

# A LINE THAT BARELY BUDGES

U.S. Limiting Access to Asylum  
Nogales, Arizona Port of Entry



Kino Border Initiative  
Iniciativa Kino  
para la Frontera

---

## Introduction and key findings

This report documents impediments facing people attempting to seek asylum at the U.S. port of entry in Nogales, Arizona following the end of the Title 42 policy on May 11, 2023. While the Biden administration finally ended its use of that illegal policy, the administration has implemented other steps to deny or delay access to asylum at the southwest border, including limits that force asylum seekers to wait for weeks or months for processing at ports of entry and a new asylum ban that went into effect on May 11, 2023. The new rule unlawfully renders ineligible for asylum most refugees who cross the border outside of ports of entry as well as those who seek asylum at a port of entry without one of the highly limited CBP One appointments. The asylum ban violates U.S. law and core principles of international refugee law binding on the United States, as Members of Congress, UNHCR, former immigration judges, the asylum officer's union and [many others have confirmed](#). The asylum ban will return refugees to persecution, torture, and death in their home countries and other countries where their lives are at risk.

U.S. immigration [law](#) makes clear that people in search of refuge can seek asylum at U.S. ports of entry and/or after entering the United States through other means. The right to seek asylum is protected regardless of whether someone entered at a designated port of entry. U.S. immigration and refugee law can no longer be evaded through use of the specious Title 42 "public health" policy. The right to seek asylum is a fundamental human right enshrined in the Universal Declaration of Human Rights, and treaties binding on the United States as well as customary international law prohibit the return of refugees to places where they risk persecution.

Yet, in Heroica Nogales, Sonora, Mexico, ("Nogales, Mexico") people waiting to seek asylum at the Dennis DeConcini Port of Entry face a barrage of logistical and legal barriers, despite the clear provisions of U.S. and international law forbidding such restrictions. These include:

- **Life-threatening dangers while left waiting and struggling to get CBP One appointments:** People waiting in Nogales, Mexico to seek asylum in the United States – including survivors of rape, kidnapping, and persecution – face kidnappings, assaults, robberies and other immediate dangers while displaced waiting in Nogales, Mexico as they struggle to secure one of the highly limited number of appointments released through the CBP One app, which operates essentially like a lottery. While waiting to secure an appointment, an LGBTQI+ asylum seeker was nearly kidnapped in Sonora, and two Haitian couples and a baby escaped a potential kidnapping near the port of entry in late May.

- **Lack of knowledge of Biden administration asylum ban and impossible choices imposed by the ban:** During May and early June, monitors from the Kino Border Initiative, The Florence Immigrant & Refugee Rights Project (“The Florence Project”), and Human Rights First spoke with hundreds of asylum seekers waiting in Nogales, Mexico who did not know about the asylum ban and the penalties it inflicts. Upon learning of the new asylum ban, people seeking asylum confront an impossible choice: either seek safety at the port of entry without an appointment, a step that – for non-Mexican asylum seekers – could bar them from asylum under the ban and return them to life-threatening harm, or wait indefinitely in situations of displacement and life-threatening danger until they secure an appointment through the CBP One system which functions essentially like a lottery.
- **Mexican asylum seekers forced to wait in danger in country of persecution:** Even though people seeking asylum from Mexico are not subject to the asylum ban for entering without a CBP One appointment and no one seeking asylum can be turned away from a port of entry under U.S. law, U.S. officials routinely leave Mexican asylum seekers to wait in line for weeks at risk in their country of feared persecution as the Biden administration and CBP limit access to asylum at ports of entry and deprioritize the processing of the asylum requests of people without appointments.
- **People suffering emergencies or urgent threats left at risk:** People facing an urgent medical or protection situation including threats to their life or safety such as risk of sexual assault and kidnapping, torture or murder, have been left by U.S. officials to wait in Nogales, Mexico for over two weeks due to minimal processing of asylum seekers without CBP One appointments. The Department of Homeland Security (DHS) and Customs and Border Protection (CBP) are deprioritizing cases without appointments and lack government-led procedures for the timely identification and processing of urgent medical and protection cases. At present, access to seek asylum at the port for those without appointments functions with minimal daily processing of those in this line, and those who may be facing urgent circumstances are often out of eyesight of CBP officers or are prevented from being able to directly walk up to the CBP officers due to metering mechanisms run by Mexican authorities. Beyond relying on local NGOs with limited resources to identify such circumstances and tirelessly advocate on the vulnerable person's behalf, DHS and CBP have not implemented any public-facing or government-led procedures to ensure that individuals with urgent medical and protection cases – even those that may fall within the asylum ban's “compelling circumstances” unduly narrow exceptions – are identified by local CBP officers and processed quickly given the life-threatening risks they face.
- **A line that barely budges:** Hundreds of individuals and families waiting to seek asylum at the U.S. port of entry in Nogales, many of whom are Mexican, have been left by CBP to wait in line for, on average, more than 15 nights since about May 15, 2023. CBP officers appear to have processed only a small fraction of people seeking asylum who do not have CBP One appointments, which monitors estimate to be an average of 10 to 15 individuals per night. Restrictions on processing at the Nogales and other ports of



entry – through the CBP One app and the minimal processing of people without appointments – violate U.S. refugee law and amount to unlawful metering.

- **Families continue to be separated** under the Biden administration, including women who were separated from their husbands, partners, siblings, and other family members and then transported 1,200 miles by U.S. Border Patrol before being expelled alone to Nogales, Mexico during the last days of Title 42.

**The Nogales DeConcini Port of Entry is the only port of entry which accepts CBP One appointments for the entire Arizona/Sonora border.** Therefore, any asylum seeker for hundreds of miles in either direction must travel to Nogales, Mexico should they secure an appointment using the CBP One app. The other smaller ports of entry along the Arizona/Sonora border are Class B or C ports, meaning they do not operate 24 hours per day, seven days per week (as the Nogales DeConcini port of entry does), and they lack significant resources to process more than a handful of asylum seekers per day. Moreover, the other smaller ports tend to be in remote parts of the Arizona desert, where the Sonoran towns directly across from the U.S. ports have high levels of organized crime; in fact, there have previously been incidents of active warfare between different cells of organized crime along certain Sonoran highways leading from the remote towns to Nogales, Mexico. Simply put, the Nogales Port of Entry is the only option for many vulnerable asylum seekers for hundreds of miles. And yet, even Nogales, Mexico is not a safe place to wait to secure a CBP One appointment or wait outside the port of entry.



View of the U.S.-Mexico border from Nogales, Arizona.



The research in this report stems from the work of the Kino Border Initiative, The Florence Immigrant & Refugee Rights Project, and Human Rights First. The Kino Border Initiative (KBI) is a binational, Catholic organization, locally rooted in Ambos Nogales on the Mexico-U.S. border. Its mission is to promote humane, just, and workable migration through: direct humanitarian assistance and holistic accompaniment of migrants, education and encounter to awaken solidarity with migrants, and policy advocacy in Mexico and the U.S. The Florence Project is a 501(c)(3) non-profit organization that provides free legal and social services to the thousands of adults and children detained in immigration custody in Arizona on any given day. The Florence Project was founded in 1989 to provide free legal services to asylum seekers and other migrants in remote Arizona immigration detention centers and in 2017 expanding their services to migrants and asylum seekers in Heroica Nogales, Sonora, Mexico. The Florence Project's vision is to ensure that all immigrants have access to counsel, understand their rights under the law, and are treated fairly and humanely. Human Rights First is a U.S.-based human rights organization that is working to track, as it did with the [Remain in Mexico, Title 42 policy](#), and the Trump administration's [asylum transit ban](#), denials of access to asylum and other harms inflicted by the Biden administration's asylum ban.

---

## CBP restricts access to asylum through a line that barely budges

U.S. officers must allow people to seek asylum in accordance with Title 8 of U.S. immigration law and [treaties](#) binding on the United States. Yet, despite the requirements of U.S. and international law, since Title 42 ended, the Biden administration has limited access to asylum through its asylum ban and limited processing of people seeking asylum by failing to allocate sufficient resources to this function. CBP officers at the DeConcini Port of Entry have functionally restricted entry of people seeking asylum who present themselves at the port *without* a CBP One appointment by prioritizing the processing of those with CBP One appointments. In doing so, CBP officers have left hundreds of families, children and other people in need of immediate protection stranded – treated as though they are not priorities – waiting for over 15 nights and counting in a line that barely budges. Though the CBP officers have not affirmatively turned anyone away from waiting in line at the port of entry (as was common under prior metering schemes in 2017 - 2020), the CBP officials' prioritization of those with CBP One appointments contributes to the increasing line of persons who should, under U.S. laws, be provided with processing in a timely manner.

A few days after the end of Title 42, hundreds of individuals and families who had been waiting in Nogales, Mexico unable to seek asylum – with one family having waited for up to a year – and the majority of whom had been attempting to obtain a CBP One appointment for months, began to line up in a calm and orderly way along a thoroughfare outside the DeConcini Port of Entry to seek asylum in accordance with Title 8 of U.S. law. Among those waiting in line were infants, young children, adolescents, pregnant and lactating women, individuals with serious medical conditions, Indigenous language speakers, and elderly individuals. The majority of the individuals and families who first



lined up were Mexican and were not subject to the Biden administration asylum ban for seeking protection at a port of entry without a CBP One appointment. There were also a few Haitian individuals and couples, including a pregnant woman, who were waiting in line and would be subject to the Biden administration asylum ban but nonetheless are required by law to be processed at a port of entry regardless of whether they have an appointment.

On May 22, 2023, following the first week of waiting, human rights monitors observed that everyone in line – from the first to the last – were all going on eight nights of sleeping at the port of entry because the line had barely budged. Only a limited number of people are allowed at a time into the roofed hallway leading up to the “limit line,” the official entry point to U.S. soil, where CBP officers stand behind closed doors. The majority of those waiting remained outside the turnstile that demarcates the entrance to the port from the public thoroughfare outside. These individuals and families waiting outside had no contact with the CBP officers inside the port and reported that they received no explanation as to why the line was hardly advancing.

During this first week of waiting, people waiting to seek asylum reported that they did not have access to a public bathroom, which was apparently due to needed repairs that were subsequently undertaken. Lack of access to public toilets has again been a recent issue due to additional maintenance required. Local municipal authorities are bringing portable bathrooms and potable water to the plaza so that those persons waiting in line may be able to access them. However, these portable restrooms are driven to and from the plaza each day and are not accessible all day and night. These inhumane conditions led some families to decrease their water intake and resulted in dehydration and the spread of preventable, communicable illnesses such as gastrointestinal and respiratory illnesses that required evacuation of several children in need of urgent medical care.

- A single mother traveling with her three young daughters aged four, six, and 11 who recounted to a Human Rights First researcher that she was fleeing violent harm in Mexico, was sleeping with them outside on the concrete where they had spent the last eight days and nights. She shared her incessant fears: **“I’m afraid for my girls. You can’t sleep because you don’t know if they’ll be snatched. You start to become psychologically traumatized. Because I’m a woman, I can’t defend myself. There’s no security [here].”** Nearly three weeks later, on June 1st, the same Mexican single mother with her three young daughters was going on her **18th night** waiting to seek asylum protection, having at one point lost her spot in the line, and likely faced an additional night or two of waiting.
- An elderly woman traveling with her children and grandchildren, a family group of 12 who were fleeing violent harm in Mexico, sat fatigued on a concrete bench at the very end of the line. They were in the first group of people who arrived at the port to wait. The grandmother shared that she felt unsafe and was going on her eighth day and night of sitting and sleeping **at that exact spot**, also with nothing more than a blanket. During that first week of waiting, Mexican authorities stopped allowing more individuals into the interior roofed hallway nearest to the port’s entrance so the individuals and families waiting in the outside portion of the line had hardly budged.







A single mother and her three daughters slept outside the DeConcini Port of Entry with just blankets and waited 18 nights to seek asylum.

The majority of individuals and families, including those with infants, children, elderly, and other vulnerable individuals, report spending over **15 nights** on average waiting to seek life-saving access to safety in the United States. Many endure sleeping outside on the concrete floor without shelter or security for most of their wait, and rely on the Kino Border Initiative and other volunteers who provide food, water, blankets, and limited medical attention.

Despite the requirements of U.S. law, CBP has failed to allow all but a miniscule number of those waiting in line without appointments to seek asylum each day. CBP has not disclosed how many individuals are processed without appointments at the DeConcini Port of Entry. Through interviews with people waiting in line, monitors learned that during the first week, anywhere from two to 13 individuals were processed at the end of each day, nearly always very late in the evening such as midnight, 1 a.m., or 2 a.m., after those with CBP One appointments were prioritized throughout the day. People waiting in line indicated that during the second and third weeks, anywhere from 10-15 individuals were



processed each day at varying times. The DeConcini Port of Entry has only been processing approximately 55 individuals with CBP One appointments per day, according to a recent [report](#) issued by the Strauss Center for International Security and Law. Shortly after issuance of the Strauss Center report, on June 1, 2023 DHS increased daily CBP One appointments from 1,000 to 1,250 borderwide, though it is unknown how many additional appointments, if any, have been allocated to the Nogales Port of Entry.

---

## Mexican asylum seekers trapped waiting in their country of feared persecution

The majority of those waiting in line at the DeConcini Port of Entry during the first two weeks were Mexican asylum seekers. Many of the Mexican asylum seekers reported that they had been waiting in Nogales, Mexico for months and a few reported waiting up to a year, unable to seek asylum first because of Title 42 – forcing them to wait long periods to access NGO-led Title 42 exemptions processes, and then because they were unable to obtain an appointment via the CBP scheduling system which functions like a lottery. These Mexican individuals and families are not subject to the asylum ban for entering without a CBP One appointment and U.S. law requires that all individuals seeking asylum at ports of entry are processed into the United States. Yet in contravention of U.S. refugee and immigration law, CBP has left Mexican asylum seekers presenting at the port of entry to wait for over two weeks, trapped inside their own country of feared persecution and at continued risk of harm.

People fleeing persecution in Mexico, a country that directly borders the United States, cannot wait. Access to territory and to asylum for people fleeing persecution in their home country is a central tenet of international refugee law. The Biden administration's decisions to limit access to asylum, limit asylum processing capacity by failing to sufficiently allocate resources to this function at ports of entry, and prioritize access to asylum for those with CBP One appointments in turn restricts the right to seek life-saving protection for Mexican asylum seekers and forces them to remain exposed and at risk of persecution in their own country. These actions also restrict access to protection for people who have fled other countries, including those in immediate need of access to protection due to particular vulnerabilities or high risks.

For Mexican individuals and families, the threat of persecution by those they are fleeing – such as violent cartels and other organized crime groups that exercise control over territory and often work in collusion with Mexican authorities – is still palpable as they are forced to continue to wait in northern Mexico in the hopes of finally having access to safety. The U.S. State Department 2022 report on human rights in Mexico finds that:

“Significant human rights issues included credible reports of: **unlawful or arbitrary killings by police, military, and other governmental officials; forced disappearance by government agents; torture or cruel, inhuman, degrading treatment or punishment by security forces; harsh and life-threatening prison conditions; arbitrary arrest or detention; serious acts of government corruption;** insufficient investigation of and accountability for





**gender-based violence, including domestic or intimate partner violence; crimes involving violence or threats of violence targeting lesbian, gay, bisexual, transgender, queer, or intersex persons; and crimes involving violence or threats of violence targeting persons with disabilities.**

Impunity and extremely low rates of prosecution remained a problem for all crimes, including human rights abuses and corruption. There were **reports some government agents were complicit with international criminal gangs**, and prosecution and conviction rates were low for these abuses.

**Criminal elements, including local and transnational gangs and narcotics traffickers, were significant perpetrators of violent crimes and committed acts of homicide, torture, kidnapping, extortion, human trafficking, bribery, intimidation, and other threats, resulting in high levels of violence and exploitation.** The government investigated and prosecuted some of these crimes, but the majority remained uninvestigated and unprosecuted.”<sup>1</sup>

People from Mexico waiting to seek asylum outside the DeConcini Port of Entry expressed their fears of persecution in Mexico and desperation to access immediate protection.

- A female-headed family consisting of a Zenaida\*<sup>2</sup> and her 11-year-old daughter, along with Zenaida’s daughter-in-law, Yaneth\*, and Yaneth’s two young children, aged four and one, were waiting to seek asylum outside the DeConcini Port of Entry for eight days at the time they spoke to a Human Rights First researcher in early June 2023. They had spent the last five nights sleeping outside the port on the concrete of the public thoroughfare with blankets other asylum seekers had left behind. They recounted fleeing death threats and gender-based violence by violent cartel members in Mexico who burned Yaneth’s 4-year-old son, killed Yaneth’s sister, and disappeared Yaneth’s husband (Zenaida’s son), while Zenaida herself was kidnapped and beaten and her brother was kidnapped and found dead. Zenaida shared:

**“The days feel eternal. Every day we’re still trying to get a [CBP One] appointment. Each time we get in a taxi, we’re asked where we’re from, and I’m afraid to tell them. Wherever we go, we’re constantly afraid they [the cartel] will find us. They’re everywhere.”**

These women and their children arrived in Nogales a month prior under Title 42 and were blocked from seeking asylum. Zenaida’s 11-year-old daughter fell ill with diarrhea and vomiting while they were living out on the street. An elderly man approached them and offered them a room, which turned out to be the same room he slept in and where he strategically placed his bed blocking the front door. Shortly after, he began to

<sup>1</sup>“2022 Country Reports on Human Rights Practices: Mexico,” U.S. State Department, available at: <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/mexico/>.

<sup>2</sup> An asterisk\* indicates use of a pseudonym to protect an individual’s confidentiality.



sexually harass them, leading Zenaida and Yaneth to fear the worst for themselves and their children. They managed to escape and fled directly to the DeConcini Port of Entry where they had been sleeping the past five nights outside on the concrete. Zenaida expressed:

**“Why does no one hear us? We are so scared. We’re afraid when people look at us and ask us where we’re from. We cannot wait here.”**

- A single mother and her young daughters fled southern Mexico when members of an armed criminal group that controls part of the territory threatened to kill her at gunpoint and left her threatening messages stained in blood when she would not and could not pay their extortion fees targeting her small floral business.

**“I had to pull my daughters from school. There, if you don’t pay, they give you 24 hours to leave or they’ll kill your daughters or family. And since it has happened, you grab what you can because it psychologically traumatizes you – that you’ll appear chopped to pieces in a body bag – and you’ve seen it. Those who have a bit more resources survive paying extortion fees. The local police in these small towns disregard you, possibly because they’re afraid.”**



Two young girls spend their days waiting with their mother outside the DeConcini Port of Entry.

- A family consisting of a mother, father, and three children aged eleven, seven and three, fled southern Mexico after being internally displaced due to cartel violence



where the father was then threatened and beaten by cartel members. He went to the police station to file a police report and was instead handcuffed by the police officers and thrown into a cell for three days with members of the criminal group who beat him so severely he required surgery afterward. As he shared his story with a Human Rights First researcher while waiting in line outside the port of entry, his voice lowered to a whisper before mentioning those who shall not be named – the cartel – as he looked around warily and said: **“The police themselves handed me over to these criminals. You no longer know who is good and who is bad. Mentally, I still have panic attacks.”**

- A family consisting of a mother, father and five minor children fled southern Mexico when the cartel attempted to forcibly recruit the father and threatened him with death. They escaped but his brother did not have a chance and the cartel killed him.

Many Mexican asylum seekers have shared with Kino Border Initiative staff that they feel unsafe because the Mexican National Guard and police forces<sup>3</sup> have taken photos and videos of them waiting in line without their consent. One family told Kino Border Initiative staff that their family members called them and told them they had seen them on Facebook in a video someone uploaded, showing scenes at the port of entry. They now fear that they will be located and harmed by their persecutors. In general, it is less than a one or two days’ journey from southern Mexican states to Nogales, Mexico, so an average wait time of 15 days leaves these Mexican families in great danger if their perpetrators are able to locate them quickly at or near U.S. ports of entry.

---

## People seeking asylum face enormous challenges in securing a CBP One appointment

Problems include insufficient appointments; lack of access to smartphones, electricity, and internet data; glitches; language access deficiencies; and the app’s continuing failures to recognize darker skin tones.

People waiting to seek asylum in Nogales, Mexico face numerous barriers to seeking asylum, including the lack of sufficient CBP One appointments: financial, technological and other equal access deficiencies; language access deficiencies; and continuing failures

<sup>3</sup> The U.S. State Department 2022 Report on Human Rights Practices in Mexico finds that “Significant human rights issues included credible reports of: **unlawful or arbitrary killings by police, military, and other governmental officials; forced disappearance by government agents; torture or cruel, inhuman, degrading treatment or punishment by security forces;** harsh and life-threatening prison conditions; arbitrary arrest or detention; serious acts of government corruption (...). Impunity and extremely low rates of prosecution remained a problem for all crimes, including human rights abuses and corruption. **There were reports some government agents were complicit with international criminal gangs,** and prosecution and conviction rates were low for these abuses. Criminal elements, including local and transnational gangs and narcotics traffickers, were significant perpetrators of violent crimes and committed acts of homicide, torture, kidnapping, extortion, human trafficking, bribery, intimidation, and other threats, resulting in high levels of violence and exploitation. The government investigated and prosecuted some of these crimes, but the majority remained uninvestigated and unprosecuted.”



to recognize darker skin tones. While the number of appointments available across the entire border have reportedly recently increased to 1250 per day, only a negligible portion of these appointments have been available to people waiting in Nogales. At the time that DHS provided 1,000 daily CBP One appointments, the Nogales port of entry only processed 55 persons a day.

While it is unknown if or how many additional appointments will be allocated to Nogales, even if the appointments at Nogales increase proportionally to approximately 69 appointments a day out of the overall border total of approximately 1250 persons, this means that **only 5.5% of all available appointments would be allotted to the Nogales Port of Entry**, one of eight total ports across the border where people can present via CBP One. DHS and CBP officials have long stated numerous times that appointments are allocated based upon each port's capacity constraints, **which begs the question, "why is the only port of entry with CBP One appointments for a span of nearly over 600 miles (from the California border to El Paso, Texas) so poorly resourced to process only 55 asylum seekers per day?"** People waiting to seek asylum in Nogales have noticed very little improvement in processing since the end of Title 42 and continue to express exasperation at their futile attempts to obtain an appointment each day through the CBP One system which functions like a lottery.

- A Mexican couple traveling with their five minor children who have been waiting outside the Nogales port of entry to seek asylum and were previously in Ciudad Juárez, shared: "We arrived to Ciudad Juárez in March but never attempted to cross [between ports] because we were afraid. My husband and I have five young children. We're a family of seven. **We've been trying with the [CBP One] application since we arrived in March. I'd complete all the steps, but it would tell me that there wasn't an appointment for a group of seven.**"
- In early May 2023, a Venezuelan woman crossed into the United States from Matamoros, Mexico to seek asylum and was separated by CBP from her family and expelled under Title 42 to Nogales, Mexico on May 7, 2023. She shared with a Human Rights First researcher that she had been in Mexico since October 2022, blocked under Title 42 from seeking asylum, and had been attempting to obtain a CBP One appointment since mid-February 2023. She is stranded alone in Nogales, Mexico together with two other Venezuelan women she met who were also expelled alone. She shared: "**The three of us are each trying every day to request an [CBP One] appointment. We try at 2:00, 3:00, 4:00<sup>4</sup> in the morning, at all hours, and nothing. We've been in Nogales for almost a month now.**"

<sup>4</sup> On May 10, 2023, the CBP One application transitioned to a new scheduling system that allows an individual to request an appointment during a 23-hour period rather than at a designated time as it first functioned. "CBP Makes Changes to CBP One App," U.S. Customs and Border Protection, available at: <https://www.cbp.gov/newsroom/national-media-release/cbp-makes-changes-cbp-one-app>



- A Colombian male young adult traveling alone who has been waiting outside the Nogales port of entry to seek asylum for over two weeks after futile attempts to schedule a CBP appointment was unaware that without an appointment he would likely be barred from asylum under the asylum ban, subject to a higher screening standard, and could be deported to Colombia where he feared persecution. He shared: **"I feel unsafe here in Mexico. I can't apply for asylum [here]. If the [CBP One] appointment took three days, I'd wait. But it doesn't. I've been trying and nothing. And I have to rent a room and pay for food. I can't keep waiting."**

In order to even attempt to secure a CBP One appointment, people seeking asylum must have daily access to a smartphone with certain capabilities, electricity, internet and/or phone reception with data. The use of this appointment system – and the asylum ban's provisions barring refugees from asylum if they do not have an appointment – prevents many vulnerable people who lack financial resources or access to technology from seeking asylum. Some families do not have phones or have had their phones stolen. Other families seeking asylum have had to make the choice between going hungry and buying data for their phones.

- A Mexican single mother and her three young daughters have been in Nogales since January trying each day to obtain an appointment. She said: **"I'd run out of internet data and instead of buying food, I'd need to buy more data."** As a result, she **has been forced to restrict her and her daughters' food consumption even further**, and even then, there have been days she couldn't afford to buy internet data and was unable to request a CBP One appointment to seek life-saving asylum protection. She shared: "Many *paisanos* cross through the border. I want to enter lawfully."
- A Mexican family had been waiting to seek asylum outside the Nogales port of entry for nearly eight nights when the father informed a Human Rights First researcher that **the family's only phone was stolen from under him while they slept at night on the concrete outside the port. "We don't have a phone now and I don't have money to buy another one. We'll continue to wait here."**







Asylum seekers charge their phones at the DeConcini Port of Entry.

The asylum ban disproportionately impacts vulnerable populations, such as Indigenous people seeking asylum protection who face Indigenous language exclusion in use of the CBP One application, which is only available in English, Spanish, and Haitian Creole, and more recently in Russian and Portuguese. The Florence Project has monitored cases of Indigenous Guatemalan and Mexican families waiting for months to seek access to asylum, first blocked under Title 42 – prompting submission on their behalf of Title 42 exemption requests due to their inability to use the CBP One app.

Of the **five exemption requests submitted on behalf of Indigenous language speakers** in March 2023, **all five requests were outright ignored – for months –** by the Tucson CBP Office of Field Operations (the entity to which Title 42 exemption requests were to be directed). Of those five Indigenous-language families (totaling 13 persons), only two families were eventually able to secure an appointment via the CBP One application after much struggle. Of the remaining three families, one family seems to no longer have the same phone number and Florence Project staff cannot contact them; one Indigenous Mexican family felt they had no choice but to wait in line at the DeConcini Port of Entry in the second half of May; and the final family – a Mayan family from Guatemala who will be



subject to the asylum ban if they cannot enter with an appointment – is still waiting in Nogales and struggling with the CBP One application.

The Kino Border Initiative consistently receives new arrivals who are Indigenous community members and Indigenous language speakers from southern Mexico and Guatemala who struggle to use the CBP One application. Additionally, asylum seekers placed in expedited removal must pass credible fear interviews to have an opportunity to apply for asylum, but Indigenous people seeking asylum are often forced to interview in languages they do not fluently speak. The asylum ban will be applied in these interviews to bar them based on inability to use the CBP One app and language access barriers in these interviews will further endanger Indigenous asylum seekers and fuel their deportation.

Since its inception in January 2023, the CBP One application has been plagued with glitches and technical errors. Kino Border Initiative staff spoke with Ignacio\*, his wife and children who kept getting an error code indicating the name of their emergency contact in the US was missing, when it was clearly written in the app. Although subsequent versions have led to some improvements, particularly with regard to how appointments are scheduled, individuals with darker skin tones continue to experience problems with CBP One's facial recognition software even after the May 10, 2023 update.

- In mid-May 2023, Kino staff witnessed a Venezuelan woman who was notified of a CBP One appointment and had 23 hours under the most recent software update to accept the appointment on the app. She struggled to and nearly missed the deadline on account of the app's facial recognition software not recognizing her darker pigmentation. Kino staff witnessed her repeated attempts over hours and growing anguish as she moved to different spots within their fully-lit, bright shelter. They even placed strong lighting over her face. She ultimately succeeded in capturing her image after these anguished attempts. However, it should be noted that had she not been able to secure such shelter in the first place or had other sources of light as additional support, the woman likely would have missed out on her CBP One appointment for failure to confirm the appointment slot in time. Simply put, had she been displaced nearly anywhere else – in dimly lit shelters, on the street, or waiting in line at or near a port of entry, the app's facial capture software would have likely failed this woman, as it continues to do for countless others.

---

Asylum cannot be scheduled: people seeking asylum are in need of immediate access to protection

In addition to people seeking asylum from Mexico, asylum seekers from a range of other countries are also waiting to seek asylum in Nogales, Mexico. These include individuals and families from Colombia, Ecuador, Guatemala, Haiti, and Venezuela. Many of these people have spent months struggling and failing to secure CBP One appointments.

As they wait in Nogales, Mexico, people seeking asylum are at risk of kidnapping, disappearance, rape, trafficking, and extortion. The U.S. State Department has issued a Level 3 Reconsider Travel advisory for the state of Sonora, Mexico where Nogales is located,



stating that violent crime such as homicide, kidnapping, carjacking and robbery is widespread and common in Mexico with Sonora being a key location used by the international drug trade and human trafficking networks. Many asylum seekers in Mexico suffer horrific violence at the hands of Mexican government agents and cartels, with many targeted precisely because they are migrants or seeking asylum in the United States. Human Rights First has tracked over 13,000 reports of murders, kidnappings, rapes, and other violent attacks against migrants and asylum seekers blocked in or expelled to Mexico due to Title 42 since President Biden took office.

The Kino Border Initiative, the Florence Project, and Human Rights First monitors spoke with hundreds of asylum seekers waiting in Nogales, Mexico over the last month who did not know about the asylum ban and the penalties it inflicts. Upon learning of the Biden administration asylum ban, people seeking asylum confront an impossible choice of whether to seek safety at the port of entry without a CBP One appointment, a step that – for asylum seekers who transited other countries – could bar them from asylum under the ban and return them to life-threatening harm, or wait indefinitely in situations of life-threatening danger until they can schedule an appointment through the CBP One system which functions like a lottery.

Faced with these threats, some people who have been unable to get one of the limited CBP One appointments have approached the port of entry to seek asylum. If they choose to present at the port without an appointment and they are not Mexican nationals, then they will now risk being subjected to the Biden administration asylum ban and deported back to danger even if they are refugees with well-founded fears of persecution. People waiting to seek asylum at ports of entry without an appointment who, upon being processed into the United States, could be barred by the asylum ban regardless of the persecution they fled and their eligibility for asylum under U.S. law include:

- A Colombian LGBTQI+ woman traveling alone was waiting outside the Nogales port of entry to seek asylum for 15 nights, 12 of which she had spent sleeping on the concrete in line. She reported that she was unaware of the asylum ban and its damaging consequences for entering at a port of entry without an appointment. Yet she was fleeing persecution in Colombia and serious harm in Mexico. In Colombia, she was internally displaced by an armed group. She and her partner were sexually assaulted by Colombian police officers. She tried to file a complaint but didn't receive state protection and had to flee. While transiting on a bus to northern Mexico, a Mexican state police officer boarded the bus and inspected those who were Colombian. The female officer instructed her to enter the bus bathroom where she stripped her of her clothing and digitally penetrated her vaginally without use of a glove, alleging she was transporting cocaine, and then robbed her of her money. Upon arrival at a bus station in Sonora she experienced an attempted kidnapping. **"I'm afraid to be here. I'm afraid criminal groups will try to kidnap me again."**
- A Venezuelan woman traveling alone who had also been waiting 15 nights outside the Nogales port of entry waiting to seek asylum shared with a Human Rights First researcher that she was fleeing persecution in Venezuela and that her sister had been murdered by the guerilla, a non-state armed group that exercises control over territory,



as she clutched a manilla envelope holding proof of her death. She did not know that the Biden administration's asylum ban would likely bar her from asylum protection for presenting at the port without a CBP One appointment and that she risked deportation back to Mexico. **"But what about this?"** she asked, **holding up her proof of persecution**, stunned to learn that she could be blocked from applying for asylum protection simply for not having an appointment. **"I have nowhere to go. I cannot wait here [in Mexico]. I need asylum."**

- Kino Border Initiative staff also met a group from Colombia who had recently arrived at the port of entry. They explained that **Mexican immigration agents kidnapped them for a day in collusion with organized crime** in another part of Mexico. Upon their release, the immigration agents told them to specifically go to Nogales, that they would be safe here, but **they do not feel safe**, knowing that Mexican authorities and organized crime know who they are and their current location.

People waiting to seek asylum in Nogales, Mexico have also reported to the Kino Border Initiative attacks, threats, intimidation and other unsafe conditions that they are forced to endure as they wait and attempt to exercise their right to seek asylum.

- On June 1, 2023, two Haitian couples traveling with an 11-month-old infant told a Human Rights First researcher about extortion and dangers they had experienced in Mexico, including difficulties finding safe shelter and an attempted kidnapping they had experienced the day prior as they approached the DeConcini Port of Entry. The father of the baby shared: **"We were walking toward here. A truck with three men stopped and they got out and started coming toward us. 'RUN!' I shouted to my wife and baby. We managed to escape."**
- In mid-May 2023, multiple people reported to Kino Border Initiative staff that a group of men had recently arrived at the port of entry and beat up a teenager who was waiting at the port of entry to seek asylum. A woman with the group recorded the assault on the teenager. The attackers threatened the migrants who had witnessed it, warning that they needed to stay quiet about the attack or something even worse would happen to them.
- In mid-May 2023, Kino Border Initiative staff and a Human Rights First researcher were separately told of two young men who were waiting to seek asylum outside the Nogales port of entry and left the line to shower. On their way back, they were apprehended by an organized crime group and were searched, questioned, threatened, and robbed of their belongings. Kino Border Initiative staff were informed that the young men reported this to the Nogales municipal police, but the local police did not do anything.

Non-Mexicans presenting at the port of entry in Nogales without a CBP One appointment who are subject to the asylum ban can overcome the ban and be considered for asylum if they can prove that they (or a member of their immediate family who they are traveling with) faced an "exceptionally compelling" circumstance, such as at the time of entry into the United States, faced an acute medical emergency; an imminent and extreme threat to life or



safety, such as an imminent threat of rape, kidnapping, torture, or murder; or was a “victim of a severe form of trafficking in persons,” as defined by U.S. regulations.

The narrow exceptions to the ban will not protect many refugees and will often be impossible to prove. For instance, many asylum seekers in Mexico suffer horrific violence at the hands of Mexican government agents and cartels, with many targeted precisely because they are migrants or seeking asylum in the United States. **Human Rights First has tracked over 13,000 reports of murders, kidnappings, rapes, and other violent attacks against migrants blocked in or expelled to Mexico due to Title 42 since President Biden took office.** Amid this unremitting violence, asylum seekers in Mexican border regions so often face a serious risk to their safety that it is absurd to require an asylum seeker to establish an “imminent and extreme” threat to life or safety, and it is unclear how they could even prove to an adjudicator that they would have been kidnapped, raped, murdered, or otherwise harmed had they remained in danger for longer.

This lack of certainty about what may be found to qualify as an “exceptionally compelling” circumstance that would overcome the ban results in asylum seekers having to make a risky calculus over whether to wait in situations of life-threatening harm struggling to obtain a CBP One appointment or seek safety by presenting at the port to seek asylum and potentially risk being barred from asylum. As is, people facing an urgent medical or protection situation including threats to their life or safety such as risk of sexual assault, kidnapping, torture or murder, have been left by U.S. officials to wait in Nogales, Mexico for two-to-three weeks already due to minimal processing of asylum seekers without CBP One appointments.

DHS and CBP are deprioritizing cases without appointments and lack government-led and publicly accessible procedures and mechanisms for the timely identification and processing of urgent medical and protection cases; instead, DHS and CBP officers count on local NGOs to bring these cases to their attention. At present, access to seek asylum at the port for those without appointments functions with minimal daily processing of those in this line. DHS and CBP have not implemented any procedures at the Nogales port of entry to ensure that CBP officers can independently identify and quickly process individuals with urgent medical and protection cases – even those that may fall within the asylum ban’s “compelling circumstances” unduly narrow exceptions are left without recourse.

People forced to wait indefinitely due to U.S. limits on asylum at ports of entry, including many single mothers, face the threat of rape, sexual abuse, kidnapping, disappearance, and trafficking. The risk of imminent harm is considerable for many, including many single mothers with babies and young children who spoke with a Human Rights First researcher on May 22, 2023 and shared that they had been waiting in line at the port of entry and sleeping outside without even a tent for protection going on eight nights at the time. They uniformly expressed their despair over their sense of vulnerability and insecurity, particularly at night as they slept on the floor against walls and crouched in corners along the public thoroughfare without any protection. They chose to remain there as they were in need of asylum protection and had been waiting for months for a CBP One appointment to no avail.





- Another Mexican single mother echoed these concerns for the safety of her children: **“You can’t sleep peacefully because we’re not safe. There has been a robbery of a cell phone and someone’s bag. I’m afraid that if I sleep, many things can happen to my kids – intimate things.”**



Outside the DeConcini Port of Entry, blankets and cardboard where people slept as they waited to seek asylum.

---

### People Suffer as they Wait in Dismal Conditions, Particularly Families with Children

During the first seven days that Mexican families were forced to wait at the port of entry in a line that barely budged due to U.S. limits on asylum processing, they had no access to public bathrooms and were required to pay 10 pesos per visit to use a nearby bathroom. This expense stressed the few resources families had for food, water, or internet. A week into waiting, local authorities opened access to a public bathroom that has no running water. For the first two weeks most had no access to a shower. During the week of May 29, 2023 a local nonprofit brought a mobile shower but some waiting in line shared on June 1, 2023 that they were unable to access it as it was locked. Since May 17th, Kino Border Initiative staff and other volunteers have been providing water and two meals a day for those waiting in line.

Families initially reported children were experiencing dehydration and falling ill, with symptoms such as vomiting and high fever, and shared that several children were taken to



local medical clinics to receive treatment. Parents expressed stress over the potential need to seek emergency care and abandon their place in line – the most reliable path to seeking life-saving asylum protection – which might force them to continue to risk months of harm while struggling to secure a CBP One appointment.



At the DeConcini Port of Entry, a child waiting to seek asylum plays in blankets that asylum seekers who slept in line left behind.

In mid-May 2023, a minor child suffered appendicitis while waiting in line and required emergency surgery. He was discharged from the local hospital and is unable to return to the line as his wound requires that he have access to clean water and a hygienic environment to prevent infection and aid in his recovery. His mother is caring for him while his brother informed a Human Rights First researcher he was obliged to remain alone and hold the family's place in a line that had hardly advanced for nearly two weeks.

---

Mexican authorities create list of Mexicans and others waiting to seek asylum in the U.S.

People seeking asylum should be allowed to do so in accordance with U.S. law, instead of being left to wait for days and weeks on end. The limiting of U.S. asylum processing at ports of entry, which was a policy implemented by the Trump administration (known as "metering") and was [found to be unlawful](#), led to years' long backlogs and long lines in Mexico and, as a result, the development of a barrage of deficient "wait-lists" in Mexico. In the wake of the U.S. failure to adequately resource ports of entry to properly process people



seeking asylum, metering is once more a reality in Nogales, Mexico. At the DeConcini Port of Entry, municipal authorities in Nogales, Mexico have created a list system for people waiting in Nogales to seek U.S. asylum. Worryingly, Mexican municipal authorities have collected names and are administering a waitlist of individuals and families that includes people waiting to flee Mexico to seek asylum in the United States. In conversations with those waiting in line on May 22, 2023, individuals indicated to a Human Rights First researcher that it was unclear to them for what purpose their names had been taken down as the list was first compiled, and some believed at the time that it was compiled by the Mexican immigration authority Grupo Beta while others did not know who compiled it.

The Mexican municipal authority initiated the list of those waiting in line on or about May 25th and on May 27th began issuing a QR code that assigns a number on a waitlist to each individual and family unit registered in line. Families waiting at the port of entry shared with monitors that the system has allowed some families, such as single mothers with young children and vulnerable individuals, to leave the line and seek temporary respite or spend their nights at a local shelter or rented room. Other families reported that they lacked resources to rent a room and informed monitors that shelters are at capacity and/or they reached the shelter's limit of days they could stay, and thus the port was the only place they could go despite the risks and conditions of sleeping outside on the concrete floor. Most families traveling with more than one adult expressed that they sometimes chose to leave one family member alone holding their place in line by day and overnight, while others frequently return to monitor the line's movement and ensure their spot, having already expressed distrust of the authorities and process.

During recent monitoring, there have been considerably fewer families and children spending the day waiting in line along the public thoroughfare outside the port of entry. For instance, on May 17, 2023, (the first week after the end of Title 42), Florence Project staff counted at least 186 individuals waiting in line at the port of entry, including those both in the covered hallway leading to the port of entry doors as well as those outside the turnstiles lining the thoroughfare. On June 5th, there were only approximately 30 – 50 persons total waiting at the port of entry, approximately 15 – 20 persons inside the hallway and near the actual doors to the port of entry building, and another 20 – 30 persons outside the turnstile in the thoroughfare area. Also on June 5th, Kino Border Initiative staff observed the municipal authority issue QR codes to new individuals and families and **instruct them to leave the port of entry** as they were last on the list and would not be called any time soon.

The same day, Kino Border Initiative staff spoke with a single mother and her child who were waiting near the limit line outside the Nogales port of entry and were next in line. The woman told Kino staff that, two days prior, she had received a phone call from the municipal authority informing her that it was her turn and instructing her to return to the port, so she and her child had spent the last two nights sleeping outdoors at the port waiting to be processed.

Municipal authorities in Nogales, Mexico originally informed Kino in late May 2023 of their intention to close the wait list after registering those individuals who were presently in line and to disperse the line as soon as possible. However, as of Thursday, June 1, 2023, the municipality has progressed to its third list, with 100 people on each list, and has indicated



that at this point they will not create a fourth list given how long they would have to wait to be processed by CBP (likely months in the future already). Instead, it is likely that the municipal authority will only add additional people to the third list as those with a QR code are processed.

While this system has for the past week permitted some to temporarily leave the line, its broader implications are troubling. U.S. law requires processing of all persons seeking asylum, regardless of manner of entry. List-keeping at ports of entry in any form raises concerns about illegal metering, and Mexicans in particular – who are not even subject to the asylum ban – are trapped in their country of persecution, exposed to additional risk of harm, which raises additional legality concerns.

It is also alarming that the Mexican municipal authority is requiring those asylum seekers queuing to access the DeConcini Port of Entry, including Mexican citizens, to submit their names given that all of the Mexican families a Human Rights First's researcher spoke with described fleeing situations of individualized threats of death by cartel members in situations where there was an egregious lack of state protection. Extensive reporting on Mexico including by the U.S. Department of State corroborates situations of persecution and violence inflicted by non-state actors, Mexican authorities, and/or both in collusion.

At present, the waitlist is being managed by one Mexican municipal agency without transparency or a mechanism for complaints, monitoring, or oversight of the list. Before the implementation of Title 42 in March 2020, the municipal government controlled a similar waitlist and there were multiple allegations of corruption with no accountability or oversight mechanisms to address concerns. Given similar actions in the past, local groups remain concerned about rights abuses in the administration of the list, possible dispersion of the line, and possible steps to dissuade people from seeking asylum at the port of entry – as well as concerns about whether cartels or complicit Mexican officials will have access to the names on the lists.

In interactions with asylum seekers and Kino Border Initiative staff, Mexican immigration officers and municipal authorities have misstated information on U.S. immigration laws and current policies, at times restricting access to the port of entry and contributing to misinformation among people waiting to seek asylum.

- **Kino Border Initiative staff spoke with a Mexican man who first arrived in Nogales in February 2023 in search of asylum.** He approached the port of entry on May 24, 2023 and was added to the waitlist and issued the number 88. On May 27<sup>th</sup> at around noon, the Nogales municipal authority arrived and began issuing QR codes. He was asked for his name and assigned number. **He was also inappropriately asked by the municipal agency whether he had been deported to Mexico previously,** to which he answered in the affirmative, but was not provided an opportunity to explain that it was an expulsion under Title 42 (which does not carry the same immigration consequence as an order of removal under U.S. law). **He was then told “you no longer qualify for asylum” and that U.S. authorities would not allow him to enter and would detain him, so he had to leave the line.** He tried to protest and explain that this **wasn't a decision for the Mexican municipal agency to make** but rather for the U.S. government, but **he was**





**asked to leave the line and to give his place “to someone who actually needed it.”** He was not allowed to speak and was not issued a QR code like others in line were. This man was able to access the port on June 4th thanks to the fellow asylum seekers in line immediately before and after him who honored his place, despite the municipal authority’s unlawful efforts to prevent him from seeking asylum.

- On May 31, 2023, Kino Border Initiative staff spoke with a Cuban man who shared that he obtained a CBP One appointment and was traveling by bus to the U.S. border to seek asylum when the bus was stopped at an immigration checkpoint. A Mexican immigration officer questioned him and he provided a screenshot of his CBP One appointment. The officer did not accept it and required that he open the app to show him the appointment. The man had no internet data at the time and was unable to access the application **so the immigration officer forced him to miss his bus.** Upon resolving the issue, he took another bus to Hermosillo, Sonora and then to Nogales, Sonora, arriving at the port **the day of his appointment but two hours late.** At the entrance to the port, **the Mexican municipal authority informed him that as he had missed his appointment time, he would need to start over in attempting to obtain another one through the app or he could be added to the municipality-administered waitlist for those seeking to enter without a CBP One appointment.** The man reached out to the Kino Border Initiative who informed him he could approach CBP directly at the limit line and not accept what the Mexican municipal authority wrongly informed him. The man approached CBP alone, explained his situation, and was processed with the next scheduled cohort.

---

Those waiting to seek asylum include refugees unable to use other pathways

Over the past month, nearly 80 percent of new arrivals to the Kino Border Initiative’s Migrant Aid Center reported leaving their homes due to violence or persecution. Asylum seekers fleeing persecution in Cuba, Haiti, Nicaragua, and Venezuela have informed Kino Border Initiative staff that they were unable to avail themselves of the Cuba, Honduras, Nicaragua, and Venezuela (CHNV) parole “pathways” specific to their countries of origin that would exempt them from the asylum ban’s application. The CHNV parole program requires long wait times (many months long, as of the time of publication), each family member to have a valid passport from their country of origin, a U.S. sponsor who must initiate the application and have legal status within the United States, and other prerequisites that create barriers and would force those fleeing persecution to continue waiting in danger. Some of these new arrivals also shared that they had only learned of the parole process once in Mexico and were now disqualified due to their manner of entry into Panama and/or Mexico.

- A woman waiting in Nogales to seek asylum fled Venezuela because her father had a business selling vegetables and “collectives” that work with the national government began to extort him. He didn’t have enough money to pay the extortion fees and they began to **threaten to kill him.** As people opposed to the current Venezuelan government, she and her family **could not go to the police.**





- A woman waiting in Nogales to seek asylum fled Venezuela because **the national police force seized her house without any police order**. This happened **on two separate occasions** with two separate homes. The **authorities beat her father and threatened to kill him** if he or his family said anything.

The asylum ban disproportionately impacts vulnerable populations, such as Indigenous people who face Indigenous language exclusion in the CBP One application and at the credible/reasonable fear interview stage. The Kino Border Initiative consistently receives new arrivals who are Indigenous community members and Indigenous language speakers, including:

- An Indigenous K'iche woman from Guatemala informed Kino Border Initiative staff that she faces **persecution** for being part of the Indigenous community and **criminal groups have killed many people from her community**.
- An Indigenous Triqui grandmother, daughter, niece and grandson fled southern Mexico when **armed groups forced them out of their homes**, displacing them. The Triqui people organized marches and **asked the government for protection** in Mexico City but Mexican **authorities ignored them**.

The asylum ban restricts access to asylum for survivors of LGBTQI+ persecution and gender-based violence who often continue to be exposed to high risk of harm during transit and while waiting in Mexico:

- A Colombian LGBTQI+ woman fled Colombia following **displacement by an armed group** and **persecution by the Colombian police** on account of her **sexual orientation**. She and her same-sex partner were **sexually assaulted by Colombian police** and she was **unable to obtain state protection** despite attempting to report the attack. While **in Mexico**, she **survived sexual abuse by Mexican state police** and **an attempted kidnapping by a cartel group**. She is **terrified to remain in Mexico** and cannot return to Colombia so she has been waiting for over two weeks at the DeConcini Port of Entry to seek asylum without a CBP One appointment and will be subject to the asylum ban once processed.

---

## Women separated from family by U.S. Border Patrol struggle to access asylum

Human Rights First and other organizations have learned of many incidents of family separation conducted by U.S. Border Patrol (a subagency of U.S. Customs and Border Protection) under the Biden administration. These reports include recent incidents in which Border Patrol agents transported separated family members hundreds of miles away to expel them and refused to explain what was happening to them or where their family members were. In late May 2023, a Human Rights First researcher spoke with four



Venezuelan women who had been waiting outside the Nogales port of entry to seek asylum for many days, and reported that they were each separated by Border Patrol from their respective family groups and/or others they were traveling with after crossing into the United States near Matamoros, Tamaulipas, Mexico during the final days of Title 42. These four Venezuelan women were expelled to Nogales, Sonora, Mexico – 1200 miles away – in a group that included an estimated 200 women. The women remain stranded in Nogales, still unable to seek asylum, now on account of the Biden administration asylum ban.

- A woman seeking asylum from Venezuela, Xóchitl\*, was separated by Border Patrol from her husband, subsequently expelled under Title 42 alone 1200 miles away to Nogales, and struggles to seek asylum in wake of Biden asylum ban:

**“[Border Patrol] asked if there were any married couples. We told them we were married and had our legal marriage certificate. We were then separated. I spent four very cold nights in a soft-sided tent without any information on my husband. I was then handcuffed at the wrists, ankles, waist and transported by plane with 200 other women, still not told what was happening or where my husband was. I was then returned through Nogales, Mexico alone with these other women. Only once in Nogales did I hear from my husband. He had been returned back to Matamoros.**

**It was horrible. The [Border Patrol] officers mocked us. There were many women crying and they [the officers] would laugh. When they boarded us on the plane, we weren't even told where we were going. They crossed us back to Nogales without giving us any information, not even the name or location of a shelter.”**

Shortly after, this woman's husband tried again to enter the United States from Matamoros, Tamaulipas, Mexico to seek asylum. This time, Xóchitl reports, he was paroled and issued a court date, at which point he will have a chance to plead his case for protection; what he may or may not realize is that, if he entered on or after May 12th, the Biden administration's asylum ban will most likely apply to him when he goes before an immigration judge and he will be likely ineligible for asylum due to his manner of entry. His wife, Xóchitl, meanwhile remains alone in Nogales. She was waiting in line outside the port for over two weeks. She was unaware of the potential consequences of the Biden administration asylum ban on people who enter at the port without an appointment. Even though she has been waiting at a U.S. port of entry, the ban will likely block her from asylum and she may be deported to Mexico or Venezuela with a five-year ban on entry to the United States.

- **Border Patrol separated a Venezuelan woman, Veronica\*, from her sister and her partner. Veronica was then expelled under Title 42 alone to Nogales – 1200 miles away.** In early May 2023, a Venezuelan woman crossed into the United States from Matamoros, Tamaulipas, Mexico together with her adult sister, two female friends, her partner, and her partner's four brothers. She spent four nights in a soft-sided CBP facility where she was not permitted to shower and was then separated from her sister, partner and other female friends and expelled under Title 42 alone on May 7th through Nogales,



Mexico, 1200 miles away. She has been trying to obtain a CBP One appointment to seek asylum for two months, including the last month she has been in Nogales with two other women, Ulia and Teofila, who were also expelled alone. She shared:

**“We have been trying to get a [CBP One] appointment. We don’t even have money for food. We decided to turn ourselves in at the port as a last resort. We have nowhere to sleep. Shelters only let you stay one week. This bench and floor is where we’re sleeping tonight.”**

She was unaware of the potential consequences of the Biden administration asylum ban on people who enter at the port without an appointment. Even though she has been waiting at a U.S. port of entry, the ban will likely block her from asylum and she may be deported to Mexico or Venezuela with a five-year ban on entry to the United States.



Venezuelan women separated from family by U.S. Border Patrol and expelled to Nogales, Mexico wait to seek asylum.

- **A Venezuelan woman, Ulia\*, was separated from her partner and his family, expelled alone 1200 miles away.** Ulia arrived in Mexico in October 2022 together with her partner and his extended family; they were all blocked from seeking asylum under Title 42. Ulia, her partner, and their extended family had been attempting to request a CBP One appointment since mid-February 2023. After three months of daily struggles with the CBP One application, Ulia and her partner crossed into the United States in early May 2023 from Matamoros, Mexico and were detained by Border Patrol agents. Ulia was held in a soft-sided facility for three days while her partner was held for seven days and then paroled and issued a notice to appear in immigration court, where he will be



able to plead his asylum claim; what Ulia's partner may or may not realize is that, if he was registered as entering on or after May 12th, the Biden administration's asylum ban will most likely apply to him when he goes before an immigration judge and he will be ineligible for asylum due to his manner of entry. However, Ulia was separated from him and expelled alone through Nogales, Mexico, over 1,200 miles away on May 7, 2023. Ulia detailed how her partner's extended family with whom she was traveling were all separated:

The entire family, with the exception of her and her partner, all crossed into the United States to seek asylum through Ciudad Juárez, Chihuahua, Mexico in October 2022, yet there were arbitrary and disparate outcomes which are divorced from refugee law:

- A Venezuelan couple (Ulia's partner's sister) with their three-year-old daughter were expelled under Title 42 through Matamoros, Mexico. They repeatedly tried to cross and were expelled, but incredibly obtained a CBP One appointment on the very first day the application launched and were paroled in.
- A Venezuelan single mother and her two adolescent children (relatives of Ulia's partner) were expelled under Title 42 through Nogales, Sonora and then sent further south by Mexican immigration authorities to Hermosillo, Sonora, Mexico. They returned to Ciudad Juárez, Chihuahua, Mexico (near El Paso, Texas) and were paroled during their second attempt to enter the United States.
- A Venezuelan couple who are Ulia's friends and a Venezuelan single adult friend were expelled under Title 42 through Ciudad Juárez, Chihuahua, Mexico;
- An Ecuadorian and Venezuelan couple, Ecuadorian mother-in-law and Ecuadorian three-year-old child (relatives of Ulia's partner) were paroled the same day they entered in October 2022 through El Paso.
- **Teofila\*, a Venezuelan woman, was separated from her traveling companions who were also survivors of sexual violence, expelled to Nogales alone - 1200 miles away.** During her journey to Mexico, Teofila was kidnapped and sexually assaulted while traveling with a group of 27 people on foot through the mountains of Guatemala. Two other women with her were also sexually assaulted. Part of her group made it to Matamoros, Tamaulipas, Mexico where seven of the men in the group were kidnapped from their tents and held hostage for one month. Teofila finally made it to Matamoros and crossed into the United States in early May 2023 to seek life-saving asylum protection together with the other two survivors of sexual violence. The other two women were paroled in to the U.S. under Title 42 while Teofila was expelled alone about 1,200 miles away to Nogales, Mexico.



Teofila remains alone in Nogales where she has been the last month. She recently arrived to the DeConcini Port of Entry to attempt to seek asylum. She was unaware of the potential consequences of the Biden administration asylum ban on people who enter at the port without an appointment. Even though she has been waiting at a U.S. port of entry, the ban will likely still render her ineligible for asylum because she failed to obtain an appointment through the CBP One application which functions similar to that of a lottery, failed to obtain permission to enter the United States through the CHNV parole program she is ineligible for based on her date of entry to Mexico and lack of a Venezuelan passport, and failed to seek asylum protection in Guatemala and Mexico – despite having survived sexual assault and other forms of harm while traveling those countries. If or when Teofila is determined to be ineligible for asylum, she is likely to be deported to Mexico or Venezuela with a five-year ban on re-entry to the United States.

Similarly, Human Rights First researchers previously [identified other cases](#) of family separation by Border Patrol agents during the last days of Title 42. In these cases, families who had crossed into the United States through Matamoros were separated by Border Patrol from family members who were expelled under Title 42 or whose whereabouts were unknown. Among these were seven pregnant Haitian women, a married Venezuelan couple, and a twenty-one-year-old young adult who had been separated from her parents, among others.

---

## Recommendations

**Uphold refugee law and right to seek asylum:** The Biden administration, as well as DHS and DOJ, must uphold U.S. and international refugee law and immediately rescind their asylum ban. People seeking asylum must not be penalized and/or barred if they arrive at an official port of entry without an appointment or due to their irregular entry or transit routes to the United States, in accordance with U.S. and international law. People seeking asylum must not be forced to wait and wait, or be subjected to improper metering, at U.S. ports of entry – and Mexican nationals should not be left to “wait,” trapped at risk in their country of feared persecution.

**The CBP One smartphone application cannot be used to ban, block, delay or limit others from seeking asylum:** The Biden administration must ensure equitable access to seek asylum for all individuals without discrimination, including for those without the means to purchase a smartphone, obtain access to electricity and internet while stranded in Mexico, as well as those who are illiterate, or who speak languages other than the few employed by CBP One, including Indigenous languages. While the Biden administration asylum ban is in effect, the CBP One application cannot be essentially the only path through which non-Mexicans can seek asylum at the U.S. southwest border without incurring the penalties of the asylum ban.

**Maximize rather than limit asylum processing capacity at ports of entry, including for Mexican and other asylum seekers without CBP One appointments:** DHS must maximize asylum processing capacity at ports of entry, including for those without CBP One





appointments and stop deprioritizing people without appointments to seek asylum at ports of entry. While government officials report surging resources to the U.S./Mexico border, it is insufficient. The U.S. government's failure to increase and sustain critical resources – including personnel, physical infrastructure, internet and computers, and other resources required to significantly increase CBP's Office of Field Operations' processing of asylum seekers at all ports of entry – is resulting in irreparable, life-threatening harm to people seeking asylum in need of protection.

Given the overwhelming evidence of kidnappings, trafficking, sexual assault, disappearances, robbery, and extortion by organized criminal groups with the complicity and participation of Mexican authorities, the only effective approach to addressing the number of asylum seekers at the U.S.-Mexico border, including Nogales, is for U.S. ports of entry to be the safest, most efficient, and fair way to seek asylum. **To achieve this, the U.S. government must make a concerted and intentional effort to redistribute the resources it currently appropriates for deterrence-based practices and policies and instead reallocate those resources towards ports of entry.** DHS must ensure timely processing of all asylum seekers in accordance with U.S. law and core principles of international refugee law binding on the United States. Furthermore, resources and specialized teams within DHS entities must be equipped to identify and immediately process those with urgent medical and protection situations without applying a narrow interpretation with a heightened standard of proof and scrutiny as the asylum ban does. Mexican government wait lists are not the answer to the U.S. government's failure to properly resource its border ports of entry; CBP needs to significantly increase asylum processing, including for people without appointments. Mexican asylum seekers must not be left waiting to seek U.S. asylum in their country of feared persecution.

**Stop separating families in DHS agencies' custody and processing:** The right to family unity requires that family members are not separated. DHS must take steps to ensure families are processed together including in the same processing "pathway," are not separated and deported or otherwise sent back through different ports of entry, and are provided timely information on the status and whereabouts of other family members.

**Increase government and other aid:** Increase government and other aid to support humanitarian efforts in Nogales, Mexico (and other areas in Mexico) where people are waiting to seek asylum and to support humanitarian reception in the United States. DHS must shift funds away from over-funded detention, enforcement and surveillance accounts and surge funds toward reception services.



---

## Mission Statement

Human Rights First works to create a just world in which every person's intrinsic human rights are respected and protected, to build societies that value and invest in all their people. To reach that goal demands assisting victims of injustice, bringing perpetrators of abuse to justice, and building institutions that ensure universal rights.

Human Rights First is a nonprofit, nonpartisan international human rights organization based in Los Angeles, New York, and Washington D.C.

© 2023 Human Rights First All Rights Reserved.

All photos by Christina Acencio.

This report is available online at [humanrightsfirst.org](https://humanrightsfirst.org)

---

## Acknowledgements

This report was researched by Christina Acencio of Human Rights First, Chelsea Sachau of The Florence Immigrant and Refugee Rights Project, and Pedro de Velasco of the Kino Border Initiative. The report was drafted by Christina Acencio of Human Rights First with edits contributed by Eleanor Acer and Rebecca Gendelman of Human Rights First, Chelsea Sachau and Laura St. John of The Florence Immigrant and Refugee Rights Project, and Pedro de Velasco of the Kino Border Initiative. Human Rights First is grateful to the donors and foundations who provide invaluable support for the organization's research on access to asylum and representation of asylum seekers. We honor and thank the numerous asylum seekers who bravely shared their stories in hopes of bettering the system for all those who seek protection and refuge in the United States.

