

March 27, 2019

VIA ELECTONIC MAIL

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, DC 20528

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 Denies Family Access to Ports of Entry to Lawfully Seek Asylum, Leading to Kidnapping, and Mistreatment in Mexico.

Dear Mr. Kelly, Mr. Quinn, and Mr. Klein,

The American Civil Liberties Union (ACLU) Border Rights Center files this complaint on behalf of C.A.R (DOB: July 28, 1978) and D.G.G. (DOB: July 3, 1987) and their three children, D.N.G. (DOB: July 26, 2006), C.A.G. (DOB: June 7, 2012) and B.A.A.G. (DOB: January 4, 2016). U. S. Customs and Border Protection (CBP) turned away the A.G. family at the Eagle Pass port of entry (Bridge 2) on July 26, 2018, and again at the Paseo del Norte port of entry on January 12, 2019.

From May 2018 onward, the federal government has denied access to the U.S. asylum system by adopting a practice of turning away asylum seekers attempting to enter U.S. ports of entry after indicating to CBP officers their intention to seek asylum.¹ CBP officials have turned away asylum seekers at ports of entry, claiming they are at capacity.² Those asylum seekers who have not set foot on U.S. soil have been blocked from doing so.³ This policy has left many asylum seekers sleeping on bridges at the U.S.-Mexico border or stranded in Mexico where they face ongoing threats to their security.⁴

¹ See, e.g., Robert Moore, *At the U.S. Border, Asylum Seekers Fleeing Violence Are Told to Come Back Later*, WASH. POST (June 13, 2018), 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

² *Id.*

³ See, e.g., Dara Lind, *Trump Keeps Making It Harder for People to Seek Asylum Legally*, Vox (June 5, 2018), <https://www.vox.com/policy-and-politics/2018/6/5/17428640/border-families-asylum-illegal>.


⁴ See, USA: "You Don't Have Any Rights Here" Illegal Pushbacks, Arbitrary Detention & Ill-Treatment of Asylum-Seekers in the United States, Amnesty International (October 11, 2018),

Background

The United States government is required by statute to allow noncitizens presenting themselves at U.S. borders and ports of entry to apply for asylum or other forms of humanitarian protection.⁵ When inspecting a noncitizen who arrives at a port of entry, CBP officials must follow the procedures mandated by Congress in 8 U.S.C. § 1225.⁶ Where Congress has granted statutory rights and has directed an agency to establish a procedure for providing such rights, the U.S. Constitution requires the government establish a fair procedure and to abide by that procedure.⁷

The A.G. family

The A.G. family fled El Salvador following imminent and credible threats to their lives and the lives of their children.



D.N.G. (age 12) suffers from heart arrhythmia. He experiences semi-regular anxiety attacks that result in his heart rate increasing from 90 to 140 bpm, severe pain in his chest, and difficulty breathing. His last such attack occurred while in Mexico. A Mexican hospital reportedly denied him medical care for the condition because he was a migrant. His condition requires regular medication and medical supervision.

CBP Illegal Turn Back of the A.G family at the Eagle Pass International Bridge

On or about July 26, 2018, the family arrived in Piedras Negras, Coah. opposite Eagle Pass, TX, and attempted to seek asylum at the Eagle Pass International Bridge. The family took two steps past a yellow line on the international bridge, on the U.S. side, when two Customs and Border Protection agents approached the family and physically pushed them back across the line. The CBP agents told the family

<https://www.amnesty.org/en/documents/amr51/9101/2018/en/>; see also, e.g., *Watch the U.S. Turn Away Asylum Seekers at the Border*, THE ATLANTIC (June 18, 2018), <https://www.theatlantic.com/video/index/563084/us-border-asylum/>.

⁵ The Immigration and Nationality Act provides that “[a]ny alien who is physically present in the United States or who arrives in the United States. . . irrespective of such alien’s status, may apply for asylum in accordance with this section or, where applicable, section 235(b).” 8 U.S.C. § 1158(a)(1); see also 8 U.S.C. § 1225(b)(1)(A)(ii).

⁶ 8 U.S.C. § 1225(b) (Refer any noncitizen placed in expedited removal proceedings who expresses either an intent to apply for asylum or a fear of persecution if returned to his or her home country to an asylum officer for a credible fear interview pursuant to 8 U.S.C. §§ 1225(b)(1)(A)(ii), 1225(b)(1)(B)).

⁷ The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of “life, liberty, or property, without due process of law.” See generally, U.S. Const. Amend. V

they could not seek asylum legally at the port and that they needed to go to the migrant shelter in Piedras Negras in order to seek asylum in the U.S. The family explained to the CBP agents their intention to seek asylum in the United States and that their child's heart condition requiring medical attention. A CBP agent told the family that he was not a doctor and repeated his instruction that they must return to Mexico. Fearing CBP would call Mexican immigration agents, the family left the bridge and went to the migrant shelter in Piedras Negras.

Following CBP's unlawful refusal to process the family as arriving asylum seekers, the family experienced the following in Mexico:

Threats, Kidnapping, and Instituto Nacional de Migracion Extortion

Once at the migrant shelter in Piedras Negras, the family was put on a waiting list to re-present at the port of entry and sought out a doctor in Piedras Negras to review D.N.G.'s heart condition. There was no medicine for the condition available in Piedras Negras. After two days, the family began receiving phone calls from the coyotes that brought them to the border from El Salvador. The coyotes demanded the family pay them \$2,000 USD or they would infiltrate the migrant shelter and kill the family. Ms. A.G.'s family sent \$2,000 USD to the coyotes in response to the threat.

Three days later, on or around July 29, 2018, the family walked to a convenience store in Piedras Negras, approximately one and a half blocks from the migrant shelter and was kidnapped. A truck with three armed men approached the family and forced Ms. A.G. and the three children into the vehicle. The father forced his way into the vehicle to stay with his family. Ms. A.G. asked the kidnappers what they wanted and was told "shut up, this is an order from the coyotes." The kidnappers took the family to a house near the train tracks and demanded payments from relatives in El Salvador in exchange for their release. Family members sent four separate payments for their release, totaling around \$2,000 USD.

The family spent two days trapped in the kidnappers' house, until members of the State police force, "La Fuerza Coahuila," entered the house. The family witnessed the police receive money from one of the kidnappers. The police proceeded to speak with the family and called Instituto Nacional de Migracion (INM) agents, due to the family's lack of legal status in Mexico. Approximately one and a half hours later the INM agents arrived and asked the family to pay them \$1,000 for their release. Unable to pay, the INM agents took the family to a migrant detention center. At the detention center the INM agents attempted to force the family to sign documents for their deportation to El Salvador. The family refused and explained their need to seek asylum from El Salvador. INM agents held the family in a migrant detention facility in Coahuila for two weeks before transferring the family to an immigration detention center in Mexico City. Mr. A.R. faced threats from Barrio 18 gang members while in Mexican immigration detention, and Mexican officials would not take action to ensure his safety.

Ongoing Threats and Inability to Remain in Mexico

In August 2018, the family submitted an application for asylum in Mexico and were released from detention. Upon release, the family's cell phone was returned and contained numerous texts from their kidnappers. Approximately two days following their release from immigration detention, on or around September 22, 2018, outside a Mexico City migrant center, men attempted to abduct B.A.A.G. from her mother, prompting the family to leave the migrant shelter that same day. Calls from their kidnappers continued and the family sought the U.N. High Commissioner on Refugee's support in transferring out of

Mexico City. Once transferred to Guadalajara the threats did not stop and the family feared that members of the Barrio 18 would find the family.

On or about January 11, 2018, the family transited from Guadalajara to Ciudad Juárez to again attempt to seek asylum in the United States, given their ongoing fear of remaining in Mexico.

The family could not remain in Mexico without fear of ongoing violence at the hands of their kidnapers.

Turn Back at El Paso Paseo del Norte Port of Entry

On January 12, 2018, at approximately 4:00 pm, the family presented themselves to CBP agents stationed at the middle of the Paso del Norte International Bridge. The family explained to the officers their need to seek asylum in the United States, their child's heart condition, and their fear of returning to Mexico. The CBP officers instructed the family that there was no room and that they need to go see Mexican immigration agents to get on a list. Following the rejection by CBP agents, members of Congresswoman Veronica Escobar's office, who were present on the bridge, called CBP leadership to alert them to the agency's turn back of the family. The ACLU also sent an email notification to Office of Inspector General Agent Javy Pedroza, who later confirmed he forwarded the complaint to CBP leadership. After approximately one hour on the international bridge, CBP allowed the family to proceed into the port of entry, where they were processed and released 1.5 days later.

Conclusion

We request an immediate investigation into CBP's unlawful turn back of the A.G. family at both the Eagle Pass and Paso del Norte ports of entry following their legal attempt to seek protection in the United States. CBP's initial illegal turn back of the family resulted in their kidnapping and ongoing persecution in Mexico for six months. Thousands of families experiencing similar restrictions at ports of entry across the border are likely to experience similar dangers in Mexico, further necessitating investigation and changes into the current policy of turning away asylum seekers mid-bridge across Texas.

Sincerely,



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

