



## Metering and Asylum Turnbacks

Under United States law, any person who is physically present in the United States or who “arrives” at the border must be given an opportunity to seek asylum.<sup>1</sup> Despite this clear command, in recent years U.S. Customs and Border Protection (“CBP”) officers stationed at the southern border have turned away thousands of people who come to ports of entry seeking protection, including through a practice known as “metering” (or “queue management”). This has occurred even as officials issued pleas to asylum seekers to go to ports of entry and request asylum, rather than crossing the border between the ports of entry to ask for asylum.<sup>2</sup>

Under metering, CBP officers assert a lack of capacity to refuse to inspect and process asylum seekers, requiring them to wait for weeks or months in Mexico just for the opportunity to start the asylum process. This practice began as early as 2016 at certain ports of entry along the U.S.-Mexico border but its use expanded significantly border-wide during the Trump administration. Metered individuals followed the U.S. government’s instructions to wait to seek asylum without crossing the border between ports of entry but have been left to languish in Mexico indefinitely or return home and abandon their hopes of applying for asylum in the United States.

### Use and Impact of Metering

Metering is one of many tactics used by CBP officers to turn away asylum seekers at the U.S.-Mexico border, in a general practice of “asylum turnbacks.”<sup>3</sup> Under metering, CBP limits the number of individuals who are permitted to access the asylum process each day at ports of entry across the border. Metering was used as early as February 2016, primarily at the San Ysidro port of entry.<sup>4</sup> This early usage of metering primarily targeted Haitian asylum seekers, who were required to get a “ticket” from Mexican officials giving them a place in line to seek asylum at the U.S. border.<sup>5</sup> In 2017, the use of metering declined following a significant drop in the number of people seeking asylum in the first months of the Trump administration.

In late April 2018, the Trump administration ordered ports of entry across the U.S.-Mexico border to meter asylum seekers.<sup>6</sup> According to new guidance, CBP officials could stand at the borderline between the United States and Mexico, which physically kept asylum seekers from stepping foot onto U.S. soil. CBP kept no record of individuals who were metered because CBP officials refused to inspect the individuals and process them into immigration proceedings.

In most locations, asylum seekers turned away by CBP had to place themselves on a “list” maintained by a person or group on the Mexican side of the border.<sup>7</sup> How this list was maintained varied significantly from place to place. In Tijuana, the list originally took the form of physical notebooks (later digitized) that were passed around by migrants and kept under guard by Mexican immigration officials.<sup>8</sup> In Nogales, the municipal government maintained the list.<sup>9</sup> In Ciudad Juárez, a Mexican state agency—COESPO—operated the list

directly.<sup>10</sup> Along the Rio Grande Valley, lists were maintained by a wide variety of actors, including private shelters in Nuevo Laredo, the municipal government in Piedras Negras, and asylum seekers living in an encampment in Matamoros.<sup>11</sup>

While metering was in effect, CBP contacted the person or entity in charge of the list and informed them of how many people could be admitted and processed in order to request asylum on a given day.<sup>12</sup> This process could be extremely slow, and at some ports of entry multiple days would pass with no people called off the list.<sup>13</sup>

Once an individual's number was called, they could then travel to the port of entry and begin the asylum process. However, this did not mean that people would be allowed to enter the United States. Despite already having been subjected to metering, some individuals who sought asylum at ports of entry would be processed and then placed into the Migrant Protection Protocols ("MPP") program and sent back to Mexico.<sup>14</sup>

An investigation by the Department of Homeland Security's ("DHS") Office of Inspector General (OIG) determined that DHS Secretary Kirstjen Nielsen personally approved of metering, despite having previously issued public statements declaring that asylum seekers should go to ports of entry.<sup>15</sup> At the time metering went into effect, internal CBP estimates suggested that as many as 650 asylum seekers a day would be turned away.<sup>16</sup> In June 2018, Secretary Nielsen signed a memorandum directing ports of entry not to prioritize processing asylum seekers and authorizing ports to divert resources to other matters.<sup>17</sup>

The effect of border-wide metering and reduced asylum processing capacity was significant. By November 2019, the Strauss Center estimated that more than 21,000 individuals were waiting in border cities across Mexico just for the opportunity to start the asylum process.<sup>18</sup> Wait times varied from a low of one to three days at the ports of entry between Reynosa, Tamaulipas and McAllen, Texas, to a high of six months at the ports of entry between Ciudad Juárez, Chihuahua and El Paso, Texas.<sup>19</sup>

CBP has said that Mexicans and unaccompanied children were not subject to metering.<sup>20</sup> However, reports repeatedly showed that Mexicans and unaccompanied children were forced to wait in Mexico under metering or had simply been turned back without being permitted to apply for asylum.<sup>21</sup> The DHS OIG has twice reported that metering or turnbacks have been a direct cause of some asylum seekers choosing to cross *between* ports of entry, rather than wait months in Mexico in limbo with no guarantee of ever being permitted to access asylum at ports of entry.<sup>22</sup>

## **Changes to Policies at the Border Due to COVID-19**

Metering continued across the border until spring 2020, when a series of changes were implemented that led to the suspension of all asylum processing. On March 20, 2020, the Director of the Centers for Disease Control and Prevention (CDC), Robert R. Redfield, issued an order suspending the "introduction" into the United States of certain individuals who have been in "Coronavirus Impacted Areas."<sup>23</sup> The order specifically targeted individuals who would normally be detained by CBP after arriving at the border, such as asylum seekers, unaccompanied children, and people attempting to enter the United States without inspection.<sup>24</sup>

Reporting later confirmed that this order was issued over the objection of CDC scientists and at the direction of high-level Trump administration officials.<sup>25</sup>

After March 20, the Border Patrol began “expelling” individuals who arrived at the U.S.-Mexico border, including those who came to ports of entry, without giving them the opportunity to seek asylum.<sup>26</sup> All asylum processing at ports of entry stopped, leaving those individuals previously waiting under metering in limbo.

By November 2020, research on those remaining at the border suggested that there were approximately 15,690 people still on “metering lists” who remain in limbo with no ability to seek asylum.<sup>27</sup> Most waitlists shut to new admissions, meaning that individuals arriving at the border after March 2020 who wished to seek asylum through ports of entry were left without any options other than waiting until the border reopened.<sup>28</sup>

Following the inauguration of President Joe Biden, DHS officials indicated that the border would remain largely closed to asylum seekers until humanitarian capacity can be restored.<sup>29</sup> As of March 2021, the Biden administration has not put forward any plan for allowing those on metering lists to enter the United States. While metering lists may still exist in some cities, asylum seekers continue to be turned away at ports of entry.

## Endnotes

1. 8 U.S.C. § 1158(a).
2. The Trump administration also issued an asylum ban for individuals who crossed between ports of entry. See *Addressing Mass Migration Through the Southern Border of the United States* 83 Fed. Reg. 57,661 (Nov. 9, 2018). This ban has been blocked in court since implementation. See Adam Liptak, “Supreme Court Won’t Revive Trump Policy Limiting Asylum,” *New York Times*, December 21, 2018, <https://www.nytimes.com/2018/12/21/us/politics/supreme-court-asylum-trump.html>.
3. See American Immigration Council, “Challenging Customs and Border Protection’s Unlawful Practice of Turning Away Asylum Seekers,” <https://www.americanimmigrationcouncil.org/litigation/challenging-customs-and-border-protections-unlawful-practice-turning-away-asylum-seekers>.
4. Congressional Research Service, The Department of Homeland Security’s Reported “Metering” Policy: Legal Issues (Washington, DC: August 2019), <https://fas.org/sgp/crs/homesecc/LSB10295.pdf>.
5. Sandra Dibble, “Surge of Haitians at San Ysidro Port of Entry,” *San Diego Union Tribune*, May 26, 2016, <https://www.sandiegouniontribune.com/news/border-baja-california/sdut-haitians-flood-san-ysidro-port-entry-2016may26-story.html>.
6. James Frederick, “‘Metering’ At The Border,” *NPR*, June 29, 2019, <https://www.npr.org/2019/06/29/737268856/metering-at-the-border>.
7. *Metering Update*, November 2019, 5-14.
8. *Ibid.* at 13.
9. *Ibid.* at 12.
10. *Ibid.* at 10.
11. *Ibid.* at 5-9.
12. *Ibid.*
13. Dara Lind, “The US has made migrants at the border wait months to apply for asylum. Now the dam is breaking,” *Vox*, November 28, 2018, <https://www.vox.com/2018/11/28/18089048/border-asylum-trump-metering-legally-ports> (“Metering started up again in September, with at least one week where no one was allowed to enter the port.”); Elliot Spagat, et al., “For thousands of asylum seekers, all they can do is wait,” *Associated Press*, May 9, 2019, <https://www.apnews.com/ed788f5b4269407381d79e588b6c1dc2> (“Some days, no one gets in”).
14. American Immigration Council, “The ‘Migrant Protection Protocols,’” January 22, 2021, <https://www.americanimmigrationcouncil.org/research/migrant-protection-protocols>.
15. Department of Homeland Security Office of Inspector General, “CBP Has Taken Steps to Limit Processing of Undocumented Aliens at Ports of Entry,” October 27, 2020, <https://www.oig.dhs.gov/sites/default/files/assets/2020-10/OIG-21-02-Oct20.pdf>.
16. *Ibid.* at 6.
17. *Ibid.* at 9.
18. Strauss Center, “Metering Update, November 2019” (University of Texas, Austin, November 2019), [https://usmex.ucsd.edu/files/metering-update\\_nov-2019.pdf](https://usmex.ucsd.edu/files/metering-update_nov-2019.pdf).
19. *Ibid.*, 5-14.
20. Molly Hennessy-Fiske & Wendy Frye, “Mexican asylum seekers at multiple border crossings grow frustrated with waiting,” *Los Angeles Times*, Sept. 30, 2019, <https://www.latimes.com/world-nation/story/2019-09-30/u-s-customs-blocking-mexican-asylum-seekers-at-multiple-border-crossings>.
21. *Ibid.*
22. Department of Homeland Security, Office of Inspector General, *Special Review – Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy* (Washington, DC: September 2018), 6-7, <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-84-Sep18.pdf>; Department of Homeland Security Office of Inspector General, “CBP Has Taken Steps to Limit Processing of Undocumented Aliens at Ports of Entry,” October 27, 2020, <https://www.oig.dhs.gov/sites/default/files/assets/2020-10/OIG-21-02-Oct20.pdf>.
23. Centers for Disease Control and Prevention, Department of Health and Human Services, “Notice of Order Under Sections 362 and 365 of the Public Health Service Act Suspending Introduction of Certain Persons From Countries Where a Communicable Disease Exists,” 85 Fed. Reg. 17,060 (March 26, 2020), <https://www.federalregister.gov/documents/2020/03/26/2020-06327/notice-of-order-under-sections-362-and-365-of-the-public-health-service-act-suspending-introduction>.
24. *Ibid.*

25. James Bandler, Patricia Callahan, Sebastian Rotella, and Kirsten Berg, "Inside the Fall of the CDC," *ProPublica*, October 15, 2020, <https://www.propublica.org/article/inside-the-fall-of-the-cdc>.
26. Dara Lind, "Leaked Border Patrol Memo Tells Agents to Send Migrants Back Immediately — Ignoring Asylum Law," *ProPublica*, April 2, 2020, <https://www.propublica.org/article/leaked-border-patrol-memo-tells-agents-to-send-migrants-back-immediately-ignoring-asylum-law>.
27. Stephanie Leutert and Savitri Arvey, *Metering Update: November 2020* (Austin, TX: University of Texas at Austin, Strauss Center for International Security and Law, November 2020), [https://www.strausscenter.org/wp-content/uploads/MeteringUpdate\\_2001123-1.pdf](https://www.strausscenter.org/wp-content/uploads/MeteringUpdate_2001123-1.pdf).
28. Ibid.
29. Camilo Montoya-Galvez, "Biden retains Trump's border rules for now, with migrants stuck in Mexico or facing expulsion," *CBS News*, February 1, 2021, <https://www.cbsnews.com/news/biden-immigration-trump-border-policies>.