



November 14, 2019

VIA ELECTRONIC MAIL

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***Re: CBP's unlawful turn back of Mexican asylum seekers at ports of entry***

Dear Mr. Cuffari, Ms. Quinn and Mr. Klein,

The American Civil Liberties Union (“ACLU”) of Texas and the ACLU Border Rights Center write to demand accountability for Customs and Border Protection’s (“CBP”) unlawful policy of turning back asylum-seeking Mexican nationals at ports of entry. CBP is systematically violating U.S. and international law by turning Mexican nationals back into the very country and dangers from which they have attempted to flee. The Department of Homeland Security (“DHS”) has confirmed that it has severely limited the rate of processing of asylum seekers at ports of entry in order to deter migration, flouting U.S. law.<sup>1</sup> A recent study found that 11,000 Mexican nationals are currently impacted by CBP’s turn back policy and resulting metering systems border wide, amounting to 52 percent of all those subjected to the policy.<sup>2</sup>

CBP’s policies are further exacerbating a humanitarian crisis of the agency’s own creation across northern Mexico, with thousands of asylum seekers stuck in encampments in areas where migrants commonly face kidnappings, rape, and disappearances. The crisis will only

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<sup>1</sup> See, Sophie Weiner, *The Trump Administration is Allegedly Slowing the Asylum Process to Discourage Applicants*, SPLINTER NEWS (Dec. 18, 2018), available at <https://splinternews.com/the-trump-administration-is-allegedly-slowing-the-asylum-1831168211>

<sup>2</sup> See, “Metering Update”, The University of Texas at Austin Strauss Center for International Security and Law (Nov. 2019), available at [https://www.strausscenter.org/images/strauss/18-19/MSI/MeteringUpdate\\_191107.pdf](https://www.strausscenter.org/images/strauss/18-19/MSI/MeteringUpdate_191107.pdf)

worsen as winter months approach, yet CBP continues to reject thousands of Mexican asylum seekers arriving at ports of entry.

Most Mexican nationals rejected by CBP in El Paso and Brownsville live in precarious, insecure, and unsanitary conditions in encampments near the U.S. ports. Most individuals in the encampments are children, lacking access to school, adequate medical care, or basic security. At times, illness has spread through the camps—on one occasion the portable toilets overflowed with feces in a camp in Juarez. Pregnant women, children with disabilities and chronic medical conditions, and other particularly vulnerable groups have also been rejected by CBP officers and forced to sleep in the streets of Juarez and Matamoros.

We found CBP officers consistently deny Mexican nationals' access to ports of entry to seek asylum in El Paso and Brownsville. CBP officers have, for example, told Mexican asylum seekers that there is no more asylum in the United States. Some officers directed Mexican nationals to seek out Mexican government officials in order to access protection in the United States—the same government from which Mexican asylum seekers are fleeing. Many CBP officers claim that since the ports are at capacity, they cannot process arriving Mexican nationals seeking protection—a claim which, as described below, is demonstrably false. Another officer simply stated he would not let in any Mexican asylum seekers while he was posted on the international bridge.

CBP's consistent and widespread rejection of asylum seekers at ports of entry have left thousands waiting near ports for their opportunity to seek asylum in the United States. CBP's actions, including direct threats to migrants that they will shut down the ports, have led Mexican asylum seekers to form lists to organize those waiting in Juarez and Matamoros. These lists now include thousands of Mexican families, many fleeing immediate and ongoing persecution, who are forced to wait because of CBP's refusal to process and receive asylum seekers. To be clear, the cause of the delay for Mexican asylum seekers is not the metering lists handled by those in Mexico—it is the result of CBP's intentional blocking of Mexican asylum seekers.

The Department of Homeland Security Office of Inspector General and Office of Civil Rights and Civil Liberties, as well as CBP's Office of Professional Responsibility, must fulfill their oversight obligations by investigating CBP's unlawful policy and issuing robust and timely recommendations for ending a policy that continues to violate the rights of thousands.

CBP must immediately end this policy and process all Mexican asylum seekers arriving at the U.S.-Mexico border.

### ***Background***

Through its turn back policy, CBP denies migrants access to the U.S. asylum system by turning away asylum seekers arriving at U.S. ports of entry. In April 2018, CBP expanded and formalized its policy of turning away asylum seekers at ports of entry across the U.S-Mexico

border through the use of a practice known as “metering.”<sup>3</sup> Under “metering,” CBP has systematically blocked those seeking protection at ports of entry across Texas by posting agents mid-bridge to turn away arriving migrants.<sup>4</sup> Based on names currently on metering lists across the border, this policy has stranded an estimated 21,300 asylum seekers in Mexico, as of November 2019, where they face ongoing threats to their security.<sup>5</sup>

CBP’s unlawful policy of turning away asylum seekers at ports of entry has directly led to the creation of “metering” systems in northern Mexican border towns. In fact, documents obtained via litigation indicate early implementation of the policy included direct coordination with Mexican authorities to limit access at ports. For example, in a 2016 email, the Laredo Field Office instructed all port officers to follow the mandate of the CBP Commissioner and Deputy Commissioner to “meet with your INM [Mexican immigration agency] counterpart and request they control the flow of aliens to the ports of entry.” If their Mexican counterparts refused, CBP staff was instructed to tell arriving asylum seekers to return at a later time.<sup>6</sup> CBP’s summary rejection of asylum seekers at ports and the agency’s reliance on resulting metering lists has directly resulted in a system that limits arriving asylum seekers’ access to ports of entry across the border.

From its inception, CBP has applied its turn back policy to a wide array of arriving asylum seekers, including particularly vulnerable populations.<sup>7</sup> CBP has also refused to publicly

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<sup>3</sup> See, Robert Moore, *At the U.S. Border, Asylum Seekers Fleeing Violence Are Told to Come Back Later*, WASH. POST (June 13, 2018), available at [https://www.washingtonpost.com/world/national-security/at-the-us-border-asylum-seekers-fleeing-violence-are-told-to-come-back-later/2018/06/12/79a12718-6e4d-11e8-afd5-778aca903bbe\\_story.html?utm\\_term=.c17d3d1d9df4](https://www.washingtonpost.com/world/national-security/at-the-us-border-asylum-seekers-fleeing-violence-are-told-to-come-back-later/2018/06/12/79a12718-6e4d-11e8-afd5-778aca903bbe_story.html?utm_term=.c17d3d1d9df4); see also, “Special Review- Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy”, Office of Inspector General (Sept. 27, 2019), available at <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-84-Sep18.pdf>

<sup>4</sup> See, Dara Lind, *Trump Keeps Making It Harder for People to Seek Asylum Legally*, VOX (June 5, 2018), available at <https://www.vox.com/policy-and-politics/2018/6/5/17428640/border-families-asylum-illegal>

<sup>5</sup> See, “Metering Update”, *supra* note 2; see also, “Barred at the Border: Wait ‘Lists’ Leave Asylum Seekers in Peril at Texas Ports of Entry,” HUMAN RIGHTS FIRST (April 2019), available at [https://www.humanrightsfirst.org/sites/default/files/BARRERED\\_AT\\_THE\\_BORDER.pdf](https://www.humanrightsfirst.org/sites/default/files/BARRERED_AT_THE_BORDER.pdf); see also, Dara Lind, *Asylum- Seekers Who Followed Trump Rule Now Don’t Qualify Because of New Trump Rule*, PROPUBLICA (July 22, 2019), available at <https://www.propublica.org/article/asylum-seekers-that-followed-trump-rule-now-dont-qualify-because-of-new-trump-rule>; see also, USA: ‘You Don’t Have Any Rights Here’ Illegal Pushbacks, Arbitrary Detention & Ill-Treatment of Asylum-Seekers in the United States, AMNESTY INTERNATIONAL (Oct. 11, 2018), available at <https://www.amnesty.org/en/documents/amr51/9101/2018/en/>; see also, *Watch the U.S. Turn Away Asylum Seekers at the Border*, THE ATLANTIC (June 18, 2018), available at <https://www.theatlantic.com/video/index/563084/us-border-asylum/>

<sup>6</sup> See, Second Amended Complaint at paras. 50-60, *AOL v. McAleenan*, No. 3:17-cv-02366-BAS-KSC (S.D. Cal. Nov. 13, 2018)

<sup>7</sup> See, “Crossing the Line: U.S. Border Agents Illegally Reject Asylum Seekers,” HUMAN RIGHTS FIRST (May 2017), available at <https://www.humanrightsfirst.org/sites/default/files/hrf-crossing-the-line-report.pdf>

release official policy guidelines for its turn back policy or any relevant data to support its claims that capacity at ports limit their ability to process arriving asylum seekers.<sup>8</sup>

Despite abundant evidence to the contrary, CBP has consistently maintained that Mexican nationals are not subjected to turn backs or resulting metering systems. And in a memorandum entitled “Metering Guidance” and issued on April 27, 2018, Todd Owen, Executive Assistant Commission for CBP Office of Field Operations, instructed CBP southwest border field operation directors to be “particularly aware of any [Mexican immigration agency] controls that are preventing U.S. Citizens, LPRs [green card holders], or Mexican nationals (some of whom may intend to claim fear) from entering the United States.”<sup>9</sup>

Documentation by the ACLU and partner organizations—described in detail below—demonstrates that CBP is denying Mexican asylum seekers access to the U.S.

### ***Mexican Nationals Subjected to CBP’s Turn Back Policy and Resulting Metering Systems***

ACLU staff have confirmed that CBP has subjected approximately 3,000 Mexican nationals in Juarez, opposite El Paso, TX, and approximately 860 Mexican nationals in Matamoros, opposite Brownsville, TX, to its turn back policy and the resulting metering systems that limit their access to U.S. ports.

Information collected by partners indicates that Mexican nationals are currently subjected to CBP’s turn back policy at ports of entry across the whole southwest border. A report recently published by the Robert Strauss Center at the University of Texas at Austin tallied 11,000 Mexican nationals metered across 10 major ports of entry, making up 52 percent of all asylum seekers subjected to CBP’s policy and resulting metering lists. This includes some 5,000 Mexican Nationals being metered in Tijuana, 3,000 in Juarez, and several hundred in Mexicali, Nogales, and Agua Prieta.<sup>10</sup> Notably, over 1,200 Mexican nationals are currently on a metering list in San Luis Rio Colorado, a small border south of Yuma, AZ.<sup>11</sup>

This complaint contains 18 case examples from Mexican nationals unlawfully subjected to CBP’s turn back policy at ports of entry in El Paso and Brownsville.

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<sup>8</sup> See, FOIA Letter from ACLU of Texas to Customs and Border Protection Agency (Oct. 29, 2018), available at [https://www.aclutx.org/sites/default/files/foia\\_minor\\_adjustment.pdf](https://www.aclutx.org/sites/default/files/foia_minor_adjustment.pdf); see also, Letter from Senators Jerrold Nadler, Bennie G. Thompson and Zoe Lofgren to acting U.S. DHS Sec. Kevin McAleenan (Dec. 17, 2018), available at <https://judiciary.house.gov/sites/democrats.judiciary.house.gov/files/documents/Nadler-Lofgren-Thompson%2012.17%20Letter%20to%20CBP%20Commissioner.pdf>

<sup>9</sup> See, *AOL v. McAleenan*, No. 3:17-cv-02366-BAS-KSC (S.D. Cal. Sept. 26, 2019), ECF No. 293-13

<sup>10</sup> See, “Metering Update”, *supra* note 2. (This updated report highlights changes over the past three months across 14 Mexican border cities. The data reported is derived from conversations with asylum seekers, Mexican government officials, and representatives from U.S. and Mexican civil society organizations. These conversations were conducted during field research in nine border cities, and via phone interviews with individuals in five additional cities.)

<sup>11</sup> *Id.*

In September 2019, contrary to general prior practice, CBP began rejecting Mexican nationals at the El Paso sector ports of entry.<sup>12</sup> Local advocates in Juarez began to observe an increasing number of Mexican asylum-seeking families stranded at the foot of the Santa Fe bridge, connecting the Paso del Norte port of entry with downtown Juarez.<sup>13</sup> Around the same time, the ACLU Border Rights Center also issued a letter to CBP expressing concern that the agency was justifying recent port closures with false claims of potential “mass entry” of migrants. During one such closures, reports indicated that the only migrants at the port were a group of 20 Mexican asylum seekers sleeping at the foot of the bridge.<sup>14</sup> CBP agents on the Santa Fe bridge would later threaten arriving Mexican asylum seekers with further port closures if they themselves failed to limit the flow of Mexican asylum seekers at the port, according to asylum seekers interviewed by ACLU staff.

CBP has since rejected arriving Mexican nationals at all three major ports of entry in El Paso.

In September 2019, local advocates also observed asylum-seeking Mexican families denied entry at Gateway bridge in Matamoros. Families initially requested entry from CBP officials stationed at the middle of the bridge but were turned back and told there was no space for them. As a result, Mexican asylum seekers started to sleep at the base of the bridge, in the open-air and later in tent encampments comprised of individuals returned to Matamoros through the Migrant Protection Protocols (“MPP”), or “Remain in Mexico” program, and metered Central Americans. Currently, the population of the migrant encampment has grown to approximately 2,000 people, including approximately 560 Mexican asylum seekers, and has expanded over the Rio Grande/Rio Bravo River levy into the nearby wooded area.

Due to the growing encampment at Gateway bridge, metered Mexicans began attempting to seek asylum at the Brownsville & Matamoros (“B&M”) bridge in September 2019. Currently, there are approximately 300 people on the metered list for the B&M bridge maintained by the Mexican asylum seekers themselves. However, individuals were told in October 2019 that asylum seekers were no longer being accepted. In fact, not a single family was processed for over a week following an October 10<sup>th</sup> protest, during which CBP shut down the Gateway

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<sup>12</sup> See, Julian Aguilar, *As Violence increases, more Mexicans are waiting in Ciudad Juarez to apply for asylum*, THE TEXAS TRIBUNE (Sept. 13, 2019), available at <https://www.texastribune.org/2019/09/13/number-mexicans-waiting-ciudad-juarez-apply-asylum-increasing/>

<sup>13</sup> See, Nick Miroff, Mary Beth Sheridan and Kevin Sieff, *Surge of Mexican migrants is new challenge for Trump border crackdown*, WASH. POST (Oct. 18, 2019), available at [https://www.washingtonpost.com/national/surge-of-mexican-migrants-is-new-challenge-for-trump-border-crackdown/2019/10/18/c40f6e72-f029-11e9-b648-76bcf86eb67e\\_story.html](https://www.washingtonpost.com/national/surge-of-mexican-migrants-is-new-challenge-for-trump-border-crackdown/2019/10/18/c40f6e72-f029-11e9-b648-76bcf86eb67e_story.html)

<sup>14</sup> See, Letter from ACLU of Texas to Customs and Border Protection- Office of Field Operations in El Paso (Sept. 4, 2019), available at [https://www.aclutx.org/sites/default/files/field\\_documents/aclu\\_border\\_rights\\_center\\_-\\_cbp\\_port\\_closure\\_letter\\_9-4-19.pdf](https://www.aclutx.org/sites/default/files/field_documents/aclu_border_rights_center_-_cbp_port_closure_letter_9-4-19.pdf)

bridge.<sup>15</sup> As a result, approximately 100 families left the B&M bridge, giving up their places on this list. As of last week, approximately one family a day was being processed at this port of entry.

### ***Living Conditions in Encampments in Juarez and Matamoros***

Mexican asylum seekers in Juarez have formed encampments near the three pedestrian ports of entry in El Paso. In all three locations, asylum seekers report that their children do not have access to school, have trouble finding food, and sleep on the ground, either in tents, on concrete, or on dirt. In all three locations, asylum seekers report inadequate sanitary conditions, inadequate access to health care, and general fear of violence.

The Santa Fe bridge is located in downtown Juarez. Mexican asylum seekers are living on the street and sidewalks in an encampment next to train tracks, a bus stop, and busy streets. Approximately 60-70 percent of the people living in this encampment are children, who are forced to play on the busy streets. As of October 29, 2019, there were approximately 300 people living in this encampment. There are no public restrooms. Instead, asylum seekers must pay to access restrooms in a store or on the bridge. There are no public showers, and families are forced to rent hotel rooms by the hour in order to shower. Not all families have funds to ensure regular access to these facilities

The Cordova bridge is the most secluded of the three bridges in Juarez. Mexican asylum seekers live and sleep on the ground or in tents. There were approximately 400 families living there as of October 23, 2019. There are approximately six portable toilets, which have overflowed with feces, and no showers.

Close to 1,000 Mexican asylum seekers live in an encampment near Juarez's Zaragoza bridge. They all sleep on concrete sidewalks, under tarps or in tents. There are approximately five portable toilets on the street. During a recent rainstorm the encampment was completely flooded. The owner of a close-by strip mall momentarily let pregnant women into an empty storefront to escape the flooding. Some families struggle to locate sufficient food and all fear for their safety in Juarez.

In Matamoros, Mexican asylum seekers have formed one larger encampment at the base of the Gateway bridge and a much smaller one at the foot of the B&M bridge. Most people interviewed described immediate, imminent threats upon their lives and those of their children. Rejection by CBP has forced them into hiding, moving from location to location to avoid being discovered by those threatening their lives. As such, children are unable to attend school and adults are unable to work.

As of October 30, 2019, there were approximately 560 Mexican nationals living in a section of the approximately 2,000-person encampment at the Gateway bridge in Matamoros. There is no running water and only a handful of portable toilets available for the growing

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<sup>15</sup> See, Adolfo Flores, *Asylum-Seekers Protesting Squalid Conditions Shut down a US Border Crossing for 15 Hours*, BUZZFEED NEWS (Oct. 10, 2019), available at <https://www.buzzfeednews.com/article/adolfoflores/asylum-seekers-protesting-bridge-close-matamoros-texas>

encampment. The conditions are dangerous and unhygienic, with open defecation near the riverbank where people bathe and fish in the polluted water. Dead bodies and animal carcasses have been found in the water and frequent drownings have occurred over the last few months. Open fires are common near the tents, so there is a constant threat of smoke inhalation and tents catching fire. Cartels also pose a pervasive and a constant threat throughout this area. Shortly after speaking with ACLU staff on October 29, 2019, one metered Mexican woman was beaten by individuals believed to be connected with the local cartel. That woman is still alive and waiting on the metering list.

There were approximately 300 Mexicans on the metered list at the B&M bridge when ACLU staff conducted interviews on October 29 and 30, 2019. A majority of the individuals are taking refuge in a local Catholic Church or grouping together to rent rooms with multiple families crowded into tight quarters. One of the families interviewed is living in one room with eight people. They are all forced to sleep on the floor because there is no bed to share. A small number of people are sleeping in the open air at the foot of the bridge and bathe and wash their clothing in the river.

### ***CBP's Statements Regarding the Turning Back of Mexican Asylum Seekers at Ports***

CBP has carried out and expanded its turn back policy without providing Congress or the public any explanation of how the policy is implemented or the basis for the agency's action. In December 2018, a senior DHS official told Congressional staffers that limiting its capacity to process asylum seekers at ports of entry was a means of deterring further migration.<sup>16</sup>

CBP officials in El Paso and Brownsville have stated the opposite to ACLU staff—that Mexican asylum seekers should not be rejected at ports of entry and should be immediately processed. At a meeting in Brownsville on May 3, 2019, CBP Office of Field Operations (“OFO”) Port Director Tater Ortiz stated that his officers always admit Mexican asylum seekers. At a similar meeting in El Paso on September 5, 2019, CBP OFO leadership stated that they were not rejecting Mexicans at ports of entry and were in fact processing large numbers of them.

In response to reporting on the increased turn backs of Mexican asylum seekers, CBP spokespersons have attempted to sidestep the issue. Recognizing the agency's obligation to process arriving Mexican asylum seekers, CBP stated that “the agency processes asylum seekers as quickly as possible”<sup>17</sup> or “as expeditiously as possible.”<sup>18</sup> The agency has also stated it has

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<sup>16</sup> See, Sophie Weiner, *The Trump Administration is Allegedly Slowing the Asylum Process to Discourage Applicants*, SPLINTER NEWS (Dec. 18, 2018), available at <https://splinternews.com/the-trump-administration-is-allegedly-slowing-the-asylu-1831168211>

<sup>17</sup>See, Anna-Catherine Brigida, *Mexican Asylum Seekers Are Facing Long Waits at the U.S. Border. Advocates Say That's Illegal*, TIME (Oct. 16, 2019), available at <https://time.com/5701989/mexico-asylum-seekers-border/>

<sup>18</sup>See, Molly Hennessy-Fiske and Wendy Fry, *Mexican asylum seekers at multiple border crossings grow frustrated with waiting*, LA TIMES (Sept. 20, 2019), available at <https://www.latimes.com/world-nation/story/2019-09-30/u-s-customs-blocking-mexican-asylum-seekers-at-multiple-border-crossings>

redirected resources from vehicle entry lanes to process asylum seekers from Juarez.<sup>19</sup> The agency, however, consistently stated that if no space is available asylum seekers are “instructed to wait.”<sup>20</sup>

Mexican families interviewed by the ACLU indicate that CBP officers at ports of entry commonly maintain that a lack of capacity is the reason they will not process arriving asylum seekers. CBP’s capacity excuse does not comport with available information. In recent months CBP has processed a minimal number of individuals daily and has gone long periods where it allowed no one to seek asylum at the port. This occurred during a period, from May to September 2019, when overall border crossers dropped by over 66 percent.<sup>21</sup> Such information undercuts the claim that CBP lacks capacity to process more arriving asylum seekers at ports.

CBP has further shrouded its turn back policy in near complete secrecy. The ACLU, along with members of Congress, has long demanded CBP provide data to substantiate its capacity claims.<sup>22</sup> The agency has failed to do so. Moreover, CBP has repeatedly asked Congress for additional funding for detention space or other supposed “border security” measures.<sup>23</sup> Yet, CBP has not asked Congress for additional resources or reallocated current resources to address the claimed capacity limitations at ports. CBP’s lack of transparency and absence of funding requests again suggests the agency either does not have a capacity issue at ports or is ignoring the limitations and opting for continuing its turn back policy.

### ***Rejecting Entry of Mexican Asylum Seekers is Unlawful***

The principle of nonrefoulement, the core of all refugee law, prohibits the return of asylum seekers to the country from which they flee. Following World War II, the United States committed to respecting the principle of nonrefoulement through its ratification of various human rights and refugee treaties – treaties the United States Congress later incorporated into

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<sup>19</sup> See, Adolfo Flores, *Asylum-Seekers are trying to flee violence in Mexico. The U. S. is sending them right back*, BUZZFEED NEWS (Sept. 30, 2019), available at <https://www.buzzfeednews.com/article/adolfoflores/asylum-mexico-violence-trump-border-immigration>

<sup>20</sup> See, Lauren Villagram, *‘Just waiting to see if they give us a chance’: Mexican asylum seekers camp near Santa Fe bridge*, EL PASO TIMES (Sept. 20, 2019), available at <https://www.elpasotimes.com/story/news/2019/09/20/immigration-mexican-asylum-cbp-border-santa-fe-bridge/2368738001/>; also see Julian Aguilar, *As Violence increases, more Mexicans are waiting in Ciudad Juarez to apply for asylum*, THE TEXAS TRIBUNE (Sept. 13, 2019), available at <https://www.texastribune.org/2019/09/13/number-mexicans-waiting-ciudad-juarez-apply-asylum-increasing/>

<sup>21</sup> See, “Southwest Border Migration FY 2019”, U.S. Customs and Border Protection (Oct. 29, 2019), available at <https://www.cbp.gov/newsroom/stats/sw-border-migration>

<sup>22</sup> See, FOIA Letter from ACLU of Texas to Customs and Border Protection Agency, *supra* note 8; see also, Letter from Senators Jerrold Nadler, Bennie G. Thompson and Zoe Lofgren to acting U.S. DHS Sec. Kevin McAleenan, *supra* note 8.

<sup>23</sup> See, Pedro Rios, *If Congress Wants to Keep America Safe, Funding CBP is the Last Thing it Should be Doing*, NEWSWEEK (April 9, 2019), available at <https://www.newsweek.com/kristen-nielsen-kevin-mcaleenan-cpb-border-funding-1390436>



U.S. statute. All subsequent laws pertaining to the arrival and processing of asylum seekers were designed to uphold the United States' adherence to its nonrefoulement obligations. CBP's present turn back policy, particularly as applied to Mexican asylum seekers, ignores applicable law.

CBP's field manual instructs officers to refer anyone to a fear interview with an asylum officer if the person indicates "in any fashion or at any time during the inspection process, that he or she has a fear of persecution, or that he or she suffered or may suffer torture."<sup>24</sup> Alternatively, CBP can refer arriving asylum seekers directly to immigration court for review of potential asylum claims.<sup>25</sup> Neither processing option allows delay in processing or rejection of individuals arriving to ports.

The guidance memorandum promulgated on April 27, 2019 by CBP's Executive Assistant Commissioner from the OFO also states: "[a]t no point may an officer discourage a traveler from waiting to be processed, claiming fear of return, or seeking any other protection." CBP's turning away of Mexican nationals who express a fear of returning to Mexico is a violation of this directive and CBP's own guidelines.

CBP spokespersons have stated that officers stationed at the border are "making certain those who intend to apply have entry documents" and "[i]f they do not and there is no space available at the CBP facility they are instructed to wait."<sup>26</sup> Nothing in U.S. law and international treaties requires an asylum seeker to present a valid entry document before requesting asylum. In fact, those with valid entry documents are obviously unlikely to request asylum at ports as they can enter the United States and apply affirmatively for asylum, an option legally unavailable to those without documents sufficient to enter the United States. CBP further violates this its own guidance memorandum of April 27, 2019, when CBP officers direct Mexican officials to remove asylum seekers from international bridges, as asylum seekers interviewed by the ACLU have witnessed and experienced.

Turning asylum seekers back into the country from which they are fleeing is also unlawful under U.S. statute and international treaties. Under U.S. law, any person "who arrives in the United States ... may apply for asylum."<sup>27</sup> A federal judge recently found Congress intended such provision to apply to individuals seeking asylum with CBP officers at ports of entry.<sup>28</sup> The law further requires that "the Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that

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<sup>24</sup> See, Customs and Border Protection, Inspector's Field Manual, Section 17.15(b)(1), available at <http://www.aila.org/File/Related/11120959F.pdf>

<sup>25</sup> See, Matter of E-R-M- & L-R-M-, U.S. Department of Justice, Executive Office for Immigration Review, Board of Immigration Appeals, (June 3, 2011) (The use of expedited removal is in the discretion of DHS)

<sup>26</sup> See, Lauren Villagram, *supra* note 20

<sup>27</sup> 8 U.S.C. 1158 (a) (1) (2017)

<sup>28</sup> See, AOL v. McAleenan, No. 3:17-cv-02366-BAS-KSC (S.D. Cal. Aug. 8, 2019), ECF No. 280 at pg. 42-43

country because of the alien’s race, religion, nationality, membership in a particular social group, or political opinion.”<sup>29</sup> Furthermore, Congress has also passed a clear set of laws governing the processing of all arriving migrants, including a mandatory duty to inspect and process asylum seekers—none of which grant CBP the authority to turn back or meter asylum seekers at ports of entry.<sup>30</sup>

Lastly, international treaties, to which the United States are party, require that U.S. officials not reject asylum seekers at international borders and ensure they are not returned to a country where they fear future persecution.<sup>31</sup> As explained by the Supreme Court, “Article 33 of the Convention, with certain exceptions, prohibits contracting states from expelling or returning a refugee to a territory where his or her life or freedom would be threatened on account of race, religion, nationality, membership in a particular social group or political opinion.”<sup>32</sup> CBP’s rejection of Mexican nationals fleeing Mexico, at U.S. ports of entry, does precisely what the law prohibits.

CBP’s actions documented in this complaint violate U.S. law, U.S. treaty obligations, and CBP’s own internal guidance.

## **CASE EXAMPLES:**

### *El Paso, TX.*

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<sup>29</sup> 8 U.S.C. 1231 (b)(3)(A) (2005); IIRIRA also revised the asylum section of the INA, which likewise enshrines the principle of nonrefoulement. 8 U.S.C. 1158 (a)(1) (1994) (“Any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien’s status, may apply for asylum in accordance with this section or, where applicable, section 1225(b) of this title.”)

<sup>30</sup> See 8 U.S.C. 1225 (b)

<sup>31</sup> See generally, B. Shaw Drake and Elizabeth Gibson, Vanishing Protection: Access to Asylum at the Border, City University of New York Law Review, Volume 21 Issue 1, Winter 2017, available at <https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1451&context=clr>; see also, James C. Hathaway, The Rights of Refugees Under International Law (2005) at 317 (*Refoulement*, taken from French, refers to the return of a person to a country where they have reason to fear persecution based on a protected ground); see also, Convention Relating to the Status of Refugees art. 1, July 28, 1951, 189 U.N.T.S. 137, <https://perma.cc/7FLY-HYFA> (Convention drafters understood non-refoulement to prohibit turning away asylum seekers at borders. Louis Henkin, United States representative to the convention drafting conference, explicitly stated: “Whether it was a question of closing the frontier to a refugee who asked admittance, or of turning him back after he had crossed the frontier, or even of expelling him after he had been admitted to residence in the territory, the problem was more or less the same. Whatever the case might be, whether or not the refugee was in a regular position, he must not be turned back to a country where his life or freedom could be threatened”); see also UN Ad Hoc Committee on Refugees and Stateless Persons, Ad Hoc Committee on Statelessness and Related Problems, First Session: Summary Record of the Twentieth Meeting Held at Lake Success, New York, on Wednesday, 1 February 1950, at 2.30. p.m., (Feb. 10, 1950), , available at <http://www.refworld.org/docid/3ae68c1c0.html>

<sup>32</sup> *I.N.S. v. Stevic*, 467 U.S. 407, 426 (1984)

- **E.R.U.H., along with his wife, who suffers from an enlarged heart, and his 3 children, age 19, 6, and 4, are from Juarez, Chihuahua, Mexico, are seeking protection in the United States, and have been subjected to metering systems at the Santa Fe bridge.** E.R.U.H was approached by cartel members in Juarez demanding he cross drugs into the United States. Drug cartel members have looked for E.R.U.H. at his house and his former job. He approached CBP agents at the middle of the Santa Fe bridge on or about October 28, 2019. He told CBP agents he and his family were Mexican citizens from Juarez fleeing from violence and requesting asylum from the United States. CBP agents laughed at him, told them there was nothing they could do for him, and sent him back into Mexico. He is currently separated from his family and living on the streets of Juarez attempting to avoid detection by local cartels who seek to kill him.
- **B.J.C., along with her two children, from Zacatecas, Mexico, are seeking protection in the United States, have been rejected by CBP on three occasions, and have been subjected to metering system at the Santa Fe bridge in Juarez for over six weeks.** B.J.C. was forced to flee her home after cartel members kidnapped her son and said they would send her his severed head in a cooler if she did not pay. Her son was released after she paid the extortion fee, but Mexican police refused to investigate because the local police commander works for the cartel. B.J.C. arrived to the Santa Fe bridge on or about September 22, 2019 where she was stopped and told to put her name on a list to seek asylum in the United States. B.J.C. has approached CBP on three occasions. Each time she has identified herself as a Mexican asylum seeker. Each time CBP officers have rejected her, stating there is “no room.” CBP officers have also instructed Mexican asylum seekers to seek out Mexican immigration in Mexico to sign up for a list. B.J.C. has observed CBP process only eight Mexican families at the Santa Fe bridge in over a week. B.J.C. and her children sleep on the street in a tent with limited access to bathrooms and showers. She worries about the safety of her children but feels her only option for safety is waiting for potential protection in the United States.
- **J.O.L., along with his pregnant wife and four children, ages eight, seven, five, and four, are from Zacatecas, Mexico, are seeking asylum in the United States, and have been subjected to the metering system at the Cordova international bridge for six weeks.** J.O.L. and his family were forced to flee their home after J.O.L. was identified as the music composer for a popular local group. Assuming he had money, cartel members targeted J.O.L. for threats and extortion. J.O.L. has observed CBP officers reject Mexican asylum seekers on multiple occasions. J.O.L. has observed CBP officers tell asylum seekers there is no asylum in the United States anymore. One CBP officer that asylum seekers have nicknamed “the racist” told a pregnant woman and her family “you all always make your own problems and then bring them to us. Go back to your country and take up your problems with organized crime.” J.O.L. reports periods of up to 15 consecutive days when CBP has processed zero Mexican asylum seekers. J.O.L. and his family do not leave the encampment near the port for fear of violence and further persecution in Juarez.

- J.M.F., along with his wife and four children, ages eight, seven, five and one, are from Michoacán, Mexico, and have been subjected to the metering system at the Cordova international bridge for over a month.** J.M.F. and his family were forced to flee their home after cartel members kidnapped and disappeared their relative. Cartel members continued to threaten to kill J.M.F. and take his children following the disappearance. J.M.F. helps manage the list at the Cordova international bridge and helped establish a card and stamp system to organize those waiting in the encampment. J.M.F. believes CBP knows about the metering system because other asylum seekers have reported to him that CBP officers rejected them because they were not the next ones on the list. J.M.F. also estimated that as of late October there were 400 families waiting at the Cordova International Bridge.
- J.C.G., along with his wife and three daughters, are from Michoacán, Mexico, and have been subjected to the metering system at the Zaragoza bridge for over six weeks.** J.C.G. was a taxi driver had to flee his home after cartels threatened to kill him if he did not pay an extortion fee for his taxi. J.C.G. previously managed the metering list at the Zaragoza bridge. In that role he approached CBP officers on the bridge on five different occasions. He showed CBP officers the list and explained the process they had set up. One CBP officer told J.C.G. that as long as he was posted on the bridge, he would not let a single Mexican asylum seeker across. Yet another CBP officer told J.C.G. that asylum did not exist anymore in the United States. Another CBP officer told him to go to other ports like Tijuana to seek asylum because they were not going to be allowed to pass here. J.C.G. estimated there are approximately 900 people waiting at the bridge, making up around 250 families. J.C.G. has observed CBP turn away a family with a child with cancer and a family with a child with frequent seizures, along with numerous pregnant women. J.C.G. and his family sleep on the street in tents and under tarps, along with the other families on the list.
- M.V.R., along with his daughter and grandson, age nine, are from Michoacán, Mexico, and have been subjected to the metering system at the Santa Fe international bridge for over three weeks.** M.V.R. and his family had to flee their home after the cartel kidnapped and tortured his son, leaving his mutilated body on the steps of the Public Ministry building in Hidalgo. Mexican policy told M.V.R. that it would be very dangerous for him to file a statement about the death of his son. After threats against him and his family continued, M.V.R. made the decision to flee for safety in the United States. M.V.R. arrived at the Santa Fe International Bridge on or about October 15, 2019 and put his name on the metering list. He cannot sleep in the encampment with other asylum seekers for fear that local cartel lookouts will identify him and his family. He and his family are currently staying in nearby motels and come to the bridge every day to remain on the metering list. He fears for his family's life while he waits for the opportunity to seek asylum at the port of entry.
- N.J.M, along with his wife and children, ages 11, 8, and 5, are from Michoacán, Mexico, have been turned away by CBP officers 5 times, and have been subjected to the metering system at the Zaragoza bridge for over 6 weeks.** N.J.M and his family were forced to flee their home after cartel violence prevented their children from

attending school and cartel members made direct threats on their life. When N.J.M. became one of the next five families on the metering list, he was therefore able to approach CBP officers to ask to be processed. In just one day, N.J.M. approached CBP officer on five separate occasions, each time identifying himself as a Mexican asylum seeker. Each time CBP officers told him they were only letting people through that have documents and that they were full. While waiting on the metering list, N.J.M. has observed CBP process two or three families per day with some periods where none were processed. N.J.M. sleeps in the street with his family. His 11-year-old son suffers from asthma and N.J.M. worries the coming cold weather may threaten his son's health. For N.J.M., returning home is not an option.

- **O.P.S., along with her husband and son, age seven, are from Michoacán, Mexico. Her son is deaf, suffers from partial facial paralysis and is largely non-verbal. They have been turned away by CBP officers and subjected to metering systems for weeks.** O.P.S. and her family were forced to flee their home after the cartels disappeared several family members and threatened her and her children. O.P.S. and her family first arrived to the Zaragoza bridge on or about September 6, 2019. After identifying themselves as Mexican asylum seekers, CBP officers on the bridge told them there were dangers everywhere, citing the Walmart massacre in El Paso, and asked if the family thought they were better than all the other people waiting. The CBP officer then told the family they would have to wait, maybe a just an hour or a whole year. O.P.S. and her family tried again the same day at the Santa Fe international bridge. O.P.S.'s child requires constant attention due to his disabilities. They currently sleep in a tent on the street. At the time of interview, CBP officers had rejected the family a total of nine times. O.P.S. fears for the safety of her family but is committed to continuing to wait until CBP will process her and her family.
- **S.R.A., along with his wife and two children, are from Michoacán, Mexico, and have been subjected to the metering system at the Santa Fe international bridge for over one month.** S.R.A. and his family were forced to flee their home due to threats from the cartel. After arriving to the Santa Fe bridge, S.R.A. and his family were stopped by Mexican officials and told to put their name on the metering list. S.R.A.'s daughter has down syndrome and a heart condition. Cold weather exacerbates her heart condition and she requires their constant attention to keep her safe. S.R.A. and his wife fear for her safety in Juarez. S.R.A. and his family cannot return to their home and need protection in the United States. They plan to wait as long as needed to seek protection.
- **J.M.O.S., along with his wife who is eight months pregnant, are from Michoacán, Mexico, are seeking protection in the United States, and have been subjected to metering systems in Juarez for a month and a half.** J.M.O.S. is fleeing his home after cartel members shot at his home and pointed guns at his wife. On or about October 28, 2019, J.M.O.S. and his wife walked up to the middle of the Zaragoza bridge to request asylum after waiting a week on the metering list. CBP officers turned them away even though they identified themselves as Mexican asylum seekers and told CBP officers it was their turn on the metering list. The officer told them there was no space, that there

was no asylum at this time, and that we should come back at a later date. Over a four day period J.M.O.S. and his wife tried to cross a total of 15 times, each time identifying themselves as Mexican asylum seekers. CBP officer rejected them. One CBP officer also told them that he did not want to see them on the bridge and that he would not let any Mexican cross into the United States to request asylum. J.M.O.S. and his wife have lived for the past month and a half in a tent, which is part of a tent encampment close to the base of the Zaragoza bridge. They sleep on a concrete floor; there are five temporary toilets placed on the street; and are forced to rent showers from persons who live close to the bridge.

- **M.M.R., along with her son, daughter, grandson, cousin, and pregnant niece, are from Durango, Mexico, are seeking protection in the United States, and have been subjected to metering systems in Juarez for a month and a half.** M.M.R. fled from Durango after drug cartel members threatened to kill her if she did not sell drugs from her home. On or around the end of September 2019, M.M.R. arrived in Juarez and wrote her name on a metering list at the Cordova international bridge. Around October 29, 2019, M.M.R. and her family walked to the middle of the bridge to request asylum. They identified themselves as Mexican asylum seekers and were told by CBP agents that there was no space for them and that they would have to wait at the bottom of the bridge. M.M.R. and her family currently live in a tent at the base of the Cordova international bridge in Juarez, Mexico. They have inadequate clothing and blankets for when the temperature drops, and they have limited access to restrooms and no access to showers.
- **M.I.L.R., who is eight months pregnant, along with her husband, her three-year-old son and her aunt, are from Durango, Mexico, are seeking protection in the United States, and have been subjected to metering systems in Juarez for over a month and half.** On or about October 29, M.I.L.R. walked with her family to the middle of the bridge to request asylum from CBP officials because it was her turn according to the metering list. After M.I.L.R. and her family identified themselves as Mexicans requesting asylum, the CBP agents told them there was no space for them to cross and to return in a few hours. Over the next few days they returned several times and each time were told by CBP agents that there was no space for them and to wait at the bottom of the bridge. M.I.L.R. is currently eight months pregnant and lives in a tent on the ground close to the base of the Cordova international bridge. M.I.L.R. was told by a gynecologist that her unborn child's umbilical cord is wrapped around his neck and that it was a high-risk pregnancy requiring a caesarian section in order to birth the child. M.I.L.R. does not have the 35,000 pesos needed to pay for the procedure. On or about October 29, 2019, M.I.L.R. and other asylum seekers were threatened by a Mexican police officer that child services would take their children away unless they left the encampment.
- **S.L.D., along with his wife and four children, ages 19, 17, 13, and 6, are from Oaxaca, Mexico, are seeking protection in the United States, and have been subjected to metering systems in Juarez since September 30, 2019.** S.L.D. fled from

Oaxaca after criminals threatened to kill him and killed his brother. On or about October 26, 2019, S.L.D. was told by CBP agents that even though he is a Mexican asylum seeker, he could not cross into the United States. S.L.D. sleeps in a tent on the concrete floor at the base of the bridge.

*Brownsville, TX.*

- **D.A.L., along with her parents and two children, are from Veracruz, Mexico, are seeking protection in the United States, and have been subjected to metering systems in Matamoros for 26 days.** D.A.L. and her family fled their home because they are in immediate danger of being kidnapped, tortured, and killed by members of the cartel. Her husband is presumed dead after being disappeared in late September 2019, even after she paid a ransom to kidnappers. On or about October 5, 2019, she and her family approached CBP officers in the middle of the New Bridge to request asylum. She showed the officers their Mexican birth certificates, a copy of the complaint she filed regarding her husband's kidnapping and explained why they were fleeing. The CBP officers turned her away, telling her that she should consider moving to another state within Mexico and that they would only take her 13 year-old-daughter because she is a U.S. citizen, but not the rest of her family. Two days later, she received messages from her husband's kidnappers indicating they have located her and her family. She and her family are now in hiding in Matamoros. D.A.L.'s daughter suffers from asthma and has already experienced two asthma attacks, with no access to medicine, while waiting her turn on the "metering" list.
- **J.H.D., along with his wife and two daughters, of Chiapas, Mexico, are seeking protection in the United States and has been subjected to metering systems in Matamoros for over a month.** J.H.D. and his family fled their home because cartels threatened them with death after they refused to pay a monthly tax to members of the cartel. His wife and children were being surveilled and his brother had been murdered by the same organization last year. Currently, J.H.D. and his family are living in a rented room shared with a family of four. The room is cramped and all eight of them have to sleep on the floor. J.H.D.'s wife continues to receive phone calls from the individuals from which their family fled. They fear they will be found soon if they are not allowed to cross into the United States. J.H.D. manages the list which includes 75 heads of households or approximately 300 people.
- **N.M.G.R., along with her daughter, age two, of Michoacán, Mexico, are seeking protection in the United States, and have been subjected to metering systems in Matamoros for nearly a month.** N.M.G.R. is fleeing her abusive husband, a member of organized crime, who is threatening to kill her and take her daughter. Her husband tracked her down and learned she was in Matamoros. When she told CBP officers of this situation, she was told to return at a different time to see if there was space to process her for asylum. When she returned, she was told there was no space. She has since fled to another city, where she hides with her daughter, and takes a 2-hour bus every day to Matamoros to check on the status of her number on the metered list. At the time of

interview, on October 30, 2019, she and her daughter were number 61 on the list. She is fearful her husband will find her and kill her if she is not allowed to cross into the United States soon.

- **S.L.J., along with his wife and daughter, 11 months old, of Chiapas, Mexico, are seeking protection in the United States, and have been subjected to metering systems in Matamoros for a month and a half.** S.L.J. is fleeing violence brought on by a rivalry between two Mexican political parties that have left him and his family targets. When S.L.J. and his family arrived in Matamoros to seek asylum at the B&M bridge, they were told by other metered Mexican asylum seekers that they had to sign onto a list. S.L.J. and his family are number three on the list. During the day, he and his family stay on the international bridge hoping CBP will allow them across. While they are waiting on the bridge, the family first in line requests asylum with the present CBP officers. S.L.J. noted that, typically, only one family crosses per day, but there are “pauses” of multiple days when CBP officers do not allow any families to cross. Officers typical claim there is “no space.” The first family in line asks the CBP officer every two hours if they will be allowed into the port to seek asylum. At night he and his family take refuge in a nearby Catholic Church. He and his family are in fear of what may happen to them while waiting because they were victims of a failed robbery at gunpoint that was stopped by other metered Mexicans at the international bridge. S.L.J. is concerned for the health of his infant daughter in the conditions they are forced to be in while being metered.
- **S.P.L.D.L., along with her husband and three children, ages 11, 8 and 6, of Chiapas, Mexico, are seeking protection in the United States, and have been subjected to metering systems in Matamoros for over a month.** S.P.L.D.L fled her home because a man from a neighboring village, San Juan Chamula, threatened to kill her and her family if she did not sell her eight-year-old daughter to him so that she could be married to his nephew when she turned 12. The man was seeking a kind of lay-a-way plan to purchase her daughter that appears to be the custom in San Juan Chamula. S.P.L.D.L. has witnessed families burned alive for refusing to comply with these kinds of requests. In Matamoros, she and her family have been forced to hide in plain sight, as there are many individuals from San Juan Chamula on the metered list that could easily inform the man threatening their lives of their whereabouts. S.P.L.D.L. and her family arrived in Matamoros on September 24, 2019. S.P.L.D.L. has been spending her days on the bridge with 5 families in total. She noted that only one family per day is being allowed in by U.S. officials.

CBP must end its unlawful turn back policy and immediately inspect and process all asylum seekers arriving to U.S. ports of entry. CBP most certainly cannot reject arriving Mexican nationals intending to seek protection in the United States. Doing so not only violates U.S. and international law, it places already vulnerable asylum seekers back within reach of their persecutors. Furthermore, CBP’s systemic violation of the law and its own policies only further exacerbates the humanitarian crisis along the border, a crisis that only exists because of this administration’s broad ranging effort to deny asylum seekers access to the United States by forcing tens of thousands to remain or return to Mexico.



We request an immediate end to this policy and demand a full investigation.

Sincerely,

**Shaw Drake**

Policy Counsel

Border Rights Center

American Civil Liberties Union of Texas

**Rochelle Garza**

Staff Attorney

American Civil Liberties Union of Texas

**Bernardo Rafael Cruz**

Immigrants' Rights Fellow

American Civil Liberties Union of Texas

**Thomas Buser-Clancy**

Staff Attorney

American Civil Liberties Union of Texas

Figure 1 through Figure 4: Pages from Mexican asylum seeker metering list at the Santa Fe International Bridge. (Oct. 28-29, 2019)

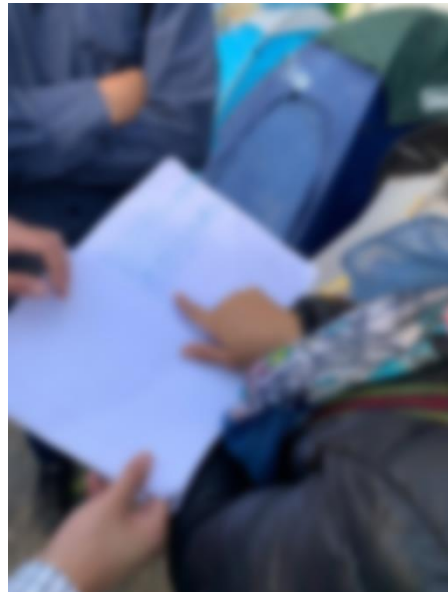
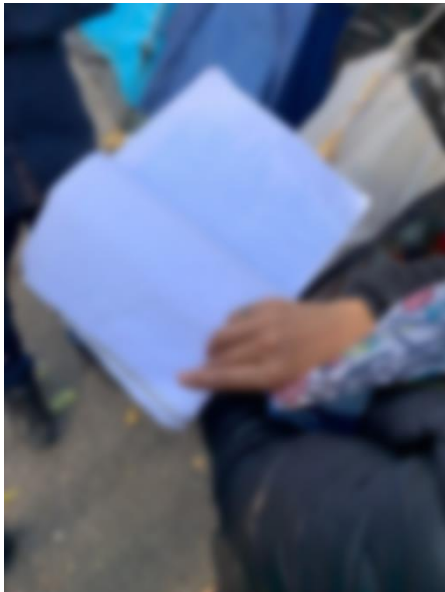
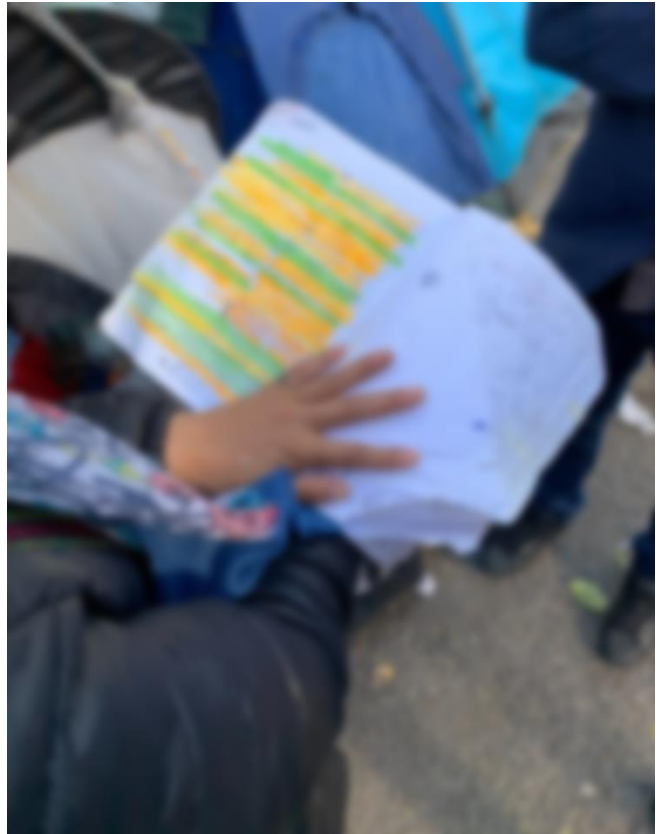
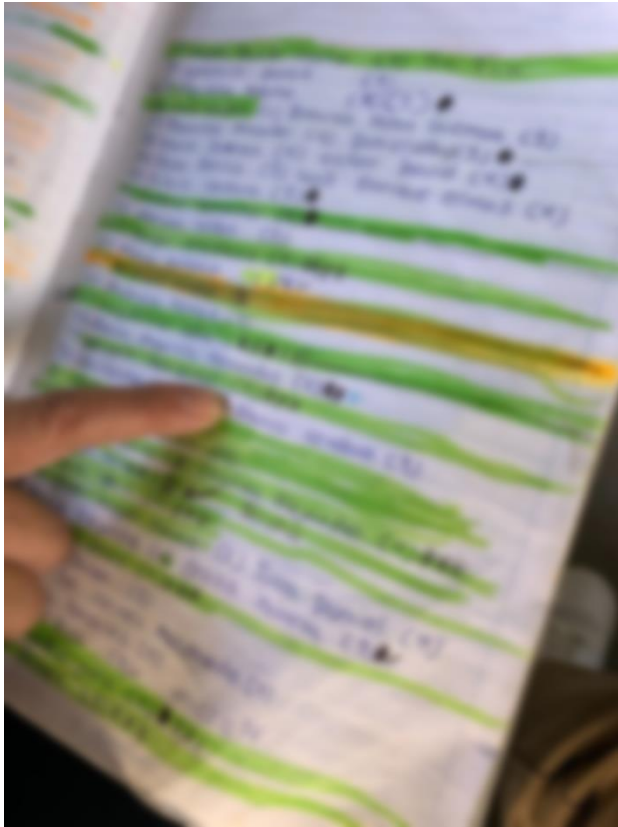


Figure 5: Pages from Mexican asylum seeker metering list at the Santa Fe International Bridge. (Oct. 28-29, 2019)

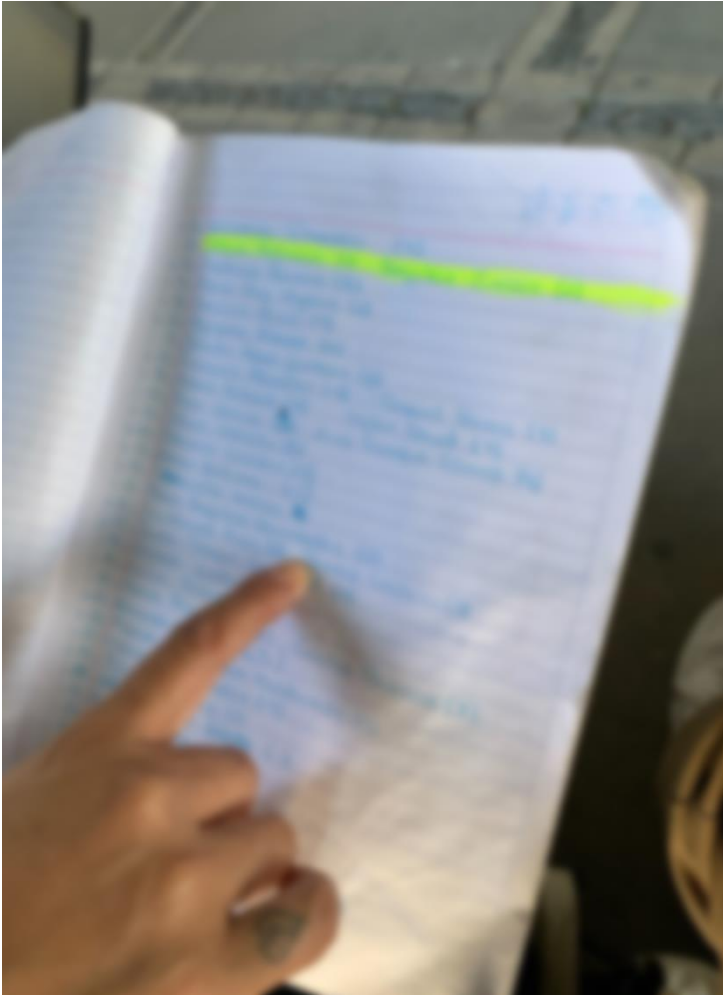


Figure 6: Pages from Mexican asylum seeker metering list at the Santa Fe International Bridge. (Oct. 28-29, 2019)

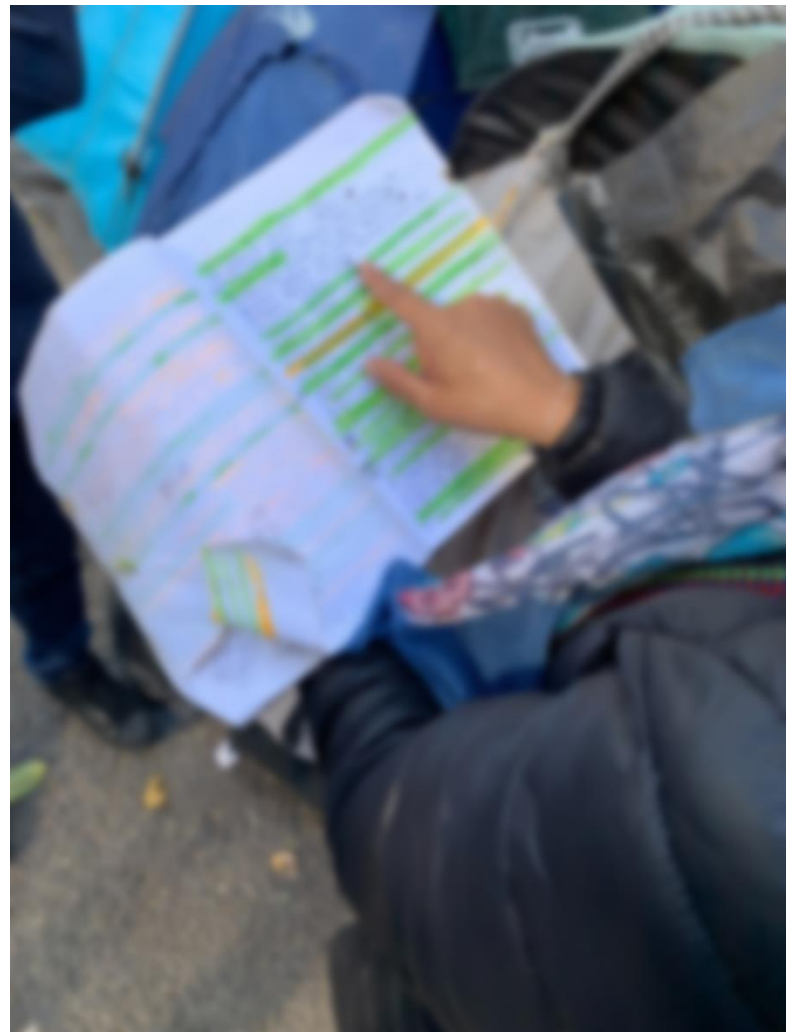






Figure 7: Portion of Mexican asylum seeker encampment near Santa Fe International Bridge. (Oct. 28, 2019)



Figure 8: Shared kitchen space at encampment at the Zarzoga International Bridge. (Nov. 1, 2019)



Figure 9: Section of tents in park near the Cordova International Bridge that are a part of the Mexican asylum seeker encampment. (Oct. 30, 2019)





**Figure 10:** Portions of Mexican asylum seeker encampment near Zaragoza International Bridge. (Nov. 1, 2019)



**Figure 11:** Portions of Mexican asylum seeker encampment near Zaragoza International Bridge. (Nov. 1, 2019)





Figure 12 and Figure 13: Portions of Mexican asylum seeker encampment on Gateway International Bridge. (Oct. 28, 2019)





Figure 14 and Figure 15: Rio Grande, where asylum seekers bathe and wash their clothes in contaminated water. (Oct. 29, 2019)





Figure 16: Makeshift open-fire pit at encampment, near Gateway International Bridge. (Oct. 29, 2019)



Figure 17: Portions of asylum seeker encampment on Gateway International Bridge. (Oct. 29, 2019)





Figure 18 and Figure 19: Clothes hanging to dry on fencing in encampment, near Gateway International Bridge. (Oct. 29, 2019)

