

August 08, 2019

VIA ELECTONIC MAIL

Paul Del Rincon
Port Director for Eagle Pass Port of Entry
U.S. Customs and Border Protection
160 Garrison St.
Eagle Pass, TX 78852

Matthew Klein
Assistant Commissioner for Office of Professional Responsibility
U.S Customs and Border Protection
1300 Pennsylvania Ave. NW
Washington, DC 20229

Re: **U.S. Customs and Border Protection (CBP) Illegally Denying Entry of United States Citizens as Mexican Authorities Threatened Them with Arrest.**

Dear Mr. Del Rincon and Mr. Klein,

The American Civil Liberties Union (ACLU) Border Rights Center files this complaint on behalf of Stephanie Leutert, Catherine Ezzell, and Jake Dizard. On August 2, 2019, Customs and Border Protection (CBP) officers denied Ms. Leutert, Ms. Ezzell, and Mr. Dizard (all United States citizens) entry into the country, exposing them to potential harassment by Mexican authorities simply for presenting an unaccompanied child who had been previously turned away at a port of entry to CBP officials for processing.

CBP's disallowing U.S. citizens entry into the country raises serious concerns. Not only is it a violation of the Fifth Amendment to deny a citizen's entry to the United States,¹ it also represents a continued escalation of CBP's unlawful actions to intimidate those who advocate for the rights of arriving asylum seekers.

We ask for an immediate investigation into this incident. The agents involved should be removed from their positions pending investigation into their unlawful denial of entry of three United States citizens, exposing them to the known possibility of harm in Mexico. CBP should further clarify, in writing, their

¹ *Worthy v. United States*, 328 F.2d 386, 392 (5th Cir. 1964) ("The right to travel is a part of the 'liberty' of which the citizen cannot be deprived without due process of law under the Fifth Amendment . . . We think it is inherent in the concept of citizenship that the citizen, when absent from the country to which he owes allegiance, has a right to return, again to set foot on its soil."); *See also Nguyen v. INS*, 533 U.S. 53, 67 (2001); *Balzac v. Porto Rico*, 258 U.S. 298, 308-09 (1922); *Newton v. INS*, 736 F.2d 336, 342 (6th Cir. 1984) ("It is the fundamental right of an American citizen to reside wherever he wishes, whether in the United States or abroad, and to engage in the consequent travel.").

policy regarding the presenting of unaccompanied children seeking asylum at ports of entry.² CBP should also explain, in writing, their policy and practices regarding collaboration with Mexican authorities to remove asylum seekers and advocates from international bridges.

CBP Officers Illegally Turned Away Three United States Citizens

Ms. Leutert is a migration researcher and director of the Central America & Mexico Policy Initiative at the University of Texas at Austin. She teaches a MA class on Mexico's migratory policy at the LBJ School of Public Affairs at the University of Texas at Austin and travels to the south Texas border region roughly every two months. She has published frequently on border issues. Ms. Leutert was in the border area on Friday, August 2, 2018 to conduct research for the August update of an asylum processing and waitlist report. Ms. Ezzell is a Masters student at the LBJ School of Public Affairs, where she focused on issues related to migration policy and has traveled frequently to the border region. Mr. Dizard is a postdoctoral fellow at the University of Texas at Austin, where he researches and teaches on issues of security and democracy in Mexico and Latin America.

At, or around 4:05 pm, the three approached CBP agents stationed at the middle of the Eagle Pass International Bridge II opposite Piedras Negras, Mexico along with an unaccompanied minor. CBP agents had previously unlawfully turned away the child when seeking asylum days earlier. The child immediately stepped forward to tell the CBP officers he was there to seek asylum. Ms. Leutert and her colleagues made it clear to agents they were not seeking to accompany the child into the United States but were rather there to ensure CBP processed the child as an asylum seeker, as required by law. After CBP officers mid-bridge made unknown calls on their radio, Mexican authorities approached the group and threatened them with arrest for having accompanied the child to the bridge.

Ms. Leutert then turned to CBP Supervisor Fuller, who had joined agents mid-bridge, to say "Are you going to let them arrest us?" Supervisor Fuller replied they were still on Mexican soil. Ms. Leutert, U.S. passport in hand, stepped across the international boundary mid-bridge and asked again for them to be allowed to enter the United States. Supervisor Fuller replied, "I'm not going to let you in, they are taking you back to Mexico." Supervisor Fuller then motioned to Mexican authorities that they could take the group away into Mexico.

Local Piedras Negras municipal authorities, Mexican private security guards, and eventually officials from Mexico's National Migration Institute (Instituto Nacional de Migración) held the group in Mexico for one hour. Following calls from the ACLU to local CBP leadership and inquiries by at least one member of Congress, CBP Port Director Paul del Rincon called Mexican municipal government authorities to have them release the group. Mexican authorities then returned the group to CBP officials in the middle of the international bridge. Port Director del Rincon later confirmed that they have a close relationship with Mexican authorities and were able to call to get them released. CBP agents again stopped the group and forced them to wait before crossing into the United States.

When Ms. Leutert began noting the CBP officer's names at the midpoint of the bridge, the two officers both reached up and removed their nametags from their uniforms. Nevertheless, the group had

² The United States District Court for the Southern District of California recently found that those seeking asylum at a port of entry are "arriving aliens," thereby triggering CBP's duty to inspect and refer asylum seekers into set procedures for processing asylum claims of those arriving at ports of entry. *Al Otro Lado, Inc. v. McAleenan*, 2019 WL 3413406, (S.D. Cal. July 29, 2019)

previously noted CBP officers Fravel and Chapa's last names. The group was eventually allowed to enter the port of entry, the unaccompanied minor was taken to be processed as an asylum seeker. The group of U.S. citizens were released after approximately one additional hour in CBP offices where officers attempted to clarify and justify their unlawful actions.

Retaliation

This incident is only the latest in a string of CBP actions aimed at threatening and intimidating advocates seeking to hold CBP accountable for violating the rights of asylum seekers.

Journalists, lawyers, and human rights advocates who traverse the border to advocate for migrants seeking asylum in the United States have been subject to interrogation, harassment, and detention at the hands of CBP officers.³ CBP has seized and searched their personal belongings, like phones and cameras.⁴ Officials have threatened to prosecute and investigate advocates to intimidate and discourage their cross-border advocacy.⁵

Members of Congress, lawyers, human rights advocates and religious leaders have accompanied asylum seekers to present at ports of entry, including unaccompanied children, most without CBP officers denying U.S. citizens entry or being subjected to fabricated allegations of criminal activity.⁶

CBP's unlawful actions on August 2, 2019, both intimidated and discouraged Ms. Leutert, Ms. Ezzell, and Mr. Dizard, from conducting such lawful advocacy at the Eagle Pass port of entry. CBP's actions also denied them their rights, as U.S. citizens, to re-enter the United States.

³ See Amnesty International, *USA: Authorities are misusing justice system to harass migrant human rights defenders*, (July 2, 2019), <https://www.amnesty.org/en/latest/news/2019/07/usa-authorities-misusing-justice-system-harass-migrant-human-rights-defenders/>; *Human Rights Watch, US Harassing Journalists, Lawyers, Activists at Border*, (March 8, 2019), <https://www.hrw.org/news/2019/03/08/us-harassing-journalists-lawyers-activists-border> ("At least 23 people, including at least 15 US citizens, have been interrogated, detained, or blocked at the border. At least one journalist and two lawyers were denied entry to Mexico. Those affected were working among a group of migrants who reached the border in late 2018 and early 2019.").

⁴ Ryan Devereaux, *Border Official Admits Targeting Journalists and Human Rights Advocates With Smuggling Investigations*, *The Intercept*, (May 17, 2019), <https://theintercept.com/2019/05/17/border-smuggling-journalists-activists/> ("In a number of cases, the phones or cameras of those being questioned were seized or examined by U.S. authorities.").

⁵ Amnesty International, *supra* note 3.

⁶ See, Representative Jimmy Gomez, *Reps. Jimmy Gomez and Nanette Barragán Travel to Southern Border to Investigate Conditions of Asylum Seekers*, December 18, 2018, <https://gomez.house.gov/news/documentsingle.aspx?DocumentID=431> ; Julián Aguilar, *Meet the man going head-to-head with federal agents to help asylum-seeking immigrants cross the border*, *The Texas Tribune*, June 20, 2018, <https://www.texastribune.org/2018/06/20/immigrant-families-asylum-seeking-border-aclu-el-paso/>; Victoria Gagliardo-Silver, *Bishop walks migrants across US border bridge to protest Trump policy*, *Independent*, June 28, 2019, <https://www.independent.co.uk/news/world/americas/us-politics/bishop-migrants-border-trump-us-texas-protest-a8979881.html> ("A Texas bishop walked with Central American migrants across and US-Mexico border bridge in protest of conditions asylum seekers face under the Trump Administration."); Lauren Villagran, *Democratic presidential candidate Cory Booker escorts migrants in Juárez to El Paso*, *El Paso Times*, July 3, 2019, <https://www.elpasotimes.com/story/news/2019/07/03/cory-booker-texas-border-democrat-presidential-candidate-migrants-immigration/1641513001/>.

CBP must immediately investigate this incident and the agents involved should be removed from their positions pending investigation. CBP should further clarify, in writing, their policy regarding the presenting of asylum seekers at ports of entry. The agency should also explain, in writing, their policy and practices regarding collaboration with Mexican authorities.

Ms. Leutert, Ms. Ezzell, and Mr. Dizard are available to provide additional information in furtherance of your investigation into this incident.

Sincerely,



Shaw Drake
Counsel
Border Rights Center
American Civil Liberties Union
P.O Box 8306
Houston, TX 77288-8306



CC:
John V. Kelly
Acting Inspector General
Department of Homeland Security
254 Murray Lane SW
Washington DC 20528

Cameron Quinn
Officer for Civil Rights and Civil Liberties
U.S Department of Homeland Security
Building 410, Mail Stop #0190
Washington, D.C 20528