



HUMAN
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“We Couldn’t Wait”

Digital Metering at the US-Mexico Border



“We Couldn’t Wait”

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Summary

When Sandra S., her husband, and their two young children arrived at the US-Mexico border, they thought they had reached safety.

They had fled Michoacán, Mexico, after an armed member of a cartel forced his way into their home and threatened to kill the family if they did not keep quiet about having witnessed the disappearances of several people at the neighboring cartel-owned property. The family said the property functioned as a stash house—a place where cartels keep kidnapped or trafficked people, money, weapons, or drugs.

Sandra and her husband left in the early morning, pulling their children out of school without notice, and made their way to Nuevo Laredo, Mexico, which borders Laredo, Texas, in the United States.

When they reached the international bridge, US Customs and Border Protection (CBP) officers standing at the border demarcation line between the US and Mexico refused to admit the family, instructing them that they first needed to make an asylum appointment via CBP One, a US government mobile application. The app also has an online portal. Human Rights Watch accompanied the family when they tried for a second time to seek asylum, and CBP officers again turned the family back, even after being made aware that the family was Mexican and feared persecution in Mexico. Operatives of a different cartel working the border in Nuevo Laredo had already recognized the family as being Mexican asylum seekers trying to flee Mexico and threatened them with violence if they failed to “keep quiet.” Sandra said that if the cartel learned why they had fled, its members would hurt them.

Upon returning to Nuevo Laredo, the family’s only practical option was to wait in a makeshift encampment near the international bridge along with hundreds of other asylum seekers, some of whom had been waiting for an appointment for up to four months. During these waits, asylum seekers and migrants face violence and other dangers as well as a lack of adequate food, clean water, and other necessities. Unable to return home or enter the United States without an appointment booked via the CBP One application, asylum seekers are often effectively trapped at the border for long periods of time. Many stay in encampments or shelters where they are easy targets for criminal groups.

The fundamental right of all people to seek asylum in another country, and to be granted refugee protection after proving fear of persecution on specific grounds, is provided for in US law and in international law binding on the United States. While the right to seek asylum is guaranteed under US law, changes in administrative regulations and US policy in recent years have substantially curtailed people’s ability to access this right in practice.

Tens of thousands of people who, like Sandra and her family, are seeking asylum in the United States have been forced to wait in Mexico under a new rule introduced by the administration of US President Joe Biden in May 2023. The Biden asylum rule impermissibly limits the right to seek asylum for many people and compels them to wait in foreseeably dangerous and inhumane conditions in Mexico.

The Biden asylum rule effectively establishes two categories of asylum seekers. It privileges one of these groups, those who can schedule an appointment on the CBP One app and then appear at the time of their appointment at an official border crossing, or “port of entry.” The second, non-privileged group—all other asylum seekers without visas or another basis for entering the United States—must show they fit within one of a handful of narrow exceptions that allow them access to the regular US asylum system.

Crucially, everyone in the second, non-privileged group—including anyone arriving at a port of entry or apprehended immediately after entering the United States irregularly—is presumed ineligible for asylum. They also may be subject to detention in abusive conditions in immigration holding cells at the border—sometimes for weeks—and processed for removal under “enhanced” expedited removal rules, rushed procedures that do not afford adequate due process. People who attempt to return to the United States within five years after deportation may face criminal prosecution. Substantively, the Biden asylum rule is nearly identical to two Trump-era policies held by federal courts to be illegal.

The near-mandatory nature of the CBP One app, strict limits on the number of asylum seekers who can access US ports of entry each day, and other restrictions imposed by the Biden asylum rule have drastically narrowed access to asylum. The result is a system of “digital metering” at the US-Mexico border.

CBP's nearly exclusive use of the CBP One app and portal to process asylum seekers creates additional barriers to access for those seeking asylum, particularly for certain groups. Many asylum seekers do not have cellphones at all, usually because they cannot afford them or because criminal actors or government agents in Mexico have stolen their phones. When asylum seekers do have phones, their devices often do not have memory space to support the app, they cannot pay for the data they need to use the app, and they do not have access to Wi-Fi.

Some asylum seekers Human Rights Watch interviewed for this report were not aware of the existence of the CBP One app; most knew about it but had problems using it. Nearly all of those we spoke with for this report described having trouble using CBP One, often due to factors such as their race, digital literacy, ability to read or write, language, age, or disability.

While the US government says that having a CBP One appointment is not required for asylum seekers to be processed by CBP officials, this report finds that the app is effectively mandatory because people are turned away by US and Mexican officials at the border when they do not have an appointment on the app and because the US subjects asylum seekers who cannot or do not get appointments on the app to punitive expedited removal procedures.

The US government claims that “scheduling appointments makes the process safer and more orderly, and the advance information that is submitted to CBP officers creates a more efficient and streamlined process for CBP and for individuals.” However, in this report Human Rights Watch demonstrates that the reality is often far from this vision of streamlined efficiency.

The very limited number of appointments available via CBP One fails to meet asylum processing needs, which CBP and Department of Homeland Security (DHS) officials have said reflects CBP's limited capacity. Capacity, though, largely reflects the administration's priorities and choices. The US government has significant resources at its disposal to increase humane processing capacity, but it has created a vicious cycle whereby increased numbers of asylum seekers are forced into labor-intensive expedited processes overseen by CBP instead of fair and efficient asylum determination procedures, accessible to all as required under US law.

Biden administration officials can argue their policies are an improvement over what could be an even worse US approach at the border. The administration has established a new humanitarian parole program to allow more asylum seekers safe pathways into the US, though they are limited to certain nationalities, and among them, people who can afford to pay for plane tickets and other travel, are able to obtain passports, and have family members in the United States wealthy enough to apply to sponsor them with the US government. The Biden administration has also made extensive use of temporary protected status and raised refugee admissions caps.

Still, the Biden asylum rule and digital metering policies are part of a larger effort by the United States to deter irregular migration at the US-Mexico border. The US has sought agreements with many Latin American governments, including Mexico and Guatemala, aimed at deterring migration. In one such arrangement, Mexican President Andrés Manuel López Obrador has agreed to accept some non-Mexican asylum seekers who are rapidly removed or returned “voluntarily” by the United States.

Against this high-level backdrop, officials from both the United States and Mexico participate in blocking asylum seekers from seeking asylum in the United States. In this report, Human Rights Watch documents efforts by the US and Mexico to conduct “turnbacks”—blocking people from entering the United States and pushing them back to Mexico—of asylum seekers at ports of entry at the US-Mexico border. The US CBP One appointment system is cited by officials of both governments when blocking asylum seekers from accessing the border. Turnbacks today are therefore often the dangerous result of digital metering and the Biden asylum rule.

The US policies blocking asylum at the border in recent years, carried out in collaboration with Mexico, have changed in name and severity, but one material outcome for asylum seekers has remained the same: they are forced to wait in northern Mexican states, as well as in many cities in other parts of Mexico through which migrants transit, where they are systematically targeted by cartels, sometimes with the help of Mexican government officials, for kidnapping, extortion, sexual assault, robbery, and other abuse. Digital metering feeds cartel needs for a vulnerable population to prey upon.

The more difficult it is for migrants to cross the US-Mexico border, the more money cartels make, whether from smuggling operations or from kidnapping and extortion. Human Rights

Watch documented cases of kidnapping for ransom in interviews in each of the five Mexican cities in which we visited for this report. Criminal actors and government officials also have near impunity when sexually assaulting asylum seekers, given the fear and power imbalance they can exploit due to digital metering.

The Mexican government also apprehends many non-Mexican asylum seekers at the US border before they can reach the United States and relocates them to southern Mexico, where they are typically forced to sign a document agreeing to leave Mexico via its southern border. The Mexican government also summarily deports asylum seekers directly to their country of origin.

Similarly, the Guatemalan government has recently agreed in talks with the US government to try to reduce the number of migrants arriving at the US southern border. Asylum seekers told us that police and immigration authorities in Guatemala often conduct invasive searches of their persons and belongings, probing with ungloved hands into shoes, socks, waistbands, bras, and underwear. Some asylum seekers said women had been sexually assaulted during such searches, including acts of unwanted touching by men who identified themselves as Guatemalan government officials.

This report also finds that individual asylum seekers forced by the Biden asylum rule to wait in Mexico often constitute a distinct social group in Mexico—meaning that the rule as applied heightens their need for protection and increases the number of viable asylum claims. Asylum seekers who do not speak Spanish at all or do not speak it as Mexicans speak Spanish are easily identified as non-Mexican. In many cases, asylum seekers from countries other than Mexico are also readily identified by physical appearance, including their facial structure, height, or skin color. These are immutable characteristics of this group—they cannot reasonably change their physical appearance, the languages they speak, or how they speak Spanish. These characteristics set non-Mexican asylum seekers apart, and Mexican society readily recognizes non-Mexican asylum seekers as a distinct social group.

This report also shows that navigating or accessing the Biden asylum rule and the CBP One app is more difficult for certain categories of people—among them, disabled individuals, Black and Indigenous people, people who do not have the language skills, ability to read or write, or digital literacy skills required to use the app, older people, and, for more structural

reasons, LGBT people and people who are not wealthy enough to be able to pay for smartphones, data plans, and internet access—or for passports and a financial sponsor in the US. The Biden asylum rule and digital metering system are therefore discriminatory.

Most essential of all, the Biden asylum rule and digital metering violate the fundamental legal principle of nonrefoulement, which prohibits the return of refugees (defined as people with well-founded fears of persecution on specific grounds) to countries where their lives or freedom would be at risk. The principle of nonrefoulement is incorporated into US law and is a cornerstone of international refugee law.

US officials preventing arriving asylum seekers from accessing asylum procedures (which would allow asylum seekers to be identified as refugees or not) based on whether or not they are able to access CBP One appointments likely constitutes refoulement, in violation of international law.

While international refugee law does not formally provide an asylum seeker (a person claiming to be a refugee) the right to enter a country and certainly not a presumptive guarantee that refugee protection will be granted, the refoulement prohibition provides little latitude when the asylum seeker appears at a land border. Summary rejection of asylum seekers at a land border has been found to violate the principle of nonrefoulement by the UN Refugee Agency (UNHCR).

The digital metering system, which includes the effectively mandatory use of the CBP One application enforced by the actions of CBP agents and Mexican officials working in collusion with them, rejects asylum seekers—some of whom may be refugees—at the border. The promise of entry at a later date does not protect against refoulement.

In addition, for people who arrive at the border without a CBP One appointment and are therefore subject to the Biden asylum rule's enhanced expedited removal procedures, the risk of refoulement is acute. Asylum seekers must now show in credible fear interviews that they are not subject to the Biden asylum rule or that they qualify for one of a few narrow exceptions. The standards set forth in the rule are difficult to meet under the best of circumstances. People who are detained by CBP under abusive conditions and without access to counsel face extraordinary obstacles.

The Biden administration claims that its asylum rule and effectively mandatory use of CBP One will disrupt smuggling networks. Human Rights Watch has observed that, on the contrary, digital metering in Mexico leaves asylum seekers vulnerable to extortion, kidnapping, and violence. And, with no other way to access protection, asylum seekers are more likely to engage smugglers, further enriching criminal cartels.

There is also evidence the new rule is driving people to take greater risks to try to enter the United States undetected. Border deterrence policies have already led to record numbers of border deaths during the Biden administration. During the Trump administration, CBP reported around 300 US-side border deaths each year—an already unconscionable number—but that number skyrocketed in Fiscal Year 2022 (the 12-month period beginning October 1, 2021), the first full year of the Biden administration, when CBP reported more than 850 people found dead in the United States at or near the border in circumstances that suggested they had attempted to enter irregularly. While CBP data for fiscal year 2023 (when the Biden asylum rule went into effect) are not yet public, local medical examiners at the border have already reported new record highs in some regions.

To fulfill US and international legal obligations, the Biden administration should immediately rescind its asylum rule, end all practices of metering, digital or otherwise, and stop collaborating with Mexico and other states to block asylum claims in the United States. The US Congress and the administration should identify and implement approaches that reflect the reality that persecution, conflicts, economic conditions, climate and environmental factors, and peoples' needs to reunite with family in the United States mean that migration will continue. Lawmakers and policymakers should treat migration as an opportunity on all fronts: reuniting families, fulfilling the promises of protection established by law and engraved on national monuments, and benefiting communities and strengthening society.

The US needs an orderly process for increased opportunities for safe, legal migration—not a digital metering system that increases vulnerability to human rights violations, enriches and empowers cartels, and creates conditions in which it is nearly impossible for asylum seekers and migrants to follow the rules. An orderly process that affords meaningful access to the asylum system is urgently needed. Asylum seekers' lives are on the line.

Methodology

This report is based on Human Rights Watch interviews with 128 asylum seekers who were able to share information on the experiences of a total of 263 people, including family members and friends with whom they were traveling. Most had been subjected to the CBP One appointment system. Human Rights Watch also interviewed 13 shelter workers, eight migrant service providers, Mexican government officials, and human rights workers.

We conducted interviews in August and September 2023 in Mexico City; Saltillo and Piedras Negras, Coahuila; Monterrey, Nuevo Leon; Nuevo Laredo, Tamaulipas; and Eagle Pass, Texas. Human Rights Watch also observed attempts by asylum seekers to access US ports of entry in Piedras Negras and Nuevo Laredo. Locations were chosen in consultation with other organizations monitoring the impact of CBP One and the Biden asylum rule, including with the International Rescue Committee and Human Rights First. We also observed asylum seekers using CBP One and assessed the app's accessibility and usability.

Human Rights Watch carried out interviews in English or Spanish, depending on the preference of the interviewee, without interpreters. We informed the interviewees of the purpose of our research, and they consented to be interviewed for that purpose. They did not receive any payments or other incentives. Where appropriate, Human Rights Watch provided migrants and refugees with contact information for organizations offering health care services or legal, social, or counseling services.

The names of migrants and asylum seekers have been replaced with pseudonyms to mitigate security concerns, especially since many of those we spoke with continue to wait in Mexico to seek protection in the United States. Some migrant shelter workers and security guards also spoke to Human Rights Watch on condition of anonymity to mitigate security or funding concerns.

We also shared our findings with both governments on November 3, 2023. We received no response from the United States. We received responses from Mexican government agencies and have included those responses in relevant sections of this report.

Background

Although US law guarantees the right to seek asylum, since at least the mid-1990s successive administrations have narrowed access to asylum, treating claims for protection as burdensome and presumptively abusive. Most recently, in a move that replicates the maneuvers of the Trump administration, the Biden administration introduced a 2023 asylum rule aimed at deterring most arriving asylum seekers.

However, the asylum rule has not deterred people from seeking to enter the United States to seek safety. Nor has it increased the efficiency of the asylum system. Instead, it has made the asylum system less fair. One of its main elements is an appointment system accessed through a mobile application, CBP One, that many people cannot use—because they do not have mobile phones, cannot afford data and do not have Wi-Fi access, do not speak the languages available on the app, or lack the digital literacy to use it successfully.

On its face, the rule allows people who cannot make appointments on the app to request asylum in person at a US “port of entry,” an official border crossing. But US Customs and Border Protection (CBP) agents treat a CBP One appointment as effectively mandatory. The result is a system of digital metering—a process of strictly limiting the number of people allowed to seek asylum on any given day—that has increased backlogs in asylum processing and spurred irregular immigration as a growing number of people blocked from entering the US are driven to cross in more remote and dangerous parts of the border.¹

¹ Human Rights Watch interview with Raymundo Ramos, director, Comité de Derechos Humanos de Nuevo Laredo, Nuevo Laredo, Mexico, September 8, 2023; Department of Homeland Security Office of Inspector General, Special Review - Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy, September 27, 2018, <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-84-Sep18.pdf> (accessed October 10, 2023); Santiago Pérez and Alicia A. Caldwell, “It’s Like a Graveyard’: Record Numbers of Migrants Are Dying at the US Border,” *Wall Street Journal*, February 17, 2023, <https://www.wsj.com/articles/illegal-immigration-mexico-us-border-deaths-c35cf892> (accessed December 6, 2023); Ari Sawyer, “50 Migrants Found Dead in Texas Shows Flawed Approach in US,” commentary, Human Rights Watch dispatch, June 29, 2022, <https://www.hrw.org/news/2022/06/29/50-migrants-found-dead-texas-shows-flawed-approach-us>; Human Rights Watch, US: Biden ‘Asylum Ban’ Endangers Lives at the Border, Human Rights Watch news release, May 11, 2023, <https://www.hrw.org/news/2023/05/11/us-biden-asylum-ban-endangers-lives-border>.



US authorities leave a Haitian family of 11, including four children, for at least 3 hours in 99-degree heat on the riverbank in Eagle Pass, Texas, September 5, 2023. Asylum seekers who cannot wait for a CBP One appointment and are turned back at ports of entry often face dangerous crossings between ports of entry only to be presumed ineligible for asylum in the United States under the Circumvention of Lawful Pathways Final Rule. © 2023 Ari Sawyer/Human Rights Watch

Valeria Wheeler, the executive director of Mission: Border Hope, a migrant shelter in Eagle Pass, Texas, that receives from CBP hundreds of asylum seekers who cross the border irregularly, said at first, she thought people were refusing to follow the new rule. Then she realized asylum seekers were wading across the deadly Rio Grande because they had no other choice. “People are getting desperate and just crossing the river,” Wheeler said. “They need to cross, and neither buoys nor the app will stop them.”²

The Circumvention of Lawful Pathways Rule

US law provides for the right to seek asylum from persecution on specific grounds.³ However, the Biden administration’s May 2023 Circumvention of Lawful Pathways Rule (the “Biden asylum rule”) severely limits people’s ability to access this right.

The Biden asylum rule, which applies to everyone who attempts to enter the United States between May 11, 2023, and May 11, 2025, establishes privileged and non-privileged categories of asylum seeker. Those who are privileged are those who can pre-schedule an appointment via a mobile phone application, CBP One, and present themselves at an official port of entry at the time of their appointment. All other asylum seekers without any other legal basis for entering the United States must show they fit within an exception in

² Human Rights Watch interview with Valeria Wheeler, executive director, Mission: Border Hope, Piedras Negras, Mexico, September 4, 2023.

³ See Immigration and Nationality Act § 208, codified at 8 U.S.C. § 1158.

order to access the regular US asylum system. People without CBP One appointments or who cannot prove an exception are not able to access the regular US asylum system.

The exceptions are supposed to include Mexican citizens, unaccompanied children, people who can prove they sought and were denied asylum in another country, people who can obtain or have obtained parole (generally only available to wealthy people of certain nationalities),⁴ or people who present at a port of entry without an appointment who can prove an inability to access the CBP One app.⁵

For anyone attempting to argue that they were unable to access the CBP One app, significant proof is required. Individuals may try to claim a “language barrier, illiteracy, significant technical failure, or other ongoing and serious obstacle.”⁶ However, the rule also states asylum seekers are expected to seek assistance if they are having difficulties accessing the app.⁷

Asylum seekers in the non-privileged group, including anyone presenting at or between ports of entry without a CBP One appointment (and no proof of inability to access the app), are presumed to be ineligible for asylum.⁸

The presumption of asylum ineligibility can be rebutted by a showing of “exceptionally compelling circumstances,”⁹ including “an acute medical emergency,”¹⁰ “an imminent and

⁴ Since late 2022 and early 2023, Venezuelans, Haitians, Cubans, and Nicaraguans who have a valid passport and a financial sponsor in the United States may apply for a program called humanitarian parole. Those granted parole are given permission to travel to the US by plane and to remain there for a limited amount of time—potentially up to two years. Once in the US, they may apply for permission to work. They may also apply for asylum, which, if granted, could allow them to remain in the country. Obtaining a passport is difficult for people from Cuba, Nicaragua, Venezuela, and Haiti and may be dangerous or nearly impossible for those who fear being persecuted by their government.

⁵ See Lawful Pathways Condition on Asylum Eligibility, codified at 8 C.F.R. § 208.33(a)(2), <https://www.ecfr.gov/current/title-8/chapter-1/subchapter-B/part-208/subpart-C/section-208.33> (accessed Oct 10, 2023).

⁶ US Department of Homeland Security, Fact Sheet: Circumvention of Lawful Pathways Final Rule, May 11, 2023, <https://www.dhs.gov/news/2023/05/11/fact-sheet-circumvention-lawful-pathways-final-rule> (accessed April 10, 2024).

⁷ Federal Register, “Circumvention of Lawful Pathways,” Department of Homeland Security and Executive Office of Immigration Review, 88 Fed. Reg. 31315 (May 16, 2023), <https://www.federalregister.gov/documents/2023/05/16/2023-10146/circumvention-of-lawful-pathways> (accessed October 12, 2023).

⁸ 8 C.F.R. § 208.33.

⁹ *Ibid.* § 208.33(a)(3)(i).

¹⁰ *Ibid.* § 208.33(a)(3)(i)(A).

extreme threat to life or safety, such as an imminent threat of rape, kidnapping, torture, or murder,”¹¹ or “a severe form of trafficking in persons.”¹²

The Biden asylum rule subjects asylum seekers outside the privileged group to “enhanced” expedited removal, under which people are forced through rushed procedures. Expedited removal dates to 1996, but the asylum rule makes the process more punitive by forcing many asylum seekers to make their initial claims while in Border Patrol detention, and in other cases by putting parents and children who are apprehended at the US border into a rapid screening process that keeps families under heavy surveillance.

The Biden asylum rule is substantively nearly identical to two previous US policies held by federal courts to violate US law. As a federal district court in California recently found when examining the Biden asylum rule in comparison to those previous court cases, “conditioning asylum eligibility on presenting at a port of entry or having been denied protection in transit conflicts with the unambiguous intent of Congress.”¹³

The CBP One App

The Biden administration first used the CBP One mobile application in February 2021 to process asylum seekers during the wind-down of the so-called Migrant Protection Protocols (MPP), commonly known as the “Remain in Mexico” policy, which had required non-Mexican asylum seekers to wait for months or years in dangerous Mexican border cities for their US asylum hearings.¹⁴

In May 2021, the Biden administration expanded its use of CBP One, “relying on partnerships with certain International Organizations/NGOs” to process claims of individuals who might qualify for humanitarian exemptions from a previous Trump-era

¹¹ Ibid. § 208.33(a)(3)(i)(B).

¹² Ibid. § 208.33(a)(3)(i)(C).

¹³ Order Granting Plaintiffs’ Motion for Summary Judgment, *East Bay Sanctuary Covenant v. Biden* (N.D. Cal. July 25, 2023), <https://s3.documentcloud.org/documents/23886564/bidenasylumrigo72523.pdf> (accessed February 18, 2024).

¹⁴ US Department of Homeland Security, Privacy Impact Assessment for CBP One™, February 19, 2021, <https://www.dhs.gov/sites/default/files/2023-05/privacy-pia-cbpo68-cbpmobileapplication-may2023.pdf> (accessed October 20, 2023).

summary border expulsion policy known as Title 42.¹⁵ Those NGOs would use CBP One to “submit certain biographic and biometric information to CBP on the individual’s behalf,” outsourcing a fundamental CBP task to NGOs and IGOs.¹⁶ Again, individual asylum seekers did not have access to the application themselves.

The Title 42 CBP One exemption request program led to corruption, extortion, and other dangers as Mexican government and non-government actors sought to exploit the appointment system,¹⁷ and it proved overwhelming for organizations that provide direct services to migrants, monitor US government abuse, and defend the right to seek asylum. Despite or because of these problems, and at the urging of some NGOs, in January 2023 US authorities made the CBP One application available for use by individual asylum seekers who wished to apply for the exemption program.¹⁸

These earlier uses of the CBP One app were relatively limited. As the following sections describe, the 2023 asylum rule has significantly expanded its use, and CBP practices make it effectively mandatory.

Metering at the US-Mexico Border

The United States has carried out “metering”—only accepting a certain number of asylum seekers each day and turning back the rest—at least since 2016, during the administration of President Barack Obama.¹⁹ Metering became a formal policy and was expanded in 2018, during the Trump administration,²⁰ when Mexican officials, shelter workers, and even

¹⁵ US Department of Homeland Security, Privacy Impact Assessment Update for the Unified Secondary System: Advance Information from Certain Undocumented Individuals, May 7, 2021,

<https://www.dhs.gov/sites/default/files/publications/privacy-pia-cbp067a-unifiedsecondary-may2021.pdf> (accessed October 20, 2023); Alisa Reznick, “In Nogales, New Process Has Asylum Seekers Ask for Title 42 Exceptions Using a CBP App,” *Fronteras Desk*, January 26, 2023, <https://fronterasdesk.org/content/1837048/nogales-new-process-has-asylum-seekers-ask-title-42-exceptions-using-cbp-app> (accessed October 12, 2023).

¹⁶ *Ibid.*

¹⁷ Emily Green, “Exclusive: Mexican Officials Are Extorting Thousands of Dollars from Migrants Applying for Asylum,” *Vice* March 13, 2019, <https://www.vice.com/en/article/kzdy4e/exclusive-mexican-officials-are-extorting-thousands-of-dollars-from-migrants-to-apply-for-asylum> (accessed December 6, 2023).

¹⁸ *Ibid.*

¹⁹ Clara Migoya, “Judge Rules ‘Metering’ of Asylum Seekers Is Unconstitutional,” *Arizona Republic*, September 3, 2021, <https://www.azcentral.com/story/news/politics/border-issues/2021/09/03/judge-rules-metering-asylum-seekers-unconstitutional/5719466001/> (accessed October 12, 2023).

²⁰ Memorandum from Todd C. Owen, Executive Assistant Commissioner, Office of Field Operations, Metering Guidance, April 27, 2018, <https://www.docketbird.com/court-documents/Al-Otro-Lado-Inc-et-al-v-Elaine-C-Duke/Exhibit-1-Memorandum-from-Todd-C-Owen-Apr-27-2018/casd-3:2017-cv-02366-00283-001> (accessed October 10, 2023).

migrants themselves created and managed paper lists of those waiting to present themselves at a US port of entry in response to the limited number of asylum seekers CBP officers said they would process on a given day.²¹ CBP relied on those lists to carry out their metering policy.²²

The list process was riddled with corruption and danger, as some of those who managed lists extorted migrants who wanted to register while others became targets for criminal organizations that sought to profit from the CBP-imposed scarcity in asylum processing.²³ By November 2019, more than 21,000 people were waiting in Mexico to be able to seek asylum in the United States.²⁴

Though internal CBP “metering guidance” stressed that Mexican nationals were not covered by the metering policy and instructed CBP officials to be “particularly aware” of any efforts by Mexican authorities to prevent Mexican nationals claiming fear of return to Mexico (their potential country of persecution) from entering the United States,²⁵ Mexican citizens, too, were subjected to the metering policy.²⁶ For example, in November 2019, Human Rights Watch observed as scores of Mexican asylum seekers, over half of whom were children with their parents, as they presented themselves to CBP officers at the Paso del Norte bridge between Ciudad Juárez and El Paso, Texas and were told consistently by CBP that the port of entry was “too full,” even when they clearly stated their fears and need to claim asylum.²⁷

²¹ Department of Homeland Security Office of Inspector General, Special Review - Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy.

²² Order, p. 5, *Al Otro Lado v. Wolf*, No. 19-56417, (9th Cir. February 5, 2020), <https://cdn.ca9.uscourts.gov/datastore/general/2020/03/05/19-56417%20-%20Order.pdf> (accessed April 10, 2024).

²³ Clara Migoya, “Judge Rules ‘Metering’ of Asylum Seekers Is Unconstitutional,” *Arizona Republic*.

²⁴ *Ibid.*

²⁵ Memorandum from Todd C. Owen, April 27, 2018, https://www.dhs.gov/sites/default/files/publications/metering_02.pdf.

²⁶ Human Rights Watch, US: Mexican Asylum Seekers Ordered to Wait, news release, December 23, 2019, <https://www.hrw.org/news/2019/12/23/us-mexican-asylum-seekers-ordered-wait>. That same month, the American Civil Liberties Union (ACLU) filed a complaint with the Department of Homeland Security’s Office of Inspector General (OIG) in November 2019 providing 18 examples of Mexican asylum-seeking families and individuals who had been subject to metering in Ciudad Juárez and Matamoros, Mexico. American Civil Liberties Union, complaint to DHS Office of Inspector General, “Re: CBP’s unlawful turn back of Mexican asylum seekers at ports of entry,” November 14, 2019, https://www.aclutx.org/sites/default/files/aclu_oig_complaint_metering.pdf (accessed October 10, 2023).

²⁷ *Ibid.*

Legal Challenges to the Biden Asylum Rule and to Metering

The Biden asylum rule incorporates earlier rules that federal judges found inconsistent with US law. One of these earlier rules, the “third-country transit ban,” purported to block access to asylum for people who passed through a third country before arriving in the United States—meaning, for example, that it would foreclose asylum claims by anyone travelling through Mexico.²⁸ Another measure, the “entry ban,” attempted to block access to asylum for people who crossed the border irregularly.²⁹

A federal district court temporarily blocked the Biden asylum rule on July 25, 2023, holding, as with the Trump administration rules, the conditions for asylum eligibility imposed by the rule are inconsistent with US law, which specifically permits people to seek asylum whether at or between ports of entry.³⁰ A federal appeals court has allowed the policy to remain in effect while the appeal is heard.³¹

In addition, a class action lawsuit now known as *Al Otro Lado v. Mayorkas*, ongoing since 2017, challenges the government’s use of metering as a violation of US law and international refugee and human rights law. Plaintiffs argue that both Trump and Biden administration policies that require asylum seekers to wait for an appointment before approaching a port of entry violate the US Immigration and Nationality Act (INA), the Administrative Procedure Act (APA), the due process clause of the Fifth Amendment, and the doctrine of nonrefoulement—the principle of international human rights and refugee law that forbids any country from returning a person to a country where they would face

²⁸ See Order Granting Preliminary Injunction, *East Bay Sanctuary Covenant v. Barr*, No. 19-cv-04073 (N.D. Cal. February 16, 2021) (preliminary injunction of final third-country transit ban rule), <https://www.aclu.org/cases/east-bay-v-barr?document=pi-order> (accessed February 18, 2024); See also *East Bay Sanctuary Covenant v. Barr*, 964 F.3d 832, 857 (9th Cir. 2020) (affirming the district court’s preliminary injunction of the nearly identical interim third-country transit ban rule), <https://www.aclu.org/cases/east-bay-v-barr?document=order-east-bay-v-barr> (accessed February 18, 2024).

²⁹ See *East Bay Sanctuary Covenant v. Trump*, 950 F.3d 1242, 1272 (9th Cir. February 28, 2020) (observing that the entry ban was “effectively a categorical ban on migrants who use a method of entry explicitly authorized by Congress”) <https://www.aclu.org/cases/east-bay-sanctuary-covenant-v-barr?document=east-bay-sanctuary-covenant-v-trump-ninth-circuit-ruling> (accessed February 18, 2024).

³⁰ Order Granting Plaintiffs’ Motion for Summary Judgement and Denying Defendant’s Motion for Summary Judgement, p. 16, *East Bay Sanctuary Covenant v. Biden*, No. 4:18-cv-06810-JST (N.D. Cal. July 25, 2023), https://immigrantjustice.org/sites/default/files/content-type/press-release/documents/2023-07/187-East%20Bay-v-Biden_Order-granting-motion-for-SJ_7-25-23.pdf (accessed February 18, 2024).

³¹ Order, *East Bay Sanctuary Covenant v. Biden*, No. 23-16032 (9th Cir. August 3, 2023), <https://immigrantjustice.org/sites/default/files/content-type/press-release/documents/2023-08/East-Bay-Sanctuary-Covenant-v.-Biden-CA9-Stay-Order.pdf> (accessed February 18, 2024); See also National Immigrant Justice Center, *East Bay Sanctuary Covenant v. Biden*, August 4, 2023, https://immigrantjustice.org/court_cases/east-bay-sanctuary-covenant-v-biden (accessed February 1, 2024).

persecution or torture—and charge that metering policies have unlawfully subjected asylum seekers to prolonged danger and deprived them of their right to seek asylum.³² On September 2, 2021, a federal district court in Southern California found that the government had violated its statutory duties as well as its constitutional due process obligations by turning back asylum seekers at ports of entry without inspecting and processing them.³³ The judge ruled the practice of metering—or, more plainly, the government’s “systematic turnbacks of asylum seekers”³⁴ from ports of entry—was illegal, even in cases where the person was not on US territory.³⁵ On November 1, 2021, CBP formally rescinded the metering policy, though the practice continued.³⁶

More recently, a new class action complaint, part of the same lawsuit against the Biden asylum rule, argues that the digital metering system the rule creates “is just the latest manifestation of the government’s multi-year effort to block asylum access for asylum seekers in the process of arriving at the southern border.”³⁷

³² See Center for Gender and Refugee Studies, *Al Otro Lado v. Mayorkas*, <https://cgrs.uclawsf.edu/our-work/litigation/al-otro-lado-v-mayorkas> (accessed October 10, 2023).

³³ Opinion Granting in Part and Denying in Part Parties’ Cross-Motions for Summary Judgment, *Al Otro Lado v. Mayorkas*, No. 17-cv-02366-BAS-KSC (S.D. Cal. September 2, 2021) (2021 Partial Summary Judgment Order); See also *Al Otro Lado, v. Mayorkas*, 619 F. Supp. 3d 1029, 1034-35 (S.D. Cal. August 5, 2022) (2022 Declaratory Judgment), <https://cgrs.uclawsf.edu/legal-document/remedies-opinion> (accessed February 18, 2024).

³⁴ *Al Otro Lado, v. Mayorkas*, 619 F. Supp. 3d at 1032.

³⁵ Opinion Granting in Part and Denying in Part Parties’ Cross-Motions for Summary Judgment, *Al Otro Lado v. Mayorkas*, No. 17-cv-02366-BAS-KSC.

³⁶ US Customs and Border Protection, Guidance for Management and Processing of Undocumented Noncitizens at Southwest Border Land Ports of Entry, November 1, 2021, <https://www.cbp.gov/sites/default/files/assets/documents/2021-Nov/CBP-mgmt-processing-non-citizens-swb-lpoes-signed-Memo-11.1.2021-508.pdf> (accessed November 13, 2023); Stephanie Leutert and Caitlyn Yates, *Metering Update*, Strauss Center for International Security and Law, February 2022, https://www.strausscenter.org/wp-content/uploads/Feb_2022_Metering.pdf (accessed November 13, 2023).

³⁷ Class Action Complaint, p. 2, *Al Otro Lado v. Mayorkas*, No. 23-cv-01367-AGS-BLM (S.D. Cal. filed July 27, 2023), <https://cgrs.uclawsf.edu/legal-document/complaint-2> (accessed November 13, 2023).

New Barriers to Asylum: The Biden Rule and Digital Metering

The CBP One App Effectively Denies or Restricts Access to Asylum

According to the US government, the CBP One smartphone application is “a mobile application that serves as a single portal to a variety of CBP services. Through a series of guided questions, the app will direct each type of user to the appropriate services based on their needs.”³⁸

In the context of certain US immigration programs made available to people in Cuba, Haiti, Nicaragua, Venezuela, and Ukraine, who use CBP One in the process of applying for parole from within their countries, the app has been used to help save lives and unite families.³⁹ However, at the US-Mexico border, the app combined with the Biden asylum rule creates new system of digital metering that is an illegal barrier to asylum.

Practical Problems

CBP’s nearly exclusive use of the CBP One app and portal to process asylum seekers creates additional barriers to access for those seeking asylum, particularly for certain groups. Many asylum seekers do not have cellphones at all, usually because they cannot afford them or because criminal actors or government agents in Mexico have stolen their phones.⁴⁰ Where asylum seekers do have phones, they often do not have memory space to support the app, cannot pay for the data they need to use the app, and do not have access to Wi-Fi, migrant shelter workers told Human Rights Watch.⁴¹

In many cases, people we spoke to said that the CPB One app did not always function as they expected, returning error messages that meant they were unable to book an

³⁸ US Customs and Border Protection, CBP One Mobile Application, Knowledge Article, November 4, 2023, https://help.cbp.gov/s/article/Article-1701?language=en_US (accessed March 13, 2024).

³⁹ David Bier, *Parole Sponsorship Is a Revolution in Immigration Policy*, CATO Institute, September 18, 2023, https://www.cato.org/sites/cato.org/files/2023-09/BP%20165_update.pdf (accessed December 6, 2023); US Citizenship and Immigration Services, Processes for Cubans, Haitians, Nicaraguans, and Venezuelans, last updated September 20, 2023, <https://www.uscis.gov/CHNV> (accessed December 6, 2023).

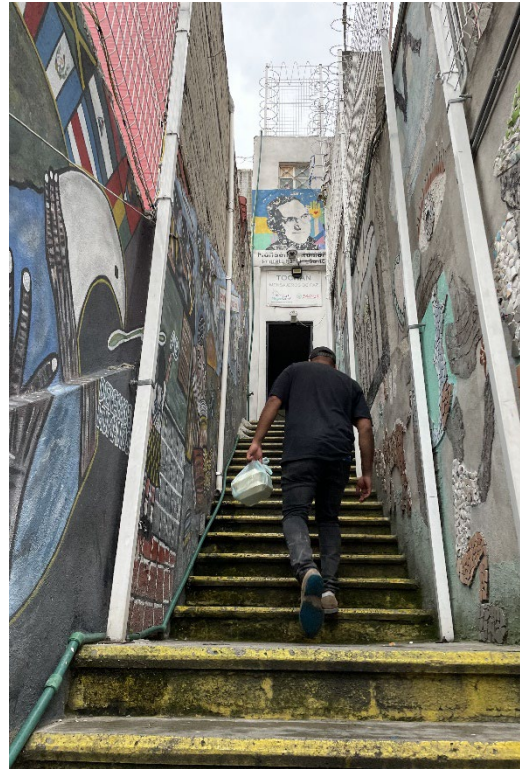
⁴⁰ Human Rights Watch interviews with asylum seekers, Mexico and United States, August-September 2023.

⁴¹ *Ibid.*; Human Rights Watch interviews with shelter workers, Monterrey, Mexico, August 22-24; Human Rights Watch interviews with migrant shelter workers, Mexico City, August 2023.

appointment and leading to extended wait times. CBP One is also available via a web portal, albeit with limitations, and it still requires the use of a cellphone to submit photos and to submit to the app’s “aliveness test” using facial recognition technology. In any case, given the circumstances in which they live, asylum seekers rarely have access to computers, and when they do, that access is extremely limited.

Migrant shelter workers told Human Rights Watch that CBP One, which is geofenced to operate within a certain distance of the border, including Mexico City and other northern Mexico cities, has upended their operations. Previously, asylum seekers would stay at shelters for short periods of time—often only a matter of days. They now spend much longer waiting for a CBP One appointment, creating a greater need for services like medical and psychological care.⁴² Many shelters, which typically do not receive government funding, have extended the time periods for which asylum seekers are permitted to stay, but with an ongoing need for shelter among newly arriving asylum seekers, they have needed to turn many asylum seekers away or ask existing asylum seekers to leave. While some shelters allow people to stay for up to a month, many are only able to offer a few days of shelter.

Several asylum seekers told Human Rights Watch that they had no choice but to cross irregularly to turn themselves in because they no longer had anywhere to stay in Mexico.⁴³



A man who intends to seek asylum in the United States scales the steps of a migrant shelter in Mexico City where he has been waiting for a CBP One appointment, August 16, 2023. © 2023 Ari Sawyer/Human Rights Watch

⁴² Human Rights Watch interviews with migrant shelter workers, Mexico, August-September 2023.

⁴³ Human Rights Watch interviews with migrants, Mexico, August-September 2023.

When asylum seekers have questions about how to use CBP One, there is no one at CBP they can call, fueling a high level of confusion and misinformation around how to use the application.⁴⁴ For those needing help, there is only an email address they can contact, showing the lack of urgency around response and additional digital literacy and accessibility barriers. The US government has given some trainings to shelter workers in Mexico, but there continues to be high levels of confusion, including among shelter workers who told Human Rights Watch that they continued to have problems with the function of the app. Many asylum seekers told Human Rights Watch that they tried to troubleshoot application errors or avoid long wait times by deleting their accounts and re-registering several times, while others said they were forced to re-register because they'd entered information incorrectly, exposing them for longer periods of time to targeted abuse in Mexico.⁴⁵

CBP One is also difficult for asylum seekers to access because many are simply unfamiliar with smartphones. According to a 2022 World Bank report, many asylum seekers applying to the US have fled countries with very low smartphone penetration rates per household.⁴⁶ While a 2021 study found that 85 per cent of people in the United States own a smartphone,⁴⁷ Mexico and countries in Central and South America have lower internet and smartphone penetration. More advanced 4G technologies have a penetration rate of only 37 percent in Mexico and Central America due to “the lack of high-speed fixed broadband infrastructure, the high costs of data and devices, the lack of digital skills, and the unavailability of relevant, local-language content.”⁴⁸ Only 5 percent of households in Haiti have access to a fixed internet connection, 25 percent in Nicaragua, 31 percent in Guatemala, 40 percent in Honduras, 43 percent in El Salvador, 55 percent in Bolivia, and 65 percent in Mexico.⁴⁹ There was no data on Venezuela, but a 2018 Pew Research report found 32 percent of Venezuelans did not own a mobile phone, let alone a smartphone.⁵⁰

⁴⁴ Ibid.; Human Rights Watch interviews with migrant shelter workers, Mexico, August-September 2023.

⁴⁵ Human Rights Watch interviews with asylum seekers, Mexico, United States, August-September 2023.

⁴⁶ World Bank, *Internet Access and Use in Latin America and the Caribbean*, September 2022, p. 5, <https://www.undp.org/sites/g/files/zskgke326/files/2022-09/undp-rblac-Digital-EN.pdf> (accessed October 18, 2023).

⁴⁷ Pew Research Center, “Mobile Fact Sheet,” *Pew Research Center*, April 7, 2021, <https://www.pewresearch.org/internet/fact-sheet/mobile/> (accessed October 18, 2023).

⁴⁸ World Bank, *Internet Access and Use in Latin America and the Caribbean*, September 2022, <https://www.undp.org/sites/g/files/zskgke326/files/2022-09/undp-rblac-Digital-EN.pdf> (accessed October 18, 2023).

⁴⁹ Ibid.

⁵⁰ Laura Silver, “Mobile Divides in Emerging Economies,” *Pew Research Center*, November 20, 2019, <https://www.pewresearch.org/internet/2019/11/20/mobile-divides-in-emerging-economies/> (accessed October 18, 2023).

Asylum seekers who have not had practice using smartphones should not be forced to learn in life-threatening circumstances.

Identity-Based Barriers

While some asylum seekers Human Rights Watch interviewed were not aware of the existence of the CBP One app, most knew about it but had problems using it.⁵¹ Nearly all of those we spoke with reported having trouble using CBP One, often due to some aspect of their personal identity.⁵²

Black and Brown asylum seekers may face barriers to using CBP One as the app uses facial recognition technology to verify an asylum seeker against their identity documents. Asylum seekers must allow the app to take a photo of their faces when registering on the app and again to confirm their appointment and often receive error messages. Asylum seekers and migrant shelter workers reported having trouble getting the selfie to work with asylum seekers with darker skin tones and having to shine a bright light on asylum seekers' faces in an attempt to lighten their skin tone and make themselves recognizable to the app.⁵³

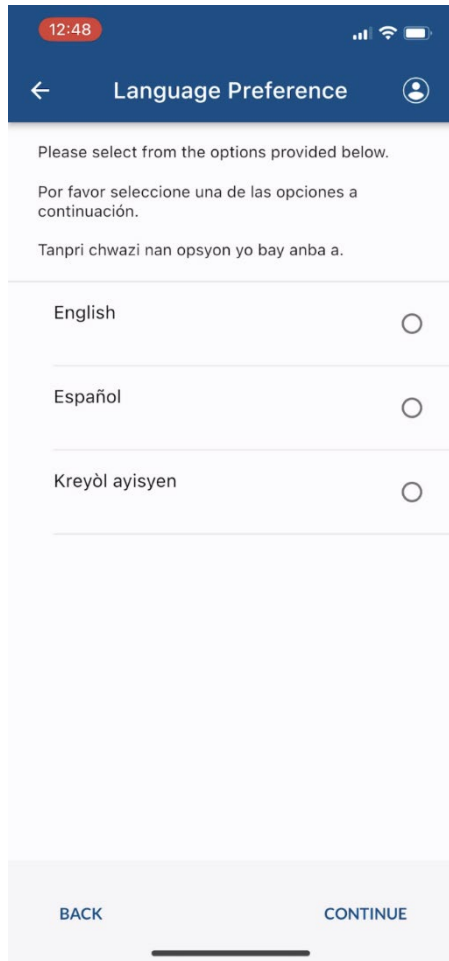
Asylum seekers experience language barriers in accessing CBP One. As has been well documented by legal service providers and human rights workers, CBP One is inaccessible to many asylum seekers, including those without access to a smartphone or the internet, those who do not speak one of the few languages available in the application, are not able to read, have never used a smartphone and do not understand how to use CBP One or any other mobile applications.⁵⁴ The app is only available in English, Spanish, and Haitian Creole, but arriving asylum seekers speak a multitude of other languages, including those

⁵¹ Human Rights Watch interviews with asylum seekers, Mexico, United States, August-September 2023.

⁵² Ibid.

⁵³ Human Rights Watch interviews with shelter workers, Mexico, August-September 2023.

⁵⁴ International Rescue Committee, *Limits on Access to Asylum After Title 42: One Month of Monitoring U.S.-Mexico Border Ports of Entry*, report, June 2023, https://www.rescue.org/sites/default/files/2023-06/Limits%20on%20Access%20to%20Asylum%20After%20Title%2042_1.pdf (accessed October 16, 2023); Andre Deck, "Seeking Asylum at the US-Mexico Border? You'd Better Speak English or Spanish," *Rest of World*, June 1, 2023, <https://restofworld.org/2023/migrant-languages-challenge-cbp-one-app-haitian-creole/> (accessed October 16, 2023); American Immigration Council, "CBP One: An Overview," December 9, 2021, <https://www.americanimmigrationcouncil.org/research/cbp-one-overview> (accessed October 16, 2023); Christina Asencio and Rebecca Gendelman, "Inhumane and Counterproductive: Asylum Ban Inflicts Mounting Harm," *Human Rights First*, October 12, 2023, <https://humanrightsfirst.org/library/inhumane-and-counterproductive-asylum-ban-inflicts-mounting-harm/> (accessed October 13, 2023).



A screenshot of the language possibilities while registering on CBP One, January 23, 2024. © 2024 Ari Sawyer/Human Rights Watch

who come from Asia, Africa, the Middle East, Europe, and Indigenous communities in the Americas.

The app is also inaccessible to those with limited literacy skills. A volunteer at one migrant shelter in Monterrey, Mexico, told Human Rights Watch that about one in every 10 asylum seekers he assisted in using CBP One could not read.⁵⁵ Another shelter worker in Monterrey told Human Rights Watch he worked with a man seeking asylum who could not read.⁵⁶ After helping the man set up his CBP One account, the shelter worker taught the man how to request an appointment each day by helping him memorize the selection pattern based on the sequence of icons and images.⁵⁷ “If you see something different, come here to talk to us,” he told the man.⁵⁸ “A lot of people [cannot read], but they have a functional ability to fill out their basic information,” said Beatriz Fuentes, director of Casa Fuente in Mexico City. “CBP One goes beyond what they are functionally capable of.”⁵⁹

Lesbian, gay, bisexual, and transgender (LGBT) asylum seekers face unique challenges in accessing the Wi-Fi, which in turn thwarts their access to the app. Shelter operators and asylum seekers told Human Rights Watch that many migrant shelters—asylum seekers’ main

source of Wi-Fi and makeshift tech support, helping people access the app and troubleshoot app errors—are religiously affiliated and some have turned away LGBT

⁵⁵ Human Rights Watch interview with shelter volunteer, Monterrey, Mexico, August 22, 2023.

⁵⁶ Human Rights Watch interview with shelter worker, Monterrey, Mexico, August 23, 2023.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Human Rights Watch interview with Beatriz Fuentes, director, Casa Fuente, Mexico City, August 15, 2023.

asylum seekers⁶⁰ or otherwise discriminated against them based on their sexual orientation or gender identity.⁶¹

Older adults reported to Human Rights Watch they were unfamiliar with the use of smartphones and struggled to use the application. For example, Paulina I., 56, who is traveling with her husband, 62, had to ask a shelter worker in Nuevo Laredo for help to register on CBP One. She said they did not understand how to use this or other apps, have very little experience using smartphones, and struggled to input a Human Rights Watch researchers contact information into her phone.⁶² Lena G., 56, relies on her young nephew to operate the application.⁶³ Family members, friends, acquaintances, or shelter workers may not input information correctly for older adults, jeopardizing the parole and asylum processes of users. And asylum seekers who need help using the app may be forced to share personal information in ways that put them at risk.

The app may also be more difficult to use for people with disabilities, including those who cannot see or who experience an intellectual disability. Workers at Casa Tochan, a migrant shelter in Mexico City, told Human Rights Watch they provided housing to an asylum-seeking man who was blind.⁶⁴ The man hoped to receive medical treatment in the United States in the hope of regaining some of his sight, but he could not use the CBP One application.⁶⁵ Some other asylum seekers ended up helping the man create an account and request an appointment, the workers said.⁶⁶

Damaris C., a 30-year-old woman who fled Colombia with her husband and their 8- and 15-year-old sons, told Human Rights Watch that her teenage child had become responsible for

⁶⁰ Human Rights Watch has previously documented the specific abuses that LGBT migrants face at the border and in their home countries, including violence, discrimination, killings, and sexual violence. See Human Rights Watch, *US: LGBT Asylum Seekers in Danger at the Border*, Human Rights Watch news release, May 31, 2023, <https://www.hrw.org/news/2022/05/31/us-lgbt-asylum-seekers-danger-border>.

⁶¹ Human Rights Watch interview with Beatriz Fuentes, director, Casa Fuentes, August 15, 2023; Human Rights Watch interviews with shelter worker, Casa Indi, Monterrey, Mexico, August 23, 2023; Human Rights Watch interviews with Pedro E. and Francis E., Monterrey, Mexico, August 24, 2023.

⁶² Human Rights Watch interview with Paulina I., Nuevo Laredo, Mexico, November 8, 2023.

⁶³ Human Rights Watch interview with Lena G., Saltillo, Mexico, August 26, 2023.

⁶⁴ Human Rights Watch interview with workers at Casa Tochan, Mexico City, August 16, 2023.

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

managing CBP One since her husband could not see well enough to use the app and she did not “know anything about technology.”⁶⁷

Use of CBP One Is Effectively Mandatory

While the US government claims that having a CBP One appointment is not required for asylum seekers to be processed by CBP officials, that has been the practical effect of the May 2023 rule promulgated by the Biden administration.

According to the rule, “Noncitizens are not required to make an appointment in the CBP One app to present at a POE (port of entry), and CBP policy provides that in no instance will an individual be turned away from a POE.”⁶⁸

Despite this, Human Rights Watch has documented cases in which border agents have turned away asylum seekers without appointments, including Mexican nationals. Mexican officials have also prevented people without appointments from approaching ports of entry. As a result, asylum seekers have virtually no choice but to use CBP One.⁶⁹

The first reason that CBP One is effectively mandatory is that people are turned away at the border when they do not use the app. As before May 2023, CBP agents cite capacity issues when turning away asylum seekers without an appointment, but they now also cite the new rule.⁷⁰ Human Rights Watch observed CBP officers at the Laredo port of entry tell Sandra S. that they had already processed everyone they were going to process that day, all of whom had an appointment via CBP One, and that they did not have capacity to process more people.⁷¹ This response contradicts the rule because Sandra S. is a Mexican citizen and the new Biden rule clearly states that Mexicans have an exception from the CBP One appointment requirement.

⁶⁷ Human Rights Watch interview with Damaris C., Monterrey, Mexico, August 24, 2023.

⁶⁸ Ibid.

⁶⁹ US Embassy in El Salvador, “CBP One Facilitated Over 170,000 Appointments in Six Months, and Continues to be a Safe, Orderly, and Humane Tool for Border Management”, fact sheet, August 3, 2023, <https://sv.usembassy.gov/cbp-one-facilitated-over-170000-appointments-in-six-months-and-continues-to-be-a-safe-orderly-and-humane-tool-for-border-management/> (accessed October 18, 2023).

⁷⁰ Human Rights Watch observation at the Laredo port of entry, September 9, 2023.

⁷¹ Ibid.

The second reason that the app is effectively mandatory is because of the punitive treatment experienced by asylum seekers who cannot or do not use it. Under the rule, the Biden administration has re-upped the Trump-style expedited removal process for asylum seekers without a CBP One appointment.

CBP officials have discretion in deciding whether non-Mexican asylum seekers without a CBP One appointment should be placed into expedited removal proceedings. Overcoming the rule's "presumption of asylum ineligibility" while in expedited proceedings, often in the custody of CBP, is exceedingly difficult and exacerbates harm.

While expedited removal predates both the Biden and Trump administrations, it was the Trump administration that first modified the policy such that it would target asylum seekers and require detaining them for several days or weeks in CBP temporary detention facilities designed to house people for no more than 72 hours.⁷² Many migrants held without meaningful access to attorneys or family in CBP custody face inhumane and abusive detention conditions, including sexual assault, physical violence, verbal abuse, lack of access to adequate medical care or showers or other hygienic needs, frigid temperatures, and overcrowding.⁷³

Reporting by Human Rights Watch and many others has shown CBP agents implementing expedited removal have abused border crossers and residents with near-total impunity for decades,⁷⁴ have lied on official paperwork for asylum seekers,⁷⁵ and have illegally turned back asylum seekers at ports of entry.⁷⁶ Asylum seekers placed in enhanced expedited

⁷² Kate Huddleston, "Ending PACR/HARP: An Urgent Step Toward Restoring Humane Asylum Policy," *Just Security*, February 16, 2021, <https://www.justsecurity.org/74678/ending-pacr-harp-an-urgent-step-toward-restoring-humane-asylum-policy/> (accessed December 6, 2023).

⁷³ Human Rights Watch, "*They Treat You Like You are Worthless*": *Internal DHS Reports of Abuse by US Border Officials* (New York: Human Rights Watch, 2021), <https://www.hrw.org/report/2021/10/21/they-treat-you-you-are-worthless/internal-dhs-reports-abuses-us-border-officials>; Human Rights Watch, *In the Freezer: Abusive Conditions for Women and Children in US Immigration Holding Cells* (New York: Human Rights Watch, 2018), <https://www.hrw.org/report/2018/02/28/freezer/abusive-conditions-women-and-children-us-immigration-holding-cells>.

⁷⁴ Southern Border Communities Coalition, "Abuse of Power and Its Consequences", last updated in part September 12, 2023, https://www.southernborder.org/border_lens_abuse_of_power_and_its_consequences (accessed October 11, 2023); Ari Sawyer (Human Rights Watch), "The US Border Patrol is Broken," commentary, *Newsweek*, February 2, 2022, <https://www.hrw.org/news/2022/03/02/us-border-patrol-broken>.

⁷⁵ Human Rights Watch, "*They Treat You Like You're Worthless*."

⁷⁶ Human Rights Watch, "US: Mexican Asylum Seekers Ordered to Wait", Human Rights Watch news release, December 23, 2019, <https://www.hrw.org/news/2019/12/23/us-mexican-asylum-seekers-ordered-wait>; American Immigration Council, "Metering and Asylum Turnbacks", fact sheet, March 8, 2021, <https://www.americanimmigrationcouncil.org/research/metering-and-asylum-turnbacks> (accessed October 11, 2023).

removal face return to the countries they have fled or to Mexico without meaningful access to due process.⁷⁷ In CBP custody, without time or the ability to gather evidence, non-Mexican asylum seekers are interviewed by asylum officers to determine whether they “can establish a reasonable possibility of persecution on account of a protected ground or face torture in the country to which [they] will be ordered removed.”⁷⁸

Most of the non-Mexican asylum seekers we spoke with who had been placed into expedited removal proceedings under the asylum rule and deported to Mexico said they were held for weeks in CBP border jails with very little or no access to phones or attorneys.

Asylum seekers who are placed into expedited removal and are unsuccessful in presenting their claims for asylum are often removed from the United States with a five-year legal bar on returning to the United States, and a direct threat in the Biden rule of criminal prosecution should they attempt to return, and non-eligibility for the parole program.⁷⁹

Under the enhanced expedited removal provisions of the Biden asylum rule, “DHS has repatriated approximately 126,000 noncitizens under Title 8 authorities, including single adults and [families,] to more than 100 countries between May 12 and July 31, 2023,” according to DHS Assistant Secretary for Border and Immigration Policy Blas Nuñez-Neto.⁸⁰

These punitive measures for those who do not use CBP One make the app de facto mandatory for asylum seekers.

In light of all these factors, asylum seekers are forced to wait in Mexico. The scarcity of appointments adds another layer of pressure to this system since CBP restricts the number

⁷⁷ ACLU of Texas, “ACLU Calls on President Biden to End PACR/HARP Protocols”, press release, January 27, 2021, <https://www.aclu.org/press-releases/aclu-calls-president-biden-end-pacr-harp-protocols> (accessed October 16, 2023).

⁷⁸ Federal Register, Circumvention of Lawful Pathways, 88 Fed. Reg. 31315.

⁷⁹ US Department of Homeland Security, Fact Sheet: Circumvention of Lawful Pathways Final Rule, May 11, 2023, <https://www.dhs.gov/news/2023/05/11/fact-sheet-circumvention-lawful-pathways-final-rule> (accessed March 13, 2024) (Stating: “Those ordered removed will be subject to at least a five-year bar to reentry and potential criminal prosecution if they subsequently re-enter without authorization. Those ordered removed also will be ineligible for the parole processes available to nationals of Cuba, Haiti, Nicaragua, and Venezuela.”).

⁸⁰ Declaration of DHS Assistant Secretary for Border and Immigration Policy Blas Nuñez-Neto, *Texas v. Mayorkas*, Case No. 2:23-cv-00024-AM (W.D. Tex. filed August 25, 2023).

available each day, forcing asylum seekers to wait for weeks or months⁸¹ for an appointment in dangerous and unhealthy conditions in Mexico.

The US government claims that “scheduling appointments makes the process safer and more orderly, and the advance information that is submitted to CBP Officers creates a more efficient and streamlined process for CBP and for individuals.”⁸² However, HRW has found the reality to be far from this vision of streamlined efficiency.

The Myth of Lack of Capacity

CBP agents have for years cited lack of capacity as the reason for limiting the number of asylum seekers they process, but a 2020 DHS Office of Inspector General report on metering found that CBP officials “used these reasons regardless of the port’s actual capacity and capability.”⁸³ Often, CBP’s claims about capacity were simply untrue.⁸⁴

The very limited number of appointments available via CBP One fails to meet asylum processing needs, which CBP and Department of Homeland Security (DHS) officials have said reflects CBP’s limited capacity.⁸⁵ Capacity, though, largely reflects the administration’s priorities and choices. The US government has significant resources at its disposal to increase humane processing capacity yet has created a vicious cycle: an increase in the number of asylum seekers in expedited removal proceedings being held well beyond the 72-hour limit in inhumane CBP facilities, which generates a need for increased agency capacity that could otherwise be used to process arriving asylum seekers. This in turn contributes to a further processing backlog, as the number of asylum seekers arriving in northern Mexico continues, and people are driven to cross between ports of entry when they are blocked at the ports, making them vulnerable to being placed in expedited removal proceedings.

⁸¹ Human Rights Watch interviews with asylum seekers, Mexico, August-September 2023.

⁸² US Embassy in El Salvador, “CBP One Facilitated Over 170,000 Appointments in Six Months,” press release.

⁸³ Department of Homeland Security Office of Inspector General, CBP Has Taken Steps to Limit Processing of Undocumented Aliens at Ports of Entry, October 27, 2020, <https://www.oig.dhs.gov/sites/default/files/assets/2020-10/OIG-21-02-Oct20.pdf> (accessed October 10, 2023).

⁸⁴ Robert Moore, “CBP Turned Away Asylum Seekers, Claiming They Didn’t Have Room for Them. It Often Wasn’t True,” *El Paso Matters*, September 28, 2021, <https://elpasomatters.org/2021/09/28/cbp-turned-away-asylum-seekers-claiming-they-didnt-have-room-for-them-it-often-wasnt-true/> (accessed October 20, 2023).

⁸⁵ Stephanie Leutert and Caitlyn Yates, *Asylum Processing at the U.S.-Mexico Border*, Strauss Center for International Security and Law, August 2023, https://www.strausscenter.org/wp-content/uploads/August_2023_Asylum_Processing-1.pdf (accessed October 12, 2023).

The App Creates a Digital Metering System

Whereas the metering policy under the Trump administration relied upon analog lists held by Mexican actors or migrants themselves, the digital metering system created by the Biden asylum rule has established CBP as the owner of a border-wide digital metering list. CBP now possesses the knowledge and power to determine who will be processed next, at which port of entry, and when. Asylum seekers must sign up with CBP One and add their names to the digital metering list to ensure they will be processed by CBP and allowed to seek asylum in the United States. If they do not, they face routine turnbacks by either US or Mexican officials, outlined in greater detail in the following chapter.

CBP does not provide enough appointments to meet the demand from asylum seekers. The agency initially provided 1,000 CBP One appointments each day, raising the number of available appointments to 1,250. In June 2023, CBP increased the number of available appointments to 1,450 each day.⁸⁶ Between May 2023, when the Biden asylum rule was implemented, and January 2024, border arrivals averaged about 7,240 per day.⁸⁷

CBP reported that between January 2023 and February 2024, more than 501,000 asylum seekers had been paroled into the United States after requesting a CBP One appointment, including in processes predating the asylum rule, which went into effect in May 2023.⁸⁸ While high, that number is a small fraction of the 64 million requests asylum seekers have made for a CBP One appointment between May 2023 and February 2024. The high number of requests reflects the fact that, under the asylum rule, people must apply each day as new appointments become available until they secure a time and day to appear at the border post.⁸⁹

⁸⁶ US Customs and Border Protection, “CBP One™ Appointments Increased to 1,450 Per Day”, press release, June 30, 2023, <https://www.cbp.gov/newsroom/national-media-release/cbp-one-appointments-increased-1450-day> (accessed March 1, 2024).

⁸⁷ US Customs and Border Control, Southwest Land Border Encounters, updated February 13, 2024, <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters> (accessed March 1, 2024).

⁸⁸ US Customs and Border Protection, “CBP Releases February 2024 Monthly Update,” news release, March 22, 2024, <https://www.cbp.gov/newsroom/national-media-release/cbp-releases-february-2024-monthly-update> (accessed April 10, 2024).

⁸⁹ Camilo Montoya-Galvez, “Migrants in Mexico Have Used CBP One App 64 Million Times to Request Entry Into US,” *NBC*, February 12, 2024, <https://www.cbsnews.com/news/immigration-cbp-one-app-migrants-mexico-64-million/> (accessed March 1, 2024).

Human Rights Watch documented wait times for people seeking appointments via the CBP One app ranging from a few days to four months. Most asylum seekers with whom Human Rights Watch spoke said they, their families, or friends they were travelling with had been waiting for a month or more in Mexico.⁹⁰

Though the Biden asylum rule is designed to deter most arriving asylum seekers, the rule has not deterred people from trying to enter the United States to seek safety.⁹¹ With US ports of entry effectively closed to most asylum seekers who do not have a CBP One appointment, inability to access the digital metering system contributes to irregular border crossings and jeopardizes asylum seekers' protection claims under the Biden asylum rule.

⁹⁰ Human Rights Watch interviews with asylum seekers, Mexico and United States, August-September 2023.

⁹¹ David Bier, "Parole Sponsorship is a Revolution in Immigration Policy," *CATO Institute*, September 18, 2023, <https://www.cato.org/briefing-paper/parole-sponsorship-revolution-immigration-policy> (accessed October 18, 2023); Jason de León, Eduardo "Lalo" Garcia, and The Undocumented Migration Project, "Prevention Through Deterrence: Picturing a U.S. Policy," *Sapiens*, February 16, 2016, <https://www.sapiens.org/culture/prevention-through-deterrence/> (accessed November 10, 2023). See also the number of daily arrivals of asylum seekers in each CBP One port of entry compared to the number of CBP One appointments and walkups processed each day at: Stephanie Leutert, Caitlyn Yates, *Asylum Processing at the US-Mexico Border*, Strauss Center for International Security and Law

Turnbacks of Asylum Seekers

In tandem with the Biden asylum rule and digital metering policy, US officials work with their Mexican counterparts to prevent asylum seekers from reaching the US border and requesting access to asylum in the United States. Human Rights Watch documented efforts by the US and Mexico to conduct “turnbacks”—blocking people from entering the United States and pushing them back to Mexico—of asylum seekers at ports of entry at the US-Mexico border. The US CBP One appointment system is cited by officials of both governments when blocking asylum seekers from accessing the border. Turnbacks are therefore the dangerous result of digital metering and the Biden asylum rule.

Against this high-level backdrop, officials from both the United States and Mexico participate in blocking asylum seekers from accessing protection.⁹²

Turnbacks by CBP

CBP regularly turns asylum seekers back at the border. Agents posted at the midpoint of international bridges—the recognized boundary between the United States and Mexico—require every person who attempts to approach border stations to show identification and evidence of authorization to enter the United States. They typically turn back asylum seekers who do not have CBP One appointments.

In one such case, Denny G., a 33-year-old Cuban asylum seeker, who had been waiting in an Nuevo Laredo encampment for a month, said he tried to enter at a port of entry, but was turned back by CBP officers on the middle of the bridge.⁹³ Denny said he planned to try again along with four other asylum seekers he had met on the journey in the hopes that

⁹² In August and September 2023, Human Rights Watch filed Freedom of Information Act requests with the US government—including the Office of Science and Technology Policy, the Office of Management and Budget, and US Customs and Border Protection—to obtain information on the costs of creating and operating the CBP One application, CBP’s policy or guidelines to officers on dealing with asylum seekers who arrive without an appointment, data collected by the application, the government’s analysis of the effectiveness, equity, and accessibility of the application, and any agreements the United States has with Mexico to screen asylum seekers for CBP One appointments, turn back asylum seekers without an appointment, and remove migrants from the border area to southern Mexico. Human Rights Watch will provide and discuss those responses in later publications.

⁹³ Human Rights Watch interview with Denny G., Nuevo Laredo, Mexico, September 8, 2023.

there would be strength in numbers.⁹⁴ “There is too much violence here,” Denny said. “Why don’t they process the people waiting here at the encampment?”⁹⁵

CBP agents often turn people back at the border even when they attempt to explain that they face danger in Mexico. For instance, Lara D., a 23-year-old asylum seeker from Venezuela, traveled by car via the rideshare application DiDi to the Laredo port of entry. About two blocks from the international bridge, a black truck carrying two armed men pulled out in front of the car, forcing the vehicle to stop.⁹⁶ One of the men got out of the truck and got into the car Lara was in with her husband, cousin, and parents. He began “speaking very strongly” with the DiDi driver, telling him to take another route. The man told Lara and her family that they needed to be registered and that their photos would be taken and information collected. The rideshare driver accelerated suddenly, launching the car forward with the door open and causing the armed man to fly out of the car. The driver left Lara and her family at the entrance to the Laredo port of entry, and the family hurried across the bridge. On the middle of the bridge, they were blocked by CBP officers who, despite having been told about what had just befallen the family and that they had a fear of returning to both their country of origin and Mexico, turned Lara and her family back to Mexico.⁹⁷ “[CBP] said they had already processed all the people they were going to process that day and they would not accept us,” Lara said.⁹⁸

In another such case, Human Rights Watch accompanied Sandra S. and her family in their attempt to turn themselves in to CBP Office of Field Operations (OFO) officers at the Laredo port of entry for a second time after they had been identified and threatened by members of a cartel in Nuevo Laredo.⁹⁹ Human Rights Watch then witnessed a CBP Office of Field Operations (OFO) agent tell another CBP officer in front of Sandra and her family that asylum seekers had “milked the system” and that they would “not allow them to do it again.” The agent then told the family that any asylum seekers who arrive without proof that they have filed a police report would be automatically turned away.¹⁰⁰

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ Human Rights Watch interview with Lara D. Nuevo Laredo, Mexico, September 8, 2023.

⁹⁷ Ibid.

⁹⁸ Ibid.

⁹⁹ Human Rights Watch observation of Laredo port of entry, United States, September 9, 2023.

¹⁰⁰ Ibid.

A CBP officer who identified herself as a supervisor then told Sandra and her family that they would need to go back to Nuevo Laredo to wait for a CBP One appointment.¹⁰¹ When the family remained on the bridge to plead their case, standing in heat that exceeded 100 degrees Fahrenheit (38 degrees Celsius), CBP officers threatened to call the Mexican National Guard to remove the family from the bridge if they did not leave of their own accord.¹⁰² By this point, the CBP agents involved had heard the family's account of the threats and danger they would face upon return to Mexico and were made aware of the additional protections that apply to people fleeing Mexico, but nonetheless turned the family back.¹⁰³

In Sandra's case, not only did CBP agents inaccurately insist that CBP One was the exclusive means for an asylum seeker to secure entry to the United States, but they also imposed an invented standard for an asylum claim.

There is no requirement to file a police report to apply for asylum in the US, nor are asylum seekers required to show CBP evidence of their asylum claims. In fact, it is not CBP's role to adjudicate asylum claims. Sandra and her family did not feel safe speaking to the Mexican police and had not filed a police report.¹⁰⁴ Among other concerns, Mexican law enforcement officials have extorted migrants and have also been implicated in working with organized criminal groups to kidnap and otherwise harm them.¹⁰⁵

Sandra and her family were living in a makeshift encampment of roughly 100 people in Nuevo Laredo when we visited in early September 2023. The encampment is located in Mexico, across the border from Laredo, Texas. Asylum seekers, including many young children, sleep there beneath suspended tarps with no walls, security, or basic services.

¹⁰¹ Human Rights Watch observation of Laredo port of entry, United States, September 9, 2023.

¹⁰² Human Rights Watch text conversation with Sandra S., September 9, 2023.

¹⁰³ Ibid.

¹⁰⁴ Human Rights Watch observation at the Laredo port of entry, September 9, 2023.

¹⁰⁵ Human Rights Watch interviews with asylum seekers, Mexico, August-September 2023; Letter from Human Rights Watch to Joseph Cuffari, Inspector General and Cameron Quinn, Officer, "DHS OIG Formal Complaint Regarding 'Remain in Mexico,'" June 2, 2020, <https://www.hrw.org/news/2020/06/02/dhs-oig-formal-complaint-regarding-remain-mexico#:~:text=Human%20Rights%20Watch%20submits%20this,accountable%20for%20knowingly%20subjecting%20asylum.>



Shipping containers topped with barbed wire block asylum seekers from crossing the border irregularly in Eagle Pass, Texas, September 4, 2023. (C) 2023 Ari Sawyer/Human Rights Watch

There were nine Mexican citizens total in the encampment at the time, all of whom reported having been turned back by Mexican or US officials at the Laredo port of entry.¹⁰⁶

Mexican officials sometimes repeat the same excuse.

Natalia V., 25, fled Venezuela with her husband, 28, their five children, between the ages of 1 and 9, and her father-in-law. When they arrived at the Eagle Pass port of entry, Natalia was exhausted and sick. They had been traveling for four months and had completely run out of money. With no resources in Mexico, they said they needed to enter the United States immediately and join their family in Chicago. Natalia and her family tried to present themselves to CBP officers at the port of entry but were turned back by Mexican guards

¹⁰⁶ Human Rights Watch interviews with asylum seekers, Nuevo Laredo, Mexico, September 7-9, 2023; Human Rights Watch interview with shelter workers, Nuevo Laredo, Mexico, September 7-8, 2023.

because they did not have a CBP One appointment. They tried to cross the Rio Grande near the port but were told to go back to the bridge.

“The [US] soldiers yelled at us, but we could not cross the bridge because security turned us back,” Natalia said. “The loop was infinite. They told us to cross the bridge. We could not cross the bridge and then we could not turn ourselves in between ports of entry.”

They ended up waiting four hours in the severe heat near barbed wire between ports of entry for Border Patrol to arrive. “We couldn't wait,” she said. “We had to turn ourselves in.”¹⁰⁷

Mexico’s Role in Turnbacks

CBP has repeatedly claimed it has no agreement with Mexican authorities requiring the latter to assist the US in turning back asylum seekers who arrive at a US port of entry without a CBP One appointment. Yet Human Rights Watch found evidence of close collaboration.

Some asylum seekers told Human Rights Watch the sight of Mexican government officials, especially armed officials, at ports of entry discouraged them from attempting to approach CBP officers to seek asylum.

Betty C., a Venezuelan woman traveling with her family of five, including two children, told Human Rights Watch the sight of Mexican National Guard soldiers in front of the Laredo port of entry kept the family from seeking asylum. The family had been waiting in the makeshift encampment in Nuevo Laredo for three weeks when we spoke with her.¹⁰⁸

“We are afraid to get close to the authorities in Mexico because we are worried they will detain us and send us to the south [of Mexico],” Beatriz said. “I want to enter legally, but I don’t know how.”¹⁰⁹

¹⁰⁷ Human Rights Watch interview with Natalia V., Eagle Pass, United States, September 6, 2023.

¹⁰⁸ Human Rights Watch interview with Betty C., Nuevo Laredo, Mexico, September 8, 2023.

¹⁰⁹ Ibid.

Since the Biden asylum rule was implemented, Mexican government officials, or security contractors, have typically been present on the Mexico side blocking access to the international bridge. These government officials, or representatives, actively screen asylum seekers for CBP One appointments at all eight ports of entry for which appointments are assigned.¹¹⁰ Asylum seekers who cannot show proof of an appointment are usually barred from accessing the port of entry.¹¹¹

The chart below outlines the Mexican governmental agencies or contractors involved in blocking asylum seekers from accessing asylum procedures in the United States.

Mexican Agencies and Contractors Barring Access to US Ports of Entry

Port of Entry	Mexican government agency
San Ysidro East/Tijuana	National Institute of Migration (Instituto Nacional de Migración, INM)/National Guard (Guardia Nacional)
El Chaparral/Tijuana	National Guard/INM/Private security (hired by unknown agency)
Calexico/Mexicali	INM
Nogales/Nogales	Private security hired by Bienestar Social Nogales.
El Paso/Ciudad Juarez	Private security hired by Fideicomiso de Puentes Fronterizos de Chihuahua, National Guard
Hidalgo/Reynosa	INM
Eagle Pass/Piedras Negras	City of Piedras Negras: Grupo Enlace
Laredo/Nuevo Laredo	National Guard, INM
Brownsville/Matamoros	INM

Source: Human Rights Watch observation of ports of entry at Eagle Pass and Laredo, Texas, United States, September 2023; Human Rights Watch email correspondence with Al Otro Lado, October 2023; Human Rights Watch phone conversation with Thomas Cartwright, Witness at the Border, September 2023; Human Rights Watch text conversation with Edith Tapia, International Refugee Commission, September 2023; Human Rights Watch email correspondence with Maria Silva, International Rescue Committee, September 22, 2023; International Rescue Committee, *Limits on Access to Asylum After Title 42: One Month of Monitoring U.S.-Mexico Border Ports of Entry*, report; Stephanie Leutert and Caitlyn Yates, *Asylum Processing at the U.S.-Mexico Border*, Strauss Center for International Security and Law.

¹¹⁰ Human Rights Watch observation of ports of entry at Eagle Pass and Laredo, Texas, United States, September 2023; Human Rights Watch email correspondence with Al Otro Lado, October 2023; Human Rights Watch phone conversation with Thomas Cartwright, Witness at the Border, September 2023; Human Rights Watch text conversation with Edith Tapia, International Refugee Commission, September 2023; Human Rights Watch email correspondence with Maria Silva, International Rescue Committee, September 22, 2023; International Rescue Committee, *Limits on Access to Asylum After Title 42: One Month of Monitoring U.S.-Mexico Border Ports of Entry*, report; Stephanie Leutert and Caitlyn Yates, *Asylum Processing at the U.S.-Mexico Border*, Strauss Center for International Security and Law.

¹¹¹ Ibid.; Human Rights Watch observation at Eagle Pass port of entry, September 5-6, 2023; Human Rights Watch observation at Laredo port of entry, September 7-9, 2023.

Denny G., a Cuban asylum seeker whose case is described above, said he tried to enter a port of entry twice, but was turned back—once by CBP officers at the middle of the bridge and once by Mexican National Guard soldiers. Such Mexican soldiers, armed and uniformed, stand in front of the bridge’s entrance and prevent asylum seekers without a CBP One appointment from crossing.¹¹²

Paulina I., a 56-year-old woman fleeing Guerrero, Mexico, with her husband after cartel operatives extorted, threatened, and kidnapped the couple, reported they were turned away at the Laredo port of entry in August 2023 by Mexican officials. The couple had fled their hometown after they could no longer afford the extortion payments the cartel was demanding. On their way, the cartel kidnapped them and threatened to kill them, eventually releasing them but keeping the couple’s truck and the farm animals they were traveling with.¹¹³

“We had to choose between our truck and our animals or our lives,” Paulina said.¹¹⁴

When they arrived at the Nuevo Laredo bus terminal, several strangers, who Paulina and her family believe were cartel operatives, questioned them at various times about what they were doing in the city. To avoid confirming they were seeking asylum in the United States, they replied they were visiting someone. When they got to the Laredo port of entry where they hoped to turn themselves in to CBP officers, they were stopped by Mexican National Guard soldiers who asked if they had a CBP One appointment. The soldiers sent them to speak to INM agents, who, seeming surprised, asked the couple whether they had not already been stopped by anyone at the bus terminal. The agents gave them a list of migrant shelters to stay at in Nuevo Laredo and turned them away. All the shelters were closed, and the family’s only option was to wait in the insecure makeshift encampment near the US port of entry.¹¹⁵

Alex H., 26, fled death threats from cartel members in Honduras in June 2023 and had been waiting for an appointment via CBP One for 45 days in Monterrey with his mother. The two ran out of money, so Alex began working a construction job. While working one day, an

¹¹² Human Rights Watch interview with Denny G., Nuevo Laredo, Mexico, September 8, 2023.

¹¹³ Human Rights Watch interview with Paulina I., Nuevo Laredo, Mexico, September 8, 2023.

¹¹⁴ Ibid.

¹¹⁵ Ibid.

arc of electricity passed from a tool to his body, and he sustained third-degree burns over much of his skin, including on his torso, arms, legs, and neck. Human Rights Watch first spoke to Alex as he lay in a rudimentary health clinic, unable to walk. The clinic, adjacent to a migrant shelter, usually treats people who have lost limbs after falling from the cargo train migrants often ride through Mexico to the border. Alex had developed a rare fungal infection in some of the burn wounds. He was unable to access the medical care he needed in Mexico, he said, including the anti-fungal medicine clinicians told him he needed and could find in the United States.¹¹⁶

CBP said Alex and his mother would be allowed to cross the border and even offered to schedule an ambulance to take the family directly to a hospital. However, when the two arrived at the Mexico side of the Eagle Pass port of entry in September 2023, guards with Grupo Enlace, an agency with the city of Piedras Negras government, told the family that without a CBP One appointment, they could not cross the international bridge.¹¹⁷ The guards told Alex and his mother they already had called CBP and been told the family did not have permission to cross.¹¹⁸ The family was eventually able access the port of entry and rushed to the hospital, but only after repeated intervention of human rights monitoring groups and groups providing legal services, including Human Rights Watch, Witness at the Border, Al Otro Lado, and Mission: Border Hope, and only after hours of waiting in severe heat—a serious health risk for Alex.

Two days earlier, Human Rights Watch had spoken to a man who identified himself as a Grupo Enlace supervisor.¹¹⁹ “We are working with Mexico and the United States to ensure that only people with CBP One appointments can cross,” he said.¹²⁰

The supervisor said security guards are posted in front of the international bridge entrance 24 hours a day, where they screen people for appointments. He said they stop both Mexican and non-Mexican asylum seekers who do not have an appointment. He said he

¹¹⁶ Human Rights Watch interview with Alex H., Monterrey, Mexico, August 24, 2023.

¹¹⁷ Human Rights Watch phone and text conversations with Alex H., Piedras Negras, Mexico, September 7, 2023; Human Rights Watch phone and text conversations with Mission: Border Hope, Piedras Negras, Mexico, and Eagle Pass, United States, September 7, 2023; Email correspondence with US Customs and Border Protection made available to Human Rights Watch September 6, 2023; Human Rights Watch text and phone conversation with Witness at the Border, September 7, 2023.

¹¹⁸ Human Rights Watch phone and text conversations with Alex H., Piedras Negras, Mexico, September 7, 2023.

¹¹⁹ Human Rights Watch interview with Grupo Enlace supervisor, Piedras Negras, Mexico, September 5, 2023.

¹²⁰ *Ibid.*

was not aware of any law that states Mexicans have a right to leave their country, was not aware of the responsibility of state agents, including contractors hired by the government, not to engage in acts of refoulement, and had received no training on refugee protection laws.¹²¹

The supervisor repeated his statement that the guards were working for the United States within hearing of three other Grupo Enlace guards standing next to him.¹²² Grupo Enlace, an agency under the city of Piedras Negras, Coahuila, is managed by the Piedras Negras Mayor's office, including City Manager José Hermelo Castellón Martínez, who the supervisor identified as the person managing the agency's day-to-day operations, and Piedras Negras Mayor Norma Treviño Galindo.¹²³

Neither Castellón nor Treviño responded to questions from Human Rights Watch about the activities of the Grupo Enlace guards. The city communications manager, Jesús Chávez Martínez, said the Grupo Enlace guards are "citizen guards" the city posted there to prevent migrants without permission from entering the United States from accessing the bridge.¹²⁴ He said the Grupo Enlace presence is part of "a deal for the US to open its bridges again for Mexicans."¹²⁵



Grupo Enlace agents screen border crossers in Piedras Negras, Mexico, requiring anyone without US passports or visas to show CBP One appointments. February 18, 2024. © 2024 Casey Miller

¹²¹ Ibid.

¹²² Ibid.

¹²³ Human Rights Watch text conversation with Jesús Chávez Martínez, Piedras Negras social communication manager, October 31, 2023.

¹²⁴ Ibid.

¹²⁵ Ibid.

On September 20, 2023, the US government closed one of the international bridges between Piedras Negras and Eagle Pass, Texas for five weeks, citing an increase in the number of arriving migrants.¹²⁶

¹²⁶ “Piedras Negras-Eagle Pass Crossing Reopened After Five Weeks,” *Mexico Now*, October 17, 2023, <https://mexico-now.com/piedras-negras-eagle-pass-crossing-reopened-after-five-weeks/> (accessed March 13, 2024).

Harms in Mexico

Targeting by Criminal Operatives and Government Officials

Conditions faced by asylum seekers in Mexico while they are caught in the US digital metering system are unsustainable and can be life-threatening. Human Rights First has published at least two investigations documenting scores of cases of kidnappings, extortion, sexual violence, disappearances, and other types of harm perpetrated against asylum seekers in Mexico since the Biden asylum rule went into effect.¹²⁷

The US policies blocking asylum at the border in recent years have changed in name and severity, but one material outcome for asylum seekers has remained the same: asylum seekers are forced to wait in northern Mexican states, as well as in many cities in other parts of the country through which migrants transit, where they are systematically targeted by cartels, sometimes with the help of Mexican government officials, for kidnapping, extortion, sexual assault, robbery, and other abuse. Human Rights Watch has documented how Mexican immigration officials or police have turned migrants over to cartels for kidnapping and extortion.¹²⁸ In November 2023, the mayor of Matehuala, a city in the central Mexican state of San Luis Potosi, was arrested for his part in a migrant kidnapping ring from which 27 people were rescued in April, along with the chief of police, according to a report about the police investigation.¹²⁹

As detailed below and in previous research, cartels—transnational criminal organizations—monitor the entry and exit of migrants into particular locations, especially at the border, and

¹²⁷ Christina Asencio and Rebecca Gendelman, *Inhumane and Counterproductive: Asylum Ban Inflicts Mounting Harm*, report Human Rights First, October 12, 2023, <https://humanrightsfirst.org/library/inhumane-and-counterproductive-asylum-ban-inflicts-mounting-harm/> (accessed October 13, 2023); Eleanor Acer, Christina Asencio, and Rebecca Gendelman, *Refugee Protection Travesty: Biden Asylum Ban Endangers and Punishes At-Risk Asylum Seekers*, report, July 23, 2023, https://humanrightsfirst.org/wp-content/uploads/2023/07/Refugee-Protection-Travesty_Asylum-Ban-Report_July-2023-1.pdf (accessed February 11, 2024).

¹²⁸ Human Rights Watch interviews with asylum seekers, Mexico, August-September 2023; Human Rights Watch, DHS OIG Formal Complaint Regarding 'Remain in Mexico.'

¹²⁹ Nancy Lizet Hernández, "Detienen a alcalde de Matehuala de SLP por ejercicio abusivo de la función pública," *El Universal*, November 11, 2023, <https://www.eluniversal.com.mx/estados/detienen-a-alcalde-de-matehuala-de-slp-por-ejercicio-abusivo-de-la-funcion-publica/> (accessed December 6, 2023); Patricia Azuara, "Secuestro de Migrantes en SLP: Detienen a jefe policiaco de Matehuala tras operativo sorpresa," *El Financiero*, April 11, 2023, <https://www.elfinanciero.com.mx/estados/2023/04/11/secuestro-de-migrantes-en-slp-detienen-a-jefe-policia-co-de-matehuala-tras-operativo-sorpresa/> (accessed December 6, 2023).

they have well-established practices for conducting targeted kidnappings and extortions of migrants.¹³⁰ They track migrants in transit, sourcing information from taxi or rideshare drivers, migrant shelters, and observing migrants at outdoor encampments. They operate with near total impunity.

The kidnapping and extortion of migrants as a cartel business model grew as the result of the Trump administration’s metering policy, Remain in Mexico, and rapid expulsion policies that expose migrants to harm in Mexico, often for extended periods of time.¹³¹ Human Rights First documented 1,544 publicly reported cases of kidnapping and other violent attacks of migrants during the first two years of Remain in Mexico.¹³² That figure expanded under the Biden administration to 13,480 as of December 2022.¹³³ Under the Biden asylum rule and digital metering, kidnapping and extortion rings targeting migrants have expanded further, with reports of new kidnapping operations in cities in central Mexico, including Tlaxcala and Durango.¹³⁴

“Migration became an international business, and they wanted a cut,” said Raymundo Ramos, director of the Comité de Derechos Humanos de Nuevo Laredo. “Cartels, especially in the north, started seeing migrants as part of their business model.”¹³⁵

Ramos said that while his organization has observed a steady increase in kidnappings of migrants at the border and has supported victims, they do not dare document kidnappings publicly or report them because doing so would make them targets for violence as well.¹³⁶

¹³⁰ Human Rights Watch, DHS OIG Formal Complaint Regarding ‘Remain in Mexico.’

¹³¹ Ibid.; Stephen Dudley, Parker Asmann and Victoria Dittmar, “Unintended Consequences: How US Immigration Policy Fosters Organized Crime on the US-Mexico Border,” *InSight Crime*, June 2023, <https://insightcrime.org/wp-content/uploads/2023/06/HGBF-US-Policy-OC-and-Migration-Policy-Brief-InSight-Crime-June-2023-FINAL-ENG.pdf> (accessed October 16, 2023).

¹³² Human Rights First, “Any Version of Remain in Mexico Policy Would be Unlawful, Inhumane, and Deadly,” fact sheet, September 9, 2021, <https://humanrightsfirst.org/library/any-version-of-remain-in-mexico-policy-would-be-unlawful-inhumane-and-deadly/> (accessed December 5, 2023).

¹³³ Julia Neusner, Kennji Kizuka, and Eleanor Acer, *Human Rights Stain, Public Health Farce*, report, Human Rights First, December 15, 2022, <https://humanrightsfirst.org/library/human-rights-stain-public-health-farce/> (accessed April 16, 2024).

¹³⁴ Human Rights Watch interview with Berto M., Monterrey, Mexico, August 22, 2023; Human Rights Watch interview with workers at Casa Tochan, Mexico City, August 29, 2023; Human Rights Watch interviews with shelter workers, Monterrey, Mexico, August 2023.

¹³⁵ Human Rights Watch interview with Raymundo Ramos, director, Comité de Derechos Humanos de Nuevo Laredo, Nuevo Laredo, Mexico, September 8, 2023.

¹³⁶ Ibid.

In other parts of Mexico, migrants in transit are frequently targeted by Mexican government officials and criminals for extortion, and other abuses. Asylum seekers, shelter workers, and commercial bus company employees told Human Rights Watch that Mexican police, National Guard soldiers, INM agents, or cartels frequently stop and board commercial buses—a primary means of travel through Mexico for migrants—and racially profile and extort money or phones from migrants on board.¹³⁷ Mexican police and private security also have targeted migrants for extortion on cargo trains, they said, which migrants ride atop of when safer pathways are not accessible. If migrants cannot pay the requested sum, they risk being forcibly taken to southern Mexico by Mexican immigration officials, kidnapped, sexually assaulted, or otherwise harmed. Human Rights Watch has also previously documented the kidnapping of migrants by police in Mexican border cities.¹³⁸

Kidnapping for Ransom and Sexual Violence

The more difficult it is for migrants to cross the US-Mexico border, the more money cartels make, whether from smuggling operations or from kidnapping and extortion. Criminal actors also have near impunity when sexually assaulting asylum seekers, given the fear and power imbalance smugglers can exploit due to US policies of digital metering.

Human Rights Watch documented reports of kidnapping for ransom from migrants in each of the five Mexican cities in which we conducted interviews.¹³⁹ In one case, a man kidnapped in Durango, in the Mexican state of Durango, reported seeing about 150 other kidnapped migrants there in the stash house where he was being held.¹⁴⁰ Durango has been the site of several mass kidnappings of migrants by cartel operatives.¹⁴¹ In another case, a migrant who had been kidnapped for ransom by men who identified themselves as belonging to “the cartel” in Mexicali, Mexico, near the Calexico US port of entry, said he

¹³⁷ Human Rights Watch interviews with asylum seekers, Mexico and United States, August-September 2023; Human Rights Watch interviews with migrant shelter workers, Mexico and United States, August-September 2023; Ari Sawyer, “Mexico’s Congress Should Ban Discriminatory Immigration Checks,” commentary, Human Rights Watch dispatch, April 25, 2023, <https://www.hrw.org/news/2023/04/25/mexicos-congress-should-ban-discriminatory-immigration-checks>.

¹³⁸ Human Rights Watch, DHS OIG Formal Complaint Regarding ‘Remain in Mexico.’

¹³⁹ Human Rights Watch interviews with asylum seekers, Mexico, August-September 2023.

¹⁴⁰ Human Rights Watch interview with Nicolas P., Piedras Negras, Mexico, September 5, 2023.

¹⁴¹ Jose Luis Gonzalez, Jackie Botts, and Daina Beth Solomon, “Migrants Tell of Mass Kidnappings in Mexico Before Crossing Into the US,” *Reuters*, December 14, 2022, <https://www.reuters.com/world/migrants-tell-mass-kidnappings-mexico-before-crossing-into-us-2022-12-14/> (accessed October 18, 2023).

witnessed cartel operatives shoot and kill two Honduran migrants when they tried to defend themselves.¹⁴²

Eddy L, 40, a Venezuelan asylum seeker, said an INM agent stopped a bus he was riding and took him off it when he had no money and could not pay the amount she was demanding. He was detained and forcibly relocated to the border with Guatemala after being forced to sign an agreement that he would leave Mexico through its southern border. Traveling north once more, he rode atop a cargo train along with hundreds of other migrants and was robbed of his cellphone. Near Celaya, in the Mexican state of Guanajuato, he witnessed around 15 people kidnapped from the train by unidentified men. He managed to run away.¹⁴³

Javi J., 42, a Honduran asylum seeker, was kidnapped in Reynosa, in the Mexican state of Tamaulipas, for two months until his brother could pay a ransom of US\$4,000.¹⁴⁴

Carlos M, 32, told Human Rights Watch he was kidnapped by people who identified themselves as police in Tonalá, Jalisco, Mexico, for three days.¹⁴⁵

“They hit me and sent photos to my family saying that they would kill me if they didn't pay,” Carlos said. His mother-in-law paid a ransom of US\$2,000 for his release, and the police released him at the border with Guatemala.¹⁴⁶

Nicolas P., 20, a Honduran asylum seeker, was kidnapped shortly after arriving at a hotel in Durango. Men who identified themselves as police, used police uniforms, and used police cars showed up and took him from his room, leading him to believe the hotel staff called them. The police delivered him to a cartel stash house. Cartel operatives took his phone and, after four days, had him call his family, who paid a ransom of US\$1,000 for his release. The police then came to pick him up from the cartel stash house and took him back to the hotel,

¹⁴² Human Rights Watch interview with Berto M., Monterrey, Mexico, August 22, 2023.

¹⁴³ Human Rights Watch interview with Eddy L., Saltillo, Mexico, August 26, 2023.

¹⁴⁴ Human Rights Watch interview with Javi. J., Monterrey, Mexico, August 24, 2023.

¹⁴⁵ Human Rights Watch interview with Carlos M., Monterrey, Mexico, August 24, 2023.

¹⁴⁶ Ibid.

saying “everything has been arranged.” He said he believes the hotel workers, the police, and the cartel are working together to operate an efficient kidnapping ring.¹⁴⁷

In addition, Beatriz Fuentes, the director of the Casa Fuente migrant shelter in Mexico City, told Human Rights Watch it is common for migrant women to arrive to her shelter having been sexually assaulted.¹⁴⁸

“Sexual assault has become normalized among women,” she said. “It’s seen as another payment to be able to travel or cross.”¹⁴⁹

Cartel Coercion and Kidnappings in Nuevo Laredo

The Rio Grande between Laredo in the United States and Nuevo Laredo in Mexico is unmarred by sections of border wall, razor wire, or buoys with saws on them, but few dare cross it without paying and getting permission from the cartel that polices it, according to asylum seekers, migrant shelter workers, and NGO workers there.¹⁵⁰

With the introduction of the digital metering system, the cartel in Nuevo Laredo has endeavored to charge asylum seekers with a CBP One appointment US\$500 for permission to cross and initially wanted shelter workers in Nuevo Laredo to carry out the extortion on their behalf, the shelter workers told Human Rights Watch.¹⁵¹ Instead of capitulating to the cartels, the shelters closed, leaving thousands of asylum seekers waiting weeks and months for their CBP One appointment in a makeshift encampment about two blocks from the US port of entry, with no security or access to basic services.¹⁵²

Many asylum seekers told Human Rights Watch they saw cartel lookouts surveilling the river to ensure asylum seekers are not able to turn themselves in to CBP there, and that cartel operatives visit the makeshift refugee camp, taking photos of the asylum seekers,

¹⁴⁷ Human Rights Watch interview with Nicolas P., Piedras Negras, Mexico, September 5, 2023.

¹⁴⁸ Human Rights Watch interview with Beatriz Fuentes, director, Casa Fuentes, August 15, 2023.

¹⁴⁹ Ibid.

¹⁵⁰ Ibid.; Human Rights Watch interviews with asylum seekers, Nuevo Laredo, Mexico, September 2023; Human Rights Watch interviews with shelter workers, Nuevo Laredo, Mexico, September 2023.

¹⁵¹ Ibid.

¹⁵² Ibid.

including children, warning them that they will be seriously harmed if they try to cross the border without paying.¹⁵³

The cartel also kidnaps migrants directly from the bus terminal in Nuevo Laredo.¹⁵⁴ Taxi and rideshare drivers in Nuevo Laredo are reportedly forced to participate in a WhatsApp group they share with cartel operatives where they must notify the cartel when they have migrant passengers and turn migrants over to the cartel when asked.¹⁵⁵ Even the migrant shelters had been compromised while they were still open, with some workers extorting migrants on behalf of the cartel, while others turn over migrants' identifying information to the cartel on a regular basis, the workers themselves told Human Rights Watch.¹⁵⁶

Forced Relocation of Asylum Seekers to Southern Mexico

The Mexican government also apprehends some non-Mexican asylum seekers at the US border before they can reach the United States and relocates them to southern Mexico, where they are typically pressured to sign written agreements to leave Mexico via its southern border. The Mexican government also summarily deports asylum seekers to their country of origin, typically without screening to ensure they are not being returned to harm.

Virginia Z., a 47-year-old Venezuelan asylum seeker traveling with her 11-year-old son, told Human Rights Watch the family was attempting to turn themselves in at the Eagle Pass port of entry in August 2023 when INM agents near the international bridge “grabbed” them, she said, put them on a bus, and relocated them to the state of Tabasco, which borders Guatemala.¹⁵⁷ Traveling north once again through Mexico, Virginia lost her phone and had to create a new CBP One registration using someone else's phone. She had been waiting for two months in Nuevo Laredo when we spoke with her.¹⁵⁸

¹⁵³ Human Rights Watch interviews with asylum seekers, Nuevo Laredo, Mexico, September 2023.

¹⁵⁴ Human Rights Watch interview with Raymundo Ramos, director, Comité de Derechos Humanos de Nuevo Laredo, Nuevo Laredo, Mexico, September 8, 2023; Human Rights Watch interviews with asylum seekers, Nuevo Laredo, Mexico, September 2023; Human Rights Watch interviews with shelter workers, Nuevo Laredo, Mexico, September 2023.

¹⁵⁵ Ibid.

¹⁵⁶ Ibid.

¹⁵⁷ Human Rights Watch interview with Virginia Z., Nuevo Laredo, Tamaulipas, Mexico, September 7, 2023.

¹⁵⁸ Ibid.

York G., a 28-year-old Haitian asylum seeker, told Human Rights Watch he was waiting for a CBP One appointment in Piedras Negras in June 2023 when INM agents apprehended him, put him on a bus, and relocated him near the Mexican border with Guatemala, saying they were doing it on behalf of the United States.¹⁵⁹ York told a Human Rights Watch researcher, “The agents told me, ‘We have to deport [relocate] you, we are not doing it because we want to. It is not anything to do with you being Haitian or Black,’” York said. “They said they had to do a certain number of removals set by the US government.”¹⁶⁰

Mexican President Andrés Manuel López Obrador has repeatedly agreed to block migrants from arriving at the US southern border, including by using Mexican authorities to apprehend asylum seekers in border cities and relocate them to southern Mexico.¹⁶¹

York said he experienced discrimination and abuse in Mexico at the hands of Mexican government officials. After being relocated to southern Mexico by Mexican government authorities, he traveled north again and had been waiting for his appointment for two-and-a-half months at the time we spoke with him.¹⁶²

US Removals of Non-Mexicans to Mexico

Since May 2023, when Mexico agreed to accept removals and voluntary returns of non-Mexican nationals from the United States, CBP has sent thousands of people across the border.¹⁶³ Earlier, under separate agreements, the United States sent more than 77,000 people, mostly from Honduras, Nicaragua, Cuba, Guatemala, El Salvador, Venezuela, Colombia, and Ecuador, to Mexico pending US asylum hearings,¹⁶⁴ and it also carried out

¹⁵⁹ Human Rights Watch interview with York G., Saltillo, Coahuila, Mexico, August 26, 2023.

¹⁶⁰ Ibid.

¹⁶¹ Rosa Flores, et al., “Mexico Makes Agreement With US to Deport Migrants From its Border Cities as One Mayor Warns His City is at ‘a Breaking Point,’” *CNN*, September 24, 2023, <https://edition.cnn.com/2023/09/23/us/mexico-us-border-patrol-agreement-migration-surge/index.html> (accessed March 1, 2024); “Mexico’s President is Willing to Help With Border Migrant Crush but Wants US to Open Talks With Cuba,” *Associated Press*, December 22, 2023, <https://apnews.com/article/mexico-border-crossings-migrants-venezuela-cuba-6844e96d09bee286964e9bac15do6fba> (accessed March 1, 2024).

¹⁶² Human Rights Watch interview with York G., Saltillo, Coahuila, Mexico, August 26, 2023.

¹⁶³ Instituto Nacional de Migración letter to Human Rights Watch, October 26, 2023.

¹⁶⁴ American Immigration Council, “The ‘Migrant Protection Protocols’: an Explanation of the Remain in Mexico Program,” 2024, https://www.americanimmigrationcouncil.org/sites/default/files/research/migrant_protection_protocols_2024.pdf (accessed April 10, 2024); Transactional Records Access Clearinghouse (TRAC), MPP (Remain in Mexico) Deportation Proceedings—All Cases, Data, November 2022, <https://trac.syr.edu/phptools/immigration/mpp/> (accessed April 10, 2024).

summary expulsions more than 2.8 million times,¹⁶⁵ including hundreds of thousands of expulsions to Mexico of migrants from mostly Honduras, Guatemala, El Salvador, and Haiti.¹⁶⁶

Under the Biden asylum rule, asylum seekers are sent to Mexico either because they were deported in the enhanced expedited removal proceedings or they agreed to a “voluntary return” to Mexico.¹⁶⁷ Some non-Mexican asylum seekers told Human Rights Watch they were warned by CBP officials that they would not be granted asylum and that they would face deportation with a 5-year bar on return to the United States if they did not agree to return to Mexico—typically without screening to ensure asylum seekers were not being returned to harm in Mexico.¹⁶⁸ The non-Mexican asylum seekers said CBP officials told them they would be able to wait for a CBP One appointment and access the US asylum system if they agreed to be sent to Mexico.¹⁶⁹

However, when US CBP officials carry out removals or returns of non-Mexican asylum seekers—Haitians, Nicaraguans, Venezuelans, and Cubans—to Mexico, they turn them over directly to Mexican INM agents,¹⁷⁰ who often apprehend them, place them on buses they are not allowed to leave for up to three days, and relocate them to Villahermosa, Tabasco, at the border with Guatemala, without screening for protection needs.¹⁷¹ When effectuating these forced relocations, which INM calls “assisted returns” or “transfers,”¹⁷²

¹⁶⁵ Adam Isacson, “10 Things to Know About the End of Title 42,” commentary, Washington Office on Latin America, May 9, 2023, <https://www.wola.org/analysis/end-title-42/#:~:text=As%20a%20result%2C%20since%20March,border%20over%202.8%20million%20times> (accessed April 10, 2024).

¹⁶⁶ John Gramlich, “Key Facts About Title 42, the Pandemic Policy That Has Reshaped Immigration Enforcement at US-Mexico Border,” *Pew Research Center*, April 27, 2022, <https://www.pewresearch.org/short-reads/2022/04/27/key-facts-about-title-42-the-pandemic-policy-that-has-reshaped-immigration-enforcement-at-u-s-mexico-border/#:~:text=Mexico%20is%20by%20far%20the,have%20been%20from%20other%20countries> (accessed April 10, 2024).

¹⁶⁷ Alex Hinojosa, “US Program is Leaving Asylum Seekers Stranded in Mexico, Advocates Say,” *The Guardian*, July 2, 2023, <https://www.theguardian.com/us-news/2023/jul/02/voluntary-return-us-mexico-border-migration-stranded> (accessed April 10, 2024).

¹⁶⁸ Human Rights Watch interviews with asylum seekers, Mexico, August-September 2023.

¹⁶⁹ *Ibid.*

¹⁷⁰ Human Rights Watch interviews with asylum seekers and shelter workers, Mexico, August-September 2023; US Customs and Border Protection, Custody and Transfer Statistics FY2023, <https://www.cbp.gov/newsroom/stats/custody-and-transfer-statistics> (accessed October 16, 2023); Instituto Nacional de Migración letter to Human Rights Watch, October 26, 2023.

¹⁷¹ Human Rights Watch interviews with asylum seekers and shelter workers, Mexico, August-September 2023.

¹⁷² Maria Verza, “Mexico Halts Deportations and Migrant Transfers Citing Lack of Funds,” *Associated Press*, December 4, 2023, <https://apnews.com/article/mexico-immigration-migrants-venezuela-17615ace23do677bb443d8386e254fbc> (accessed December 6, 2023).

INM officials often compel asylum seekers to sign a statement saying they will leave Mexico via its southern border within a certain number of days.¹⁷³

Asylum seekers told Human Rights Watch that INM agents yelled at them and would not allow them to read what they were signing. They said INM agents also never asked them if they had a fear of return to their home country or to Guatemala.¹⁷⁴

From May through September 2023, the National Institute of Migration (INM) told Human Rights Watch it had received 31,409 non-Mexican migrants sent by the United States to Mexico.¹⁷⁵

That number is higher than data inconsistently cited by the US government over the same period. CBP said over 17,000 non-Mexicans had been deported to Mexico from May through September 20, 2023.¹⁷⁶ Also citing data from May through September 2023, DHS Assistant Secretary for Border and Immigration Policy Blas Nuñez-Neto reported CBP had removed about 21,000 non-Mexican nationals to Mexico.¹⁷⁷

CBP data show nearly a 10-fold increase in transfers of all migrants since the Biden asylum rule went into effect in May 2023 and since Mexico agreed to accept US returns and removals of non-Mexicans, also in May: from 3,552 people in April, when those transferred were Mexican nationals only, to 30,009 people in August, with transfers then including Mexican and non-Mexican nationals.¹⁷⁸

¹⁷³ Human Rights Watch interviews with asylum seekers, Mexico and United States, August-September 2023; Maria Verza and Edgar H. Clemente, “Mexico Moving Migrants Away from Borders to Relieve Pressure,” *Associated Press*, May 20, 2023, <https://apnews.com/article/mexico-migrants-borders-us-guatemala-0a4352adf37ae74ecf9436ae6bbc7980> (accessed December 6, 2023).

¹⁷⁴ Human Rights Watch interviews with asylum seekers, Mexico and United States, August-September 2023.

¹⁷⁵ Instituto Nacional de Migración letter to Human Rights Watch, October 26, 2023.

¹⁷⁶ US Department of Homeland Security, Fact Sheet: The Biden-Harris Administration Takes New Actions to Increase Border Enforcement and Accelerate Processing for Work Authorizations, While Continuing to Call on Congress to Act, September 20, 2023, <https://www.dhs.gov/news/2023/09/20/fact-sheet-biden-harris-administration-takes-new-actions-increase-border> (accessed April 10, 2024).

¹⁷⁷ *M.A. v Mayorkas*, No. 1:23-cv-01843-TSC, US District Court for D.C., October 27, 2023, Appendix A: Declaration of Blas Nuñez-Neto, para. 27, <https://storage.courtlistener.com/recap/gov.uscourts.dcd.256826/gov.uscourts.dcd.256826.53.1.pdf> (accessed April 10, 2024).

¹⁷⁸ US Customs and Border Protection, Custody and Transfer Statistics FY2023, <https://www.cbp.gov/newsroom/stats/custody-and-transfer-statistics> (accessed October 16, 2023).

As part of an agreement with the US government, the Mexican government also summarily deports non-Mexican asylum seekers to their home countries after apprehending them in Mexican border cities, before asylum seekers have a chance to seek asylum in the United States.¹⁷⁹ Since the asylum rule went into effect, Mexico has made an official and public agreement with the United States to apprehend more asylum seekers at its border with the US and send them to their home countries by land or air.¹⁸⁰

“Mexico continues to do the United States’ dirty work,” said a Mexican human rights worker and attorney with extensive experience with asylum seekers on the Mexican side of the border who spoke to Human Rights Watch on condition of anonymity. “[After CBP sends them to Mexico], they're given to Mexican immigration who take them on a bus to Tabasco, Mexico.”¹⁸¹

According to an October 2023 report, the INM paid private bus company ETN Turistar 490 million pesos (US\$28.5 million) to transport to the Mexico-Guatemala border migrants and asylum seekers apprehended by Mexican authorities or removed or sent by the United States to Mexico.¹⁸² The contract expired December 31, 2023, and was reportedly not renewed.¹⁸³

The López Obrador administration summarily deported more than 53,300 migrants to their country of origin in 2023, 122,000 in 2022, and 130,000 in 2021.¹⁸⁴

¹⁷⁹ Rosa Flores, et al, “Mexico Makes Agreement With US to Deport Migrants,” *CNN*.

¹⁸⁰ Instituto Nacional de Migración, “Acuerdan INM y Ferromex acciones con 3 niveles de gobierno y CBP para sistema ferroviario y que personas migrantes no arriesguen su vida,” press release, September 22, 2023, <https://www.gob.mx/inm/prensa/acuerdan-inm-y-ferromex-acciones-con-los-tres-niveles-de-gobierno-y-cbp-para-la-ruta-del-sistema-ferroviario-a-fin-de-que-las-personas-migrantes-no-arriesguen-su-vida-a-bordo?idiom=fr> (accessed December 6, 2023); Rosa Flores, et al, “Mexico Makes Agreement With US to Deport Migrants,” *CNN*.

¹⁸¹ Human Rights Watch interview with Mexican human rights worker and attorney, Monterrey, Mexico, August 24, 2023.

¹⁸² Roxana González, “Transportar a Migrantes en autobuses le Cuesta 490 mdp al INM,” *El Sol de México*, October 17, 2023, <https://www.elsoldemexico.com.mx/mexico/sociedad/transportar-a-migrantes-en-autobuses-le-cuesta-490-mdp-al-inm-10809610.html> (accessed October 12, 2023).

¹⁸³ *Ibid.*; Linaloe R. Flores, “2023, el intrincado año para la migración en México,” *Reporte Indigo*, January 8, 2024, <https://www.reporteindigo.com/reporte/2023-el-intrincado-ano-para-la-migracion-en-mexico-presupuesto-atencion/> (accessed March 1, 2024).

¹⁸⁴ Gobierno de México, *Personas en Situación Migratoria Irregular (Antes, Extranjeros Presentados y Devueltos)*, 2023, Boletines Estadísticos, n.d., <http://www.politicamigratoria.gob.mx/es/PoliticaMigratoria/CuadrosBOLETIN?Anual=2023&Secc=3> (accessed March 4, 2024); Maria Verza, “México Ordena Suspender Traslados y Devoluciones de Migrantes por Falta de Dinero,” *Associated Press*, December 4, 2023, <https://apnews.com/world-news/general-news-d3491122a5b85b6b7ce8f97711edf66f> (accessed December 5, 2023).

Lena, 56, and her nephew Fernando, 24, fled Venezuela and then Colombia with Lena's son, daughter-in-law, and their two children. After a long and harrowing journey, they turned themselves in outside the Eagle Pass port of entry. CBP then separated the family three ways: Lena's son, wife, and children were allowed to enter the United States, while Fernando was sent to El Paso and held in CBP custody for 16 days, and Lena was sent to Laredo for a few days and then to El Paso. In total, Lena was held in CBP border jails for 22 days, where she said she was only questioned by CBP agents about whether she had a fear of return to Mexico, not to her country of origin.¹⁸⁵

Fernando told Human Rights Watch that CBP tried to get him to accept a "voluntary" return to Mexico.¹⁸⁶ "Border Patrol kept telling me that if I continued to insist on my fear of return then I would be deported," Fernando said. "They told me dozens of times."¹⁸⁷

At separate times, and without allowing them to communicate with one another, CBP deported Lena and Fernando to Mexico. In both cases, CBP shackled the Venezuelan asylum seekers and accompanied them across the international bridge into Ciudad Juárez, Chihuahua, Mexico, and turned them over directly to INM agents. Their shackles were only removed as the custody transfer occurred. In both cases, INM agents detained them, put them on buses with other deported or returned asylum seekers, and had them driven for three days to forcibly relocate them to Villahermosa, Tabasco, a state bordering Guatemala. INM agents pressured them to sign a document agreeing to leave via the southern border of their own accord.¹⁸⁸

Because CBP agents never returned Fernando's personal belongings, he found himself once again in southern Mexico, a country where he and his family had already experienced abuse, with no documents, no cellphone, and no money. Lena arrived a few days later, but the two did not manage to find one another again until they had both made it to northern Mexico once more.¹⁸⁹

¹⁸⁵ Human Rights Watch interview with Fernando G., Saltillo, Mexico, August 25, 2023; Human Rights Watch interview with Lena G., Saltillo, Mexico, August 26, 2023.

¹⁸⁶ Human Rights Watch interview with Fernando G., Saltillo, Mexico, August 25, 2023.

¹⁸⁷ Ibid.

¹⁸⁸ Ibid.

¹⁸⁹ Ibid.; Human Rights Watch interview with Lena G., Saltillo, Mexico, August 26, 2023

Alana T., 54, left Venezuela with her daughter, 30, her son-in-law, 31, and her four grandchildren, ages 1, 2, 8, and 9. After they crossed the Rio Grande near the port of entry in Eagle Pass and turned themselves in, CBP agents threw away Alana’s diabetes medicine and separated her from the rest of her family. CBP immediately processed her children and grandchildren into the United States but detained Alana for seven days without medical treatment. An immigration judge ordered her removal because she had not arrived with a CBP One appointment. CBP deported her to Mexico, turning her over to INM agents in Nuevo Laredo. INM detained Alana on a bus for three days with 40 other women without letting them get off, forcibly relocating them all in Villahermosa, Tabasco, Mexico, near Guatemala, after which she said they pressured the women to sign a paper agreeing to depart Mexico via its southern border.¹⁹⁰

Asylum seekers removed or returned by CBP to Mexico and then sent by INM agents from the US-Mexico border to its southern border with Guatemala are often compelled to try to travel north again to attempt to access the US asylum system.

Forcibly relocating migrants and asylum seekers from northern to southern Mexico endangers them and subjects them again to the exhausting journey and gauntlet of abuse migrants pass through in Mexico to reach the United States. Having been denied access to the US asylum system, many are likely to pursue more dangerous irregular crossings to enter the United States.

Risk of Exposure to Harm in Guatemala

It is unreasonable to expect asylum seekers to agree to leave Mexico through its southern border with Guatemala.

The vast majority of asylum seekers Human Rights Watch spoke to said Guatemalan police or immigration officials routinely demanded money from them, threatening to deport them if they did not pay, while, in some cases, violently assaulting them.¹⁹¹ Asylum seekers reported that Guatemalan officials also stopped and boarded commercial buses and demanded payment from migrants throughout the country.¹⁹²

¹⁹⁰ Human Rights Watch interview with Alana T., Saltillo, Mexico, August 26, 2023.

¹⁹¹ Human Rights Watch interviews with asylum seekers, Mexico and United States, August-September 2023.

¹⁹² Ibid.

At least some Guatemalan officials have claimed to be acting on behalf of the US government, although the circumstances of these interactions suggest the officials likely did so to intimidate asylum seekers.

Felipe Z., an asylum seeker who fled Ecuador with his 10 family members, told Human Rights Watch that Guatemalan officials told him they were working for the US government and Guatemalan officials were supposed to be conducting deportations on behalf of the United States when they apprehended the family of 11.¹⁹³

The Guatemalan government has recently agreed in talks with the US government to try to reduce the number of migrants arriving at the US southern border and has in recent years carried out violent crackdowns of migrants along with US Immigration and Customs Enforcement officials in Guatemala.¹⁹⁴ However, there is no indication Guatemalan police or immigration officials are “working for” the US government.

Asylum seekers told us that police and immigration authorities in Guatemala often conducted invasive searches of their persons and belongings, probing with ungloved hands into shoes, socks, waistbands, bras, and underwear. In one case recounted to us, Guatemalan police stole a young girl’s earrings. Asylum seekers reported these types of abuses in interviews in each of the six cities and 10 shelters that Human Rights Watch visited.¹⁹⁵

Some asylum seekers said women had been sexually assaulted during such searches, including acts of unwanted touching and being forced to undress, by men who identified themselves as Guatemalan government officials.¹⁹⁶

¹⁹³ Human Rights Watch interview with Felipe Z., Saltillo, Mexico, August 25, 2023; Asylum seekers Human Rights Watch interviewed were not sure of exactly where they were in Guatemala when this happened.

¹⁹⁴ The White House, Joint Statement from the United States and Guatemala on Migration, June 1, 2023, <https://www.whitehouse.gov/briefing-room/statements-releases/2023/06/01/joint-statement-from-the-united-states-and-guatemala-on-migration/> (accessed February 1, 2024); Aline Barros, “US, Mexico, Guatemala Boost Cooperation to Control Migrant Arrivals at Southern Border,” *Voice of America*, February 28, 2024, <https://www.voanews.com/a/us-mexico-guatemala-boost-cooperation-to-control-migrant-arrivals-at-southern-border/7507282.html> (accessed February 1, 2024); “US Agents Aid in Guatemalan Crackdown on Hundreds of Migrants Headed North,” *The Guardian*, January 16, 2020, <https://www.theguardian.com/world/2020/jan/16/guatemala-migrants-us-agents-honduras> (accessed February 1, 2024).

¹⁹⁵ Human Rights Watch interviews with asylum seekers, Mexico and United States, August-September 2023.

¹⁹⁶ *Ibid.*

Pamela D., 23, and Naomi D., 25, cousins who fled Venezuela with their teenage sisters, told Human Rights Watch that armed men in uniforms stopped a bus they were on in Guatemala in the middle of the night. Two armed men then boarded the bus. One of these men took all the male passengers off the bus. The other man began to point a flashlight in the faces of the women and girls. He appeared to be singling out certain women, at which point he would turn off the light and begin sexually assaulting them. He turned off the light when he got to Naomi and reached his hand beneath her clothes, fondling her breasts and genitals before taking her money.¹⁹⁷

¹⁹⁷ Human Rights Watch interview with Pamela D., Mexico City, August 29, 2023; Human Rights Watch interview with Naomi D., Mexico City, August 29, 2023.

Legal Framework

The United States' near-exclusive reliance on CBP One to access the asylum system, enforced by CBP agents at the physical border and by Mexican officials, as well as private security guards who appear to be operating at the direction of Mexican officials, likely results in violations of the United States' obligation to refrain from refoulement—the return of people to likely persecution, torture, or other irreparable harm. In addition, when Mexico blocks people from reaching the United States, transfers people from its northern border, and induces them to exit via its southern border, its actions are also likely to result in refoulement, constituting violations for which Mexico and the United States share responsibility.

Digital metering also deprives people of effective enjoyment of the right to seek asylum and subjects them to discrimination on the basis of race, wealth, and other status, in violation of the United States' international obligations.

Finally, because asylum seekers turned back under the digital metering system are readily identifiable, share common characteristics, are perceived in Mexican society as a distinct social group, and face harm because they are asylum seekers subject to digital metering, they can plausibly show they face persecution on account of their membership in a particular social group. That is, the digital metering system has the foreseeable consequence of creating more viable asylum claims.

The Obligation Not to Return People to Irreparable Harm

The principle of nonrefoulement prohibits states from transferring anyone, directly or indirectly, to a place where they would have a well-founded fear of persecution, would face a risk of torture or other cruel, inhuman, or degrading treatment or punishment, or would likely suffer other irreparable harm. Refoulement is prohibited by the 1967 Protocol Relating to the Status of Refugees,¹⁹⁸ the International Covenant on Civil and Political

¹⁹⁸ UN Protocol relating to the Status of Refugees (Refugee Protocol), 606 U.N.T.S. 268 (entered into force October 4, 1967), incorporating the substantive provisions of the Convention relating to the Status of Refugees (Refugee Convention), 189 U.N.T.S. 150 (entered into force April 22, 1954). The United States acceded to the Refugee Protocol in 1968; Mexico acceded to the protocol in 2000. The United States incorporated the provisions of the Refugee Protocol into domestic law through the

Rights,¹⁹⁹ and the Convention against Torture,²⁰⁰ among other treaties,²⁰¹ as well as under customary international law.²⁰²

The principle is reflected in US law.²⁰³

US turnbacks of Mexican nationals or anyone with a fear of persecution in Mexico without screening for asylum likely violates the principle because nonrefoulement hinges on a refugee not being returned to a place where their lives or freedom would be at risk, often, but not always, their country of origin. Reflecting this reality, the Circumvention of Lawful Pathways Rule exempts Mexican nationals.²⁰⁴ Similarly, CBP guidance during prior metering operations has warned that Mexican nationals should not be turned back at the border.²⁰⁵

Refugee Act of 1980, Pub. L. No. 96- 212, 94 Stat. 102 (1980). As the US Supreme Court has confirmed, a primary purpose of Congress in passing the Refugee Act “was to bring United States refugee law into conformance with the 1967 United Nations Protocol.” *INS v. Cardoza-Fonseca*, 480 U.S. 421, 426 (1987). See also *INS v. Stevic*, 467 U.S. 407, 416-24 (1984) (providing a history of the incorporation of the Refugee Convention standards into US law through the Refugee Protocol and the Refugee Act of 1980).

¹⁹⁹ International Covenant on Civil and Political Rights (ICCPR), December 16, 1966, 999 U.N.T.S. 171 (entered into force February 23, 1976); Human Rights Committee, General Comment No. 20: Article 7 (Prohibition of Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment) (February 10, 1992), para. 9; Human Rights Committee, General Comment No. 31 on the Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (May 26, 2004), para. 12.

²⁰⁰ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 3, December 10, 1984, (entered into force June 26, 1987).

²⁰¹ For example, American Convention on Human Rights, art. 22(8); Convention on the Rights of the Child, arts. 6, 37, September 2, 1990, 1577 U.N.T.S. 3 (entered into force November 20, 1989). The UN Committee on the Rights of the Child has interpreted the Convention on the Rights of the Child to prohibit expulsions or returns “to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child.” Committee on the Rights of the Child, General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, U.N. Doc. CRC/GC/2005/6 (September 1, 2005), para. 27. Mexico acceded to the American Convention on February 2, 1981, and ratified the Convention on the Rights of the Child on September 21, 1990.

²⁰² See, for example, UN High Commissioner for Refugees (UNHCR), The Principle of Non-Refoulement as a Norm of Customary International Law. Response to the Questions Posed to UNHCR by the Federal Constitutional Court of the Federal Republic of Germany in Cases 2 BvR 1938/93, 2 BvR 1953/93, 2 BvR 1954/93, January 31, 1994, <https://www.refworld.org/jurisprudence/amicus/unhcr/1994/en/20625> (accessed February 20, 2024).

²⁰³ See, for example, 8 U.S.C. § 1158(b); 8 U.S.C. § 1231(b)(3)(A).

²⁰⁴ Federal Register, Circumvention of Lawful Pathways, 88 Fed. Reg 31315.

²⁰⁵ For example, CBP’s 2018 “metering guidance” states: “[INM] has, at times, elected to conduct exit controls at some locations in Mexico to limit the throughput of travelers into the United States. DFOs should be particularly aware of any [INM] controls that are preventing U.S. citizens, LPRs, or Mexican nationals (some of whom may intend to claim fear) [from entering the United States, and should work with [INM], as appropriate, to address such concerns.” Customs and Border Protection Office of Field Operations, “Metering Guidance,” memo, Pp. 43-44, April 27, 2018 (emphasis added), <https://www.cbp.gov/sites/default/files/assets/documents/2021-Nov/Metering%20and%20Queue%20Management%2002.pdf> (accessed December 6, 2023).

More generally, preventing arriving asylum seekers of any nationality from accessing asylum procedures—the mechanism which allows asylum seekers to be identified as refugees or not—based on whether or not they are able to access CBP One appointments constitutes a likely violation of nonrefoulement. While international refugee law does not formally provide an asylum seeker—a person claiming to be a refugee—the right to enter, the refoulement prohibition provides little latitude when the asylum seeker appears at a land border. As the UN’s refugee agency, UNHCR, which provides authoritative guidance on refugee law, made clear in a 2023 brief to the US Supreme Court:

The “cardinal protection principle” of non-refoulement prohibits State conduct that could “lead[] to” a refugee’s “return in any manner whatsoever” to an unsafe foreign territory.” That certainly proscribes enactment and implementation of a blanket policy of “rejection at the [border] or nonadmission to the territory,” because blanket rejection or non-admission clearly may subject a refugee to direct or indirect refoulement.²⁰⁶

The UNHCR’s Executive Committee Conclusion 99 calls on States to ensure “full respect for the fundamental principle of nonrefoulement, including non-rejection at frontiers without access to fair and effective procedures for determining status and protection needs.”

The US digital metering system, through the use of the CBP One application and by the actions of CBP agents and Mexican officials colluding with them, rejects asylum seekers, some of whom may be refugees, at the frontier. The promise of entry at a later date does not meet the standard of “effective procedures” for determining protection needs.

The risk of refoulement is particularly high for individuals who do not have a CBP One appointment and are therefore subject to the Biden asylum rule’s enhanced expedited removal procedures. Asylum seekers must now show in credible fear interviews that they are not subject to the rule or that they qualify for an exception, an undertaking that is difficult on its own terms. Making an asylum claim is even more difficult, and may well be impossible, for people subjected to expedited removal, who have just a few days to

²⁰⁶ *Arizona v. Mayorkas*, Amicus Curiae Brief of United Nations High Commissioner for Refugees before the US Supreme Court, February 8, 2023, https://www.supremecourt.gov/DocketPDF/22/22-592/254395/20230209124358742_22-592%20Amicus%20Brief.pdf (accessed December 6, 2023) (internal citations omitted).

prepare and present their cases, often over videoconference or on the phone, while detained by CBP under abusive conditions²⁰⁷ and without access to counsel.

UNHCR has warned that “the credible fear prescreening within expedited removal has, since its inception, diverged from international standards for accelerated procedures.”²⁰⁸ Federal asylum officers have spoken out against these systems of “enhanced” expedited removal under the Biden asylum rule, saying they are “inconsistent with the asylum law enacted by Congress, the treaties the United States has ratified, and our country’s moral fabric and longstanding tradition of providing safe haven to the persecuted,” according to the union that represents United States Citizen and Immigration Services employees—the American Federation of Government Employees Council 119.²⁰⁹

Similarly, actions by Mexican officials to prevent asylum seekers from reaching US soil and seeking asylum are also likely acts of refoulement.

Moreover, Mexico’s summary deportation of people without providing access to the asylum process or evaluating risks upon return also risks refoulement. The same is true of forced relocation to the Mexican border with Guatemala.

In short, the United States violates the obligation of nonrefoulement when its officials turn people back at the border to face irreparable harm. Mexico violates this obligation when its officials or agents, including private security guards operating under its direction or authority, turn people back from the US border to face irreparable harm, deport people without assessing the likelihood of harm upon their return, or induce people to depart Mexico via its southern border if they would face irreparable harm in Guatemala.

The United States and Mexico also violate the obligation of nonrefoulement when their officials or agents turn people back or induce them to travel to countries that then subject them to refoulement. For instance, the United States may not send a non-Mexican national

²⁰⁷ See, e.g., Human Rights Watch, *“They Treat You Like You are Worthless”* (New York, Human Rights Watch, 2021).

²⁰⁸ Letter from UN High Commissioner for Refugees (UNHCR), to Executive Office for Immigration Review and U.S. Citizenship and Immigration Services, “Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers,” May 31, 2022, p. 14-15, <https://www.regulations.gov/comment/USCIS-2021-0012-5305>.

²⁰⁹ Hamed Aleaziz, “Biden Immigration Plan Could Force Asylum Officers to Break Law, Union Warns,” *Los Angeles Times*, February 27, 2023, <https://www.latimes.com/world-nation/story/2023-03-27/biden-asylum-plan-break-law>.

to Mexico if that person, in turn, may face refoulement by Mexico.²¹⁰ Similarly, Mexico may not send or induce the departure of a person to Guatemala if that person would likely face refoulement in Guatemala.

Moreover, the United States shares responsibility for violations by Mexican officials committed in the course of acts Mexico carries out at the behest of or in agreement with the United States government.²¹¹

It is a general principle of international law that one state may not avoid its international obligations by allowing a second state to commit acts that would be prohibited if committed by the first state.²¹²

International law also extends responsibility for internationally wrongful acts to the conduct of non-state entities, for instance Mexican private security companies contracted by the government, when those entities exercise elements of governmental authority.²¹³ Even if the entity exceeds its authority or contravenes instructions, its conduct is considered an act of the state under international law if it is acting in a governmental capacity.²¹⁴ As the Human Rights Committee has said when interpreting Article 7 of the International Covenant on Civil and Political Rights, “[i]t is also implicit in article 7 that States Parties have to take positive measures to ensure that private persons or entities do not inflict torture or cruel, inhuman or degrading treatment or punishment on others within their power.”²¹⁵ In the facts documented by this report, non-state entities may be acting in

²¹⁰ See Amicus Curiae Brief of United Nations High Commissioner for Refugees, *Arizona v. Mayorkas*, No. 22-592 (U.S. filed February 8, 2023), https://www.supremecourt.gov/DocketPDF/22/22-592/254395/20230209124358742_22-592%20Amicus%20Brief.pdf (accessed April 1, 2024).

²¹¹ Rosa Flores, et al, “Mexico Makes Agreement with US to Deport Migrants,” *CNN*.

²¹² Draft Articles on the Responsibility of States for internationally wrongful acts, adopted by the International Law Commission at its Fifty-third Session (2001) (extract from the Report of the International Law Commission on the work of its Fifty-Third Session), Official Records of the General Assembly, Fifty-sixth session, Supplement No. 10, (A/56/10), Ch. IV.E.1), at [http://www.un.org/law/ilc/texts/State_responsibility/responsibility_articles\(e\).pdf#pagemode=bookmarks](http://www.un.org/law/ilc/texts/State_responsibility/responsibility_articles(e).pdf#pagemode=bookmarks) (ILC Draft Articles).

²¹³ Article 5 of the ILC Draft Articles states that “the conduct of a person or entity which is not an organ of the State... but which is empowered by the law of that State to exercise elements of the governmental authority shall be considered an act of the State under international law, provided the person or entity is acting in that capacity in the particular instance.”

²¹⁴ “The conduct of an organ of a State or of a person or entity empowered to exercise elements of the governmental authority shall be considered an act of the State under international law if the organ, person or entity acts in that capacity, even if it exceeds its authority or contravenes instructions.” Article 7, ILC Draft Articles.

²¹⁵ Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004) <http://hrlibrary.umn.edu/gencomm/hrcom31.html> (accessed October 14, 2023).

governmental capacity on behalf of Mexico or the United States and violating human rights, including by committing acts of refoulement.

The Right to Seek Asylum

The right to seek asylum is affirmed in the Universal Declaration of Human Rights and reflected in human rights treaties to which the United States and Mexico are party.²¹⁶ As UNHCR’s Executive Committee has stated, “the institution of asylum, which derives directly from the right to seek and enjoy asylum from persecution set out in Article 14 of the [Universal] Declaration, is among the most basic mechanisms for the protection of refugees.”²¹⁷

The separate right of everyone to leave any country, including one’s own, is essential to effective enjoyment of the right to asylum. The right to leave any country is affirmed in the Universal Declaration and guaranteed in the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and the American Convention.²¹⁸ The UN Human Rights Committee and the Inter-American Commission on Human Rights have highlighted the interrelationship between the rights to seek asylum, the right to leave any country, and the right to protection from refoulement.²¹⁹

Actions by Mexican government officials that prevent migrants or asylum seekers from leaving Mexico violate the right to leave any country. The same is true of such actions by private actors contracted by the state or otherwise operating as state agents. The right to leave any country applies to everyone, including people not lawfully in the territory, and may be limited only for permissible reasons that are provided for by law, necessary and

²¹⁶ Universal Declaration of Human Rights, art. 14; Refugee Protocol, art. 1 (incorporating the substantive obligations of the Refugee Convention); American Convention, art. 22(7).

²¹⁷ UN High Commissioner on Refugees (UNHCR), Executive Committee of the High Commissioner’s Programme, Conclusion on International Protection No. 85 (XLIX) (October 9, 1998), para. f.

²¹⁸ Universal Declaration, art. 13(2); ICCPR, art. 12(2); International Convention on the Elimination of All Forms of Racial Discrimination, art. 5(d)(ii), February 7, 1966, 660 U.N.T.S. 195 (entered into force January 4, 1969; ratified by Mexico February 20, 1975); American Convention, art. 22(2).

²¹⁹ See UN Human Rights Committee, General Comment No. 15, para. 8; Organization of American States, Inter-American Commission on Human Rights, “IACHR Urges Honduras and Guatemala to Guarantee the Rights of People in the Migrant and Refugee Caravan,” press release, February 19, 2019. https://www.oas.org/en/iachr/media_center/PReleases/2019/037.asp (accessed March 13, 2023).

proportionate, and consistent with other human rights.²²⁰ The right applies even when persons do not have legal permission to travel to their intended destination.²²¹

The Obligation of Nondiscrimination

The United States and Mexico are obligated to guarantee the right to asylum and other human rights without discrimination²²² and more generally to guarantee equality before the law, including “equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”²²³

In particular, both countries have “undertake[n] to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms.”²²⁴ The obligation to eliminate racial discrimination “in all its forms and manifestations”²²⁵ extends to “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”²²⁶ To fulfil this obligation, states should “[e]nsure that immigration policies do not have the effect of discriminating against persons on the basis of race, colour, descent, or national or ethnic origin,”²²⁷ among other measures. Racially discriminatory impacts are also contrary to President Biden’s Executive Order 13985, announcing a policy to address “entrenched disparities” in US laws and public policy.²²⁸

²²⁰ See Human Rights Committee, General Comment No. 27: Freedom of Movement, U.N. Doc. CCPR/C/21/Rev.1/Add.9 (November 1, 1999).

²²¹ See, for example, *Stamose v. Bulgaria*, App. No. 29713/05 (Eur. Ct. H.R. November 27, 2012), para. 36 (analyzing the analogous provision of the European Convention on Human Rights and concluding that “[a]lthough the Court might be prepared to accept that a prohibition on leaving one’s own country imposed in relation to breaches of the immigration laws of another State may in certain compelling situations be regarded as justified, it does not consider that the automatic imposition of such a measure without any regard to the individual circumstances of the person concerned may be characterized as necessary in a democratic society.”).

²²² ICCPR, art. 2; ICERD, art.

²²³ ICCPR, art. 26. Accord ICERD, art. 5(a).

²²⁴ ICERD, art. 2(1).

²²⁵ *Ibid.*, pmb.

²²⁶ *Ibid.*, art. 1(1).

²²⁷ UN Committee on the Elimination of Racial Discrimination, General Recommendation XXX on Discrimination Against Non-Citizens, para. 9.

²²⁸ Federal Register, “Circumvention of Lawful Pathways,” 88 Fed. Reg. 31315, p. 31,358-31,359.

As this report has shown, navigating the Biden asylum rule and the CBP One app is more difficult for certain categories of people—among them: disabled individuals, LGBT people, Black and Indigenous people, people with limited language or digital literacy skills, older people, and people who are not wealthy enough to be able to pay for smartphones, data plans, and access to Wi-Fi.

The racially discriminatory impacts of the Biden asylum rule and the digital metering system, imposed by the nearly mandatory use of CBP One, are particularly apparent. These policies inflict disproportionate harm on Black, Brown, and Indigenous asylum seekers. These rules target people seeking safety at the southern border, the overwhelming majority of whom are people of color. It is also the case that the US humanitarian parole program, which offers an avenue into the privileged group of asylum seekers under the Biden asylum rule, is only available to Cubans, Haitians, Nicaraguans, and Venezuelans. The program denies access to other nationalities, such as Guatemalans, of whom approximately 45 percent are Indigenous,²²⁹ and any African or Asian nationalities. Meanwhile, a separate humanitarian parole process is readily available to Ukrainians,²³⁰ who are predominantly white.

The effectively mandatory use of a mobile application that is known to be difficult for Black and Indigenous people, among others, to seek asylum violates US obligations under ICERD. More generally, the US digital metering system and other US asylum policies are dangerous for these groups of asylum seekers. Under the Biden asylum rule, and policies that predate it, the United States has regularly returned Black and Latinx migrants to

²²⁹ International Work Group for Indigenous Affairs, “Indigenous Peoples in Guatemala,” n.d., <https://www.iwgia.org/en/guatemala.html> (accessed March 13, 2024).

²³⁰ US Citizenship and Immigration Services, “Uniting for Ukraine,” updated February 27, 2024, <https://www.uscis.gov/ukraine> (accessed March 13, 2024).

countries where they are at risk, as Human Rights Watch has documented in Honduras²³¹, El Salvador²³², Mexico,²³³ Cameroon,²³⁴ and Haiti.²³⁵

Moreover, as described above, wealth-based discrimination is already cemented into one of the clearest avenues to access the regular US asylum system under the Biden asylum rule: the US humanitarian parole program for certain nationals. Many people do not have money to purchase a plane ticket to the United States or do not have a family member in the United States who is financially solvent enough to sponsor them—requirements under the program.²³⁶

CBP One’s Digital Metering May Create a Particular Social Group

This report’s principal finding is that digital metering by the United States, the resulting turnbacks by the United States and Mexico, and other practices by Mexico deprive people of access to asylum and risk refoulement. In addition, because digital metering creates specific risks for people who are turned back at the US border, it creates an independent basis for asylum. That is, although the asylum rules and practices implemented by the United States purport to increase the efficiency of the asylum system,²³⁷ they will have the foreseeable effect of increasing the number of viable asylum claims.

US law defines a refugee in terms nearly identical to those of the Refugee Convention as someone fleeing persecution or fear of persecution “on account of race, religion, nationality, *membership in a particular social group*, or political opinion.”²³⁸ The Board of

²³¹ Human Rights Watch, “*You Don’t Have Rights Here: US Border Screening and Returns of Central Americans to Risk of Serious Harm*” (New York: Human Rights Watch, 2014), <https://www.hrw.org/report/2014/10/16/you-dont-have-rights-here/us-border-screening-and-returns-central-americans-risk>.

²³² Human Rights Watch, *Deported to Danger: United States Deportation Policies Expose Salvadorans to Death and Abuse*, (New York: Human Rights Watch, 2020), <https://www.hrw.org/report/2020/02/05/deported-danger/united-states-deportation-policies-expose-salvadorans-death-and>.

²³³ Human Rights Watch, “*We Can’t Help You Here: US Returns of Asylum Seekers to Mexico*,” (New York: Human Rights Watch, 2019), <https://www.hrw.org/report/2019/07/02/we-cant-help-you-here/us-returns-asylum-seekers-mexico>.

²³⁴ Human Rights Watch, “*How Can You Throw Us Back? Asylum Seekers Abused in the US and Deported to Harm in Cameroon*” (New York: Human Rights Watch, 2022), <https://www.hrw.org/report/2022/02/10/how-can-you-throw-us-back/asylum-seekers-abused-us-and-deported-harm-cameroon#7407>.

²³⁵ Human Rights Watch, “Haitians Being Returned to a Country in Chaos,” Human Rights Watch news release, March 24, 2022, <https://www.hrw.org/news/2022/03/24/haitians-being-returned-country-chaos>.

²³⁶ Bill Frelick (Human Rights Watch), “Biden’s New Plan: No Help for Desperate Venezuelan Refugees,” Op-ed, *The Hill*, October 28, 2022, <https://www.hrw.org/news/2022/10/28/bidens-new-plan-no-help-desperate-venezuelan-refugees>.

²³⁷ Federal Register, Circumvention of Lawful Pathways, 88 Fed. Reg 31315.

²³⁸ 8 U.S.C. § 1101(a)(42) (emphasis added)

Immigration Appeals (BIA), the branch of the administrative agency that conducts reviews of decisions by immigration judges, stated in its first precedential decision on particular social groups: “Persecution on account of membership in a particular social group’ refers to persecution that is directed toward an individual who is a member of a group of persons, all of whom share a common, immutable characteristic.”²³⁹

Subsequent BIA decisions have introduced additional elements to satisfy this ground for asylum, holding that a particular social group is “socially distinct within the society in question,” is “defined with particularity,” and is made of people who have “shared past experience, or a social or other status.”²⁴⁰ While some of these elements as applied may not be consistent with the Refugee Act of 1980, the purpose of which was to implement the Refugee Protocol,²⁴¹ most people turned back at the US border or otherwise affected by the US digital metering policy can convincingly show they meet this standard.

International migrants in the states of Baja California, Sonora, Chihuahua, Coahuila, Nuevo León, and Tamaulipas, as well as in other parts of Mexico where migrants are known to transit, who are seeking asylum in the United States are members of a clearly defined and socially distinct group.²⁴² International migrants in Mexico’s six northern border states and main transit hubs who are seeking asylum in the United States are a group with a shared social status as foreigners without a legal status in Mexico who are known to be trying to leave Mexico for the United States.

Individuals waiting in Mexico, or pushed back to Mexico, or migrating through Mexico to seek asylum in the United States are a socially distinct group in Mexico. Asylum seekers do not speak Spanish at all or do not speak it as Mexicans speak Spanish, and their physical appearance—including their facial structure, height, and skin color—means they are often

²³⁹ *Matter of Acosta*, 19 I. & N. Dec. 211, 233 (B.I.A. 1985).

²⁴⁰ *Matter of M-E-V-G*, 26 I. & N. Dec. 227 (BIA 2014); *Matter of W-G-R*, 26 I. & N. Dec. 208 (BIA 2014); See also US Citizenship and Immigration Services, Nexus-Particular Social Group, RAI0 Directorate-Officer Training, July 20, 2021, https://www.uscis.gov/sites/default/files/document/foia/Nexus_-_Particular_Social_Group_PSG_LP_RAIO.pdf (accessed Mar. 13, 2024).

²⁴¹ The US incorporated the provisions of the 1967 Protocol into domestic law through the Refugee Act of 1980, Pub. L. No. 96- 212, 94 Stat. 102 (1980). As the US Supreme Court has confirmed, a primary purpose of Congress in passing the Refugee Act “was to bring United States refugee law into conformance with the 1967 United Nations Protocol.” *INS v. Cardoza-Fonseca*, 480 U.S. 421, 426 (1987); see also *INS v. Stevic*, 467 U.S. 407, 416-24 (1984) (providing a history of the incorporation of the Refugee Convention standards into US law through the 1967 Protocol and the Refugee Act of 1980).

²⁴² See, for example, *Pirir-Boc v. Holder*, 750 F.3d 1077 (9th Cir. 2014).

easily identified as non-Mexican. These are immutable characteristics of this group—they cannot change without unreasonable effort the way they appear, the languages they speak, or the way they speak Spanish. Individually and in combination, these characteristics identify people as belonging to a social group, and Mexican society recognizes this social group as distinct. The group is also characterized by other features that are not immutable but are distinctive: migrants returned by the US often do not have shoelaces, asylum seekers often dress differently from others, they often are seen in small groups and travel with simple bags of belongings, and they engage in certain types of work known to Mexican society. They are, in short, a distinct group.

The fluctuating numbers of asylum seekers in Mexico does not affect whether they are a particular social group under US law.²⁴³

Because they are perceived as transient, asylum seekers in Mexico are often denied access to essential services that Mexican citizens enjoy, like medical care, public education, and basic health care, by the government. They are also systematically targeted in Mexico by both Mexican state and non-state actors for kidnapping, extortion, sexual assault, and other violence that may amount to persecution on account of their membership in the particular group of asylum seekers stranded on the Mexican border with the United States. The Mexican government is “unable or unwilling” to protect migrants in Mexico from persecution and discrimination, as documented in this report, and at times even carries out acts of discrimination and other persecution.

²⁴³ *Matter of M-E-V-G*, 26 I.& N. Dec. at 239; *Perdomo v. Holder*, 611 F.3d 662, 669 (9th Cir. 2010) (reasoning “that the size and breadth of a group alone does not preclude a group from qualifying as such a social group”).

Recommendations

To the Biden Administration and the US Department of Homeland Security

- Instruct CBP to process all arriving asylum seekers to allow them to pursue their asylum claims in the United States without differentiating between the manner or location of their entry, including whether they arrived at or between ports of entry, or whether they obtained an appointment through the CBP One app.
- Rescind the Circumvention of Lawful Pathways rule and instruct immigration judges and asylum officers to review all asylum claims thoroughly and fairly, regardless of whether the claimant obtained an appointment through the CBP One app, can show proof of having unsuccessfully sought asylum in a third country, or meets any of the criteria for an exception to the rule.
- End the use of expedited removal for all cases.
- Instruct CBP to end all metering practices and turnbacks of asylum seekers at the border without allowing them access to the US asylum system.
- Allow continued use of the CBP One app for individuals who wish to schedule appointments or use the app for other US immigration processes, but impose no penalties, or differentiation in treatment to asylum seekers based on their use or non-use of the app.
- Insofar as it is used as an additional scheduling tool and not a mandatory pathway to access the asylum system, the US government should improve the CBP One app for accessibility and usability, in consultation with affected communities. This may include extending the range of languages available in CBP One to include including Arabic, French, Russian, Chinese, Portuguese, and Indigenous languages such as Mam, Quiche, Q'eqchi', and Quechua, among many others; creating user-friendly guides in multiple languages explaining the app functionality, and outlining alternate options to secure CBP appointments; creating and resourcing support and complaints mechanisms for people struggling to use the app to access appointments, for instance via a well-staffed phone helpline; addressing issues in facial verification software where there are currently seemingly detrimental effects for people with darker skin tones; and addressing privacy concerns around geolocation and biometric data accessed and stored via CBP One.
- Increase appropriately trained personnel— asylum officers, doctors, child-care specialists, mental health services professionals and other first responders—at the

border using funds currently allocated by the US Congress for immigration enforcement and detention.

- Beyond initial screening of migrants, transfer humanitarian reception, including migrant processing and asylum functions, from Customs and Border Protection to a separate government agency, such as FEMA, or groups with trauma-informed training and whose mission is to perform humanitarian services.
- Ensure that asylum seekers do not spend any more time than is strictly necessary in CBP custody and are never held beyond the designated 72-hour limit established in the CBP National Standards on Transport, Escort, Detention, and Search (TEDS).
- End all removals of non-Mexican migrants to Mexico; do not reinstate expulsions or returns of non-Mexican migrants to Mexico.
- End any agreements with Mexico that result in rights violations, including agreements to expel and deport asylum seekers or block them at US ports of entry.
- Eliminate requirements that make humanitarian parole inaccessible to many mostly low-income people, including the need to have a valid passport and a financial sponsor in the United States.

To the US Congress

- Expand legal, orderly, and safe pathways for people to migrate to the United States, including by:
 - Incorporating into the Immigration and Nationality Act the expanded definition of refugees contained in the Cartagena Declaration, or a comparable standard of complementary protection, that includes individuals fleeing violence or other exceptional situations, including those related to climate change or extreme weather events, that expose them to a real risk of serious harm.
 - Incorporating into the Immigration and Nationality Act new family unity-based grounds for admissibility to the United States for individuals seeking to join family members already living in the US.
 - Enacting into law other safe and legal avenues for migration, such as family reunification visas, expanded temporary work visas, and temporary visas for witnesses of serious crimes as enumerated in the eligibility criteria for U visas.

To the Mexican Government

- Stop blocking people from leaving Mexico and otherwise enforcing the Biden asylum rule and US CBP One appointment system by turning back asylum seekers at US ports of entry when they do not have a CBP One appointment.
- Cease summary deportation of migrants without screening for asylum or other protection needs.
- Investigate allegations of extortion and other abuses of migrants by federal, state, and local police, national guard soldiers, and immigration officials boarding commercial buses at checkpoints. Make the results of the investigations public, and hold police, soldiers, and immigration officials accountable.

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(left) Shipping containers topped with barbed wire block asylum seekers from crossing the border irregularly in Eagle Pass, Texas, September 4, 2023. © 2023 Ari Sawyer/Human Rights Watch

(front cover) A man seeking asylum in the US uses his phone to access the US Customs and Border Protection CBP One application to request an appointment at a land port of entry to the US, outside a shelter in Ciudad Juarez, Mexico, January 12, 2023. © 2023 REUTERS/Jose Luis Gonzalez

“We Couldn’t Wait”

Digital Metering at the US-Mexico Border

The administrations of US President Joe Biden and Mexican President Andrés Manuel López Obrador are forcing tens of thousands of people seeking asylum in the United States to wait for long periods of time in Mexico, where they are preyed on and at risk of serious abuse, as part of a US asylum policy requiring most people to use a mobile phone application to access asylum in the United States.

“We Couldn’t Wait” details how a Biden administration policy, known as the Circumvention of Lawful Pathways Final Rule, has created a de facto digital metering system whereby almost all asylum seekers are now required to obtain an appointment via an app called CBP One. The app requires a smartphone and connectivity, is often glitchy, and there are relatively very few appointments available each day. Asylum seekers often struggle to use or access the app, and the difficulties appear to be compounded for those from already vulnerable or discriminated-against communities who are less likely to have the necessary funds or social support.

Those without an app appointment, including those fleeing persecution in their home countries, are turned away by both US and Mexican officials or security guards contracted by the Mexican government. In Mexico they face serious risks, in some cases for months at a time: non-Mexican migrants are easily targeted for kidnapping, extortion, sexual assault, and other violence by cartels, at times in collaboration with Mexican government officials, who also extort migrants hoping to reach the US southern border.

Human Rights Watch calls on the US government to immediately stop turning back or sending non-Mexican migrants to Mexico, and the Mexican government to stop collaborating with the United States to carry out rights-abusive immigration policies.