to work.

Studies of facial recognition software have shown that the technology tends to have more errors when screening these demographic groups.

Expelled and waiting

Jesús, an asylum seeker from Cuba who was recently expelled, is hoping to enter the United States soon through a CBP One appointment. (Alejandro Tamayo/The San Diego Union-Tribune)

Jesús, a Cuban man who asked not to be fully identified because of his ongoing vulnerable situation, is waiting anxiously for his CBP One appointment.

Jesús fled Cuba in December and was expelled from the United States in early January.

He left because of government surveillance and harassment and the effect that had on his business fixing washing machines, he said.

“I’ll summarize it in one sentence — there is no freedom,” he said of Cuba. “There is no freedom for anything.”

He said Border Patrol agents made him throw away his belongings except for his documents when they apprehended him after he crossed in the Mexicali area. Then

they put him on a bus and, without telling him where he was going, sent him to the border where he was expelled to Tijuana.

“My world fell,” he said in Spanish. “I made so many sacrifices. To be returned is something really hard.”

He’s been staying at the shelter run by the city of Tijuana converted from a sports complex. He filled out the CBP One application on the first morning it was available, he said, and was able to get an appointment. His friend who tried later in the day was not.

Still, he’s fearful that CBP could reject him.

Los Angeles Times staff writer Andrea Castillo contributed to this report.

Kate Morrissey

CBP One Is Riddled With Flaws That Make the App Inaccessible to Many Asylum Seekers

Posted by Raul Pinto | Feb 28, 2023 | Asylum, Border Enforcement, Enforcement

In January and February of this year, the Biden administration announced new policies to process individuals seeking

asylum at ports of entry at the U.S.-Mexico border. A key component of these new policies is the increased use of the CBP One app. CBP One allows certain people to submit their biographic information to U.S. Customs and Border Protection (CBP) before arriving at ports of entry.

The government requires Cubans, Haitians, Nicaraguans, and Venezuelans applying for advance travel authorization to come to the United States and seek humanitarian parole to use CBP One. The app also is the main method by which people seeking to enter the United States under an exemption to Title 42—the law that has been used by the government to expel potential asylum-seekers—can submit their information and make appointments at ports of entry.

This month, the Biden administration published a proposed rule that makes CBP One a necessity for those seeking asylum after Title 42 restrictions are lifted. If the rule goes into effect, asylum seekers who traveled to the United States and passed through a third country—like Mexico or Guatemala—but did not seek protection in such third country must use CBP One and make an appointment for processing at ports of entry to remain eligible for asylum.

But while the app has the potential to make border processing more efficient, the recent expansion of CBP One's functions has been riddled with problems. The app's flaws, coupled with the lack of access to appointments, are preventing many people from successfully entering the United States to seek protection.

Issues with Capturing Photos

One of the main issues reported by CBP One users is that the app's expanded photo function disproportionately rejects people with darker skin tones. One of the first steps applicants must take to submit their information is to take a selfie using CBP One. As described in the U.S. Department of Homeland Security's (DHS) Privacy Impact Assessment—one of the only government documents with a detailed description of CBP One's functionality—CBP officers at the port of entry will take a new photo of the traveler, which is then searched against photos in a database. Media reports indicate that CBP One has trouble capturing the photos of people with darker skin tones at the first step.

Some asylum seekers using CBP One also have been unable to schedule appointments at ports of entry due to the limited availability of appointments.

Repeated rejections of photos can lead to applicants' delay in submitting the required information, which contributes to an inability to obtain appointments. This flaw in the system has the effect of shutting some people out of the asylum process altogether.

Inherent Issues with Accessing Humanitarian Processes Through an App

The agency's plan to make access to humanitarian programs for vulnerable populations contingent on people's use of CBP One had flaws from its inception. CBP One relies on people having strong mobile connectivity to download the app. This is a problem for individuals who need to download the app in Mexico in order to apply for Title 42 exemptions and for individuals in Cuba, Haiti, Nicaragua, and Venezuela who intend to apply for humanitarian parole programs. Users report it is difficult to stay connected to the internet for long enough to enter information for the main travelers and their family members.

CBP also assumes that travelers with limited financial resources would be able to obtain a phone that would allow them to download and use the app.

Finally, navigating CBP One requires a certain level of tech-savviness that some asylum seekers lack. For example, the app requires users to first create an account with Login.gov, a website that provides access to certain government agencies' function. The app also requires two-step authentication to sign in once an account has been created.

Systemic Failures Prohibit People From Completing CBP One Functions

Others have reported that CBP One users often get error messages while using the app that prohibits them from successfully entering their information.

These errors, coupled with the requirements for users to understand how to access the app, further limit those who can use CBP One.

Agency documents released by CBP in response to a FOIA lawsuit revealed that it is expanding CBP One's functions with little transparency. Documents show that CBP One was not created for the processing of asylum seekers, but within months after unveiling the app, CBP added features to it for this purpose. It is unclear whether CBP considered whether the technology used in the app could disproportionately shut out

racial minorities or would create the current accessibility issues users face.

CBP needs to fix these issues in order to increase access to the app for individuals who are eligible to enter the United States through certain programs. If the app isn't accessible to certain individuals, CBP must provide other methods for processing and widely publicize these alternatives. Further, the agency must ensure that potential users have information well in advance of when functions are rolled out so that people know how to access these capabilities. Thus far, CBP's efforts to advise potential CBP One users have been insufficient.

Making border processing for individuals seeking asylum more efficient—especially if it reduces the time people are detained—is a worthy goal, and technology is crucial to success. However, the technology must work properly. CBP One has a long way to go toward meeting that goal.

FILED UNDER: CBP One Risks, Customs and Border Protection

ABOUT THE AUTHOR

Raul Pinto

Raul Pinto is a Senior Staff Attorney at the American Immigration Council. His work focuses on promoting transparency in the field of immigration, helping to lead the Council's Freedom of Information Act (FOIA) work, and supporting litigators, open-government organizations, and other advocates encourage agency transparency on immigration issues, with a focus on enforcement and due process. Previously, Raul was a Senior Attorney with the North Carolina Justice Center representing low-income immigrants at all stages of the immigration process. Prior to his work at the NC Justice Center, Raul was a staff attorney at the ACLU of North Carolina investigating civil rights violations with an emphasis on immigrants' rights. Raul holds a J.D. from City University of New York School of Law and a B.A. from Rutgers University.

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CONGRESS

House Democrats call to improve border appointment app

Lawmakers say glitches, accessibility limits on CBP One app have caused 'grave harm'

Rep. Jesús "Chuy" Garcia, D-Ill., speaks at a rally in 2021 in Washington. (Paul Morigi/Getty Images for CPD Action)

By **Suzanne Monyak**
Posted March 14, 2023 at 12:37pm, Updated at 4:15pm

Nearly three dozen House Democrats raised concerns Monday about the Biden administration's use of a smartphone application for migrants to request an appointment to seek asylum, the latest in mounting criticism from the president's own party over his border policies.

The group of 35 Democrats, led by Reps. Jesús "Chuy" García of Illinois and Raul M. Grijalva of Arizona, called on Homeland Security Secretary Alejandro Mayorkas to "take immediate steps to resolve the serious equity and accessibility issues migrants are facing" when using the CBP One app, in a letter sent Monday and obtained by CQ Roll Call.

The app, developed in 2020 for other uses by travelers, was recently expanded to allow migrants to schedule appointments at the U.S.-Mexico border to request the opportunity to seek asylum.

But CBP One has since come under fire by immigrant advocates and nonprofits at the border for technological glitches and accessibility limits, which they say makes it harder for migrants who speak only indigenous languages or who do not have access to smartphones or reliable internet service to access protection.

The Democrats said in their letter that their offices "have received numerous reports of unusability, inaccessibility, and inequity that have already resulted in grave harm to asylum seekers," and they asked Mayorkas to "increase accessibility and usability of this app."

"While technology can be helpful to facilitate processing, it should never be used to create a tiered system that treats groups differently according to economic status, gender identity, age, language, nationality, or race," the Democrats wrote.

They suggested the department make the app more accessible for migrants who speak other languages besides the three offered — English, Spanish and Haitian Creole — and for migrants with disabilities, including those who are blind.

They also asked the department to ease the photo verification requirement of the app, after advocates reported problems for migrants with darker complexions and babies and toddlers.

The lawmakers further asked Mayorkas to "reverse course" on plans to implement a policy proposal that would limit asylum eligibility for migrants who arrive at the border and request protection, unless they had secured an appointment through the CBP One app or attempted to seek asylum in another country first, among other exceptions. That proposed asylum rule was publicly released last month.

"The administration should withdraw this rule and pursue rational policies that ensure pathways to asylum for all migrants arriving at the southern border," the lawmakers wrote.

According to DHS, demand for appointments has continued to outstrip supply, but the department has made recent improvements to the app, including one that aims to make it easier for family units to secure an appointment as a group. As of the end of January, more than 20,000 people have scheduled appointments through the CBP One app, according to the department.

Monday's letter is the latest example of heightening critiques the administration has faced from other Democrats over efforts to restrict asylum and reduce the number of unauthorized border crossings.

In February, Sen. Edward J. Markey, D-Mass., sent a letter to Mayorkas that asked the Department of Homeland Security to "shelve the CBP One app immediately." Markey said the app "raises troubling issues of inequitable access to — and impermissible limits on — asylum, and has been plagued by significant technical problems and privacy concerns."

The recently proposed asylum restrictions, paired with reports that the administration considered reinstating migrant family detention, has also frustrated members of the Congressional Hispanic Caucus, who have complained the administration has left them out of the loop on major immigration policy developments.

Sen. Bob Menendez, D-N.J., a vocal proponent for passing comprehensive immigration legislation, said earlier this month that "the lack of communication on immigration-related policy decisions is an insult."

Congress of the United States
House of Representatives
Washington, DC 20515–1304

March 13, 2023

The Honorable Alejandro Mayorkas
Department of Homeland Security
300 7th St. SW
Washington, DC 20024

Dear Secretary Mayorkas,

We write to express our serious concerns over this administration's recently announced initiatives that drastically restrict the rights of asylum-seekers at the U.S.-Mexico border, to call on the Department of Homeland Security (DHS) to uphold its obligations under domestic and international law, and to urge you to take immediate steps to resolve the serious equity and accessibility issues migrants are facing when trying to use the CBP One mobile application as the sole means of seeking asylum at southwest border land Ports of Entries (POEs).

First, we urge DHS and the Department of Justice to reverse course on the proposed rule published on February 23, 2023 that would ban most migrants from asylum protection in the United States. If implemented, the rule would create a presumption of asylum ineligibility for individuals who did not apply for, and/or did not receive a denial of, protection in a transit country, and for those who entered between ports of entry at the southern border or attempted to enter at a port of entry without a previously scheduled appointment through the CBP One mobile application. The standard for asylum is well-established under U.S. and international law, and does not discriminate based on manner of entry or immigration status. We are deeply concerned that establishing a higher standard for asylum for people unable to seek and be denied protection in a third country or to obtain an appointment through a mobile application would circumvent this statutory scheme and undermine the fundamental right to asylum, violating the letter and spirit of the law. The administration should withdraw this rule and pursue rational policies that ensure pathways to asylum for all migrants arriving at the southern border

Second, while we recognize the administration's efforts to provide convenient, orderly and lawful pathways to migration at the southern border, we advise you to both diversify methods to achieve this goal beyond the CBP One mobile application and to increase accessibility and usability of this app. DHS announced that individuals seeking to enter the United States under exemptions to Title 42 at southern land POEs should use CBP One to submit information prior to their arrival and schedule appointments starting on January 12, 2023. Since then, our offices have received numerous reports of unusability, inaccessibility, and inequity that have already resulted in grave harm to asylum seekers.

Create an alternative pathway to present at POEs. According to DHS Guidance, 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.[1] However, the app is now a requirement to access the Title 42 exemption process (and, in the future, asylum processing at ports of entry), a photo is required from all migrants, and NGOs may no longer provide help with pre-submittal of information, which must come from an individual's smartphone.[2]

Under both U.S. and international law, an appointment is not required to seek asylum. For as long as Title 42 has been enforced, CBP has allowed certain vulnerable asylum seekers to seek exemption from the policy and enter the United States. As it stands today, CBP One requires attestation to direct harm in Mexico and provides no pathway for asylum-seekers escaping harm in their home countries including due to group membership status such as sexual orientation, gender identity, religious belief, or race.

Additionally, many migrants are either unable to access the CBP One app, or, if they are able to log in to the app, are unable to access appointments due to their extremely limited availability. Many migrants do not have access to high-speed internet or high-end technology such as the smartphones with specific capabilities required to download the CBP One application.[3] Further, our offices have received numerous reports of appointment slots being filled within seconds of their release at 8:00 am each morning, creating grave concerns about the safety of individuals who are particularly vulnerable or facing medical emergencies or other crises.

We urge you to take all steps possible to ensure that people seeking asylum at POEs are provided access in accordance with U.S. refugee law and are not turned away when they have not used, or been able to use, CBP One to make an appointment. With Title 42 in effect, we also urge you to follow CBP's written commitment to make admissibility and processing determinations on a case-by-case basis at the POE, and ensure that port directors and CBP officers retain discretion to prioritize processing of migrants based on need, medical emergency, vulnerability, or other humanitarian factors for which we owe them a statutory duty, in order to ensure individuals who

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1 *Guidance for Management and Processing of Undocumented Noncitizens at Southwest Border Land Ports of Entry*, U.S. Customs and Border Protection (Nov. 1, 2021),https://www.cbp.gov/sites/default/files/assets/documents/2021-Nov/CBP-mgmt-processing-non-citizens-swb-lpoes-signed-Memo-11.1.2021-508.pdf. Indeed, A 2021 information collection notice assured that the use of CBP One as "voluntary," saying photos would only be required from those migrants that "choose to provide advance information," and that, even upon full roll-out of the application, NGOs would still be able to help individuals with the process that needed it. https://www.federalregister.gov/documents/2021/09/28/2021-20988/collection-of-advance-information-from-certain-undocumented-individuals-on-the-land-border.

2 *Supra*, note 1.

3 CBP One Mobile Application, U.S. Customs and Border Protection, *NEW: Submit Advance Information and Schedule an Appointment Capability for Non-Citizens without Appropriate Travel Documents*, https://www.cbp.gov/about/mobile-apps-directory/cbpone.

are unable to secure appointments via CBP One are able to apply for exemption and seek asylum.

Make Critical Changes to App Procedures. We also advise you to immediately increase the accessibility and usability of the app by addressing the following issues.

Keep all families together. The current process for submitting information and scheduling appointments in CBP One makes it all but impossible for a family to get a block of appointments together, as each family member must book an appointment and appointment blocks are not set aside for families, leading to de facto priority for single adults. Attestation to harm in the third country of Mexico also presents families with a heightened standard that does not align with the vulnerabilities under Title 42.

Make migration processing technology accessible. CBP One requires high levels of technological literacy, and its interface is only available in English, Spanish, and Haitian Creole languages, leaving asylum seekers that read and write in other languages unable to use it or forced to pay high fees to third parties for paper instructions in their native language. We urge you to immediately add simple instructions to the application while making it accessible in other common languages read and written by asylum seekers presenting at the ports, using recent historical data to prioritize the order of translation efforts. We also urge you to address accessibility issues for asylum seekers who lack literacy in any language, require help due to disability, or are blind.

Cease reliance on third-party photograph comparison technology. CBP One requires users to submit photos as part of the information entry process and the facial comparison technology it has used is far more likely to misidentify people of color, children, and transgender migrants. Some migrants, particularly those with darker skin tones, have reported that CBP One rejects required photos, delaying or rejecting their applications. Similarly, there have been many problems associated with capturing images of babies and small children. Transgender migrants may present differently at the border than they did at the time of photo capture, leading to problems at the POE. We recommend ceasing use of the photo comparison tool until and unless the technology can be used equitably and to ensure vulnerable groups can seek Title 42 exemptions, even if their faces are not recognized by CBP One's facial comparison technology.

Families traveling thousands of miles to seek safety abroad are entitled to dignity and respect when they arrive at our border. While technology can be helpful to facilitate processing, it should never be used to create a tiered system that treats groups differently according to economic status, gender identity, age, language, nationality, or race.

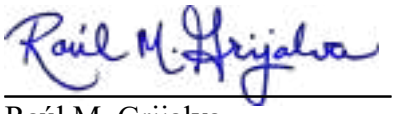
We ask that the administration develop alternative pathways to apply for Title 42 exemption appointments immediately, while rapidly disseminating concise and accessible information about

both how to use the app and the availability of alternative methods for individuals who do not have access to the application. We believe these measures are essential to ensure that CBP One meets the balance between efficiency, access, and transparency for asylum-seekers approaching our southwest border.

Thank you for your attention to this urgent matter, and we look forward to your response.

Sincerely,

Jésús G. "Chuy" García
Member of Congress



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Eleanor Holmes Norton
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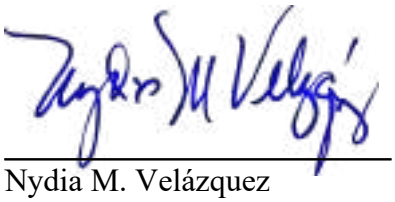

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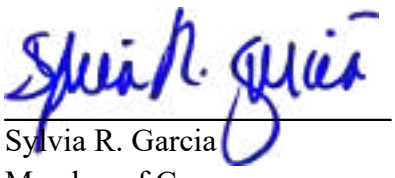

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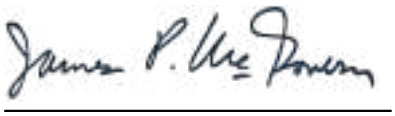

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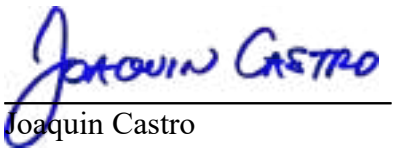

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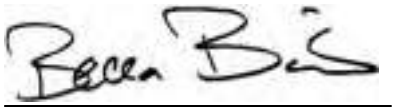

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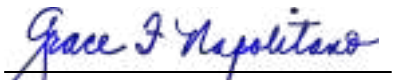

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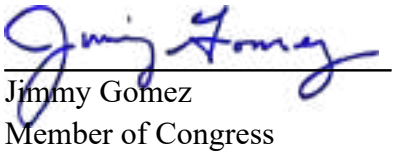

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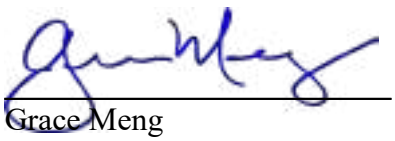

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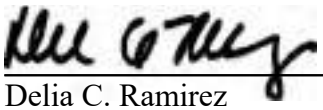

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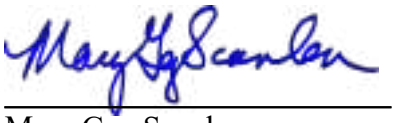

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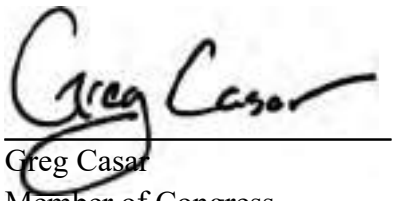

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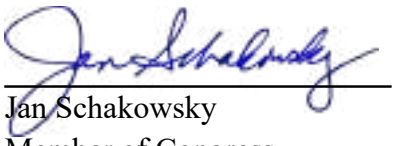

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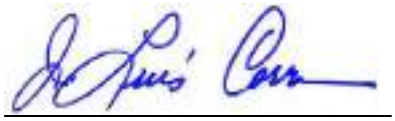

J. Luis Correa
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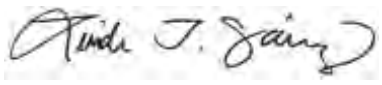

Linda T. Sánchez
Member of Congress

Nikema Williams
Member of Congress

FEBRUARY 21, 2023

SENATOR MARKEY CALLS ON DHS TO DITCH MOBILE APP RIDDLED WITH GLITCHES, PRIVACY PROBLEMS, FOR ASYLUM SEEKERS

Washington (February 21, 2023) – Senator Edward J. Markey (D-Mass.) today sent a letter to the Department of Homeland Security (DHS) urging it to cease using its problematic CBP One app. DHS has required migrants seeking asylum at the southern border to use the app and submit sensitive information, including biometric data and precise location data, raising serious privacy concerns. The CBP One app has also suffered from technical problems, including facial recognition software misidentifying people of color. The app further presents barriers for asylum seekers who do not have cellular or internet access. The Senator's letter to DHS also raises concerns that the CBP One app promotes the false notion that an appointment is required to seek asylum in the United States and the expectation of its expanded use once Title 42 restrictions are lifted carries profound long-term implications for the U.S. immigration system.

"This expanded use of the CBP One app raises troubling issues of inequitable access to — and impermissible limits on — asylum, and has been plagued by significant technical problems and privacy concerns. DHS should shelve the CBP One app immediately," **Senator Markey wrote to DHS.** "Rather than mandating use of an app that is inaccessible to many migrants, and violates both their privacy and international law, DHS should instead implement a compassionate, lawful, and human rights centered approach for those seeking asylum in the United States."

The letter continues, "Technology can facilitate asylum processing, but we cannot allow it to create a tiered system that treats asylum seekers differently based on their economic status — including the ability to pay for travel — language, nationality, or race."

In the letter, Senator Markey requested that DHS respond to the following questions by March 10, 2023:

1. Will DHS commit to permanently cease using the CBP One application to screen asylum applicants? If not, why not, and will DHS at least temporarily stop using it until DHS can remove any biometric technology and geolocation functionality and fix the app's technical issues?
2. Will DHS ensure that there is an alternative means for migrants to seek asylum at the southern border, one that does not require an app or internet access? Currently, are asylum seekers who lack a smartphone or internet access — and therefore cannot schedule an appointment through CBP One — turned back when they present themselves at a point of entry (POE)?
3. How is DHS preventing the CBP One app from discriminating against applicants of color, including the app's rejecting photos of applicants with darker complexions?
4. What assistance, if any, is DHS providing to asylum seekers whose photos are rejected, or who receive error messages or experience other technical problems with CBP One? Can migrants seeking asylum at the southern border still exercise that right without using the CBP One app?
5. Before CBP One's expanded rollout, was the application tested to screen for technology glitches or failures? If not, why not?
6. Before CBP One's expanded rollout, were civil society or nongovernmental organizations consulted? If not, why not?
7. Why are only eight POEs participating in CBP One? How and why did DHS decide on this number and the specific locations?
8. How many appointments does DHS make available each day through the CBP One app?
9. In what geographic areas does the CBP One application work and how was this decided?
10. How is DHS working with Mexico to ensure the safety of individuals who must travel in order to present themselves at one of the eight participating POEs?
11. The CBP One app is available only in English, Spanish, and Haitian Creole languages. This makes the app inaccessible to asylum seekers who speak a different language. How did DHS decide on these three languages? What options are available for asylum seekers using the CBP One app who don't speak those three languages?
12. What steps is DHS taking to prevent exploitation of asylum seekers through clone apps or scam attempts? How is DHS defending against misinformation around the CBP One app?
13. How is DHS safeguarding biometric and geolocation information obtained through use of the CBP One App? How is DHS ensuring that this information cannot be misused? Has CBP shared any personal information collected by the CBP One App with any other government agencies or law enforcement entities? If so please describe that sharing in detail.

Last month, Senator Markey sent a letter to President Biden calling on the Administration to reverse the expansion of Title 42 and abandon the proposed asylum "transit ban" rule. After the President visited the southwest border and met with Mexican President López Obrador, Senator Markey wrote to senior Biden administration officials sounding the alarm on paramilitary vigilante groups patrolling the U.S.-Mexico border and

ED MARKEY
UNITED STATES SENATOR FOR MASSACHUSETTS

,, ,, ,,

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EDWARD J. MARKEY
MASSACHUSETTS

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1550 MAIN STREET, 4TH FLOOR
SPRINGFIELD, MA 01103
413-785-4610

February 21, 2023

The Honorable Alejandro Mayorkas
Secretary of Homeland Security
U.S. Department of Homeland Security
3801 Nebraska Avenue, NW
Washington, DC 20016

Dear Secretary Mayorkas,

I write to urge the Department of Homeland Security (DHS) to cease using the CBP One mobile application, which DHS recently made a requirement for migrants seeking asylum in the United States at the southern border. Under the new DHS policy, those asylum seekers must now use the CBP One app to submit biometric information and schedule appointments to present themselves at certain points of entry (POEs).[1] This expanded use of the CBP One app raises troubling issues of inequitable access to — and impermissible limits on — asylum, and has been plagued by significant technical problems and privacy concerns. DHS should shelve the CBP One app immediately.

I appreciate that, through the expanded use of the CBP One app — initially launched in October 2020 with limited functionality—the Biden administration intended to ensure the safe and orderly processing of noncitizens at POEs. But requiring asylum seekers to use a virtual platform accessible only with a smartphone effectively denies to indigent migrants their legally protected right to seek asylum.[2] Those fleeing dangerous conditions often lack access to technology, including smartphones and the internet access required to download and use the CBP One app.[3]

Furthermore, even migrants with the resources and know-how to obtain and use this technology must schedule an appointment at, and travel to, one of only eight POEs participating in the CBP One app's expanded rollout—out of 328 POEs nationwide.[4] Advocates report that migrants in

[1] *DHS Continues to Prepare for End of Title 42: Announces New Border Enforcement Measures and Additional Safe and Orderly Processes*, Dep't of Homeland Security (Jan. 5, 2023), https://www.dhs.gov/news/2023/01/05/dhs-continues-prepare-end-title-42-announces-new-border-enforcement-measures-and.
[2] CBP One Mobile Application, U.S. Customs and Border Protection, *NEW: Submit Advance Information and Schedule an Appointment Capability for Non-Citizens without Appropriate Travel Documents,* https://www.cbp.gov/about/mobile-apps-directory/cbpone.
[3] *Id.*
[4] *DHS Continues to Prepare for End of Title 42: Announces New Border Enforcement Measures and Additional Safe and Orderly Processes*, Dep't of Homeland Security (Jan. 5, 2023), https://www.dhs.gov/news/2023/01/05/dhs-

Reynoso and Matamoros, Mexico were given appointments for asylum in Tijuana, some 1,500 miles away.[5] Technology can facilitate asylum processing, but we cannot allow it to create a tiered system that treats asylum seekers differently based on their economic status — including the ability to pay for travel — language, nationality, or race.

According to reports, the app also was not ready for its expanded use, could not handle the volume of applicants, and frequently did not work.[6] One user described how she "would create an account, go through several more steps and the app would then restart to step one, a seemingly endless cycle."[7]

Additionally, the use of the CBP One app to collect biometric information raises privacy concerns and poses unique threats to immigrant communities. According to DHS, the CBP One app uses facial comparison and cloud technology to collect, store, and process data — including biometric and geolocation information — on asylum seekers before they enter the United States.[8] But this technology is fraught with serious problems. An analysis of face recognition software tools conducted by the National Institute of Standards and Technology (NIST) found that "one-to-one matching . . . saw higher rates of false positives for Asian and African American faces relative to images of Caucasians," up to a factor of 100 times.[9] It therefore comes as no surprise that CBP One has reportedly rejected photos from some migrants — particularly those with dark complexions — delaying or rejecting their applications and requiring them to start the arduous process all over again.[10] Accuracy issues aside, government collection of biometric data is extremely problematic because it is highly invasive and invites serious privacy violations.

The use of geolocation tracking and cloud storage also raises surveillance concerns. These features allow the government to identify and track migrants' movements without their knowledge or consent. Communities of color are systematically subjected to over-policing. The proliferation of biometric surveillance tools is therefore likely to disproportionately infringe on the privacy of individuals in Black, Brown, and immigrant communities.

Last, but certainly not least, the CBP One app promotes the false notion that, in order to seek asylum in the United States, an appointment is required. It is not, under either U.S. or international law. Indeed, according to DHS guidance from November 2021, "asylum seekers or

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continues-prepare-end-title-42-announces-new-border-enforcement-measures-and; *At Ports of Entry*, U.S. Customs and Border Protection, https://www.cbp.gov/border-security/ports-entry.

[5] Sandra Sanchez, *CBP One app gives cash-strapped asylum-seekers interviews hundreds of miles away* (Jan. 18, 2023), https://www.borderreport.com/immigration/cbp-one-app-gives-cash-strapped-asylum-seekers-interviews-hundreds-of-miles-away/.

[6] Regina Yurrita, *Asylum seekers met with issues from new CBP One app*, CBS8 (Feb. 1, 2023), https://www.cbs8.com/article/news/local/asylum-seekers-met-with-issues-from-cbp-one-app/509-5f69579c-05e1-4999-a7a9-720eab0cc680.

[7] *Id.*

[8] *Privacy Impact Assessment for CBP One*, Dep't of Homeland Security (Feb. 19, 2021), https://www.dhs.gov/sites/default/files/2023-01/privacy-pia-cbp068-cbpmobileapplication-jan2023.pdf.

[9] National Institute of Standards and Technology, *NIST Study Evaluates Effects of Race, Age, Sex on Face Recognition Software* (Dec. 19, 2019), https://www.nist.gov/news-events/news/2019/12/nist-study-evaluates-effects-race-age-sex-face-recognition-software.

[10] Suzanne Monyak, *Migrants grapple with government app to make asylum appointments,* Roll Call (Jan. 31, 2023), https://rollcall.com/2023/01/31/migrants-grapple-with-government-app-to-make-asylum-appointments/.

others seeking humanitarian protection cannot be required to submit advance information in order to be processed at a Southwest Border land POE."[11] Disturbingly, requiring asylum seekers to remain in Mexico and await their appointments mirrors "metering" efforts under the Trump administration.[12] And those awaiting their appointments can face dangerous conditions, In January, a 17-year old Cuban boy awaiting his scheduled CBP One appointment in Monterrey, Mexico was fatally shot, underscoring the dangers facing asylum seekers.[13]

Currently, the CBP One app is required for asylum seekers requesting an exception from Title 42; after Title 42 restrictions are lifted, its use will be greatly expanded.[14] This carries profound long-term implications for the U.S. immigration system. In order to help us better understand current and future issues surrounding the CBP One app, please provide written answers to the following questions by March 10, 2023:

1. Will DHS commit to permanently cease using the CBP One application to screen asylum applicants? If not, why not, and will DHS at least temporarily stop using it until DHS can remove any biometric technology and geolocation functionality and fix the app's technical issues?
2. Will DHS ensure that there is an alternative means for migrants to seek asylum at the southern border, one that does not require an app or internet access? Currently, are asylum seekers who lack a smartphone or internet access — and therefore cannot schedule an appointment through CBP One — turned back when they present themselves at a POE?
3. How is DHS preventing the CBP One app from discriminating against applicants of color, including the app's rejecting photos of applicants with darker complexions?
4. What assistance, if any, is DHS providing to asylum seekers whose photos are rejected, or who receive error messages or experience other technical problems with CBP One? Can migrants seeking asylum at the southern border still exercise that right without using the CBP One app?
5. Before CBP One's expanded rollout, was the application tested to screen for technology glitches or failures? If not, why not?
6. Before CBP One's expanded rollout, were civil society or nongovernmental organizations consulted? If not, why not?
7. Why are only eight POEs participating in CBP One? How and why did DHS decide on this number and the specific locations?
8. How many appointments does DHS make available each day through the CBP One app?

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[11] *Guidance for Management and Processing of Undocumented Noncitizens at Southwest Border Land Ports of Entry*, U.S. Customs and Border Protection (Nov. 1,2021), https://www.cbp.gov/sites/default/files/assets/documents/2021-Nov/CBP-mgmt-processing-non-citizens-swb-lpoes-signed-Memo-11.1.2021-508.pdf

[12] *Metering and Asylum Turnbacks*, American Immigration Council (Mar. 8, 2021), https://www.americanimmigrationcouncil.org/research/metering-and-asylum-turnbacks.

[13] Press Release, *Teenager Killed While Waiting in Mexico to Seek Asylum in the United States*, Young Center for Immigrant Children's Rights (Jan. 26, 2023), https://www.theyoungcenter.org/media-press-releases/2023/1/26/teenager-killed-while-waiting-in-mexico-to-seek-asylum-in-the-united-states.

[14] *DHS Continues to Prepare for End of Title 42: Announces New Border Enforcement Measures and Additional Safe and Orderly Processes*, Dep't of Homeland Security (Jan. 5, 2023), https://www.dhs.gov/news/2023/01/05/dhs-continues-prepare-end-title-42-announces-new-border-enforcement-measures-and.

9. In what geographic areas does the CBP One application work and how was this decided?
10. How is DHS working with Mexico to ensure the safety of individuals who must travel in order to present themselves at one of the eight participating POEs?
11. The CBP One app is available only in English, Spanish, and Haitian Creole languages. This makes the app inaccessible to asylum seekers who speak a different language. How did DHS decide on these three languages? What options are available for asylum seekers using the CBP One app who don't speak those three languages?
12. What steps is DHS taking to prevent exploitation of asylum seekers through clone apps or scam attempts? How is DHS defending against misinformation around the CBP One app?
13. How is DHS safeguarding biometric and geolocation information obtained through use of the CBP One App? How is DHS ensuring that this information cannot be misused? Has CBP shared any personal information collected by the CBP One App with any other government agencies or law enforcement entities? If so please describe that sharing in detail.

Rather than mandating use of an app that is inaccessible to many migrants, and violates both their privacy and international law, DHS should instead implement a compassionate, lawful, and human-rights centered approach for those seeking asylum in the United States.

Thank you for your attention to this urgent matter, and I look forward to your response.

Sincerely,

_____

Edward J. Markey
United States Senator

Jack Herrera @jherrerx · 2h

In Matamoros, I watched as dozens of asylum seekers—mostly from Venezuela—tried to get appointment with the CBP One app, the only way to access asylum under Biden. Appointments are released at 10am daily.

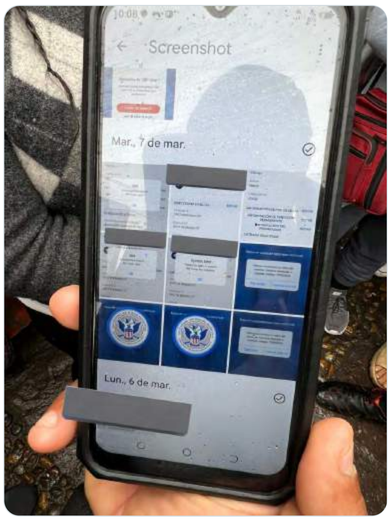
Not a single person got a slot. And the app crashed for many of them:

10 176 285 42.3K

Jack Herrera @jherrerx · 2h

Some have been trying for over a month to get appointments on the app. One Venezuelan showed me a collection of screenshots with days of examples of the app crashing for him, or rejecting him because appointments run out within minutes:

(I covered ID info)



1 13 37 3,513

Jack Herrera
@jherrerx

I talked to over a dozen asylum seekers, and they each said that, since Saturday, they haven't heard of anyone in Matamoros getting a CBP One appointment. Even though the situation is the same elsewhere, they're talking about traveling other cities west to try their luck there

12:29 PM · Mar 21, 2023 · **1,761** Views

6 Retweets **36** Likes

John Washington @jbwashing · 2h

Replying to @jherrerx

seeing much of the same in Nogales, Jack:

> **John Washington** @jbwashing · 2h
> My latest for @AZLuminaria
> How the app, CBP One, supposedly meant to "streamline" initial asylum processing, is so far a dangerous and racist flop.
>
> azluminaria.org/2023/03/20/gli...
> Show this thread

1 2 616

Chicagovieja @AstorCountess · 1h

Replying to @jherrerx

Dangling a carrot that is never in reach. And this is just for an appointment something that should be able to be scheduled on an app, over the phone, in person.

35

(https://www.americanimmigrationcouncil.org)

Government Documents Reveal Information about the Development of the CBP One App

Records Show Consistent Lack of Transparency Around CBP One as CBP Expands its Use

Tuesday, February 28, 2023

On October 28, 2020, U.S. Customs and Border Protection (CBP) launched a mobile device application called CBP One. In January 2023, the Biden administration announced that it would expand the use of CBP One.

CBP One is now used by migrants in the following situations:

- Migrants seeking to schedule appointments to obtain exemptions at ports of entry from Title 42 (https://www.americanimmigrationcouncil.org/research/guide-title-42-expulsions-border) – the health law used by the government to expel asylum seekers based on the COVID-19 pandemic.
- Cubans, Haitians, Nicaraguans, and Venezuelans can use CBP One from their home countries to submit biometric information to CBP as part of the process to apply for travel authorization and obtain parole

through special programs for those nationalities.

The use of CBP One for these purposes has raised concerns about gaining access to asylum—a legal right—through a smartphone app; about whether this app is technically capable of handling such an important task; and about the app's privacy implications. CBP also has indicated CBP One will be the primary method for migrants seeking asylum to enter the country after the government lifts restrictions Title 42 restrictions.

In July 2021, the American Immigration Council requested information from CBP (https://www.americanimmigrationcouncil.org/sites/default/files/foia_documents/investigating_cbp_use_of_mobile_applica to inform the public about the app, its uses, and the technologies' inherent flaws. The Council sued CBP pursuant to the Freedom of Information Act (FOIA) in December 2021 to obtain these records.

Documents obtained from the ensuing litigation show that, so far, the federal government has strongly pushed for using CBP One to manage the border without much consideration of the app's inherent flaws or the need for transparency with regards to the app's functions. The agency's rapid implementation of some CBP One functions created confusion even among government officials. It promised government watchdogs that some features would be optional – namely, the submission of a photo – only to later make them mandatory. As CBP's use of the app has expanded, certain flaws have become apparent, including problems with the app's photograph capturing function (especially with photo submissions of asylum-seekers with darker skin color) and GPS location capabilities. The documents obtained thus far fail to show whether or not CBP considered these flaws before forcing asylum-seekers to use an app that could fail them.

CBP created an informational webpage about CBP One (https://www.cbp.gov/about/mobile-apps-directory/cbpone) that has failed to keep up with the app's expansion. The webpage provides web links where users can download the app when the website is accessed via a mobile device. This webpage, however, provides limited information about CBP One's functions and what will be required of travelers who wish to use it. The webpage links to the latest version of the Privacy Impact Assessment (PIA) (https://www.dhs.gov/sites/default/files/2023-01/privacy-pia-cbp068-cbpmobileapplication-jan2023.pdf) published by the U.S. Department of Homeland Security (DHS). The PIA is a dense government document that agencies are required to publish describing potential privacy issues for all new or substantially changed technology that collects, uses, disseminates, or maintains personally identifiable information, and how the agency plans to mitigate these issues. The CBP One PIA contains more details about the app's functions, but it too has often lagged behind changes to the app's use.

Even though the Council's FOIA request asked for information about CBP's plans for CBP One's future uses, the agency has shared only limited information about the app's planned expansion.

CBP One's Origins

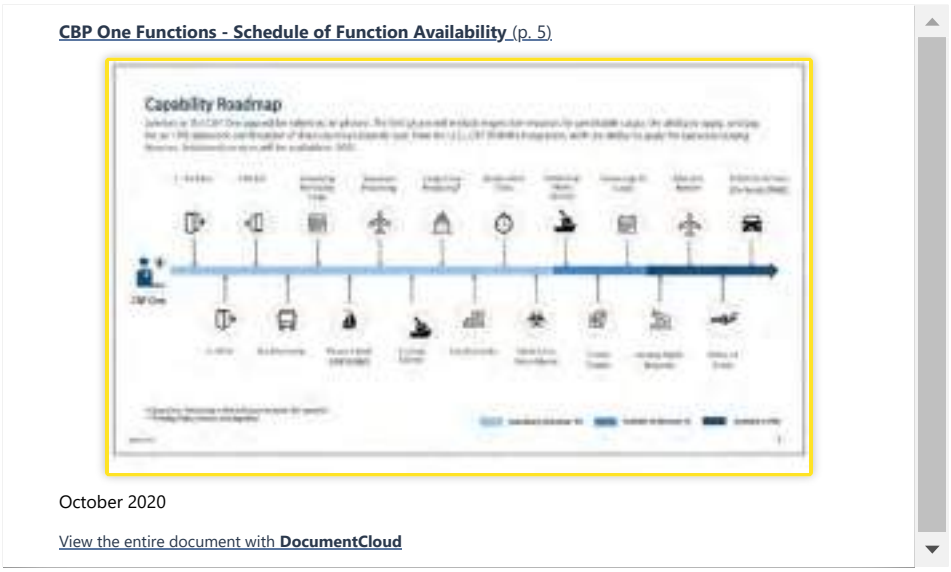
In August 2018, CBP's Planning Program Analysis and Evaluation Directorate formally launched the development of CBP One to bring together services provided by different CBP mobile apps. According to an August 14, 2018 memorandum (https://www.documentcloud.org/documents/22130845-202289_cbp-one_prod21-1-of-2-21-cv-03314-foia-cbp-000322-foia-cbp-000632#document/p12), CBP's Office of Field Operations (OFO) funded the app and developed it with the help of the agency's Office of Information Technology.

When CBP announced the official launch of CBP One on October 20, 2020, the OFO issued a memo highlighting limited "capabilities," namely the ability to apply for Form I-94 – which provides travelers' arrival records issued to those admitted into the United States and includes travelers' anticipated departure date – and make appointments scheduling for inspection of perishable cargo. The agency did not include processing of asylum-seekers among either the initial or anticipated future uses of the app.

> The rollout of CBP One will be a phased approach with the initial capabilities limited to the I-94 Apply and a Scheduling/Appointment feature for brokers to schedule perishable exams.
>
> Subsequent rollouts will include incorporate I-94 Exit, CBP ROAM along with the ability to apply for and update cruising licenses. the ability to apply for and check Global Entry status, and the upcoming CBP version of Mobile Passport Control.
>
> Source Document (https://www.documentcloud.org/documents/22130845-202289_cbp-one_prod21-1-of-2-21-cv-03314-foia-cbp-000322-foia-cbp-000632#document/p19/a2201232)

CBP One Expands

CBP One was not created for purposes of data collection. A Capability Roadmap for CBP One from October 2020 shows CBP's plans for the app, which did not include plans to use the app for processing individuals at ports of entry.



However, a few months later, it was being used for just that.

On February 19, 2021, DHS published the first PIA for CBP One (https://omb.report/icr/202112-1651-001/doc/116957000). The PIA included a description of how the app would be used to help process individuals enrolled in the Migrant Protection Protocols (MPP).

MPP, also known as "Remain in Mexico," was a program instituted by the Trump administration in 2019 that forced certain individuals seeking asylum in the United States to wait in Mexico for the duration of their immigration proceedings. As the Biden administration ended MPP, it relied on international non-governmental organizations' (NGOs) staff members to bring asylum-seekers back into the U.S. while their cases continued. CBP One could be used to verify that immigrants seeking to reenter the U.S. actually had ongoing cases under MPP.

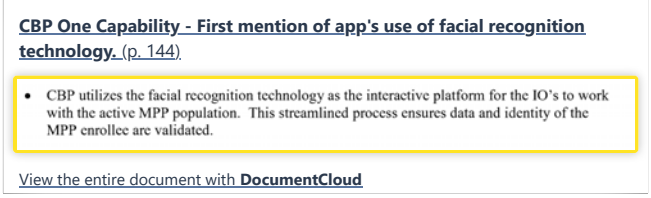
The FOIA documents show that CBP had already been planning to use CBP One in the MPP wind down prior to announcing it to the public in the PIA. The first reference in the FOIA documents to CBP One's role in processing individuals is a presentation about MPP dated February 9, 2021

(https://www.documentcloud.org/documents/22337370-3-of-3-21-cv-03314-foia-cbp-000633-foia-cbp-001084#document/p123). The presentation provides instructions to international NGOs' staff tasked with checking whether or not individuals were enrolled in MPP.

In notes from a meeting hosted by OFO and other agency components on February 12, 2021 providing an overview of CBP One's MPP application, CBP admitted the app "was not initially designed for this particular process," and that expansion could take time.

> - CBP's technology division continues to pursue opportunities for data batching and CBP One IO application will continue to trasnform and expand capabilities.
>   - The expansion will take a while longer as CBP One was not initially designed for this particular process, but OFO is confident it can be accomplished.
>
> Source Document (https://www.documentcloud.org/documents/22337370-3-of-3-21-cv-03314-foia-cbp-000633-foia-cbp-001084#document/p144/a2148274)

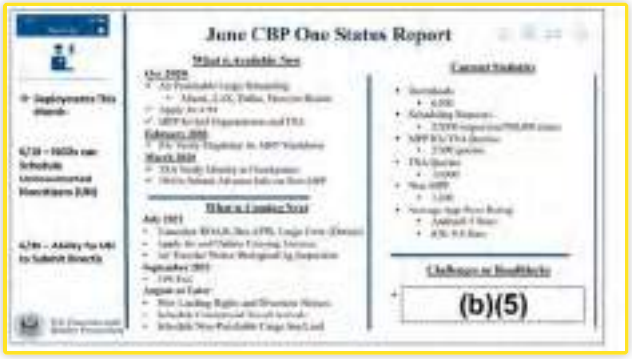
Notes from that meeting also say that CBP One's capability to identify people enrolled in MPP was already operational and that the agency uses "facial recognition technology" as the interactive platform for international organizations to work with the active MPP population.



The following month, CBP further expanded the use of CBP One in border processing by using it for individuals seeking exemptions from the Title 42 policy to seek asylum at ports of entry. The exemption process, like the MPP wind-down, relied on NGO staff, who used CBP One to enter information on behalf of individuals seeking exemptions and schedule appointments at ports of entry for processing.

CBP published a document describing this function on April 29, 2021 (https://www.documentcloud.org/documents/23592357-21-cv-03314-foia-cbp-001085-foia-cbp-001091?responsive=1&title=1). This document also shows that this new function would allow NGO staff to make appointments at ports of entry on behalf of immigrants applying for Title 42 exemptions. A CBP status report about the app confirms that CBP One's function allowing for the submission of information in advance became operational in March, while the scheduling feature became available in June.

CBP One Functions - Status Report showing when certain functions became available (p. 18)



Notably, the functions in the "Available Now" Section of the Report appear to have a typo. The functions under the heading "March 2020" were likely available in March 2021, since the app only became available in October 2020.

View the entire document with **DocumentCloud**

At this point, CBP was apparently collecting this information before it applied for approval from the Office of Management and Budget to do so. Though CBP One allowed users to seek exemptions to Title 42 in March 2021, it wasn't until May that the agency asked the Office of Management and Budget for emergency approval (https://omb.report/icr/202112-1651-001/doc/117444600) to collect personal information from people coming to the border.

The same month, DHS publicly acknowledged it was changing the app's function in an update to the CBP One PIA on May 7. The statement in support of the OMB request did not specify whether the biographic information to be submitted in advance would be collected by intermediaries -- like the NGOs that CBP was using at the time for MPP wind-down and Title 42 exemptions -- or directly from individuals. This ambiguity is important because agency documents such as the June Status Report show that CBP planned to phase-out the advance submission of information by NGOs as early as June 2021 (https://www.documentcloud.org/documents/22130845-202289_cbp-one_prod21-1-of-2-21-cv-03314-foia-cbp-000322-foia-cbp-000632#document/p18/a2198893), and shift to collecting information from migrants themselves.

An August 2021 CBP One Status Report (https://www.documentcloud.org/documents/22130845-202289_cbp-one_prod21-1-of-2-21-cv-03314-foia-cbp-000322-foia-cbp-000632#document/p23/a2198881) shows that the agency put on hold its implementation of the direct submission of advance information by individuals seeking processing at ports of entry.

As of January 2023, however, CBP informed the public that the app would be available for individuals to submit their own information in advance and schedule appointments at ports of entry. The agency is pushing individuals to use CBP One for this purpose and has not provided any information about alternatives methods for applying for Title 42 exemptions for people who may not be able to access the app.

With restrictions under Title 42 potentially set to expire on May 11, the Biden administration has proposed a regulation that would expand the use of CBP One to process individuals seeking access to southwestern border ports of entry after Title 42 restrictions expire. The regulation, if adopted, would restrict asylum to those who arrived unannounced at a port of entry and have been denied asylum in those countries through which they traveled. This restriction, however, would not apply to people who reach Mexico and are able to access CBP One to make an appointment for processing at ports of entry.

While documents obtained through the Council's FOIA request show that CBP informed NGOs about CBP One's capabilities to enter information and schedule appointments for travelers seeking Title 42 exemptions, the same cannot be said about the agency's push to shift this function from NGOs' staff to travelers themselves. As shown above, CBP prepared presentations showing screen shots from the app instructing NGO staff how to navigate the app. CBP failed to make these detailed presentations available to the public and potential users, instead waiting until the functions became available in January 2023 to publish limited factsheets (https://www.cbp.gov/about/mobile-apps-directory/cbpone) on how the app is supposed to work.

CBP Has Failed to Inform the Public about CBP One's Photo Submission Requirements

CBP has not been transparent about CBP One's expanded photo submission requirements and about its methods for facial recognition, which the agency refers to in its own records both as "facial recognition technology" and "facial comparison technology." In addition, CBP has failed to inform users about potential issues that may arise when users submit photos via CBP One, and whether or not there are viable alternatives for those who would rather not use it.

The DHS PIA explains how CBP One collects photos from users:

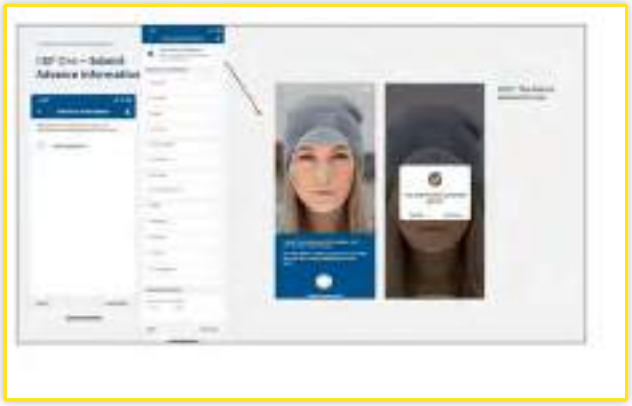
- Applicants seeking appointments at southwest border ports of entry submit a selfie with the app so the agency may ensure the submission is being made by a "live person." These photos are stored in a "gallery" within the Traveler Verification Service (TVS) system (https://www.dhs.gov/sites/default/files/publications/privacy-pia-cbp056-tvs-february2021.pdf), which is CBP's matching service for "all biometric entry and exit operations that use facial recognition technology." During the inspection appointment at the port of entry, a CBP officer will take a new photograph of the applicant to "match" the new photo with the selfie the applicant submitted through CBP One.
- Applicants seeking advance travel authorization for the CHNV programs also submit a selfie with the app to conduct a liveness check. CBP uses the selfie to compare it to applicants' passport photos and to compare it to other photos accessible by the agency to vet the applicant for law enforcement and national security purposes. The PIA describes the selfies' uses as follows: CBP uses the selfie image for five distinct purposes: (1) to conduct one-to-one (1:1) facial comparison against the passport photograph previously uploaded to the ATA mobile application from the eChip; (2) to conduct one-to-many (1:n) vetting against derogatory photographic holdings for law enforcement and national security concerns as part of the ATA vetting process; (3) to generate a new gallery of ATA participants for facial comparison when ATA

participants arrive at a port of entry; (4) to conduct 1:n identity verification once the participants arrive at the port of entry; and (5) to conduct 1:n vetting against known derogatory photographs for assistance in CBP's admissibility determination.

Submission of photos, however, was not always required and has expanded throughout the app's evolution with limited notice to users.

For example, the April 29, 2021 document describing the function allowing users to submit information to obtain Title 42 exemptions prior to arrival at ports of entry shows that photo submission was "Optional."

Photo Optional at the beginning (p. 3)



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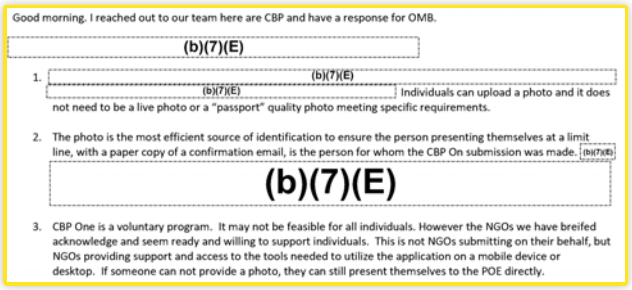
The photograph submission later became a requirement. DHS' most recent version of the PIA states users "must complete liveness detection through their device's camera prior to scheduling a presentation at a [port of entry]."

CBP's lack of clarity regarding CBP One's photo submission requirements and its potential to exclude people from processing at ports of entry raised questions during the agency's application for emergency approval from OMB. In an email exchange on July 19, 2021, OMB officials asked CBP whether users would be required to submit photographs via CBP One. At the time of this email, CBP was already requesting photograph submissions from users as part of the collection of information in advance of arrival at ports of entry. In response, the Economic Impact Analysis Branch Chief stated that the photo "was the most efficient source of identification," but acknowledged that CBP One is a "voluntary program" that "might not be feasible for all individuals," and that NGOs might still need to help people to submit their information. The Chief said that "If someone can not [sic] provide a photo, they can still present themselves to the POE directly," an option that has become virtually impossible given how the agency implements restrictions under Title 42.

Email about photo requirement. (p. 63)



Good morning. I reached out to our team here are CBP and have a response for OMB.

(b)(7)(E)

1. (b)(7)(E) (b)(7)(E) Individuals can upload a photo and it does not need to be a live photo or a "passport" quality photo meeting specific requirements.
2. The photo is the most efficient source of identification to ensure the person presenting themselves at a limit line, with a paper copy of a confirmation email, is the person for whom the CBP On submission was made. (b)(7)(E)

(b)(7)(E)

3. CBP One is a voluntary program. It may not be feasible for all individuals. However the NGOs we have breifed acknowledge and seem ready and willing to support individuals. This is not NGOs submitting on their behalf, but NGOs providing support and access to the tools needed to utilize the application on a mobile device or desktop. If someone can not provide a photo, they can still present themselves to the POE directly.

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Likewise, photos became a requirement for users who wanted to obtain their I-94 information through CBP One. Initially, users could access this information by entering their biographical information into the app rather than submitting a photograph.

I-94 Function - No photo required (p. 19)

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By the time DHS published the latest version of the PIA (https://www.dhs.gov/sites/default/files/2023-01/privacy-pia-cbp068-cbpmobileapplication-jan2023.pdf), it explained that this function "requires users to submit photographs of themselves and co-travelers." To date, CBP does not explain the photo submission requirement for this function on the CBP One webpage, nor does DHS mention this requirement in the Appendix to the PIA with information about the app's I-94 capabilities.

Similarly, CBP expanded the photo submission requirement for "liveness" checks for applicants using the app to access the new humanitarian parole programs. The Venezuelan parole program launched on October 2022 required people seeking advance travel authorization (ATA) to fly into the United States to submit their biographic information, including a photo of themselves taken with their phone's camera, via CBP One. DHS expanded this parole program to people from Cuba, Haiti, and Nicaragua in January 2023.

Because DHS requires applicants for these parole programs to submit their information via CBP One, applicants have no choice but to comply with the app's photo requirements. A description of this requirement is not available on the CBP One webpage and can only be found by parsing through DHS PIA on the ATA program (https://www.dhs.gov/sites/default/files/2023-01/privacy-pia-cbp073-ata-jan2023.pdf).

All of these examples illustrate CBP's rapid shift from making photo submission optional to requiring photograph submissions.

Predictably, reports (https://www.sandiegouniontribune.com/news/immigration/story/2023-01-22/cbp-one-app-asylum-tijuana?fbclid=IwAR2DumhqadYHUNf7CUE_LjUwU3rkZr_rwTDQSD8Y-lyU29aax1OgDbmvq4M) have surfaced that people of color trying to apply for Title 42 exemptions, particularly Haitian nationals, are having issues with submission of their photo. If Haitian nationals are having this problem, it is likely that individuals in Haiti also will be rejected when trying to apply for the advance travel authorization necessary for the new humanitarian parole program. If this issue becomes the norm, it will continue to shut people out of the process for obtaining Title 42 exemptions and could prohibit them from being able to apply for asylum when Title 42 restrictions are lifted simply because of their race.

The FOIA documents reviewed thus far fail to show whether CBP sought to address issues presented by CBP One's photo submission requirements.

What is the Future of CBP One?

While the agency has not been forthcoming with plans for the app, its further expansion seems inevitable.

CBP has thus far not provided clear information to the public regarding how an individual may opt out of using CBP One and when the app is mandatory for individuals accessing certain immigration processes. In addition, questions persist as to whether preference for processing at ports of entry will be given to noncitizens who use CBP One, and whether those who choose not to use it will effectively be refused inspection or processing – making it impossible for them to seek asylum in the U.S. Though the Council continues to pursue information about the development of CBP One, the need for clearer information is imminent as the country-specific list of parole programs grows and more people are required to use CBP One, and as the Biden administration determines what its border policy will be after Title 42 ends – a future in which CBP One could become even more central to border processing.

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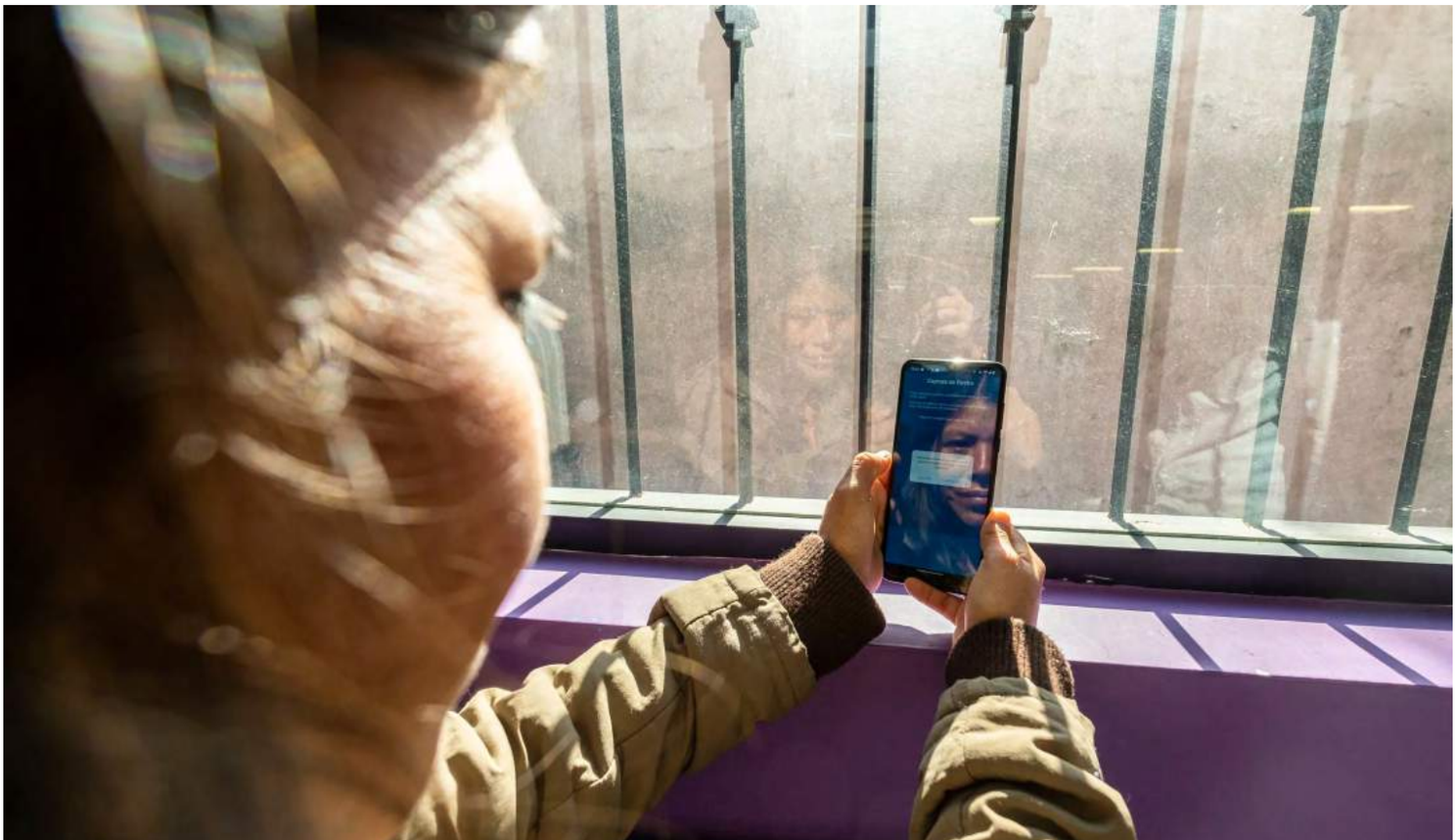
EQUITY

Glitchy CBP One app turning volunteers into Geek Squad support for asylum-seekers in Nogales

The app is now the only way for people seeking asylum outside the U.S. to make an appointment for a claim

by **John Washington**
March 20, 2023

Twitter Facebook



Lidia is an Indigenous Mam woman from Oaxaca. She's seeking asylum for safety with her children, and tries to take a required photo using the CPB One app during a training session at the the Kino Border Initiative site in Nogales, Sonora on Friday, Feb. 3, 2023. She tried the federal government's CBP One app dozens of times and was met with an error message each time. Credit: Michael McKisson

NOGALES, México — Lidia is frowning at the smartphone screen. The face staring back at her, a blonde-haired woman wearing a Carhartt beanie and heavy mascara around her large blue eyes, is modeling how asylum-seekers should position their faces on the federal government's CBP One mobile app.

"Captura de Rostro," the message above the blonde woman's face reads. "Face Capture," followed by "Touch anywhere to continue."

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Lidia is an Indigenous Mam woman from Oaxaca. Mam are a Mayan people who speak the Mam language primarily in Guatemala and in the states of southern México. She touches the screen of her phone, where the blonde-woman's face is, and tries to take a selfie.

"Error," the screen responds.

"I don't look like her," Lidia says, repositioning herself to try to catch more light from the window. "Maybe that's the problem."

Lidia is short, hardly 5-feet tall, has round cheeks, dark brown hair. She helps her little girl climb into the chair next to her.

Lidia is one of more than two dozen asylum-seekers who, on a recent Friday in early February, are attending a troubleshooting workshop in Nogales, Sonora. Migrant-rights volunteers have been hosting the crash courses around a long card table in a large room with a whiteboard.

Currently, the app is the only way for asylum-seekers outside the United States to gain an exemption and make an appointment at a port of entry to levy an asylum claim. Nogales is the only port in Arizona where asylum-seekers can make an appointment, which concentrates asylum-seekers in a city where they have few resources or people to depend on.

Gia Del Pino leads a class training people migrating for safety at the Kino Border Initiative to use the CBP One app in Nogales, Sonora on Friday, Feb. 3, 2023. Credit: Michael McKisson

In the closed-in patio visible through a wall of windows, volunteers are finishing cleaning up and eating a late breakfast. In the classroom, other volunteers are helping people navigate their legal and human rights via a flawed Custom and Border Protection app.

For years, the number of people coming to the United States to seek asylum has been rising.

In March of 2020, the Trump administration invoked an antiquated public health code, known as Title 42, to automatically expel anyone crossing the U.S. border without authorization. Since then, the overwhelming majority of people coming to or crossing the U.S.-México border to seek humanitarian protection have been blocked or pushed back.

The move was the culmination of years of efforts to limit asylum, turning various sites in northern México into de facto refugee camps.

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To mitigate the crisis, the Kino Border Initiative, or KBI, which has been assisting migrants in northern Sonora for decades, offering a safe space, beds, food, medical assistance, as well as some legal and social services, expanded its role and capacity. Now volunteers also assist the new population of people blocked from seeking safety, dealing with the precarity of northern México, and unable to return to their home states or countries.

KBI holds twice-weekly workshops, basically asylum-seeker Geek Squad sessions, says Gia Del Pino, the organization's director of communications.

Kino Border Initiative communications director, Gia Del Pino, listens as people migrating explain the challenges of using the US Customs and Border Protection's CPB One app during a training session in Nogales, Sonora on Friday, Feb. 3, 2023. Credit: Michael McKisson

CBP One, purported to help streamline access to claiming asylum, uses facial recognition software to compare the faces of people seeking asylum with their other identity documents. It also runs their faces through a terrorist and national security database.

The problem? The technology seems unable to recognize many faces, especially when people have darker skin tones or Indigenous features — when they don't look like the blonde model on the screen's background.

Advocates are finding that Black asylum-seekers, from Haiti and African countries, or elsewhere, face greater bias using the app, as the algorithm doesn't recognize their skin tone.

Lidia and all other asylum-seekers in this article — all of whom fear persecution in their home countries and insecurity and danger in northern México — are only identified by their first names.

Critics argue that long-standing legal complications, discrimination and other hurdles to gaining asylum have now been compounded by the Biden administration's new app mandate.

Faltering facial recognition technology is only one of a host of complaints asylum-seekers and advocates have enumerated about the app. It also needs a strong signal or Wi-Fi to work and requires two-factor authentication. That's a problem for less wealthy or less tech-literate people without emails. And it is only available in three languages — English, Spanish, and, as of recently and after criticism from Haitian migrants, Haitian Creole.

Rafael, right, and his son Marcelo attempt to schedule a meeting time with representatives from the US Customs and Border Protection agency through their CBP One app during a training session hosted by the Kino Border Initiative in Nogales, Sonora on Friday, Feb. 3, 2023. They are fleeing political unrest in Peru. Credit: Michael McKisson

All of that puts what was once a straightforward, though harrowing and legally difficult, act for asylum-seekers behind a technological wall. Human-rights advocates argue that the process of fleeing to the border and asking for asylum protection is now derailed by an app that's endangering lives as people worry at their phones and languish in northern México.

The app has been around for years, but was recently updated as part of a series of new initiatives by the Biden administration.

Ports of entry were closed to asylum-seekers because of the Title 42 public health order. After multiple lawsuits and missed expiration dates, the measure could end in May, as the federal government reviews public comments on new asylum regulations and moves to terminate the COVID-19 national and public health order.

The app, according to a Jan. 12 Department of Homelands Security announcement, was meant to "reduce wait times and help ensure safe, orderly, and streamlined processing."

But as Lidia and many others testify, the app is having the opposite effect: one more tool used by the U.S. government to deny asylum and push impoverished and endangered migrants away from U.S. territory.

Eleanor Acer, Director, Refugee Protection, Human Rights First, said in a recent press call that the Biden administration is effectively "advancing the Trump administration's agenda."

"Neither U.S. or international law requires access to technology in order to be able to exercise your human rights to seek asylum," Acer said. "There's no question that the CBP One app should not be, legally, morally, or otherwise, the only way in which people can access asylum in the United States."

A March 13 letter from 35 members of Congress, including Raúl Grijalva, D-Ariz., addressed to DHS Secretary Alejandro Mayorkas cites their offices having "received numerous reports of inusability, inaccessibility, and inequity that have already resulted in grave harm to asylum-seekers" because of reliance on the CBP One app.

In the KBI workshop in Sonora, less than a mile from the U.S. border, Lidia repositions herself, tries to find better light from the window, and again faces the blonde model.

Lidia explains that she doesn't know how to read very much, having only attended one year of school. She is struggling to figure out not just how to take and upload her photo, but how to complete all the other portions of the app that would allow her to present at the U.S.-México border.

People seeking asylum are required to use the newly launched CPB One app to take their photo as one step in the process. Photo taken at the Kino Border Initiative in Nogales, Sonora on Friday, Feb. 3, 2023. Credit: Michael McKisson

"I have to figure it out," she says, looking at her kids. "More than anything it's for them."

Her two children, 6 and 4, are playing in chairs next to her. Lidia explains that violence in her small community in Chiapas has forced teachers to abandon the local school. Shootouts became common, and she was scared not only that she'd be unable to give her kids an education, but that she'd be unable to keep them alive.

After a weeks-long bus journey to the U.S.-México border, the biggest obstacle she now faces is a phone app.

Blocking Asylum

Since the passage of the Refugee Act in 1980, which brought U.S. law into line with protocols first established in the 1951 United Nations Refugee Convention, anybody who is inside the United States, no matter how they arrived, or who shows up at the U.S. border, was given a chance to apply for asylum.

While there have long been exceptions to who may be granted asylum, and in practice the policy discriminated against certain nationalities, the principle of offering protection to those who needed it was unquestioned. That began to markedly change during the Trump administration when White House and the Department of Homeland Security officials made concerted efforts to restrict both asylum and refugee procedures.

In the two months since the Biden administration announced its overhaul of the system for seeking asylum, which is pending possible changes that would not go into effect until May, policymakers and national and international lawyers have been talking with people on the ground.

They're trying to assess how the rollout of CBP One for asylum-seekers is already causing turmoil. They hear stories from people like the volunteer Geek Squad at KBI in Nogales trying to help migrants like Lidia and her children secure their safety, rights and navigate a technological nightmare.

The CBP One App is part of a multipronged strategy the Biden administration is implementing in attempts to reduce the numbers of migrants, mostly asylum-seekers, arriving at the U.S. southern border.

Other efforts include a policy that permits as many as 30,000 people from Venezuela, Cuba, Haiti, and Nicaragua to be paroled into the U.S. every month, at the same time that 30,000 from each country can be immediately expelled into México. The program has expanded from last fall when it initially applied only to Venezuelans, and which was, in turn, modeled on a similar program for Ukrainians. Parole is only temporary, not a pathway to citizenship, and does not let those who qualify to bring family members over as well.

On Feb. 21, the Biden administration announced its most restrictive measures, which would deny asylum to people who passed through another country without seeking protection there first and penalize them if they cross the border without authorization. The penalization directly contravenes existing U.S. law, which states that any migrant "who is physically present in the United States," regardless of status or where they are, may apply for asylum.

In the text of the proposed new regulation, which is up for public comment and is scheduled to go into effect in May, the CBP One app is described as "an innovative mechanism for noncitizens to schedule a time to arrive at ports of entry."

People may provide feedback on the proposed regulation through March 27.

The new rule would expand the use of the app, as most asylum-seekers outside of the United States would need to use the app to request protection.

“Use of this app protects migrants from having to wait in long lines of unknown duration at the ports of entry, and enables the ports of entry to manage the flows in a safe and efficient manner,” according to the text of the new rule.

While the rule claims that the app is “creating efficiencies” in asylum processing, the administration also acknowledges that they are “aware of concerns regarding the accessibility” of the app.

They also note that there may be exceptions to the requirement to use the app, as long as the asylum-seeker “demonstrates by a preponderance of the evidence that it was not possible to access or use the CBP One app due to language barrier, illiteracy, significant technical failure, or other ongoing and serious obstacle.”

CBP officials did not respond to detailed questions about the inaccessibility of the app.

The proposed asylum regulations are “a death sentence for the poor, Indigenous, LGBTQ+, African, and other communities who don’t have the luxury of buying a direct ticket to the United States,” said Bilal Askaryar, interim campaign manager of the #WelcomeWithDignity campaign.

Social worker Yemilka Hernandez helps a person migrating navigate the CPB One app during a training session hosted by the Kino Border Initiative in Nogales, Sonora on Friday, Feb. 3, 2023. Credit: Michael McKisson

‘What do I do?’

The facial-recognition software that Lidia and others are contending with is only a small part of the problem with CBP One. “The app is very glitchy,” says Gia, the KBI spokesperson.

Erika Pinheiro, the executive director of Al Otro Lado, a migrant rights organization based in Tijuana, echoed Gia's sentiment: "You have to go through multiple screens and it just keeps on crashing."

At the KBI workshop, one man, José, from the state of Guerrero, holds out his phone to explain that his Google Chrome operating system kept wanting to fill in the boxes itself, but when he gave it permission to do so, it wouldn't, and when he denied it permission, it just asked again.

"What do I do?" José asks his neighbor, Rafael, an asylum-seeker from Peru. Rafael shows him his own phone, which was displaying the message: "The code sent is invalid."

Another man, his voice pitched with desperation, says. "I don't even have an email."

Gia is standing at the head of the series of tables around which two dozen men and women, along with a few children, are thumb-stumbling on their phones.

"Is anybody else trying to figure out how to get an email?" she asks.

Six hands go up.

"Does anybody else have problems simply putting in their email"?

Eight hands.

"Anybody have trouble understanding what the app is asking you?"

Five hands.

"Anyone struggling to take a photo?"

Nine hands.

"The application no está bien hecha," Gia says. It's not well-built.

She suggests trying to close it and restart, but admits that doing so will require you to fill out everything again. With the patience and equanimity of a schoolteacher, after further general announcements and answers, Gia begins a series of circles around the tables, leaning over shoulders, swiping across screens, and trying to answer and troubleshoot specific issues.

A person migrating attempts to take a photo of her son using the CPB One app during a training session hosted by the Kino Border Initiative in Nogales, Sonora on Friday, Feb. 3, 2023. People migrating for safety have struggled to use the app because of various bugs and frequent crashing. Credit: Michael McKisson

'Virtual border walls'

"There's things that we anticipated that are even worse than what we thought, especially the racially-disparate access," said Erika, from Al Otro Lado.

Asylum-seekers from Haiti face particular difficulties. When the app was first expanded in January to be used by asylum-seekers, it didn't have an option for Haitian Creole speakers. As of March 16, the app's Haitian Creole website is a nearly illegible word jumble. It's not the only instance of CBP websites not being accessible to Haitians.

Laura Wagner, the Haitian Creole Team Lead at Respond Crisis Translation, said that some of CBP's websites are clearly just using Google translation services.

"Haitian migrants are faced not only with glitchy web platforms that don't work well, display error messages in English, and often fail to recognize people with darker skin," Wagner said, "but also with poorly-translated Kreyól — when those websites or platforms are translated at all."

Jean Jeef Nelson, a case manager for Haitian Bridge Alliance, explained that even when the Haitian Creole translations do work on the app, they only do so for the first steps of trying to book an appointment. Then the app switches back to English or Spanish. All of the error messages, he noted, are in English.

"We have folks who are illiterate who were compelled to pay as much as $500 dollars for help filling out the app," Nelson said, describing the situation with Haitian asylum-seekers in Tijuana.

Jake Wiener, an attorney at Electronic Privacy Information Center, or EPIC, a DC-based organization that focuses on privacy and freedom of expression, worries that "an app that functions poorly can deter people from applying for asylum or spread mistrust of programs that are designed to protect and benefit asylum-seekers."

When CBP pushes migrants to use an app like CBP One, they are asking migrants to trust them to handle their data safely and use it responsibly.

Jake worries about the new technology "creating virtual border walls."

"Any tech should be used to solve real problems and improve access to services," Jake added, "not to expand surveillance and discourage migrants."

Reliance on new technology can be frustrating for anyone. When it's a matter of life or death, the frustration takes on a new dimension.

"It can also be traumatizing to have your family's safety come down to luck with an app," said Chelsea Sachau, managing attorney of the Florence Immigrant & Refugee Rights Project's Border Action Team.

"Many of the people we serve have told us they feel powerless to protect their kids and families when they aren't able to get an appointment despite trying every morning."

Kino Border Initiative staff member Gia Del Pino helps people navigate the CPB One app during a training session hosted by the Kino Border Initiative in Nogales, Sonora on Friday, Feb. 3, 2023. People migrating for safety have struggled to use the app because of various bugs and frequent crashing. Credit: Michael McKisson

Dangers for asylum-seekers in México

The problems asylum-seekers are facing with the app are more than just technical. The app's failures have repercussions beyond the frustration familiar to anyone who deals with modern technology.

Asylum-seekers are, by definition, fleeing for their lives. And while many of them may have left the most pressing dangers far behind them — in South America, the Caribbean, or elsewhere — northern México has repeatedly proven itself to be dangerous, even deadly, for migrants.

Over the past years, as successive U.S. administrations have sought to block asylum-seekers from accessing U.S. territory, various organizations have extensively documented a host of abuses against migrants, including intimidation, extortion, kidnapping, rape, enslavement, and murder.

Omar, 22, has been struggling with the CBP One app for a month. He is terrified of what may become of him.

Originally from El Salvador, Omar was forced to flee after a gang in his hometown gave him an ultimatum: either join their ranks, or, they said to him, "we'll deal with you."

He knew what *dealing with him* meant: almost certain death. So he and his family collected all the money they could, about $700 dollars, and he headed north.

Soon after crossing the border from Guatemala into México, he says he was kidnapped by armed men in police uniforms. He suspects they were not actual police officers, but isn't sure. After three days of threats, and watching a fellow migrant beaten to the precipice of death, he escaped.

His travails in México were not over.

As he continued north by bus, he was robbed by police, who forced him to pay a bribe to continue traveling. And once he arrived in Nogales, a group of young men, recognizing that he wasn't a local, told him he'd have to start paying a fee to live in Nogales.

A few days after first trying to schedule his appointment on the app and find safety across the border, with no luck, his cellphone broke. That meant he was out of the game for nearly two weeks as he struggled to raise the money to buy a new phone. He eventually got a Samsung Galaxy S10e, which cost him more than $300.

After staying for a bit more than a week at the KBI shelter, Omar was now sharing a small apartment, and had even landed a job. But after more than a month of struggling with the app, he still hasn't found an appointment.

Omar says that he's dealing with discrimination in Nogales. He's paid less at the laundromat than his coworkers who are Mexican, and he's scared to ask for more. With hundreds of publicized cases of asylum-seekers being extorted, kidnapped, or murdered, he's trying as much as possible to maintain a low profile.

"I'm scared something will happen to me here. I wasn't going to stay in El Salvador to die, and I don't want to stay here and die either," Omar says.

People migrating for safety use scraps of papers to write down important pieces of information when filling out the required information in the CPB One app during a training session hosted by the Kino Border Initiative in Nogales, Sonora on Friday, Feb. 3, 2023. Credit: Michael McKisson

'I want to cry'

"The stress is killing us," says Rafael, another asylum seeker from Peru. He continues fussing at his phone, showing screen-grabs of error messages. He holds the phone up and a CBP seal, ringed by a blue line continuously circling.

"No carga, no carga, no carga, no carga," Rafael says, complaining about the app not loading.

"It's like they're making fun of us," he says. And then adds, "I want to cry."

A man next to Rafael has a torn off bit of a candy box with his email and password scratched onto it. He's quiet and patiently waiting for help.

Another man was standing against a wall for at least twenty minutes, staring at the blonde woman's face and trying to break through the facial recognition: "No me sale," he says. It's not coming out.

Omar says, "I remember when Biden, before he became president, said he'd help migrants, but he's doing the opposite."

"Just give us a chance," he says, getting choked up behind his mask. "We're not coming because we want to, but we have to, it's our destiny. We're not trying to do anything bad, we just want to live."

He pulls his cap down low, trying to hide his tears. That's the constant predicament asylum-seekers in northern México deal with: hide or blend in so as not to become targets of crime at the same time they need to make their faces visible to a CBP algorithm that, in many cases, refuses to recognize them.

Related

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TAGGED: instagram

JOHN WASHINGTON

John Washington is an investigative journalist based in Tucson with a focus on immigration and borders, as well as criminal justice and literature. His first book, "The Dispossessed: A Story of Asylum... More by John Washington

NATIONAL IMMIGRANT JUSTICE CENTER
A HEARTLAND ALLIANCE PROGRAM

November 29, 2021

Submitted via CBP_PRA@cbp.dhs.gov

Seth Renkema
Chief, Economic Impact Analysis Branch
U.S. Customs and Border Protection
Office of Trade, Regulations and Rulings
90 K Street NE, 10th Floor
Washington, DC 20229-1177

Re: Comment On Collection of Advance Information From Certain Undocumented Individuals on the Land Border, Docket Number 2021-20988; 86 FR 53667

Dear Mr. Renkema:

The National Immigrant Justice Center ("NIJC" or "we") works to advance the rights of all immigrants. With the above-referenced notice and request for comment ("notice"), U.S. Customs and Border Protection (CBP) is extending and amending a data collection program at the land border, which was established on an emergency basis on May 3, 2021.[i] NIJC urges the administration to address concerns regarding the proposal to expand CBP's collection of information from non-citizens arriving at the U.S.-Mexico border, including issuing a new Privacy Impact Assessment, prior to approving the expansion as described in the notice.

The notice proposes the expansion of collection on the previous collection process for persons who may warrant an exception to Title 42, to "include undocumented noncitizens who will be processed under Title 8 at the time they arrive at the POE after the CDC Order is rescinded, in whole or in part."[ii] According to the notice, individuals will be able to modify their requests within the CBP One™ application ("CBP One").[iii] CBP is proposing requiring the submission of a photograph—previously optional—for all who choose to provide advance information. The proposal states that the submission of a photograph in advance will provide CBP officers with a mechanism to match a noncitizen who arrives at the POE with the photograph submitted in advance, therefore identifying those individuals, and verifying their identity.

The proposed data collection expansion could have unexamined consequences, impacting thousands of people a year, and lead to a large increase in non-U.S. citizens, including lawful permanent residents, submitting face scans prior to presenting at a U.S. port of entry.

Before allowing for information collection expansion by CBP as envisioned in this notice, DHS should further examine the consequences associated with the expansion. This comment addresses the following concerns: 1) The expanded information collection could become a de facto requirement and vehicle for externalization of the U.S.'s asylum process; 2) Concerns about the burden assessed and efficiency of the CBP One mobile application described in the notice; and 3) Lack of transparency and concerns regarding potential violations of privacy and civil liberties.

NIJC's interest and opposition to proposed changes

Headquartered in Chicago, NIJC offers a wide range of legal services to low-income immigrants. Attorneys and trained staff provide consultations and legal representation on matters that include family-based immigration, applications for Lawful Permanent Residence (LPR)**,** legal protections for immigrant victims of family violence, visas for immigrant victims of crimes, visas for immigrant victims of human trafficking, and more. NIJC provides direct legal services to and advocates for these populations through policy reform, impact litigation, and public education. Since its founding more than three decades ago, NIJC blends individual client advocacy with broad-based systemic change.

NIJC provides legal services to more than 10,000 individuals each year, including many children designated as unaccompanied upon arrival at the southern border, and asylum seekers. Under the text of the CBP notice, we are concerned that these individuals would suffer a burden not accounted for, including the potential for externalizing U.S. asylum processing obligations, and subjecting families, including children, to unnecessary additional facial recognition technology. There is a need to implement clear safeguards to ensure that sensitive and private information collected by CBP is not stored in error-prone government databases, and not used to target immigrants throughout the country.

The proposed expansion of information by CBP also raises concerns in light of the agency's record of abuse and lack of accountability, including its role in serious abuses against people from Haiti seeking safety in the United States,[iv] family separation, history of detaining people in horrific conditions, use of lethal force, and racial and religious profiling.[v] Faulty facial recognition technology and false matches runs the risk of enabling CBP to detain vulnerable individuals for hours without access to a lawyer,[vi] potentially fueling ICE enforcement actions on faulty grounds,[vii] and sharing information with foreign governments in ways that put asylum seekers at risk.[viii] For these reasons, NIJC calls for a closer examination of the proposal and greater transparency, before giving more authority to CBP to collect additional sensitive data from people seeking entry into the United States.

I. CBP's information collection system could become a de facto requirement and externalization vehicle for asylum processing

Turning people attempting to enter the U.S. to seek asylum is a violation of U.S. and international asylum law.[ix] Nonetheless, policies blocking asylum seekers from entering the United States, such as the "Remain in Mexico" policy and "metering" (limiting the number of people given a chance to claim asylum), have inflicted violence against migrants and fueled organized crime. Importantly, on November 1, 2021, CBP released a memo ending the "metering" policy, and provided updated guidelines on management and processing of noncitizens at southwest border points of entry (POE).[x] The memo states that asylum seekers or people seeking humanitarian parole cannot be required to submit advance information in order to be processed at a POE, stating: "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."[xi]

However, the memo also addresses steps to "leverage technological and processing efficiencies to streamline POE processing," including the "innovative use of existing tools such as the CBPOne™ mobile application." According to the memo, the application "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."[xii]

The memo and CBP notice raise concerns that CBP One could exacerbate - rather than alleviate - "metering" at the border by creating new and separate backlogs. Since users of CBP One are not guaranteed an appointment at the port of entry at the time selected through the app, the utility of the application could quickly become illusory if registering does not diminish the amount of time one must wait in a border community before review by CBP at the port of entry. Failure to implement the application in a way that ensures users will be seen at the port of entry at the time indicated through the application will quickly erode confidence in the app, while leaving users vulnerable to harm in Mexico.

Moreover the proposed notice describes the use of CBP One as "voluntary;" however, the expanded use of the application runs the risk that it will be perceived as mandatory. Those who cannot afford access to the application will risk facing a segregated system in which they have to wait in line behind, or in an entirely different queue from, those with access to a smartphone. The proposal raises alarm that the broader use of CBP One could lead to another form of metering.

The Immigration and Nationality Act is unambiguous in its requirement that asylum seekers be processed into the United States to seek safety, at ports of entry or between. The imposition of processing requirements on asylum seekers *prior to arriving at the U.S. border*, even if technically not mandatory, raises questions regarding the equitable application of domestic asylum law and protections for those arriving at the border. Such proposals should be met with great scrutiny and care, particularly given the United States' history of externalization of asylum

obligations.[xiii] The harsh practices the U.S. has used to keep vulnerable people away from our borders have resulted in unimaginable harm, including sexual violence, torture, and death. Offshoring and externalization tactics have driven asylum seekers to take more dangerous routes – often to other parts of the border where they face more dangerous terrain. The introduction of a new (and now expanded) information collection asylum seekers are encouraged to utilize prior to arrival at the U.S. border must be scrutinized carefully to ensure it does not contribute to preferential treatment for certain asylum seekers over others and does not contribute to metering or other forms of externalized border control.

II. The notice raises concern about the assessed burden and efficiency of the CBP One Mobile Application

The CBP notice states that the purpose of the expanded information collection is to "continue to achieve efficiencies to process undocumented noncitizens under Title 8 upon their arrival at the POE, consistent with public health protocols, space limitations, and other restrictions." The notice states that the process will "streamline" and on average take 16 min per user; however, CBP does not offer reliable data to support this premise. The additional information CBP plans to collect from individuals before their arrival at the U.S.-Mexico border is comprehensive, and the notice does not consider the financial burden and lack of access to resources required to use the CBP One application.

The notice fails to account for gaps in technology, language access, and economic disparity between groups of non-citizens attempting to use the application and upload photos before they arrive at a port of entry. There is no apparent consideration of how CBP One requires access to the internet and a smartphone, for example. Previously, the use of this application was largely facilitated by Non-Governmental Organizations (NGOs). Without ensuring that NGOs are willing and able to facilitate the process, the notice does not provide any assurance that the CBP One application will be used in a manner that is equitable and does not discriminate against migrants who have limited resources or literacy or speak only rare languages.

Expanding the use of CBP One also runs the risk of incentivizing individuals with language access or literacy concerns to turn to third parties to complete the application, which raises another set of concerns with regards to possible fraud and exploitation at the expense of migrants and asylum seekers. The U.S. government must remove all barriers to the processing of asylum seekers, and CBP should not be permitted to create a new tiered system that adds new barriers to access under the guise of technological progress.

The notice states that information previously collected included a wide range of biographic and biometric information; yet, CBP is proposing widening the net of what they are requesting to include mandatory face scans without sufficient justification, under the guise of streamlining information collection. The proposal merits another review to accurately assess the true burden associated with CBP's plan for expanded information collection.

III. Concerns regarding privacy, civil liberties, and the lack of transparency

The notice fails to address privacy and civil liberties concerns associated with the expanded collection of information through the CBP One app, and the broader growing expansion of collection of biometrics data, including facial recognition technology on people seeking to enter the U.S. via the U.S.-Mexico border.[xiv]

According to the agency, CBP One has three main uses: merchants can make appointments for cargo inspection, foreign travelers can apply for an arrival and departure record, otherwise known as an I-94, and organizations in Mexico can verify whether individuals are enrolled in the Migrant Protection Protocols (MPP) program.

CBP One uses facial-recognition technology to check whether individuals are enrolled in MPP and have pending immigration cases.[xv] The mobile application also can use its GPS function to collect information about users' location when such information is submitted. If not closely guarded, these technologies could be used to track immigrants and use collected data in ways that are outside of the application's stated purposes. According to a DHS Privacy Impact Assessment (PIA) from April 30, 2021, there are a number of privacy risks associated with the CBP One application in the context of MPP enrollee identification, including: a risk of the overcollection of biometrics and biographic information from individuals who are not MPP enrollees; and a risk the application will fail to match children, when they are in fact a match.[xvi] Before rolling out any expansion, DHS should at the minimum conduct an updated PIA.

Likewise, one of the application's stated future uses would allow bus drivers and airplane pilots to submit biographic information to CBP on behalf of "consenting" travelers; yet the government fails to address what happens if the travel operators make use of the application mandatory.[xvii] Ultimately, use of the new application may not be perceived as voluntary to the travelers subjected to CBP One.

CBP's expanded deployment of facial recognition technology raises concerns with regards to threats to civil liberties and privacy protections, creating new risks of surveillance and abuse. DHS regulations provide that any foreign national may be required to provide fingerprints, photographs or other specified biometric identifiers upon arrival into or departure from the United States.[xviii] In the proposed notice, however, CBP proposes adding a requirement to submit a photo before they reach the border, which will significantly expand the amount of biometrics data collected and stored by the agency. When CBP collects such data, it can be used by other DHS agencies (including the U.S. Customs and Enforcement, ICE), as well as by foreign governments and federal, state, and local law enforcement to identify individuals for a variety of purposes.[xix]

Moreover, U.S. law is clear that children under fourteen should not be subject to biometrics collection.[xx] However, the notice provides no explicit protection for children, and does not

exempt them from the requirement to submit a photo. Further, the notice contains no information on how information-sharing will be restricted to protect against data falling in the wrong hands. There is no way to ensure that information collected through CBP One and shared with other databases is accurate.

By expanding the amount of information stored in DHS databases, the proposed rule risks placing asylum seekers in greater danger by exposing their biometrics data to the very foreign government persecutors they have sought to escape.[xxi] NIJC represents clients who have had their children separated from them because DHS relied on erroneous information provided through information sharing programs with foreign governments.[xxii] The increased biometrics collection runs the risk of placing more asylum seekers at risk of being wrongly accused of criminal activities and facing political violence, including torture, when returned to their home country.

As a general matter, facial recognition technologies are not reliably accurate.[xxiii] These systems "vary in their ability to identify people, and no system is 100 percent accurate under all conditions."[xxiv] Database matching errors can result in delays or the wrongful detention of people lawfully in the U.S. When there is a faceprint-matching error, CBP may not have a traveler's fingerprints on file as an alternative means of identity-verification. For these travelers in particular, faceprint-matching errors could lead to wrongful deportation or even false arrest for criminal charges.[xxv]

Facial recognition technology is also infamous for its racial bias.[xxvi] Many cities have banned the technology altogether, and members of Congress have introduced legislation to ban the use of facial recognition technology by federal law enforcement agencies.[xxvii] Collecting additional biometrics face scans from individuals before they are allowed to enter the U.S. risks an increase in unwarranted, and discriminatory law enforcement surveillance.

Finally, this notice follows a troubling trend of subjecting immigrant populations to emerging and experimental digital technologies. The United Nations Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance recently investigated the use of surveillance technology for border and migration control. In the report, the Special Rapporteur urged states to move beyond simplistic notions that technology is race-neutral, as its use either signals disparate intent to jeopardize the rights of immigrants of color or disparate impacts racial minorities.[xxviii] We urge DHS to consider the issues relating to racial bias and other concerns regarding the use of the facial recognition technology before approving CBPs expanded collection of facial scans and other biometrics data.

Conclusion

Before allowing for CBP to expand its information collection programs as envisioned in this notice, DHS should further examine the consequences associated with the expansion. The

administration must further consider the concerns regarding: the potential that CBP One will be used to create a new form of metering; questions relating to efficiency and lack of equity; and possible violations of privacy and civil liberties. NIJC urges DHS to re-consider the proposed information collection expansion and to protect non-citizens from intrusive and unwarranted information collection.

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Thank you for your consideration and please do not hesitate to contact Jesse Franzblau for further information.

/s/ Jesse Franzblau
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[i] U.S. Customs and Border Protection (CBP), Department of Homeland Security, Collection of Advance Information From Certain Undocumented Individuals on the Land Border, September 28, 2021, https://www.federalregister.gov/documents/2021/09/28/2021-20988/collection-of-advance-information-from-certain-undocumented-individuals-on-the-land-border.

[ii] 86 Fed. Reg. at 53668.

[iii] U.S. Customs and Border Patrol, CBP One Mobile Application, last modified August 2, 2021, https://www.cbp.gov/about/mobile-apps-directory/cbpone.

[iv] *See, i.e.,* Letter from 39 civil rights leaders delivered September 21, 2021 to President Biden calling for a halt to the deportations of Haitian migrants and an end to the summary expulsions that violate asylum rights and human rights on the border. Text of the letter is available at https://immigrantjustice.org/sites/default/files/content-type/press-release/documents/2021-09/Civil_Rights_Leaders_Letter_to_President_9-21-21.pdf.

[v] A recent Human Rights Watch report, for example, detailed systematic abuses and from 2016-2021, including sexual assault, and a lack of accountability for those responsible for such abuses. *See* "Internal DHS Reports of Abuses by US Border Officials," Human Rights Watch, October 21, 2021, https://www.hrw.org/report/2021/10/21/they-treat-you-you-are-worthless/internal-dhs-reports-abuses-us-border-officials#6949.

[vi] *See, i.e.*, Ashley Gorski, "CBP's Plan to Expand Face Surveillance at Airports is a Civil Liberties Disaster in the Making," American Civil Liberties Union (ACLU), December 21, 2020, https://www.aclu.org/news/immigrants-rights/cbps-plan-to-expand-face-surveillance-at-airports-is-a-civil-liberties-disaster-in-the-making/.

[vii] *See, i.e.,* Caroline Haskins, "ICE just paid a MasterCard-backed company called Trust Stamp $3.9 million for 'rapid' facial recognition at migrant detention facilities," Business Insider, September 27, 2021, https://www.businessinsider.com/ice-gets-rapid-ai-facial-recognition-at-migrant-detention-facilities-2021-9.

[viii] *See, i.e.*, Jesse Franzblau, "NIJC's Public Comment Opposing Trump Administration's Dangerous & Discriminatory Mass Surveillance Expansion," National Immigrant Justice Center, October 13, 2021, https://immigrantjustice.org/staff/blog/nijcs-public-comment-opposing-trump-administrations-dangerous-discriminatory-mass.

[ix] 8 U.S.C. § 1158(a)(1) ("Any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien's status, may apply for asylum in accordance with this section or, where applicable, section 1225(b) of this title.").

[x] *See* "CBP Issues Memo on Processing of Undocumented Noncitizens at Southwest Border Land Ports of Entry," AILA Doc. No. 21110307, November 1, 2021, https://www.aila.org/infonet/cbp-issues-memo-on-processing-of-undocumented.

[xi] Ibid.

[xii] Ibid.
[xiii] *See i.e.,* Azadeh Erfani and Maria Garcia, "Pushing Back Protection: How Offshoring And Externalization Imperil The Right To Asylum," August 3, 2021, https://immigrantjustice.org/research-items/off-shoring-asylum.
[xiv] *See, i.e,* Raul Pinto, "The New CBP One App May Put Immigrants and Travelers' Privacy at Risk," American Immigration Council, August 5, 2021, https://immigrationimpact.com/2021/08/05/cbp-one-app-privacy-risks/#.YYly8p7MI2x.
[xv] *See* U.S. Department of Homeland Security, "Privacy Impact Assessment for the Processing Individuals Subject to Migrant Protection Protocols (MPP)" DHS Reference No. DHS/CBP/PIA-070, April 30, 2021, https://www.dhs.gov/sites/default/files/publications/privacy-pia-cbp070-mpp-may2021.pdf.
[xvi] Ibid at Section 2.5.
[xvii] U.S. Customs and Border Patrol, CBP One Mobile Application, last modified August 2, 2021, https://www.cbp.gov/about/mobile-apps-directory/cbpone.
[xviii] 8 C.F.R. §§ 215.8(a) & 235.1(f).
[xix] *See i.e.*, Dr. Krisztina Huszti-Orbán & Prof. Fionnuala Ní Aoláin, *Use of Biometric Data to Identify Terrorists: Best Practice or Risky Business?*, University of Minnesota Human Rights Center, (2020), https://www.ohchr.org/Documents/Issues/Terrorism/biometricsreport.pdf.
[xx] INA section 262(b), 8 U.S.C. 1302, states, ''Whenever any alien attains his fourteenth birthday in the United States he shall, within thirty days thereafter, apply in person for registration and to be fingerprinted.'' INA section 264(a), 8 U.S.C. 1304, provides that the Secretary is authorized to prepare forms for the registration and fingerprinting of non-citizens "aged 14 and older in the United States, as required by INA section 262."
[xxi] In relying on foreign data as the basis for enforcement purposes, CBP has circumvented legal rights and falsely criminalized migrants, including asylum seekers fleeing political violence. *See i.e.,* Jesse Franzblau, "Consequences Of Unreliable Transnational Gang Allegations," National Immigrant Justice Center, September 30, 2021, https://immigrantjustice.org/staff/blog/consequences-unreliable-transnational-gang-allegations.
[xxii] *See* U.S. House Judiciary Committee, "Hearing Oversight of Family Separation and U.S. Customs and Border Protection Short-Term Custody under the Trump Administration," Statement of the National Immigrant Justice Center (NIJC), July 25, 2019, https://www.congress.gov/116/meeting/house/109852/documents/HHRG-116-JU00-20190725-SD014.pdf. *See also Ms. L., et al., Petitioners-Plaintiffs, v. U.S. Immigration and Customs Enforcement ("ICE"), et al.,* Declaration of Lisa Koop, National Immigrant Justice Center, July 20, 2019 [copy on file with author].
[xxiii] Electronic Frontier Foundation, Issues, "Biometrics," https://www.eff.org/issues/biometrics [last visited December 8, 2020].
[xxiv] Jennifer Lynch, Face Off: Law Enforcement Use of Face Recognition Technology, Electronic Frontier Foundation 6 (May 2019) https://www.eff.org/files/2018/02/15/face-off-report-1b.pdf.
[xxv] *See, i.e.,* Elisha Anderson, "Controversial Detroit Facial Recognition Got Him Arrested for a Crime He Didn't Commit," Detroit Free Press, July 11, 2020, https://www.freep.com/story/news/local/michigan/detroit/2020/07/10/facial-recognition-detroit-michael-oliver-robert-williams/5392166002.
[xxvi] Sophie Bushwick, "How NIST Tested Facial Recognition Algorithms for Racial Bias," December 27, 2019, https://www.scientificamerican.com/article/how-nist-tested-facial-recognition-algorithms-for-racial-bias. *See also* Amnesty International, "Amnesty International Calls for Ban on the Use of Facial Recognition Technology for Mass Surveillance," (June 2020), https://www.amnestyusa.org/wp-content/uploads/2020/06/061120_Public-Statement-Amnesty-International-Calls-for-Ban-on-the-Use-of-Facial-Recognition-Technology-for-Mass-Surveillance.pdf.
[xxvii] Olivia Solon, "Facial recognition bill would ban use by federal law enforcement," NBC News, June 25, 2020, https://www.nbcnews.com/tech/security/2-democratic-senators-propose-ban-use-facial-recognition-federal-law-n1232128.
[xxviii] Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Advance Unedited Version, 10 November 2020, A/75/50289 ("This report highlights how digital technologies are being deployed to advance the xenophobic and racially discriminatory ideologies that have become so prevalent, in part due to widespread perceptions of refugees and migrants as *per se* threats to national security. In other cases, discrimination and exclusion occur in the absence of explicit animus, but as a result of the pursuit of bureaucratic and humanitarian efficiency without the necessary human rights safeguards. The report also highlights how ongoing securitization of borders, and related massive economic profits are a significant part of the problem.").

Privacy Impact Assessment

for the

Collection of Advance Information from Certain Undocumented Individuals on the Land Border

DHS Reference No. DHS/CBP/PIA-076

January 19, 2023

Homeland Security

Abstract

Historically, U.S. Customs and Border Protection (CBP) received no advance biographic or biometric information prior to the arrival of undocumented individuals at ports of entry (POE). This lack of information increases the amount of time it takes CBP officers (CBPO) to process undocumented individuals upon their arrival. To streamline and increase processing capacity at land POEs, CBP is expanding the use of the CBP One™ mobile and desktop application to allow the advance submission of biographic and biometric information from undocumented individuals seeking admission into the United States. Undocumented individuals and organizations and entities (e.g., International Organizations (IO) and Non-Governmental Organizations (NGO)) acting on their behalf may voluntarily elect to submit biographic and biometric information via CBP One™. CBP previously provided notice of this advance information collection through a Privacy Impact Assessment (PIA) Update to DHS/CBP/PIA-067(a) Unified Secondary and Privacy Impact Assessment Appendices to the DHS/CBP/PIA-056 Traveler Verification Service[1] and DHS/CBP/PIA-068 CBP One™ Mobile Application.[2] CBP is conducting this new standalone Privacy Impact Assessment to provide full transparency on this initiative and fully assess the risks associated with this collection.

Overview

CBP safeguards America's borders by protecting the public from dangerous people and materials while enhancing the nation's global economic competitiveness by enabling legitimate trade and travel. CBP is charged with ensuring compliance with federal laws at the border including preventing the entry of contraband and other dangerous goods, as well as ensuring that individuals entering the United States comply with all appropriate legal requirements. CBP has authority to inspect, examine, and search persons, vehicles, baggage, and merchandise to ensure compliance with the law.

A citizen of a foreign country who seeks to enter the United States generally must first obtain a U.S. travel document (e.g., a U.S. visa).[3] Possession of a visa does not guarantee admission to the United States; it indicates that the Department of State determined that the

[1] *See* U.S. DEPARTMENT OF HOMELAND SECURITY, U.S. CUSTOMS AND BORDER PROTECTION, PRIVACY IMPACT ASSESSMENT FOR THE TRAVELER VERIFICATION SERVICE, DHS/CBP/PIA-056, *available at* https://www.dhs.gov/privacy-documents-us-customs-and-border-protection.
[2] *See* U.S. DEPARTMENT OF HOMELAND SECURITY, U.S. CUSTOMS AND BORDER PROTECTION, PRIVACY IMPACT ASSESSMENT FOR THE CBP ONE™ MOBILE APPLICATION, DHS/CBP/PIA-068 (2021), *available at* https://www.dhs.gov/privacy-documents-us-customs-and-border-protection.
[3] A visa is a travel document issued by the traveler's country of citizenship and is placed in the traveler's passport. Certain international travelers may be eligible to travel to the United States without a visa if they meet the requirements for visa-free travel. For example, individuals do not require a visa if they are a citizen or national and traveling from a country that participates in the Visa Waiver Program (VWP) and meet the qualifications of the program.

individual is eligible to seek admission. Upon arrival, all travelers arriving at or traveling through any U.S. air, sea, or land POE are subject to inspection and examination by a CBP Officer and, in some cases, an agricultural specialist.[4] CBP officers perform the inspection to ensure that a traveler is admissible to the United States (as a U.S. citizen or otherwise) and that the traveler is not bringing items into the United States contrary to law.[5] A traveler is not permitted to enter the United States without inspection by a CBPO.

Longstanding regulations require commercial sea and air carriers, as well as private aircraft operators, to submit passenger and crew manifest information to CBP prior to arrival.[6] However, for individuals seeking to enter the United States by land, CBP receives limited or no advance information.[7] For most undocumented individuals[8] who arrive in the United States at a land POE, CBP receives no information about the individuals prior to their arrival.

Advance Information Vetting

When available, CBP uses information obtained in advance from individuals seeking to enter the United States as part of a multi-layered national security approach to conduct appropriate vetting prior to an individual's arrival. Prior to arrival, CBP uses this information to search within CBP's existing information holdings, as well as other law enforcement and national security databases, to determine whether the individual may pose a public safety or national security risk. The advance collection of information also assists in streamlining the inspection process upon an individual's arrival at a POE. CBP has several longstanding advance information collections through which the agency obtains information in advance of arrival either directly from the

[4] *See* 8 CFR Part 235 Inspection of Persons Applying for Admission.
[5] Individuals who are inadmissible are subject to removal from the United States. The Immigration and Nationality Act (INA) sets forth grounds of inadmissibility (INA § 212(a)). The general categories of inadmissibility include health, criminal activity, national security, public charge, lack of labor certification (if required), illegal entry, fraud or misrepresentation, lack of proper documentation, prior removals, unlawful presence in the United States, and several miscellaneous categories. However, for certain grounds of inadmissibility, it may be possible for a person to obtain a waiver of that inadmissibility.
[6] *See* 19 CFR §§ 4.7a, 4.64, 122.22, 122.49a, 122.49b, 122.49c, 122.75a, and 122.75b. CBP uses advance passenger information to vet individuals for public safety and national security concerns. CBP also provides recommendations to air and sea carriers on whether to permit an individual to board. Carriers are not permitted to board or transport individuals who do not possess proper documents.
[7] Rail and bus carriers may voluntarily submit advance passenger information to CBP, although it is not a requirement.
[8] An undocumented individual is an individual who does not possess a valid visa and is not traveling from a country for which the requirement to obtain a visa is waived. Undocumented individuals may or may not possess a passport or other acceptable document that denotes identity and citizenship when entering the United States (e.g., passport, passport card; Enhanced Driver's License; Trusted Traveler Program card (NEXUS, SENTRI, or FAST); U.S. Military identification card; U.S. Merchant Mariner; American Indian Card; or (when available) Enhanced Tribal Card).

traveler (e.g., Trusted Traveler Programs,[9] Electronic System for Travel Authorization (ESTA),[10] Electronic Visa Update System (EVUS)[11]) or from carriers and operators (e.g., Advance Passenger Information[12] and Passenger Name Record[13]).

Undocumented Individuals

As stated above, historically CBP does not receive advance information about undocumented individuals before they arrive at a land POE. Because these individuals do not present a valid travel document,[14] CBP is unable to conduct basic identification verification and standard law enforcement and national security system checks upon arrival as part of CBP's primary inspection. Therefore, undocumented individuals are referred for secondary inspection. During secondary inspection, CBP officers spend significant time collecting, verifying, and manually entering information from undocumented individuals into the Unified Secondary system

[9] Trusted Traveler Programs are risk-based programs that facilitate expedited processing of pre-approved low-risk travelers. CBP offers several types of Trusted Traveler Programs for arrival at air, sea, and land POEs. Eligible travelers who apply for a particular program are vetted against various law enforcement databases, and those who are conditionally approved are interviewed. During the interview, CBP collects biometric information. Trusted Traveler Program members are subject to recurrent vetting to ensure that these travelers do not pose threats to law enforcement or national security and to determine their continued eligibility to receive expedited processing at POEs. Trusted Traveler Programs are generally limited to U.S. citizens, with certain exceptions. *See* DHS/CBP/PIA-002 Global Enrollment System and subsequent updates, *available at* www.dhs.gov/privacy.

[10] The Visa Waiver Program permits eligible travelers from certain participating countries to travel to the United States without first obtaining a visa. Participation in the Visa Waiver Program requires enrollment in CBP's ESTA program. *See* U.S. DEPARTMENT OF HOMELAND SECURITY, U.S. CUSTOMS AND BORDER PROTECTION, PRIVACY IMPACT ASSESSMENT FOR THE ELECTRONIC SYSTEM FOR TRAVEL AUTHORIZATION, DHS/CBP/PIA-007 (2008 and subsequent updates), *available at* https://www.dhs.gov/privacy-documents-us-customs-and-border-protection.

[11] CBP's EVUS is a web-based enrollment system used to collect information from nonimmigrant noncitizens who 1) hold a passport that was issued by an identified country approved for inclusion in the EVUS program and 2) have been issued a U.S. nonimmigrant visa of a designated category. EVUS, similar to ESTA, collects updated information in advance of an individual's travel to the United States. *See* U.S. DEPARTMENT OF HOMELAND SECURITY, U.S. CUSTOMS AND BORDER PROTECTION, PRIVACY IMPACT ASSESSMENT FOR THE ELECTRONIC VISA UPDATE SYSTEM, DHS/CBP/PIA-033 (2016), *available at* https://www.dhs.gov/privacy-documents-us-customs-and-border-protection.

[12] In accordance with 19 C.F.R. §§ 122.49a, 122.49b, air carriers are required to send passenger and crew manifests to CBP before an air carrier departs from the foreign port or place for the United States. *See* U.S. DEPARTMENT OF HOMELAND SECURITY, U.S. CUSTOMS AND BORDER PROTECTION, PRIVACY IMPACT ASSESSMENT FOR THE ADVANCE PASSENGER INFORMATION SYSTEM, DHS/CBP/PIA-001 (2005 and subsequent updates), *available at* https://www.dhs.gov/privacy-documents-us-customs-and-border-protection.

[13] 49 U.S.C. § 44909(c)(3) and its implementing regulation at 19 C.F.R. § 122.49d require air carriers operating flights to or from the United States to provide CBP with certain passenger reservation information, called Passenger Name Record data, to the extent it is collected and contained in the air carrier's reservation and/or departure control systems.

[14] The Department of State and DHS partnered to implement a key 9/11 Commission recommendation and the statutory mandates of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA). IRTPA, in part, required the DHS and DOS to develop and implement a plan to require all travelers, U.S. citizens and foreign nationals alike, to present a passport or other acceptable document that denotes identity and citizenship when entering the United States, under the Western Hemisphere Travel Initiative.

(USEC)[15] to document the secondary inspection process from referral to disposition and case processing. Not only is this burdensome for the CBP, but it leads to increased wait times at POEs and reduces the overall CBP throughput.

In an effort to streamline processing of certain undocumented individuals, in May 2021, CBP began collecting advance information from undocumented individuals using CBP One™. Organizations could choose to submit advance information on behalf of an undocumented individual on a voluntary basis. CBP previously provided notice of this advance information collection through a Privacy Impact Assessment Update to DHS/CBP/PIA-067(a) Unified Secondary and Privacy Impact Assessment Appendices to the DHS/CBP/PIA-056 Traveler Verification Service[16] and DHS/CBP/PIA-068 CBP One™ Mobile Application.[17] Since the publication of the Privacy Impact Assessment Update, CBP has expanded the voluntary advance information collection. CBP is documenting the expanded process in this standalone Privacy Impact Assessment to provide full transparency on this initiative and fully assess the risks associated with this collection.

Advance Information Collection

To facilitate the processing of certain undocumented noncitizens at land POEs, CBP created a way for undocumented individuals, as well as organizations and entities who may provide assistance to undocumented individuals, to submit advance information to CBP through CBP One™. CBP One™ is both a mobile and desktop application and serves as a single portal to a variety of CBP services.[18] Individuals may voluntarily choose to submit biographic and biometric information on behalf of themselves and their spouse and children using CBP One™ in advance of their arrival at a POE. Separately, organizations and entities who work with undocumented individuals may collect and transmit the information on behalf of an undocumented individual and their spouse and children in advance of arrival at a POE. In addition to enabling undocumented individuals to submit advance arrival information, CBP is also offering a designated number of dates and times at certain POEs for undocumented individuals to schedule a date and time to

[15] *See* U.S. DEPARTMENT OF HOMELAND SECURITY, U.S. CUSTOMS AND BORDER PROTECTION, PRIVACY IMPACT ASSESSMENT FOR UNIFIED SECONDARY, DHS/CBP/PIA-067, *available at* https://www.dhs.gov/privacy-documents-us-customs-and-border-protection.
[16] *See* U.S. DEPARTMENT OF HOMELAND SECURITY, U.S. CUSTOMS AND BORDER PROTECTION, PRIVACY IMPACT ASSESSMENT FOR THE TRAVELER VERIFICATION SERVICE, DHS/CBP/PIA-056, *available at* https://www.dhs.gov/privacy-documents-us-customs-and-border-protection.
[17] *See* U.S. DEPARTMENT OF HOMELAND SECURITY, U.S. CUSTOMS AND BORDER PROTECTION, PRIVACY IMPACT ASSESSMENT FOR THE CBP ONE™ MOBILE APPLICATION, DHS/CBP/PIA-068 (2021), *available at* https://www.dhs.gov/privacy-documents-us-customs-and-border-protection.
[18] The desktop or mobile application is using an intuitive, user-friendly interface and requires no training to use it properly. However, CBP provided multiple live demonstration sessions for designated users as well as provided a Quick Reference Guide. CBP also provided and continues to provide ad hoc assistance to troubleshoot technical issues as well as implement system enhancements to improve the user experience.

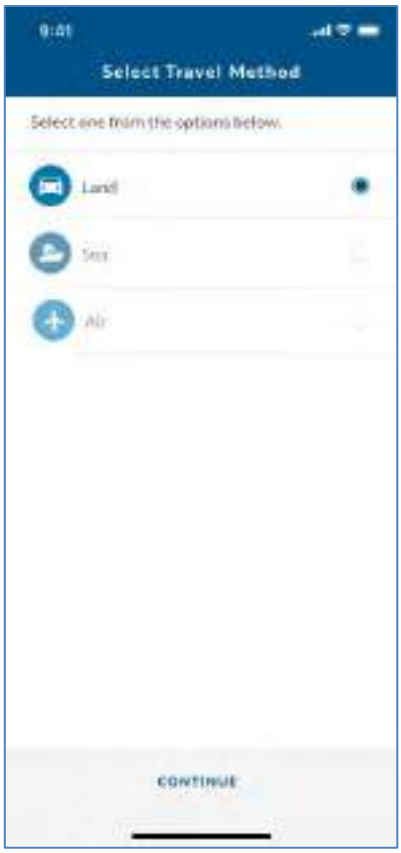
present themselves at the POE for processing.[19]

On January 12, 2023, CBP began accepting advance information submissions from undocumented individuals seeking to travel to the United States through the southwest border (SWB) land POEs to request an exception from the Centers for Disease Control and Prevention (CDC) Order, "Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists (hereafter referred to as Title 42). "[20] Post-Title 42 Order, this scheduling functionality will be available for undocumented individuals to schedule a time to present themselves at one of the SWB land ports of entry identified above for inspection and processing, rather than arriving unannounced at a port of entry or attempting to cross in-between ports of entry. Post-Title 42 Order, CBP will remove the requirement for individuals to attest to the vulnerability criteria in CBP One™. However, the remainder of the features of the application and scheduling functionality, as described above, will remain the same.

While the Title 42 Order is in effect, undocumented individuals seeking to travel to the United States through a SWB POE to request an exception to Title 42 must first use CBP One™ to attest that they believe that they or an accompanying spouse or child meet certain vulnerability criteria. After the individual attests that they believe that they, or their accompanying spouse or child meet the criteria, they are then able to submit advance information to CBP to request a date and time to present at an identified port of entry to request an exception to the Title 42 Order. Use of CBP One™ does not guarantee that an individual will be granted an exception to the Title 42 Order.[21]

To submit advance information, individuals and designated personnel/points of contact within organizations and entities ("users") download CBP One™ from the Google Play or iTunes mobile application stores or use a web browser to access the application. Users are prompted to

[19] CBP plans to release a certain number of date/time slots per POE for a given period on a routine basis.
[20] On March 20, 2020, the Department of Health and Human Services (HHS) issued an Interim Final Rule (IFR) and Order under Sections 265 and 268 of Title 42 of the U.S. Code, which permits the Director of the Centers for Disease Control and Prevention (CDC) to "prohibit […] the introduction" into the United States of individuals when the Director believes that "there is serious danger of the introduction of [a communicable] disease into the United States."9 Section 268 of Title 42 provides that customs officers—which include officers of CBP's Office of Field Operations and U.S. Border Patrol agents—shall implement any quarantine rule or regulation issued by the CDC, which includes Orders under section 265. The Order permits customs officers to except individuals from the CDC Order in totality of the circumstances based on "consideration of significant law enforcement, officer and public safety, humanitarian, and public health interests." On August 2, 2021, the CDC issued an updated *Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists, available at* https://www.cdc.gov/coronavirus/2019-ncov/cdcresponse/laws-regulations.html.
[21] At the time of publication, the participating POEs are Nogales, Brownsville, Eagle Pass, Hidalgo, Laredo, El Paso (Paso del Norte), Calexico, and San Ysidro.



create a new Login.gov account using an email address, phone number, and password, or sign into an existing Login.gov account to access CBP One™.[22] When users log into CBP One™; users must consent to the CBP Privacy Policy[23] before using the application. Additionally, upon set up, users submitting advance information via the mobile application are required to enable location services[24] on their phone for geolocation purposes.[25]

After logging in, the user is prompted to choose their preferred language and select either "International Organization" or "Traveler" from a list of options, depending on whether the individual is submitting information on their own behalf, or whether a third-party individual, organization, or entity is submitting the information on behalf of a traveler. The user then selects "land" from the travel method options ("land/air/sea"), since the voluntary submission of advance information is limited to land entries and chooses "Continue."

[22] Login.gov ensures a secure connection and identity verification for International Organizations/Non-Governmental Organizations to use CBP One™. *See* GENERAL SERVICES ADMINISTRATION, PRIVACY IMPACT ASSESSMENT FOR LOGIN.GOV (2020), *available at* https://www.gsa.gov/reference/gsa-privacy-program/privacy-impact-assessments-pia.

[23] The CBP One™ Privacy Policy can be found at https://cbpone.cbp.dhs.gov/#/.

[24] At the time the user submits information to CBP via the CBP One™ mobile application, the GPS on his or her device is pinged by CBP One™. CBP One™ collects and sends the latitude and longitude coordinates to CBP for analytical purposes (e.g., to determine where the user is submitting the advance arrival information from) and to monitor irregularities (e.g., receiving multiple submissions from the same phone), not to conduct surveillance or track user movement. If a user submits information using a web browser, upon submission CBP will collect the Internet Protocol address from the device to monitor for irregularities (e.g., receiving multiple submissions from the same IP address). CBP is implementing geofencing capabilities to limit use of CBP One™ to users within a defined proximity to the United States border. This geofencing is intended to mitigate the likelihood of planned irregular migration to the Southwest Border.

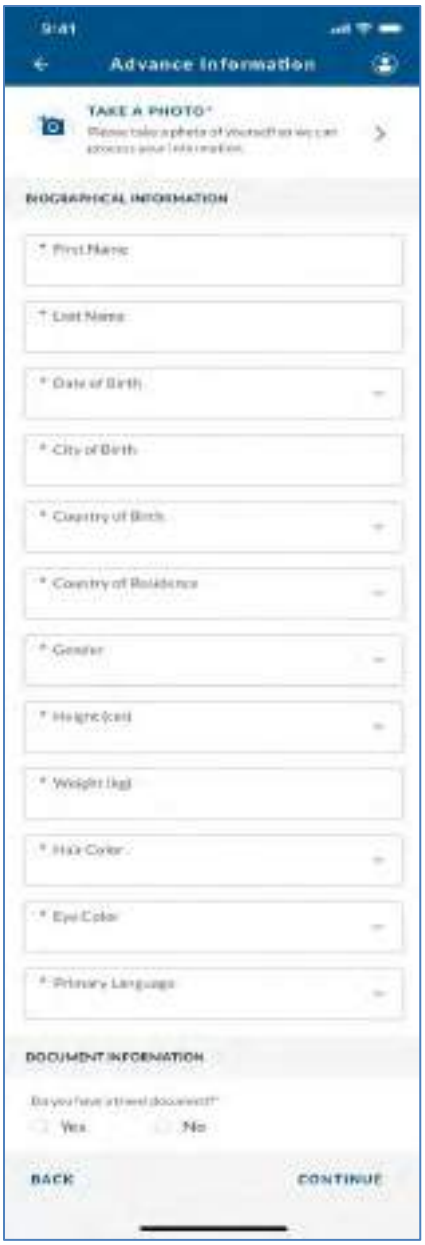
[25] Geolocation is the process or technique of identifying the geographical location of a person or device by means of digital information processed via the internet.

The next screen will then display a list of options, including "Submit Advance Information." After selecting this option, the user is prompted to select their preferred language. After selecting the language, the user is presented with the following list of vulnerability criteria:

- Physical or mental illness;
- Disability;
- Pregnancy;
- No access to safe housing or shelter in Mexico;
- Under the age of 21;
- Over the age of 70; or
- Have been threatened or harmed while in Mexico.

In order to be able to submit advance information to CBP to request an exception to Title 42, the user must attest that they believe that they, or a spouse or child accompanying them, meet the vulnerability criteria. If the user or family member meets the above vulnerability criteria, the user and their family members are permitted to submit advance information to CBP to request an exception from Title 42.

Once the user attests to the vulnerability criteria, the user may submit information on their spouse and children by selecting "Add Individual," if applicable. Once this is selected, the user will be directed to begin entering their and their spouse and children's biographic and biometric information.



CBP One™ requests the user enter the same information that CBP would otherwise collect from undocumented individuals during the primary and/or secondary inspection, including: name, date of birth, nationality, country/city of birth, country of residence, phone numbers, U.S. address, foreign addresses (optional), employment history (optional), travel history (optional), emergency contact information (optional), family information (optional), marital information (optional), non-Western Hemisphere Travel Initiative (WHTI) compliant[26] identity documents (optional), primary language, gender, height, weight, and eye color.[27]

Once the user enters all requested information, the CBP One™ application prompts the user to either upload a photograph (if using the desktop application) or take a live photo of the undocumented individual (if using the mobile application). All users are required to submit a photograph of the undocumented individual(s) as part of the advance information collection. Biographic advance information cannot be submitted to CBP without including a photograph.

Once the user enters the biographic and biometric (i.e., photograph) information into CBP One™ and enables their location services, the user is required to select a desired POE and desired date/time of arrival, when prompted. The traveler will only be able to request a date and time if they are within a specified distance from the U.S.-Mexico border. CBP requests users to select a desired date/time of arrival, to assist in streamlining the processing upon arrival at a POE. However, CBP treats the selected date and time of arrival as the initial time to present at the POE, and cannot guarantee that an individual will be processed within a particular time frame. In all cases, CBP will inspect and process undocumented individuals in accordance with the POE's capability to do so. The scheduling feature helps CBP to properly allocate resources to the POEs for a given day or week

[26] The types of acceptable Western Hemisphere Travel Initiative compliance documents vary by POE type (i.e., land, air, sea), but generally include U.S. Passport; U.S. Passport Card, Enhanced Driver's License, Enhanced Tribal Card, Trusted Traveler Program card (NEXUS, SENTRI or FAST); U.S. Military identification card when traveling on official orders; U.S. Merchant Mariner document when traveling in conjunction with official maritime business.
[27] The data elements are substantially similar to, and used for the same purposes as, the Form I-94W Nonimmigrant Visa Waiver Arrival/Departure Record.

to further assist in streamlining in-person processing upon arrival. Once a POE and desired date/time of arrival is selected, the user may submit the information to CBP. Upon submission, the user is presented with a confirmation screen which displays a confirmation number along with the selected POE and date/time, if applicable. A copy of the confirmation is also sent to the email address provided as part of the advance information collection process. The granting of an appointment does not guarantee an exception from the Title 42 Order, nor does it guarantee admission into the United States. CBP officers make determinations of whether an exception is authorized, as well as all admissibility determinations at the POE. CBP officers consider all available information, including information supplied in advance by the traveler, and the totality of the individual case circumstances and will determine the appropriate processing disposition for each individual.

The submission of advance information through the CBP One™ application is voluntary. Once the Title 42 Order is no longer in effect, individuals may present themselves at a port of entry for processing without utilizing CBP One™. However, if an individual chooses to not submit advance

information and schedule their arrival, they may experience a longer wait time than individuals who submitted their information in advance. In all cases, CBP will continue to process all travelers who present themselves for inspection as quickly as possible.

CBP Collection and Use Prior to Arrival

When a traveler uses CBP One™ to submit advance information, the biographic information and photograph is transferred to a segregated database within the Automated Targeting System (ATS).[28] CBP then conducts biographic and biometric pre-arrival vetting against ATS's Unified Passenger (UPAX). UPAX, an ATS functionality, processes submitted information against information within CBP holdings and applies risk-based rules centered around CBP officer experience, analysis of trends of suspicious activity, and raw intelligence from DHS and other government agencies. Pre-arrival vetting enables CBP to identify any previous DHS encounters, public safety threats (such as wants/warrants), and national security threats (such as links to terrorist organizations). Pre-arrival vetting individuals for public safety and national security concerns reduces the amount of time that officers typically spend on determining whether the individual is a match to checks and results completed during the inspection process. CBP does not conduct pre-arrival vetting to pre-determine an individual's processing disposition nor admissibility to the United States.

In addition to conducting pre-arrival vetting, CBP also creates a templatized copy of the photograph in a standalone Traveler Verification System (TVS) gallery.[29] CBP stages all photographs submitted via CBP One™ in a segmented TVS gallery until the individual arrives at the POE. CBP temporarily retains the photographs of undocumented individuals within TVS for 1 year after submission for identity confirmation, evaluation of the technology, assurance of accuracy of the algorithms, and system audits.

As noted above, the user is required to select a POE and desired date and time on which the undocumented individual(s) intends to arrive in order for the submission to be complete. If the user does not select a POE and desired date and time as part of the original submission, the user may retrieve the submission using the confirmation number to select a POE and desired date and

[28] *See* U.S. DEPARTMENT OF HOMELAND SECURITY, U.S. CUSTOMS AND BORDER PROTECTION, PRIVACY IMPACT ASSESSMENT FOR THE AUTOMATED TARGETING SYSTEM, DHS/CBP/PIA-006(e) (2017), *available at* https://www.dhs.gov/privacy-documents-us-customs-and-border-protection.

[29] CBP's TVS is an accredited information technology system consisting of a group of similar systems and subsystems that support the core functioning and transmission of data between CBP applications and partner interfaces. Since early 2017, CBP has used the TVS as its backend matching service for all biometric entry and exit operations that use facial comparison, regardless of air, land, or sea. *See* U.S. DEPARTMENT OF HOMELAND SECURITY, U.S. CUSTOMS AND BORDER PROTECTION, PRIVACY IMPACT ASSESSMENT FOR THE TRAVELER VERIFICATION SERVICE, DHS/CBP/PIA-056, *available at* https://www.dhs.gov/privacy-documents-us-customs-and-border-protection.

time at a later date. The user can also retrieve the submission to reschedule an undocumented individual's arrival date and time.

CBP Inspection Process

Undocumented noncitizens who utilize CBP One™ to submit advance information will generally be processed in a more streamlined manner than individuals who do not utilize the app, since CBP is able to pre-populate the advance information into CBP systems which ultimately reduces the amount of manual data entry that is typically completed during the inspection process.[30] Post-Title 42 Order, CBP estimates that the importation of information collected in advance of arrival at the POE will result in a savings of 16 minutes in CBP's processing of each undocumented individual.

Primary Inspection

All individuals are subject to primary inspection upon arrival at the POE. At the beginning of the primary inspection process, the CBP officer takes a photograph, using Simplified Arrival, a system that uses biometric facial matching or biographic matching, to locate and display relevant records CBP maintains on the individual.[31] Using a designated processing mode in Simplified Arrival, the individual's photograph is compared against the pre-staged gallery of images taken from the photographs submitted via CBP One™ directly from the individual or by the organizations and entities, known as *1:n matching*. If TVS does not produce a match, CBP officers may query the segregated database using the CBP One™ confirmation number or name, date of birth, and country of citizenship provided by the undocumented individual. Once an individual is matched and all primary inspection checks are complete, CBPOs use Simplified Arrival to generate a referral for the undocumented individual to go to secondary inspection.[32]

Secondary Inspection

Advance information submitted via the CBP One™ application streamlines the secondary inspection process by pre-populating biographic information in USEC. When a CBP officer refers

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[30]. Undocumented individuals who do not submit advance information may still be processed at a POE, but may need to wait in line with other undocumented individuals for which CBP does not have advance information for, and will likely experience longer wait and processing times.

[31] Simplified Arrival is an enhanced international arrival process that uses facial biometrics to automate the manual document checks that are already required for admission into the United States, providing individuals with a secure, touchless travel experience while fulfilling a longstanding Congressional mandate to biometrically record the entry and exit of non-citizens. *See* U.S. DEPARTMENT OF HOMELAND SECURITY, U.S. CUSTOMS AND BORDER PROTECTION, PRIVACY IMPACT ASSESSMENT FOR THE TRAVELER VERIFICATION SERVICE - APPENDIX A ON SIMPLIFIED ARRIVAL, DHS/CBP/PIA-056, *available at* https://www.dhs.gov/privacy-documents-us-customs-and-border-protection.

[32] If an individual arrives at a POE without sufficient documentation, as part of standard processing the CBPO typically refers the individual for a secondary inspection.

an undocumented individual for secondary inspection, they have the option of importing the biographic information submitted in advance via CBP One™ in the corresponding USEC referral event via the segregated backend database where it is stored in ATS. A CBP officer reviews the imported information, verifies the accuracy of the data, and makes any necessary updates to the event. The USEC event may include the confirmation number previously generated by CBP One™.[33] CBP officers may also manually add the individual's CBP One™ confirmation number as a record ID in USEC. The USEC event for the undocumented individual includes the previously submitted biographic information, any biometric information, and the UPAX pre-arrival and primary vetting results. The results of pre-vetting will display relevant events/encounters that the CBP officers will use to inform questioning that typically occurs as part of the secondary inspection. The results may also lead CBPOs to conduct additional system checks in accordance with standard secondary processes.

CBP officers determine an individual's admissibility and appropriate processing disposition on a case-by-case basis and consider the totality of the facts and circumstances known to the officer at the time of inspection. CBPOs do not make any disposition determinations in advance of an encounter with an undocumented individual.

Section 1.0 Authorities and Other Requirements

1.1 What specific legal authorities and/or agreements permit and define the collection of information by the project in question?

Undocumented individuals (either on their own behalf or through organizations and entities) may submit information to CBP on a voluntary basis, for the purpose of facilitating and implementing CBP's mission. This collection is consistent with DHS and CBP's authorities, including under 6 U.S.C. §§ 202 and 211(c). Under these authorities, DHS and CBP are permitted to maintain the security of the border, including "securing the borders, territorial waters, ports, terminals, waterways, and air, land, and sea transportation systems of the United States," and "implement[ing] screening and targeting capabilities, including the screening, reviewing, identifying, and prioritizing of passengers and cargo across all international modes of transportation, both inbound and outbound." Providing advance information in CBP One™ does not create or confer any rights, substantive or procedural, enforceable by law by any party in any matter, whether civil or criminal. It places no legal requirements on CBP nor any other government agency or department; has no regulatory effect; confers no remedies; and does not have the force of law or a ruling of any administrative agency, court, or other governmental entity.

1.2 What Privacy Act System of Records Notice(s) (SORN(s)) apply

[33] The CBPO uses the following information to create the referral: first name, last name, date of birth, nationality, confirmation number, document type and number (if available), issuing country, and photograph.

to the information?

The ATS System of Records Notice (SORN)[34] covers the collection of information in advance of travel from undocumented individuals. All information collected from travelers at the time of inspection and processing is covered by the Nonimmigrant Information System[35] and TECS[36] System of Records Notices. Additionally, the Arrival Departure Information System (ADIS) System of Records Notice permits CBP to collect information from certain public and private organizations regarding individuals who seek entry or admission into the United States.[37]

1.3 Has a system security plan been completed for the information system(s) supporting the project?

Yes. All CBP source systems have undergone the Security Authorization process in accordance with DHS and CBP policy, which complies with federal statutes, policies, and guidelines. ATS, as a system that stores advance information from undocumented individuals, received a renewed Authority to Operate on January 26, 2020.

1.4 Does a records retention schedule approved by the National Archives and Records Administration (NARA) exist?

CBP temporarily retains the photographs of undocumented individuals within TVS for 1 year for identity confirmation, evaluation of the technology, assurance of accuracy of the algorithms, and system audits. Furthermore, the advance information, including the photograph, that is collected via CBP One™ is stored in a segregated database within ATS for 1 year. Upon arrival and once the advance information is imported into a USEC event and verified, or a UPAX event is created during pre-arrival vetting, the information will be stored within ATS for 15 years consistent with the ATS retention schedule. In addition, the USEC event data will be transmitted into and stored in other systems, where it will be retained in accordance with the retention schedules for those systems. For example, information that is sent to and stored in TECS is retained for 75 years in accordance with the TECS retention schedule. Many of the forms completed through USEC are sent to the U.S. Immigration and Customs Enforcement (ICE) Enforcement Integrated Database (EID) as the source system, in which case they are stored for 75 years.[38]

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[34] *See* DHS/CBP-006 Automated Targeting System, May 22, 2012, 77 FR 30297, *available at* https://www.dhs.gov/system-records-notices-sorns.
[35] *See* DHS/CBP-016 Nonimmigrant Information System, March 13, 2015, 80 FR 13398, *available at* https://www.dhs.gov/system-records-notices-sorns.
[36] *See* DHS/CBP-011 U.S. Customs and Border Protection TECS, December 19, 2008, 73 FR 77778, *available at* https://www.dhs.gov/system-records-notices-sorns.
[37] *See* DHS/CBP-021 Arrival and Departure Information System, November 18, 2015, 80 FR 72081, *available at* https://www.dhs.gov/system-records-notices-sorns.
[38] EID is a DHS shared common database repository used by several DHS law enforcement and homeland security

1.5 If the information is covered by the Paperwork Reduction Act (PRA), provide the OMB Control number and the agency number for the collection. If there are multiple forms, include a list in an appendix.

CBP previously received emergency approval from the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) for the collection of advance information from undocumented individuals who seek to enter the United States under OMB 1651-0140.[39] This approval was limited to the collection of advance information from certain undocumented individuals potentially amenable for an exception to Title 42 at southwest border land POEs. CBP is now concurrently seeking a separate emergency approval for the collection of advance information from all undocumented individuals. The 60-day notice for the extension and amendment published on September 28, 2021, and CBP is now seeking approval by OMB to extend and amend this collection under the Paperwork Reduction Act.[40]

Section 2.0 Characterization of the Information

2.1 Identify the information the project collects, uses, disseminates, or maintains.

To streamline processing at POEs, CBP is collecting voluntarily submitted biographic and biometric information in advance of arrival from certain undocumented individuals . This information is expected to streamline processing upon arrival. This voluntary information collection is completed through the CBP One™ application by, or on behalf of, the undocumented individual. This advance collection enables CBP to streamline in-person processing upon arrival by reducing the inspection and administrative burden for both CBP officers and the undocumented individual.

CBP One™ collects the following information from undocumented individuals:

- Name;
- Date of birth;

applications. EID stores and maintains information related to the investigation, arrest, booking, detention, and removal of persons encountered during immigration and criminal law enforcement investigations and operations conducted by ICE, U.S. Citizenship and Immigration Services (USCIS), and CBP. EID supports ICE's processing and removal of noncitizens from the United States. *See* U.S. DEPARTMENT OF HOMELAND SECURITY, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, PRIVACY IMPACT ASSESSMENT FOR THE ENFORCEMENT INTEGRATED DATABASE (EID), DHS/ICE/PIA-015 (2010 and subsequent updates), *available at* https://www.dhs.gov/privacydocuments-ice.

[39] *See* https://omb.report/omb/1651-0140.

[40] 86 FR 53667 (September 28, 2021).

- Phone number(s);
- U.S. address;
- Country/City of Birth;
- Country of Residence;
- Foreign address(es) (optional);
- Nationality;
- Employment history (optional);
- Travel history (optional);
- Emergency contact information (optional);
- Family information (optional);
- Marital information (optional);
- Non-Western Hemisphere Travel Initiative (WHTI) compliant identity documents (optional););
- Gender;
- Height;
- Weight;
- Eye color;
- Preferred language;
- Requested Date/Time of Arrival (required to schedule);
- Intended Arrival POE (required to schedule); and
- Photograph (required for submission).

Undocumented individuals and organizations and entities who submit information to CBP via CBP One™ on behalf of such individuals are required to provide a photograph of the undocumented individual as part of the advance information package. Users may upload an existing photograph if using the desktop application or capture a live photograph through CBP One™ if using the mobile application. Advance information cannot be submitted to CBP without the inclusion of a photograph.

In addition to the information collected about undocumented individuals, CBP also collects limited information about the third-party who is submitting information on behalf of an

undocumented individual. CBP requests that the third-party representative submits the following information: first name, last name, and email address.

2.2 What are the sources of the information and how is the information collected for the project?

Information is collected directly from an individual or representative (e.g., spouse, parent, organization) who submits information on behalf of the individual. Information is submitted through the CBP One™ mobile or desktop application.

2.3 Does the project use information from commercial sources or publicly available data? If so, explain why and how this information is used.

No.

2.4 Discuss how accuracy of the data is ensured.

CBP collects this information directly from the undocumented individual or from organizations and entities submitting the information on behalf of the individual. While there is always an inherent risk to manual data entry, organizations, entities, and the individuals themselves can review and verify the information prior to submission to CBP. Moreover, during the inspection process, a CBPO will verify and update any information in USEC that is incorrect or inaccurate.

2.5 Privacy Impact Analysis: Related to Characterization of the Information

Privacy Risk: There is a risk of overcollection, since CBP may collect advance information about individuals who do not actually arrive at the POE.

Mitigation: This risk is partially mitigated. CBP is collecting this information from individuals who are seeking to travel to the United States. The undocumented individuals voluntarily provide this information directly to CBP via CBP One™ or through organizations and entities who submit the information to CBP via CBP One™ on the undocumented individual's behalf. Advance information helps to streamline the individual's inspection and processing upon their arrival at a POE. This information collection is similar to other advance information collections, such as Advance Passenger Information (API) data,[41] where a commercial travel carrier submits certain advance information on passengers intending to travel to the United States. In this circumstance, CBP also collects and retains information on individuals who may intend to

[41] *See* U.S. DEPARTMENT OF HOMELAND SECURITY, U.S. CUSTOMS AND BORDER PROTECTION, PRIVACY IMPACT ASSESSMENT FOR THE ADVANCE PASSENGER INFORMATION SYSTEM, DHS/CBP/PIA-001 (2008 and subsequent updates), *available at* https://www.dhs.gov/privacy-documents-us-customs-and-border-protection.

travel but fail to board the carrier. Another example is the CBP Advance Travel Authorization (ATA) process,[42] under which CBP collects certain information from individuals as part of the process of determining whether they are eligible to obtain advance authorization to travel to the United States to seek a discretionary grant of parole. In this circumstance, the traveler may not end up traveling to the United States. In all circumstances, CBP uses the advance information, combined with the results of the pre-arrival vetting to identify public safety threats (such as wants/warrants) and national security threats (such as links to terrorist organizations). Furthermore, for future travel, CBP officers may refer to past vetting results as a basis for interview inspection questions and to inform processing dispositions or admissibility determinations.

Privacy Risk: There is a risk that information submitted via CBP One™ and stored in ATS will be inaccurate.

Mitigation: This risk is mitigated. While there is always an inherent risk to manual data entry, CBP One™ users can review and verify the information prior to submission to CBP. Once an individual arrives at the POE, advance information also reduces the potential for manual data entry error by pre-populating the USEC event with information previously submitted on behalf of the undocumented individual. CBPOs then verify the information with the undocumented individual during processing and can make any changes if necessary.

Privacy Risk: There is a risk that CBP is collecting more information than necessary to make an admissibility determination and determine the appropriate processing disposition.

Mitigation: This risk is mitigated. CBP is collecting the same information that is typically collected prior to an individual traveling to the United States (e.g., APIS, ATA, Passenger Name Record data,[43] ESTA,[44] Form I-94 *Nonimmigrant Visa Waiver Arrival/Departure*[45]). Additionally, the information collected in advance of an undocumented individual's arrival is consistent with the information that CBP normally collects at the POE during secondary inspection in accordance

[42] *See* U.S. DEPARTMENT OF HOMELAND SECURITY, U.S. CUSTOMS AND BORDER PROTECTION, PRIVACY IMPACT ASSESSMENT FOR THE ADVANCE TRAVEL AUTHORIZATION, DHS/CBP/PIA-073, *available at* https://www.dhs.gov/privacy-documents-us-customs-and-border-protection.

[43] U.S. law requires air carriers operating flights to, from, or through the United States. to provide CBP, with certain passenger reservation information, called Passenger Name Record data. The collection of Passenger Name Record data allows CBP to prevent, detect, investigate, and prosecute terrorist offenses and related crimes and certain other crimes that are transnational in nature. Air carriers are required to provide this information on all persons traveling on flights to, from, or through the United States to CBP beginning 72 hours prior to departure of a flight, and up until 24 hours before the scheduled flight departure.

[44] *See* U.S. DEPARTMENT OF HOMELAND SECURITY, U.S. CUSTOMS AND BORDER PROTECTION, PRIVACY IMPACT ASSESSMENT FOR THE ELECTRONIC SYSTEM FOR TRAVEL AUTHORIZATION, DHS/CBP/PIA-007 (2008 and subsequent updates), *available at* https://www.dhs.gov/privacy-documents-us-customs-and-border-protection.

[45] *See* U.S. DEPARTMENT OF HOMELAND SECURITY, U.S. CUSTOMS AND BORDER PROTECTION, PRIVACY IMPACT ASSESSMENT FOR THE I-94 WEBSITE APPLICATION, DHS/CBP/PIA-016 (2013 and subsequent updates), *available at* https://www.dhs.gov/privacy-documents-us-customs-and-border-protection.

with existing CBP processes. The advance collection of this data streamlines the processing of these individuals upon their arrival to the POE because it reduces manual data entry into the USEC event. Providing advance information to CBP is not a prerequisite for undocumented individuals to be processed at a POE.

Privacy Risk: There is a risk that CBP will be unable to process the application without the user providing all requested information.

Mitigation: This risk is mitigated. Should an individual seek to use this process, CBP has designated certain advance information fields and questions as mandatory. Users who fail to complete mandatory fields are unable to submit the advance information to CBP. However, the user is not required to supply certain information if it is not relevant. For example, if a user answers "Yes" to the question asking if they are employed, they are presented with additional fields to complete. If the user responds with "No," they will not be presented with or required to provide employment related information. The only required field under the mandatory questions is when a user indicates "Yes" to travel documents, they must input the document type, number, and country of issuance. If a user fails to appropriately respond to the questions (e.g., answers "No" to travel documents, when they should have answered "Yes"), this will cause delays in processing and the individual will likely spend additional time in secondary inspection upon arrival at a POE.

Privacy Risk: There is a risk of overcollection now that CBP requires the submission of photograph with the advance information package.

Mitigation: This risk is partially mitigated. As noted above, post-Title 42 Order, providing advance information to CBP will not be a prerequisite for undocumented individuals to be processed at a POE. Undocumented individuals who voluntarily provide this information to CBP (directly or through organizations and entities) are expected to be processed in a more streamlined manner upon their arrival to a POE. Should an undocumented individual choose to submit advance information to CBP, they must supply a photograph as part of the submission. The advance submission of a photograph provides CBP officers with a mechanism to confirm upon arrival that the undocumented individual as a match to information submitted in advance. Therefore, upon arrival at a POE, the officer will visually compare the photograph submitted via CBP One™ against the individual physically present at the POE who is seeking admission to the United States. This manual verification will help ensure that the CBP officer is processing the correct person, ultimately reducing the potential for fraud. In addition to the manual verification, CBP the conducts the 1:n matching, as described above.

Section 3.0 Uses of the Information

3.1 Describe how and why the project uses the information.

CBP uses advance information collected from certain undocumented individuals via CBP

One™ to streamline processing upon arrival at the POE. The advance information collection is a combination of biographic and biometric information, to include the individual's selected POE and requested date/time of arrival. The purpose of this advance collection is to achieve efficiencies in processing individuals upon their arrival at the POE. The advance collection of scheduling information allows CBP to appropriately allocate resources to those POEs and dates/times at which undocumented individuals have requested to arrive.

Upon submission of advance information through CBP One™, the advance information is staged within ATS' UPAX for pre-arrival and primary vetting results. CBP uses the undocumented individuals' advance information to perform pre-arrival vetting, including queries of certain databases to identify any previous DHS encounters, public safety threats (such as wants/warrants), and national security threats (such as links to terrorist organizations) prior to an undocumented individual's arrival at a POE. Pre-arrival vetting for public safety and national security concerns reduces the amount of time that officers typically spend on determining whether the individual is a match to checks and results completed during the inspection process. CBP does not conduct pre-arrival vetting to pre-determine an individual's admissibility to the United States or to pre-determine a particular processing disposition.

CBP uses the photographs submitted via CBP One™ as part of the advance information to build a segmented TVS gallery. CBP stages all photographs submitted via CBP One™ in this segmented TVS gallery until the individual arrives at the POE. Once the individual arrives at a POE, the officer uses the photograph provided though CBP One™ to confirm the individual as a match to information submitted in advance of arrival. CBPOs complete this manual identity matching to reduce the potential for fraud.

In addition to the photograph provided through CBP One™, the CBP officer takes a new live photograph of the individual upon arrival at the POE. Using Simplified Arrival, the undocumented individual's live photograph is compared against the pre-made gallery of images taken from the photographs submitted via CBP One™ — known as 1:n matching. If TVS does not produce a match, CBP officers may query the segregated database using the CBP One™ confirmation number or name and date of birth provided as part of the advance information package. Following basic primary checks and standard biometric searches and enrollment, CBPOs use Simplified Arrival to generate a referral for the undocumented individual to go to secondary inspection.[46]

CBP officers may import the advance information into a USEC event. This helps to streamline processing and reduces the need to manually enter information into USEC. Additionally, CBPOs access the UPAX pre-arrival vetting results via USEC. The results include

[46] If an individual arrives at a POE without sufficient documentation, as part of standard processing, the CBPO typically refers the individual for a secondary inspection.

relevant events/encounters that the officers may use to inform questioning that typically occurs as part of the secondary inspection. The results may also lead them to conduct additional system checks. Once the inspection is complete, the CBP officer will make appropriate processing and admissibility determinations based on the totality of the circumstances.

3.2 Does the project use technology to conduct electronic searches, queries, or analyses in an electronic database to discover or locate a predictive pattern or an anomaly? If so, state how DHS plans to use such results.

Yes. ATS is used to compare existing information about travelers and cargo entering and exiting the country with patterns identified as requiring additional scrutiny. The patterns are based on CBP officer experience, trend analysis of suspicious activity, law enforcement cases, and raw intelligence.

3.3 Are there other components with assigned roles and responsibilities within the system?

The advance information is stored in a segmented ATS database and is typically not available for access by other DHS components. However, if CBP creates a UPAX event based on pre-arrival vetting, the UPAX event will be accessible by DHS components who have access to the Targeting Framework within ATS. Furthermore, upon the individual's arrival at a POE, the advance information may be imported into USEC. While the roles and responsibilities in USEC are limited to CBP personnel only, other DHS components may create TECS lookouts to aid in referring a traveler to secondary inspection. Furthermore, secondary inspections that result in adverse or administrative immigration actions are automatically sent to and stored in the ICE EID as immigration events. Additionally, biometric and associated biographic information collected during the secondary inspection process is enrolled in the Automated Biometric Identification System/Homeland Advanced Recognition Technology System (IDENT/HART).[47]

3.4 Privacy Impact Analysis: Related to the Uses of Information

[47] *See* U.S. DEPARTMENT OF HOMELAND SECURITY, OFFICE OF BIOMETRIC IDENTITY MANAGEMENT, PRIVACY IMPACT ASSESSMENT FOR THE AUTOMATED BIOMETRIC IDENTIFICATION SYSTEM (IDENT), DHS/OBIM/PIA-001 (2012), *available at* https://www.dhs.gov/privacy-documents-office-biometric-identity-management-obim..pdf. DHS is in the process of replacing IDENT with the Homeland Advanced Recognition Technology System (HART) as the primary DHS system for storage and processing of biometric and associated biographic information. For more information about HART, please *see* U.S. DEPARTMENT OF HOMELAND SECURITY, OFFICE OF BIOMETRIC IDENTITY MANAGEMENT, PRIVACY IMPACT ASSESSMENT FOR THE HOMELAND ADVANCED RECOGNITION TECHNOLOGY SYSTEM (HART) INCREMENT 1, DHS/OBIM/PIA-004 (2020), *available at* https://www.dhs.gov/privacy-documents-office-biometric-identity-management-obim.

Privacy Risk: There is a risk that CBP will conduct pre-arrival vetting checks on individuals who do not arrive in the United States.

Mitigation: This risk is partially mitigated. CBP may conduct pre-arrival vetting on undocumented individuals who never arrive in the United States. This use is consistent with current CBP operations, such as when CBP receives Advance Passenger Information from carriers who submit information regarding travelers intending to travel to the United States but who do not arrive. In both these circumstances, CBP still collects information on and vets travelers to identify public safety threats (such as wants/warrants) and national security threats (such as links to terrorist organizations). Additionally, CBP is collecting this information through CBP One™ on a voluntary basis. When an individual submits the information on behalf of themselves, CBP One™ presents them with a Privacy Policy prior to collecting advance information. By acknowledging the policy and submitting information through CBP One™, the individual consents to CBP's use of their information, to include pre-arrival vetting and screening.

Furthermore, similar to Advance Passenger Information, CBP only retains advance information submitted through CBP One™ for 1 year in a segregated backend database within ATS and TVS. Therefore, in most circumstances, if the individual does not arrive at a POE within 1 year of providing information, CBP will delete the data and cannot use the advance information beyond the original intended purpose of streamlining processing upon arrival. However, in circumstances where CBP finds derogatory information and creates a UPAX event during pre-arrival vetting, CBP will store the information in ATS for 15 years, consistent with the ATS retention schedule.

Privacy Risk: There is a risk that CBP will use the information for purposes other than what is stated in this Privacy Impact Assessment.

Mitigation: This risk is mitigated. The original DHS/CBP/PIA-067 CBP Unified Secondary and this Privacy Impact Assessment update articulate the ways in which CBP will use the information and the mechanisms in place to ensure it does so. Once the information from CBP One™ is populated into a USEC event, CBP will use the information in the same way that CBP uses and shares information in other USEC events. Secondary inspections that result in adverse or administrative immigration actions are automatically sent to and stored in ICE EID. Consistent with standard operating procedures, the individual's biometric and associated biographic information collected during the secondary inspection process will also be enrolled in IDENT/HART.

Privacy Risk: There is risk that geolocation information (e.g., latitude, longitude) collected from users of certain CBP One™ functions may be used by CBP to conduct surveillance on the undocumented individual or to track their movement.

Mitigation: This risk is mitigated. The geolocation information collected through CBP One™ is not used to conduct surveillance or track user movement. CBP does not know the location of the user's device beyond the moment of submission of the data. At the time the user submits their advance arrival information, the device's GPS is pinged by CBP One™, and the latitude and longitude coordinates are sent to CBP. The response to the GPS ping is only collected at the exact time the user pushes the submit button and is used to confirm the device is within the CBP-determined appropriate proximity to the U.S. border. The latitude and longitude information captured is not visible to CBP officers. CBP collects the latitude and longitude information from the GPS ping to permit an individual to submit their advance arrival information. If the individual is not within the defined radius, they are unable to submit advance arrival information.

Privacy Risk: There is a risk that CBP will enroll undocumented individuals in IDENT/HART based on the photograph submitted via CBP One™.

Mitigation: This risk is mitigated. CBP uses the CBP One™ photograph to conduct one-to-many (1:n) vetting against derogatory photographic holdings in ATS for law enforcement and national security concerns and to create the TVS gallery of CBP One™ photographs. The CBP One™ photographs are stored in a segmented database within TVS and ATS. CBP populates the segmented TVS gallery with images sent to CBP from CBP One™. However, upon arrival at a POE, CBP officers take another photograph of the individual, and the photograph collected through CBP One™ is deleted from TVS within 1 year of submission. The photograph that is taken by the CBPO at the POE is enrolled into IDENT/HART, as it is a biometric travel encounter.

Privacy Risk: There is a risk that individuals who do not have access to a desktop or mobile device or understand how to submit information via the CBP One™ application will be treated differently than those who voluntarily submit advance information.

Mitigation: This risk is partially mitigated. While there is a possibility that undocumented individuals may not have access to a computer or mobile device to submit information in advance to CBP, organizations and entities can also provide advance information to CBP on behalf of undocumented individuals. Furthermore, the submission of advance arrival information is voluntary. Undocumented individuals seeking to travel to the United States may choose to work with International Organizations and Non-Governmental Organizations to submit information to CBP through CBP One™.

Privacy Risk: There is a risk that CBP will use the photograph beyond the purposes described in this PIA.

Mitigation: This risk is mitigated. CBP collects and uses the photograph for the following purposes:

1. To conduct one-to-many (1:n) vetting against derogatory photographic holdings in ATS;

2. To populate the pre-staged TVS gallery;
3. To compare the photograph taken during the primary inspection via Simplified Arrival against the pre-staged gallery of CBP One™ photographs; and,
4. To ensure the user is within a prescribed proximity to the border to schedule their arrival.

As part of the vetting process, CBP uses the CBP One™ photograph to biometrically vet the photograph against ATS holdings. The purpose of this vetting is to identify national security and law enforcement concerns. CBP uses the photograph submitted via CBP One™ to build a segmented TVS gallery. CBP stages all photographs submitted via CBP One™ in this segmented TVS gallery until the individual arrives at the POE. Once the individual arrives at a POE, the CBPO uses the photograph provided though CBP One™ to confirm the individual is a match to Simplified Arrival photograph. Finally, CBP may also utilize the live photograph combined with geolocation to ensure users are in a prescribed proximity to the border to schedule their presentation date and time with CBP. Once the user enables location services on their phone, CBP can rely on the geofencing[48] capabilities within the photograph to ensure mobile device is being used by a "live person" who is requesting to schedule their arrival at a POE.

Section 4.0 Notice

4.1 How does the project provide individuals notice prior to the collection of information? If notice is not provided, explain why not.

CBP One™ provides users with a Privacy Notice prior to the collection of information. CBP is providing general notice on the expansion through this Privacy Impact Assessment. CBP previously issued an update to the DHS/CBP/PIA-067(a) Unified Secondary Privacy Impact Assessment and appendices to DHS/CBP/PIA-056 Traveler Verification Service and DHS/CBP/PIA-068 CBP One™ Mobile Application. On May 3, 2021, OMB granted emergency approval for the collection of advance information from certain undocumented individuals seeking an exception to Title 42 under the Paperwork Reduction Act. CBP is now seeking approval from OMB to extend and amend this collection.[49]

4.2 What opportunities are available for individuals to consent to uses, decline to provide information, or opt out of the project?

Advance information about undocumented individuals is provided to CBP through CBP One™ on a voluntary basis. Post-Title 42 Order, providing advance information to CBP will not

[48] A geo-fence is a virtual geographic boundary, defined by CBP personnel, that determines a person or devices proximity to a designated area or location.
[49] 86 FR 53667 (September 28, 2021).

be a prerequisite for undocumented individuals to be processed at a POE. By providing this information to CBP, individuals consent to CBP's use of the information for pre-arrival vetting purposes, and for purposes of streamlining their processing upon arrival. If an undocumented individual does not provide information in advance, the individual will be inspected and processed in accordance with a POE's capabilities to do so; thus, the individual may need to wait longer to be inspected, and it may take longer for CBP to process them.

4.3 Privacy Impact Analysis: Related to Notice

Privacy Risk: There is a risk that undocumented individuals who use the assistance of others (e.g., organizations) will not receive notice as they do not directly log in to CBP One™.

Mitigation: This risk is partially mitigated. CBP will provide direct notice to individuals who submit information on their own behalf. In instances where an organization is submitting information on behalf of an undocumented individual, CBP will not be able to provide direct notice to the individual whose information CBP is collecting. As noted above, CBP has communicated this initiative through various means including an update to DHS/CBP/PIA-067 and DHS/CBP/PIA-068. CBP is also issuing this standalone Privacy Impact Assessment to provide transparency and describe the privacy risks and mitigations associated with the proposed changes to the collection of advance information.

Section 5.0 Data Retention by the Project

5.1 Explain how long and for what reason the information is retained.

The advance information collected via CBP One™ will be stored in a segregated database within ATS for 1 year. However, if the advance information is imported into a USEC event, or a UPAX event is created during pre-arrival vetting, it will be stored within ATS for 15 years consistent with the ATS retention schedule. Additionally, the USEC event data will be transmitted into and stored in other systems, where it is retained in accordance with the retention schedules for those systems. For example, all USEC information, regardless of a positive or negative outcome, is sent to and stored in TECS where it is retained for 75 years in accordance with the TECS retention schedule. Many of the forms completed through USEC are sent to the ICE EID as the source system, in which case they are stored for 75 years.

5.2 Privacy Impact Analysis: Related to Retention

Privacy Risk: There is a risk that CBP will retain information on individuals who do not arrive in the United States.

Mitigation: This risk is partially mitigated. CBP is retaining information on individuals who may not arrive in the United States. However, CBP is retaining this information on a temporary basis for 1 year, which is consistent with the APIS System of Records Notice. If the

undocumented individual does not appear at a POE within a year of providing advance information via CBP One™, CBP will purge the data—unless CBP finds derogatory information and creates a UPAX event during pre-arrival vetting. If CBP creates a UPAX event, CBP will store the information in ATS for 15 years consistent with the ATS retention schedule.

Privacy Risk: There is a risk that the CBP One™ application itself will retain advance information.

Mitigation: This risk is mitigated. CBP One™ is a single portal to a variety of CBP services. Regardless of the service, CBP One™ does not store any information locally on the device. CBP pushes all information collected through CBP One™ to back-end systems. No information is stored locally on the undocumented individual or representative's device or in the CBP One™ application itself. The retention of information CBP collects through CBP One™ depends on the respective CBP One™ service. As described above, for this service, CBP is storing the advance information collected via CBP One™ in a segregated database within ATS for 1 year. Any information that is transferred into subsequent systems will be stored pursuant to their own retention schedules. CBP has analyzed the application to ensure that information is sent only to CBP, and the application can only access the information necessary to complete the respective service.

Section 6.0 Information Sharing

6.1 Is information shared outside of DHS as part of the normal agency operations? If so, identify the organization(s) and how the information is accessed and how it is to be used.

Advance information that is imported into CBP systems may be shared on a case-by-case basis with appropriate federal, state, local, tribal, and foreign governmental agencies or multilateral governmental organizations responsible for investigating or prosecuting violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, or when CBP believes the information would assist enforcement of civil or criminal laws. The information entered into CBP One™ and temporarily stored in the segregated ATS database and TVS is not shared outside of CBP. However, once information becomes an immigration event in USEC, USEC disseminates the event information to various transactional systems that are accessed and used by counterterrorism, law enforcement, and public security communities. This information may reveal information about suspected or known violators of the law and other persons of concern. CBP only shares information consistent with the published routine use(s) in the relevant System of Records Notice(s).

6.2 Describe how the external sharing noted in 6.1 is compatible with the SORN noted in 1.2.

CBP shares immigration events with external organizations consistent with the published routine uses in the System of Records Notices, which are compatible with the original purpose of collection.[50] CBP details data sharing practices in Memoranda of Understanding/Agreement (MOU/A) and Interconnection Security Agreements (ISA), which govern sharing data outside of CBP, when appropriate. Under the terms of these Memoranda of Understanding/Agreement and Interconnection Security Agreements, other agencies are required to secure CBP information consistent with approved security practices that meet DHS standards. Recipients from other agencies are required by the terms of the relevant information sharing agreement to employ security features to safeguard the shared information.

6.3 Does the project place limitations on re-dissemination?

Yes. CBP implements Memoranda of Understanding/Agreement with external organizations prior to the systematic sharing of information. When sharing information with parties outside of DHS, the same specifications related to security and safeguarding of privacy-sensitive information that are in place for CBP are applied to the outside entity. Any agreements between CBP and external entities fully outline responsibilities of the parties, security standards, and limits of use of the information, including re-dissemination, prior to information sharing. Access to records is governed by need-to-know criteria that demand that the receiving entity demonstrate the mission-related need for the data before access is granted. In the terms of a negotiated agreement or the language of an authorization providing information to an external agency, CBP includes a justification for collecting the data and an acknowledgement that the receiving agency will not share the information without CBP's permission, as applicable. Information that is shared with other agencies, federal, state, local, tribal, or foreign, outside of the context of any Memoranda of Understanding/Agreement or prior written agreement generally requires a written request by the requesting agency specifically identifying the type of information sought and purpose for which the information will be used. Authorization to share information in this request scenario is subject to approval by the CBP Privacy and Diversity Office.

6.4 Describe how the project maintains a record of any disclosures outside of the Department.

Memoranda of Understanding/Agreement and other written agreements defining roles and responsibilities are executed between DHS and each agency that receives CBP data on a systematic basis. The information may be transmitted either electronically or as printed materials to

[50] *See* DHS/CBP-011 U.S. Customs and Border Protection TECS, 73 FR 77778 (December 19, 2008); DHS/CBP-006 Automated Targeting System, 77 FR 30297 (May 22, 2012); DHS/CBP-013 Seized Assets and Case Tracking System, 73 FR 77764 (December 19, 2008); DHS/ICE-011 Criminal Arrest Records and Immigration Enforcement Records (CARIER), 81 FR 72080 (October 19, 2016); DHS/USCIS-001 Alien File, Index, and National File Tracking System of Records, 78 FR 69983 (September 18, 2017), *available at* https://www.dhs.gov/system-records-notices-sorns.

authorized personnel. Electronic communication with other non-CBP systems may be enabled via message/query-based protocols delivered and received over secure point-to-point network connections between CBP systems and the non-CBP system. CBP's external sharing of the data recorded in USEC complies with statutory requirements for national security and law enforcement systems.

Information that is shared with other agencies, federal, state, local, tribal, or foreign, outside of the context of any Memoranda of Understanding/Agreement or other prior written arrangement generally requires a written request by the agency specifically identifying the type of information sought and purpose for which the information will be used. Authorization to share information in this request scenario is subject to approval by the CBP Privacy and Diversity Office and documented in DHS Form 191.

6.5 Privacy Impact Analysis: Related to Information Sharing

Privacy Risk: There is a risk that advance information that is stored within TVS and ATS will be shared externally.

Mitigation: This risk is mitigated. Upon receipt, CBP stages all photographs submitted via CBP One™ in a segmented TVS gallery until the individual arrives at the POE. CBP temporarily retains the photographs of undocumented individuals within TVS for 1 year after submission for identity confirmation, evaluation of the technology, assurance of accuracy of the algorithms, and system audits. TVS does not share information with external partners. Additionally, the CBP One™ data is sent to and stored in a segregated database in ATS. This segregated database is a separate set of independently managed tables within ATS and will not be shared externally. However, once the CBP One™ data is imported into USEC as an event, due to a referral to secondary inspection, CBP shares the information externally on an as needed basis, as described above. Furthermore, once an immigration event is created, the information can be queried from targeting or secondary systems to which external partners may have access. The data will not be accessible by external entities until the CBP officer imports the information into USEC when the individual arrives at the POE.

Privacy Risk: There is a risk that advance information included as part of immigration events will be inappropriately shared to external partners.

Mitigation: This risk is partially mitigated. When sharing immigration events with parties outside of DHS, the same specifications related to security and privacy that are in place for CBP and DHS apply to the outside entity. Access to this information is governed by a need-to-know criterion that demands the receiving entity demonstrate the mission-related need for the data before access is granted. The reason for the access, a specific mission purpose, and an intended use consistent with the receiving agency's purpose and CBP's justification for collecting the data are also concerns that are included in either the terms of negotiated Memoranda of

Understanding/Agreement and Interconnection Security Agreements or the language of an authorization providing facilitated access to an external agency. The Memoranda of Understanding/Agreement specify the general terms and conditions that govern the use of the functionality or data, including limitations on use. Interconnection Security Agreements specify the data elements, format, and interface type, including the operational considerations of the interface. Memoranda of Understanding/Agreement and Interconnection Security Agreements are periodically reviewed, and outside entities must agree to use, security, and privacy standards before sharing can continue.

Section 7.0 Redress

7.1 What are the procedures that allow individuals to access their information?

The CBP One™ application does not store any information; therefore, there are no records to correct or amend within CBP One™. If an undocumented individual submits incorrect information through CBP One™ they can resubmit new information or contact the CBP INFO Center online or by calling 1-877-CBP-5511 to determine how to update their submission. Upon arrival at a POE, the CBP officer can update or edit any inaccurate information that was submitted through CBP One™. Additionally, individuals seeking notification of and access to information contained in CBP holdings, or seeking further information related to their secondary inspection, may gain access to certain information by filing a Freedom of Information Act (FOIA) request with CBP at https://foiaonline.gov/, or by mailing a request to:

U.S. Customs and Border Protection (CBP)
Freedom of Information Act (FOIA) Division
1300 Pennsylvania Avenue NW, Room 3.3D
Washington, D.C. 20229
Fax Number: (202) 325-1476

U.S. citizens, lawful permanent residents, and individuals who have records covered under the Judicial Redress Act (JRA) may file a Privacy Act request to access their information.

All Privacy Act and Freedom of Information Act requests must be in writing and include the requestor's daytime phone number, email address, and as much information as possible of the subject matter to expedite the search process. Requests for information are evaluated by CBP to ensure that the release of information is lawful; will not impede an investigation of an actual or potential criminal, civil, or regulatory violation; and will not reveal the existence of an investigation or investigative interest on the part of DHS or another agency.

7.2 What procedures are in place to allow the subject individual to

correct inaccurate or erroneous information?

Individuals may correct inaccurate or erroneous information directly with the processing CBPO, who will correct the CBP records, at the time of encounter and throughout the secondary inspection process. Individuals can inform CBP officers of inaccurate information if CBP officers ask them a question containing inaccurate information and at any time during secondary inspection.

Any individual who believes that CBP's actions are the result of incorrect or inaccurate information may request information about his or her records pursuant to procedures provided by the Freedom of Information Act. U.S. citizens, lawful permanent residents, and individuals who have records covered under the Judicial Redress Act who believe that CBP's actions are the result of incorrect or inaccurate information may request correction of that data under the amendment provisions of the Privacy Act of 1974 by writing to the above address. The CBP Privacy Division reviews all requests for correction and amendment regardless of status.

Travelers may also contact the DHS Traveler Redress Inquiry Program (TRIP) at 601 South 12th Street, TSA-901, Arlington, VA, 22202-4220 or online at www.dhs.gov/trip. Individuals making inquiries should provide as much identifying information as possible to identify the record(s) at issue.

7.3 How does the project notify individuals about the procedures for correcting their information?

Individuals are notified of the procedures for correcting their CBP information through the System of Records Notices describing each of the underlying systems from which USEC accesses information. This Privacy Impact Assessment also serves as notification. Additionally, signage and tear sheets at POEs provide information on how to contact the DHS Traveler Redress Inquiry Program. In addition, travelers may request information from the on-site CBP officer.

7.4 Privacy Impact Analysis: Related to Redress

Privacy Risk: There is a risk that travelers will not know how to request redress.

Mitigation: This risk is partially mitigated. This Privacy Impact Assessment provides information on how to request access and amendments to information within CBP holdings. Additionally, CBP officers located at POEs inform travelers verbally and through tear sheets on how they can challenge a determination and request access to the information that CBP used to make a determination. Travelers who wish to access information about themselves or challenge a determination can submit a Freedom of Information Act request to CBP or a DHS Traveler Redress Inquiry Program request to the addresses above. Additionally, U.S. citizens, lawful permanent residents, and individuals covered by the Judicial Redress Act, may submit a Privacy Act Amendment request to CBP.

Section 8.0 Auditing and Accountability

8.1 How does the project ensure that the information is used in accordance with stated practices in this PIA?

CBP implements role-based access for all CBP systems, and only grants access to users who have a demonstrated need to know. All CBP systems secure its data by complying with the requirements of DHS information technology security policy, particularly the DHS Sensitive Systems Policy Directive 4300A.[51] This handbook establishes a comprehensive program to provide complete information security, including directives on roles and responsibilities, management policies, operational policies, technical controls, and application rules. CBP periodically evaluates these systems to ensure that it complies with these security requirements. Each system provides audit trail capabilities to monitor, log, and analyze system transactions as well as actions and system accesses of authorized users. CBP periodically conducts reviews for compliance within the program and between external partners to ensure that the information is used in accordance with the stated acceptable uses documented in the Memoranda of Understanding/Agreement, System of Record Notice, sharing agreements, and other technical and business documentation

8.2 Describe what privacy training is provided to users either generally or specifically relevant to the project.

CBP does not grant access to users of CBP systems without completion of the CBP Security and Privacy Awareness course, which is required to be completed on an annual basis. This course presents Privacy Act responsibilities and agency policy regarding the security, sharing, and safeguarding of both official information and personally identifiable information. The course also provides information regarding sharing, access, and other privacy controls. CBP updates this training regularly, and CBP system users are required to take the course annually.

8.3 What procedures are in place to determine which users may access the information and how does the project determine who has access?

System access is based on a demonstrated need to know by a user, and access is only granted with supervisory approval and upon completion of the required security checks. However, the purpose and use of a user's access varies by system. For example, CBP employee access to the CBP One™ system is limited to users from CBP's Office of Information Technology (OIT) in order to perform application updates and correct any issues. TVS assigns non-privileged accounts

[51] *See* DHS 4300A SENSITIVE SYSTEMS HANDBOOK, *available at* https://www.dhs.gov/publication/dhs-4300a-sensitive-systems-handbook.

to end users and privileged accounts to account managers or administrators in order to manage and maintain TVS. The TVS system owner determines the conditions for role membership and designates selected individuals to serve as account managers for the system. Once a user successfully completes the application for a TVS account, their supervisor identifies which TVS system role(s) are needed to accomplish the job, and the account manager determines account access. USEC is primarily accessed by CBPOs located at a POE. USEC has provisions and roles to determine what access is provided to users. USEC users have to be separately provisioned to access the source systems that feed into Unified Secondary in order to view that information documented in USEC. Lastly, the advance arrival information that is stored in the segregated ATS database is only accessible by a limited number of CBP employees. However, once the information becomes part of an immigration event or a UPAX event is created, it may be accessed by internal and external partners who have access to ATS. Each user group's access to information in ATS is defined by the specific profile created for that group. Group profiles are intended to limit access by reference to the common need to know and mission responsibilities of users within the group. Access by Users, Managers, System Administrators, Developers, and others to the ATS data is defined in the same manner and employs profiles to tailor access to mission or operational functions.

8.4 How does the project review and approve information sharing agreements, MOUs, new uses of the information, new access to the system by organizations within DHS and outside?

Any information sharing agreements for this data will define the nature of access, the scope of information subject to the sharing agreement, and the privacy, security, safeguarding, and other requirements. All information sharing arrangements are reviewed by the CBP Privacy Officer and the CBP Office of Chief Counsel in accordance with existing CBP and DHS policy.

Contact Official

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Approval Signature

Original, signed copy on file with the DHS Privacy Office.

_____

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Human Rights First

TRAPPED, PREYED UPON, AND PUNISHED

One Year of the Biden Administration Asylum Ban

May 2024

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Executive summary

On May 11, 2023, the Biden administration initiated a new bar on asylum through its Circumvention of Lawful Pathways rule. Often referred to as an "asylum ban," the bar is structured to deny asylum, with highly limited exceptions, to non-Mexican people who cross into the United States between ports of entry, or arrive at ports of entry without appointments. The ban is used with expedited removal to deny people full asylum hearings even if they would have a significant chance of winning asylum in immigration court, if they don't meet a higher, unduly onerous, initial screening standard.

In its first year, the asylum ban and accompanying restrictions have endangered people seeking asylum; fueled returns to persecution and torture; spurred crossings outside U.S. ports of entry; undermined effective migration policy and refugee protection; and disproportionately threatened Black, Indigenous, LGBTQI+, women, children, and other at-risk people seeking asylum. Because of the ban, vulnerable children and adults are forced to wait in danger in Mexico for up to seven months to obtain an appointment through Customs and Border Protection's "CBPOne" app to seek asylum at a port of entry. Those waiting are targets of sharply escalating cartel kidnappings and violence, and actions by the Mexican government that prevent them from reaching U.S. ports of entry to seek asylum, even if they are waiting for or have CBP One appointments.

This report updates prior Human Rights First reports issued in July 2023 and October 2023, and follows reports issued with Haitian Bridge Alliance and other partners in May 2023 and with Florence Immigrant and Refugee Rights Project and the Kino Border Initiative in June 2023. This report is based on research conducted over the last year in five Mexican cities: Tijuana, Baja California; Nogales, Sonora; Ciudad Juárez, Chihuahua; Reynosa and Matamoros, Tamaulipas; visits to shelters in five U.S. cities: San Diego, California; Tucson, Arizona; El Paso, McAllen, and Brownsville, Texas; visits to open-air detention sites in San Ysidro and Jacumba, California, to Lukeville and Sasabe, Arizona, information and case examples shared by attorneys and legal service organizations, and by humanitarian and religious workers in Mexico and the United States. It is supported by interviews with over 500 asylum seekers as well as discussions with over sixty legal, humanitarian, and religious workers on both sides of the U.S.-Mexico border.

Key findings:

- **The asylum ban and accompanying restrictions are ineffective and counterproductive to effective migration policy and refugee protection.** People seeking asylum, including the over 500 interviewed over the last year by Human Rights First across the U.S.-Mexico border, were overwhelmingly not aware of the ban and its consequences. Even when asylum seekers do learn of it, their decisions are primarily driven by urgent needs for safety and protection. Rather than deterring people from irregularly crossing the southwest border or funneling people to ports of entry, the ban and accompanying restrictions spur irregular

crossings and punish people who cross with penalties that violate the Refugee Convention.

- **Wait times for the U.S. port of entry appointments referenced in the rule have risen from** two to four months **to up to seven months, while daily CBP One appointments have stagnated at 1450 since June 2023**. Like other forms of metering, long wait times for CBP One appointments spur crossings outside of official ports of entry, making them counterproductive to effective migration policy and detrimental to the safety of people seeking asylum.

- **People seeking asylum waiting in Mexico for CBP One appointments are targeted for kidnappings, torture, rape, and brutal violence.** Human Rights First has tracked reports of over 2,500 survivors of kidnappings and other violent attacks on asylum seekers and migrants stranded in Mexico, including those waiting to secure CBP One appointments, since the asylum ban was initiated in 2023. **Targeted attacks against migrants and asylum seekers have sharply escalated** by 70% in some areas. Increasing numbers of people are missing their CBP One appointments because they are being kidnapped in Mexico, further trapping them in danger.

- **People waiting for CBP One appointments, and some people with appointments, are prevented from seeking asylum at U.S. ports of entry by the Mexican government's increased targeting** of migrants for arrest, detention, forced transfers to southern Mexico, and potential return to persecution.

- **Black, Indigenous, LGBTQI+, HIV+, women, children, and other vulnerable people seeking asylum face particular barriers and harms under the asylum ban**. The asylum ban and related restrictions discriminate against and deny equal access to asylum to people who do not speak English, Spanish, or Haitian Creole, including most African, Indigenous, and other people seeking asylum from outside of the Americas, in addition to others who cannot use the CBP One app due to access barriers.

- **The asylum ban leads to the return of refugees to persecution and torture, amounting to refoulement**. People subject to the ban's higher screening standard in expedited removal credible fear interviews are three times more likely to be ordered deported to their countries of feared persecution or to Mexico, where they face dangers and risk return (chain refoulement), compared to those who are not subject to the ban. The result has been that the United States has ordered the deportation of people with strong and obvious needs for refugee protection.

    - **People deported or ordered deported under the asylum ban include**: a transgender woman from Venezuela fleeing anti-LGBTQI+ abuses, a victim of political persecution from Senegal, an illiterate man from Nicaragua fearing torture by Nicaraguan authorities, a Chinese pro-democracy dissident, and a victim of religious persecution from Egypt.

- **People who are unable to secure, or cannot safely wait in Mexico for, CBP One appointments face barriers to processing at U.S. ports of entry and risk the asylum ban's punishment if they cross at or between ports of entry without appointments.** The barriers that impede their access to U.S. ports of entry include CBP limits on processing people without appointments (otherwise known as "metering"), and Mexican authorities' actions to block asylum seekers' access to ports of entry; they turn away people facing urgent medical needs or threats to their lives and safety in Mexico.

- **The use of the asylum ban in expedited removal and the relaunch of the Trump-era practice of conducting Credible Fear Interviews when asylum seekers are in CBP custody impedes access to counsel and prolongs detention of asylum seekers in dangerous and subpar conditions** in border holding cells, which violates CBP guidelines**.** Despite the Biden administration's attempts to support access to legal consultations, the vast majority of those in custody do not have meaningful access to legal assistance or representation before or during their interviews. The systemic due process issues that exist in expedited removal are amplified when people seeking asylum are in CBP custody. These issues, in addition to those inherent in the asylum ban, lead people with refugee claims to be returned to harm.

The asylum ban is a new iteration of transit and entry bans promulgated by the Trump administration that were repeatedly enjoined or struck down by federal courts as they violated U.S. law. A federal district court ruled in July 2023 that the Biden administration's asylum ban is unlawful, but it remains in place while the administration appeals this decision. The asylum ban has generated strong and diverse opposition from faith groups, Holocaust survivors, major unions, civil rights organizations, members of the president's political party, and other key Biden administration allies. As a candidate, President Biden promised to end such policies.

Recommendations:

Instead of banning and blocking people seeking asylum, the Biden administration and Congress should double down on humane and effective strategies that the administration has already initiated or announced, including to quickly ramp up regional refugee resettlement plans, strengthen parole initiatives, increase humanitarian and other aid to address protection gaps in the Americas, maximize access to ports of entry, properly staff asylum and immigration court adjudications, improve and restart use of the Biden administration's new asylum processing rule to help adjudicate a greater number of asylum cases more efficiently and take other key steps previously recommended by Human Rights First.

The Biden administration should rescind its asylum ban and end accompanying policies that unjustly punish and turn away people seeking asylum. Instead, the administration should

take effective and humane steps to address challenges at the border as Human Rights First has long recommended and outlines in this report.

The Administration should:

- Maximize access to asylum at U.S. ports of entry: conduct processing at more ports of entry, ensure access at ports of entry for people who do not have CBP One appointments, and increase the number of CBP One appointments offered;

- Implement a whole of government approach to reception efforts: create a centralized White House office to coordinate between the federal government, states, cities, and the non-government organizations that provide essential humanitarian services, and work with Congress to secure robust and sustainable appropriations for this vital work;

- Ensure access to work authorization and prompt processing of work permit applications necessary for both migrants and receiving communities;

- Strengthen the asylum adjudication system to ensure fair and timely outcomes;

- Expand and strengthen the Biden administration's parole and regional refugee resettlement programs, as well as diplomacy and support for protection in the Americas;

- Press the Government of Mexico to ensure people seeking U.S. asylum have access to U.S. ports of entry and to take steps to protect the safety and human rights of migrants and asylum seekers, including those waiting to seek U.S. asylum.

Sharp escalations in targeted violence

"They torture you and beat you like an animal."[1]

The asylum ban and related restrictions at U.S. ports of entry strand children and adults seeking U.S. asylum in Mexico where they are targeted for horrific and widespread abuses by cartels and Mexican authorities often acting in complicity with those cartels. Human Rights First has tracked reports of over 2,500 survivors of kidnapping, torture, rape, enforced disappearance, extortion, and other violent attacks against asylum seekers and migrants stranded in Mexico since the asylum ban took effect. As detailed below, and in our October 2023 report, this violence has risen sharply since the asylum ban was initiated.

CBP One appointments are only available at eight ports of entry across the entire southwest border, concentrating people seeking asylum at these locations. In Reynosa, Matamoros, and Nuevo Laredo, Mexican border cities where the Department of Homeland Security (DHS) issues over 40% of its CBP One appointments, kidnappings, torture, and sexual assault by cartels of people seeking asylum, including those waiting for or with CBP One appointments, have risen since the ban took effect. These areas were already designated by the U.S. State Department as "Do Not Travel" locations due to life-threatening risks—designations that are akin to those issued for war zones. In Nuevo Laredo, the Strauss Center for International Security and Law has reported that conditions are so dangerous that migrant shelters continue to be closed due to "members of organized crime threatening and perpetrating violence against shelter staff and migrants." Reports of sexual violence against migrants in Reynosa and Matamoros increased 70% during the last months of 2023 according to Doctors Without Borders, in addition to the already sharply escalating instances of kidnappings in Reynosa following the implementation of the ban. In January 2024, Doctors Without Borders teams in northern Mexico reported more cases of sexual violence than in any month of the previous year.

In recent weeks, humanitarian aid workers in these areas have informed Human Rights First that the frequency and brutality of the kidnappings has only gotten worse. Aid workers recounted that men and women have suffered from horrific torture and sexual violence, including women gang raped and sexually assaulted in the presence of children. Migrant survivors of kidnapping in Tamaulipas also report extreme physical violence such as acid burns, fractures, beatings with a slab of wood, and even mentioned having witnessed homicides, as told to Doctors Without Borders. After suffering these horrors, children and their families remain terrified and trapped in danger. Aid workers reported to Human Rights First that they have observed that increased numbers of asylum seekers have missed their CBP One appointments because of these escalating abuses. Aid workers in Tamaulipas

[1] Quote from a Venezuelan asylum seeker kidnapped and tortured in Reynosa while waiting for a CBP One appointment.

continue to report concerns that they themselves are also at increased risk of violent attacks and threats due to their work with people seeking asylum and other migrants.

In Piedras Negras, Coahuila, another border city where people with CBP One appointments can access a U.S. port of entry, Doctors Without Borders reported cases of sexual violence, kidnappings, beatings, threats, and forced disappearance of family members in transit or at the border in 2023. A humanitarian aid worker informed Human Rights First that many people who arrive in Piedras Negras with CBP One appointments are kidnapped and as a result miss their appointments. West of Coahuila, the Mexican northern border state of Chihuahua recorded last year the highest number of kidnappings in three years. Kidnappings nearly tripled from 67 victims in 2022, during implementation of the Title 42 expulsion policy, to 181 victims in 2023, following implementation of the asylum ban and related restrictions on access to ports of entry. And yet, kidnappings are notoriously under-reported. The Mexican national anti-kidnapping commissioner stated last year that the *cifra negra* of kidnappings in Mexico remains high as only one in ten kidnappings are reported, as quoted by SN Digital Tlaxcala. A Ciudad Juárez prosecutor reported that all kidnappings in the city in 2023 were specifically perpetrated against migrants arriving in Ciudad Juárez, as organized criminal groups have focused on the kidnapping and smuggling of migrants.

Human Rights First has tracked reports of **over 2,500 survivors** of kidnapping, torture, rape, extortion, and other violent harm against people seeking asylum and migrants while stranded in Mexico as they wait to seek U.S. asylum in the year since the ban took effect. Of these, 1,300 survivors of violent harm were identified during the ban's first six months. Given the under-reporting of kidnappings and other crimes in Mexico and substantial increase in kidnappings in parts of the northern Mexico border reported by aid workers and Mexican authorities, this figure certainly represents the tip of the iceberg. In its prior reports on the asylum ban, Human Rights First documented numerous examples of adults, children and families who survived these harms while stranded in Mexico as they attempted to secure a CBP One appointment.

These included: a Venezuelan young adult kidnapped and tortured by having his finger cut off; a Honduran mother kidnapped with her family and raped; a Venezuelan man kidnapped and shot in the head leading to the loss of his eye; Honduran teenage boys kidnapped and raped; a Latin American mother and her minor children sexually assaulted; a Colombian LGBTQI+ woman sexually assaulted by a Mexican official; and a Latin American man kidnapped and tortured by Mexican officials in Reynosa.

Some recent examples of the targeting of people waiting to access U.S ports of entry in order to seek asylum over the last few months, include:

- **Members of a cartel kidnapped and tortured three Haitian men in Reynosa who were seeking asylum. The men were tortured during their abduction, including the forcible removal of teeth.** Two of the men were waiting for CBP One appointments and one missed his appointment on account of the kidnapping in April 2024.

- **Latin American[2] woman and her children were pulled off a bus while traveling from Monterrey to Reynosa by members of a cartel and kidnapped. The cartel members gang raped the mother** while holding the family captive in April 2024.

- **Venezuelan man was kidnapped in Reynosa while waiting for a CBP One appointment and physically brutalized for 10 days by members of a cartel.** In fear of being kidnapped again, he fled to the neighboring city of Matamoros after his release and crossed the Rio Grande to seek U.S. asylum protection. Although he had fled political persecution by the Venezuelan police, his claim of fear of return to Venezuela was ignored and he was expeditiously removed to Mexico without receiving a credible fear interview, as Jewish Family Services of San Diego reported.

- **Haitian unaccompanied teenage girl and three Haitian women seeking asylum survived an enforced disappearance by Mexican authorities who turned them over to cartel members who abused them physically and sexually.** The teenage girl and three women were transiting to Reynosa by bus when armed men dressed as Mexican police officers stopped the bus in late December 2024. The Mexican police officers robbed them of their phones and placed them together in a car with black bags over their heads. They were turned over to members of the cartel and held captive for ransom. Cartel members attempted to rape the teenage girl and severely beat her with a stick for resisting. The three Haitian women were raped and beaten. They also witnessed other captive Haitian women who were pregnant and were beaten and raped.

- **Latin American[3] pregnant woman was raped by members of a cartel in Reynosa after they kidnapped her and her husband in March 2024.** The kidnappers continued to rape her as she went into labor and her water broke. She was left on the street with her husband who was badly beaten, and soon after delivered her baby.

Indefinite wait in danger with access to U.S. ports of entry restricted

> *"I am afraid for my life here. Afraid that I will be killed, kidnapped, or that they'll do something to me."*[4]

In order to seek asylum at a port of entry, people must wait up to six to seven months and try *daily* to obtain an appointment on a glitchy, inequitable smartphone app, CBP One, that operates in essence like a daily lottery. Those facing acute risks who cannot safely wait in Mexico, or in some cases even use the CBP One app, have little to no meaningful access to

[2] To protect the safety of the family, Human Rights First is not identifying them by their specific nationality.
[3] To protect the safety of the family, Human Rights First is not identifying them by their specific nationality.
[4] Quote from a Honduran asylum seeker raped in Matamoros while waiting for a CBP One appointment and who was twice blocked from accessing the U.S. port of entry by Mexican officers.

processing at U.S. ports of entry and are driven to undertake irregular crossings to save their lives.

CBP limits the number of CBP One appointments, both the total number available daily and the locations where they are accepted. Since June 2023, the total number of CBP One appointments available daily has remained stagnant at 1450 per day, contributing to a steady increase in wait times. While initial wait times for appointments were reportedly two to four months, one year after the ban was initiated, wait times have increased up to six to seven months. These appointments, moreover, are only available at eight ports of entry across the nearly 2,000 miles of the southwest border, leaving spans of hundreds of miles between various ports without access to any safe processing at ports of entry.

> *"We've been waiting for an appointment that doesn't arrive. [The CBP One app] doesn't care about the risk [we face] or our human rights."*[5]

For people who are unable to secure appointments, or cannot safely wait for one, CBP processing at ports of entry is nonexistent or minimal, estimated at fewer than 100 people per day across the entire U.S.-Mexico border. In tandem, Mexican authorities continue to block and restrict port of entry access to people without CBP One appointments, including individuals facing acute risks. Mexican authorities also block Mexican nationals and unaccompanied minors, two groups that are not even subject to the ban.

CBP limits the number of people without appointments allowed in at U.S. ports of entry by turning away, metering and/or leaving asylum seekers without appointments to "wait" in Mexico, often in real or virtual lines. This is a violation of both U.S. law and DHS guidance, which makes clear that people seeking asylum cannot be required to submit advance information in order to be processed at a U.S. port of entry.

By blocking and restricting access to ports of entry, the asylum ban and metering policies spur crossings between ports of entry and undermine effective migration management, which would be better served by increasing and maximizing access at ports of entry. In April 2024, Human Rights First researchers interviewed adults and families in El Paso who had crossed into the United States between ports of entry. Many indicated that they had tried to obtain a CBP One appointment to enter through a port of entry, but that the monthslong wait times, along with the dangers and risks in Mexico, drove them to seek protection in the United States by crossing the border. The risks they recounted included significant and cumulative trauma suffered in Mexico, ranging from widespread extortion and abuses by Mexican authorities, risk of kidnapping and violent harm by brutal cartels, and fear Mexican authorities would forcibly move them to southern Mexico and/or deport them to their countries of feared persecution.

[5] Quote from a Venezuelan family with minor children who were kidnapped during which the mother was twice sexually abused while waiting for a CBP One appointment in June 2023.

In Nogales, Sonora, people without CBP One appointments seeking access to the U.S. port of entry are required to join a waitlist administered by a Mexican municipal agency. In October 2023, the estimated wait time to be processed was four to five months. As of April 2024, families interviewed by Human Rights First reported waiting **six to seven months to be processed.** CBP only processes a handful of individuals from this Mexico-administered waitlist daily and on some days processes none of them. Many of those on the list are Mexican nationals who are not even subject to the asylum ban and whose access to the U.S. port of entry without a CBP One appointment is still being metered. When a Human Rights First researcher visited in April 2024, a Mexican family with two minor children had been sleeping outside the port of entry for two months waiting to seek asylum.

Nogales is the only port of entry of six in Arizona that processes CBP One appointments, and it processes an estimated 100 daily CBP One appointments—the only appointments available to cross into Arizona through a port of entry. The nearest alternative ports accepting CBP One appointments in El Paso, Texas and Calexico, California are about 350 and 400 miles away, respectively. Given the limited processing and restricted access to ports of entry, asylum seekers and migrants unable to access or safely wait for a CBP One appointment are being driven to attempt perilous desert crossings to seek protection and risk being barred from seeking asylum under the ban. From July 2023 through March 2024, Tucson Border Patrol sector apprehended the most migrants entering between ports of entry across the southwest border.

Similarly at other U.S. ports of entry, Mexican authorities continue to routinely block access to people who do not have CBP One appointments, as documented in our July and October 2023 reports. In Piedras Negras, Coahuila, Doctors Without Borders reported that even people with CBP One appointments have been turned away from the Eagle Pass, Texas port of entry by Mexican authorities. The blocked access to U.S. ports of entry and targeting by cartels and Mexican authorities compel people seeking asylum in this area to risk their lives crossing the Rio Grande river, resulting in numerous drowning deaths. These impediments continue. For example:

- **Maya Ixil woman and her infant blocked from accessing U.S. port of entry multiple times despite written permission from DHS to present themselves there.** A Maya Indigenous woman, the granddaughter of a survivor of the Ixil genocide in Guatemala, who only speaks Ixil, had not heard of the CBP One app and attempted to seek U.S. protection by crossing the Rio Grande to Eagle Pass, Texas. **Once on U.S. soil, U.S. authorities blocked them from seeking protection and stranded them on the U.S. side of the riverbank overnight.** Without being able to exercise their right to seek asylum, **U.S. authorities forced them to cross back to Mexico where they were treated for hypothermia.** After surviving this ordeal, the mother learned of the CBP One appointment system and attempted to secure an appointment for nearly two months but struggled due to limited internet access, technological and language barriers as the app is not available in any Indigenous language. The family attempted to seek protection at two ports of entry in Piedras Negras, Coahuila but were repeatedly blocked by Grupo Enlace, Mexican municipal employees, from accessing the port of entry despite permission from DHS to

present. One Mexican agent even implied that she would have to pay a bribe or they would deport her to Guatemala. During a later attempt, the family was again denied entry despite having a letter from DHS confirming their permission to present. The family was finally allowed to present at the port of entry and were processed into the country following significant intercession by U.S. non-profit groups. These aggressive tactics not only violated their right to seek asylum, but worsened the mental, emotional and spiritual state of an already traumatized mother and child.

Equal access to asylum denied

Black, Indigenous, LGBTQI+, HIV+, women, children, and other vulnerable groups, including people with disabilities or urgent medical conditions continue to face particular and egregious barriers, dangers, and disparities in seeking asylum due to the asylum ban. The asylum ban and related restrictions deny equal access to asylum at U.S. ports of entry to most African, Indigenous, and other asylum seekers who are unable to use the CBP One app or wait for an appointment.

Black asylum seekers forced to wait at risk in Mexico continue to be targets of anti-Black violence, discrimination and harm by Mexican authorities. They are also at risk from violent cartels that control vast territory, often with the complicity of some Mexican authorities. In Reynosa, Haitian asylum seekers are now also being targeted for kidnapping for ransom. Earlier this year **four Haitian asylum seekers were kidnapped and held by a cartel for six weeks.**

Haitian Bridge Alliance (HBA) reported to Human Rights First that Mexican immigration officers and municipal police continue to target Haitians, and migrants and asylum seekers of African-descent. They are targeted as they transit through Mexico, including at airports and on buses. Over the last several months, Mexican immigration officers have targeted African migrants in Tijuana at specific hotels. The officers threatened to arrest, detain, and transfer the migrants and asylum seekers to southern Mexico if they refuse to pay bribes to the officers. Earlier this year, **Mexican immigration officers unlawfully arrested and detained 45 Haitian asylum seekers with CBP One appointments in Tijuana for two hours outside the city**. HBA's advocacy helped secure the release of nearly all of the victims, but Mexican authorities forcibly moved one family with three children to Tabasco in the south of Mexico who were waiting for their CBP One appointment. HBA also reports that between November 2023 and April 2024, Mexican authorities **detained approximately 500 Haitian men, women, and children who were waiting for CBP One appointments in Tijuana and forcibly transferred them to Tabasco and Tapachula in the south of Mexico.**

Discriminatory barriers to medical care facing Black asylum seekers and migrants in Mexico have also resulted in the preventable deaths of Haitian asylum seekers. Some Haitians have been forced to wait with untreated chronic medical issues in inhumane conditions for many months while waiting for CBP One appointments.

- A 67-year old Haitian man died in Tijuana in November 2023 while waiting for a CBP One appointment. He had suffered paralysis due to three strokes but was unable to access medical care, as confirmed by the Haitian Bridge Alliance.

- A 36-year-old Ghanaian intending to seek U.S. asylum died in December 2023 outside the San Luis Potosí immigration jail shortly after having been released by Mexican immigration officers late at night. Mexican authorities reported that the Ghanaian man entered their facility at 9:00 p.m. and at around 11 p.m., paramedics arrived and he was already deceased. According to the state Attorney General's office, he died as a result of a heart condition, while other reporting indicates suspected hypothermia.

- A humanitarian aid worker confirmed that a Haitian woman who had been waiting in Reynosa to seek U.S. asylum died of health complications in December 2023 due to barriers in accessing urgent medical care.

- A humanitarian aid worker confirmed that a Haitian man who had been waiting with his wife and children in Reynosa for a CBP One appointment died of suspected diabetes-related complications in July 2023.

- A humanitarian aid worker confirmed that a Haitian woman waiting to seek asylum in the U.S. died in front of her two-year-old outside a migrant shelter in Reynosa in September 2023.

- The Haitian Bridge Alliance reported that in late August 2023, a Haitian mother who had been waiting with her husband and three children in Matamoros for a CBP One appointment died of a stroke after being hospitalized. The family had a CBP One appointment, but as the mother was critically ill it came too late.

- The Haitian Bridge Alliance confirmed that a Haitian man who had been waiting for a CBP One appointment in Tijuana died after suffering two strokes in June 2023. The Haitian Bridge Alliance organized a funeral for him.

- A humanitarian aid worker reported that in August 2023 a pregnant Haitian woman was forced by CBP to wait for two days at the Reynosa port of entry while experiencing pregnancy complications. She later lost her baby.

- A pregnant Haitian woman in her third trimester who was unhoused and living outside the entrance to a migrant shelter in Reynosa while waiting to seek U.S. asylum fell ill in July 2023. Seeking emergency medical care, a taxi took her to a private hospital; she was denied treatment. By the time a humanitarian aid worker brought her to a public hospital, she suffered a stillbirth.

LGBTQI+ people seeking U.S. asylum are stranded in Mexico for months where they are targeted for harm due to anti-LGBTQI+ violence and their migratory status. Despite these dangers, they are left at risk of being barred from asylum and returned to persecution if they

seek protection by crossing at or between ports of entry without a CBP One appointment. In its research over the last year, Human Rights First has encountered examples of vulnerable people in this population who waited months trying to secure a CBP One appointment while facing acute risks and violence in Mexico, including:

- Five LGBTQI+ asylum seekers from **Cuba, Honduras, and Mexico waited in Tijuana about five months** for a CBP One appointment but finally grew desperate for safety in January 2024 and decided to cross between U.S. ports of entry to seek asylum.

- **Cuban HIV+ transgender woman and her husband had been waiting nearly seven months** as of March 2024 but were unsuccessful at securing a CBP One appointment. While waiting in Matamoros they experienced an attempted kidnapping, which spurred them to enter the United States between ports of entry.

- **Honduran transgender woman had been waiting in Tijuana four months for a CBP One appointment** in February 2024, after already waiting eight months in southern Mexico for a one-year Mexican humanitarian visa which she hoped would protect her from return to persecution while transiting through Mexico.

- **Mexican transgender woman had been waiting in Tijuana seven months** for a CBP One appointment as of February 2024. Though Mexican asylum seekers are not subject to the asylum ban's penalties for entering without a CBP One appointment, access at ports of entry for those without appointments is restricted.

Significant barriers to the use of CBP One, including limited language access, disproportionately impact **Indigenous, many Black, and other asylum seekers** who do not speak English, Spanish, or Haitian Creole, the only three languages of the CBP One app. People seeking asylum who are illiterate, have limited language and digital literacy, or have disabilities that impede their ability to use the app, are also often denied equal access to ports of entry and asylum. So too are people with limited financial means to access daily internet or purchase a smartphone—a very real challenge for the many migrants who have told Human Rights First that their phones have been stolen by Mexican authorities and cartels or lost or damaged during their travels.

Unable to use the CBP One app, and unable to access ports of entry without appointments, many people cross between ports of entry to seek asylum, unaware of the consequences imposed by the ban. The asylum ban includes an exception for individuals unable to access or use the CBP One app due to a language barrier, illiteracy, significant technical failure, or other ongoing and serious obstacle. However, the rule specifically provides that this exception applies only to people who enter at ports of entry (yet, ironically, ports are generally inaccessible for those without CBP One appointments, making this exception largely illusory). Yet Indigenous, Black, and other asylum seekers who are unable to use CBP One for these reasons and cross between ports of entry risk the asylum ban's punishments. This report documents in the expedited removal section further below, individuals who were unable to use the CBP One app due to language barriers and illiteracy, were found to not

meet an exception, and were subjected to the asylum ban's heightened fear screening, including a Senegalese man who only speaks Wolof, a Nicaraguan illiterate man, and an Egyptian Arabic speaker. DHS's failure to apply the serious and ongoing obstacles exception to asylum seekers facing language barriers would endanger asylum seekers in the following situations:

- **Mayan woman from Guatemala who is illiterate and speaks Akatek crossed without an appointment with her infant son.** After the mother survived sexual assault in Guatemala, and family members were murdered, they received death threats from MS-13. While transiting Mexico by bus, they were stopped by armed, uniformed Mexican officials who beat the mother and threatened to kill her and her infant if she did not pay a bribe. She arrived near the U.S.-Mexico border terrified of further abuse by Mexican authorities and of being located by MS-13. She had no knowledge of CBP One, had never owned a smartphone, only speaks Akatek, and is illiterate. The family crossed into Arizona between ports of entry and now risks potential return to persecution under the ban.

- **Black Senegalese gay asylum seeker who speaks Wolof and Fulani at risk under the asylum ban.** The man's boyfriend was killed in Senegal, and he fled a stoning, beatings, and death threats because of his sexuality. Once in Mexico, he sought protection after crossing into the United States between ports of entry and was unaware of the asylum ban's consequences for entering without an appointment. He only speaks Wolof and Fulani, languages the CBP One appointment system is not available in and was unable to access the app. He is now in ICE detention and risks return to persecution under the ban.

- **Three Hazara Afghan men who speak Dari, and were unaware of the app, at risk under the asylum ban.** Three Hazara men, a persecuted ethnic and religious minority, fled Afghanistan after the fall of Kabul to the Taliban. Lacking any safe pathways to protection they crossed irregularly into the United States and immediately turned themselves in to seek asylum. They speak Dari and were unfamiliar with the CBP One app, which is not available in their language. Under the asylum ban, they now risk potential return to the Taliban and their certain deaths in Afghanistan. Even if they are subsequently found eligible for withholding of removal, they will be denied a path to permanent residence, citizenship and stability.

- **Turkish transgender male asylum seeker who does not speak a CBP One language** reported to Human Rights First that he was unable to use the app to schedule an appointment at a port of entry due to the language barrier, as he speaks Turkish. He crossed between ports of entry in California and will now risk being barred from asylum despite his potential eligibility for asylum.

- **Black Mauritanian human rights advocate who was unaware of, and does not speak CBP One languages, at risk under the ban.** Imprisoned for his anti-corruption work in Mauritania, the human rights advocate fears arrest, torture, and death if returned to Mauritania. He was unaware of the CBP One app or of the

asylum ban's consequences when seeking protection at the U.S. southwest border. As an Arabic and French speaker, he would not have been able to use the CBP One scheduling system. While in Mexico, he was robbed and beaten by gangs and extorted by Mexican police which motivated his crossing to the U.S. to seek protection. He now risks being barred from asylum and returned to persecution under the ban.

- **Indian Sikh family** fleeing persecution on religious grounds crossed between ports of entry into southern California. The family are Hindi speakers and were unaware of the CBP One app.

- **Black Senegalese man who speaks only Wolof at risk under the ban**. He fled torture and sexual assault in Senegal due to his imputed LGBTQI+ status. The man has limited literacy and only speaks Wolof. While on a bus in Mexico, armed men pulled him and other Black migrants off the bus and robbed them at gunpoint. Shortly after, Mexican immigration officers detained them and held them for four days before releasing them near the U.S. border and informing them they had ten days to leave the country. He entered the United States between ports of entry to seek asylum, was sent into ICE detention, and is at risk of return to persecution under the ban.

Counterproductive to effective migration policy and refugee protection

The asylum ban is counterproductive to effective migration policy and refugee protection, setting a terrible example for other countries. Far from deterring people from irregularly crossing the southwest border, the ban and accompanying restrictions spur irregular crossings and cruelly punish people who cross, subjecting them to improper penalties that violate the Refugee Convention. The asylum ban diverts the time of asylum adjudicators from the merits of people's refugee claims, undermines the capacity to adjudicate asylum cases efficiently, and hampers U.S. integration by depriving people who qualify as refugees under U.S. law of a path to stability and citizenship.

As Human Rights First has documented in multiple reports, restrictionist policies that meter and limit access to U.S. ports of entry spur irregular crossings by at-risk people who cannot safely wait in Mexico. Over the last year, Human Rights First has interviewed many asylum seekers who have recounted that they crossed the border, or were contemplating doing so, due to their inability to seek asylum at a port of entry and the risks they face while waiting. Their accounts are detailed both in this report and in the prior four asylum ban reports issued by Human Rights First.

Such policies are also a boon to cartels and smugglers, who target migrants and asylum seekers left stranded in highly dangerous areas for kidnapping, violence and extortion. Indeed, the Chihuahua Attorney General stated in April 2024 that the increase in kidnappings and murders in Chihuahua is linked to the fact that organized crime groups have now taken up migrant smuggling

People continue to be unaware of the asylum ban

One year into the asylum ban, people waiting to seek asylum overwhelmingly do not know about or understand the asylum ban and its consequences, as Human Rights First's interviews with over 500 asylum seekers have confirmed. Humanitarian service providers, who have worked across the U.S. southwest border and northern Mexico with thousands more, also report that people seeking asylum are largely unaware of the ban and its consequences. This is not a challenge that can be addressed by more information about the asylum ban; it is instead a reflection of the realities of refugees' situations. People waiting to seek asylum continue to express wanting to do so at ports of entry, but in the face of restricted access to ports and increasing security threats and survival needs, asylum seekers' decisions are overwhelmingly driven by urgent protection needs spurring many to cross between ports of entry.

The asylum ban subverts refugee protection

The asylum ban subverts refugee protection by denying asylum to refugees and depriving many people who qualify as refugees under U.S. law of a path to citizenship. It targets vulnerable and at-risk populations: people seeking asylum who have a significant possibility of establishing their eligibility for asylum but do not meet the higher bar imposed under the ban, and people with well-founded fears of persecution who do not meet yet another unduly high standard. The use of the ban to artificially elevate the credible fear screening standard in expedited removal, leading more people to be denied full asylum hearings, is not a success, but a refugee protection failure.

Diverts resources, contributes to backlogs

The asylum ban's use in expedited removal has also unduly complicated the adjudication of, and increased the time required to conduct, credible fear interviews and related Immigration Judge credible fear reviews, as former Immigration Judges and former members of the Board of Immigration Appeals detailed in the amicus brief in support of plaintiffs in the case challenging the asylum ban. The union representing USCIS asylum officers who conduct credible fear interviews explained, in an October 2023 amicus brief submitted in the litigation challenging the ban, that the ban's implementation in credible fear interviews "significantly adds to the workload and pressures facing asylum officers," including due to the "factually intensive, complex determination" of the asylum ban's exceptions.

Moreover, with the asylum ban in place, many USCIS asylum officers are diverted away from conducting affirmative asylum adjudications and asylum merits interviews under the Biden administration's Asylum Processing Rule (APR) in favor of expedited removal interviews. This has greatly exacerbated delays and preexisting backlogs at the USCIS asylum office, which by January 2024 hit 1.158 million. In Fiscal Year 2023, the Biden administration conducted over 130,000 credible fear interviews through expedited removal—a historical record.

The deployment of USCIS asylum officers to expedited removal over the year since the asylum ban went into effect has also hampered steps to improve the efficiency of the asylum system, including preventing USCIS from deploying sufficient asylum officers to the Biden administration's new APR process. With some key improvements, that initiative can make the adjudication process more efficient and reduce referrals to the immigration courts.

Thwarts path to citizenship, leaves refugees in limbo

The asylum ban will also create long term challenges by undermining the ability of people recognized as refugees to become legal residents and citizens, impacting their stability in their new U.S. communities. The ban will ultimately leave many people without a secure status and path to citizenship. While many people who meet the refugee definition risk return to persecution under the asylum ban**,** some may be spared that fate if they meet the higher legal standard for withholding of removal, or protection under the Convention Against Torture. However, while asylum status provides the ability to work, travel abroad, petition to reunite with spouses and children, and a pathway to permanent residence and citizenship, these alternate forms of protection merely provide protection against removal and the ability to work.

They leave refugees in limbo and without a path to stability, permanent residence or citizenship, and often facing barriers to health care and potential threats of deportation. Indeed, people granted only withholding of removal or CAT protection have in some cases been ordered deported and live in the United States under the constant threat that the U.S. government could seek to reopen their cases and remove them. While the ban includes a family unity exception, it will leave many refugees, including LGBTQI+ refugees, unprotected and in limbo. For example:

- A Georgian asylum seeker fleeing LGBTQI+ persecution was subject to the asylum ban in a final merits hearing, denied asylum under the ban and granted withholding of removal. The Immigration Judge held that he would have been granted asylum but for the asylum ban, according to the asylum seeker's pro bono attorneys at Lewis Roca.

Many who are not granted these other forms of protections will be ordered deported even though they have well-founded fears of persecution, and qualify for asylum under U.S. law. Despite requests that it publish data on the application of the asylum ban in expedited removal, immigration court hearings, and USCIS adjudications, the U.S. government has not provided this data. As asylum seekers held in ICE jails—where legal representation is scarce—are those most likely to be quickly subjected to the asylum ban in full asylum adjudications, there is currently a dearth of information about the impact of the ban in full asylum adjudications.

Over the coming months, as individuals subject to the ban appear before Immigration Judges for their final merits hearings, the asylum ban's denial of asylum and deprivations of

stability and a path to citizenship, along with the resulting counterproductive dysfunctions, will certainly increase.

Seeking U.S. asylum but targeted by Mexican authorities

For months, Mexican authorities have increasingly blocked asylum seekers and migrants from reaching the United States. Even people who have CBP One appointments, or have been waiting for them, have been removed from the northern Mexico border or blocked from reaching it. These actions have been accompanied by abuses, including reports of extortion, family separation, arbitrary arrest, prolonged detention, physical abuse, forced relocation to the south of Mexico, and refoulement. Mexican authorities' abuses and failure to protect migrants and asylum seekers from targeted violence drive people to cross into the United States irregularly – where they will then risk the penalties of the asylum ban – contribute to the dangers facing these vulnerable populations, and subvert refugee protection.

"They're persecuting and hunting down migrants."[6]

After border apprehension numbers rose in December 2023, U.S. officials met with Mexico's president to press for measures to limit migrants and people seeking asylum from reaching the United States. Months prior, the Mexican president had agreed to deport migrants from its northern border cities and increase immigration checkpoints, among other actions. The U.S. and Mexican government's joint efforts to block asylum seekers and migrants from reaching the U.S. border have resulted in abuses by Mexican authorities. Mexican immigration and security forces have increased their presence in northern border cities in coordination with some Mexican state and municipal law enforcement. Authorities have increased checkpoints along key transit routes through central and northern Mexico to remove people transiting by train and bus, detain them, forcibly transport them by plane or bus to the south of Mexico where they are typically pressured to agree to leave Mexico by its southern border, and deport some. These immigration sweeps have led to the interception of an estimated 8,000 U.S.-bound migrants per day through use of military patrols and highway checkpoints.

In Matamoros, humanitarian aid workers described initial sweeps in December 2023 resulting in the detention of hundreds of people waiting to seek U.S. asylum. The aid workers reported that **many of these asylum seekers have been waiting for CBP One appointments**. Uniformed Mexican immigration officers wearing face coverings entered the river encampment and began to destroy tents, search for, and detain, migrants. During these sweeps, a nine-month pregnant Haitian woman waiting to seek asylum was separated from her husband who was detained by Mexican immigration officers.

[6] Quote by a humanitarian aid worker in Matamoros on the immigration raids conducted by the National Institute for Migration targeting migrants.

During the last 10 days of December, Mexican immigration authorities sent 22 flights of migrants and people attempting to seek U.S. asylum from its northern border region to southern Mexico, with most originating in Piedras Negras and others in Tampico, Monterrey, Tijuana and Ciudad Juárez. The next month, the U.S. government attributed the significant reduction in migrant crossings, which had been halved as compared to December, to Mexican authorities' actions. The Mexican immigration agency also sent two deportation flights directly to Venezuela at the end of December with 329 migrants. A Venezuelan woman and her husband fleeing persecution were among those wrongfully returned.

> *"We were like prisoners there. My children knew nothing about me for four days. The [immigration] official said, 'sign here, it's mandatory to release you,' but it was a trick. We were boarded on a bus and told we were going to Mexico City. They didn't explain anything. We arrived at the airport and they sent us here [Venezuela]. My daughter and grandson are at a shelter in northern Mexico, and yet we're here."*

A Venezuelan woman fleeing politically-motivated death threats was apprehended by Mexican immigration officers while traveling to Piedras Negras on foot with her family. Immigration officers separated her and her husband from their daughter and grandson. They were deceived by the officers who told them that they wouldn't arrest them, and promised water, food, and help to reach Piedras Negras. Instead, they were taken and boarded onto a bus for *four days* to the south of Mexico where they were left on the road. After they finally managed to board a bus to Mexico City, half an hour into the ride, Mexican immigration officers boarded the bus and targeted them as Venezuelans, instructing them and another Venezuelan migrant to exit.

They were transported to an immigration jail. Their cell phones and belongings were taken. They were not allowed to make a phone call, communicate with anyone or go outside. **Mexican authorities did not ask them about fear of return to Venezuela or whether they wished to seek asylum,** though the Venezuelan woman recounted that she told them that she feared return to Venezuela. Mexican officers told them to sign a document so that they could be "released." Instead, however, Mexican officers loaded them onto a bus and transported them to Mexico City. They were forced to remain on the bus and told they had more travel still ahead - without being provided with any information. The couple, who were prevented from seeking asylum in the United States, were put on a flight to Venezuela despite their fears of return - and again without being informed where they were going.

Human Rights Watch reported that Mexican authorities "summarily deport asylum seekers to their country of origin, typically without screening to ensure they are not being returned to harm." Attempts to prevent people from seeking asylum, to deny asylum seekers information, and to deliver them back to their countries of feared persecution are blatant violations of international refugee law that should not be requested or tolerated by the United States, nor conducted by Mexico.

"Why are they sending us back if we have an appointment?"

A Venezuelan family with a CBP One appointment intending to seek U.S. asylum was apprehended by Mexican immigration officers in December 2023 while on a freight train on their way to the U.S. border. The wife became separated from her husband and child as she explained to the officers that they had a CBP One appointment, but was instead detained and forcibly flown alone to the south of Mexico.

The U.S. government has essentially predicated access to asylum on obtaining a CBP One appointment, which can only be requested when in central or northern Mexico due to the app's geofencing design. The asylum ban is structured to force people to wait at risk in Mexico for up to many months while trying to obtain an appointment. Yet Mexican immigration authorities are apprehending migrants and people seeking asylum, including those waiting for or with CBP One appointments, separating families, committing abuses, and forcibly relocating them to southern Mexico where they are stranded, at risk, outside of the CBP One app's geofence and unable to request an appointment. Humanitarian aid providers reported to Human Rights First that some people seeking asylum have missed their CBP One appointments because they were detained by Mexican authorities.

- **Afghan family with a CBP One appointment** was extorted by Mexican immigration officers in the Mexico City and Tijuana airports in January 2024; officers demanded the family open the CBP One app, took their phone, and **threatened to eliminate their appointment if they did not pay them a bribe.**

- **Venezuelan family with a CBP One appointment** flew from Mexico City to Ciudad Juárez where they were questioned by Mexican immigration officers upon arrival who **tore up the family's CBP One appointment print out**, wrongly accusing them of fraud, and threatened to bus them to southern Mexico or deport them. Another officer eventually arrived and acknowledged their appointment and allowed them to leave in April 2024.

- **Ecuadorian mother and teenage son separated by Mexican immigration officers from her husband and eighteen-year-old son.** After the freight train the family was traveling on was stopped as it approached Juárez in March 2024, they were caught by Mexican officers. The mother pleaded with the officers, indicating that they were a family and had documentation to prove it. The officers separated the family. She was left in Chihuahua with her minor son while **her husband and 18-year-old son were forcibly transported to Tapachula**. When Human Rights First interviewed the mother, the family had already been separated, and unable and to reunite, for a month.

- **Venezuelan family with minor children prevented from seeking U.S. asylum and instead detained by Mexican officers and transported to Tapachula in January 2024**. The family was removed from a bus at the last checkpoint as they approached Reynosa. Mexican officers took their cell phones and transported them

to a detention center. When the family asked immigration officers why they were being held and what was going to happen, the officers deceived them and said they would be taken to Mexico City to regularize their legal status. Instead, they were taken to the Reynosa airport and forcibly flown to Tapachula, bordering Guatemala, and forced to start their journey to seek U.S. asylum again.

In April 2024, Mexican immigration authorities in Chihuahua reactivated immigration raids against migrants in Juárez and further south, targeting people transiting to seek protection at the U.S.-Mexico border. Amid this heightened crackdown, forty-nine Mexican human rights groups denounced the use of force and incidents of violence and abuse by Mexican immigration officers. Flights to southern Mexico from the northern border continue, with 170 migrants waiting to seek entry to the United States having been detained and flown from Juárez to Tapachula, bordering Guatemala. Recent abuses by Mexican authorities during immigration raids and inspections include:

- Migrant woman detained in an immigration jail in Reynosa recounted to a Venezuelan family who was also detained that Mexican **immigration officers pushed her off a train and beat her, leading her to suffer a miscarriage**. The family found her huddled on the floor of the cell grieving her loss in January 2024.

- A group of 55 migrants, mostly women and children, from Venezuela, Ecuador and Honduras were intercepted by Mexican immigration officers in Chihuahua in April 2024 and robbed of their phones, identity documents, money, and even shoes. The officers **kicked some of the women, dragged another, slapped the children, and abandoned them** at a gas station.

- **Pregnant Venezuelan woman was forcefully thrown to the ground by Mexican immigration officers at a checkpoint in Chihuahua in April 2024**. She landed on her stomach and began to bleed vaginally, **suffering a miscarriage**. She asked to go to a hospital but the officers did not take her and she lost consciousness. She awoke at a migrant shelter in Juárez where the officers had dropped her. The shelter staff called an ambulance and she was hospitalized. Upon her release, her condition worsened over several days so she crossed between ports of entry to seek protection, crawling under the border razor wire. She was hospitalized immediately on account of her critical condition.

- A Venezuelan woman reported in April 2024 that when she and her family attempted to seek U.S. protection and approached the border wall in Ciudad Juárez, the **Mexican military removed them and attempted to hit a man carrying his child and rip their documents.**

Due to this crackdown by Mexican authorities on migrants and asylum seekers, including those *already waiting at the northern Mexico border*, many fear being apprehended and forcibly sent to the south of Mexico or deported. As a result, many migrants and asylum seekers Human Rights First spoke with in Ciudad Juárez reported their intention to seek irregular entry because of their distrust of Mexican immigration and other authorities and

their inability to safely wait in Mexico. Asylum seekers and migrants Human Rights First spoke with in El Paso who crossed between ports of entry confirmed this.

The direct targeting of asylum seekers and migrants by Mexican authorities for extortion and other abuses, complicity or participation of some Mexican authorities with cartels in their abuse of migrants and asylum seekers, and the near-complete lack of state accountability, protection, and access to justice in Mexico, is confirmation that **Mexico is not safe for many asylum seekers and migrants.**

Asylum ban and related punitive policies rig expedited removal processes

The Biden administration is using the asylum ban in combination with expedited removal and other punitive policies to summarily deport people without an opportunity to apply for asylum and present their case. These deportations violate U.S. and international law and return people to danger without meaningful access to the U.S. asylum system.

Asylum ban fuels refoulement

DHS is not required to use expedited removal and has the authority to directly refer people seeking asylum directly for full asylum hearings rather than first requiring them to pass a credible fear screening. The punitive use of expedited removal and the asylum ban in credible fear interviews targets people who entered the United States without a CBP One appointment, in violation of international and domestic law prohibitions against penalizing refugees for their manner of entry.

Under U.S. law, individuals subject to expedited removal who express a fear of return *must* be referred for a preliminary fear screening (referred to as a "credible fear interview") conducted by an Asylum Officer. Congress deliberately established this as a "low screening standard," defined as a "significant possibility" that the asylum seeker could establish eligibility for asylum in a full hearing. By law, anyone determined to have a credible fear of persecution cannot be deported without a full hearing on their asylum claim. Since May 2023, adults and families with children in this process who sought safety without a CBP One appointment have had to demonstrate they are exempt from the ban or meet a narrow exception— requirements that are completely unrelated to the merits of their asylum claim. Should they fail to demonstrate they are exempt or meet an exception, they are presumed ineligible for asylum and denied the opportunity to establish a credible fear of persecution. In violation of the fear standard created by Congress, the asylum ban also imposes a higher screening standard on asylum seekers who, because they are deemed to be subject to the ban, are limited to being considered for withholding of removal and protection under the Convention Against Torture, which are more difficult to secure and provide lesser long-term protections. The United Nations High Commissioner for Refugees has repeatedly explained that heightening the U.S. fear screening standard, which was already inconsistent with what international law would allow, would endanger refugees, deny them asylum hearings, and increase risks of *refoulement* to persecution. Initial outcomes following the implementation of the asylum ban confirm this fear.

People subject to the asylum ban's higher screening standard are **more than** three times as likely **to fail their screenings and be ordered deported without a chance to apply for asylum** compared to those not subject to the ban, according to government data provided in the litigation challenging the ban. While people who established an exception to the ban and proceeded under the correct CFI standard passed their screenings 84.5 percent of the time between May 12 and August 11, 2023, those who were subjected to the ban and had to meet the higher screening fared far worse—with 52.7 percent passing their screenings and the rest ordered deported.

Those who do not pass credible fear interviews are ordered deported without an opportunity to apply for asylum or other protection unless the decision is reversed by an Immigration Judge or the Asylum Office. While people are entitled to request an Immigration Judge review of their negative credible fear decision (also referred to as a negative credible fear review), these hearings are often cursory, with some asylum seekers prohibited from speaking, submitting evidence, or having their attorney speak on their behalf. The Biden administration has also eliminated longstanding safeguards in the credible fear process to severely limit the ability of asylum seekers and their attorneys to request reconsideration of a negative CFI from the asylum office.

Human Rights First learned of some cases where refugees' summary deportation were prevented only because attorneys or advocates learned of these potential returns to persecution and successfully intervened. While advocacy by attorneys spared a few from unlawful returns, access to counsel in expedited removal is extremely limited and the vast majority of people subject to expedited removal may be deported without ever consulting with an attorney.

Refugees placed in peril by the asylum ban's use in expedited removal, include:

- A Venezuelan air force lieutenant**, the son of a known opponent to the Maduro regime, was found not to meet the heightened asylum ban fear screening standard, deported without an asylum hearing** to Venezuela in December 2023 where he was immediately sent to a military prison.

- **A Chinese pro-democracy activist jailed as a political prisoner for years and whose persecution was documented by Western media was ordered deported under the higher screening standard imposed by the asylum ban.** He was found to not meet an exception and subjected to the ban's higher screening standard. His deportation order was only reversed after a legal service organization learned of his case and conducted extensive advocacy.

- **A Senegalese man fleeing politically motivated attacks from Senegalese authorities was deported to Senegal under the asylum ban.** USCIS conducted his CFI while he was in ICE custody and found he did not meet an exception to the asylum ban. He only speaks Wolof and suffered abuse in Mexico, including unlawful detention and demands for bribes by Mexican officers. This abuse, and his fear of

further violence in Mexico, motivated his irregular crossing into the United States to seek protection. The asylum officer also failed to record the man's relaying of the details of his assault by the Senegalese police, and when he brought this up at the negative credible fear review, the Immigration Judge claimed the man was changing his story and was not credible, even though credible fear review hearings are meant to conduct the screening *de novo*.

- **A Transgender Venezuelan woman living with HIV, who suffered years of physical abuse and was threatened with rape in Venezuela due to her sexual orientation and gender identity, was subjected to the asylum ban and ordered deported.** USCIS conducted her CFI in ICE detention and she was held to the asylum ban's higher screening standard. The officer conducting the CFI repeatedly instructed her to answer questions about past persecution with "yes" or "no" responses and did not include any analysis or explanation of the negative determination in the interview records. She remained detained for months, suffering enormous trauma while ICE prepared to deport her to Venezuela, where she feared she would be killed. The deportation order was reversed only after Immigration Equality learned of her case and provided her assistance.

- **A Venezuelan torture survivor and military deserter was found to not meet an exception to the asylum ban despite surviving an attempted kidnapping in Mexico, and was ordered deported.** During his CFI in ICE custody, he described his escape from a kidnapping attempt in Mexico by three armed men who chased him, but the Asylum Officer found he did not meet an exception to the ban and he failed the asylum ban's higher screening standard. He was only spared from summary deportation to his country of persecution after securing legal representation by RAICES. An Immigration Judge subsequently concluded he met the asylum ban's extreme threat to life or safety exception and vacated the deportation order.

- **A Nicaraguan illiterate man who was severely beaten by Nicaraguan police and threatened with imprisonment was ordered deported to Nicaragua under the asylum ban.** The Asylum Officer found he did not meet an exception to the ban although he could not use the CBP One app due to illiteracy, a fact which he shared in his CFI.[7] During the immigration judge review, the judge conceded the ban should not apply to him due to his illiteracy but nonetheless upheld the expedited removal order despite risk of torture by Nicaraguan authorities if returned.

- **An Egyptian man targeted and beaten because he is Christian and who fears he will be killed if returned to Egypt, was ordered deported under the ban.** The man only speaks Arabic, a language that is not available on the CBP One app.[8] Like the vast majority of people put into expedited removal, he was not represented in his

[7] *Ibid.*
[8] *Ibid.*

CFI. His deportation order was only vacated after a legal service organization learned of his case and conducted extensive advocacy.

- **A Honduran man who escaped forced recruitment by the MS-13 gang under threat of death was subjected to the asylum ban in ICE detention and deported because he did not meet the higher screening standard.** In Honduras, gangs control widespread territory across the country, collude with government agents, and target, attack, and murder people who resist their demands. In his credible fear interview, this asylum seeker testified that he escaped a kidnapping in Mexico, but the Asylum Officer found no exception to the asylum ban and did not include an explanation in the CFI records as to why these facts did not constitute an imminent and extreme threat to life or safety. He was ordered deported because he did not meet the asylum ban's higher screening standard. At his negative fear review hearing, an Immigration Judge upheld the negative fear determination and the man was deported to Honduras.

CFIs in CBP holding facilities undermines due process with serious risk of refoulement

At the same time the asylum ban was implemented, the Biden administration relaunched a Trump-era policy of conducting CFIs in CBP custody, leading to prolonged detention of people seeking asylum in dangerous and subpar border holding cells conditions in violation of CBP guidelines. Through agreements with Mexico to deport some people there, the U.S. government is also using the asylum ban in CBP holding facilities to summarily deport or return some people seeking protection without any screening of their refugee protection claim and fears of persecution in the country they fled, rather focusing the CFI determination on fear of harm in Mexico. Despite attempts by the administration to provide access to consultations with legal counsel, the vast majority of those in this program do not have meaningful access to legal assistance before, or legal representation in, these life or death interviews. The systemic due process issues with expedited removal, amplified while in CBP custody, combined with the asylum ban is leading to people with refugee claims being returned to harm. Unofficial data from CBP indicate that the credible fear interview pass rate for those in CBP custody is an abysmal 23%.

Detention in CBP custody, where many are held essentially incommunicado in horrendous, sometimes life-threatening conditions for prolonged periods—in violation of government policy—and their whereabouts often cannot be confirmed by attorneys or loved ones, may constitute enforced disappearances under international law. There is neither physical access to those detained in CBP custody nor regular access to phones that would facilitate adequate representation of individuals in detention in CBP custody.

Additionally, even when asylum seekers are represented, their attorneys report that they are often not informed of the dates and times of their clients' negative credible fear reviews by Immigration Judges. Attorneys attempting to provide legal information to asylum seekers report that telephone access is often limited to short periods of time, and to inconsistent and irregular hours—including outside of business hours and on weekends. Legal representation

is further impeded by the decision last year, after implementation of the asylum ban, by the Executive Office for Immigration Review to stop posting the outcomes of Immigration Judges' negative credible fear reviews, making it impossible for attorneys to determine the outcome of a case and how best to assist a client before they are deported. The full extent of the harm inflicted by this policy is unknown, as most of those subject to the program never speak to a lawyer and despite requests for data, information about specific fear outcomes for those in CBP jails has not been made public. Human Rights First learned of the following individuals deported after having their CFIs in CBP custody:

- **Afro-Venezuelan man fleeing death threats from government officials due to his anti-corruption work was detained in CBP custody and ordered deported under the asylum ban. CBP deported him to Mexico without an opportunity to tell an asylum officer about his fear of persecution in Venezuela.** While in Mexico, he was targeted by armed, uniformed officers, removed from a bus, and forced to remove all his clothing and stand naked for nearly 30 minutes while they robbed him of his money. When he began to run away, they fired their weapons at him. He had heard of the CBP One app, but did not understand what it was or know about the asylum ban's consequences. He did not feel safe staying in Mexico so he crossed between ports of entry into the United States to seek protection. During his CFI in CBP custody, he testified to the abuses by Mexican officers but an Asylum Officer found he did not meet an exception to the asylum ban. Due to the United States' agreement to deport Venezuelan nationals to Mexico, the Asylum Officer required him to meet the higher screening standard with respect to fear of persecution in Mexico, not Venezuela. He was deported to Mexico under the ban. Still in fear of persecution, he waited three months to secure a CBP One appointment and was again detained after presenting at the U.S. port of entry. This time he was transferred to ICE jail and waited over two months for a new CFI. ICE eventually issued a Notice to Appear, placing him in removal proceedings.

- **Indigenous Peruvian woman persecuted because of her Indigenous identity and threatened with death as her house was burned down, was subjected to the asylum ban in CBP custody and deported to Peru.** She was detained in CBP custody and did not have an opportunity to first speak to a lawyer before her credible fear interview by telephone. She spoke Spanish, some Quechua, and had limited literacy, but the Asylum Officer found she did not meet an exception to the ban. The Asylum Officer misheard a specific interpreted word and as a result, misunderstood a material issue in her claim that supported a protected ground of asylum. An attorney with RAICES learned of her case, and entered appearance to represent her at her immigration court review. The lawyer was informed of the time of the hearing in Pacific Time, but the Immigration Judge conducted it at Mountain Time and ordered her deported without her counsel present. She was removed to Peru. Suffering from historical discrimination and racism, Indigenous populations in Peru face violations of territorial rights, are often denied access to basic rights and face land dispossession. Their access to justice is limited given the entrenched power dynamics between the non-Indigenous ruling political class and Indigenous Peoples and structural inequalities.

Families subject to rushed deportations under heavy surveillance

Since May 2023, the administration has also subjected families seeking protection to the asylum ban, in combination with expedited removal, unduly short timelines, home curfews, and other punitive policies, raising the risk of refoulement and inflicting extreme trauma on families and children who have just fled harm. Credible fear interviews conducted in this program—dubbed "Family Expedited Removal Management (FERM)"—take place within days or weeks of families' arrival in the United States. As of November 2023, only 2.6% of all families enrolled in FERM were represented.

As Human Rights First documented in its October 2023 report, these interviews are replete with instances of parents, babies, and children crying; young children questioned by asylum officers; and parents having to comfort their children or informing the officers that a child is hungry or needs a diaper change. Families have suffered additional trauma during these interviews due to the asylum ban because they had to testify about the brutal violence they suffered in Mexico in order to meet an exception to or rebut the presumption of the ban. Indigenous families in the FERM process face even more significant barriers because the government fails to interview them in their best and native language, leading to deportation orders and severe trauma.

A few of the families initially ordered deported while in this program, and only spared this fate as they were among the tiny percent that received legal representation, include:

- **Colombian family escaped threats of forced recruitment by an armed leftist group and was ordered deported under the asylum ban's higher standard** through the expedited removal program for families. Mother and son were kidnapped in Mexico and held captive for three days, starved, and had everything stolen from them. They were rescued by the Mexican military and immediately sought protection in the United States after entering between ports of entry. They were placed in the FERM program, and ordered deported under the asylum ban's higher standard, after an Asylum Officer found that their kidnapping did not rise to the "serious and imminent" threat to life or safety exception to the asylum ban. They managed to secure legal representation by a legal service organization for the immigration judge review, resulting in reversal of the deportation order.

- **Peruvian family targeted for their political work was ordered deported under the asylum ban's higher standard** while in the expedited removal program for families. The mother described during her CFI that she and her child were on a train near Juarez, Mexico when men with guns boarded the train and began kidnapping people. She hid with her hand over her son's mouth and they were able to escape. Fearing for their lives, they sought protection crossing into the United States between ports of entry. An Asylum Officer found this did not meet the "imminent and extreme" threat to life or safety and held them to the asylum ban's higher fear screening standard. They were ordered deported to Peru. They were fortunate to be

represented by a legal service organization in their immigration court review, resulting in reversal of the deportation order.

- **Colombian family fleeing persecution by a guerilla group was ordered deported under the asylum ban's higher standard** through the expedited removal program for families. The family managed to obtain a CBP One appointment, but armed men entered their hotel room in Mexico and held them at gunpoint, threatening to kill them if they didn't pay. They handed over all their money and valuables, and immediately sought protection crossing between ports of entry out of fear for their lives. An Asylum Officer found they did not meet the "serious and imminent" threat to their life or safety exception and ordered them deported under the asylum ban's higher standard. A legal service organization represented them in a credible fear review before an immigration judge, leading to reversal of the decision.

Exceptions are failing to protect refugees from the ban's penalties

Individuals and families placed in expedited removal who undergo credible fear screenings are assessed by Asylum Officers as to whether they are exempted under the asylum ban, able to meet an exception, or subject to it. This initial determination then decides whether their fear screening will be at the unlawfully heightened standard.

The asylum ban includes narrow exceptions for people who can prove that they faced "exceptionally compelling" circumstances, such as an imminent and extreme threat to life or safety at the time they entered the United States, suffered a medical emergency at the time of entry, or were a victim of a severe form of trafficking at any point in their life. People who are processed at ports of entry without CBP One appointments may also be exempted from the ban if they faced a serious and ongoing obstacle to accessing CBP One, such as a language or technological barrier.[9] Those who qualify for an exception are not subject to the ban's penalties and may be considered for asylum protection.

These limited exceptions are proving insufficient to protect refugees, including vulnerable populations such as Black, Indigenous, and LGBTQI+ asylum seekers, women, and children who face disproportionate harms in Mexico while blocked from seeking protection in the United States. Human Rights First tracked reports of more than 2,500 survivors of kidnapping, torture, rape, extortion, and other violent attacks against asylum seekers and

[9] The asylum ban rule also provides that people who have applied for and been denied protection in a transit country are exempted from the rule. This is an illusory exception given that many refugees face life-threatening dangers in common transit countries—including on the basis of the same protected characteristics that they were persecuted for in their home countries—and cannot seek protection there because these countries do not have asylum systems that accommodate large numbers of refugees and/or can actually ensure their safety and protection. In the course of Human Rights First's research since the asylum ban went into effect, researchers have not spoken with or learned of a single asylum seeker who applied for and was denied protection in a transit country, and nearly all shared grave fears and accounts of harm in Mexico. Additionally, there is an exception for people who entered with a previously approved authorization to travel, such as through the administration's limited, nationality-based parole programs, but these programs require those who are eligible to travel by plane to the United States—also making this exception rarely, if ever, applicable.

migrants while stranded in Mexico waiting to seek protection in the United States since the asylum ban took effect. Of these reports, half were documented during the first six months of the asylum ban's implementation (May to November 2023). Given the under-reporting of kidnappings and other crimes in Mexico and substantial increase in kidnappings in parts of the northern Mexico border reported by aid workers and Mexican authorities, this figure represents the tip of the iceberg. In years prior, Human Rights First has documented the horrific abuses inflicted on migrants and asylum seekers when they are blocked, turned away, or left to wait in Mexico, including over 13,000 reports of murders, kidnappings, rapes, and other violent attacks against people blocked in or expelled to Mexico under the Title 42 policy.

Not only are these exceptions unduly—and improperly—narrow, but in practice, they are so narrowly applied as to render them meaningfully unavailable. Exceptions are infrequently granted during CFIs, with only 14.5 percent of 37,075 people qualifying for an exception during the credible fear process between May 12 and August 11, despite the documented widespread dangers that people face at the border.

During the credible fear process, asylum officers determine whether the asylum ban applies by asking questions about medical issues at the time of entry, threats to life and safety, and other potential exceptions. These interviews often take place telephonically in detention, usually before a person can consult with a lawyer to understand the relevance of these questions and that their ability to apply for safety may hinge on sharing particular and traumatic details that might seem irrelevant to their reasons for seeking asylum. Even where asylum seekers did share detailed information about horrific attacks, dangers, and medical issues that could make them eligible for an exception, some officers have nonetheless determined that they are subject to the asylum ban, disregarding testimony that should qualify for an exception. Despite requests by legal and humanitarian organizations, the government has not provided public guidance on how these exceptions are adjudicated, what constitutes a threat to life or safety or a medical emergency, and what evidence is required. Nor have asylum officers typically provided written analysis in the credible fear record regarding why an exception was not met, according to attorneys who spoke with Human Rights First and records reviewed by Human Rights First.

People seeking protection who have been found ineligible for an exception during their credible fear interview include:

- **Venezuelan woman fleeing politically-motivated violence was locked out of the CBP One application and while waiting to access it, was nearly kidnapped and raped by a Mexican law enforcement officer who threatened her as she escaped. She entered the United States at a port of entry and was found to not meet an exception to the ban**. The woman was fleeing repeated torture, kidnapping, and threats of death by Venezuelan police because of her political opposition. She entered at a U.S. port of entry without a CBP One appointment and was found to not meet any exception to the ban despite the obstacles to use of CBP One, and her attempted kidnapping and rape in Mexico.

- **Ecuadorian man denied exception and deported under asylum ban following immigration judge conclusion that death threat was not "imminent or extreme" because *two days* lapsed between threat and crossing into the United States.** After fleeing from one of Ecuador's most violent gangs, which pursued him during record levels of gang violence, an Ecuadorian man fled to seek U.S. asylum. During his telephonic CFI in ICE jail without legal representation, an Asylum Officer applied the asylum ban's higher fear screening standard and ordered him deported. At his immigration court review, and with the assistance of legal representation by RAICES, he testified to how he was robbed and later threatened with death if he did not quickly leave the area, leading him to cross irregularly into the United States two days later to seek protection. An immigration judge found that he did not meet the "imminent or extreme threat" to life or safety exception because *two days* lapsed between the threat and his crossing into the United States and he was deported to Ecuador under the asylum ban's heightened standard.

- **Venezuelan woman fleeing political persecution who was raped and threatened with death, entered the United States at a port of entry without a CBP One appointment to seek protection and was found to not meet an exception to the ban.** In her CFI, the woman explained that she couldn't enter the CBP One application during the last few days before she entered the port because of glitches and error messages each time she attempted, according to The Florence Immigrant and Refugee Rights Project. She also felt unsafe waiting for a CBP One appointment because of cartel surveillance of migrants, but was subjected to the asylum ban

Recommendations

The Biden administration and Congress should take effective and humane steps to address challenges at the border and uphold refugee law. Human Rights First has offered a comprehensive set of recommendations to do that. They include:

Uphold refugee law and the right to seek asylum

- Rescind the asylum ban, stop defending it in court, and reject any similar policies because they endanger lives. The asylum ban also violates U.S. and international law. It wastes government resources, diverts already overstretched governmental asylum adjudicators, and leaves some refugees without a path to stability, permanent legal resident status, and citizenship, undermining integration.

- End the conduct of credible fear interviews in CBP custody and halt other uses of expedited removal where conditions are deficient, access to counsel and legal representation is impeded, and the asylum ban is used to improperly heighten the credible fear standard.

Maximize and increase asylum processing capacity at U.S. ports of entry, including for asylum seekers without CBP One appointments

- Ensure swift access for people seeking asylum at all or more ports of entry and maximize asylum capacities, including for people who do not have appointments. Significantly increase CBP One appointments.

- Ensure people seeking asylum are not turned away, left to wait, or subjected to metering.

    - Uphold and enforce the November 2021 Miller CBP Directive.

    - Instruct CBP not to meter, limit, turn away, "de-prioritize," or leave people "waiting" weeks or months to seek asylum—whether done via use of CBP One, limit lines, the asylum ban or other policies.

    - Urge Mexican authorities to assure people seeking asylum can approach U.S. ports of entry without Mexican officers turning them away or preventing their access to those ports, including people attempting to seek asylum who do not have appointments.

    - Work with Congress to increase and sustain critical resources that ensure the swift, humane, and effective processing of people seeking asylum at ports of entry—including personnel, physical infrastructure, internet, computers, and other resources required to significantly increase CBP's Office of Field Operations' (OFO) processing of asylum seekers at all ports of entry.

    - Staff and resources should be shifted to OFO and away from agencies that prioritize enforcement and surveillance and have histories of mistreating and abusing migrants.

Build out and invest in coordinated U.S. reception system

- Create a centralized White House office to implement a whole-of-government approach to welcoming new arrivals and to coordinate across key stakeholders engaged in vital reception efforts at the U.S. border and within interior receiving cities, including federal, state, and local government agencies and non-profit organizations.

- The Biden administration and Congress must secure robust and sustainable funding for the existing FEMA Shelter and Services Program (SSP) that supports the immediate reception of people seeking asylum, the DHS Case Management Pilot Program (CMPP) that supports organizations providing longer-term case management, and the Office of Refugee Resettlement (ORR) Refugee Entrant Assistance Account (REA). Provide additional funding to communities and

organizations providing medium- and long-term housing and other support. These programs must implement culturally-sensitive services and work with nonprofit specialists who have firsthand experience in this work.

Access to and prompt processing of work permit applications

- Build upon recent successes to expand access to work permit processing by replicating pilot programs for work authorization applications at border shelters and clinics in destination cities.

- Take executive action wherever possible and support Congressional efforts to speed up the work authorization eligibility process and make the process for renewing work permits more accessible to people seeking asylum.

Strengthen the U.S. asylum adjudication system

- The Biden administration should work with Congress to ensure robust and sustainable funding for asylum adjudications to clear the existing case backlogs and to decide new cases in timely manners. Capacity needs include immigration court staff, interpreters, immigration judges, and asylum officers focused on merits adjudications.

- The Biden administration should strongly pursue and work with Congress to secure funding to provide legal representation for all indigent individuals and families navigating the U.S. asylum system. The administration should also support existing legal orientation and representation programs. Legal representation is currently inaccessible to the vast majority of people seeking asylum in the United States. Legal representation not only helps the system function more fairly and efficiently, but it will also help protect the due process rights of immigrants and people seeking asylum and defend against the refoulement of refugees.

- USCIS should:

    - Improve Asylum Office adjudication efficiency by leveraging Asylum Division research and analysis; develop updated country conditions analyses on persecuted religious, ethnic or other groups; focused interview guidance for specific caseloads as the USCIS Ombudsman recommended; develop "pattern and practice" or similar analysis where a persecuted religious, ethnic, or other group in a particular country would generally have well-founded fears of persecution.
    - Replicate efficiencies in asylum adjudications in Operation Allies Welcome Afghan, refugee corps, and/or Safe Mobility Offices cases.

    - Resolve, not refer, more asylum-eligible cases at Asylum Offices so they are not unnecessarily and inefficiently added to already backlogged immigration courts.

- Ensure that a core objective of the newly-created Asylum Division District Offices is to implement consistent decision-making across offices, asylum officers, and supervisory asylum officers, and instruct asylum offices to grant one-year filing deadline implicated cases where an exception exists.

- USCIS and Executive Office for Immigration Review (EOIR) should:

  - Improve the Asylum Processing rule by fixing unworkable counterproductive timelines so the process leads to increased efficiency, rather than rushed, mistaken decisions that add to court backlogs. This includes:

    - Ensure that AMIs are scheduled at least 90 days after credible fear determinations; interview rescheduling and evidentiary filing extensions are provided within first year of entry and under good cause/exceptional circumstance standards in line with U.S. law; immigration court hearings are governed by regular removal proceeding timelines; initial referrals are not limited to cases in expedited removal; and unjust limits on reconsideration of credible fear denials are removed.

- EOIR should continue to employ and leverage pre-hearing conferences to narrow trial issues and stipulations on uncontested issues to reduce the number and length of hearings and use administrative closures and termination where cases can be resolved by USCIS, but only with consent of the individual or counsel.

Strengthen regular pathways, and refugee resettlement in the United States; support humanitarian and reception efforts abroad.

- The Biden administration should continue to strengthen important regional refugee resettlement and parole initiatives, especially those targeted at improving access for at-risk refugees. This should include steps to accelerate the pace of processing and travel, and lift barriers and numerical restrictions that impair access to parole. Building out this international infrastructure should never be considered a replacement for non-discriminatory, robust asylum access at the U.S. border.

- The Biden administration should increase advocacy and support for refugee hosting and asylum capacity in Latin America and the Caribbean. While the Biden administration has taken some important steps to support asylum and refugee hosting capacities in Mexico and other countries, many of those needs have increased. At the same time, persistent rights abuses and the escalating impacts of deficiencies in regional reception systems are pushing some people north in search of effective protection. These deficiencies include:

  - The lack of lasting (as opposed to only temporary) protection status;

- Lack of sufficient support for efforts to provide refugees with lasting, regular status and eventual citizenships;
- Lack of access to work and food;
- Under-resourced, backlogged and delayed asylum systems, such as in Mexico and Costa Rica;
- Lack of protection from violence; and
- Rising xenophobia and/or escalations in political and/or other instability.

Sustained and enhanced support is crucial as refugees face prolonged displacement crises, as well as discrimination, xenophobia, and inadequate protection of their rights in countries where they have been staying initially.

Engagement with the Government of Mexico

- Department of State (DOS) and Biden administration officials should address with the Mexican government its unlawful restrictions on access to U.S. ports of entry for people seeking asylum.
- DOS and Biden administration officials should escalate dialogue with the Mexican government and press for protection of migrants and people seeking asylum who transit through Mexico, including those waiting for CBP One appointments. In states such as Tamaulipas, Coahuila, Chihuahua, and others, migrants are targeted for kidnappings, sexual violence, and torture by cartels, at times with complicity of Mexican state actors.
- DOS and Biden administration officials must end any agreements with Mexico that allow or facilitate the pushback to Mexico or return of refugees to persecution without meaningful access to full asylum assessments, including the return of asylum seekers denied access to full asylum hearings in the United States due to the asylum ban.
- In its bilateral engagements with Mexico and other countries, the Biden administration should prioritize the protection of the human rights and physical safety of refugees, migrants and asylum seekers. They should increase diplomatic efforts and aid to improve the woefully deficient shelter and refugee reception capacities in northern, central, and southern Mexico where people wait in dangerous conditions or without sufficient safe shelter to seek U.S. asylum.

To reach that goal demands assisting victims of injustice, bringing perpetrators of abuse to justice, and building institutions that ensure universal rights.

Human Rights First is a nonprofit, nonpartisan international human rights organization based in Los Angeles, New York, and Washington D.C.

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Cover image: A sick infant sleeps outside the port of entry in Juárez, Mexico where her family had been waiting five days to seek asylum and waited over two months for a CBP One appointment in July 2023. Courtesy of Christina Asencio.

This report is available online at humanrightsfirst.org

HUMAN RIGHTS WATCH

“We Couldn’t Wait”

Digital Metering at the US-Mexico Border

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"We Couldn't Wait"

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Summary

When Sandra S., her husband, and their two young children arrived at the US-Mexico border, they thought they had reached safety.

They had fled Michoacán, Mexico, after an armed member of a cartel forced his way into their home and threatened to kill the family if they did not keep quiet about having witnessed the disappearances of several people at the neighboring cartel-owned property. The family said the property functioned as a stash house—a place where cartels keep kidnapped or trafficked people, money, weapons, or drugs.

Sandra and her husband left in the early morning, pulling their children out of school without notice, and made their way to Nuevo Laredo, Mexico, which borders Laredo, Texas, in the United States.

When they reached the international bridge, US Customs and Border Protection (CBP) officers standing at the border demarcation line between the US and Mexico refused to admit the family, instructing them that they first needed to make an asylum appointment via CBP One, a US government mobile application. The app also has an online portal. Human Rights Watch accompanied the family when they tried for a second time to seek asylum, and CBP officers again turned the family back, even after being made aware that the family was Mexican and feared persecution in Mexico. Operatives of a different cartel working the border in Nuevo Laredo had already recognized the family as being Mexican asylum seekers trying to flee Mexico and threatened them with violence if they failed to "keep quiet." Sandra said that if the cartel learned why they had fled, its members would hurt them.

Upon returning to Nuevo Laredo, the family's only practical option was to wait in a makeshift encampment near the international bridge along with hundreds of other asylum seekers, some of whom had been waiting for an appointment for up to four months. During these waits, asylum seekers and migrants face violence and other dangers as well as a lack of adequate food, clean water, and other necessities. Unable to return home or enter the United States without an appointment booked via the CBP One application, asylum seekers are often effectively trapped at the border for long periods of time. Many stay in encampments or shelters where they are easy targets for criminal groups.

***

The fundamental right of all people to seek asylum in another country, and to be granted refugee protection after proving fear of persecution on specific grounds, is provided for in US law and in international law binding on the United States. While the right to seek asylum is guaranteed under US law, changes in administrative regulations and US policy in recent years have substantially curtailed people's ability to access this right in practice.

Tens of thousands of people who, like Sandra and her family, are seeking asylum in the United States have been forced to wait in Mexico under a new rule introduced by the administration of US President Joe Biden in May 2023. The Biden asylum rule impermissibly limits the right to seek asylum for many people and compels them to wait in foreseeably dangerous and inhumane conditions in Mexico.

The Biden asylum rule effectively establishes two categories of asylum seekers. It privileges one of these groups, those who can schedule an appointment on the CBP One app and then appear at the time of their appointment at an official border crossing, or "port of entry." The second, non-privileged group—all other asylum seekers without visas or another basis for entering the United States—must show they fit within one of a handful of narrow exceptions that allow them access to the regular US asylum system.

Crucially, everyone in the second, non-privileged group—including anyone arriving at a port of entry or apprehended immediately after entering the United States irregularly—is presumed ineligible for asylum. They also may be subject to detention in abusive conditions in immigration holding cells at the border—sometimes for weeks—and processed for removal under "enhanced" expedited removal rules, rushed procedures that do not afford adequate due process. People who attempt to return to the United States within five years after deportation may face criminal prosecution. Substantively, the Biden asylum rule is nearly identical to two Trump-era policies held by federal courts to be illegal.

The near-mandatory nature of the CBP One app, strict limits on the number of asylum seekers who can access US ports of entry each day, and other restrictions imposed by the Biden asylum rule have drastically narrowed access to asylum. The result is a system of "digital metering" at the US-Mexico border.

CBP's nearly exclusive use of the CBP One app and portal to process asylum seekers creates additional barriers to access for those seeking asylum, particularly for certain groups. Many asylum seekers do not have cellphones at all, usually because they cannot afford them or because criminal actors or government agents in Mexico have stolen their phones. When asylum seekers do have phones, their devices often do not have memory space to support the app, they cannot pay for the data they need to use the app, and they do not have access to Wi-Fi.

Some asylum seekers Human Rights Watch interviewed for this report were not aware of the existence of the CBP One app; most knew about it but had problems using it. Nearly all of those we spoke with for this report described having trouble using CBP One, often due to factors such as their race, digital literacy, ability to read or write, language, age, or disability.

While the US government says that having a CBP One appointment is not required for asylum seekers to be processed by CBP officials, this report finds that the app is effectively mandatory because people are turned away by US and Mexican officials at the border when they do not have an appointment on the app and because the US subjects asylum seekers who cannot or do not get appointments on the app to punitive expedited removal procedures.

The US government claims that "scheduling appointments makes the process safer and more orderly, and the advance information that is submitted to CBP officers creates a more efficient and streamlined process for CBP and for individuals." However, in this report Human Rights Watch demonstrates that the reality is often far from this vision of streamlined efficiency.

The very limited number of appointments available via CBP One fails to meet asylum processing needs, which CBP and Department of Homeland Security (DHS) officials have said reflects CBP's limited capacity. Capacity, though, largely reflects the administration's priorities and choices. The US government has significant resources at its disposal to increase humane processing capacity, but it has created a vicious cycle whereby increased numbers of asylum seekers are forced into labor-intensive expedited processes overseen by CBP instead of fair and efficient asylum determination procedures, accessible to all as required under US law.

Biden administration officials can argue their policies are an improvement over what could be an even worse US approach at the border. The administration has established a new humanitarian parole program to allow more asylum seekers safe pathways into the US, though they are limited to certain nationalities, and among them, people who can afford to pay for plane tickets and other travel, are able to obtain passports, and have family members in the United States wealthy enough to apply to sponsor them with the US government. The Biden administration has also made extensive use of temporary protected status and raised refugee admissions caps.

Still, the Biden asylum rule and digital metering policies are part of a larger effort by the United States to deter irregular migration at the US-Mexico border. The US has sought agreements with many Latin American governments, including Mexico and Guatemala, aimed at deterring migration. In one such arrangement, Mexican President Andrés Manuel López Obrador has agreed to accept some non-Mexican asylum seekers who are rapidly removed or returned "voluntarily" by the United States.

Against this high-level backdrop, officials from both the United States and Mexico participate in blocking asylum seekers from seeking asylum in the United States. In this report, Human Rights Watch documents efforts by the US and Mexico to conduct "turnbacks"—blocking people from entering the United States and pushing them back to Mexico—of asylum seekers at ports of entry at the US-Mexico border. The US CBP One appointment system is cited by officials of both governments when blocking asylum seekers from accessing the border. Turnbacks today are therefore often the dangerous result of digital metering and the Biden asylum rule.

The US policies blocking asylum at the border in recent years, carried out in collaboration with Mexico, have changed in name and severity, but one material outcome for asylum seekers has remained the same: they are forced to wait in northern Mexican states, as well as in many cities in other parts of Mexico through which migrants transit, where they are systematically targeted by cartels, sometimes with the help of Mexican government officials, for kidnapping, extortion, sexual assault, robbery, and other abuse. Digital metering feeds cartel needs for a vulnerable population to prey upon.

The more difficult it is for migrants to cross the US-Mexico border, the more money cartels make, whether from smuggling operations or from kidnapping and extortion. Human Rights

Watch documented cases of kidnapping for ransom in interviews in each of the five Mexican cities in which we visited for this report. Criminal actors and government officials also have near impunity when sexually assaulting asylum seekers, given the fear and power imbalance they can exploit due to digital metering.

The Mexican government also apprehends many non-Mexican asylum seekers at the US border before they can reach the United States and relocates them to southern Mexico, where they are typically forced to sign a document agreeing to leave Mexico via its southern border. The Mexican government also summarily deports asylum seekers directly to their country of origin.

Similarly, the Guatemalan government has recently agreed in talks with the US government to try to reduce the number of migrants arriving at the US southern border. Asylum seekers told us that police and immigration authorities in Guatemala often conduct invasive searches of their persons and belongings, probing with ungloved hands into shoes, socks, waistbands, bras, and underwear. Some asylum seekers said women had been sexually assaulted during such searches, including acts of unwanted touching by men who identified themselves as Guatemalan government officials.

This report also finds that individual asylum seekers forced by the Biden asylum rule to wait in Mexico often constitute a distinct social group in Mexico—meaning that the rule as applied heightens their need for protection and increases the number of viable asylum claims. Asylum seekers who do not speak Spanish at all or do not speak it as Mexicans speak Spanish are easily identified as non-Mexican. In many cases, asylum seekers from countries other than Mexico are also readily identified by physical appearance, including their facial structure, height, or skin color. These are immutable characteristics of this group—they cannot reasonably change their physical appearance, the languages they speak, or how they speak Spanish. These characteristics set non-Mexican asylum seekers apart, and Mexican society readily recognizes non-Mexican asylum seekers as a distinct social group.

This report also shows that navigating or accessing the Biden asylum rule and the CBP One app is more difficult for certain categories of people—among them, disabled individuals, Black and Indigenous people, people who do not have the language skills, ability to read or write, or digital literacy skills required to use the app, older people, and, for more structural

reasons, LGBT people and people who are not wealthy enough to be able to pay for smartphones, data plans, and internet access—or for passports and a financial sponsor in the US. The Biden asylum rule and digital metering system are therefore discriminatory.

Most essential of all, the Biden asylum rule and digital metering violate the fundamental legal principle of nonrefoulement, which prohibits the return of refugees (defined as people with well-founded fears of persecution on specific grounds) to countries where their lives or freedom would be at risk. The principle of nonrefoulement is incorporated into US law and is a cornerstone of international refugee law.

US officials preventing arriving asylum seekers from accessing asylum procedures (which would allow asylum seekers to be identified as refugees or not) based on whether or not they are able to access CBP One appointments likely constitutes refoulement, in violation of international law.

While international refugee law does not formally provide an asylum seeker (a person claiming to be a refugee) the right to enter a country and certainly not a presumptive guarantee that refugee protection will be granted, the refoulement prohibition provides little latitude when the asylum seeker appears at a land border. Summary rejection of asylum seekers at a land border has been found to violate the principle of nonrefoulement by the UN Refugee Agency (UNHCR).

The digital metering system, which includes the effectively mandatory use of the CBP One application enforced by the actions of CBP agents and Mexican officials working in collusion with them, rejects asylum seekers—some of whom may be refugees—at the border. The promise of entry at a later date does not protect against refoulement.

In addition, for people who arrive at the border without a CBP One appointment and are therefore subject to the Biden asylum rule's enhanced expedited removal procedures, the risk of refoulement is acute. Asylum seekers must now show in credible fear interviews that they are not subject to the Biden asylum rule or that they qualify for one of a few narrow exceptions. The standards set forth in the rule are difficult to meet under the best of circumstances. People who are detained by CBP under abusive conditions and without access to counsel face extraordinary obstacles.

The Biden administration claims that its asylum rule and effectively mandatory use of CBP One will disrupt smuggling networks. Human Rights Watch has observed that, on the contrary, digital metering in Mexico leaves asylum seekers vulnerable to extortion, kidnapping, and violence. And, with no other way to access protection, asylum seekers are more likely to engage smugglers, further enriching criminal cartels.

There is also evidence the new rule is driving people to take greater risks to try to enter the United States undetected. Border deterrence policies have already led to record numbers of border deaths during the Biden administration. During the Trump administration, CBP reported around 300 US-side border deaths each year—an already unconscionable number—but that number skyrocketed in Fiscal Year 2022 (the 12-month period beginning October 1, 2021), the first full year of the Biden administration, when CBP reported more than 850 people found dead in the United States at or near the border in circumstances that suggested they had attempted to enter irregularly. While CBP data for fiscal year 2023 (when the Biden asylum rule went into effect) are not yet public, local medical examiners at the border have already reported new record highs in some regions.

To fulfill US and international legal obligations, the Biden administration should immediately rescind its asylum rule, end all practices of metering, digital or otherwise, and stop collaborating with Mexico and other states to block asylum claims in the United States. The US Congress and the administration should identify and implement approaches that reflect the reality that persecution, conflicts, economic conditions, climate and environmental factors, and peoples' needs to reunite with family in the United States mean that migration will continue. Lawmakers and policymakers should treat migration as an opportunity on all fronts: reuniting families, fulfilling the promises of protection established by law and engraved on national monuments, and benefiting communities and strengthening society.

The US needs an orderly process for increased opportunities for safe, legal migration—not a digital metering system that increases vulnerability to human rights violations, enriches and empowers cartels, and creates conditions in which it is nearly impossible for asylum seekers and migrants to follow the rules. An orderly process that affords meaningful access to the asylum system is urgently needed. Asylum seekers' lives are on the line.

Methodology

This report is based on Human Rights Watch interviews with 128 asylum seekers who were able to share information on the experiences of a total of 263 people, including family members and friends with whom they were traveling. Most had been subjected to the CBP One appointment system. Human Rights Watch also interviewed 13 shelter workers, eight migrant service providers, Mexican government officials, and human rights workers.

We conducted interviews in August and September 2023 in Mexico City; Saltillo and Piedras Negras, Coahuila; Monterrey, Nuevo Leon; Nuevo Laredo, Tamaulipas; and Eagle Pass, Texas. Human Rights Watch also observed attempts by asylum seekers to access US ports of entry in Piedras Negras and Nuevo Laredo. Locations were chosen in consultation with other organizations monitoring the impact of CBP One and the Biden asylum rule, including with the International Rescue Committee and Human Rights First. We also observed asylum seekers using CBP One and assessed the app's accessibility and usability.

Human Rights Watch carried out interviews in English or Spanish, depending on the preference of the interviewee, without interpreters. We informed the interviewees of the purpose of our research, and they consented to be interviewed for that purpose. They did not receive any payments or other incentives. Where appropriate, Human Rights Watch provided migrants and refugees with contact information for organizations offering health care services or legal, social, or counseling services.

The names of migrants and asylum seekers have been replaced with pseudonyms to mitigate security concerns, especially since many of those we spoke with continue to wait in Mexico to seek protection in the United States. Some migrant shelter workers and security guards also spoke to Human Rights Watch on condition of anonymity to mitigate security or funding concerns.

We also shared our findings with both governments on November 3, 2023. We received no response from the United States. We received responses from Mexican government agencies and have included those responses in relevant sections of this report.

Background

Although US law guarantees the right to seek asylum, since at least the mid-1990s successive administrations have narrowed access to asylum, treating claims for protection as burdensome and presumptively abusive. Most recently, in a move that replicates the maneuvers of the Trump administration, the Biden administration introduced a 2023 asylum rule aimed at deterring most arriving asylum seekers.

However, the asylum rule has not deterred people from seeking to enter the United States to seek safety. Nor has it increased the efficiency of the asylum system. Instead, it has made the asylum system less fair. One of its main elements is an appointment system accessed through a mobile application, CBP One, that many people cannot use—because they do not have mobile phones, cannot afford data and do not have Wi-Fi access, do not speak the languages available on the app, or lack the digital literacy to use it successfully.

On its face, the rule allows people who cannot make appointments on the app to request asylum in person at a US "port of entry," an official border crossing. But US Customs and Border Protection (CBP) agents treat a CBP One appointment as effectively mandatory. The result is a system of digital metering—a process of strictly limiting the number of people allowed to seek asylum on any given day—that has increased backlogs in asylum processing and spurred irregular immigration as a growing number of people blocked from entering the US are driven to cross in more remote and dangerous parts of the border.[1]

[1] Human Rights Watch interview with Raymundo Ramos, director, Comité de Derechos Humanos de Nuevo Laredo, Nuevo Laredo, Mexico, September 8, 2023; Department of Homeland Security Office of Inspector General, Special Review - Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy, September 27, 2018, https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-84-Sep18.pdf (accessed October 10, 2023); Santiago Pérez and Alicia A. Caldwell, "'It's Like a Graveyard': Record Numbers of Migrants Are Dying at the US Border," *Wall Street Journal*, February 17, 2023, https://www.wsj.com/articles/illegal-immigration-mexico-us-border-deaths-c35cf892 (accessed December 6, 2023); Ari Sawyer, "50 Migrants Found Dead in Texas Shows Flawed Approach in US," commentary, Human Rights Watch dispatch, June 29, 2022, https://www.hrw.org/news/2022/06/29/50-migrants-found-dead-texas-shows-flawed-approach-us; Human Rights Watch, US: Biden 'Asylum Ban' Endangers Lives at the Border, Human Rights Watch news release, May 11, 2023, https://www.hrw.org/news/2023/05/11/us-biden-asylum-ban-endangers-lives-border.

US authorities leave a Haitian family of 11, including four children, for at least 3 hours in 99-degree heat on the riverbank in Eagle Pass, Texas, September 5, 2023. Asylum seekers who cannot wait for a CBP One appointment and are turned back at ports of entry often face dangerous crossings between ports of entry only to be presumed ineligible for asylum in the United States under the Circumvention of Lawful Pathways Final Rule. © 2023 Ari Sawyer/Human Rights Watch

Valeria Wheeler, the executive director of Mission: Border Hope, a migrant shelter in Eagle Pass, Texas, that receives from CBP hundreds of asylum seekers who cross the border irregularly, said at first, she thought people were refusing to follow the new rule. Then she realized asylum seekers were wading across the deadly Rio Grande because they had no other choice. "People are getting desperate and just crossing the river," Wheeler said. "They need to cross, and neither buoys nor the app will stop them."[2]

The Circumvention of Lawful Pathways Rule

US law provides for the right to seek asylum from persecution on specific grounds.[3] However, the Biden administration's May 2023 Circumvention of Lawful Pathways Rule (the "Biden asylum rule") severely limits people's ability to access this right.

The Biden asylum rule, which applies to everyone who attempts to enter the United States between May 11, 2023, and May 11, 2025, establishes privileged and non-privileged categories of asylum seeker. Those who are privileged are those who can pre-schedule an appointment via a mobile phone application, CBP One, and present themselves at an official port of entry at the time of their appointment. All other asylum seekers without any other legal basis for entering the United States must show they fit within an exception in

[2] Human Rights Watch interview with Valeria Wheeler, executive director, Mission: Border Hope, Piedras Negras, Mexico, September 4, 2023.

[3] See Immigration and Nationality Act § 208, codified at 8 U.S.C. § 1158.

order to access the regular US asylum system. People without CBP One appointments or who cannot prove an exception are not able to access the regular US asylum system.

The exceptions are supposed to include Mexican citizens, unaccompanied children, people who can prove they sought and were denied asylum in another country, people who can obtain or have obtained parole (generally only available to wealthy people of certain nationalities),[4] or people who present at a port of entry without an appointment who can prove an inability to access the CBP One app.[5]

For anyone attempting to argue that they were unable to access the CBP One app, significant proof is required. Individuals may try to claim a "language barrier, illiteracy, significant technical failure, or other ongoing and serious obstacle."[6] However, the rule also states asylum seekers are expected to seek assistance if they are having difficulties accessing the app.[7]

Asylum seekers in the non-privileged group, including anyone presenting at or between ports of entry without a CBP One appointment (and no proof of inability to access the app), are presumed to be ineligible for asylum.[8]

The presumption of asylum ineligibility can be rebutted by a showing of "exceptionally compelling circumstances,"[9] including "an acute medical emergency,"[10] "an imminent and

[4] Since late 2022 and early 2023, Venezuelans, Haitians, Cubans, and Nicaraguans who have a valid passport and a financial sponsor in the United States may apply for a program called humanitarian parole. Those granted parole are given permission to travel to the US by plane and to remain there for a limited amount of time—potentially up to two years. Once in the US, they may apply for permission to work. They may also apply for asylum, which, if granted, could allow them to remain in the country. Obtaining a passport is difficult for people from Cuba, Nicaragua, Venezuela, and Haiti and may be dangerous or nearly impossible for those who fear being persecuted by their government.

[5] See Lawful Pathways Condition on Asylum Eligibility, codified at 8 C.F.R. § 208.33(a)(2), https://www.ecfr.gov/current/title-8/chapter-I/subchapter-B/part-208/subpart-C/section-208.33 (accessed Oct 10, 2023).

[6] US Department of Homeland Security, Fact Sheet: Circumvention of Lawful Pathways Final Rule, May 11, 2023, https://www.dhs.gov/news/2023/05/11/fact-sheet-circumvention-lawful-pathways-final-rule (accessed April 10, 2024).

[7] Federal Register, "Circumvention of Lawful Pathways," Department of Homeland Security and Executive Office of Immigration Review, 88 Fed. Reg. 31315 (May 16, 2023), https://www.federalregister.gov/documents/2023/05/16/2023-10146/circumvention-of-lawful-pathways (accessed October 12, 2023).

[8] 8 C.F.R. § 208.33.

[9] Ibid. § 208.33(a)(3)(i).

[10] Ibid. § 208.33(a)(3)(i)(A).

extreme threat to life or safety, such as an imminent threat of rape, kidnapping, torture, or murder,"[11] or "a severe form of trafficking in persons."[12]

The Biden asylum rule subjects asylum seekers outside the privileged group to "enhanced" expedited removal, under which people are forced through rushed procedures. Expedited removal dates to 1996, but the asylum rule makes the process more punitive by forcing many asylum seekers to make their initial claims while in Border Patrol detention, and in other cases by putting parents and children who are apprehended at the US border into a rapid screening process that keeps families under heavy surveillance.

The Biden asylum rule is substantively nearly identical to two previous US policies held by federal courts to violate US law. As a federal district court in California recently found when examining the Biden asylum rule in comparison to those previous court cases, "conditioning asylum eligibility on presenting at a port of entry or having been denied protection in transit conflicts with the unambiguous intent of Congress."[13]

The CBP One App

The Biden administration first used the CBP One mobile application in February 2021 to process asylum seekers during the wind-down of the so-called Migrant Protection Protocols (MPP), commonly known as the "Remain in Mexico" policy, which had required non-Mexican asylum seekers to wait for months or years in dangerous Mexican border cities for their US asylum hearings.[14]

In May 2021, the Biden administration expanded its use of CBP One, "relying on partnerships with certain International Organizations/NGOs" to process claims of individuals who might qualify for humanitarian exemptions from a previous Trump-era

[11] Ibid.§ 208.33(a)(3)(i)(B).

[12] Ibid. § 208.33(a)(3)(i)(C).

[13] Order Granting Plaintiffs' Motion for Summary Judgment, *East Bay Sanctuary Covenant v. Biden* (N.D. Cal. July 25, 2023), https://s3.documentcloud.org/documents/23886564/bidenasylumrlg072523.pdf (accessed February 18, 2024).

[14] US Department of Homeland Security, Privacy Impact Assessment for CBP One™, February 19, 2021, https://www.dhs.gov/sites/default/files/2023-05/privacy-pia-cbp068-cbpmobileapplication-may2023.pdf (accessed October 20, 2023).

summary border expulsion policy known as Title 42.[15] Those NGOs would use CBP One to "submit certain biographic and biometric information to CBP on the individual's behalf," outsourcing a fundamental CBP task to NGOs and IGOs.[16] Again, individual asylum seekers did not have access to the application themselves.

The Title 42 CBP One exemption request program led to corruption, extortion, and other dangers as Mexican government and non-government actors sought to exploit the appointment system,[17] and it proved overwhelming for organizations that provide direct services to migrants, monitor US government abuse, and defend the right to seek asylum. Despite or because of these problems, and at the urging of some NGOs, in January 2023 US authorities made the CBP One application available for use by individual asylum seekers who wished to apply for the exemption program.[18]

These earlier uses of the CBP One app were relatively limited. As the following sections describe, the 2023 asylum rule has significantly expanded its use, and CBP practices make it effectively mandatory.

Metering at the US-Mexico Border

The United States has carried out "metering"—only accepting a certain number of asylum seekers each day and turning back the rest—at least since 2016, during the administration of President Barack Obama.[19] Metering became a formal policy and was expanded in 2018, during the Trump administration,[20] when Mexican officials, shelter workers, and even

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[15] US Department of Homeland Security, Privacy Impact Assessment Update for the Unified Secondary System: Advance Information from Certain Undocumented Individuals, May 7, 2021, https://www.dhs.gov/sites/default/files/publications/privacy-pia-cbp067a-unifiedsecondary-may2021.pdf (accessed October 20, 2023); Alisa Reznick, "In Nogales, New Process Has Asylum Seekers Ask for Title 42 Exceptions Using a CBP App," *Fronteras Desk*, January 26, 2023, https://fronterasdesk.org/content/1837048/nogales-new-process-has-asylum-seekers-ask-title-42-exceptions-using-cbp-app (accessed October 12, 2023).

[16] Ibid.

[17] Emily Green, "Exclusive: Mexican Officials Are Extorting Thousands of Dollars from Migrants Applying for Asylum," *Vice* March 13, 2019, https://www.vice.com/en/article/kzdy4e/exclusive-mexican-officials-are-extorting-thousands-of-dollars-from-migrants-to-apply-for-asylum (accessed December 6, 2023).

[18] Ibid.

[19] Clara Migoya, "Judge Rules 'Metering' of Asylum Seekers Is Unconstitutional," *Arizona Republic*, September 3, 2021, https://www.azcentral.com/story/news/politics/border-issues/2021/09/03/judge-rules-metering-asylum-seekers-unconstitutional/5719466001/ (accessed October 12, 2023).

[20] Memorandum from Todd C. Owen, Executive Assistant Commissioner, Office of Field Operations, Metering Guidance, April 27, 2018, https://www.docketbird.com/court-documents/Al-Otro-Lado-Inc-et-al-v-Elaine-C-Duke/Exhibit-1-Memorandum-from-Todd-C-Owen-Apr-27-2018/casd-3:2017-cv-02366-00283-001 (accessed October 10, 2023).

migrants themselves created and managed paper lists of those waiting to present themselves at a US port of entry in response to the limited number of asylum seekers CBP officers said they would process on a given day.[21] CBP relied on those lists to carry out their metering policy.[22]

The list process was riddled with corruption and danger, as some of those who managed lists extorted migrants who wanted to register while others became targets for criminal organizations that sought to profit from the CBP-imposed scarcity in asylum processing.[23] By November 2019, more than 21,000 people were waiting in Mexico to be able to seek asylum in the United States.[24]

Though internal CBP "metering guidance" stressed that Mexican nationals were not covered by the metering policy and instructed CBP officials to be "particularly aware" of any efforts by Mexican authorities to prevent Mexican nationals claiming fear of return to Mexico (their potential country of persecution) from entering the United States,[25] Mexican citizens, too, were subjected to the metering policy.[26] For example, in November 2019, Human Rights Watch observed as scores of Mexican asylum seekers, over half of whom were children with their parents, as they presented themselves to CBP officers at the Paso del Norte bridge between Ciudad Juárez and El Paso, Texas and were told consistently by CBP that the port of entry was "too full," even when they clearly stated their fears and need to claim asylum.[27]

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[21] Department of Homeland Security Office of Inspector General, Special Review - Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy.

[22] Order, p. 5, *Al Otro Lado v. Wolf*, No. 19-56417, (9th Cir. February 5, 2020), https://cdn.ca9.uscourts.gov/datastore/general/2020/03/05/19-56417%20-%20Order.pdf (accessed April 10, 2024).

[23] Clara Migoya, "Judge Rules 'Metering' of Asylum Seekers Is Unconstitutional," *Arizona Republic*.

[24] Ibid.

[25] Memorandum from Todd C. Owen, April 27, 2018, https://www.dhs.gov/sites/default/files/publications/metering_02.pdf.

[26] Human Rights Watch, US: Mexican Asylum Seekers Ordered to Wait, news release, December 23, 2019, https://www.hrw.org/news/2019/12/23/us-mexican-asylum-seekers-ordered-wait. That same month, the American Civil Liberties Union (ACLU) filed a complaint with the Department of Homeland Security's Office of Inspector General (OIG) in November 2019 providing 18 examples of Mexican asylum-seeking families and individuals who had been subject to metering in Ciudad Juárez and Matamoros, Mexico. American Civil Liberties Union, complaint to DHS Office of Inspector General, "Re: CBP's unlawful turn back of Mexican asylum seekers at ports of entry," November 14, 2019, https://www.aclutx.org/sites/default/files/aclu_oig_complaint_metering.pdf (accessed October 10, 2023).

[27] Ibid.

Legal Challenges to the Biden Asylum Rule and to Metering

The Biden asylum rule incorporates earlier rules that federal judges found inconsistent with US law. One of these earlier rules, the "third-country transit ban," purported to block access to asylum for people who passed through a third country before arriving in the United States—meaning, for example, that it would foreclose asylum claims by anyone travelling through Mexico.[28] Another measure, the "entry ban," attempted to block access to asylum for people who crossed the border irregularly.[29]

A federal district court temporarily blocked the Biden asylum rule on July 25, 2023, holding, as with the Trump administration rules, the conditions for asylum eligibility imposed by the rule are inconsistent with US law, which specifically permits people to seek asylum whether at or between ports of entry.[30] A federal appeals court has allowed the policy to remain in effect while the appeal is heard.[31]

In addition, a class action lawsuit now known as *Al Otro Lado v. Mayorkas*, ongoing since 2017, challenges the government's use of metering as a violation of US law and international refugee and human rights law. Plaintiffs argue that both Trump and Biden administration policies that require asylum seekers to wait for an appointment before approaching a port of entry violate the US Immigration and Nationality Act (INA), the Administrative Procedure Act (APA), the due process clause of the Fifth Amendment, and the doctrine of nonrefoulement—the principle of international human rights and refugee law that forbids any country from returning a person to a country where they would face

[28] See Order Granting Preliminary Injunction, *East Bay Sanctuary Covenant v. Barr*, No. 19-cv-04073 (N.D. Cal. February 16, 2021) (preliminary injunction of final third-country transit ban rule), https://www.aclu.org/cases/east-bay-v-barr?document=pi-order (accessed February 18, 2024); See also *East Bay Sanctuary Covenant v. Barr*, 964 F.3d 832, 857 (9th Cir. 2020) (affirming the district court's preliminary injunction of the nearly identical interim third-country transit ban rule), https://www.aclu.org/cases/east-bay-v-barr?document=order-east-bay-v-barr (accessed February 18, 2024).

[29] See *East Bay Sanctuary Covenant v. Trump*, 950 F.3d 1242, 1272 (9th Cir. February 28, 2020) (observing that the entry ban was "effectively a categorical ban on migrants who use a method of entry explicitly authorized by Congress") https://www.aclu.org/cases/east-bay-sanctuary-covenant-v-barr?document=east-bay-sanctuary-covenant-v-trump-ninth-circuit-ruling (accessed February 18, 2024).

[30] Order Granting Plaintiffs' Motion for Summary Judgement and Denying Defendant's Motion for Summary Judgement, p. 16, *East Bay Sanctuary Covenant v. Biden*, No. 4:18-cv-06810-JST (N.D, Cal. July 25, 2023), https://immigrantjustice.org/sites/default/files/content-type/press-release/documents/2023-07/187-East%20Bay-v-Biden_Order-granting-motion-for-SJ_7-25-23.pdf (accessed February 18, 2024).

[31] Order, *East Bay Sanctuary Covenant v. Biden*, No. 23-16032 (9th Cir. August 3, 2023), https://immigrantjustice.org/sites/default/files/content-type/press-release/documents/2023-08/East-Bay-Sanctuary-Covenant-v.-Biden-CA9-Stay-Order.pdf (accessed February 18, 2024); See also National Immigrant Justice Center, *East Bay Sanctuary Covenant v. Biden*, August 4, 2023, https://immigrantjustice.org/court_cases/east-bay-sanctuary-covenant-v-biden (accessed February 1, 2024).

persecution or torture—and charge that metering policies have unlawfully subjected asylum seekers to prolonged danger and deprived them of their right to seek asylum.[32] On September 2, 2021, a federal district court in Southern California found that the government had violated its statutory duties as well as its constitutional due process obligations by turning back asylum seekers at ports of entry without inspecting and processing them.[33] The judge ruled the practice of metering—or, more plainly, the government's "systematic turnbacks of asylum seekers"[34] from ports of entry—was illegal, even in cases where the person was not on US territory.[35] On November 1, 2021, CBP formally rescinded the metering policy, though the practice continued.[36]

More recently, a new class action complaint, part of the same lawsuit against the Biden asylum rule, argues that the digital metering system the rule creates "is just the latest manifestation of the government's multi-year effort to block asylum access for asylum seekers in the process of arriving at the southern border."[37]

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[32] See Center for Gender and Refugee Studies, *Al Otro Lado v. Mayorkas*, https://cgrs.uclawsf.edu/our-work/litigation/al-otro-lado-v-mayorkas (accessed October 10, 2023).

[33] Opinion Granting in Part and Denying in Part Parties' Cross-Motions for Summary Judgment, *Al Otro Lado v. Mayorkas*, No. 17-cv-02366-BAS-KSC (S.D. Cal. September 2, 2021) (2021 Partial Summary Judgment Order); See also *Al Otro Lado, v. Mayorkas*, 619 F. Supp. 3d 1029, 1034-35 (S.D. Cal. August 5, 2022) (2022 Declaratory Judgment), https://cgrs.uclawsf.edu/legal-document/remedies-opinion (accessed February 18, 2024).

[34] *Al Otro Lado, v. Mayorkas*, 619 F. Supp. 3d at 1032.

[35] Opinion Granting in Part and Denying in Part Parties' Cross-Motions for Summary Judgment, *Al Otro Lado v. Mayorkas*, No. 17-cv-02366-BAS-KSC.

[36] US Customs and Border Protection, Guidance for Management and Processing of Undocumented Noncitizens at Southwest Border Land Ports of Entry, November 1, 2021, https://www.cbp.gov/sites/default/files/assets/documents/2021-Nov/CBP-mgmt-processing-non-citizens-swb-lpoes-signed-Memo-11.1.2021-508.pdf (accessed November 13, 2023); Stephanie Leutert and Caitlyn Yates, *Metering Update*, Strauss Center for International Security and Law, February 2022, https://www.strausscenter.org/wp-content/uploads/Feb_2022_Metering.pdf (accessed November 13, 2023).

[37] Class Action Complaint, p. 2, *Al Otro Lado v. Mayorkas*, No. 23-cv-01367-AGS-BLM (S.D. Cal. filed July 27, 2023), https://cgrs.uclawsf.edu/legal-document/complaint-2 (accessed November 13, 2023).

New Barriers to Asylum:
The Biden Rule and Digital Metering

The CBP One App Effectively Denies or Restricts Access to Asylum

According to the US government, the CBP One smartphone application is "a mobile application that serves as a single portal to a variety of CBP services. Through a series of guided questions, the app will direct each type of user to the appropriate services based on their needs."[38]

In the context of certain US immigration programs made available to people in Cuba, Haiti, Nicaragua, Venezuela, and Ukraine, who use CBP One in the process of applying for parole from within their countries, the app has been used to help save lives and unite families.[39] However, at the US-Mexico border, the app combined with the Biden asylum rule creates new system of digital metering that is an illegal barrier to asylum.

Practical Problems

CBP's nearly exclusive use of the CBP One app and portal to process asylum seekers creates additional barriers to access for those seeking asylum, particularly for certain groups. Many asylum seekers do not have cellphones at all, usually because they cannot afford them or because criminal actors or government agents in Mexico have stolen their phones.[40] Where asylum seekers do have phones, they often do not have memory space to support the app, cannot pay for the data they need to use the app, and do not have access to Wi-Fi, migrant shelter workers told Human Rights Watch.[41]

In many cases, people we spoke to said that the CPB One app did not always function as they expected, returning error messages that meant they were unable to book an

[38] US Customs and Border Protection, CBP One Mobile Application, Knowledge Article, November 4, 2023, https://help.cbp.gov/s/article/Article-1701?language=en_US (accessed March 13, 2024).

[39] David Bier, *Parole Sponsorship Is a Revolution in Immigration Policy*, CATO Institute, September 18, 2023, https://www.cato.org/sites/cato.org/files/2023-09/BP%20165_update.pdf (accessed December 6, 2023); US Citizenship and Immigration Services, Processes for Cubans, Haitians, Nicaraguans, and Venezuelans, last updated September 20, 2023, https://www.uscis.gov/CHNV (accessed December 6, 2023).

[40] Human Rights Watch interviews with asylum seekers, Mexico and United States, August-September 2023.

[41] Ibid.; Human Rights Watch interviews with shelter workers, Monterrey, Mexico, August 22-24; Human Rights Watch interviews with migrant shelter workers, Mexico City, August 2023.

appointment and leading to extended wait times. CBP One is also available via a web portal, albeit with limitations, and it still requires the use of a cellphone to submit photos and to submit to the app's "aliveness test" using facial recognition technology. In any case, given the circumstances in which they live, asylum seekers rarely have access to computers, and when they do, that access is extremely limited.

A man who intends to seek asylum in the United States scales the steps of a migrant shelter in Mexico City where he has been waiting for a CBP One appointment, August 16, 2023. © 2023 Ari Sawyer/Human Rights Watch

Migrant shelter workers told Human Rights Watch that CBP One, which is geofenced to operate within a certain distance of the border, including Mexico City and other northern Mexico cities, has upended their operations. Previously, asylum seekers would stay at shelters for short periods of time—often only a matter of days. They now spend much longer waiting for a CBP One appointment, creating a greater need for services like medical and psychological care.[42] Many shelters, which typically do not receive government funding, have extended the time periods for which asylum seekers are permitted to stay, but with an ongoing need for shelter among newly arriving asylum seekers, they have needed to turn many asylum seekers away or ask existing asylum seekers to leave. While some shelters allow people to stay for up to a month, many are only able to offer a few days of shelter.

Several asylum seekers told Human Rights Watch that they had no choice but to cross irregularly to turn themselves in because they no longer had anywhere to stay in Mexico.[43]

[42] Human Rights Watch interviews with migrant shelter workers, Mexico, August-September 2023.

[43] Human Rights Watch interviews with migrants, Mexico, August-September 2023.

When asylum seekers have questions about how to use CBP One, there is no one at CBP they can call, fueling a high level of confusion and misinformation around how to use the application.[44] For those needing help, there is only an email address they can contact, showing the lack of urgency around response and additional digital literacy and accessibility barriers. The US government has given some trainings to shelter workers in Mexico, but there continues to be high levels of confusion, including among shelter workers who told Human Rights Watch that they continued to have problems with the function of the app. Many asylum seekers told Human Rights Watch that they tried to troubleshoot application errors or avoid long wait times by deleting their accounts and re-registering several times, while others said they were forced to re-register because they'd entered information incorrectly, exposing them for longer periods of time to targeted abuse in Mexico.[45]

CBP One is also difficult for asylum seekers to access because many are simply unfamiliar with smartphones. According to a 2022 World Bank report, many asylum seekers applying to the US have fled countries with very low smartphone penetration rates per household.[46] While a 2021 study found that 85 per cent of people in the United States own a smartphone,[47] Mexico and countries in Central and South America have lower internet and smartphone penetration. More advanced 4G technologies have a penetration rate of only 37 percent in Mexico and Central America due to "the lack of high-speed fixed broadband infrastructure, the high costs of data and devices, the lack of digital skills, and the unavailability of relevant, local-language content."[48] Only 5 percent of households in Haiti have access to a fixed internet connection, 25 percent in Nicaragua, 31 percent in Guatemala, 40 percent in Honduras, 43 percent in El Salvador, 55 percent in Bolivia, and 65 percent in Mexico.[49] There was no data on Venezuela, but a 2018 Pew Research report found 32 percent of Venezuelans did not own a mobile phone, let alone a smartphone.[50]

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[44] Ibid.; Human Rights Watch interviews with migrant shelter workers, Mexico, August-September 2023.

[45] Human Rights Watch interviews with asylum seekers, Mexico, United States, August-September 2023.

[46] World Bank, Internet Access and Use in Latin America and the Caribbean, September 2022, p. 5, https://www.undp.org/sites/g/files/zskgke326/files/2022-09/undp-rblac-Digital-EN.pdf (accessed October 18, 2023).

[47] Pew Research Center, "Mobile Fact Sheet," *Pew Research Center*, April 7, 2021, https://www.pewresearch.org/internet/fact-sheet/mobile/ (accessed October 18, 2023).

[48] World Bank, *Internet Access and Use in Latin America and the Caribbean*, September 2022, https://www.undp.org/sites/g/files/zskgke326/files/2022-09/undp-rblac-Digital-EN.pdf (accessed October 18, 2023).

[49] Ibid.

[50] Laura Silver, "Mobile Divides in Emerging Economies," *Pew Research Center*, November 20, 2019, https://www.pewresearch.org/internet/2019/11/20/mobile-divides-in-emerging-economies/ (accessed October 18, 2023).

Asylum seekers who have not had practice using smartphones should not be forced to learn in life-threatening circumstances.

Identity-Based Barriers

While some asylum seekers Human Rights Watch interviewed were not aware of the existence of the CBP One app, most knew about it but had problems using it.[51] Nearly all of those we spoke with reported having trouble using CBP One, often due to some aspect of their personal identity.[52]

Black and Brown asylum seekers may face barriers to using CBP One as the app uses facial recognition technology to verify an asylum seeker against their identity documents. Asylum seekers must allow the app to take a photo of their faces when registering on the app and again to confirm their appointment and often receive error messages. Asylum seekers and migrant shelter workers reported having trouble getting the selfie to work with asylum seekers with darker skin tones and having to shine a bright light on asylum seekers' faces in an attempt to lighten their skin tone and make themselves recognizable to the app.[53]

Asylum seekers experience language barriers in accessing CBP One. As has been well documented by legal service providers and human rights workers, CBP One is inaccessible to many asylum seekers, including those without access to a smartphone or the internet, those who do not speak one of the few languages available in the application, are not able to read, have never used a smartphone and do not understand how to use CBP One or any other mobile applications.[54] The app is only available in English, Spanish, and Haitian Creole, but arriving asylum seekers speak a multitude of other languages, including those

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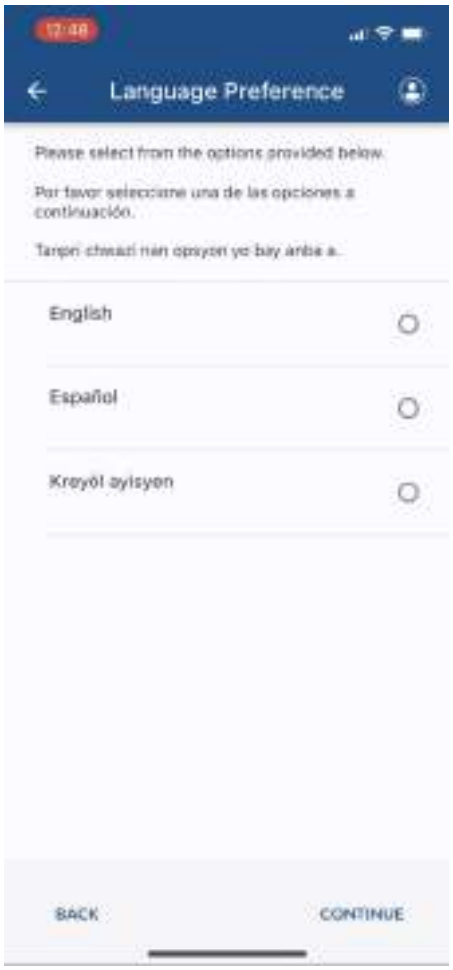
[51] Human Rights Watch interviews with asylum seekers, Mexico, United States, August-September 2023.

[52] Ibid.

[53] Human Rights Watch interviews with shelter workers, Mexico, August-September 2023.

[54] International Rescue Committee, *Limits on Access to Asylum After Title 42: One Month of Monitoring U.S.-Mexico Border Ports of Entry*, report, June 2023, https://www.rescue.org/sites/default/files/2023-06/Limits%20on%20Access%20to%20Asylum%20After%20Title%2042_1.pdf (accessed October 16, 2023); Andre Deck, "Seeking Asylum at the US-Mexico Border? You'd Better Speak English or Spanish," *Rest of World*, June 1, 2023, https://restofworld.org/2023/migrant-languages-challenge-cbp-one-app-haitian-creole/ (accessed October 16, 2023); American Immigration Council, "CBP One: An Overview," December 9, 2021, https://www.americanimmigrationcouncil.org/research/cbp-one-overview (accessed October 16, 2023); Christina Asencio and Rebecca Gendelman, "Inhumane and Counterproductive: Asylum Ban Inflicts Mounting Harm," *Human Rights First*, October 12, 2023, https://humanrightsfirst.org/library/inhumane-and-counterproductive-asylum-ban-inflicts-mounting-harm/ (accessed October 13, 2023).



A screenshot of the language possibilities while registering on CBP One, January 23, 2024. © 2024 Ari Sawyer/Human Rights Watch

who come from Asia, Africa, the Middle East, Europe, and Indigenous communities in the Americas.

The app is also inaccessible to those with limited literacy skills. A volunteer at one migrant shelter in Monterrey, Mexico, told Human Rights Watch that about one in every 10 asylum seekers he assisted in using CBP One could not read.[55] Another shelter worker in Monterrey told Human Rights Watch he worked with a man seeking asylum who could not read.[56] After helping the man set up his CBP One account, the shelter worker taught the man how to request an appointment each day by helping him memorize the selection pattern based on the sequence of icons and images.[57] "If you see something different, come here to talk to us," he told the man.[58] "A lot of people [cannot read], but they have a functional ability to fill out their basic information," said Beatriz Fuentes, director of Casa Fuente in Mexico City. "CBP One goes beyond what they are functionally capable of."[59]

Lesbian, gay, bisexual, and transgender (LGBT) asylum seekers face unique challenges in accessing the Wi-Fi, which in turn thwarts their access to the app. Shelter operators and asylum seekers told Human Rights Watch that many migrant shelters—asylum seekers' main source of Wi-Fi and makeshift tech support, helping people access the app and troubleshoot app errors—are religiously affiliated and some have turned away LGBT

[55] Human Rights Watch interview with shelter volunteer, Monterrey, Mexico, August 22, 2023.

[56] Human Rights Watch interview with shelter worker, Monterrey, Mexico, August 23, 2023.

[57] Ibid.

[58] Ibid.

[59] Human Rights Watch interview with Beatriz Fuentes, director, Casa Fuente, Mexico City, August 15, 2023.

asylum seekers[60] or otherwise discriminated against them based on their sexual orientation or gender identity.[61]

Older adults reported to Human Rights Watch they were unfamiliar with the use of smartphones and struggled to use the application. For example, Paulina I., 56, who is traveling with her husband, 62, had to ask a shelter worker in Nuevo Laredo for help to register on CBP One. She said they did not understand how to use this or other apps, have very little experience using smartphones, and struggled to input a Human Rights Watch researchers contact information into her phone.[62] Lena G., 56, relies on her young nephew to operate the application.[63] Family members, friends, acquaintances, or shelter workers may not input information correctly for older adults, jeopardizing the parole and asylum processes of users. And asylum seekers who need help using the app may be forced to share personal information in ways that put them at risk.

The app may also be more difficult to use for people with disabilities, including those who cannot see or who experience an intellectual disability. Workers at Casa Tochan, a migrant shelter in Mexico City, told Human Rights Watch they provided housing to an asylum-seeking man who was blind.[64] The man hoped to receive medical treatment in the United States in the hope of regaining some of his sight, but he could not use the CBP One application.[65] Some other asylum seekers ended up helping the man create an account and request an appointment, the workers said.[66]

Damaris C., a 30-year-old woman who fled Colombia with her husband and their 8- and 15-year-old sons, told Human Rights Watch that her teenage child had become responsible for

[60] Human Rights Watch has previously documented the specific abuses that LGBT migrants face at the border and in their home countries, including violence, discrimination, killings, and sexual violence. See Human Rights Watch, US: LGBT Asylum Seekers in Danger at the Border, Human Rights Watch news release, May 31, 2023, https://www.hrw.org/news/2022/05/31/us-lgbt-asylum-seekers-danger-border.

[61] Human Rights Watch interview with Beatriz Fuentes, director, Casa Fuentes, August 15, 2023; Human Rights Watch interviews with shelter worker, Casa Indi, Monterrey, Mexico, August 23, 2023; Human Rights Watch interviews with Pedro E. and Francis E., Monterrey, Mexico, August 24, 2023.

[62] Human Rights Watch interview with Paulina I., Nuevo Laredo, Mexico, November 8, 2023.

[63] Human Rights Watch interview with Lena G., Saltillo, Mexico, August 26, 2023.

[64] Human Rights Watch interview with workers at Casa Tochan, Mexico City, August 16, 2023.

[65] Ibid.

[66] Ibid.

managing CBP One since her husband could not see well enough to use the app and she did not "know anything about technology."[67]

Use of CBP One Is Effectively Mandatory

While the US government claims that having a CBP One appointment is not required for asylum seekers to be processed by CBP officials, that has been the practical effect of the May 2023 rule promulgated by the Biden administration.

According to the rule, "Noncitizens are not required to make an appointment in the CBP One app to present at a POE (port of entry), and CBP policy provides that in no instance will an individual be turned away from a POE."[68]

Despite this, Human Rights Watch has documented cases in which border agents have turned away asylum seekers without appointments, including Mexican nationals. Mexican officials have also prevented people without appointments from approaching ports of entry. As a result, asylum seekers have virtually no choice but to use CBP One.[69]

The first reason that CBP One is effectively mandatory is that people are turned away at the border when they do not use the app. As before May 2023, CBP agents cite capacity issues when turning away asylum seekers without an appointment, but they now also cite the new rule.[70] Human Rights Watch observed CBP officers at the Laredo port of entry tell Sandra S. that they had already processed everyone they were going to process that day, all of whom had an appointment via CBP One, and that they did not have capacity to process more people.[71] This response contradicts the rule because Sandra S. is a Mexican citizen and the new Biden rule clearly states that Mexicans have an exception from the CBP One appointment requirement.

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[67] Human Rights Watch interview with Damaris C., Monterrey, Mexico, August 24, 2023.

[68] Ibid.

[69] US Embassy in El Salvador, "CBP One Facilitated Over 170,000 Appointments in Six Months, and Continues to be a Safe, Orderly, and Humane Tool for Border Management", fact sheet, August 3, 2023, https://sv.usembassy.gov/cbp-one-facilitated-over-170000-appointments-in-six-months-and-continues-to-be-a-safe-orderly-and-humane-tool-for-border-management/ (accessed October 18, 2023).

[70] Human Rights Watch observation at the Laredo port of entry, September 9, 2023.

[71] Ibid.

The second reason that the app is effectively mandatory is because of the punitive treatment experienced by asylum seekers who cannot or do not use it. Under the rule, the Biden administration has re-upped the Trump-style expedited removal process for asylum seekers without a CBP One appointment.

CBP officials have discretion in deciding whether non-Mexican asylum seekers without a CBP One appointment should be placed into expedited removal proceedings. Overcoming the rule's "presumption of asylum ineligibility" while in expedited proceedings, often in the custody of CBP, is exceedingly difficult and exacerbates harm.

While expedited removal predates both the Biden and Trump administrations, it was the Trump administration that first modified the policy such that it would target asylum seekers and require detaining them for several days or weeks in CBP temporary detention facilities designed to house people for no more than 72 hours.[72] Many migrants held without meaningful access to attorneys or family in CBP custody face inhumane and abusive detention conditions, including sexual assault, physical violence, verbal abuse, lack of access to adequate medical care or showers or other hygienic needs, frigid temperatures, and overcrowding.[73]

Reporting by Human Rights Watch and many others has shown CBP agents implementing expedited removal have abused border crossers and residents with near-total impunity for decades,[74] have lied on official paperwork for asylum seekers,[75] and have illegally turned back asylum seekers at ports of entry.[76] Asylum seekers placed in enhanced expedited

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[72] Kate Huddleston, "Ending PACR/HARP: An Urgent Step Toward Restoring Humane Asylum Policy," *Just Security*, February 16, 2021, https://www.justsecurity.org/74678/ending-pacr-harp-an-urgent-step-toward-restoring-humane-asylum-policy/ (accessed December 6, 2023).

[73] Human Rights Watch, *"They Treat You Like You are Worthless": Internal DHS Reports of Abuse by US Border Officials* (New York: Human Rights Watch, 2021), https://www.hrw.org/report/2021/10/21/they-treat-you-you-are-worthless/internal-dhs-reports-abuses-us-border-officials; Human Rights Watch, *In the Freezer: Abusive Conditions for Women and Children in US Immigration Holding Cells* (New York: Human Rights Watch, 2018), https://www.hrw.org/report/2018/02/28/freezer/abusive-conditions-women-and-children-us-immigration-holding-cells.

[74] Southern Border Communities Coalition, "Abuse of Power and Its Consequences", last updated in part September 12, 2023, https://www.southernborder.org/border_lens_abuse_of_power_and_its_consequences (accessed October 11, 2023); Ari Sawyer (Human Rights Watch), "The US Border Patrol is Broken," commentary, *Newsweek*, February 2, 2022, https://www.hrw.org/news/2022/03/02/us-border-patrol-broken.

[75] Human Rights Watch, *"They Treat You Like You're Worthless."*

[76] Human Rights Watch, "US: Mexican Asylum Seekers Ordered to Wait", Human Rights Watch news release, December 23, 2019, https://www.hrw.org/news/2019/12/23/us-mexican-asylum-seekers-ordered-wait; American Immigration Council, "Metering and Asylum Turnbacks", fact sheet, March 8, 2021, https://www.americanimmigrationcouncil.org/research/metering-and-asylum-turnbacks (accessed October 11, 2023).

removal face return to the countries they have fled or to Mexico without meaningful access to due process.[77] In CBP custody, without time or the ability to gather evidence, non-Mexican asylum seekers are interviewed by asylum officers to determine whether they "can establish a reasonable possibility of persecution on account of a protected ground or face torture in the country to which [they] will be ordered removed."[78]

Most of the non-Mexican asylum seekers we spoke with who had been placed into expedited removal proceedings under the asylum rule and deported to Mexico said they were held for weeks in CBP border jails with very little or no access to phones or attorneys.

Asylum seekers who are placed into expedited removal and are unsuccessful in presenting their claims for asylum are often removed from the United States with a five-year legal bar on returning to the United States, and a direct threat in the Biden rule of criminal prosecution should they attempt to return, and non-eligibility for the parole program.[79]

Under the enhanced expedited removal provisions of the Biden asylum rule, "DHS has repatriated approximately 126,000 noncitizens under Title 8 authorities, including single adults and [families,] to more than 100 countries between May 12 and July 31, 2023," according to DHS Assistant Secretary for Border and Immigration Policy Blas Nuñez-Neto.[80]

These punitive measures for those who do not use CBP One make the app de facto mandatory for asylum seekers.

In light of all these factors, asylum seekers are forced to wait in Mexico. The scarity of appointments adds another layer of pressure to this system since CBP restricts the number

[77] ACLU of Texas, "ACLU Calls on President Biden to End PACR/HARP Protocols", press release, January 27, 2021, https://www.aclu.org/press-releases/aclu-calls-president-biden-end-pacrharp-protocols (accessed October 16, 2023).

[78] Federal Register, Circumvention of Lawful Pathways, 88 Fed. Reg. 31315.

[79] US Department of Homeland Security, Fact Sheet: Circumvention of Lawful Pathways Final Rule, May 11, 2023, https://www.dhs.gov/news/2023/05/11/fact-sheet-circumvention-lawful-pathways-final-rule (accessed March 13, 2024) (Stating: "Those ordered removed will be subject to at least a five-year bar to reentry and potential criminal prosecution if they subsequently re-enter without authorization. Those ordered removed also will be ineligible for the parole processes available to nationals of Cuba, Haiti, Nicaragua, and Venezuela.").

[80] Declaration of DHS Assistant Secretary for Border and Immigration Policy Blas Nuñez-Neto, *Texas v. Mayorkas*, Case No. 2:23-cv-00024-AM (W.D. Tex. filed August 25, 2023).

available each day, forcing asylum seekers to wait for weeks or months[81] for an appointment in dangerous and unhealthy conditions in Mexico.

The US government claims that "scheduling appointments makes the process safer and more orderly, and the advance information that is submitted to CBP Officers creates a more efficient and streamlined process for CBP and for individuals."[82] However, HRW has found the reality to be far from this vision of streamlined efficiency.

The Myth of Lack of Capacity

CBP agents have for years cited lack of capacity as the reason for limiting the number of asylum seekers they process, but a 2020 DHS Office of Inspector General report on metering found that CBP officials "used these reasons regardless of the port's actual capacity and capability."[83] Often, CBP's claims about capacity were simply untrue.[84]

The very limited number of appointments available via CBP One fails to meet asylum processing needs, which CBP and Department of Homeland Security (DHS) officials have said reflects CBP's limited capacity.[85] Capacity, though, largely reflects the administration's priorities and choices. The US government has significant resources at its disposal to increase humane processing capacity yet has created a vicious cycle: an increase in the number of asylum seekers in expedited removal proceedings being held well beyond the 72-hour limit in inhumane CBP facilities, which generates a need for increased agency capacity that could otherwise be used to process arriving asylum seekers. This in turn contributes to a further processing backlog, as the number of asylum seekers arriving in northern Mexico continues, and people are driven to cross between ports of entry when they are blocked at the ports, making them vulnerable to being placed in expedited removal proceedings.

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[81] Human Rights Watch interviews with asylum seekers, Mexico, August-September 2023.

[82] US Embassy in El Salvador, "CBP One Facilitated Over 170,000 Appointments in Six Months," press release.

[83] Department of Homeland Security Office of Inspector General, CBP Has Taken Steps to Limit Processing of Undocumented Aliens at Ports of Entry, October 27, 2020, https://www.oig.dhs.gov/sites/default/files/assets/2020-10/OIG-21-02-Oct20.pdf (accessed October 10, 2023).

[84] Robert Moore, "CBP Turned Away Asylum Seekers, Claiming They Didn't Have Room for Them. It Often Wasn't True," *El Paso Matters*, September 28, 2021, https://elpasomatters.org/2021/09/28/cbp-turned-away-asylum-seekers-claiming-they-didnt-have-room-for-them-it-often-wasnt-true/ (accessed October 20, 2023).

[85] Stephanie Leutert and Caitlyn Yates, *Asylum Processing at the U.S.-Mexico Border*, Strauss Center for International Security and Law, August 2023, https://www.strausscenter.org/wp-content/uploads/August_2023_Asylum_Processing-1.pdf (accessed October 12, 2023).

The App Creates a Digital Metering System

Whereas the metering policy under the Trump administration relied upon analog lists held by Mexican actors or migrants themselves, the digital metering system created by the Biden asylum rule has established CBP as the owner of a border-wide digital metering list. CBP now possesses the knowledge and power to determine who will be processed next, at which port of entry, and when. Asylum seekers must sign up with CBP One and add their names to the digital metering list to ensure they will be processed by CBP and allowed to seek asylum in the United States. If they do not, they face routine turnbacks by either US or Mexican officials, outlined in greater detail in the following chapter.

CBP does not provide enough appointments to meet the demand from asylum seekers. The agency initially provided 1,000 CBP One appointments each day, raising the number of available appointments to 1,250. In June 2023, CBP increased the number of available appointments to 1,450 each day.[86] Between May 2023, when the Biden asylum rule was implemented, and January 2024, border arrivals averaged about 7,240 per day.[87]

CBP reported that between January 2023 and February 2024, more than 501,000 asylum seekers had been paroled into the United States after requesting a CBP One appointment, including in processes predating the asylum rule, which went into effect in May 2023.[88] While high, that number is a small fraction of the 64 million requests asylum seekers have made for a CBP One appointment between May 2023 and February 2024. The high number of requests reflects the fact that, under the asylum rule, people must apply each day as new appointments become available until they secure a time and day to appear at the border post.[89]

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[86] US Customs and Border Protection, "CBP One™ Appointments Increased to 1,450 Per Day", press release, June 30, 2023, https://www.cbp.gov/newsroom/national-media-release/cbp-one-appointments-increased-1450-day (accessed March 1, 2024).

[87] US Customs and Border Control, Southwest Land Border Encounters, updated February 13, 2024, https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters (accessed March 1, 2024).

[88] US Customs and Border Protection, "CBP Releases February 2024 Monthly Update," news release, March 22, 2024, https://www.cbp.gov/newsroom/national-media-release/cbp-releases-february-2024-monthly-update (accessed April 10, 2024).

[89] Camilo Montoya-Galvez, "Migrants in Mexico Have Used CBP One App 64 Million Times to Request Entry Into US," *NBC*, February 12, 2024, https://www.cbsnews.com/news/immigration-cbp-one-app-migrants-mexico-64-million/ (accessed March 1, 2024).

Human Rights Watch documented wait times for people seeking appointments via the CBP One app ranging from a few days to four months. Most asylum seekers with whom Human Rights Watch spoke said they, their families, or friends they were travelling with had been waiting for a month or more in Mexico.[90]

Though the Biden asylum rule is designed to deter most arriving asylum seekers, the rule has not deterred people from trying to enter the United States to seek safety.[91] With US ports of entry effectively closed to most asylum seekers who do not have a CBP One appointment, inability to access the digital metering system contributes to irregular border crossings and jeopardizes asylum seekers' protection claims under the Biden asylum rule.

[90] Human Rights Watch interviews with asylum seekers, Mexico and United States, August-September 2023.

[91] David Bier, "Parole Sponsorship is a Revolution in Immigration Policy," *CATO Institute*, September 18, 2023, https://www.cato.org/briefing-paper/parole-sponsorship-revolution-immigration-policy (accessed October 18, 2023); Jason de León, Eduardo "Lalo" Garcia, and The Undocumented Migration Project, "Prevention Through Deterrence: Picturing a U.S. Policy," *Sapiens*, February 16, 2016, https://www.sapiens.org/culture/prevention-through-deterrence/ (accessed November 10, 2023). See also the number of daily arrivals of asylum seekers in each CBP One port of entry compared to the number of CBP One appointments and walkups processed each day at: Stephanie Leutert, Caitlyn Yates, *Asylum Processing at the US-Mexico Border*, Strauss Center for International Security and Law

Turnbacks of Asylum Seekers

In tandem with the Biden asylum rule and digital metering policy, US officials work with their Mexican counterparts to prevent asylum seekers from reaching the US border and requesting access to asylum in the United States. Human Rights Watch documented efforts by the US and Mexico to conduct "turnbacks"—blocking people from entering the United States and pushing them back to Mexico—of asylum seekers at ports of entry at the US-Mexico border. The US CBP One appointment system is cited by officials of both governments when blocking asylum seekers from accessing the border. Turnbacks are therefore the dangerous result of digital metering and the Biden asylum rule.

Against this high-level backdrop, officials from both the United States and Mexico participate in blocking asylum seekers from accessing protection.[92]

Turnbacks by CBP

CBP regularly turns asylum seekers back at the border. Agents posted at the midpoint of international bridges—the recognized boundary between the United States and Mexico—require every person who attempts to approach border stations to show identification and evidence of authorization to enter the United States. They typically turn back asylum seekers who do not have CBP One appointments.

In one such case, Denny G., a 33-year-old Cuban asylum seeker, who had been waiting in an Nuevo Laredo encampment for a month, said he tried to enter at a port of entry, but was turned back by CBP officers on the middle of the bridge.[93] Denny said he planned to try again along with four other asylum seekers he had met on the journey in the hopes that

[92] In August and September 2023, Human Rights Watch filed Freedom of Information Act requests with the US government—including the Office of Science and Technology Policy, the Office of Management and Budget, and US Customs and Border Protection—to obtain information on the costs of creating and operating the CBP One application, CBP's policy or guidelines to officers on dealing with asylum seekers who arrive without an appointment, data collected by the application, the government's analysis of the effectiveness, equity, and accessibility of the application, and any agreements the United States has with Mexico to screen asylum seekers for CBP One appointments, turn back asylum seekers without an appointment, and remove migrants from the border area to southern Mexico. Human Rights Watch will provide and discuss those responses in later publications.

[93] Human Rights Watch interview with Denny G., Nuevo Laredo, Mexico, September 8, 2023.

there would be strength in numbers.[94] "There is too much violence here," Denny said. "Why don't they process the people waiting here at the encampment?"[95]

CBP agents often turn people back at the border even when they attempt to explain that they face danger in Mexico. For instance, Lara D., a 23-year-old asylum seeker from Venezuela, traveled by car via the rideshare application DiDi to the Laredo port of entry. About two blocks from the international bridge, a black truck carrying two armed men pulled out in front of the car, forcing the vehicle to stop.[96] One of the men got out of the truck and got into the car Lara was in with her husband, cousin, and parents. He began "speaking very strongly" with the DiDi driver, telling him to take another route. The man told Lara and her family that they needed to be registered and that their photos would be taken and information collected. The rideshare driver accelerated suddenly, launching the car forward with the door open and causing the armed man to fly out of the car. The driver left Lara and her family at the entrance to the Laredo port of entry, and the family hurried across the bridge. On the middle of the bridge, they were blocked by CBP officers who, despite having been told about what had just befallen the family and that they had a fear of returning to both their country of origin and Mexico, turned Lara and her family back to Mexico.[97] "[CBP] said they had already processed all the people they were going to process that day and they would not accept us," Lara said.[98]

In another such case, Human Rights Watch accompanied Sandra S. and her family in their attempt to turn themselves in to CBP Office of Field Operations (OFO) officers at the Laredo port of entry for a second time after they had been identified and threatened by members of a cartel in Nuevo Laredo.[99] Human Rights Watch then witnessed a CBP Office of Field Operations (OFO) agent tell another CBP officer in front of Sandra and her family that asylum seekers had "milked the system" and that they would "not allow them to do it again." The agent then told the family that any asylum seekers who arrive without proof that they have filed a police report would be automatically turned away.[100]

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[94] Ibid.
[95] Ibid.
[96] Human Rights Watch interview with Lara D. Nuevo Laredo, Mexico, September 8, 2023.
[97] Ibid.
[98] Ibid.
[99] Human Rights Watch observation of Laredo port of entry, United States, September 9, 2023.
[100] Ibid.

A CBP officer who identified herself as a supervisor then told Sandra and her family that they would need to go back to Nuevo Laredo to wait for a CBP One appointment.[101] When the family remained on the bridge to plead their case, standing in heat that exceeded 100 degrees Fahrenheit (38 degrees Celsius), CBP officers threatened to call the Mexican National Guard to remove the family from the bridge if they did not leave of their own accord.[102] By this point, the CBP agents involved had heard the family's account of the threats and danger they would face upon return to Mexico and were made aware of the additional protections that apply to people fleeing Mexico, but nonetheless turned the family back.[103]

In Sandra's case, not only did CBP agents inaccurately insist that CBP One was the exclusive means for an asylum seeker to secure entry to the United States, but they also imposed an invented standard for an asylum claim.

There is no requirement to file a police report to apply for asylum in the US, nor are asylum seekers required to show CBP evidence of their asylum claims. In fact, it is not CBP's role to adjudicate asylum claims. Sandra and her family did not feel safe speaking to the Mexican police and had not filed a police report.[104] Among other concerns, Mexican law enforcement officials have extorted migrants and have also been implicated in working with organized criminal groups to kidnap and otherwise harm them.[105]

Sandra and her family were living in a makeshift encampment of roughly 100 people in Nuevo Laredo when we visited in early September 2023. The encampment is located in Mexico, across the border from Laredo, Texas. Asylum seekers, including many young children, sleep there beneath suspended tarps with no walls, security, or basic services.

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[101] Human Rights Watch observation of Laredo port of entry, United States, September 9, 2023.

[102] Human Rights Watch text conversation with Sandra S., September 9, 2023.

[103] Ibid.

[104] Human Rights Watch observation at the Laredo port of entry, September 9, 2023.

[105] Human Rights Watch interviews with asylum seekers, Mexico, August-September 2023; Letter from Human Rights Watch to Joseph Cuffari, Inspector General and Cameron Quinn, Officer, "DHS OIG Formal Complaint Regarding 'Remain in Mexico,'" June 2, 2020, https://www.hrw.org/news/2020/06/02/dhs-oig-formal-complaint-regarding-remain-mexico#:~:text=Human%20Rights%20Watch%20submits%20this,accountable%20for%20knowingly%20subjecting%20asylum.

Shipping containers topped with barbed wire block asylum seekers from crossing the border irregularly in Eagle Pass, Texas, September 4, 2023. (C) 2023 Ari Sawyer/Human Rights Watch

There were nine Mexican citizens total in the encampment at the time, all of whom reported having been turned back by Mexican or US officials at the Laredo port of entry.[106]

Mexican officials sometimes repeat the same excuse.

Natalia V., 25, fled Venezuela with her husband, 28, their five children, between the ages of 1 and 9, and her father-in-law. When they arrived at the Eagle Pass port of entry, Natalia was exhausted and sick. They had been traveling for four months and had completely run out of money. With no resources in Mexico, they said they needed to enter the United States immediately and join their family in Chicago. Natalia and her family tried to present themselves to CBP officers at the port of entry but were turned back by Mexican guards

[106] Human Rights Watch interviews with asylum seekers, Nuevo Laredo, Mexico, September 7-9, 2023; Human Rights Watch interview with shelter workers, Nuevo Laredo, Mexico, September 7-8, 2023.

because they did not have a CBP One appointment. They tried to cross the Rio Grande near the port but were told to go back to the bridge.

"The [US] soldiers yelled at us, but we could not cross the bridge because security turned us back," Natalia said. "The loop was infinite. They told us to cross the bridge. We could not cross the bridge and then we could not turn ourselves in between ports of entry."

They ended up waiting four hours in the severe heat near barbed wire between ports of entry for Border Patrol to arrive. "We couldn't wait," she said. "We had to turn ourselves in."[107]

Mexico's Role in Turnbacks

CBP has repeatedly claimed it has no agreement with Mexican authorities requiring the latter to assist the US in turning back asylum seekers who arrive at a US port of entry without a CBP One appointment. Yet Human Rights Watch found evidence of close collaboration.

Some asylum seekers told Human Rights Watch the sight of Mexican government officials, especially armed officials, at ports of entry discouraged them from attempting to approach CBP officers to seek asylum.

Betty C., a Venezuelan woman traveling with her family of five, including two children, told Human Rights Watch the sight of Mexican National Guard soldiers in front of the Laredo port of entry kept the family from seeking asylum. The family had been waiting in the makeshift encampment in Nuevo Laredo for three weeks when we spoke with her.[108]

"We are afraid to get close to the authorities in Mexico because we are worried they will detain us and send us to the south [of Mexico]," Beatriz said. "I want to enter legally, but I don't know how."[109]

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[107] Human Rights Watch interview with Natalia V., Eagle Pass, United States, September 6, 2023.

[108] Human Rights Watch interview with Betty C., Nuevo Laredo, Mexico, September 8, 2023.

[109] Ibid.

Since the Biden asylum rule was implemented, Mexican government officials, or security contractors, have typically been present on the Mexico side blocking access to the international bridge. These government officials, or representatives, actively screen asylum seekers for CBP One appointments at all eight ports of entry for which appointments are assigned.[110] Asylum seekers who cannot show proof of an appointment are usually barred from accessing the port of entry.[111]

The chart below outlines the Mexican governmental agencies or contractors involved in blocking asylum seekers from accessing asylum procedures in the United States.

Mexican Agencies and Contractors Barring Access to US Ports of Entry

Port of Entry	Mexican government agency
San Ysidro East/Tijuana	National Institute of Migration (Instituto Nacional de Migración, INM)/National Guard (Guardia Nacional)
El Chaparral/Tijuana	National Guard/INM/Private security (hired by unknown agency)
Calexico/Mexicali	INM
Nogales/Nogales	Private security hired by Bienestar Social Nogales.
El Paso/Ciudad Juarez	Private security hired by Fideicomiso de Puentes Fronterizos de Chihuahua, National Guard
Hidalgo/Reynosa	INM
Eagle Pass/Piedras Negras	City of Piedras Negras: Grupo Enlace
Laredo/Nuevo Laredo	National Guard, INM
Brownsville/Matamoros	INM

Source: Human Rights Watch observation of ports of entry at Eagle Pass and Laredo, Texas, United States, September 2023; Human Rights Watch email correspondence with Al Otro Lado, October 2023; Human Rights Watch phone conversation with Thomas Cartwright, Witness at the Border, September 2023; Human Rights Watch text conversation with Edith Tapia, International Refugee Commission, September 2023; Human Rights Watch email correspondence with Maria Silva, International Rescue Committee, September 22, 2023; International Rescue Committee, Limits on Access to Asylum After Title 42: One Month of Monitoring U.S.-Mexico Border Ports of Entry, report; Stephanie Leutert and Caitlyn Yates, Asylum Processing at the U.S.-Mexico Border, Strauss Center for International Security and Law.

[110] Human Rights Watch observation of ports of entry at Eagle Pass and Laredo, Texas, United States, September 2023; Human Rights Watch email correspondence with Al Otro Lado, October 2023; Human Rights Watch phone conversation with Thomas Cartwright, Witness at the Border, September 2023; Human Rights Watch text conversation with Edith Tapia, International Refugee Commission, September 2023; Human Rights Watch email correspondence with Maria Silva, International Rescue Committee, September 22, 2023; International Rescue Committee, *Limits on Access to Asylum After Title 42: One Month of Monitoring U.S.-Mexico Border Ports of Entry*, report; Stephanie Leutert and Caitlyn Yates, *Asylum Processing at the U.S.-Mexico Border*, Strauss Center for International Security and Law.

[111] Ibid.; Human Rights Watch observation at Eagle Pass port of entry, September 5-6, 2023; Human Rights Watch observation at Laredo port of entry, September 7-9, 2023.

Denny G., a Cuban asylum seeker whose case is described above, said he tried to enter a port of entry twice, but was turned back—once by CBP officers at the middle of the bridge and once by Mexican National Guard soldiers. Such Mexican soldiers, armed and uniformed, stand in front of the bridge's entrance and prevent asylum seekers without a CBP One appointment from crossing.[112]

Paulina I., a 56-year-old woman fleeing Guerrero, Mexico, with her husband after cartel operatives extorted, threatened, and kidnapped the couple, reported they were turned away at the Laredo port of entry in August 2023 by Mexican officials. The couple had fled their hometown after they could no longer afford the extortion payments the cartel was demanding. On their way, the cartel kidnapped them and threatened to kill them, eventually releasing them but keeping the couple's truck and the farm animals they were traveling with.[113]

"We had to choose between our truck and our animals or our lives," Paulina said.[114]

When they arrived at the Nuevo Laredo bus terminal, several strangers, who Paulina and her family believe were cartel operatives, questioned them at various times about what they were doing in the city. To avoid confirming they were seeking asylum in the United States, they replied they were visiting someone. When they got to the Laredo port of entry where they hoped to turn themselves in to CBP officers, they were stopped by Mexican National Guard soldiers who asked if they had a CBP One appointment. The soldiers sent them to speak to INM agents, who, seeming surprised, asked the couple whether they had not already been stopped by anyone at the bus terminal. The agents gave them a list of migrant shelters to stay at in Nuevo Laredo and turned them away. All the shelters were closed, and the family's only option was to wait in the insecure makeshift encampment near the US port of entry.[115]

Alex H., 26, fled death threats from cartel members in Honduras in June 2023 and had been waiting for an appointment via CBP One for 45 days in Monterrey with his mother. The two ran out of money, so Alex began working a construction job. While working one day, an

[112] Human Rights Watch interview with Denny G., Nuevo Laredo, Mexico, September 8, 2023.
[113] Human Rights Watch interview with Paulina I., Nuevo Laredo, Mexico, September 8, 2023.
[114] Ibid.
[115] Ibid.

arc of electricity passed from a tool to his body, and he sustained third-degree burns over much of his skin, including on his torso, arms, legs, and neck. Human Rights Watch first spoke to Alex as he lay in a rudimentary health clinic, unable to walk. The clinic, adjacent to a migrant shelter, usually treats people who have lost limbs after falling from the cargo train migrants often ride through Mexico to the border. Alex had developed a rare fungal infection in some of the burn wounds. He was unable to access the medical care he needed in Mexico, he said, including the anti-fungal medicine clinicians told him he needed and could find in the United States.[116]

CBP said Alex and his mother would be allowed to cross the border and even offered to schedule an ambulance to take the family directly to a hospital. However, when the two arrived at the Mexico side of the Eagle Pass port of entry in September 2023, guards with Grupo Enlace, an agency with the city of Piedras Negras government, told the family that without a CBP One appointment, they could not cross the international bridge.[117] The guards told Alex and his mother they already had called CBP and been told the family did not have permission to cross.[118] The family was eventually able access the port of entry and rushed to the hospital, but only after repeated intervention of human rights monitoring groups and groups providing legal services, including Human Rights Watch, Witness at the Border, Al Otro Lado, and Mission: Border Hope, and only after hours of waiting in severe heat—a serious health risk for Alex.

Two days earlier, Human Rights Watch had spoken to a man who identified himself as a Grupo Enlace supervisor.[119] "We are working with Mexico and the United States to ensure that only people with CBP One appointments can cross," he said.[120]

The supervisor said security guards are posted in front of the international bridge entrance 24 hours a day, where they screen people for appointments. He said they stop both Mexican and non-Mexican asylum seekers who do not have an appointment. He said he

[116] Human Rights Watch interview with Alex H., Monterrey, Mexico, August 24, 2023.

[117] Human Rights Watch phone and text conversations with Alex H., Piedras Negras, Mexico, September 7, 2023; Human Rights Watch phone and text conversations with Mission: Border Hope, Piedras Negras, Mexico, and Eagle Pass, United States, September 7, 2023; Email correspondence with US Customs and Border Protection made available to Human Rights Watch September 6, 2023; Human Rights Watch text and phone conversation with Witness at the Border, September 7, 2023.

[118] Human Rights Watch phone and text conversations with Alex H., Piedras Negras, Mexico, September 7, 2023.

[119] Human Rights Watch interview with Grupo Enlace supervisor, Piedras Negras, Mexico, September 5, 2023.

[120] Ibid.

was not aware of any law that states Mexicans have a right to leave their country, was not aware of the responsibility of state agents, including contractors hired by the government, not to engage in acts of refoulement, and had received no training on refugee protection laws.[121]

Grupo Enlace agents screen border crossers in Piedras, Negras, Mexico, requiring anyone without US passports or visas to show CBP One appointments. February 18, 2024. © 2024 Casey Miller

The supervisor repeated his statement that the guards were working for the United States within hearing of three other Grupo Enlace guards standing next to him.[122] Grupo Enlace, an agency under the city of Piedras Negras, Coahuila, is managed by the Piedras Negras Mayor's office, including City Manager José Hermelo Castillón Martínez, who the supervisor identified as the person managing the agency's day-to-day operations, and Piedras Negras Mayor Norma Treviño Galindo.[123]

Neither Castillon nor Treviño responded to questions from Human Rights Watch about the activities of the Grupo Enlace guards. The city communications manager, Jesús Chávez Martínez, said the Grupo Enlace guards are "citizen guards" the city posted there to prevent migrants without permission from entering the United States from accessing the bridge.[124] He said the Grupo Enlace presence is part of "a deal for the US to open its bridges again for Mexicans."[125]

[121] Ibid.

[122] Ibid.

[123] Human Rights Watch text conversation with Jesús Chávez Martínez, Piedras Negras social communication manager, October 31, 2023.

[124] Ibid.

[125] Ibid.

On September 20, 2023, the US government closed one of the international bridges between Piedras Negras and Eagle Pass, Texas for five weeks, citing an increase in the number of arriving migrants.[126]

[126] "Piedras Negras-Eagle Pass Crossing Reopened After Five Weeks," *Mexico Now*, October 17, 2023, https://mexico-now.com/piedras-negras-eagle-pass-crossing-reopened-after-five-weeks/ (accessed March 13, 2024).

Harms in Mexico

Targeting by Criminal Operatives and Government Officials

Conditions faced by asylum seekers in Mexico while they are caught in the US digital metering system are unsustainable and can be life-threatening. Human Rights First has published at least two investigations documenting scores of cases of kidnappings, extortion, sexual violence, disappearances, and other types of harm perpetrated against asylum seekers in Mexico since the Biden asylum rule went into effect.[127]

The US policies blocking asylum at the border in recent years have changed in name and severity, but one material outcome for asylum seekers has remained the same: asylum seekers are forced to wait in northern Mexican states, as well as in many cities in other parts of the country through which migrants transit, where they are systematically targeted by cartels, sometimes with the help of Mexican government officials, for kidnapping, extortion, sexual assault, robbery, and other abuse. Human Rights Watch has documented how Mexican immigration officials or police have turned migrants over to cartels for kidnapping and extortion.[128] In November 2023, the mayor of Matehuala, a city in the central Mexican state of San Luis Potosi, was arrested for his part in a migrant kidnapping ring from which 27 people were rescued in April, along with the chief of police, according to a report about the police investigation.[129]

As detailed below and in previous research, cartels—transnational criminal organizations—monitor the entry and exit of migrants into particular locations, especially at the border, and

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[127] Christina Asencio and Rebecca Gendelman, *Inhumane and Counterproductive: Asylum Ban Inflicts Mounting Harm*, report Human Rights First, October 12, 2023, https://humanrightsfirst.org/library/inhumane-and-counterproductive-asylum-ban-inflicts-mounting-harm/ (accessed October 13, 2023); Eleanor Acer, Christina Asencio, and Rebecca Gendelman, *Refugee Protection Travesty: Biden Asylum Ban Endangers and Punishes At-Risk Asylum Seekers*, report, July 23, 2023, https://humanrightsfirst.org/wp-content/uploads/2023/07/Refugee-Protection-Travesty_Asylum-Ban-Report_July-2023-1.pdf (accessed February 11, 2024).

[128] Human Rights Watch interviews with asylum seekers, Mexico, August-September 2023; Human Rights Watch, DHS OIG Formal Complaint Regarding 'Remain in Mexico.'

[129] Nancy Lizet Hernández, "Detienen a alcalde de Matehuala de SLP por ejercicio abusivo de la función pública," *El Universal*, November 11, 2023, https://www.eluniversal.com.mx/estados/detienen-a-alcalde-de-matehuala-de-slp-por-ejercicio-abusivo-de-la-funcion-publica/ (accessed December 6, 2023); Patricia Azuara, "Secuestro de Migrantes en SLP: Detienen a jefe policiaco de Matehuala tras operativo sorpresa," *El Financiero*, April 11, 2023, https://www.elfinanciero.com.mx/estados/2023/04/11/secuestro-de-migrantes-en-slp-detienen-a-jefe-policiaco-de-matehuala-tras-operativo-sorpresa/ (accessed December 6, 2023).

they have well-established practices for conducting targeted kidnappings and extortions of migrants.[130] They track migrants in transit, sourcing information from taxi or rideshare drivers, migrant shelters, and observing migrants at outdoor encampments. They operate with near total impunity.

The kidnapping and extortion of migrants as a cartel business model grew as the result of the Trump administration's metering policy, Remain in Mexico, and rapid expulsion policies that expose migrants to harm in Mexico, often for extended periods of time.[131] Human Rights First documented 1,544 publicly reported cases of kidnapping and other violent attacks of migrants during the first two years of Remain in Mexico.[132] That figure expanded under the Biden administration to 13,480 as of December 2022.[133] Under the Biden asylum rule and digital metering, kidnapping and extortion rings targeting migrants have expanded further, with reports of new kidnapping operations in cities in central Mexico, including Torreon and Durango.[134]

"Migration became an international business, and they wanted a cut," said Raymundo Ramos, director of the Comité de Derechos Humanos de Nuevo Laredo. "Cartels, especially in the north, started seeing migrants as part of their business model."[135]

Ramos said that while his organization has observed a steady increase in kidnappings of migrants at the border and has supported victims, they do not dare document kidnappings publicly or report them because doing so would make them targets for violence as well.[136]

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[130] Human Rights Watch, DHS OIG Formal Complaint Regarding 'Remain in Mexico.'

[131] Ibid.; Stephen Dudley, Parker Asmann and Victoria Dittmar, "Unintended Consequences: How US Immigration Policy Foments Organized Crime on the US-Mexico Border," *InSight Crime*, June 2023, https://insightcrime.org/wp-content/uploads/2023/06/HGBF-US-Policy-OC-and-Migration-Policy-Brief-InSight-Crime-June-2023-FINAL-ENG.pdf (accessed October 16, 2023).

[132] Human Rights First, "Any Version of Remain in Mexico Policy Would be Unlawful, Inhumane, and Deadly," fact sheet, September 9, 2021, https://humanrightsfirst.org/library/any-version-of-remain-in-mexico-policy-would-be-unlawful-inhumane-and-deadly/ (accessed December 5, 2023).

[133] Julia Neusner, Kennji Kizuka, and Eleanor Acer, *Human Rights Stain, Public Health Farce*, report, Human Rights First, December 15, 2022, https://humanrightsfirst.org/library/human-rights-stain-public-health-farce/ (accessed April 16, 2024).

[134] Human Rights Watch interview with Berto M., Monterrey, Mexico, August 22, 2023; Human Rights Watch interview with workers at Casa Tochan, Mexico City, August 29, 2023; Human Rights Watch interviews with shelter workers, Monterrey, Mexico, August 2023.

[135] Human Rights Watch interview with Raymundo Ramos, director, Comité de Derechos Humanos de Nuevo Laredo, Nuevo Laredo, Mexico, September8, 2023.

[136] Ibid.

In other parts of Mexico, migrants in transit are frequently targeted by Mexican government officials and criminals for extortion, and other abuses. Asylum seekers, shelter workers, and commercial bus company employees told Human Rights Watch that Mexican police, National Guard soldiers, INM agents, or cartels frequently stop and board commercial buses—a primary means of travel through Mexico for migrants—and racially profile and extort money or phones from migrants on board.[137] Mexican police and private security also have targeted migrants for extortion on cargo trains, they said, which migrants ride atop of when safer pathways are not accessible. If migrants cannot pay the requested sum, they risk being forcibly taken to southern Mexico by Mexican immigration officials, kidnapped, sexually assaulted, or otherwise harmed. Human Rights Watch has also previously documented the kidnapping of migrants by police in Mexican border cities.[138]

Kidnapping for Ransom and Sexual Violence

The more difficult it is for migrants to cross the US-Mexico border, the more money cartels make, whether from smuggling operations or from kidnapping and extortion. Criminal actors also have near impunity when sexually assaulting asylum seekers, given the fear and power imbalance smugglers can exploit due to US policies of digital metering.

Human Rights Watch documented reports of kidnapping for ransom from migrants in each of the five Mexican cities in which we conducted interviews.[139] In one case, a man kidnapped in Durango, in the Mexican state of Durango, reported seeing about 150 other kidnapped migrants there in the stash house where he was being held.[140] Durango has been the site of several mass kidnappings of migrants by cartel operatives.[141] In another case, a migrant who had been kidnapped for ransom by men who identified themselves as belonging to "the cartel" in Mexicali, Mexico, near the Calexico US port of entry, said he

[137] Human Rights Watch interviews with asylum seekers, Mexico and United States, August-September 2023; Human Rights Watch interviews with migrant shelter workers, Mexico and United States, August-September 2023; Ari Sawyer, "Mexico's Congress Should Ban Discriminatory Immigration Checks," commentary, Human Rights Watch dispatch, April 25, 2023, https://www.hrw.org/news/2023/04/25/mexicos-congress-should-ban-discriminatory-immigration-checks.

[138] Human Rights Watch, DHS OIG Formal Complaint Regarding 'Remain in Mexico.'

[139] Human Rights Watch interviews with asylum seekers, Mexico, August-September 2023.

[140] Human Rights Watch interview with Nicolas P., Piedras Negras, Mexico, September 5, 2023.

[141] Jose Luis Gonzalez, Jackie Botts, and Daina Beth Solomon, "Migrants Tell of Mass Kidnappings in Mexico Before Crossing Into the US," *Reuters*, December 14, 2022, https://www.reuters.com/world/migrants-tell-mass-kidnappings-mexico-before-crossing-into-us-2022-12-14/ (accessed October 18, 2023).

witnessed cartel operatives shoot and kill two Honduran migrants when they tried to defend themselves.[142]

Eddy L, 40, a Venezuelan asylum seeker, said an INM agent stopped a bus he was riding and took him off it when he had no money and could not pay the amount she was demanding. He was detained and forcibly relocated to the border with Guatemala after being forced to sign an agreement that he would leave Mexico through its southern border. Traveling north once more, he rode atop a cargo train along with hundreds of other migrants and was robbed of his cellphone. Near Celaya, in the Mexican state of Guanajuato, he witnessed around 15 people kidnapped from the train by unidentified men. He managed to run away.[143]

Javi J., 42, a Honduran asylum seeker, was kidnapped in Reynosa, in the Mexican state of Tamaulipas, for two months until his brother could pay a ransom of US$4,000.[144]

Carlos M, 32, told Human Rights Watch he was kidnapped by people who identified themselves as police in Tonalá, Jalisco, Mexico, for three days.[145]

“They hit me and sent photos to my family saying that they would kill me if they didn't pay,” Carlos said. His mother-in-law paid a ransom of US$2,000 for his release, and the police released him at the border with Guatemala.[146]

Nicolas P., 20, a Honduran asylum seeker, was kidnapped shortly after arriving at a hotel in Durango. Men who identified themselves as police, used police uniforms, and used police cars showed up and took him from his room, leading him to believe the hotel staff called them. The police delivered him to a cartel stash house. Cartel operatives took his phone and, after four days, had him call his family, who paid a ransom of US$1,000 for his release. The police then came to pick him up from the cartel stash house and took him back to the hotel,

[142] Human Rights Watch interview with Berto M., Monterrey, Mexico, August 22, 2023.
[143] Human Rights Watch interview with Eddy L., Saltillo, Mexico, August 26, 2023.
[144] Human Rights Watch interview with Javi. J., Monterrey, Mexico, August 24, 2023.
[145] Human Rights Watch interview with Carlos M., Monterrey, Mexico, August 24, 2023.
[146] Ibid.

saying "everything has been arranged." He said he believes the hotel workers, the police, and the cartel are working together to operate an efficient kidnapping ring.[147]

In addition, Beatriz Fuentes, the director of the Casa Fuente migrant shelter in Mexico City, told Human Rights Watch it is common for migrant women to arrive to her shelter having been sexually assaulted.[148]

"Sexual assault has become normalized among women," she said. "It's seen as another payment to be able to travel or cross."[149]

Cartel Coercion and Kidnappings in Nuevo Laredo

The Rio Grande between Laredo in the United States and Nuevo Laredo in Mexico is unmarred by sections of border wall, razor wire, or buoys with saws on them, but few dare cross it without paying and getting permission from the cartel that polices it, according to asylum seekers, migrant shelter workers, and NGO workers there.[150]

With the introduction of the digital metering system, the cartel in Nuevo Laredo has endeavored to charge asylum seekers with a CBP One appointment US$500 for permission to cross and initially wanted shelter workers in Nuevo Laredo to carry out the extortion on their behalf, the shelter workers told Human Rights Watch.[151] Instead of capitulating to the cartels, the shelters closed, leaving thousands of asylum seekers waiting weeks and months for their CBP One appointment in a makeshift encampment about two blocks from the US port of entry, with no security or access to basic services.[152]

Many asylum seekers told Human Rights Watch they saw cartel lookouts surveilling the river to ensure asylum seekers are not able to turn themselves in to CBP there, and that cartel operatives visit the makeshift refugee camp, taking photos of the asylum seekers,

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[147] Human Rights Watch interview with Nicolas P., Piedras Negras, Mexico, September 5, 2023.

[148] Human Rights Watch interview with Beatriz Fuentes, director, Casa Fuentes, August 15, 2023.

[149] Ibid.

[150] Ibid.; Human Rights Watch interviews with asylum seekers, Nuevo Laredo, Mexico, September 2023; Human Rights Watch interviews with shelter workers, Nuevo Laredo, Mexico, September 2023.

[151] Ibid.

[152] Ibid.

including children, warning them that they will be seriously harmed if they try to cross the border without paying.[153]

The cartel also kidnaps migrants directly from the bus terminal in Nuevo Laredo.[154] Taxi and rideshare drivers in Nuevo Laredo are reportedly forced to participate in a WhatsApp group they share with cartel operatives where they must notify the cartel when they have migrant passengers and turn migrants over to the cartel when asked.[155] Even the migrant shelters had been compromised while they were still open, with some workers extorting migrants on behalf of the cartel, while others turn over migrants' identifying information to the cartel on a regular basis, the workers themselves told Human Rights Watch.[156]

Forced Relocation of Asylum Seekers to Southern Mexico

The Mexican government also apprehends some non-Mexican asylum seekers at the US border before they can reach the United States and relocates them to southern Mexico, where they are typically pressured to sign written agreements to leave Mexico via its southern border. The Mexican government also summarily deports asylum seekers to their country of origin, typically without screening to ensure they are not being returned to harm.

Virginia Z., a 47-year-old Venezuelan asylum seeker traveling with her 11-year-old son, told Human Rights Watch the family was attempting to turn themselves in at the Eagle Pass port of entry in August 2023 when INM agents near the international bridge "grabbed" them, she said, put them on a bus, and relocated them to the state of Tabasco, which borders Guatemala.[157] Traveling north once again through Mexico, Virginia lost her phone and had to create a new CBP One registration using someone else's phone. She had been waiting for two months in Nuevo Laredo when we spoke with her.[158]

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[153] Human Rights Watch interviews with asylum seekers, Nuevo Laredo, Mexico, September 2023.

[154] Human Rights Watch interview with Raymundo Ramos, director, Comité de Derechos Humanos de Nuevo Laredo, Nuevo Laredo, Mexico, September 8, 2023; Human Rights Watch interviews with asylum seekers, Nuevo Laredo, Mexico, September 2023; Human Rights Watch interviews with shelter workers, Nuevo Laredo, Mexico, September 2023.

[155] Ibid.

[156] Ibid.

[157] Human Rights Watch interview with Virginia Z., Nuevo Laredo, Tamaulipas, Mexico, September 7, 2023.

[158] Ibid.

York G., a 28-year-old Haitian asylum seeker, told Human Rights Watch he was waiting for a CBP One appointment in Piedras Negras in June 2023 when INM agents apprehended him, put him on a bus, and relocated him near the Mexican border with Guatemala, saying they were doing it on behalf of the United States.[159] York told a Human Rights Watch researcher, "The agents told me, 'We have to deport [relocate] you, we are not doing it because we want to. It is not anything to do with you being Haitian or Black,'" York said. "They said they had to do a certain number of removals set by the US government."[160]

Mexican President Andrés Manuel López Obrador has repeatedly agreed to block migrants from arriving at the US southern border, including by using Mexican authorities to apprehend asylum seekers in border cities and relocate them to southern Mexico.[161]

York said he experienced discrimination and abuse in Mexico at the hands of Mexican government officials. After being relocated to southern Mexico by Mexican government authorities, he traveled north again and had been waiting for his appointment for two-and-a-half months at the time we spoke with him.[162]

US Removals of Non-Mexicans to Mexico

Since May 2023, when Mexico agreed to accept removals and voluntary returns of non-Mexican nationals from the United States, CBP has sent thousands of people across the border.[163] Earlier, under separate agreements, the United States sent more than 77,000 people, mostly from Honduras, Nicaragua, Cuba, Guatemala, El Salvador, Venezuela, Colombia, and Ecuador, to Mexico pending US asylum hearings,[164] and it also carried out

[159] Human Rights Watch interview with York G., Saltillo, Coahuila, Mexico, August 26, 2023.

[160] Ibid.

[161] Rosa Flores, et al., "Mexico Makes Agreement With US to Deport Migrants From its Border Cities as One Mayor Warns His City is at 'a Breaking Point,'" *CNN*, September 24, 2023, https://edition.cnn.com/2023/09/23/us/mexico-us-border-patrol-agreement-migration-surge/index.html (accessed March 1, 2024); "Mexico's President is Willing to Help With Border Migrant Crush but Wants US to Open Talks With Cuba," *Associated Press*, December 22, 2023, https://apnews.com/article/mexico-border-crossings-migrants-venezuela-cuba-6844e96d09bee286964e9bac15d06fba (accessed March 1, 2024).

[162] Human Rights Watch interview with York G., Saltillo, Coahuila, Mexico, August 26, 2023.

[163] Instituto Nacional de Migración letter to Human Rights Watch, October 26, 2023.

[164] American Immigration Council, "The 'Migrant Protection Protocols': an Explanation of the Remain in Mexico Program," 2024, https://www.americanimmigrationcouncil.org/sites/default/files/research/migrant_protection_protocols_2024.pdf (accessed April 10, 2024); Transactional Records Access Clearinghouse (TRAC), MPP (Remain in Mexico) Deportation Proceedings—All Cases, Data, November 2022, https://trac.syr.edu/phptools/immigration/mpp/ (accessed April 10, 2024).

summary expulsions more than 2.8 million times,[165] including hundreds of thousands of expulsions to Mexico of migrants from mostly Honduras, Guatemala, El Salvador, and Haiti.[166]

Under the Biden asylum rule, asylum seekers are sent to Mexico either because they were deported in the enhanced expedited removal proceedings or they agreed to a "voluntary return" to Mexico.[167] Some non-Mexican asylum seekers told Human Rights Watch they were warned by CBP officials that they would not be granted asylum and that they would face deportation with a 5-year bar on return to the United States if they did not agree to return to Mexico—typically without screening to ensure asylum seekers were not being returned to harm in Mexico.[168] The non-Mexican asylum seekers said CBP officials told them they would be able to wait for a CBP One appointment and access the US asylum system if they agreed to be sent to Mexico.[169]

However, when US CBP officials carry out removals or returns of non-Mexican asylum seekers—Haitians, Nicaraguans, Venezuelans, and Cubans—to Mexico, they turn them over directly to Mexican INM agents,[170] who often apprehend them, place them on buses they are not allowed to leave for up to three days, and relocate them to Villahermosa, Tabasco, at the border with Guatemala, without screening for protection needs.[171] When effectuating these forced relocations, which INM calls "assisted returns" or "transfers,"[172]

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[165] Adam Isacson, "10 Things to Know About the End of Title 42," commentary, Washington Office on Latin America, May 9, 2023, https://www.wola.org/analysis/end-title-42/#:~:text=As%20a%20result%2C%20since%20March,border%20over%202.8%20million%20times (accessed April 10, 2024).

[166] John Gramlich, "Key Facts About Title 42, the Pandemic Policy That Has Reshaped Immigration Enforcement at US-Mexico Border," *Pew Research Center*, April 27, 2022, https://www.pewresearch.org/short-reads/2022/04/27/key-facts-about-title-42-the-pandemic-policy-that-has-reshaped-immigration-enforcement-at-u-s-mexico-border/#:~:text=Mexico%20is%20by%20far%20the,have%20been%20from%20other%20countries (accessed April 10, 2024).

[167] Alex Hinojosa, "US Program is Leaving Asylum Seekers Stranded in Mexico, Advocates Say," *The Guardian*, July 2, 2023, https://www.theguardian.com/us-news/2023/jul/02/voluntary-return-us-mexico-border-migration-stranded (accessed April 10, 2024).

[168] Human Rights Watch interviews with asylum seekers, Mexico, August-September 2023.

[169] Ibid.

[170] Human Rights Watch interviews with asylum seekers and shelter workers, Mexico, August-September 2023; US Customs and Border Protection, Custody and Transfer Statistics FY2023, https://www.cbp.gov/newsroom/stats/custody-and-transfer-statistics (accessed October 16, 2023); Instituto Nacional de Migración letter to Human Rights Watch, October 26, 2023.

[171] Human Rights Watch interviews with asylum seekers and shelter workers, Mexico, August-September 2023.

[172] Maria Verza, "Mexico Halts Deportations and Migrant Transfers Citing Lack of Funds," *Associated Press*, December 4, 2023, https://apnews.com/article/mexico-immigration-migrants-venezuela-17615ace23d0677bb443d8386e254fbc (accessed December 6, 2023).

INM officials often compel asylum seekers to sign a statement saying they will leave Mexico via its southern border within a certain number of days.[173]

Asylum seekers told Human Rights Watch that INM agents yelled at them and would not allow them to read what they were signing. They said INM agents also never asked them if they had a fear of return to their home country or to Guatemala.[174]

From May through September 2023, the National Institute of Migration (INM) told Human Rights Watch it had received 31,409 non-Mexican migrants sent by the United States to Mexico.[175]

That number is higher than data inconsistently cited by the US government over the same period. CBP said over 17,000 non-Mexicans had been deported to Mexico from May through September 20, 2023.[176] Also citing data from May through September 2023, DHS Assistant Secretary for Border and Immigration Policy Blas Nuñez-Neto reported CBP had removed about 21,000 non-Mexican nationals to Mexico.[177]

CBP data show nearly a 10-fold increase in transfers of all migrants since the Biden asylum rule went into effect in May 2023 and since Mexico agreed to accept US returns and removals of non-Mexicans, also in May: from 3,552 people in April, when those transferred were Mexican nationals only, to 30,009 people in August, with transfers then including Mexican and non-Mexican nationals.[178]

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[173] Human Rights Watch interviews with asylum seekers, Mexico and United States, August-September 2023; Maria Verza and Edgar H. Clemente, "Mexico Moving Migrants Away from Borders to Relieve Pressure," *Associated Press*, May 20, 2023, https://apnews.com/article/mexico-migrants-borders-us-guatemala-0a4352adf37ae74ecf9436ae6bbc7980 (accessed December 6, 2023).

[174] Human Rights Watch interviews with asylum seekers, Mexico and United States, August-September 2023.

[175] Instituto Nacional de Migración letter to Human Rights Watch, October 26, 2023.

[176] US Department of Homeland Security, Fact Sheet: The Biden-Harris Administration Takes New Actions to Increase Border Enforcement and Accelerate Processing for Work Authorizations, While Continuing to Call on Congress to Act, September 20, 2023, https://www.dhs.gov/news/2023/09/20/fact-sheet-biden-harris-administration-takes-new-actions-increase-border (accessed April 10, 2024).

[177] *M.A. v Mayorkas*, No. 1:23-cv-01843-TSC, US District Court for D.C., October 27, 2023, Appendix A: Declaration of Blas Nuñez-Neto, para. 27, https://storage.courtlistener.com/recap/gov.uscourts.dcd.256826/gov.uscourts.dcd.256826.53.1.pdf (accessed April 10, 2024).

[178] US Customs and Border Protection, Custody and Transfer Statistics FY2023, https://www.cbp.gov/newsroom/stats/custody-and-transfer-statistics (accessed October 16, 2023).

As part of an agreement with the US government, the Mexican government also summarily deports non-Mexican asylum seekers to their home countries after apprehending them in Mexican border cities, before asylum seekers have a chance to seek asylum in the United States.[179] Since the asylum rule went into effect, Mexico has made an official and public agreement with the United States to apprehend more asylum seekers at its border with the US and send them to their home countries by land or air.[180]

"Mexico continues to do the United States' dirty work," said a Mexican human rights worker and attorney with extensive experience with asylum seekers on the Mexican side of the border who spoke to Human Rights Watch on condition of anonymity. "[After CBP sends them to Mexico], they're given to Mexican immigration who take them on a bus to Tabasco, Mexico."[181]

According to an October 2023 report, the INM paid private bus company ETN Turistar 490 million pesos (US$28.5 million) to transport to the Mexico-Guatemala border migrants and asylum seekers apprehended by Mexican authorities or removed or sent by the United States to Mexico.[182] The contract expired December 31, 2023, and was reportedly not renewed.[183]

The López Obrador administration summarily deported more than 53,300 migrants to their country of origin in 2023, 122,000 in 2022, and 130,000 in 2021.[184]

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[179] Rosa Flores, et al, "Mexico Makes Agreement With US to Deport Migrants, *" CNN*.

[180] Instituto Nacional de Migracion, "Acuerdan INM y Ferromex acciones con 3 niveles de gobierno y CBP para sistema ferroviario y que personas migrantes no arriesguen su vida," press release, September 22, 2023, https://www.gob.mx/inm/prensa/acuerdan-inm-y-ferromex-acciones-con-los-tres-niveles-de-gobierno-y-cbp-para-la-ruta-del-sistema-ferroviario-a-fin-de-que-las-personas-migrantes-no-arriesguen-su-vida-a-bordo?idiom=fr (accessed December 6, 2023); Rosa Flores, et al, "Mexico Makes Agreement With US to Deport Migrants, *" CNN*.

[181] Human Rights Watch interview with Mexican human rights worker and attorney, Monterrey, Mexico, August 24, 2023.

[182] Roxana González, "Transportar a Migrantes en autobuses le Cuesta 490 mdp al INM," *El Sol de México*, October 17, 2023, https://www.elsoldemexico.com.mx/mexico/sociedad/transportar-a-migrantes-en-autobuses-le-cuesta-490-mdp-al-inm-10809610.html (accessed October 12, 2023).

[183] Ibid.; Linaloe R. Flores, "2023, el intrincado año para la migración en México," *Reporte Indigo*, January 8, 2024, https://www.reporteindigo.com/reporte/2023-el-intrincado-ano-para-la-migracion-en-mexico-presupuesto-atencion/ (accessed March 1, 2024).

[184] Gobierno de México, Personas en Situación Migratoria Irregular (Antes, Extranjeros Presentados y Devueltos), 2023, Boletines Estadísticos, n.d., http://www.politicamigratoria.gob.mx/es/PoliticaMigratoria/CuadrosBOLETIN?Anual=2023&Secc=3 (accessed March 4, 2024); Maria Verza, "México Ordena Suspender Traslados y Devoluciones de Migrantes por Falta de Dinero," *Associated Press*, December 4, 2023, https://apnews.com/world-news/general-news-d3491122a5b85b6b7ce8f97711edf66f (accessed December 5, 2023).

Lena, 56, and her nephew Fernando, 24, fled Venezuela and then Colombia with Lena's son, daughter-in-law, and their two children. After a long and harrowing journey, they turned themselves in outside the Eagle Pass port of entry. CBP then separated the family three ways: Lena's son, wife, and children were allowed to enter the United States, while Fernando was sent to El Paso and held in CBP custody for 16 days, and Lena was sent to Laredo for a few days and then to El Paso. In total, Lena was held in CBP border jails for 22 days, where she said she was only questioned by CBP agents about whether she had a fear of return to Mexico, not to her country of origin.[185]

Fernando told Human Rights Watch that CBP tried to get him to accept a "voluntary" return to Mexico.[186] "Border Patrol kept telling me that if I continued to insist on my fear of return then I would be deported," Fernando said. "They told me dozens of times."[187]

At separate times, and without allowing them to communicate with one another, CBP deported Lena and Fernando to Mexico. In both cases, CBP shackled the Venezuelan asylum seekers and accompanied them across the international bridge into Ciudad Juárez, Chihuahua, Mexico, and turned them over directly to INM agents. Their shackles were only removed as the custody transfer occurred. In both cases, INM agents detained them, put them on buses with other deported or returned asylum seekers, and had them driven for three days to forcibly relocate them to Villahermosa, Tabasco, a state bordering Guatemala. INM agents pressured them to sign a document agreeing to leave via the southern border of their own accord.[188]

Because CBP agents never returned Fernando's personal belongings, he found himself once again in southern Mexico, a country where he and his family had already experienced abuse, with no documents, no cellphone, and no money. Lena arrived a few days later, but the two did not manage to find one another again until they had both made it to northern Mexico once more.[189]

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[185] Human Rights Watch interview with Fernando G., Saltillo, Mexico, August 25, 2023; Human Rights Watch interview with Lena G., Saltillo, Mexico, August 26, 2023.

[186] Human Rights Watch interview with Fernando G., Saltillo, Mexico, August 25, 2023.

[187] Ibid.

[188] Ibid.

[189] Ibid.; Human Rights Watch interview with Lena G., Saltillo, Mexico, August 26, 2023

Alana T., 54, left Venezuela with her daughter, 30, her son-in-law, 31, and her four grandchildren, ages 1, 2, 8, and 9. After they crossed the Rio Grande near the port of entry in Eagle Pass and turned themselves in, CBP agents threw away Alana's diabetes medicine and separated her from the rest of her family. CBP immediately processed her children and grandchildren into the United States but detained Alana for seven days without medical treatment. An immigration judge ordered her removal because she had not arrived with a CBP One appointment. CBP deported her to Mexico, turning her over to INM agents in Nuevo Laredo. INM detained Alana on a bus for three days with 40 other women without letting them get off, forcibly relocating them all in Villahermosa, Tabasco, Mexico, near Guatemala, after which she said they pressured the women to sign a paper agreeing to depart Mexico via its southern border.[190]

Asylum seekers removed or returned by CBP to Mexico and then sent by INM agents from the US-Mexico border to its southern border with Guatemala are often compelled to try to travel north again to attempt to access the US asylum system.

Forcibly relocating migrants and asylum seekers from northern to southern Mexico endangers them and subjects them again to the exhausting journey and gauntlet of abuse migrants pass through in Mexico to reach the United States. Having been denied access to the US asylum system, many are likely to pursue more dangerous irregular crossings to enter the United States.

Risk of Exposure to Harm in Guatemala

It is unreasonable to expect asylum seekers to agree to leave Mexico through its southern border with Guatemala.

The vast majority of asylum seekers Human Rights Watch spoke to said Guatemalan police or immigration officials routinely demanded money from them, threatening to deport them if they did not pay, while, in some cases, violently assaulting them.[191] Asylum seekers reported that Guatemalan officials also stopped and boarded commercial buses and demanded payment from migrants throughout the country.[192]

[190] Human Rights Watch interview with Alana T., Saltillo, Mexico, August 26, 2023.
[191] Human Rights Watch interviews with asylum seekers, Mexico and United States, August-September 2023.
[192] Ibid.

At least some Guatemalan officials have claimed to be acting on behalf of the US government, although the circumstances of these interactions suggest the officials likely did so to intimidate asylum seekers.

Felipe Z., an asylum seeker who fled Ecuador with his 10 family members, told Human Rights Watch that Guatemalan officials told him they were working for the US government and Guatemalan officials were supposed to be conducting deportations on behalf of the United States when they apprehended the family of 11.[193]

The Guatemalan government has recently agreed in talks with the US government to try to reduce the number of migrants arriving at the US southern border and has in recent years carried out violent crackdowns of migrants along with US Immigration and Customs Enforcement officials in Guatemala.[194] However, there is no indication Guatemalan police or immigration officials are "working for" the US government.

Asylum seekers told us that police and immigration authorities in Guatemala often conducted invasive searches of their persons and belongings, probing with ungloved hands into shoes, socks, waistbands, bras, and underwear. In one case recounted to us, Guatemalan police stole a young girl's earrings. Asylum seekers reported these types of abuses in interviews in each of the six cities and 10 shelters that Human Rights Watch visited.[195]

Some asylum seekers said women had been sexually assaulted during such searches, including acts of unwanted touching and being forced to undress, by men who identified themselves as Guatemalan government officials.[196]

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[193] Human Rights Watch interview with Felipe Z., Saltillo, Mexico, August 25, 2023; Asylum seekers Human Rights Watch interviewed were not sure of exactly where they were in Guatemala when this happened.

[194] The White House, Joint Statement from the United States and Guatemala on Migration, June 1, 2023, https://www.whitehouse.gov/briefing-room/statements-releases/2023/06/01/joint-statement-from-the-united-states-and-guatemala-on-migration/ (accessed February 1, 2024); Aline Barros, "US, Mexico, Guatemala Boost Cooperation to Control Migrant Arrivals at Southern Border," *Voice of America*, February 28, 2024, https://www.voanews.com/a/us-mexico-guatemala-boost-cooperation-to-control-migrant-arrivals-at-southern-border/7507282.html (accessed February 1, 2024); "US Agents Aid in Guatemalan Crackdown on Hundreds of Migrants Headed North," *The Guardian*, January 16, 2020, https://www.theguardian.com/world/2020/jan/16/guatemala-migrants-us-agents-honduras (accessed February 1, 2024).

[195] Human Rights Watch interviews with asylum seekers, Mexico and United States, August-September 2023.

[196] Ibid.

Pamela D., 23, and Naomi D., 25, cousins who fled Venezuela with their teenage sisters, told Human Rights Watch that armed men in uniforms stopped a bus they were on in Guatemala in the middle of the night. Two armed men then boarded the bus. One of these men took all the male passengers off the bus. The other man began to point a flashlight in the faces of the women and girls. He appeared to be singling out certain women, at which point he would turn off the light and begin sexually assaulting them. He turned off the light when he got to Naomi and reached his hand beneath her clothes, fondling her breasts and genitals before taking her money.[197]

[197] Human Rights Watch interview with Pamela D., Mexico City, August 29, 2023; Human Rights Watch interview with Naomi D., Mexico City, August 29, 2023.

Legal Framework

The United States' near-exclusive reliance on CBP One to access the asylum system, enforced by CBP agents at the physical border and by Mexican officials, as well as private security guards who appear to be operating at the direction of Mexican officials, likely results in violations of the United States' obligation to refrain from refoulement—the return of people to likely persecution, torture, or other irreparable harm. In addition, when Mexico blocks people from reaching the United States, transfers people from its northern border, and induces them to exit via its southern border, its actions are also likely to result in refoulement, constituting violations for which Mexico and the United States share responsibility.

Digital metering also deprives people of effective enjoyment of the right to seek asylum and subjects them to discrimination on the basis of race, wealth, and other status, in violation of the United States' international obligations.

Finally, because asylum seekers turned back under the digital metering system are readily identifiable, share common characteristics, are perceived in Mexican society as a distinct social group, and face harm because they are asylum seekers subject to digital metering, they can plausibly show they face persecution on account of their membership in a particular social group. That is, the digital metering system has the foreseeable consequence of creating more viable asylum claims.

The Obligation Not to Return People to Irreparable Harm

The principle of nonrefoulement prohibits states from transferring anyone, directly or indirectly, to a place where they would have a well-founded fear of persecution, would face a risk of torture or other cruel, inhuman, or degrading treatment or punishment, or would likely suffer other irreparable harm. Refoulement is prohibited by the 1967 Protocol Relating to the Status of Refugees,[198] the International Covenant on Civil and Political

[198] UN Protocol relating to the Status of Refugees (Refugee Protocol), 606 U.N.T.S. 268 (entered into force October 4, 1967), incorporating the substantive provisions of the Convention relating to the Status of Refugees (Refugee Convention), 189 U.N.T.S. 150 (entered into force April 22, 1954). The United States acceded to the Refugee Protocol in 1968; Mexico acceded to the protocol in 2000. The United States incorporated the provisions of the Refugee Protocol into domestic law through the

Rights,[199] and the Convention against Torture,[200] among other treaties,[201] as well as under customary international law.[202]

The principle is reflected in US law.[203]

US turnbacks of Mexican nationals or anyone with a fear of persecution in Mexico without screening for asylum likely violates the principle because nonrefoulement hinges on a refugee not being returned to a place where their lives or freedom would be at risk, often, but not always, their country of origin. Reflecting this reality, the Circumvention of Lawful Pathways Rule exempts Mexican nationals.[204] Similarly, CBP guidance during prior metering operations has warned that Mexican nationals should not be turned back at the border.[205]

Refugee Act of 1980, Pub. L. No. 96- 212, 94 Stat. 102 (1980). As the US Supreme Court has confirmed, a primary purpose of Congress in passing the Refugee Act "was to bring United States refugee law into conformance with the 1967 United Nations Protocol." *INS v. Cardoza-Fonseca*, 480 U.S. 421, 426 (1987). See also *INS v. Stevic*, 467 U.S. 407, 416-24 (1984) (providing a history of the incorporation of the Refugee Convention standards into US law through the Refugee Protocol and the Refugee Act of 1980).

[199] International Covenant on Civil and Political Rights (ICCPR), December 16, 1966, 999 U.N.T.S. 171 (entered into force February 23, 1976); Human Rights Committee, General Comment No. 20: Article 7 (Prohibition of Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment) (February 10, 1992), para. 9; Human Rights Committee, General Comment No. 31 on the Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (May 26, 2004), para. 12.

[200] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 3, December 10, 1984, (entered into force June 26, 1987).

[201] For example, American Convention on Human Rights, art. 22(8); Convention on the Rights of the Child, arts. 6, 37, September 2, 1990, 1577 U.N.T.S. 3 (entered into force November 20, 1989). The UN Committee on the Rights of the Child has interpreted the Convention on the Rights of the Child to prohibit expulsions or returns "to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child." Committee on the Rights of the Child, General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, U.N. Doc. CRC/GC/2005/6 (September 1, 2005), para. 27. Mexico acceded to the American Convention on February 2, 1981, and ratified the Convention on the Rights of the Child on September 21, 1990.

[202] See, for example, UN High Commissioner for Refugees (UNHCR), The Principle of Non-Refoulement as a Norm of Customary International Law. Response to the Questions Posed to UNHCR by the Federal Constitutional Court of the Federal Republic of Germany in Cases 2 BvR 1938/93, 2 BvR 1953/93, 2 BvR 1954/93, January 31, 1994, https://www.refworld.org/jurisprudence/amicus/unhcr/1994/en/20625 (accessed February 20, 2024).

[203] See, for example, 8 U.S.C. § 1158(b); 8 U.S.C. § 1231(b)(3)(A).

[204] Federal Register, Circumvention of Lawful Pathways, 88 Fed. Reg 31315.

[205] For example, CBP's 2018 "metering guidance" states: "[INM] 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 [INM] 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 [INM], as appropriate, to address such concerns." Customs and Border Protection Office of Field Operations, "Metering Guidance," memo, Pp. 43-44, April 27, 2018 (emphasis added), https://www.cbp.gov/sites/default/files/assets/documents/2021-Nov/Metering%20and%20Queue%20Management%2002.pdf (accessed December 6, 2023).

More generally, preventing arriving asylum seekers of any nationality from accessing asylum procedures—the mechanism which allows asylum seekers to be identified as refugees or not—based on whether or not they are able to access CBP One appointments constitutes a likely violation of nonrefoulement. While international refugee law does not formally provide an asylum seeker—a person claiming to be a refugee—the right to enter, the refoulement prohibition provides little latitude when the asylum seeker appears at a land border. As the UN's refugee agency, UNHCR, which provides authoritative guidance on refugee law, made clear in a 2023 brief to the US Supreme Court:

> The "cardinal protection principle" of non-refoulement prohibits State conduct that could "lead[] to" a refugee's "'return in any manner whatsoever' to an unsafe foreign territory." That certainly proscribes enactment and implementation of a blanket policy of "rejection at the [border] or nonadmission to the territory," because blanket rejection or non-admission clearly may subject a refugee to direct or indirect refoulement.[206]

The UNHCR's Executive Committee Conclusion 99 calls on States to ensure "full respect for the fundamental principle of nonrefoulement, including non-rejection at frontiers without access to fair and effective procedures for determining status and protection needs."

The US digital metering system, through the use of the CBP One application and by the actions of CBP agents and Mexican officials colluding with them, rejects asylum seekers, some of whom may be refugees, at the frontier. The promise of entry at a later date does not meet the standard of "effective procedures" for determining protection needs.

The risk of refoulement is particularly high for individuals who do not have a CBP One appointment and are therefore subject to the Biden asylum rule's enhanced expedited removal procedures. Asylum seekers must now show in credible fear interviews that they are not subject to the rule or that they qualify for an exception, an undertaking that is difficult on its own terms. Making an asylum claim is even more difficult, and may well be impossible, for people subjected to expedited removal, who have just a few days to

[206] *Arizona v. Mayorkas*, Amicus Curiae Brief of United Nations High Commissioner for Refugees before the US Supreme Court, February 8, 2023, https://www.supremecourt.gov/DocketPDF/22/22-592/254395/20230209124358742_22-592%20Amicus%20Brief.pdf (accessed December 6, 2023) (internal citations omitted).

prepare and present their cases, often over videoconference or on the phone, while detained by CBP under abusive conditions[207] and without access to counsel.

UNHCR has warned that "the credible fear prescreening within expedited removal has, since its inception, diverged from international standards for accelerated procedures."[208] Federal asylum officers have spoken out against these systems of "enhanced" expedited removal under the Biden asylum rule, saying they are "inconsistent with the asylum law enacted by Congress, the treaties the United States has ratified, and our country's moral fabric and longstanding tradition of providing safe haven to the persecuted," according to the union that represents United States Citizen and Immigration Services employees—the American Federation of Government Employees Council 119.[209]

Similarly, actions by Mexican officials to prevent asylum seekers from reaching US soil and seeking asylum are also likely acts of refoulement.

Moreover, Mexico's summary deportation of people without providing access to the asylum process or evaluating risks upon return also risks refoulement. The same is true of forced relocation to the Mexican border with Guatemala.

In short, the United States violates the obligation of nonrefoulement when its officials turn people back at the border to face irreparable harm. Mexico violates this obligation when its officials or agents, including private security guards operating under its direction or authority, turn people back from the US border to face irreparable harm, deport people without assessing the likelihood of harm upon their return, or induce people to depart Mexico via its southern border if they would face irreparable harm in Guatemala.

The United States and Mexico also violate the obligation of nonrefoulement when their officials or agents turn people back or induce them to travel to countries that then subject them to refoulement. For instance, the United States may not send a non-Mexican national

[207] See, e.g., Human Rights Watch, *"They Treat You Like You are Worthless"* (New York, Human Rights Watch, 2021).

[208] Letter from UN High Commissioner for Refugees (UNHCR), to Executive Office for Immigration Review and U.S. Citizenship and Immigration Services, "Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers," May 31, 2022, p. 14-15, https://www.regulations.gov/comment/USCIS-2021-0012-5305.

[209] Hamed Aleaziz, "Biden Immigration Plan Could Force Asylum Officers to Break Law, Union Warns," *Los Angeles Times*, February 27, 2023, https://www.latimes.com/world-nation/story/2023-03-27/biden-asylum-plan-break-law.

to Mexico if that person, in turn, may face refoulement by Mexico.[210] Similarly, Mexico may not send or induce the departure of a person to Guatemala if that person would likely face refoulement in Guatemala.

Moreover, the United States shares responsibility for violations by Mexican officials committed in the course of acts Mexico carries out at the behest of or in agreement with the United States government.[211]

It is a general principle of international law that one state may not avoid its international obligations by allowing a second state to commit acts that would be prohibited if committed by the first state.[212]

International law also extends responsibility for internationally wrongful acts to the conduct of non-state entities, for instance Mexican private security companies contracted by the government, when those entities exercise elements of governmental authority.[213] Even if the entity exceeds its authority or contravenes instructions, its conduct is considered an act of the state under international law if it is acting in a governmental capacity.[214] As the Human Rights Committee has said when interpreting Article 7 of the International Covenant on Civil and Political Rights, "[i]t is also implicit in article 7 that States Parties have to take positive measures to ensure that private persons or entities do not inflict torture or cruel, inhuman or degrading treatment or punishment on others within their power."[215] In the facts documented by this report, non-state entities may be acting in

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[210] See Amicus Curiae Brief of United Nations High Commissioner for Refugees, *Arizona v. Mayorkas*, No. 22-592 (U.S. filed February 8, 2023), https://www.supremecourt.gov/DocketPDF/22/22-592/254395/20230209124358742_22-592%20Amicus%20Brief.pdf (accessed April 1, 2024).

[211] Rosa Flores, et al, "Mexico Makes Agreement with US to Deport Migrants," *CNN*.

[212] Draft Articles on the Responsibility of States for internationally wrongful acts, adopted by the International Law Commission at its Fifty-third Session (2001) (extract from the Report of the International Law Commission on the work of its Fifty-Third Session), Official Records of the General Assembly, Fifty-sixth session, Supplement No. 10, (A/56/10), Ch. IV.E.1), at http://www.un.org/law/ilc/texts/State_responsibility/responsibility_articles(e).pdf#pagemode=bookmarks (ILC Draft Articles).

[213] Article 5 of the ILC Draft Articles states that "the conduct of a person or entity which is not an organ of the State… but which is empowered by the law of that State to exercise elements of the governmental authority shall be considered an act of the State under international law, provided the person or entity is acting in that capacity in the particular instance."

[214] "The conduct of an organ of a State or of a person or entity empowered to exercise elements of the governmental authority shall be considered an act of the State under international law if the organ, person or entity acts in that capacity, even if it exceeds its authority or contravenes instructions." Article 7, ILC Draft Articles.

[215] Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004) http://hrlibrary.umn.edu/gencomm/hrcom31.html (accessed October 14, 2023).

governmental capacity on behalf of Mexico or the United States and violating human rights, including by committing acts of refoulement.

The Right to Seek Asylum

The right to seek asylum is affirmed in the Universal Declaration of Human Rights and reflected in human rights treaties to which the United States and Mexico are party.[216] As UNHCR's Executive Committee has stated, "the institution of asylum, which derives directly from the right to seek and enjoy asylum from persecution set out in Article 14 of the [Universal] Declaration, is among the most basic mechanisms for the protection of refugees."[217]

The separate right of everyone to leave any country, including one's own, is essential to effective enjoyment of the right to asylum. The right to leave any country is affirmed in the Universal Declaration and guaranteed in the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and the American Convention.[218] The UN Human Rights Committee and the Inter-American Commission on Human Rights have highlighted the interrelationship between the rights to seek asylum, the right to leave any country, and the right to protection from refoulement.[219]

Actions by Mexican government officials that prevent migrants or asylum seekers from leaving Mexico violate the right to leave any country. The same is true of such actions by private actors contracted by the state or otherwise operating as state agents. The right to leave any country applies to everyone, including people not lawfully in the territory, and may be limited only for permissible reasons that are provided for by law, necessary and

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[216] Universal Declaration of Human Rights, art. 14; Refugee Protocol, art. 1 (incorporating the substantive obligations of the Refugee Convention); American Convention, art. 22(7).

[217] UN High Commissioner on Refugees (UNHCR), Executive Committee of the High Commissioner's Programme, Conclusion on International Protection No. 85 (XLIX) (October 9, 1998), para. f.

[218] Universal Declaration, art. 13(2); ICCPR, art. 12(2); International Convention on the Elimination of All Forms of Racial Discrimination, art. 5(d)(ii), February 7, 1966, 660 U.N.T.S. 195 (entered into force January 4, 1969; ratified by Mexico February 20, 1975); American Convention, art. 22(2).

[219] See UN Human Rights Committee, General Comment No. 15, para. 8; Organization of American States, Inter-American Commission on Human Rights, "IACHR Urges Honduras and Guatemala to Guarantee the Rights of People in the Migrant and Refugee Caravan," press release, February 19, 2019. https://www.oas.org/en/iachr/media_center/PReleases/2019/037.asp (accessed March 13, 2023).

proportionate, and consistent with other human rights.[220] The right applies even when persons do not have legal permission to travel to their intended destination.[221]

The Obligation of Nondiscrimination

The United States and Mexico are obligated to guarantee the right to asylum and other human rights without discrimination[222] and more generally to guarantee equality before the law, including "equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."[223]

In particular, both countries have "undertake[n] to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms."[224] The obligation to eliminate racial discrimination "in all its forms and manifestations"[225] extends to "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."[226] To fulfil this obligation, states should "[e]nsure that immigration policies do not have the effect of discriminating against persons on the basis of race, colour, descent, or national or ethnic origin,"[227] among other measures. Racially discriminatory impacts are also contrary to President Biden's Executive Order 13985, announcing a policy to address "entrenched disparities" in US laws and public policy.[228]

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[220] See Human Rights Committee, General Comment No. 27: Freedom of Movement, U.N. Doc. CCPR/C/21/Rev.1/Add.9 (November 1, 1999).

[221] See, for example, *Stamose v. Bulgaria*, App. No. 29713/05 (Eur. Ct. H.R. November 27, 2012), para. 36 (analyzing the analogous provision of the European Convention on Human Rights and concluding that "[a]lthough the Court might be prepared to accept that a prohibition on leaving one's own country imposed in relation to breaches of the immigration laws of another State may in certain compelling situations be regarded as justified, it does not consider that the automatic imposition of such a measure without any regard to the individual circumstances of the person concerned may be characterized as necessary in a democratic society.").

[222] ICCPR, art. 2; ICERD, art.

[223] ICCPR, art. 26. Accord ICERD, art. 5(a).

[224] ICERD, art. 2(1).

[225] Ibid., pmbl.

[226] Ibid., art. 1(1).

[227] UN Committee on the Elimination of Racial Discrimination, General Recommendation XXX on Discrimination Against Non-Citizens, para. 9.

[228] Federal Register, "Circumvention of Lawful Pathways," 88 Fed. Reg. 31315, p. 31,358-31,359.

As this report has shown, navigating the Biden asylum rule and the CBP One app is more difficult for certain categories of people—among them: disabled individuals, LGBT people, Black and Indigenous people, people with limited language or digital literacy skills, older people, and people who are not wealthy enough to be able to pay for smartphones, data plans, and access to Wi-Fi.

The racially discriminatory impacts of the Biden asylum rule and the digital metering system, imposed by the nearly mandatory use of CBP One, are particularly apparent. These policies inflict disproportionate harm on Black, Brown, and Indigenous asylum seekers. These rules target people seeking safety at the southern border, the overwhelming majority of whom are people of color. It is also the case that the US humanitarian parole program, which offers an avenue into the privileged group of asylum seekers under the Biden asylum rule, is only available to Cubans, Haitians, Nicaraguans, and Venezuelans. The program denies access to other nationalities, such as Guatemalans, of whom approximately 45 percent are Indigenous,[229] and any African or Asian nationalities. Meanwhile, a separate humanitarian parole process is readily available to Ukrainians,[230] who are predominantly white.

The effectively mandatory use of a mobile application that is known to be difficult for Black and Indigenous people, among others, to seek asylum violates US obligations under ICERD. More generally, the US digital metering system and other US asylum policies are dangerous for these groups of asylum seekers. Under the Biden asylum rule, and policies that predate it, the United States has regularly returned Black and Latinx migrants to

[229] International Work Group for Indigenous Affairs, "Indigenous Peoples in Guatemala," n.d., https://www.iwgia.org/en/guatemala.html (accessed March 13, 2024).

[230] US Citizenship and Immigration Services, "Uniting for Ukraine," updated February 27, 2024, https://www.uscis.gov/ukraine (accessed March 13, 2024).

countries where they are at risk, as Human Rights Watch has documented in Honduras[231], El Salvador[232], Mexico,[233] Cameroon,[234] and Haiti.[235]

Moreover, as described above, wealth-based discrimination is already cemented into one of the clearest avenues to access the regular US asylum system under the Biden asylum rule: the US humanitarian parole program for certain nationals. Many people do not have money to purchase a plane ticket to the United States or do not have a family member in the United States who is financially solvent enough to sponsor them—requirements under the program.[236]

CBP One's Digital Metering May Create a Particular Social Group

This report's principal finding is that digital metering by the United States, the resulting turnbacks by the United States and Mexico, and other practices by Mexico deprive people of access to asylum and risk refoulement. In addition, because digital metering creates specific risks for people who are turned back at the US border, it creates an independent basis for asylum. That is, although the asylum rules and practices implemented by the United States purport to increase the efficiency of the asylum system,[237] they will have the foreseeable effect of increasing the number of viable asylum claims.

US law defines a refugee in terms nearly identical to those of the Refugee Convention as someone fleeing persecution or fear of persecution "on account of race, religion, nationality, *membership in a particular social group,* or political opinion."[238] The Board of

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[231] Human Rights Watch, *"You Don't Have Rights Here:" US Border Screening and Returns of Central Americans to Risk of Serious Harm* (New York: Human Rights Watch, 2014), https://www.hrw.org/report/2014/10/16/you-dont-have-rights-here/us-border-screening-and-returns-central-americans-risk.

[232] Human Rights Watch*, Deported to Danger: United States Deportation Policies Expose Salvadorans to Death and Abuse*, (New York: Human Rights Watch, 2020), https://www.hrw.org/report/2020/02/05/deported-danger/united-states-deportation-policies-expose-salvadorans-death-and.

[233] Human Rights Watch, *"We Can't Help You Here:" US Returns of Asylum Seekers to Mexico*, (New York: Human Rights Watch, 2019), https://www.hrw.org/report/2019/07/02/we-cant-help-you-here/us-returns-asylum-seekers-mexico.

[234] Human Rights Watch, *"How Can You Throw Us Back?" Asylum Seekers Abused in the US and Deported to Harm in Cameroon* (New York: Human Rights Watch, 2022), https://www.hrw.org/report/2022/02/10/how-can-you-throw-us-back/asylum-seekers-abused-us-and-deported-harm-cameroon#7407.

[235] Human Rights Watch, "Haitians Being Returned to a Country in Chaos," Human Rights Watch news release, March 24, 2022, https://www.hrw.org/news/2022/03/24/haitians-being-returned-country-chaos.

[236] Bill Frelick (Human Rights Watch), "Biden's New Plan: No Help for Desperate Venezuelan Refugees," Op-ed, *The Hill*, October 28, 2022, https://www.hrw.org/news/2022/10/28/bidens-new-plan-no-help-desperate-venezuelan-refugees.

[237] Federal Register, Circumvention of Lawful Pathways, 88 Fed. Reg 31315.

[238] 8 U.S.C. § 1101(a)(42) (emphasis added)

Immigration Appeals (BIA), the branch of the administrative agency that conducts reviews of decisions by immigration judges, stated in its first precedential decision on particular social groups: "Persecution on account of membership in a particular social group' refers to persecution that is directed toward an individual who is a member of a group of persons, all of whom share a common, immutable characteristic."[239]

Subsequent BIA decisions have introduced additional elements to satisfy this ground for asylum, holding that a particular social group is "socially distinct within the society in question," is "defined with particularity," and is made of people who have "shared past experience, or a social or other status."[240] While some of these elements as applied may not be consistent with the Refugee Act of 1980, the purpose of which was to implement the Refugee Protocol,[241] most people turned back at the US border or otherwise affected by the US digital metering policy can convincingly show they meet this standard.

International migrants in the states of Baja California, Sonora, Chihuahua, Coahuila, Nuevo León, and Tamaulipas, as well as in other parts of Mexico where migrants are known to transit, who are seeking asylum in the United States are members of a clearly defined and socially distinct group.[242] International migrants in Mexico's six northern border states and main transit hubs who are seeking asylum in the United States are a group with a shared social status as foreigners without a legal status in Mexico who are known to be trying to leave Mexico for the United States.

Individuals waiting in Mexico, or pushed back to Mexico, or migrating through Mexico to seek asylum in the United States are a socially distinct group in Mexico. Asylum seekers do not speak Spanish at all or do not speak it as Mexicans speak Spanish, and their physical appearance—including their facial structure, height, and skin color—means they are often

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[239] *Matter of Acosta*, 19 I. & N. Dec. 211, 233 (B.I.A. 1985).

[240] *Matter of M-E-V-G,* 26 I. & N. Dec. 227 (BIA 2014); *Matter of W-G-R-*, 26 I. & N. Dec. 208 (BIA 2014); See also US Citizenship and Immigration Services, Nexus-Particular Social Group, RAIO Directorate-Officer Training, July 20, 2021, https://www.uscis.gov/sites/default/files/document/foia/Nexus_-_Particular_Social_Group_PSG_LP_RAIO.pdf (accessed Mar. 13, 2024).

[241] The US incorporated the provisions of the 1967 Protocol into domestic law through the Refugee Act of 1980, Pub. L. No. 96- 212, 94 Stat. 102 (1980). As the US Supreme Court has confirmed, a primary purpose of Congress in passing the Refugee Act "was to bring United States refugee law into conformance with the 1967 United Nations Protocol." INS v. Cardoza-Fonseca, 480 U.S. 421, 426 (1987); see also INS v. Stevic, 467 U.S. 407, 416-24 (1984) (providing a history of the incorporation of the Refugee Convention standards into US law through the 1967 Protocol and the Refugee Act of 1980).

[242] See, for example, *Pirir-Boc v. Holder*, 750 F.3d 1077 (9th Cir. 2014).

easily identified as non-Mexican. These are immutable characteristics of this group—they cannot change without unreasonable effort the way they appear, the languages they speak, or the way they speak Spanish. Individually and in combination, these characteristics identify people as belonging to a social group, and Mexican society recognizes this social group as distinct. The group is also characterized by other features that are not immutable but are distinctive: migrants returned by the US often do not have shoelaces, asylum seekers often dress differently from others, they often are seen in small groups and travel with simple bags of belongings, and they engage in certain types of work known to Mexican society. They are, in short, a distinct group.

The fluctuating numbers of asylum seekers in Mexico does not affect whether they are a particular social group under US law.[243]

Because they are perceived as transient, asylum seekers in Mexico are often denied access to essential services that Mexican citizens enjoy, like medical care, public education, and basic health care, by the government. They are also systematically targeted in Mexico by both Mexican state and non-state actors for kidnapping, extortion, sexual assault, and other violence that may amount to persecution on account of their membership in the particular group of asylum seekers stranded on the Mexican border with the United States. The Mexican government is "unable or unwilling" to protect migrants in Mexico from persecution and discrimination, as documented in this report, and at times even carries out acts of discrimination and other persecution.

[243] *Matter of M-E-V-G-*, 26 I.& N. Dec. at 239; *Perdomo v. Holder*, 611 F.3d 662, 669 (9th Cir. 2010) (reasoning "that the size and breadth of a group alone does not preclude a group from qualifying as such a social group").

Recommendations

To the Biden Administration and the US Department of Homeland Security

- Instruct CBP to process all arriving asylum seekers to allow them to pursue their asylum claims in the United States without differentiating between the manner or location of their entry, including whether they arrived at or between ports of entry, or whether they obtained an appointment through the CBP One app.
- Rescind the Circumvention of Lawful Pathways rule and instruct immigration judges and asylum officers to review all asylum claims thoroughly and fairly, regardless of whether the claimant obtained an appointment through the CBP One app, can show proof of having unsuccessfully sought asylum in a third country, or meets any of the criteria for an exception to the rule.
- End the use of expedited removal for all cases.
- Instruct CBP to end all metering practices and turnbacks of asylum seekers at the border without allowing them access to the US asylum system.
- Allow continued use of the CBP One app for individuals who wish to schedule appointments or use the app for other US immigration processes, but impose no penalties, or differentiation in treatment to asylum seekers based on their use or non-use of the app.
- Insofar as it is used as an additional scheduling tool and not a mandatory pathway to access the asylum system, the US government should improve the CBP One app for accessibility and usability, in consultation with affected communities. This may include extending the range of languages available in CBP One to include including Arabic, French, Russian, Chinese, Portuguese, and Indigenous languages such as Mam, Quiche, Q'eqchi', and Quechua, among many others; creating user-friendly guides in multiple languages explaining the app functionality, and outlining alternate options to secure CBP appointments; creating and resourcing support and complaints mechanisms for people struggling to use the app to access appointments, for instance via a well-staffed phone helpline; addressing issues in facial verification software where there are currently seemingly detrimental effects for people with darker skin tones; and addressing privacy concerns around geolocation and biometric data accessed and stored via CBP One.
- Increase appropriately trained personnel—asylum officers, doctors, child-care specialists, mental health services professionals and other first responders—at the

border using funds currently allocated by the US Congress for immigration enforcement and detention.

- Beyond initial screening of migrants, transfer humanitarian reception, including migrant processing and asylum functions, from Customs and Border Protection to a separate government agency, such as FEMA, or groups with trauma-informed training and whose mission is to perform humanitarian services.
- Ensure that asylum seekers do not spend any more time than is strictly necessary in CBP custody and are never held beyond the designated 72-hour limit established in the CBP National Standards on Transport, Escort, Detention, and Search (TEDS).
- End all removals of non-Mexican migrants to Mexico; do not reinstate expulsions or returns of non-Mexican migrants to Mexico.
- End any agreements with Mexico that result in rights violations, including agreements to expel and deport asylum seekers or block them at US ports of entry.
- Eliminate requirements that make humanitarian parole inaccessible to many mostly low-income people, including the need to have a valid passport and a financial sponsor in the United States.

To the US Congress

- Expand legal, orderly, and safe pathways for people to migrate to the United States, including by:
    - Incorporating into the Immigration and Nationality Act the expanded definition of refugees contained in the Cartagena Declaration, or a comparable standard of complementary protection, that includes individuals fleeing violence or other exceptional situations, including those related to climate change or extreme weather events, that expose them to a real risk of serious harm.
    - Incorporating into the Immigration and Nationality Act new family unity-based grounds for admissibility to the United States for individuals seeking to join family members already living in the US.
    - Enacting into law other safe and legal avenues for migration, such as family reunification visas, expanded temporary work visas, and temporary visas for witnesses of serious crimes as enumerated in the eligibility criteria for U visas.

To the Mexican Government

- Stop blocking people from leaving Mexico and otherwise enforcing the Biden asylum rule and US CBP One appointment system by turning back asylum seekers at US ports of entry when they do not have a CBP One appointment.
- Cease summary deportation of migrants without screening for asylum or other protection needs.
- Investigate allegations of extortion and other abuses of migrants by federal, state, and local police, national guard soldiers, and immigration officials boarding commercial buses at checkpoints. Make the results of the investigations public, and hold police, soldiers, and immigration officials accountable.

Acknowledgments

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We thank the asylum seekers who courageously shared their stories with us. We also thank the attorneys, human rights workers, and migrant shelter directors for speaking with us.

(left) Shipping containers topped with barbed wire block asylum seekers from crossing the border irregularly in Eagle Pass, Texas, September 4, 2023. © 2023 Ari Sawyer/Human Rights Watch

(front cover) A man seeking asylum in the US uses his phone to access the US Customs and Border Protection CBP One application to request an appointment at a land port of entry to the US, outside a shelter in Ciudad Juarez, Mexico, January 12, 2023. © 2023 REUTERS/Jose Luis Gonzalez

"We Couldn't Wait"

Digital Metering at the US-Mexico Border

The administrations of US President Joe Biden and Mexican President Andrés Manuel López Obrador are forcing tens of thousands of people seeking asylum in the United States to wait for long periods of time in Mexico, where they are preyed on and at risk of serious abuse, as part of a US asylum policy requiring most people to use a mobile phone application to access asylum in the United States.

"We Couldn't Wait" details how a Biden administration policy, known as the Circumvention of Lawful Pathways Final Rule, has created a de facto digital metering system whereby almost all asylum seekers are now required to obtain an appointment via an app called CBP One. The app requires a smartphone and connectivity, is often glitchy, and there are relatively very few appointments available each day. Asylum seekers often struggle to use or access the app, and the difficulties appear to be compounded for those from already vulnerable or discriminated-against communities who are less likely to have the necessary funds or social support.

Those without an app appointment, including those fleeing persecution in their home countries, are turned away by both US and Mexican officials or security guards contracted by the Mexican government. In Mexico they face serious risks, in some cases for months at a time: non-Mexican migrants are easily targeted for kidnapping, extortion, sexual assault, and other violence by cartels, at times in collaboration with Mexican government officials, who also extort migrants hoping to reach the US southern border.

Human Rights Watch calls on the US government to immediately stop turning back or sending non-Mexican migrants to Mexico, and the Mexican government to stop collaborating with the United States to carry out rights-abusive immigration policies.

hrw.org

Shalanda Young, Director
Office of Management and Budget
White House
1600 Pennsylvania Ave. NW
Washington D.C. 20500

October 11, 2023

Re: Priorities for immigrant communities in the FY2025 White House budget

Dear Director Young:

The federal government's budgetary decisions have a tremendous impact on the daily lives of people seeking asylum, immigrant communities and border communities. As you prepare the President's annual budget request for Fiscal Year (FY) 2025, we urge you to center the rights and dignity of these communities. Specifically, we urge you to craft a budget that supports a humane, dignified approach to domestic immigration policy by prioritizing funds for adjudication, processing, and community-based respite and support services. Simultaneously, we urge you to downsize budgets for immigration detention, enforcement, and surveillance programs that undermine due process and human rights.

We were pleased to see important advancements in the White House's proposed FY2023 and 2024 budgets, but are concerned that in some cases the administration's actions are at odds with its commitments. For example, both the FY2023 and 2024 White House budgets proposed downsizing the budget for Immigration and Customs Enforcement (ICE) detention, a critical step toward the President's campaign commitment to end privatized immigration detention. Over the course of the past year, however, ICE significantly *increased* its use of carceral detention facilities and sought additional funding for immigration detention in its August 2023 supplemental funding request. Similarly, although both the FY2023 and 2024 budgets proposed funding for an appointed counsel program in immigration court, we have not seen evidence that the administration actively pushed Congress to prioritize this proposal. The administration, instead, rolled out new enforcement programs that obstruct access to counsel during the credible fear process.

Over the last year, immigration policy has continued its long-time trend toward a removal-first immigration enforcement system which prioritizes reinforcing the government's ability to carry out "consequences" over building a robust system of adjudication and processing that places due process and fairness first. We believe the budget process offers an important check on that trend. We encourage the White House Office of Management and Budget (OMB), the Departments of Homeland Security (DHS), Justice (DOJ), and Health and Human Services (HHS), to commit to

a funding structure and corresponding policy commitment that will bring transformative change toward a humane and rights-respecting approach.

Specifically, this letter provides the following recommendations for the FY2025 budget (jump-linked for convenience):

I. Alternatives to detention: Prioritize funding to grow community-based case management programs and downsize the budget for enforcement-based programming 2
II. Detention: Continue to seek decreased funding for ICE Custody Operations while ensuring increased oversight and improved access to services for those detained 5
III. Appointed counsel in immigration court: request sufficient funds to ensure legal representation for all indigent adults, families and children facing removal 6
IV. Enforcement and surveillance: Decrease CBP surveillance programs and ICE and Border Patrol's over-sized agent corps while ensuring robust CBP processing capacity 7
V. Border reception: Continue to request increased funds for the Shelter and Services Program; work with Congress to create non-custodial, humanitarian reception models at the border 8
VI. Address the USCIS backlog: Request sufficient funding for USCIS to promptly reduce the growing backlog and ensure efficient intake and processing 10

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I. Alternatives to detention: Prioritize funding to grow community-based case management programs and downsize the budget for enforcement-based programming

As we explained in our letter last year, ICE's Alternatives to Detention (ATD) programs have grown at a dizzying pace in recent decades, with little oversight or analysis of methodology. From 2005 to 2023, the appropriated funding for ICE's ATD account grew by *more than 3,000%* (from $14,202,000 in FY2005 to $442,662,000 in FY2023). Under the current administration, the Intensive Supervision Appearance Program (ISAP) enrollment grew from 87,439 people enrolled at the end of January 2021 to more than 300,000 enrolled in mid-2022 and back down to 194,632 as of ICE's most recently posted data in September 2023.

As this growth has occurred, the undersigned organizations have expressed grave and ongoing concern that the government runs its ATD programs at odds with best practices, extending ICE's enforcement footprint rather than decreasing it and failing to meet the needs of those enrolled.

In 2015, a collaborative of more than 400 civil society organizations known as the International Detention Coalition (IDC) completed an analysis of more than 250 examples of alternatives to detention programming in 60 different countries; this analysis was updated and expanded upon

in 2022. The IDC found that successful ATD models engage individuals in the immigration process through informative and community-supported programming, contributing to "positive compliance, case resolution, cost, and health and wellbeing outcomes." Hallmarks of successful programs include case management support centered around individualized needs assessments, robust referrals to community-supported services and the least onerous possible restrictions and compliance requirements.

ISAP programming stands directly in contravention of these established best practices by imposing unnecessarily onerous obligations with little attention paid to individualized needs assessments. Currently, 99.8% of ISAP participants are enrolled in mandatory, onerous technology-based surveillance programs, including GPS-based ankle monitors, telephonic reporting requirements, or — by the far the most common — the SmartLink mobile application, which relies on facial recognition software and can require participants to check in regularly or at any time without notice. Case management services are available only as an "add-on" to these programs, and are often not steeped in the kind of best practices described above.

Community-based case management and humanitarian support programming provide a humane and cost-efficient mechanism to support immigrants undergoing asylum and other case processing. To achieve the greatest level of success, however, these programs *must* be administered and funded outside of ICE and Customs and Border Protection (CBP).

We urge the White House and federal agencies to:

1) *Request increased funds for the DHS Case Management Pilot Program (CMPP), an existing program that provides an alternative model for immigration processing and support that meets the best practices described above. CMPP is funded through the Federal Emergency Management Agency (FEMA) and managed by a National Board chaired by the DHS Officer for Civil Rights and Civil Liberties and including non-profits known and trusted by immigrant and refugee communities. We urge the White House and DHS to significantly increase requested funds for this important program, while ensuring independent monitoring and evaluation to identify both best practices and areas for improvement in the future.*
2) *Request decreased funds for the ISAP program and the Young Adult Case Management Program, as part of a shift away from enforcement-centered ATD programming.*
3) *Request funds to develop an Asylum Seeker Case Management Program funded through HHS, as proposed in the FY2023 Senate DHS draft bill. Through the Office of Refugee Resettlement, HHS has the appropriate orientation and expertise to develop and support programming for arriving asylum seekers that would draw from the services provided through the agency's refugee resettlement programming.*

II. Detention: Continue to seek significantly decreased funding for ICE Custody Operations while ensuring increased oversight and improved access to services for those detained

The administration is coming under increasing scrutiny for its failure to address long-standing, persistent and irremediable abuses in ICE's largely privatized detention system. NPR recently revealed the administration's efforts to keep records hidden from public view that shed light on the severity of the system's abuses, which have led to deaths and long-lasting trauma for those detained. The detention system is proven to be racist in its application, with more Black immigrants subject to detention and more likely to be abused while detained. Human rights advocates and government investigations alike have connected the dots between these harms and the profit motives of private prison corporations and county jails. Yet, despite a campaign promise to end privatized detention entirely, the Biden administration has doubled the number of people it detains on a daily basis and increased the percentage of privatized facilities from 79 to 91 percent.

Continuing to funnel taxpayer dollars to an unnecessary network of jails that threaten the health and safety of those detained is bad governance. We were pleased to see the White House's proposed FY2023 and 2024 budgets include a requested decrease in funding for immigration detention, down from funding to support the detention of 34,000 individuals daily to 25,000. We urge the White House and DHS to again seek decreased funds.

We urge the White House and federal agencies to:

1. *Continue to request decreased funding for ICE custody operations, to no higher than the funds requested in the FY2024 budget proposal that supported an average daily population of 25,000 people.*
2. *Include in the DHS budget appendix a proposed provision to limit unnecessary prolonged detention by clarifying that "custody" in the immigration context can be met through release under conditions, mirroring the definition in the criminal context. This provision was included as section 219 of the Senate's FY2023 draft DHS appropriations bill.*

III. Appointed counsel in immigration court: Request sufficient funds to ensure legal representation for all indigent adults, families and children facing removal

More than one and a half million people are currently navigating the immigration court system without a lawyer — more than 60% of the entire population in proceedings. Legal counsel is proven to drastically increase the prospect of a person winning relief. Legal representatives also play a crucial role by making clients aware of the often complex rules and procedures in immigration court. Although immigration law is civil in nature, its consequences are severe and

life-changing. Winning or losing in immigration court can determine whether a person is permanently separated from their loved ones. For asylum seekers, the wrongful denial of protection can — and often tragically does — mean deportation to one's death.

It is particularly shameful that after decades of outcry, unaccompanied toddlers and children continue to appear in U.S. immigration courts, opposite a federally funded prosecutor, without a lawyer beside them.

We were pleased to see the FY2023 and FY2024 budgets include requests for significant investments in legal access and orientation programming while seeking funds to develop a funded representation program for adults, families and children. However, we are concerned that the White House's stated commitment to legal representation for immigrant communities has not been represented in the administration's actions. Such programs are even more critical now, given the administration's fast track, expedited adjudication programs such as the dedicated docket for families, "enhanced" expedited removal in CBP custody and the FERM program. These programs have left legal service providers scrambling to meet the needs of people rushed through asylum screenings at such a rapid rate that they are often already facing a final removal order by the time they have their first consultation with an attorney.

We urge the White House and federal agencies to:

1. *Continue to pursue the legal representation funding sought in the FY2022 and 2023 budget requests, including robust funding for legal access programs as well as new funding to ensure all indigent people facing removal are provided lawyers.*
2. *Continue to pursue the legal representation funding sought in the FY2023 budget for unaccompanied children, including robust funding for post-release services and child advocates and sufficient funding to ensure universal representation for all unaccompanied children facing removal.*

IV. Enforcement and surveillance: Decrease CBP surveillance programs and ICE and Border Patrol's over-sized agent corps while ensuring robust CBP processing capacity

Since DHS's creation twenty years ago, funding has increased dramatically for CBP and ICE agents and for surveillance technology that has essentially militarized the southern border. Much of this funding reflects a shift in U.S. immigration policy that dates back to 1994, when the Clinton administration began to embrace intentionally harsh immigration and border enforcement policies as a way to "deter" future migration. These policies, however, have failed both in terms of the stated deterrence goals and because of the harms and deaths they routinely cause. Migration data reveals on its face that deterrence-based policies have not resulted in a significant and sustained reduction of overall numbers of unauthorized migration. Second, and

more importantly, these policies have created an increasing death toll, with record deaths as harsh border policies push people toward ever-more-dangerous routes to seek safety.

The number of Border Patrol agents has doubled and the number of ICE officers has tripled since 2003. These increases, combined with rampant corruption and abuse and the harsh policies described above, have created a pervasive climate of fear among immigrant and border communities and have contributed to the erosion of constitutional and civil rights for Black, Brown and Indigenous people living and visiting the borderlands. Meanwhile, agreements to deputize local law enforcement agencies to engage in immigration enforcement actions under the 287(g) program continue to exacerbate racial profiling and other unconstitutional and abusive local police practices.

We were concerned to see the White House's August 2023 request for supplemental funding include a request for more than $100 million in surveillance technology for the border, including funding for the Homeland Advanced Recognition Technology System (HART), a sweeping biometrics storage database that is used for wide-ranging enforcement and surveillance purposes, with very little transparency. Civil rights, immigrant rights and privacy advocates have documented how the HART database is turning out to be a windfall for military contractors and big tech at the expense of privacy and fundamental rights. The Government Accountability Office reported last year that HART was in breach of cost and schedule goals due to "ongoing risks associated with technical development, program requirements and test efforts." The National Immigrant Justice Center and other legal service providers have documented the ways in which DHS's reliance on unreliable data systems such as HART prejudice people seeking asylum and other forms of relief in the United States.

We urge the White House and federal agencies to:

1. *Seek decreased funding for CBP surveillance programs that harm border communities and have not been shown to impact migration patterns, including: biometric surveillance collection programs such as HART, unmanned aerial vehicles, automatic license plate readers, facial recognition technology, tethered blimps, thermal imaging technology, surveillance towers, and wide-area surveillance.*
2. *Request scaled down funding for ICE and Border Patrol agents and ensure robust funding to expand processing capacity.*
3. *Request funds to mitigate environmental and other harms caused by the construction of border walls (and do not request any additional border wall or barrier construction funds).*

V. Border reception: Continue to request increased funds for the Shelter and Services Program; work with Congress to create non-carceral, humanitarian reception models at the border

Robust funding for civil society and local government to address the needs of people arriving at the border to seek safety is a central component of a humane approach to orderly border policy. Localities and non-governmental organizations alike continue to provide a dignified welcome to people seeking safety in our communities, without adequate funds or support from the federal government.

We are pleased to see the White House working with Congress to develop the Shelter and Services Program (SSP), which transitioned funding from FEMA's Emergency Food and Shelter Program to a new grant making body to support localities and nonprofits assisting newly arrived migrants. For many shelters, these funds are a lifeline that allow them to provide food, clothing, basic medical aid, legal information, and transportation support for individuals recently released from DHS custody. However, we note that many organizations providing respite services have found the administration to be largely unresponsive to stakeholder recommendations in its initial allocation of SSP funds. In particular, the undersigned are concerned that FEMA and CBP allocated SSP funds without providing potential recipients the opportunity to demonstrate need, and that FEMA and CBP have implemented onerous reporting requirements that limit shelters' ability to provide humanitarian services to those in need.

SSP is a crucial financial support mechanism for shelters and local communities welcoming new arrivals. However, SSP funds are only available to be used for those who have been released from DHS custody within 45 days. Beyond this initial period, asylum seekers and the communities welcoming them receive little-to-no federal support. In addition to scaling up community-based case management, additional funding programs beyond SSP should be created to support the longer-term reception needs of asylum seekers, including in final cities of destination.

Of further concern, the recently issued White House request for supplemental appropriations included a request for flexibility to use funds to develop "community-based reception facilities." Many of the undersigned and partner organizations have long encouraged the government to develop a new approach to border processing infrastructure including reception centers run by civil society. However, we have cautioned that such facilities should never be operated or controlled by an enforcement agency such as ICE or CBP, and that freedom of movement should never be restricted for people residing in the facility. It is concerning to see the administration turning to a promising model but subverting it by abandoning key best practices.

Using jail-like facilities to shelter arriving families and individuals seeking safety or a better life in the United States criminalizes the very act of migration and puts lives at risk. In addition to ensuring that people have freedom of movement, reception centers should be time-limited for the purpose of processing, with the goal of people moving on toward their final destinations within a few days and receiving individualized referrals for continuing services as needed. These principles are critical to ensuring that arriving migrants are willing and able to trust that the services provided within the center are toward a goal of fair case adjudication and integration, not enforcement.

We encourage the White House and federal agencies to:

1. *Continue to seek additional funds for the SSP to support newly-arrived migrants released from DHS custody who need humanitarian assistance.*
2. *Address the concerns raised by stakeholder organizations regarding the distribution and coordination of funds, and ensure that the SSP operates in a more consultative and transparent manner going forward.*
3. *Propose and request funding for a new program that supports the longer-term reception needs of arriving asylum seekers in receiving communities.*
4. *Ensure that any plans to construct or develop new reception facilities at the border are operated outside of ICE and CBP's purview, ensure freedom of movement, and follow the best practices outlined above.*

VI. Address the USCIS backlog: Request sufficient funding for USCIS to promptly reduce the growing backlog and ensure efficient intake and processing

USCIS is facing a significant case backlog and processing times that have sharply increased in recent years. This has resulted in individuals falling out of status, families being separated, and businesses losing needed employees. The most recent data confirms that the agency had more than 8,800,000 applications and petitions pending as of March 2023, including over 1,500,000 applications for employment authorization. Overall median processing times grew by approximately 85 percent from FY2017 through July of FY2023. Processing times have been steadily growing for many years, but delays for certain high-volume forms have increased dramatically in recent years.

Increased funding from Congress is necessary and proven to help address the dire consequences of these issues on families, employers, and workers throughout the United States. For example, in FY2022, USCIS was able to use additional appropriated funding to authorize overtime, increase staffing, and leverage new processes in order to adjudicate double the amount of immigrant visas than in years past and to reduce delays for certain form types.

In FY2022, Congress appropriated a total of $275,000,000 for USCIS backlog reduction, far less than what is needed to fully address the processing issues currently plaguing the agency. In FY2023, no funding was appropriated to address the USCIS backlog. Despite the FY2024 budget requesting $264 million, the House Homeland Security appropriations bill did not provide any funding for backlog reduction. While the Senate bill's inclusion of $143 million to specifically address the work authorization application backlog is commendable, this funding is far from sufficient to resolve the significant and growing backlog afflicting USCIS and its stakeholders and the processing delays for the many benefit types that have resulted.

To ensure efficient reduction in the agency's backlog and the restoration of our system of legal immigration, the DHS budget must include targeted and consistent funding for backlog reduction and processing efficiency in FY2025 and beyond. In FY2025, the President's Budget should request at least $400,000,000 specifically for application processing and the reduction of backlogs within USCIS asylum, field, and service center offices, as well as intake delays.

In addition, DHS should continue to support requests for continued appropriations by providing regular reports detailing USCIS's use of funds allocated by Congress that are targeted for backlog reduction and the impact of appropriated funds on both the backlog and overall intake and processing efficiency. The information provided can be similar to that requested in the Case Backlog and Transparency Act of 2022. USCIS should also provide regular updates on the use of funds to support initiatives such as electronic processing, a review of form length and content to reduce unnecessary delays in filing and adjudicating applications and petitions, and improvements in transparency and customer service for customers facing significant delays. Continued updates on the agency's efforts to address these issues and the impact of appropriated funds will help support future funding requests.

We encourage the White House and federal agencies to:

1. *Request increased and targeted funding of at least $400,000,000 to address backlog reduction, intake delay, and facilitate efficient processing of all cases and form types at USCIS asylum, field, and service center offices.*
2. *Request appropriated funds for DHS to provide regular reports detailing how appropriated funding is being utilized, as well as its impact on backlog reduction and overall efficiency.*

**

We appreciate your attention to these matters and would welcome the opportunity to meet with you to discuss these priorities at greater length. With questions or for scheduling, please contact Heidi Altman at the National Immigrant Justice Center at haltman@heartlandalliance.org.

Sincerely,

American Immigration Council
Black Alliance for Just Immigration
Church World Service
Human Rights First
National Immigrant Justice Center
Southern Border Communities Coalition
Women's Refugee Commission

U.S. Border Policies Harm People Fleeing Danger

A Haitian father and daughter wait with family for their CBP One appointments at the El Chaparral border crossing at the U.S.-Mexico border in Tijuana, Mexico, on Thursday, June 6, 2024. (Carlos Moreno/NurPhoto/Getty Images)

Earlier this month, President Biden announced executive actions that would seal the U.S.-Mexico border if the number of asylum seekers reaches a daily average of 2,500 in a given week. HIAS, among other organizations, condemned this as a denial of asylum seekers' rights to fair adjudication of their claims. The new policy worsens an already challenging situation for asylum seekers, a population that has already endured significant hardship under the asylum ban enacted in May 2023.

The experiences of one asylum seeker, M*, illustrate the vulnerability and uncertainty that asylum seekers endure under the asylum ban.

M routinely faced persecution in his home country of Guinea for his political beliefs and cultural identity. As a member of the Union of Democratic Forces of Guinea opposition party and the Fulani ethnic minority, M was arrested, tortured, and threatened with death multiple times under both the former and current government. After he escaped detention