

## CDC Relied on False Assertions in Issuing COVID-19 Order Being Used to Illegally Override U.S. Asylum Laws

On March 20, 2020, the Centers for Disease Control and Prevention (CDC) issued a much-criticized COVID-19 order that has effectively eliminated asylum at the southern U.S. border. The Department of Homeland Security (DHS) is using the order as a pretext to expel asylum seekers, unaccompanied children, and other migrants at U.S. borders without the legal processes required by Congress. In issuing its order, which was extended indefinitely on May 19, the CDC relied on false claims by DHS that individuals subject to the order “must be held . . . in congregate settings” in Customs and Border Protection (CBP) facilities where they “spend hours or days . . . while undergoing processing” among other misleading information.

In fact, DHS has existing legal authority to expeditiously release asylum seekers on parole to await immigration court proceedings inside the United States, including those returned to Mexico under the Migrant Protection Protocols who have already been processed by CBP. As detailed below, government documents reveal that CBP has the space and staff at ports of entry to process asylum seekers and unaccompanied children within a few hours while also implementing recommended public health measures for border processing during the pandemic to protect DHS staff, the families, children, and adults seeking humanitarian protections at the border, and members of the public at large.

DHS’s claim, which the CDC cited as justification for its order, that asylum seekers, unaccompanied children, and other migrants arriving at the border must be held in congregate settings at ports of entry for many hours or days is completely at odds with government documents, federal court findings, and other government data:

- Government contingency planning documents for the Laredo Field Office from August 2017 unsealed in the *Al Otro Lado v. Wolf* suit challenging the administration’s illegal policy of reducing asylum processing at southern border ports of entry—a practice known as “metering”—confirm that CBP can expeditiously process asylum seekers and unaccompanied children at ports of entry within mere hours:
  - At the Brownsville, Texas port of entry, CBP could processing inadmissible individuals, including asylum seekers, at the time in **just 2.5 hours on average**.
  - CBP officers at the Hidalgo, Texas port of entry could process asylum seekers placed in expedited removal within **approximately two to three hours**, inadmissible families within **two to four hours**, and unaccompanied children in **one to two hours**.
  - The Progreso, Texas port of entry could process people CBP chose to place in expedited removal and unaccompanied children within **approximately two to four hours**.
  - At the Roma, Texas port of entry, CBP could process Cuban nationals in **approximately one to two hours**. Many of these individuals, until a 2017 policy change, were released from CBP custody under the so-called “wet-foot, dry-foot” policy to continue immigration proceedings in the United States.
- In February 2020, a federal court found in *Doe v. Johnson*—a case challenging unconscionable conditions in Border Patrol stations in the Tucson sector—that **CBP is capable of processing individuals apprehended between ports of entry in as few as “a couple of hours” and not more than 12 hours**.
- The government documents released in the *Al Otro Lado* suit also reveal that CBP ports of entry along the southern border have multiple detention cells as well as other holding areas, such as passport control

lobbies, secondary inspection areas, and so-called “overflow” processing spaces, where individuals could observe social distancing while waiting the few hours needed to be processed – not to mention other spaces such as unused rooms at ports of entry or nearby CBP facilities.<sup>1</sup> For instance,

- The San Ysidro, California port of entry has **31 holding cells**.
- CBP has **25 cells** at the four international bridges that make up the Hidalgo, Texas port of entry.
- At the four Brownsville international bridges, CBP has a combined **20 holding cells**.
- Hidalgo port of entry has **23 detention cells** and **two dedicated processing rooms** at its 3 international crossing points.
- In Laredo, Texas CBP has **12 detention cells** and **five detention rooms** at the port’s four bridges.
- The Progreso port of entry and Donna, Texas international crossing together have **12 cells, three “hard interview rooms”** that can house migrants, and **one holding room**.
- Even small ports of entry at Del Rio, Roma, Eagle Pass, and Rio Grande, Texas have **12, 8, 7, and 4 holding cells**, respectively.

Government data also confirms that ports of entry on the southern border have sufficient staff to process asylum seekers and unaccompanied children. For example, at the same time the Trump Administration reduced asylum processing at official border posts along the southern border, **the number of CBP officers assigned to these ports of entry increased between fiscal years 2016 and 2019 by nearly 11 percent**, according to government [data](#) obtained through FOIA and analyzed by the [CATO](#) Institute.

Thus, **even if people arriving at the border were placed in separate holding cells for 12 hours—far longer than generally needed to complete border processing—CBP could still process hundreds of families, unaccompanied children, and individuals requesting humanitarian protections at the southern border each day**. Instead, under the guise of the coronavirus and the CDC order, CBP ports of entry are refusing to process asylum claims for those waiting on asylum metering lists, expelling refugees seeking life-saving protection in the United States back to the countries they have fled and, in some cases, sending asylum seekers to dangerous regions of the Mexican border where migrants are targeted for kidnapping, rape, and violent assault.

Indeed, recent DHS’ figures reveal that the agency has capacity to process people arriving at the southern border.

- For instance, in May 2020, **the dozens of U.S. ports of entry on the southern border processed only 1,643 inadmissible individuals, including asylum seekers and unaccompanied children, over the course of the month – just 8 percent of capacity compared to October 2016** under the Obama Administration. CBP clearly has capacity to process these arriving asylum seekers and unaccompanied children at ports of entry.
- In addition, the total number of Border Patrol apprehensions along the southern border in May 2020 (21,475) is essentially equivalent to the number of inadmissible individuals CBP officers processed at ports of entry alone in October 2016. Instead of transporting these people apprehended after crossing the border to ports of entry for expulsion, CBP can expeditiously process these individuals at the ports of entry and at the more than 70 southern border sector Border Patrol stations, and release asylum seekers on parole pending immigration court hearings in the United States. Similarly, unaccompanied children must be provided the anti-trafficking protections required by Congress under the [Trafficking Victims Protection Reauthorization Act](#) and swiftly transferred to the authority of Health and Human Services for release to family or other sponsors in the United States while they await immigration court proceedings.

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<sup>1</sup> As these figures are primarily drawn from a 2017 government planning document, the current number of detention cells and other available holding rooms at ports of entry may have changed over time.