

United States Senate

WASHINGTON, DC 20510

September 5, 2018

Commissioner Kevin K. McAleenan
U.S. Customs and Border Protection
1300 Pennsylvania Ave. NW
Washington, DC 20229

Commissioner McAleenan:

We write to express our concerns over reports that U.S. Customs and Border Protection (CBP) agents are refusing to allow immigrants seeking asylum to enter the United States by closing ports of entry, or are explicitly turning them away.

These reports have been increasing since the beginning of the Trump Administration, with Human Rights First issuing a report back in May 2017 claiming that “there has been a marked shift in the conduct of some CBP officers towards asylum seekers since the election of President Trump.”^[1] Some of us have ourselves witnessed asylum seekers being refused entry, or have met with asylum seekers who reported being turned away.

In some cases, individuals and families seeking asylum have waited days, and even weeks, stranded out in the blistering heat on the Mexican side of the border unable to assert their legal right to asylum in the United States.^[2] As many as half of the individuals left to wait in these conditions are children, and some are becoming ill as they wait.^[3] The vast majority of those seeking asylum in the United States are fleeing horrific situations in their home countries. Under current domestic law and international agreements that the United States has signed on to, namely the Immigration and Nationality Act and the United Nations Convention Relating to the Status of Refugees (Refugee Protocol), turning away those seeking asylum from entering the United States is not only immoral, but may be unlawful.

While the first reports of turning away asylum seekers date back to previous administrations, there is reason to believe that this practice has expanded dramatically under President Trump. This is particularly troubling when paired with the administration’s “zero tolerance” policy, which resulted in the separation of over 2,600 children from their families.

We request a response to the following questions within the next 30 business days:

^[1] Drake, B. Shaw, Eleanor Acer, and Olga Byrne. "Crossing the Line: U.S. Border Agents Illegally Reject Asylum Seekers." May 2017. <http://www.humanrightsfirst.org/sites/default/files/hrf-crossing-the-line-report.pdf>.

^[2] Foster-Frau, Silvia. "Asylum Seekers Denied Legal Entry into U.S. Are Camping out on Bridges." San Antonio Express-News. June 07, 2018. <https://www.expressnews.com/news/local/article/Asylum-seekers-denied-legal-entry-into-U-S-are-12973965.php>.

^[3] Hennessy-Fiske, Molly. "Caught in Limbo, Central American Asylum Seekers Are Left Waiting on a Bridge Over the Rio Grande." Los Angeles Times. June 07, 2018. <http://www.latimes.com/nation/la-na-asylum-seeking-families-border-bridges-20180605-story.html>

1. For each month in Fiscal Years 2017 and 2018, please provide information regarding individuals and families requesting asylum, specifically:
 - a. How many individuals and family units requested asylum at each port of entry on the U.S.-Mexico border?
 - b. How many were paroled into the U.S. to request asylum and how many were referred to the U.S. Citizenship and Immigration Service for credible fear interviews?
 - c. How many individuals and family units apprehended between ports of entry were referred for credible fear interviews?
 - d. How many individuals requesting asylum have been put in expedited removal, and how many in regular removal?
2. How has guidance given to CBP officers at ports of entry for processing those seeking asylum changed, if at all, in Fiscal Years 2017 and 2018? What, if any, policy changes, including pilot programs, have been made or discussed by the Trump Administration to the way that CBP processes asylum seekers?
3. According to a CBP representative, when border crossings are experiencing a high volume of asylum seekers, officers are directed to prioritize people with valid entry documents over those without legal documentation who “may need to wait in Mexico as CBP officers work to process those already within [their] facilities.”^[4] What is the rationale and statutory authority for prioritizing asylum seekers with valid entry documents while making others without legal documentation wait? In light of reports that groups in Mexico may be directing the formation of lines at some ports of entry in a discriminatory and potentially corrupt manner,^[5] does CBP direct, lead, prioritize, or play any role in how immigrants are queued up as they wait in Mexico?
4. What constitutes a high volume of asylum seekers that prompts CBP to refuse entry to asylum seekers? Is there written policy guidance regarding circumstances and processes for turning away asylum seekers? If so, please provide that guidance. Please provide the maximum processing capacity at each port-of-entry, and the required capacity to prevent immigrants from being turned back due to capacity issues.
5. CBP has indicated that they expect any delays in processing asylum seekers to be temporary. What steps is CBP taking to make sure that extended wait times for asylum seekers at the border do not become a permanent problem? Please describe any plans to expand processing capacity at ports-of-entry. If none exist, please explain.
6. Some asylum seekers have been told that certain port of entry are not “designated” ports for the processing of asylum seekers and they must go to a bigger port of entry to be

^[4] Romero, Simon, and Miriam Jordan. "On the Border, a Discouraging New Message for Asylum Seekers: Wait." The New York Times. June 12, 2018. <https://www.nytimes.com/2018/06/12/us/asylum-seekers-mexico-border.html>.

^[5] Carcamo, Cindy. "For Many Waiting in Tijuana, a Mysterious Notebook Is the Key to Seeking Asylum." Los Angeles Times. July 05, 2018. <http://www.latimes.com/local/california/la-me-asylum-seekers-notebook-holds-key-to-entry-20180705-story.html>

processed.⁶ Is this an official CBP policy? If so, please explain how ports are selected as “designated” ports for the processing of asylum seekers.

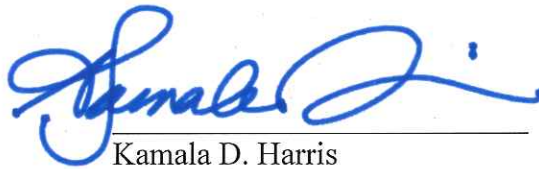
7. Please explain how the practices or policies of (a) refusing entry to asylum seekers due to high volume, and (b) the refusing entry to asylum seekers who do not arrive at “designated” ports of entry comply with the Immigration and Nationality Act and the United Nations Convention Relating to the Status of Refugees (Refugee Protocol).
8. For years immigrants have described deplorable conditions in CBP holding cells.⁷ How long do asylum seekers on average spend at a port-of-entry before they are paroled into the U.S. or transferred to Immigration and Customs Enforcement custody? Please describe the conditions of the areas they are held. What steps are being taken to improve these conditions?

We look forward to your prompt response. Thank you.

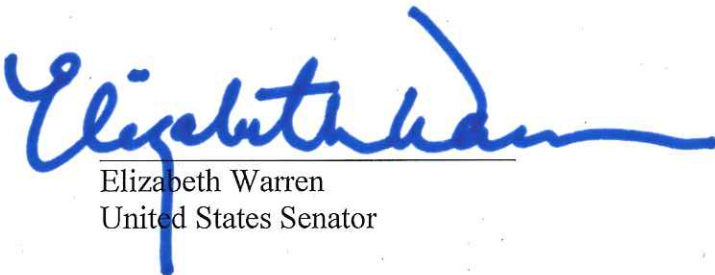
Sincerely,



Jeffrey A. Merkley
United States Senator



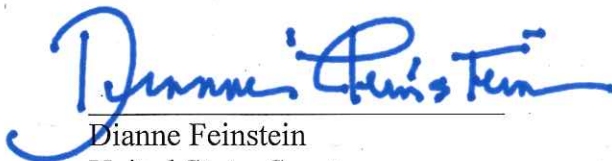
Kamala D. Harris
United States Senator



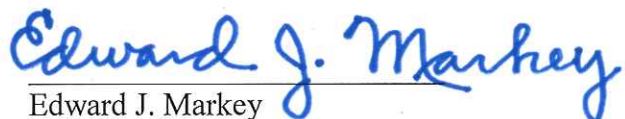
Elizabeth Warren
United States Senator



Kirsten Gillibrand
United States Senator



Dianne Feinstein
United States Senator



Edward J. Markey
United States Senator

⁶ Dominguez, Astrid, and Mike Seifert. "At US Ports of Entry, the Government Is Denying Asylum to Those Seeking Refuge." American Civil Liberties Union. August 09, 2018. <https://www.aclu.org/blog/immigrants-rights/ice-and-border-patrol-abuses/us-ports-entry-government-denying-asylum-those>.

⁷ Human Rights Watch. "Into the Freezer: Abusive Conditions for Women and Children in US Immigration Holding Cells." February 28, 2018. <https://www.hrw.org/report/2018/02/28/freezer/abusive-conditions-women-and-children-us-immigration-holding-cells>.



Catherine Cortez Masto
United States Senator



Ron Wyden
United States Senator



Mazie K. Hirono
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CC: Secretary Kirstjen Nielsen
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