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## Crossing the Line

### U.S. Border Agents Illegally Reject Asylum Seekers

May 2017

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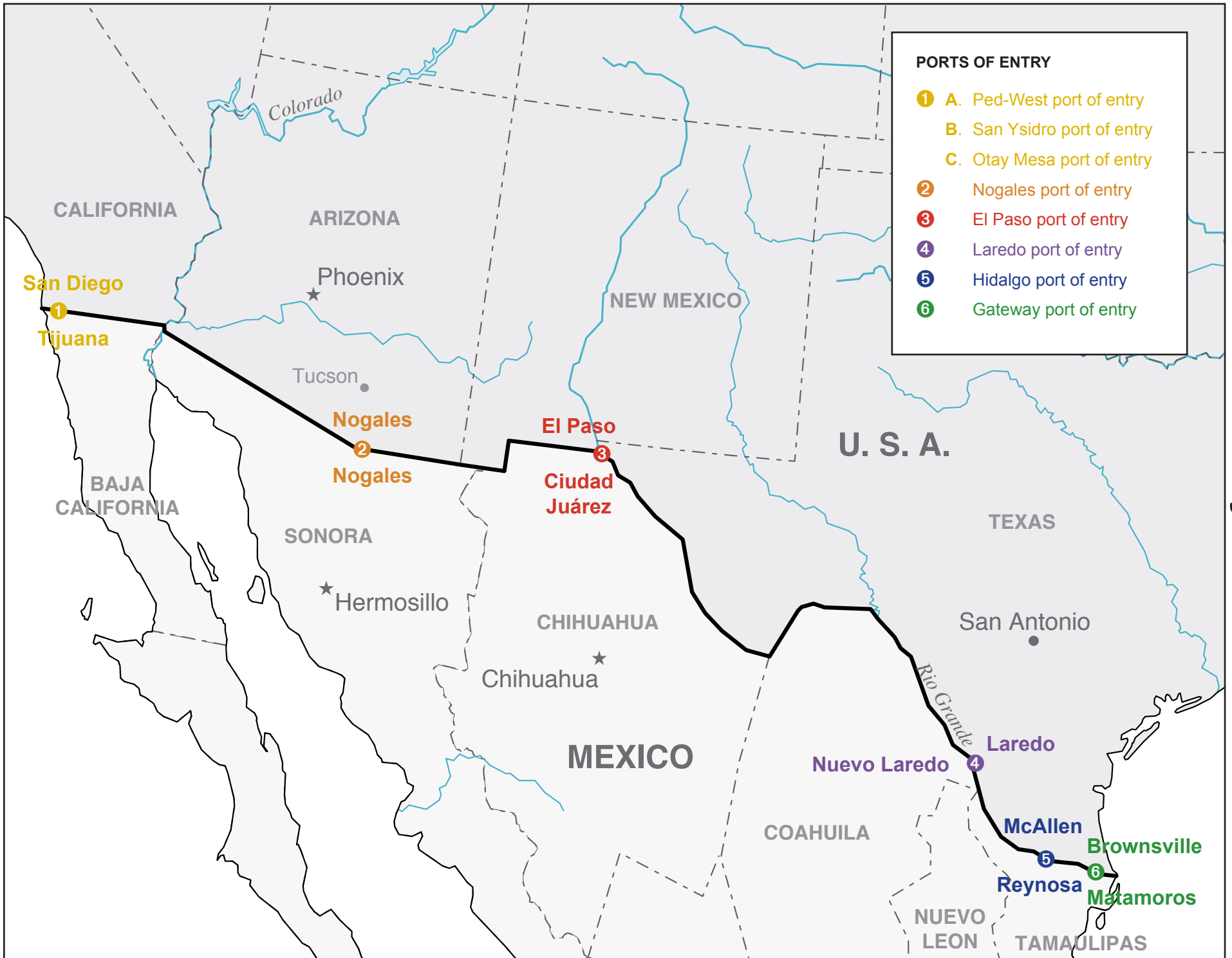
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COVER PHOTO: Getty Images/John Moore

# Mexico/U.S. Ports of Entry





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## Executive Summary

The U.S. government is illegally turning away asylum seekers at official land crossings all along the southern border. Border agents must refer a person seeking asylum or expressing a fear of persecution to a protection screening interview or an immigration court proceeding where they can seek asylum. Instead, some border agents are blocking access to asylum by refusing to process protection requests. This practice violates both U.S. law and U.S. treaty obligations. It also clashes with the ideals of a nation that has often led globally on refugee protection, a nation that President Reagan aptly described as a “beacon” to people searching for freedom.

U.S. government entities have raised concerns about the treatment of asylum seekers. In 2016, for example, the bipartisan U.S. Commission on International Religious Freedom (USCIRF) cited some Customs and Border Protection (CBP) officers’ “outright skepticism, if not hostility, toward asylum claims and inadequate quality assurance procedures.” Also in 2016 Human Rights First and other non-governmental organizations raised concerns about reports that the government was turning away asylum seekers in San Ysidro, California as CPB officers struggled to manage an increase in arrivals.

This practice proliferated after the November 2016 election and persists even as the number of arrivals has fallen sharply. In the wake of the election and President Trump’s January executive orders relating to refugees, CPB agents have in some cases claimed the United States is no longer accepting asylum seekers. For example, a CBP officer in south Texas reportedly told a Central American asylum seeker, “Trump says we don’t have to let you in.” In San Ysidro a CPB officer reportedly told a Mexican asylum seeker, “[Christians] are the people we are giving asylum to, not people like you.”

CBP officers are improperly rejecting asylum seekers at small ports of entry and major ones across the border, including in Brownsville, McAllen, Laredo, El Paso, and San Diego. When they are blocked from protection, asylum seekers face continued danger in Mexico, often immediately. Cartels, smugglers, and traffickers—who control areas around border crossings and wait outside some ports of entry where they see migrants and asylum seekers as easy prey—have kidnapped, raped, and robbed asylum seekers wrongly turned away by the U.S. government.

In February, March, and April, Human Rights First researchers visited the border regions of California, Texas, and Arizona, and the Mexican border cities of Reynosa, Matamoros, Nogales, and Tijuana. They interviewed asylum seekers, attorneys, non-profit legal staff, faith-based groups assisting refugees, and migrant shelter staff. While recent data shows CBP agents referred some 8,000 asylum seekers at ports of entry from December 2016 to March 2017, an unknown number of asylum seekers have been unlawfully rejected.

This report is based on 125 cases of individuals and families wrongfully denied access to U.S. asylum procedures at U.S. ports of entry. Many more have likely suffered a similar fate as these abuses often goes unreported due to the security threats faced by those who are turned away, the dearth of legal counsel, and the lack of effective compliance mechanisms and monitoring of CBP practices.

Human Rights First’s findings include:

- The United States is unlawfully turning away some asylum seekers at official ports of entry across the southern border without referring them, as required under U.S. law and treaty commitments, to asylum protection screenings or immigration proceedings. Documented cases of asylum seekers improperly turned away

include: an artist from Colombia fleeing political persecution at the hands of violent paramilitaries, a Turkish opposition political party member, a former Guatemalan police officer who resisted gangs, a Salvadoran child of Christian pastors who witnessed the gang murder of his sister, a Mexican fleeing police kidnapping after reporting cartel violence, Cubans requesting asylum, and transgender women from El Salvador, among others.

- The United States and Mexico collaborated to block access to U.S. ports of entry and create an appointment system in Tijuana, Mexico that CBP agents continue to use as a reason to turn away asylum seekers. Asylum seekers are turned away if they do not have an appointment given to them by Mexican officials, which Mexican officials often refuse to provide.
- Numerous attorneys, non-profit and private legal service providers, humanitarian workers, and shelter staff report that CBP and Mexican officials are telling migrants that the United States is no longer accepting asylum claims at its borders.
- Asylum seekers turned away by CBP agents, including Cubans and Central Americans, have been kidnapped, raped, and robbed upon return to Mexico, and some face continued risk of persecution.
- CBP's practice of turning away asylum seekers from established ports of entry leaves some with little choice but to attempt unauthorized and dangerous border crossings. The practice also puts asylum seekers at increased risk of trafficking, kidnapping, violence, and exploitation by smugglers.
- Even when CBP brings asylum seekers into the port of entry facility for processing, agents have in some cases pressured asylum seekers to recant their statements expressing fear, or have taken steps to produce statements that falsely

indicate no fear. Attorneys attempting to assist clients requesting asylum at ports of entry have been met with hostility by some border agents.

To address the flawed and illegal practices identified in this report, the U.S. government should take the following steps:

**The Department of Homeland Security (DHS) and CBP should:**

- Stop turning away asylum seekers without referring them for a protection screening or immigration court proceedings and instruct CBP officers to comply with U.S. legal obligations.
- Strengthen safeguards to identify and properly refer individuals in need of protection, including by strengthening the implementation of protection safeguards in the expedited removal process, as recommended by the bipartisan U.S. Commission on International Religious Freedom.
- Immediately end the appointment system, currently run by *Grupos Beta* in Tijuana, Mexico, and issue clear and public instructions to all CBP agents that asylum seekers are not required to receive an appointment to be processed at a U.S. port of entry.
- Work with Mexican officials to put an end to the practice carried out by various Mexican entities, including the military and *Grupos Beta*, of preventing some asylum seekers from accessing U.S. ports of entry.
- Abandon any formal plans to turn away asylum seekers at U.S. borders in circumvention of U.S. law and treaty commitments, including by turning them away to Mexico.
- Fully cooperate with any investigation by the DHS Office of Inspector General (OIG) into complaints that asylum seekers have been improperly turned away. The inspector general should launch a thorough inquiry, or expand any existing inquiry.

**President Trump** should rescind the “Border Security and Immigration Enforcement Improvements” executive order, which blocks access to asylum, undermines due process, and violates U.S. treaty commitments.

**The U.S. Congress should**, through its oversight of DHS and CBP, take steps to ensure those agencies comply with the law to safeguard access to asylum including:

- Request the DHS OIG thoroughly investigate all allegations of CBP officers illegally and improperly turning away asylum seekers at the southern border and review CBP’s monitoring and evaluation procedures to ensure officers are in compliance with U.S. law and treaty commitments;
- Require that DHS and CBP develop training materials for CBP officers to comply with U.S. domestic law and treaty commitments; and

- Request that DHS provide Congress with a report of all complaints filed against CBP officers for violations of U.S. domestic law and treaty commitments related to refugee protection and asylum and the resolution of said complaints over the past year.

Only a tiny fraction of the millions of travelers who pass through U.S. ports of entry request asylum. The vast majority of the world’s refugees are hosted by developing countries on the frontlines of the world’s displacement crises. While the numbers who request protection at U.S. border entry points are small in comparison, the U.S. response to those requests sets an example for the rest of the world. To provide effective global leadership and adhere to American ideals, the United States should abide by its laws and treaty obligations.



## I. United States Statute and Treaty Obligations

In the wake of World War II, the United States helped lead efforts to draft the Convention Relating to the Status of Refugees. The United States subsequently became a party to the Refugee Protocol, committing to abide by the Refugee Convention's requirements, including its prohibition on the expulsion or return of refugees in any manner whatsoever to places where their lives or freedom would be threatened.<sup>1</sup> This rule of *non-refoulement* applies to rejecting or turning away asylum seekers at a country's borders.<sup>2</sup>

Congress created legal processes for arriving asylum seekers to request protection and have their claims adjudicated in accordance with the Refugee Protocol. Section 208(a) of the Immigration and Nationality Act (INA) confirms that any individual who is physically present in the United States or who arrives in the United States at a port of entry or otherwise may apply for asylum, irrespective of the person's immigration status.<sup>3</sup> Since 2009, asylum requests, particularly among Central Americans who are fleeing endemic violence, have increased both in the United States as well as in neighboring countries of the region.<sup>4</sup>

Under U.S. immigration law, asylum seekers who have been placed into expedited removal proceedings by CBP cannot be summarily deported before having an asylum officer conduct a screening. When CBP invokes expedited removal and the individual indicates an intent to apply for asylum or a fear of persecution, the CBP officer must, under U.S. law, refer that asylum seeker for a "credible fear" interview with an asylum officer.<sup>5</sup> From December 2016 through March 2017, about 8,000 asylum seekers were referred for protection screening interviews from U.S. ports of entry, including U.S. airports. Asylum seekers are held in U.S. detention facilities during

these screenings, and even those who pass this screening often remain in immigration detention facilities for months.<sup>6</sup>

CBP's own field manual instructs officers to refer an individual to an asylum officer for a credible fear interview upon indication "in any fashion or at any time during the inspections process, that he or she has a fear of persecution, or that he or she suffered or may suffer torture."<sup>7</sup> Alternatively, CBP officers may place asylum seekers into regular immigration court proceedings before an immigration judge under section 240 of the Immigration and Nationality Act, rather than invoking expedited removal.<sup>8</sup>

The Trump administration has acknowledged U.S. legal obligations to asylum seekers. President Trump's March 6, 2017 executive order, "Protecting the Nation From Foreign Terrorist Entry Into The United States," states, "Nothing in this order shall be construed to limit the ability of an individual to seek asylum, withholding of removal, or protection under the Convention Against Torture, consistent with the laws of the United States."<sup>9</sup> Similarly, CBP officials have confirmed that the United States continues to recognize its obligation to process asylum seekers. In March 2017 a CBP spokesperson told reporters, "CBP has not changed any policies affecting asylum procedures. These procedures are based on international law and are focused on protecting some of the world's most vulnerable and persecuted people."<sup>10</sup>

However, gaps between the law and its implementation have long been documented. The bipartisan USCIRF detailed in a series of reports issued since 2005, with the most recent in 2016, a history of failure to properly implement the required steps to identify and refer individuals who indicate an intent to apply for asylum or a fear of harm.<sup>11</sup>

## II. U.S. Border Agents are Turning Away Asylum Seekers without Required Protection Screening

*“We are not seeking the American dream, we are fleeing for our lives.”*

– Edwin, a 19-year-old asylum seeker turned away by CBP at the Hidalgo port of entry.<sup>12</sup>

U.S. border agents have turned away asylum seekers, without referring them for the required protection screening or immigration court proceedings, at official ports of entry across the southern border.

In some cases, asylum seekers report that CBP officers simply ignored their request to seek asylum or their statements about fearing return, or said, for example, “We are deporting you now.”<sup>13</sup> In other cases, CBP officers gave false information about U.S. laws and procedures, mocked and intimidated asylum seekers, or accused them of lying.<sup>14</sup>

Mexican asylum seekers in particular report that CBP agents discount their fear claims and tell them Mexicans cannot get asylum in the United States. “We’re not accepting any political asylum applicants anymore,” agents told one wheelchair-bound Mexican asylum seeker in January, despite visible scars on his head from cartel attacks.<sup>15</sup>

CBP told Magdalena, another Mexican asylum seeker at the Ped-West port of entry in February, “they are killing people who are Christians. Those are the people we are giving asylum to, not people like you. You don’t qualify.”<sup>16</sup> A mentally disabled Mexican asylum seeker and his lawyer were told “we don’t give asylum here ... we are not going to give asylum here.”<sup>17</sup> Martin, a Mexican journalist whose persecution has been

documented by Reporters without Borders requested asylum at the El Paso port of entry and was told that Mexicans could not receive asylum in the United States, according to his attorney who witnessed the incident and was able to press CBP to process the protection request.<sup>18</sup>

Human Rights First wrote to DHS in July 2016 and urged that “requests for protection be properly and humanely processed at [the San Ysidro] port of entry.”<sup>19</sup> Yet the turn-backs continued and appeared to expand to multiple ports of entry along the southern border. A January 2017 complaint filed with the DHS Office of Civil Rights and Civil Liberties and the DHS Inspector General by the American Immigration Council, among other groups, detailed examples of turn-backs at multiple ports of entry in Texas, Arizona, and California between September and December 2016.<sup>20</sup>

Since November 2016 reports of CBP officers turning back asylum seekers have continued, with some officers reportedly invoking the change of administration in their refusal to process asylum seekers, particularly in the wake of the January 2017 executive orders relating to refugees and the border. Human Rights First interviews with asylum seekers and their lawyers indicate that there has been a marked shift in the conduct of some CBP officers towards asylum seekers since the election of President Trump.<sup>21</sup> CBP officers have reportedly made a range of statements to the effect that the United States is no longer granting asylum and that asylum seekers are no longer allowed to seek protection at U.S. ports.

Lawyers reported to Human Rights First that CBP agents at the Hidalgo port told asylum seekers, “Trump says we don’t have to let you in,” and “you can’t just show up here.”<sup>22</sup> In February 2017 CBP agents at the Ped-West entry point told an asylum seeker that “the United States is not giving asylum anymore.”<sup>23</sup> CBP agents told other asylum seekers they needed a visa to enter the United

States, or that “the U.S. is not processing asylum for people from your country anymore.”<sup>24</sup>

Between February and April 2017 Human Rights First researchers traveled to border areas in California, Texas, and Arizona, and visited Mexican border cities of Matamoros, Reynosa, Nogales, and Tijuana. Human Rights First requested to meet with CBP at the San Ysidro port of entry, but CBP canceled that meeting and denied Human Rights First’s request to visit CBP at the Hidalgo port of entry. Through interviews with local non-profit agencies, asylum seekers, and lawyers, as well as follow-up interviews and research, Human Rights First gathered information concerning asylum seekers who were turned away at the Gateway Bridge, Hidalgo, El Paso, Nogales, Otay Mesa, San Ysidro, and Ped-West ports of entry.<sup>25</sup> These asylum seekers have come from a range of countries, including Turkey, Colombia, Cuba, Mexico, Guatemala, Honduras, and El Salvador. Examples include:

■ **Transgender asylum seekers told the United States is “not giving asylum anymore.”** In February 2017 three transgender women who had fled El Salvador arrived at the Otay Mesa port of entry outside of Tijuana and requested protection. CBP agents told them that the United States was “not giving asylum anymore,” according to the women. The officers then told the asylum seekers to leave.

When two of the three refused to return to Mexico, CBP officers reportedly began to physically remove one woman, Maria, knocking her to the ground and putting their boots on her neck and groin area. Eventually as a result of their persistence, two of the three women were processed as asylum seekers. The other returned to Mexico and her location and security situation is currently unknown.<sup>26</sup>

■ **Cuban asylum seekers denied access to the U.S. asylum system, told “the law has**

**changed, you have to go back.”** Reports from January through April 2017 indicate that CBP agents are turning away some Cuban asylum seekers. In January agents at the Laredo port of entry told Cuban asylum seekers to go back to Mexico and wait until Trump took over to see if he would change the so-called, “wet-foot, dry-foot” policy.<sup>27</sup>

After President Trump’s inauguration CBP told a woman seeking asylum from Cuba that the law for asylum “does not exist anymore. To go to the United States, you have to get a visa from a consulate.” While the Obama Administration changed a policy that had allowed Cubans to be automatically paroled into the United States, a Cuban national at a U.S. port of entry can still seek asylum from the United States through the processes generally applicable to asylum seekers.

When the woman refused to turn around, the CBP agent threatened to call Mexican immigration to remove her.<sup>28</sup> On April 8, 2017, as reported by *The San Antonio Express*, a group of 500 Cubans, including many asylum seekers, approached the port in Laredo, after getting past Mexican military which tried to stop them. CBP agents told them, “the law has changed, you have to go back,” after one Cuban told the officer they were seeking asylum.<sup>29</sup>

■ **U.S. agents turned away Honduran family twice, forcing them to cross the Rio Grande.** A Honduran family’s eldest son, Dany, was under threat from Mara Salvatrucha (MS) gang, so he sought asylum in the United States. An immigration judge denied his case and he was deported. Two weeks later, MS murdered him. Fearing for their lives, the entire family fled. On their first attempt to seek asylum at the Hidalgo port, a CBP officer told them “you cannot be here, no Hondurans... if you don’t leave I will have to use force to remove you.” The second

time, CBP agents physically removed the family from the facility and forced them to return to Mexico. The family decided their best chance was to make a dangerous crossing of the Rio Grande river outside of Reynosa, Mexico and present themselves to Border Patrol agents there to seek asylum. But one of the sons, Edwin, was too afraid that CBP would detain and deport him and that he would end up murdered like his older brother. He remained stranded at a migrant shelter in Reynosa for months, too afraid to go outside due to the risk of kidnapping. Eventually a lawyer helped him seek asylum at the Hidalgo port again and ensured CBP processed him appropriately.<sup>30</sup>

■ **Honduran asylum seeker with bullet wounds, and his family, turned away by U.S. agents who threatened to call Mexican immigration.**

In January 2017 CBP agents at the Hidalgo port turned Daniel and his family away six times, each time saying that port holding cells were full. On one occasion Daniel lifted his shirt to show CBP agents the bullet hole wound from when Honduran gang members attempted to kill him. CBP agents threatened to call Mexican immigration authorities to deport the man and his family back to Honduras. The family tried again in February 2017 with the assistance of an attorney who successfully requested CBP process them as asylum seekers.<sup>31</sup>

■ **Turkish member of the political opposition turned back into Mexico by border agents.**

CBP agents turned away Burak, a high-profile opposition party member from Turkey at the Ped-West port in late January 2017, saying he needed his passport to enter the United States and that he could not apply for asylum. Jailed for over one hundred days and under death threats, he fled Turkey after the government had confiscated his passport, which contained a valid U.S. tourist visa. “No one wants to leave

their home country, I had to escape to save my life. I would like to live in a democratic country that respects justice,” he said after being turned away. CBP appropriately processed him as an asylum seeker the following month after a group of lawyers and a journalist accompanied him to the port of entry.<sup>32</sup>

- **Family of Mexican refugees turned away twice by U.S. officers.** In June 2016, Carla, a Mexican woman and her children sought protection at the Hidalgo port of entry after her father, son, grandfather, and uncle were killed in a span of seven days by cartels targeting the family. The family was turned away by CBP agents twice at the Los Indios port of entry in south Texas. After the family sought assistance from a private attorney, CBP officers finally processed them appropriately on the third attempt. A U.S. immigration judge in Texas recently ruled that the family were indeed refugees and granted the entire family asylum.<sup>33</sup>

Shelters and lawyers throughout the Rio Grande Valley report that these turn-aways are leading to a “ping-pong” effect, causing asylum seekers to attempt and re-attempt to request asylum at different ports of entry in the region. Asylum seekers turned away from the U.S. port of entry near Matamoros, Mexico sometimes attempt again at the Hidalgo port of entry (which connects Reynosa, Mexico with McAllen, Texas), or at smaller, less crowded ports such as Los Indios International Bridge in San Benito, Texas.<sup>34</sup> However, even at smaller ports of entry, asylum seekers have reported that they have been turned away without referral for protection screening or asylum adjudication.

Human Rights First and other groups have documented at least 125 cases of asylum seekers turned away by CBP officers at ports of entry between November 2016 and April 2017.<sup>35</sup> However, given the lack of legal and social

services available to asylum seekers when they present at the border, as well as the ongoing situation of violence in Central America and other regions that is pushing many people to flee, that number likely represents only a small fraction of the asylum seekers whom CBP improperly blocked from asylum protection assessments. As described throughout this report, in some cases, it was only through incredible perseverance, the assistance of a lawyer, or even media attention, that CBP has followed the law by referring asylum seekers to the appropriate procedures.

### III. Mexican Authorities are Complicit in Barriers to Asylum Seekers Approaching U.S. Ports of Entry

Refugees who intend to request asylum at U.S. ports of entry along the southern border face a barrage of barriers in Mexico. Some are prevented from approaching U.S. officials by Mexican private security guards or Mexican immigration enforcement agents, who say the United States is no longer giving asylum. Many who do reach CBP officers at the ports in southern California are turned back to Mexico and told they must first have an “appointment” from Mexican officials in order to meet with CBP officers at the U.S. port of entry. In reality, Mexican officials decline to issue “appointments” to many asylum seekers.

#### A. The Tijuana Appointment System—a Gauntlet and Charade for Asylum Seekers

The Tijuana appointment system was initially developed by U.S. and Mexican officials as an ad hoc response to the arrival of large numbers of Haitians at three ports of entry in the San Diego border sector during the summer of 2016. The

plan tasked *Grupos Beta*, the humanitarian branch of the Mexican immigration enforcement agency (INM),<sup>36</sup> with providing these “appointments” for migrants and asylum seekers who did not have entry documents, to present themselves to CBP at a later day and time.

This flawed appointment system was plagued with misinformation and abuse, leaving many asylum seekers stranded in Mexico. It has continued at the San Ysidro port of entry long after the number of Haitians attempting to enter the United States fell—and despite the much-touted decrease in arrivals along the border.

It does not appear that there has ever been uniform understanding between CBP agents and *Grupos Beta* as to which individuals they would refer to the appointment system. CBP agents at the San Ysidro-area ports of entry seem to require most migrants and asylum seekers without entry documents to first obtain an appointment, yet *Grupos Beta* initially provided appointments only to Haitians arriving with temporary transit visas, known as *oficios de salida*, that were previously issued by Mexican officials in southern Mexico. It later set appointments for migrants of other nationalities, as long as they held an *oficio de salida*.<sup>37</sup>

Since Central Americans are typically not issued a transit visa at Mexico’s southern border, they are effectively blocked from receiving an “appointment.”<sup>38</sup> *Grupos Beta* has also refused appointments for individuals with legal status in Mexico, such as a tourist visa, blocking other nationalities that enter Mexico on visas from approaching U.S. officials to seek asylum.<sup>39</sup>

In January 2017 the head of Mexico’s immigration office in Tijuana, Rodolfo Figueroa, told *The Washington Post* that “Mexican authorities refuse to issue numbers to [other migrants] because the system is designed to handle only Haitians.”<sup>40</sup> INM confirmed, in response to a complaint filed

with Mexico's National Commission for Human Rights in April 2017, that the Mexican immigration agency "is not responsible for giving asylum seekers tickets to seek asylum in the United States."<sup>41</sup>

Yet CBP says that the appointment system is still in place,<sup>42</sup> stating to the media in February 2017 that "CBP has coordinated and continues to work with the Mexican authorities in regards to border security and humanitarian causes to improve the processing and humanitarian assistance of those individuals with no legal status to enter the United States."<sup>43</sup> As recently as April 2017, CBP agents told asylum seekers of various nationalities to "go to *Grupos Beta* first because they will give you an appointment with us."<sup>44</sup>

Beyond the functional challenges and misinformation, turning away asylum seekers and subjecting them to an "appointment system" contravenes U.S. law and treaty commitments, and places many of them in danger, as described in Section VI below. Mexican nationals were initially subjected to the appointment system, forcing asylum seekers to approach government officials from the very country they were fleeing.<sup>45</sup>

In September 2016, after complaints about the direct return of Mexican asylum seekers, Mexican officials told migrant shelters that Mexican nationals were exempted from the appointment system.<sup>46</sup> However, despite that announcement, Human Rights First received multiple reports indicating that CBP agents have in some cases continued to tell Mexican asylum seekers to get an appointment from *Grupos Beta*.<sup>47</sup>

Many asylum seekers from other countries are also afraid to approach Mexican officials to request an appointment, fearing detention and return to persecution by Mexican immigration authorities. According to local lawyers, it is not uncommon for *Grupos Beta* to refer Central Americans and other asylum seekers to the

Tijuana INM office, where they could face detention and deportation back to their country of feared persecution.<sup>48</sup>

Examples of asylum seekers turned away by CBP agents and told to seek an appointment from Mexican authorities include:

- **Colombian asylum seeker turned away, told U.S. asylum process "starts in Mexico."** CBP agents turned away Andres, a Colombian asylum seeker, four times at the Ped-West port in November 2016. The asylum seeker had fled political persecution in Colombia after paramilitary members shot his sister and threatened to kill him. His family had spoken out against the murder of his brother and sister-in-law.

CBP agents reportedly told Andres he could not come to the border to ask for asylum "because the process for requesting asylum in the United States starts in Mexico." *Grupos Beta* agents then told Andres he needed an *oficio de salida* from Mexican authorities to get an appointment to seek asylum in the United States. The man also approached Mexican INM agents to ask for a U.S. appointment ticket. The INM agents told Andres he could not be issued an appointment with CBP because he was currently on a valid tourist visa in Mexico.<sup>49</sup>

- **Guatemalan asylum seeker turned away six times, sent to *Grupos Beta* for appointment it would not provide.** Between November 2016 and January 2017, U.S. agents turned away Diego, a former Guatemalan police officer, six times, each time informing him to seek an appointment with *Grupos Beta*. But *Grupos Beta* officers told him that they could only help people who had previously obtained an *oficio de salida* from Mexican authorities in southern Mexico, and that he would have better luck seeking asylum at another U.S. port of entry.

On his third attempt to seek asylum at the Ped-West port, Mexican private security guards and Mexican immigration agents stopped him on the Mexican side of the port, along with a Honduran family seeking asylum. The officials reportedly told him and the family that they required an *oficio de salida* from Mexican authorities in southern Mexico to get an appointment to seek asylum in the United States.<sup>50</sup>

## B. Mexican Authorities Discourage Asylum Seekers from Presenting at U.S. Entry Points

INM agents and *Grupos Beta* officials continue to prevent and discourage asylum seekers from approaching U.S. ports of entry, according to multiple interviews conducted by Human Rights First with shelters, non-profits, lawyers, and asylum seekers on both sides of the border. In some cases, Mexican officers told people that the United States is no longer accepting asylum seekers.

Human Rights First researchers observed *Grupos Beta*, INM agents, and Mexican military when approaching the border crossing points in Matamoros, Reynosa, and Tijuana. Local lawyers report that Mexican authorities turned away asylum seekers in Reynosa, Mexico who were attempting to approach the U.S. Hidalgo port of entry in January 2017.<sup>51</sup>

Media reports indicate Mexican military agents blocked Cuban asylum seekers from approaching the Laredo port in early April 2017.<sup>52</sup> Several shelters in Tijuana report that INM agents have informed Mexican asylum seekers that “Mexicans cannot get asylum in the United States,” and that local Mexican police officers have turned away Mexican asylum seekers who were attempting to approach the Ped-West port.<sup>53</sup>

Multiple reports also indicate that *Grupos Beta* is informing Mexican and Central American asylum

seekers that the United States is no longer giving people asylum.<sup>54</sup> According to local advocates in Mexico, *Grupos Beta* officials have told them, “stop lying to people, CBP told us they are not giving asylum in the United States anymore.”<sup>55</sup>

■ **Family of asylum seekers from El Salvador repeatedly blocked from requesting asylum at border, Mexican security guards threatened to have them deported.** In mid-February 2017, Laura, her husband and two children, arrived in Tijuana after fleeing their home in El Salvador, where gang members recently killed their third child. U.S. agents turned them away at the Otay Mesa port of entry just outside of Tijuana. Later, agents at the San Ysidro port of entry in downtown Tijuana told them to go to the Ped-West port. At Ped-West, private U.S. security guards stopped the family and CBP agents told them to contact *Grupos Beta*. The family returned to Mexico but could not locate any *Grupos Beta* officers. Finally, Mexican security guards, stationed at the entrance to the Ped-West port, threatened to call INM agents if the family did not leave. As of mid-March the family was still stranded and at risk in Tijuana.<sup>56</sup>

## IV. Coercion and Hostility Aimed at Discouraging Asylum Seekers

Even in cases where asylum seekers manage to speak with CBP officers, some encounter officers who press them to abandon their asylum requests, appear to make personal, arbitrary decisions on who is eligible for asylum, or fill out CBP interview forms with inaccurate, misleading, or false information.

This gauntlet of barriers to requesting asylum is so challenging that some asylum seekers have turned to lawyers to help make sure the

appropriate legal processes are followed. Asylum seekers, and sometimes lawyers, have been berated by CBP officers for urging them to process and properly refer protection requests.

Consistent with U.S. law, as detailed above, CBP officers at ports of entry are charged with referring individuals who express a fear of return or request asylum to trained United States Citizenship and Immigration Services (USCIS) asylum officers who make the legal determination of whether the asylum seeker has a significant possibility of establishing eligibility for asylum.

CBP officers, who are immigration enforcement officers, are not charged with making legal determinations about whether or not an individual may be eligible for asylum, and should not be turning away or urging asylum seekers to abandon requests for U.S. protection based on their personal opinions.

In April 2017, a CBP spokesperson confirmed, “our officers are not authorized to determine or evaluate the validity of the fear expressed.”<sup>57</sup> In mid-February the CBP spokesperson stated, consistent with U.S. law, that “the applicant does not have to specifically request asylum, they simply must express fear of being returned to their country.”<sup>58</sup> However, some CBP officers are failing to follow these processes. USCIRF documented general skepticism and hostility toward asylum seekers by CBP in a 2016 report.<sup>59</sup>

### **A. U.S. Border Agents Use Intimidation and Deception to Pressure Asylum Seekers into Denouncing Fear**

In late 2016 and early 2017, shelters, organizations, and lawyers heard reports from asylum seekers turned away by CBP that some agents were using improper, deceptive or coercive tactics when processing asylum seekers at U.S. ports of entry<sup>60</sup> – a trend documented by

various organization even before reports of turn-backs began.<sup>61</sup>

One pro bono lawyer has represented six Mexican families who were pressured by CBP into recanting their fear of return on video at the Ped-West port of entry.<sup>62</sup> Pro bono lawyers in the Rio Grande Valley also received reports from asylum seeking clients indicating that some CBP officers had forced asylum seekers to sign voluntary removal documents, despite their clear expressions of fear and intent to seek asylum.<sup>63</sup>

In January 2017 CBP agents at the Laredo port reportedly pressured Cuban asylum seekers into “voluntarily” returning to Mexico, explaining that they should wait for President Trump to take office and see if he changed U.S. policy towards Cubans. Cuban asylum seekers who approached the same port after President Trump took office were told that the law has changed and they could not seek asylum.<sup>64</sup> Cubans, like individuals of other nationalities, can request asylum from the United States at a port of entry, but as of January 2017 they no longer have access to a special parole program (known as the “wet-foot, dry-foot” policy) that allowed them to enter the country and then later become legal permanent residents without applying for asylum.<sup>65</sup>

Experienced lawyers have reported that CBP is using “copy/paste” responses on its official screening forms (I-867A and B), stating that an individual did not express a fear of return, including in cases of asylum seekers with genuine fears of harm who were ultimately ruled eligible for asylum.<sup>66</sup>

The information provided by CBP on those screening forms is notoriously unreliable, yet government lawyers frequently use them in immigration court to challenge asylum seekers’ credibility.<sup>67</sup> In one case, for example, CBP agents submitted a form saying that a three-year-old child told them he was coming to the United



States to work.<sup>68</sup> Given the many inaccuracies their researchers observed, USCIRF recommends that these forms should clearly indicate that they are not verbatim statements from the interviewees.<sup>69</sup>

Asylum seekers also report improper questioning and misleading conduct by some CBP agents. For example, in one case a CBP officer reportedly asked an asylum seeker, “What will you do if you are granted asylum in the United States? Work? Okay, so you are here to work.”<sup>70</sup> The CBP agent then wrote on the form that the asylum seeker had come to the United States to work, creating the misimpression that the asylum seeker did not come to seek U.S. protection from persecution.

CBP agents have also reportedly asked some asylum seekers, “Do you know what asylum is?” If they answer “yes,” the agents claim that they have been coached and therefore are not credible. If they answer “no,” the agents ask, “then how do you know you qualify for asylum?”<sup>71</sup>

Examples of these tactics include:

- **Mexican asylum seeker threatened and coerced into recanting fear on video.** In late January and early February 2017, CBP agents turned away Magdalena, a Mexican asylum seeker, at the Ped-West port of entry on three separate occasions. Each time CBP agents pressured or manipulated her into appearing to deny her fear of return on video. She had fled her home in Guerrero, Mexico after cartel members sexually assaulted her, forced her to watch a video of a torture victim, and demanded she turn over her son to join their ranks.

On her second attempt to seek asylum at the border, a CBP officer asked her if she knew about the new president of the United States, and the officer told her that the United States was only giving asylum to Christians. On the same attempt CBP agents asked her, “Are you

afraid to go with these Mexican officials right here?” referring to Mexican immigration agents in Tijuana. She said she was afraid to go back to Mexico, to which the CPB agent responded, “no that is not what I am asking, are you afraid to go with these officials right here?” She explained that she did not know those officials so was not afraid of those individuals. “Well then you have to answer ‘no’ to the question ‘are you afraid?’” the CBP agent said and turned on the video recorder.

She attempted to request asylum again the same day in early February, this time accompanied by a lawyer. A CBP officer told her, “You will never get asylum in the United States,” and CBP turned her back into Mexico again. She is currently in hiding in Mexico.<sup>72</sup>

- **Mexican family threatened with jail if they continued to claim that they feared persecution by the Mexican government.** In February 2017 a Mexican family fled to the Ped-West port of entry to seek asylum after suffering violence and receiving death threats from a major cartel. A CBP officer reportedly asked if they had any proof of the violence and asked if they reported the incidents to the police. One family member explained that the police were involved with the cartel so they could not safely report the incidents to the police. The CBP agent told the young man he was defaming the Mexican government and if he continued to do so the CBP agent would call Mexican authorities to put him in jail. CBP agents turned the family of asylum seekers back into Mexico and the family remains in hiding in Tijuana.<sup>73</sup>

## **B. Lawyers’ Involvement to Ensure Asylum Seekers are Processed is Unsustainable and Met with Hostility**

Because of the extraordinary efforts of CBP and Mexican officials to block access to asylum some

asylum seekers have enlisted lawyers to ensure that CBP officers follow U.S. law and properly process asylum requests. Some lawyers at migrant shelters now inform clients that they may need to attempt to collect additional evidence, such as death certificates of murdered relatives, before even requesting asylum at a U.S. port of entry, a difficult or impossible task for many refugees.<sup>74</sup> Some lawyers have had to help clients fill out asylum applications and organize evidence before arriving at the port, even though these measures are not required until much later in the process, just to ensure that CBP does not refuse to process the request for protection and properly refers it for a screening interview with a trained asylum officer.<sup>75</sup>

Despite such advocacy and preparation, lawyers have reported that CBP officers still claimed that asylum seekers expressed no fear of return and sent them away. For example, one attorney in Tijuana reported three clients were turned away at the Ped-West port after they arrived and presented a cover letter explaining their fear, a signed form confirming counsel in the United States, identity documents, and materials about the conditions in their country of origin.<sup>76</sup>

Several lawyers in the Rio Grande Valley, El Paso, Nogales, and Tijuana have personally accompanied asylum seekers to border crossings to ensure CBP appropriately processed them. In most cases, the presence of an attorney to advocate for their client results in proper processing. Others have resorted to preparing full asylum applications for their clients prior to approaching the U.S. border.<sup>77</sup>

In some cases lawyers are met with hostile reactions and their clients are still turned back into Mexico within 24 hours. Agents at the Hidalgo port have questioned asylum seekers about how they found a lawyer, and intimidated other lawyers, stating, "We know who you are."<sup>78</sup> Similar hostility

toward attorneys has reportedly occurred at the El Paso port of entry and the Ped-West crossing.<sup>79</sup>

Other examples of lawyers' effort to secure appropriate processing for asylum seekers include:

■ **Persecuted Mexican journalist required U.S. lawyer to ensure he was not turned away by U.S. agents at El Paso port.**

In early February 2017, Martin, a persecuted Mexican journalist arrived with his attorney at the El Paso port of entry. Martin had covered police violence in Guerrero, Mexico, and had been attacked by police officers and received multiple death threats. The international organization, Reporters without Borders, had documented the persecution of Martin and many others in Mexico, which is one of the most dangerous countries for journalists.<sup>80</sup> At the U.S. port of entry, a CBP agent told the attorney that Mexicans could not get asylum in the United States. After a protracted negotiation, the lawyer eventually convinced CBP to appropriately process his client as an asylum seeker. Martin has now been held in an Immigration and Customs Enforcement (ICE) detention center in west Texas for over two months.<sup>81</sup>

■ **Family stuck on international bridge at Hidalgo after U.S. agents turned them away, required attorney assistance to be processed.**

In late January 2017 a Honduran family of five arrived at the Hidalgo port of entry and requested asylum. CBP agents reportedly told the family to "go get a visa in Matamoros," the closest U.S. embassy to Reynosa. U.S. embassies do not issue visas to request asylum. The family was afraid to return to Mexico and remained on the international bridge between Reynosa and McAllen for several hours until a local attorney, contacted by relatives in the United States, arrived at the port. CBP processed the family as asylum

seekers on their second attempt with the attorney's assistance.<sup>82</sup>

- **Mexican asylum seeker questioned about her U.S. lawyer, CBP says the lawyer is a “fraud.”** In February 2017, Magdalena, a Mexican asylum seeker was questioned by CBP agents about her U.S. attorney. CBP agents reportedly stated, “Do you know who this lady is? Do you know that she is an imposter, that she is a fake? How much is she charging you? We’re not stupid. We know she’s charging you.” When Magdalena explained that her lawyer was taking her case pro bono, the agents said, “She may not charge you right now, but when you get a bond, she will charge you \$1,500 to get you out. No attorneys work for free.” Such comments appear aimed at undercutting the asylum seeker’s relationship with her lawyer.<sup>83</sup>

While this heightened level of legal representation has led to proper processing in some cases, legal representation should not be required to ensure that U.S. asylum laws and treaty commitments are respected at U.S. ports of entry. Non-profit legal resources are already extremely overstretched and the limited number of pro bono lawyers do not have the capacity to take on this type of legal representation, which should not be necessary in the first place. Moreover, the vast majority of asylum seekers cannot and should not be expected to secure evidence and make legal arguments about their asylum eligibility on their arrival at a port of entry. Arriving at a port of entry is just the first procedural step in the asylum process. A full screening interview by an asylum officer, and in many cases a full hearing before an immigration judge, will be held to determine if the person qualifies for asylum status. CBP is simply not tasked, based on existing law, with reviewing evidence at this stage. In fact, CBP’s manual makes clear that detailed questioning about the

nature of an asylum seeker’s fear of persecution or torture is the role of the asylum officer.<sup>84</sup>

## V. Turn-Backs at Border Crossings are Pushing Asylum Seekers to Cross Outside Formal Entry Points

Turning back asylum seekers at established border crossing points not only violates U.S. statutory and treaty obligations, it is pushing some asylum seekers to dangerously cross the border between formal entry points. The Trump Administration has stated that people entering the United States without inspection “present a significant threat to national security and public safety.”<sup>85</sup> Yet CBPs own actions push asylum seekers to enter without inspection, instead of through an orderly process at established border crossing points. This places vulnerable asylum seekers at additional risk of kidnapping, exploitation, trafficking, smugglers, and death in remote areas.

According to respite center staff in the United States that have seen thousands of migrants in recent months, many asylum seekers do not believe that they can request asylum at a U.S. port of entry.<sup>86</sup> The word has spread that the United States is rejecting refugees at ports of entry.<sup>87</sup> For example, Human Rights First interviewed one asylum seeker, Javier, a taxi driver from Guatemala, who thought his only option was to cross the Rio Grande because other migrants told him U.S. or Mexican authorities would turn him away. This kind of crossing requires paying the cartel that controls access to the river to allow passage.<sup>88</sup>

In Matamoros, smugglers reportedly wait at the international bridge to offer those turned away from the U.S. port of entry passage across the Rio Grande.<sup>89</sup> The smugglers operating in Reynosa

often kidnap and hold their victims for ransom, only letting them cross the river if the ransom is paid.<sup>90</sup>

In the Rio Grande Valley, lawyers and shelters have observed an increase in the number of drownings in the area since January 2017, when CBP at the Hidalgo port began turning back asylum seekers.<sup>91</sup> One shelter in Mexico reports ten known drownings between mid-February and mid-March, including a woman who had stayed at the shelter in early March 2017.<sup>92</sup>

Some reports also suggest that CBP agents have forced some asylum seekers back into Mexico between ports of entry. Several Guatemalan and Salvadoran asylum seekers reported that they were forced back over the border fence, or were walked back into Mexico by Border Patrol agents in the California desert, after explaining their intention to seek asylum.<sup>93</sup>

Border Patrol agents reportedly walked a family of Salvadoran asylum seekers, who had been apprehended within the United States near the border outside San Ysidro, back into Mexico without processing them or referring them for protection screening, despite their expressed intention to seek asylum.<sup>94</sup> Border Patrol agents told the family to get an “appointment” from *Grupos Beta*. The family had fled El Salvador after the father testified against gang members, who then sexually assaulted the mother, according to their lawyer.<sup>95</sup>

A Guatemalan mother and her two-year-old child were reportedly forced back into Mexico near Anapra, New Mexico in late 2016. The mother recounted that a CBP officer grabbed her by the shoulder, turned her around to face Mexico and stated, “we don’t want Guatemalans here.”<sup>96</sup>

Compounding these problems, legal service providers in California indicate that immigration judges sometimes deny release on bond to detained asylum seekers if they did not seek

asylum at a port of entry and instead crossed the border before requesting protection.<sup>97</sup> Under Article 31 of the Refugee Convention and Protocol, asylum seekers should not be penalized for their manner of entry, whether they requested asylum at a port of entry or crossed the border irregularly.<sup>98</sup>

Examples of the negative impact of asylum seekers forced to cross between ports of entry include:

- **Family kidnapped and held for ransom by smugglers after U.S. agents turned them away.** In January 2017 a family with two children crossed the Rio Grande River near Reynosa after being turned away by CBP agents at the Hidalgo port twice. The family had fled Honduras after their daughter was raped by gang members and the family was targeted by the gang. In late December 2016 CBP agents at the Hidalgo port of entry had told the family to come back a week later. They returned to the port in early January and CBP officers told them they could not be processed for asylum in the United States. As a result, the couple and their children returned to Mexico across the pedestrian bridge where they were approached by smugglers. The smugglers kidnapped the family and forced them to pay a ransom for their release.<sup>99</sup>
- **Woman and child from El Salvador risked river crossing after U.S. border officers turned them away.** In February 2017, Patricia, a Salvadoran woman and her young son arrived at a local respite center in McAllen, Texas after crossing the border. Patricia had attempted to request asylum, along with her child, at the Hidalgo port of entry on two different occasions. Each time she was turned away. She then crossed the border without authorization, paying a smuggler to cross the river. After crossing the Rio Grande undetected she presented herself to U.S. immigration

agents in McAllen and was given a notice to appear for an immigration court hearing on her asylum claim.<sup>100</sup>

- **Fleeing kidnapping by Mexican police, an asylum seeker crossed the border after being turned away at San Ysidro.** In late February 2017, Eduardo, a Mexican asylum seeker sought protection in the United States after escaping a kidnapping by Mexican police. The kidnapping attempt appears to be retaliation for a report he filed about cartel violence in the area. He was turned away from the U.S. port of entry at San Ysidro, and not referred for a protection screening interview. After he was turned back he crossed the border outside Tijuana and then requested asylum once CBP apprehended him.<sup>101</sup>

## VI. Asylum Seekers Face Ongoing Dangers and Lack of Protection in Mexico

By rejecting asylum seekers at its borders, the United States is turning them away to face danger persecution, torture, kidnappings, and potential trafficking in Mexico. Turning back Mexican asylum seekers to their country of feared persecution puts them at direct risk from the very forces they were trying to flee; these border rejections also put non-Mexican asylum seekers at increased risk of onward *refoulement* to their countries of persecution. The Mexican immigration system lacks the mechanisms necessary to safeguard refugees from deportation, and even those who are able to apply for asylum in Mexico are often denied asylum due to the deficiencies in the Mexican asylum system. Further, in Mexico the authorities cannot offer them actual protection from harm.

### A. Asylum Seekers Turned Away by U.S. Agents Face Increased Dangers in Mexico

Robbery, rape, and extortion are common experiences for migrants in Mexico, including in Mexico's border towns, such as Nogales, Reynosa, Matamoros, Ciudad Juárez, and Tijuana.

Expert testimony submitted to the Inter-American Committee on Human Rights in March 2017 notes, "Violence and crimes against migrants in Mexico's northern border states have long been documented to include cases of disappearances, kidnappings, rape, trafficking, extortion, executions, and sexual and labor exploitation by state and non-state actors." Turning back migrants from ports of entry exposes individuals, families, and children "to organized crime and smugglers as well as corrupt state authorities unable to protect them or investigate the crimes they have suffered."<sup>102</sup>

In recent months, smugglers have increased their prices, demanding higher payments to allow or guide people across the border between ports.

Cartel members have increased their surveillance and control of areas around border crossings, waiting outside some ports of entry where they see migrants and asylum seekers as easy targets.<sup>103</sup>

In Reynosa, lawyers and shelter staff report that most—if not all—migrants they encounter who had been turned away from the port of entry have been kidnapped and held for ransom, as cartel members wait outside the Hidalgo port.<sup>104</sup> One shelter in Reynosa receives migrants every week who have escaped or were released from kidnappings. Kidnapping victims have increased in number—in March 2017 alone the shelter encountered 30 people who had escaped from kidnappers.<sup>105</sup>

CBP at the Hidalgo port of entry reportedly set a limit on the number of asylum seekers it would process each day, forcing many to arrive early in the morning and therefore placing them at increased danger of kidnapping and violence.<sup>106</sup> Kidnapped asylum seekers report being held in large houses in Reynosa with hundreds of other migrants until their families send money to ransom them from captivity.<sup>107</sup> Many children are also kidnapped and held for ransom in Mexico, presumed to have family members in the United States who may be able to pay.<sup>108</sup>

Recently, eleven Cubans were kidnapped between Reynosa and Nuevo Laredo.<sup>109</sup> In one case a Cuban refugee who was reportedly denied entry at the Hidalgo port of entry in January 2017, was kidnapped and later found dead.<sup>110</sup> In late January 2017, *The Miami Herald* reported that Cuban families in the United States were outraged by the apparent extortion attempts from Mexican immigration officials at detention facilities who demanded money for the release of their family members, who had intended to seek asylum in the United States.<sup>111</sup>

Migrant shelters report that Mexican authorities provide no protection for migrants near the port of entry and migrants are afraid to report kidnappings to police due to threats from their kidnappers. Shelter staff fear for their own safety in the area. In March 2017 one shelter had to stop admitting migrants following a shoot-out between cartels and Mexican police.<sup>112</sup> In Tijuana, one migrant shelter reports multiple kidnappings in the first few months of 2017.<sup>113</sup>

Cartels often attempt to infiltrate the shelters to recruit and kidnap migrants, leaving migrants vulnerable anywhere they seek safety and undermining shelter staff members' ability to protect particularly vulnerable migrants such as women and children.<sup>114</sup>

Violence in other border cities also present acute problems for asylum seekers. Neighboring El Paso, Ciudad Juárez was once deemed the most dangerous city in the world and violence is again on the rise.<sup>115</sup> The U.S. State Department and other experts have warned that violence in Juárez remains a serious issue. The rate of murder and kidnapping in the region has increased over the last year, with migrants frequently targeted.

The Sonora region, neighboring Arizona, also remains particularly dangerous for migrants, as they are frequent targets of kidnapping and abuse.<sup>116</sup> Migrants are routinely victimized by Mexican migration authorities and municipal police as well as organized criminal groups who have perpetrated heinous violence against migrants, including homicide.<sup>117</sup>

Migrants and asylum seekers also report that not only do Mexican authorities fail to protect them, they are often the perpetrators of extortion and mistreatment. An official from El Salvador, who wished to remain anonymous, indicated it is widely known in the Salvadoran community that Mexican officials seek to extort Salvadoran migrants.<sup>118</sup> The same source, familiar with the journey through Mexico said, "it's so bad ... that Salvadoran women are advised by their community members to get a birth control shot before they go on their journey to Mexico because they are likely to be raped and police in Mexico won't do anything about it."<sup>119</sup> Legal service providers in the United States also report that unaccompanied minors are robbed and extorted at the hands of some Mexican officials.<sup>120</sup>

Examples of dangers faced by asylum seekers turned away by CBP include:

- **Guatemalan woman kidnapped immediately after U.S. agents turned her away at the Hidalgo port.** In February 2017 a Guatemalan woman was kidnapped in Reynosa immediately after she was turned away by CBP agents after

she requested protection at the Hidalgo port of entry. This woman had already suffered the tragedy of her child's death during their journey north, as they fled gang violence in Guatemala. She eventually escaped her kidnappers. An attorney assisted her on her second attempt to request asylum at the Hidalgo port of entry. With her lawyer's help, she was properly processed. She is currently held at a U.S. immigration detention facility while her asylum case is pending.<sup>121</sup>

- **Family with three children kidnapped after turned away three times.** In February 2017, Alma, a Honduran woman and her three children were kidnapped in Reynosa after CBP officials turned them away at the Hidalgo port of entry when they asked for asylum. Alma had fled Honduras after her other child was killed by gang members. Between December 2016 and February 2017 the family had presented at the port on three separate occasions, carrying documentation that would support their asylum claims. Each time CBP informed the family that U.S. facilities were full and she would have to turn around and return to Mexico.<sup>122</sup>
- **Woman raped in Mexico after three attempts to seek protection at U.S. port.** In December 2016, Paola and her young child were turned away by CBP agents three times. After her third attempt to seek protection at a U.S. port of entry she was raped in Mexico in the presence of her child. The family eventually crossed into the United States between established ports and were detained by Border Patrol agents and sent to a detention facility in Texas.<sup>123</sup>

## **B. Mexico's Asylum System is Flawed and Fails to Protect Refugees and Asylum Seekers**

Asylum seekers turned away by U.S. authorities not only face grave dangers in Mexico, but the Mexican asylum system, which is riddled with

deficiencies, does not effectively protect them from return to persecution. As a preliminary matter, Mexican migration enforcement efforts often fail to identify and refer asylum seekers to asylum or protection assessments. Those who do manage to seek asylum in Mexico face ongoing barriers to meaningful protection. Moreover, some refugees who have been granted asylum quickly discover that Mexico cannot protect them from their persecutors.

The 2015 U.S. Department of State report on Mexico's human rights record found that "the government failed to screen migrants properly for refugee status."<sup>124</sup> Furthermore, Mexican government data indicates that only a small percentage of the over 425,000 citizens of the Northern Triangle, which comprises El Salvador, Guatemala, and Honduras, that were deported from Mexico since 2014 received asylum interviews, despite studies showing that the majority of Central American migrants seek protection.<sup>125</sup>

Individuals who do file asylum claims while detained are held in mandatory detention until Mexican Commission for Refugee Assistance (COMAR) agents adjudicate their asylum cases.<sup>126</sup> Asylum seekers can expect to wait several months in detention, and poor detention conditions often lead asylum seekers to drop their claims instead of remaining there.<sup>127</sup>

Those turned back by U.S. officials cannot seek asylum near the border in Mexico without approaching Mexican immigration enforcement agents, who are not trusted, because there are no Mexican COMAR protection officers stationed along the U.S.-Mexico border. COMAR, only maintains offices in the capital, Mexico City, and southern states of Veracruz and Chiapas.

Immigration enforcement agents from the INM occasionally conduct protection interviews but asylum seekers do not trust them to adjudicate

their claims fairly. INM agents also lack training and capacity to conduct protection interviews, and simply forward interview notes to COMAR for final adjudication.<sup>128</sup>

The Mexican asylum system is under-resourced and understaffed, limiting COMAR's ability to properly screen and interview asylum seekers. Between November 2016 and March 2017 asylum applications in Mexico increased 150 percent.<sup>129</sup> Although COMAR recently entered into an agreement with the U.N. Refugee Agency (UNHCR) to add 29 staff positions in Mexico City, Tabasco, Chiapas, and Veracruz,<sup>130</sup> its proposed 2017 budget is 1.6 million pesos less than in 2015, despite the near doubling of asylum claims in 2016 and the expected continued increase in 2017.<sup>131</sup> Without adequate staffing the system will quickly become overwhelmed, further eroding its ability to screen and adjudicate claims. Many asylum seekers have already been wrongfully deported from Mexico back to their countries of persecution.<sup>132</sup>

Despite domestic laws and a recent constitutional amendment acknowledging the right to seek asylum in Mexico,<sup>133</sup> many who pursue asylum in Mexico face procedural and legal barriers to receiving legal status. For example, asylum seekers must apply for asylum with COMAR within 30 days of entering Mexico. This filing deadline blocks access to asylum for many refugees with well-founded fears of persecution, leaving them without protection in Mexico.

While awaiting a decision, they cannot travel or work and must report weekly to local authorities.<sup>134</sup> There is currently no mechanism to appeal a negative asylum decision issued by COMAR, meaning that those who are incorrectly denied asylum will be blocked from protection.<sup>135</sup>

The International Crisis Group reports that COMAR denies many applications from the Northern Triangle on the grounds of "internal flight

alternatives," despite strong evidence that few internal flight alternatives exist in small Northern Triangle countries where gangs dominate much of the territory.<sup>136</sup> Local advocates have moreover reported that COMAR issues "copy/paste" decisions rather than individualized assessments on asylum eligibility. These copy/paste decisions appear to be designed to exclude bona fide refugees from asylum rather than to protect refugees.<sup>137</sup>

In addition to flaws in the asylum system, Mexico cannot adequately protect those who are granted asylum or humanitarian protection, particularly those fleeing persecution at the hands of transnational gangs in Central America. Multiple reports from migrant shelter staff and lawyers indicate that persecutors have followed asylum seekers all the way to the U.S. border.<sup>138</sup>

One woman's abuser followed her to Tijuana, while another family was notified that gang members involved in the murder of their child followed them to the border. Mexican asylum seekers fleeing violent southern states of Guerrero and Michoacán also report to shelter staff that they continue to receive threats from their persecutors.<sup>139</sup>

For example:

- **Honduran refugees in Mexico found by gang members that murdered their family.** In 2015, a family from Honduras was granted humanitarian protection in Mexico and resettled in southern Mexico. However, the same gang members involved in their relative's murder in Honduras appeared near the families' new home in Mexico. Fearing for their lives, the family fled to Tijuana to seek asylum in the United States. In February 2017, CBP agents turned away the family, including children and grandchildren.<sup>140</sup>
- **Salvadoran child of Christian pastors, granted asylum in Mexico, forced to flee**



**following cartel kidnapping and gang threats.** In 2015, David, a 17-year-old child of Christian pastors fled El Salvador after the Mara Salvatrucha (MS) gang killed his sister and attempted to kill him. He and his sister had resisted gang recruitment because they planned to follow their parents' footsteps to become Christian ministers.

David witnessed his sister's murder. The gang began killing other witnesses, so he fled. His cousin, also a witness to the murder, left El Salvador around the same time. Gang members caught up to the cousin in Mexico and shot him 13 times, killing him.

In February 2016, COMAR granted David asylum status in Mexico. Soon after, friends and family in El Salvador informed him that gang members knew his whereabouts. Due to ongoing threats another cousin and an uncle also fled El Salvador and joined him in Mexico. After exiting a bus station in southern Mexico, the three men were kidnapped along with three other Salvadorans. They were beaten for several days and witnessed the rape of female migrants. The kidnapers, presumed to be Mexican cartel members, eventually released the group, which reported the kidnapping to Mexican national police.

Meanwhile, the family in El Salvador continued to hear that MS gang members were looking for

David and the other family members in Mexico. "I am running a tremendous risk staying in Mexico, not only because the MS [gang] is after me, but also because of my complaint against the cartel group that kidnapped us," David explained in a sworn declaration. In late 2016 David arrived at the U.S. Ped-West port of entry and requested asylum. The CBP officers said, "You cannot ask for asylum right now, you have to be put on a list" and turned him away.<sup>141</sup>

- **Salvadoran asylum seeker detained by Mexican immigration authorities for weeks, received no protection screening or asylum interview.** In November 2016, Camila, a Salvadoran woman and her three-year-old child, who were attempting to reach safety in the United States, were detained by Mexican immigration authorities. The mother and child were held in migration detention in Mexico City for 18 days and then removed to El Salvador. Mexican immigration agents did not screen the family for protection needs or refer them for asylum processing. Facing ongoing persecution, the family fled El Salvador a second time. In early March 2017, CBP agents at the Ped-West port refused to process the mother and child as asylum seekers. Instead, CBP turned them back into Mexico. They remain stranded and at risk in Tijuana.<sup>142</sup> ■

## Endnotes

- <sup>1</sup> U.N. General Assembly, Convention Relating to the Status of Refugees, July 28, 1951, United Nations, Treaty Series, vol. 189, Art. 33, *available at* <http://www.refworld.org/docid/3be01b964.html>.
- <sup>2</sup> Drafters of the Refugee Convention understood non-refoulement to prohibit turning away asylum seekers at borders. Louis Henkin, United States representative to the convention drafting conference, explicitly stated: “Whether it was a question of closing the frontier to a refugee who asked admittance, or of turning him back after he had crossed the frontier, or even of expelling him after he had been admitted to residence in the territory, the problem was more or less the same. Whatever the case might be, whether or not the refugee was in a regular position, he must not be turned back to a country where his life or freedom could be threatened.” See UN Ad Hoc Committee on Refugees and Stateless Persons, Ad Hoc Committee on Statelessness and Related Problems, First Session: Summary Record of the Twentieth Meeting Held at Lake Success, New York, on Wednesday, 1 February 1950, at 2.30. p.m., 10 February 1950, E/AC.32/SR.20, *available at* <http://www.refworld.org/docid/3ae68c1c0.html>. Legal scholars concur that the non-refoulement obligations include a prohibition against return “in any manner whatsoever to countries where they may face persecution,” and “is applicable to rejection at the frontier of a potential host State.” In other words, the concept of non-refoulement “encompasses both non-return and non-rejection.” See Mark R. von Sternberg, “Reconfiguring the Law of *Non-Refoulement*: Procedural and Substantive Barriers for Those Seeking to Access Surrogate International Human Rights Protection,” 2 *Journal on Migration and Human Security* 4: 329- (2014) (*citing Noll, Gregor. 2005. “Seeking Asylum at Embassies: A Right to Enter under International Law.” International Journal of Refugee Law* 17(3): 542-73 and Goodwin-Gill, Guy S. and McAdam, Jane. 2007. *The Refugee in International Law*. 3rd ed. New York: Oxford University Press); *see also* Guy S. Goodwin-Gill, *The Refugee in International Law, Second Edition*.
- <sup>3</sup> 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.”).
- <sup>4</sup> See UNHCR, Supplementary Appeal 2016: Regional Response to the Northern Triangle of Central America Situation, June 2016, p. 5.
- <sup>5</sup> Immigration and Nationality Act (INA) § 235 (b)(2)(1)(A)(ii).
- <sup>6</sup> U.S. Citizenship and Immigration Services, Asylum Division, Credible Fear Workload Report Summary, FY 2017 Port of Entry (POE) Caseload (data from Oct. 2016 through March 2017).
- <sup>7</sup> Customs and Border Protection, Inspector’s Field Manual, Section 17.15(b)(1), *available at* <http://www.aila.org/File/Related/11120959F.pdf>.
- <sup>8</sup> The Board of Immigration Appeals (BIA) and DHS agree that the use of expedited removal is in the discretion of DHS. See Matter of E-R-M- & L-R-M-, U.S. Department of Justice, Executive Office for Immigration Review, Board of Immigration Appeals, June 3, 2011.
- <sup>9</sup> Exec. Order No 13780, Presidential Executive Order: Protecting the Nation From Foreign Terrorist Entry Into the United States, 82 Fed. Reg. 13209 (March 06, 2017).
- <sup>10</sup> Roque Planas and Elise Foley, “Trump Officials Credit Him for Fewer Border Crossings. It’s Not That Simple.” *The Huffington Post*, March 9, 2017, *available at* [http://www.huffingtonpost.com/entry/trump-border-apprehensions\\_us\\_58c1cf64e4b054a0ea69479a](http://www.huffingtonpost.com/entry/trump-border-apprehensions_us_58c1cf64e4b054a0ea69479a).
- <sup>11</sup> In 2005, the U.S. Commission on International Religious Freedom (USCIRF) found that U.S. immigration officials failed to read required information advising individuals to ask for protection if they feared return in more than half of the observed interviews. In 86.5 percent of cases in which a fear question was not asked, CBP officers nevertheless indicated on the screening form that the question was asked and answered. U.S. Commission on International Religious Freedom (USCIRF), Report on Asylum Seekers in Expedited Removal, (Feb. 2005); *see also* USCIRF, Expedited Removal Study Report Card: Two Years On (2007); USCIRF, Special Report: Assessing the U.S. Government’s Detention of Asylum Seekers: Further Action Needed to Fully Implement Reforms (Apr. 2013); USCIRF, Barriers to Protection: The Treatment of Asylum Seekers in Expedited Removal (2016), p. 19.; *see also* American Civil Liberties Union, American Exile: Rapid Deportations That Bypass the Courtroom, page 37, December 2014; *see also* Human Rights Watch, “You Don’t Have Rights Here”: US Border Screening and Returns of Central Americans to Risk of Serious Harm, October 16, 2014.
- <sup>12</sup> Human Rights First has given all asylum seekers in this report pseudonyms. Many face ongoing dangers or prefer to keep their identity anonymous for fear of reprisals. Human Rights First interview with asylum seeker 2, Reynosa, Mexico, March 22, 2017.

- <sup>13</sup> Human Rights First telephone interview with foreign government official 2, March 24, 2017.
- <sup>14</sup> Human Rights First telephone interview with pro bono attorney 3, March 17, 2017; Human Rights First interview with pro bono attorney 4, McAllen, Texas, March 21, 2017; Human Rights First interview with shelter staff 2, Matamoros, Mexico, March 21, 2017; Human Rights First interview with shelter staff 3 and 4, Reynosa, Mexico, March 22, 2017; Human Rights interview with shelter staff 7 and 8, Tijuana, Mexico, March 27, 2017; declaration of pro bono attorney 4, January 31, 2017; redacted declaration of asylum seeker 4, February 7, 2017; redacted declaration of asylum seeker 6, January 26, 2017; redacted declaration of asylum seeker 8, June 22, 2016; redacted declaration of asylum seeker 11, December 10, 2016; redacted declaration of asylum seeker 13, February 3, 2017; redacted declaration of asylum seeker 14, December 10, 2016.
- <sup>15</sup> See Martha Pskowski, “Attorneys: U.S. Border Patrol systematically violates asylum seekers’ rights,” Univision News, February 28, 2017; see also American Immigration Council, Complaint Re: U.S. Customs and Border Protection’s Systemic Denial of Entry to Asylum Seekers at Ports of Entry on U.S.-Mexico Border filed with DHS Office of Civil Rights and Civil Liberties and DHS Inspector General, January 13, 2017, *available at* [https://www.americanimmigrationcouncil.org/sites/default/files/general\\_litigation/cbp\\_systemic\\_denial\\_of\\_entry\\_to\\_asylum\\_seekers\\_advocacy\\_document.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/cbp_systemic_denial_of_entry_to_asylum_seekers_advocacy_document.pdf).
- <sup>16</sup> Redacted declaration from asylum seeker 1, *available at* <https://drive.google.com/file/d/0BzSmfDxXocoDbjR0UndlaTR5eEE/view?usp=sharing>.
- <sup>17</sup> Human Rights First interview with pro bono attorney 5, Tijuana, Mexico, March 27, 2017.
- <sup>18</sup> Human Rights First interview with private attorney 2, El Paso, Texas, February 15, 2017.
- <sup>19</sup> Human Rights First letter to Deputy Secretary Alejandro Mayorkas and Commissioner R. Gil Kerlikowske, July 27, 2016, *available at* <http://www.humanrightsfirst.org/resource/letter-deputy-secretary-mayorkas-and-commissioner-kerlikowske-san-ysidro-border>.
- <sup>20</sup> See American Immigration Council, *supra* note 15.
- <sup>21</sup> Human Rights First interviews with foreign government official 1, McAllen, Texas, March 20, 2017; Human Rights First interview with pro bono attorney 4, McAllen, Texas, March 21, 2017; Human Rights First interview with shelter staff 5, McAllen, Texas, March 23, 2017; Human Rights First interview with shelter staff 3, Reynosa, Mexico, March 22, 2017; Human Rights First interview with pro bono attorney 5, Tijuana, Mexico, March 24, 2017; Human Rights First interview with shelter staff 8, Tijuana, Mexico, March 27, 2017.
- <sup>22</sup> Human Rights First interview with pro bono attorney 4, McAllen, Texas, March 21, 2017; declaration of pro bono attorney 4, January 31, 2017.
- <sup>23</sup> Human Rights First interview with asylum seeker 3, Tijuana, Mexico, March 27, 2017.
- <sup>24</sup> Human Rights First telephone interview with pro bono attorney 3, March 15, 2017.
- <sup>25</sup> Some reports indicate that the problem at the Arizona ports of entry may have abated in February and March; however, one non-profit attorney continues to receive reports of turn-aways from the Arizona ports of entry. Human Rights First interview with pro bono attorney 9, Tucson, Arizona, April 20, 2017; Human Rights First interview with shelter staff, Nogales, Mexico, April 20, 2017.
- <sup>26</sup> Human Rights First interview with legal service provider 3, San Diego, California, March 29, 2017.
- <sup>27</sup> The so called “wet-foot dry-foot” policy began in 1995 and allowed Cubans who made it onto U.S. soil to stay and eventually apply for legal permanent residency. See Julie Hirschfeld Davis and Frances Robles, “Obama Ends Exemptions for Cubans Who Arrive Without Visas,” *The New York Times*, January 12, 2017. The revocation of this policy means Cuban national are subject to removal, just as any other person arriving in the United States without documentation, unless they qualify for humanitarian relief, such as asylum. see The White House, Statement by the President on Cuban Immigration Policy, January 12, 2017.
- <sup>28</sup> Lizandra Diaz Blanco, “Me engañaron’: Cubanos tras intentar asilo en frontera Mexicana con EEUU” [The tricked me: Cubans after trying to seek asylum at the Mexican border with the U.S.], *Marti Noticias*, January 25, 2017, *available at* <http://www.martinoticias.com/a/me-engannaron-cubanos-tras-intentar-asilo-frontera/137902.html>.
- <sup>29</sup> Aaron Nelsen, “Immigration officials at Laredo turn-back protesting Cubans,” *San Antonio Express News*, April 9, 2017.
- <sup>30</sup> Human Rights First interview with asylum seeker 1, Reynosa, Mexico, March 22, 2017.
- <sup>31</sup> Human Rights First telephone interview with pro bono attorney 3, March 17, 2017.
- <sup>32</sup> Human Rights First interview with pro bono attorney 5, Tijuana, Mexico, March 27, 2017; redacted declaration of asylum seeker 6, January 26, 2017.
- <sup>33</sup> Human Rights First interview with private attorney 1, McAllen, Texas, March 20, 2017.

- <sup>34</sup> Human Rights First telephone interview with pro bono attorney 3, March 17, 2017; Human Rights First interview with private attorney 1, McAllen, Texas, March 20, 2017; Human Rights First interview with shelter staff 2, Matamoros, Mexico, March 21, 2017.
- <sup>35</sup> Human Rights First researchers conducted interviews with 40 stakeholders on both sides of the U.S.-Mexico border. Those stakeholders reported 76 cases of individuals or families turned away by CBP agents, with the vast majority occurring between January and April 2017. Most individuals and families were turned away multiple times, some at multiple ports of entry. In addition, Human Rights First reviewed declarations and documentation provided by pro bono attorneys, which detailed accounts of 45 cases of individuals and families turned away by CBP agents at multiple ports of entry, including over 32 Mexican nationals refused by CBP at the Ped-West port-of-entry in southern California in November and December 2016 alone. Human Rights First researchers conducted direct interviews with four asylum seekers recently turned away by CBP agents.
- <sup>36</sup> See Instituto Nacional de Migración, Grupos Beta de protección a migrantes, *available at* <http://www.gob.mx/inm/acciones-y-programas/grupos-beta-de-proteccion-a-migrantes>.
- <sup>37</sup> Human Rights First interview with pro bono attorney 5, Tijuana, Mexico, March 27, 2017.
- <sup>38</sup> See David Noriega, "Waiting Game: Asylum seekers are being turned away illegally at the U.S.-Mexico border," VICE News, February 9, 2017.
- <sup>39</sup> Redacted declaration asylum seeker 11, December 10, 2016; Human Rights First interview with pro bono attorney 5, Tijuana, Mexico, March 24, 2017; Human Rights First interview with shelter staff 7 and 8, Tijuana, Mexico, March 27, 2017.
- <sup>40</sup> Joshua Partlow, "U.S. border officials are illegally turning away asylum seekers, critics say," The Washington Post, January 16, 2017.
- <sup>41</sup> Declaration of pro bono attorney 6, April 9, 2017; correspondence between pro bono attorney 5 and Mexico's National Commission for Human Rights, March 31, 2017.
- <sup>42</sup> Human Rights First Interview with legal service provider 2, Tijuana, Mexico, March 28, 2017.
- <sup>43</sup> See Martha Pskowski, *supra* note 15; see also Riley Stevenson, "Why are asylum seekers being turned away at the U.S.-Mexico border?," Medium, February 5, 2017.
- <sup>44</sup> Redacted declaration of asylum seeker 3, February 3, 2017; redacted declaration of asylum seeker 6, January 26, 2017; redacted declaration of asylum seeker 7, December 10, 2016; redacted declaration of asylum seeker 9, December 10, 2016; redacted declaration of asylum seeker 11, December 10, 2017; redacted declaration of asylum seeker 14, December 10, 2016; Declaration of pro bono attorney 6, April 9, 2017.
- <sup>45</sup> Human Rights First interview with shelter staff 8, Tijuana, Mexico, March 27, 2017; Human Rights First interview with pro bono attorney 5, Tijuana, Mexico, March 27, 2017.
- <sup>46</sup> Human Rights First interview with shelter staff 8, Tijuana, Mexico, March 27, 2017.
- <sup>47</sup> Redacted declaration of asylum seeker 1, February 7, 2017; redacted declaration of asylum seeker 3, February 3, 2017; redacted declaration of asylum seeker 4, February 7, 2017; details of 32 Mexican nationals turned away in November and December 2016, provided by pro bono advocates 7 and 8; Human Rights First interview with pro bono attorney 5, Tijuana, Mexico, March 27, 2017.
- <sup>48</sup> Human Rights First interview with pro bono attorney 5, Tijuana, Mexico, March 24, 2017; Human Rights First interview with shelter staff 8, Tijuana, Mexico, March 27, 2017; redacted declaration of asylum seeker 7, December 10, 2016.
- <sup>49</sup> Human Rights First interview with pro bono attorney 5, Tijuana, Mexico, March 27, 2017; redacted declaration of asylum seeker 11, December 10, 2016.
- <sup>50</sup> Redacted declaration of asylum seeker 9, December 10, 2016.
- <sup>51</sup> Human Rights First telephone interview with pro bono attorney 3, March 17, 2017; Human Rights First interview with pro bono attorney 4, McAllen, Texas, March 21, 2017.
- <sup>52</sup> Aaron Nelsen, *supra* note 29.
- <sup>53</sup> Human Rights First interview with shelter staff 7, Tijuana, Mexico, March 27, 2017; Human Rights First interview with shelter staff 8, Tijuana, Mexico, March 27, 2017.
- <sup>54</sup> Human Rights First interview with pro bono attorney 5, Tijuana, Mexico, March 27, 2017; Human Rights First interview with shelter staff 6, Tijuana, Mexico, March 24, 2017; Human Rights First interview with shelter staff 7 and 8, Tijuana, Mexico, March 27, 2017.
- <sup>55</sup> Human Rights First interview with pro bono attorney 5, Tijuana, Mexico, March 27, 2017.
- <sup>56</sup> Human Rights First interview with asylum seeker 4, Tijuana, Mexico, March 27, 2017.

- <sup>57</sup> See Roque Planas and Elise Foley, “Border Agents Illegally Turned Away Asylum Seeker And Her Children, Attorney Says,” *The Huffington Post*, April 10, 2017.
- <sup>58</sup> See Grace Wyler, “Here’s how Trump has already affected the U.S.-Mexico border and immigration,” *Orange County Register* February 16, 2017.
- <sup>59</sup> USCIRF (2016), *supra* note 11.
- <sup>60</sup> Human Rights First interview with pro bono attorney 5, Tijuana, Mexico, March 27, 2017; Human Rights First telephone interview with pro bono attorney 3, March 17, 2017; Human Rights First interview with shelter staff 2, Matamoros, Mexico, March 21, 2017; Human Rights First interview with shelter staff 7, Tijuana, Mexico, March 27, 2017.
- <sup>61</sup> See Human Rights Watch, *supra* note 11; see also American Civil Liberties Union, *supra* note 11.
- <sup>62</sup> Human Rights First interview with pro bono attorney 5, Tijuana, Mexico, March 24 and 27, 2017.
- <sup>63</sup> Human Rights First telephone interview with pro bono attorney 3, March 17, 2017; Human Rights First interview with pro bono attorney 4, McAllen, Texas, March 21, 2017; Human Rights First interview with private attorney 1, McAllen, Texas, March 20, 2017.
- <sup>64</sup> Lizandra Diaz Blanco, *supra* note 28; Aaron Nelsen, *supra* note 29.
- <sup>65</sup> See Julie Hirschfeld Davis and Frances Robles, *supra* note 27.
- <sup>66</sup> Human Rights First interview with private attorney 1, McAllen, Texas, March 20, 2017.
- <sup>67</sup> Human Rights Watch, *supra* note 11; see also American Civil Liberties Union *supra* note 11.
- <sup>68</sup> See American Immigration Lawyers Association (AILA), Brief of Amicus, American Immigration Lawyers Association, in the Matter of M-R-R-, Board of Immigration Appeals, June 2015.
- <sup>69</sup> USCIRF (2005), *supra* note 11.
- <sup>70</sup> Human Rights First interview with legal service provider 2, San Diego, California, March 28, 2017; Human Rights First interview with pro bono attorney 9, Tucson, Arizona, April 20, 2017.
- <sup>71</sup> Human Rights First interview with legal service provider 1, San Diego, California, March 28, 2017.
- <sup>72</sup> See B. Shaw Drake, “A Troubling Trend of U.S. Turning Away Asylum Seekers at Mexico Border,” *News Deeply*, April 13, 2017.
- <sup>73</sup> Human Rights First interview with shelter staff 7, Tijuana, Mexico, March 27, 2017.
- <sup>74</sup> Human Rights First interview with shelter staff 2, Matamoros, Mexico, March 21, 2017.
- <sup>75</sup> Human Rights First interview with pro bono attorney 5, Tijuana, Mexico, March 24, 2017.
- <sup>76</sup> Human Rights First interview with pro bono attorney 5, Tijuana, Mexico, March 24, 2017; document packet for asylum seeker 5, April 9, 2017.
- <sup>77</sup> Human Rights First interview with shelter staff 1, McAllen, Texas, March 20, 2017.
- <sup>78</sup> Human Rights First telephone interview with pro bono attorney 3, March 17, 2017.
- <sup>79</sup> Human Rights First interview with private attorney 2, El Paso, Texas, February 15, 2017; Human Rights First interview with pro bono attorney 5, Tijuana, Mexico, March 27, 2017; redacted declaration of asylum seeker 1.
- <sup>80</sup> Reporters Without Borders, “Mexican journalist held at US border for past two months,” April 4, 2017, *available at* <https://rsf.org/en/news/mexican-journalist-held-us-border-past-two-months>.
- <sup>81</sup> Human Rights First interview with private attorney 2, El Paso, Texas, February 15, 2017.
- <sup>82</sup> Declaration of pro bono attorney 4, January 31, 2017.
- <sup>83</sup> Redacted declaration of asylum seeker 1, February 7, 2017.
- <sup>84</sup> Customs and Border Protection, *supra* note 7.
- <sup>85</sup> Exec. Order No. 13767, Presidential Executive Order: Border Security and Immigration Enforcement Improvements, 82 Fed. Reg. 8793 (Jan. 25, 2017).
- <sup>86</sup> Human Rights First interview with shelter staff 1, McAllen, Texas March 20, 2017.
- <sup>87</sup> Human Rights First interview with legal service provider 2, San Diego, California, March 28, 2017.
- <sup>88</sup> Human Rights First interview with asylum seeker 1, Reynosa, Mexico, March 22, 2017.
- <sup>89</sup> Human Rights First interview with shelter staff 2, Matamoros, Mexico, March 21, 2017.

- <sup>90</sup> Human Rights First interview with shelter staff 3 and 4, Reynosa, Mexico, March 22, 2017; Human Rights First interviews with pro bono attorney 4, McAllen, Texas, March 21, 2017; Human Rights First interview with private attorney 1, McAllen Texas, March 20, 2017.
- <sup>91</sup> Human Rights First telephone interview with pro bono attorney 2, March 15, 2017; Human Rights First interview with shelter staff 3, Reynosa, Mexico, March 22, 2017.
- <sup>92</sup> Human Rights First telephone interview with pro bono attorney 3, March 17, 2017.
- <sup>93</sup> Human Rights First interview with pro bono attorney 5, Tijuana, Mexico, March 27, 2017.
- <sup>94</sup> Human Rights First email correspondence with pro bono attorney 5, Tijuana, Mexico, April 10, 2017.
- <sup>95</sup> Human Rights First interview with pro bono attorney 5, Tijuana, Mexico, March 27, 2017.
- <sup>96</sup> Human Rights First email correspondence with shelter staff 9, February 22, 2016; see also Borderland Immigration Council, “Discretion to Deny: Family Separation, Prolonged Detention, and Deterrence of Asylum Seekers at the Hands of Immigration Authorities Along the US-Mexico Border,” February 2017, *available at* [http://media.wix.com/ugd/e07ba9\\_72743e60ea6d4c3aa796becc71c3b0fe.pdf](http://media.wix.com/ugd/e07ba9_72743e60ea6d4c3aa796becc71c3b0fe.pdf).
- <sup>97</sup> Human Rights First interview with legal service provider 3, San Diego, California March 29, 2017.
- <sup>98</sup> U.N. General Assembly, *supra* note 1 at Art. 31.
- <sup>99</sup> Human Rights First interview with shelter staff 4, Reynosa, Mexico, March 22, 2017.
- <sup>100</sup> Human Rights First phone interview with foreign government official 2, March 24, 2017.
- <sup>101</sup> Human Rights First interview with legal service provider 3, San Diego, California March 29, 2017.
- <sup>102</sup> Washington Office on Latin America, Latin American Working Group, and Kino Border Initiative, “Situation of Impunity and Violence in Mexico’s Northern Border Region,” March 2017.
- <sup>103</sup> Human Rights First interview with shelter staff 1, McAllen, Texas, March 20, 2017.
- <sup>104</sup> Human Rights First telephone interview with pro bono attorney 3, March 17, 2017; Human Rights First interview with shelter staff 3 and 4, Reynosa, Mexico, March 22, 2017.
- <sup>105</sup> Human Rights First interview with shelter staff 3, Reynosa, Mexico, March 22, 2017.
- <sup>106</sup> Human Rights First interview with shelter staff 3 and 4, Reynosa, Mexico, March 22, 2017.
- <sup>107</sup> Human Rights First interview with shelter staff 1, McAllen, Texas, March 20, 2017.
- <sup>108</sup> Human Rights First interview with legal service provider 1, San Diego, California, March 28, 2017.
- <sup>109</sup> “Secuestran a 11 cubanos en Reynosa” [11 Cubans kidnapped in Reynosa], El Manana, February 2, 2017, *available at* <http://elmanana.com.mx/noticia/126819/Secuestran-a-11-cubanos-en-Reynosa.html>.
- <sup>110</sup> Human Rights First interview with shelter staff 3, Reynosa, Mexico, March 22, 2017.
- <sup>111</sup> Mario J. Penton, “U.S.-bound Cubans stranded in Mexico say they are victims of extortion and more,” Miami Herald, February 14, 2017 (“For weeks, we have been getting calls from somebody demanding money if we want to see our family members again,” said the mother of one of the stranded Cubans. She asked not to be identified for fear of retribution against her son. The woman, who lives in Miami, recounted how half an hour after receiving a call from her son from the detention center, the telephone rang again and again from different numbers in Mexico”).
- <sup>112</sup> Human Rights First interview with shelter staff 3, Matamoros, Mexico, March 21, 2017.
- <sup>113</sup> Human Rights First interview with shelter staff 8, Tijuana, Mexico, March 27, 2017.
- <sup>114</sup> Human Rights First telephone interview with pro bono attorney 3, March 17, 2017; Human Rights First interview with pro bono attorney 4, McAllen, Texas, March 21, 2017; Human Rights First interview with shelter staff 3 and 4, Reynosa, Mexico, March 22, 2017.
- <sup>115</sup> Human Rights First interview with shelter staff 9, El Paso, Texas, February 16, 2017; See Sam Quinones, “Once the World’s Most Dangerous City, Juarez Returns to Life,” National Geographic, June 2016; see also Kirk Semple, “Mexico Grapples With a Surge in Violence,” The New York Times, December 13, 2016.
- <sup>116</sup> Human Rights First interview with pro bono attorney 9, Tucson, Arizona, April 20, 2017; Human Rights First interview with shelter staff, Nogales, Mexico, April 20, 2017.
- <sup>117</sup> See Washington Office on Latin America, Latin American Working Group and Kino Border Initiative, *supra* note 102; see also U.S. Department of State, Mexico Travel Warning, *available at* <https://travel.state.gov/content/passports/en/alertswarnings/mexico-travel-warning.html> [last accessed on April 24, 2017].

- <sup>118</sup> Human Rights First phone interview with foreign government official 2, March 24, 2017.
- <sup>119</sup> *Id.*
- <sup>120</sup> Human Rights First interview with legal service provider 1, San Diego, California, March 28, 2017; Human Rights First interview with legal service provider 3, San Diego, California, March 29, 2017.
- <sup>121</sup> Human Rights First telephone interview with pro bono attorney 3, March 17, 2017; Human Rights First interview with pro bono attorney 4, McAllen, Texas, March 21, 2017.
- <sup>122</sup> Human Rights First interview with shelter staff 4, Reynosa, Mexico, March 22, 2017.
- <sup>123</sup> Human Rights First attorney visit, South Texas Family Residential Center, Dilley, Texas, December 2016.
- <sup>124</sup> See U.S. Department of State, Mexico 2015 Human Rights Report.
- <sup>125</sup> Washington Office on Latin America (WOLA), *A Trail of Impunity: Thousands of Migrants in Transit Face Abuses amid Mexico's Crackdown*, October 20, 2016.
- <sup>126</sup> UNHCR, Mexico: Progress under Global Strategy Beyond Detention 2014-2019, Mid-2016, *available at* <http://www.unhcr.org/57b583c57.pdf>.
- <sup>127</sup> Human Rights First interview with pro bono attorney 5, Tijuana, Mexico, March 24, 2017.
- <sup>128</sup> INM employs child protection officers (OPIs) to screen unaccompanied minors for protection needs and conduct best interest assessments. See Instituto Nacional de Migración, *Oficiales de Protección a la Infancia (OPI)*, *available at* <http://www.gob.mx/inm/acciones-y-programas/oficiales-de-proteccion-a-la-infancia-opi> [last accessed on April 24, 2017]; However, in July 2015 the UN Committee on the Rights of the Child criticized Mexico for not establishing a best interest determination process for deciding protection needs of migrant children. Committee on the Rights of the Child, *Concluding Observations, Mexico*, UN Doc. CRC/C/MEX/CO/4-5 (July 3, 2015), para. 60(c). Additionally, a 2014 study by UNHCR found that over 70 percent of boys and over 80 percent of girls held in Mexican detention centers had not met with child protection officials. United Nations High Commission for Refugees (UNHCR), *“Arrancados de Raiz,”* 2014, *available at* <http://www.acnur.org/fileadmin/scripts/doc.php?file=fileadmin/Documentos/Publicaciones/2014/9828>; see also Human Rights Watch, *Closed Doors: Mexico's Failure to Protect Central American Refugee and Migrant Children*, March 31, 2016, p. 52; see also WOLA, *Increased Enforcement at Mexico's Southern Border*, November 2015.
- <sup>129</sup> Gabriel Stargardter, “Exclusive: Asylum applications in Mexico surge after Trump election win,” Reuters, April 18, 2017.
- <sup>130</sup> UNHCR, Hiring announcement for 29 additional COMAR agents, October 17, 2016, *available at* [http://www.gob.mx/cms/uploads/attachment/file/153000/Anuncio\\_General\\_de\\_Vacantes\\_UNOPS\\_COMAR.pdf](http://www.gob.mx/cms/uploads/attachment/file/153000/Anuncio_General_de_Vacantes_UNOPS_COMAR.pdf) [last accessed on April 24, 2017].
- <sup>131</sup> See Maureen Meyer, “Migrants in Transit Face Crimes and Human Rights Abuses,” WOLA, (*citing* Jose Knippen and Paulina Castano, “Sin garantía de derechos: migración en el Proyecto del PEF 2017” [Without Without a guarantee of rights: migration in the Project PEF 2017], FUNDAR Centro de Análisis e Investigación).
- <sup>132</sup> See *Id.*; Human Rights Watch, *supra* note 11; see also American Civil Liberties Union, *supra* note 11.
- <sup>133</sup> See Victor Manuel Colli Ek, “Improving Human Rights in Mexico: Constitutional Reforms, International Standards, and New Requirements for Judges,” Center of the Universidad Autónoma de Campeche, México, *available at* <https://www.wcl.american.edu/hrbrief/20/1ek.pdf>.
- <sup>134</sup> International Crisis Group, *Easy Prey: Criminal Violence and Central American Migration*, Latin America Report No. 57, July 28, 2016.
- <sup>135</sup> Comisión Mexicana de Ayuda a Refugiados (COMAR), *Procedimiento para ser reconocidos* [process to be recognized], *available at* [http://www.comar.gob.mx/es/COMAR/Procedimiento\\_para\\_ser\\_reconocidos](http://www.comar.gob.mx/es/COMAR/Procedimiento_para_ser_reconocidos) [last accessed on April 24, 2017].
- <sup>136</sup> International Crisis Group, *supra* note 134 at p. 19.
- <sup>137</sup> *Id.*
- <sup>138</sup> Human Rights First interview with pro bono attorney 5, Tijuana, Mexico, March 27, 2017; Human Rights First interview, Tijuana, Mexico, March 27, 2017.
- <sup>139</sup> Human Rights First interview with shelter staff 8, Tijuana, Mexico, March 27, 2017.
- <sup>140</sup> Honduran Refugee Turned Away by US Border Officials (Video), *available at* <https://www.youtube.com/watch?v=hmUd8TJNOTo>; redacted declaration of asylum seeker 13, February 3, 2017.
- <sup>141</sup> Redacted declaration of asylum seeker 10, January 20, 2017.
- <sup>142</sup> Human Rights First interview with asylum seeker 3, Tijuana, March 27, 2017.



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