



Submission to the Office of the High Commissioner for Human Rights

Addressing promoting human rights and the Sustainable Development Goals through transparent, accountable and efficient public service delivery

Center for Gender & Refugee Studies
University of California College of the Law, San Francisco

October 27, 2023

We are grateful for the [call for input](#) opportunity to inform your report on the role of public service delivery in the promotion and protection of human rights and in the achievement of the Sustainable Development Goals, including in relation to the protection of persons in vulnerable situations, which is to be presented to the 56th Session of the Human Rights Council.

In March 2023, the Center for Gender & Refugee Studies, together with the University of California College of the Law, San Francisco's Haiti Justice Partnership, Haitian Bridge Alliance, and the École Supérieure Catholique de Droit de Jérémie, conducted on-the-ground research at the U. S.-Mexico border and prepared the linked and attached report "[Making a Mockery of Asylum: The Proposed Asylum Ban, Relying on the CBP One App for Access to Ports of Entry, Will Separate Families and Deny Protection.](#)" The report provides extensive analysis to answer several questions presented in the call for input, as well as additional resources. We hope this research will be of interest and use. This submission highlights the main challenges of the U.S. Customs and Border Protection (CBP) One Mobile Application ("CBP One"), which precludes asylum seekers from exercising their right under

international and U.S. law to apply for asylum at the United States border with Mexico.

1. What are the main challenges identified in your country/region in relation to public service delivery?

In the United States, individuals fleeing persecution have the right to seek asylum at the U.S.-Mexico border at or between official ports of entry. This right extends to all, regardless of their immigration status, including those without proper entry documentation. In accordance with both international law and U.S. law, there is no prerequisite for a prior appointment to assert this claim.

However, starting May 11, 2023 the United States implemented a new rule entitled [Circumvention of Lawful Pathways, 88 FR 11704](#) that restricts applying for asylum. Under this rule, individuals are precluded from seeking asylum at the U.S.-Mexico border if they have traveled through another country and failed to apply for asylum there and receive a denial. While there are a few exceptions to this rule, asylum seekers can otherwise still apply if they have a pre-scheduled appointment through a newly released CBP One smartphone app. However, the implementation of this app has raised numerous significant issues and challenges that hinder individuals' ability to pursue asylum in a just and equitable manner with efficient public service. It is important to note that asylum seekers who do not make an appointment with the CBP One app, and who do not meet one of the other extremely narrow exceptions, are presumed to be ineligible for asylum and must therefore meet a higher and more rigorous legal standard to receive protection.

First, the requirement to schedule an appointment through the app assumes that asylum seekers possess a well-functioning smartphone with the capability to charge it, have access to high-speed data, can comprehend the instructions provided in the app, possess a degree of technological literacy, and have the ability to read. Regrettably, this disproportionately affects vulnerable populations, such as the elderly and illiterate individuals, leaving them unable to access the right to seek asylum on their own.

Second, the CBP One app offers limited language accessibility, being available only in English, Spanish, Haitian Creole, Portuguese, and Russian. Furthermore, the Haitian Creole version, which was unavailable for several weeks, erroneously indicates that it is also available in "French." Members of our research team observed that this is not the case, and while there may be some overlapping words between these languages, they are distinctly different and not at all mutually intelligible.

Third, nearly everyone using the app has encountered technical glitches at various stages of the application process. One of the most common issues is related to taking a photo while selecting a date on the calendar. The photo confirmation process consumes a significant amount of time, often leading to all available calendar slots being taken by the time it is completed. This issue is particularly challenging for families, as multiple family members necessitate multiple individual photos. Each family member over the age of five must submit a photo. Additionally, the CBP One app has been found to be ineffective in consistently and accurately distinguishing individuals with darker skin tones. Furthermore, the app is plagued by numerous software problems that result in freezing, blocked functions, and difficulties in adding family members to user profiles. These issues persist even after asylum seekers have attempted to reinstall, update the app, or remove other applications from their smartphones.

Fourth, even attempting to schedule an appointment through the CBP One app proves inaccessible to many asylum seekers. The app appears to function more effectively for individuals with newer and higher-end smartphones and reliable internet connections, thereby creating a system that privileges those with greater financial resources. Some interviewees reported having spent at least \$500 on their smartphones to meet these tacit requirements and only then found success scheduling an appointment.

For asylum seekers, the app's inadequacies represent not only a frustrating and persistent obstacle but a potentially life-threatening barrier to safety. As a direct result of these problems, many individuals find themselves unable to apply for asylum, remaining stranded in situations of grave danger in northern Mexico. Trapped without support and subject to such harms as death, kidnapping, family separation, and sexual assault, asylum seekers find themselves again living in constant fear. This situation deteriorates their physical and mental well-being and offends the principles of humanitarian protection and international refugee and human rights law.

The application process for asylum seekers should prioritize accessibility, fairness, and the protection of vulnerable individuals, in accordance with international human rights and refugee protection standards.

2. What are the examples of good practices and approaches taken to overcoming identified challenges to the provision of public services?

In the face of seemingly ubiquitous reports of persistent technical issues, U.S. CBP gradually began to implement some improvements to the app. The agency incorporated two additional languages, Portuguese and Russian, alongside English, Spanish and Haitian Creole. When the app was first introduced, the extremely limited appointments were made available to asylum seekers on a first-come, first served basis early each morning. That is, appointments were released every day in one batch, forcing individuals to wake and attempt to secure an appointment within minutes of opening. Aside from the anxiety of waking as early as possible each day to compete for a fleeting appointment slot, this approach further compounded technical issues as the system would get quickly overwhelmed by the high number of individuals attempting to secure an appointment at the same time. In response to this challenge, CBP implemented a two-step request process. Individuals can “request appointments at any point during a full 23-hour period each day and, if allocated an appointment, will have another 23-hour period to

confirm that appointment.”¹ The system also attempts to prioritize individuals who waited the longest.² CBP also increased the number of appointments per day to 1,450³ and transitioned to scheduling appointments from 14 days to 21 days in advance supposedly to allow more time for preparation (but, notably, this also prolongs the time that individuals remain in danger in Mexico).⁴

Despite these meager improvements, asylum seekers continue to encounter obstacles in their efforts to secure appointments through the CBP One app, which is itself a barrier to accessing their right to seek asylum. These persistent issues include technical glitches, extensive wait times that can reach up to eight months, insufficient language accessibility, and the resultant panoply of grave harms endemic to ignoring protection obligations and leaving people stranded at what has become the deadliest land border on earth. Such harms include family separation, rape, torture, kidnapping, and even loss of life.⁵

3. What are the barriers that hinder individuals from accessing public services to which they are entitled? How can non-take-up be reduced?

The CBP One app is itself a barrier to the right to seek asylum even if operating perfectly. The government’s new policy of turning back individuals without appointments violates U.S. and international law, which prohibit the return of refugees to any territory where they may face persecution or torture. Asylum seekers who have been denied access to the U.S. asylum system and denied basic

¹ U.S. Customs and Border Protection, *CBP Makes Changes to the CBP One™ App* (May 5, 2023) available at <https://www.cbp.gov/newsroom/national-media-release/cbp-makes-changes-cbp-one-app>.

² *Id.*

³ U.S. Customs and Border Protection, *CBP Releases July Monthly Update* (August 18, 2023) available at <https://www.cbp.gov/newsroom/national-media-release/cbp-releases-july-2023-monthly-update>.

⁴ U.S. Customs and Border Protection, *CBP Releases August Monthly Update* (September 22, 2023) available at <https://www.cbp.gov/newsroom/national-media-release/cbp-releases-august-2023-monthly-update>.

⁵ NETWORK Lobby for Catholic Social Justice, *CBP One: The Latest Roadblock to Asylum in the United States* (August 31, 2023) available at <https://networklobby.org/news/83123-cbponereport/>.

due process rights are left stranded in border cities in Mexico where violence against migrants is on the rise, in clear contravention of protection norms.⁶

Furthermore, in addition to its chaotic initial rollout, the app remains riddled with glitches and largely inaccessible to most vulnerable and marginalized individuals seeking safety. For instance, due to “geofencing,” appointments can only be made on the app while the asylum seeker is physically present in areas of Mexico where violence against migrants is worsening—namely, within a limited proximity of the U.S.-Mexico border. As many asylum seekers are left desperately attempting to secure an elusive CBP One appointment for months on end, disturbing reports have emerged of Mexican officials, in apparent coordination with U.S. CBP, preventing asylum seekers without appointments from even reaching the border to request protection.⁷

Additionally—assuming the app is offered in a person’s language and that they are literate—the app is not user friendly and instructions on how to navigate the oddities and complexities of the app are insufficient or often non-existent. One option, for example, is the ability to schedule a single appointment for an entire family. However, to utilize this feature, a family member must ensure that all family members are included in their profile. Unfortunately, CBP One does not provide clear instructions on how to do this, leading to situations where only one family member manages to secure an appointment, leaving the rest unable to cross the border. This widespread issue forces families into unimaginably difficult decisions, including the painful “choice” of whether to separate their family and leave someone behind or altogether abandon the appointment they had likely been attempting to secure for an inordinate period of time. Securing an appointment is an arduous process that can take months of desperation and persistent attempts,

⁶ Human Rights First, *Asylum Ban Inflicts Mounting Harm* (October 12, 2023) available at <https://humanrightsfirst.org/library/inhumane-and-counterproductive-asylum-ban-inflicts-mounting-harm/>.

⁷ Center for Gender & Refugee Studies, *Immigrant Rights Groups Sue for Information on Asylum Turnbacks* (October 17, 2023) available at <https://cgrs.uclawsf.edu/news/immigrant-rights-groups-sue-information-asylum-turnbacks>.

early in the morning, to secure an appointment to seek safety. Such circumstances offer no conscionable option for families fleeing harm. On the one hand, separating a child from their parent can be a profoundly traumatic experience with lasting harmful effects.⁸ On the other hand, family members stranded at the northern border in Mexico remain in dire and potentially life-threatening circumstances. Families are therefore forced to seriously consider sending young children unattended across the border for safety.

Beyond navigating the mechanics of the app, this effective ban on the right to seek asylum catches many asylum seekers by surprise. Many people approach the border without CBP One appointments simply because they have never heard of the app or the illegal policies implemented by U.S. government to curtail rights.⁹

We have challenged the U.S. government publicly and in court to act promptly to process any individual who seeks asylum at the U.S.-Mexico border regardless of whether they have an advance appointment as prescribed by domestic and international law. This is vital not only to uphold international obligations and humanitarian principles, but to save lives and ensure asylum seekers are not denied the right to pursue safety and protection.

4. What are some challenges and good practices of public services delivery specific to persons or groups in situations of vulnerability and marginalization?

Virtually every person who is forced to use the CBP One app is in a situation of acute vulnerability and marginalization by virtue of their having to seek asylum at all. That notwithstanding, as described above, the inadequacies, inefficiencies,

⁸ Montoya-Galvez, *U.S. border agents are separating migrant children from their parents to avoid overcrowding, inspector finds*, CBS News (September 16, 2023) available at <https://www.cbsnews.com/news/migrant-children-separated-parents-u-s-border-agents-overcrowding/>.

⁹ Adam Isaacson, *Weekly U.S.-Mexico Border Update: Migration Rises, Darien Gap data, House Republican's Budget*, WOLA (September 22, 2023) available at <https://www.wola.org/2023/09/weekly-u-s-mexico-border-update-migration-rises-darien-gap-data-house-republicans-budget/>.

technological failures, and restrictive implementation do disproportionately affect some groups. Perhaps unsurprisingly, such challenges compound along familiar lines: socio-economic status, race, ethnicity, class, gender, indigeneity, literacy, age, and beyond. Challenges due to the shortcomings of the CBP One app, such as technical glitches, protracted wait times, frustrating scheduling processes, and deficient language access—along with broader issues at the U.S.-Mexico border fomented and sustained by restrictive and inhumane U.S. policies—have created particularly difficult circumstances for marginalized and vulnerable asylum seekers. As mentioned above, families and parents are often forced to decide whether to split up their family and leave someone behind in Mexico or altogether forego their long-awaited appointment. Sadly, even if a family manages to successfully make their appointment in the procedurally correct manner, they still may find themselves subjected to family separation policies imposed by CBP.¹⁰ This separation can have long-lasting psychological and emotional consequences for both parents and children alike.

The situation is particularly critical as concerns the safety and well-being of women and children. Women face an increased risk of gender-based violence on their journey to seek asylum and at the U.S.-Mexico border. Travelling through extremely dangerous territories, such as the Darien Gap, women and children are often subjected to kidnapping, sexual assault, and other forms of physical and emotional violence. A lack of security and protection in such areas exacerbates these risks, leaving individuals vulnerable to exploitation by criminal organizations and human traffickers. Women and children often fall prey to traffickers, who promise safe passage into the United States but instead subject them to forced labor, sexual exploitation, or other forms of modern-day slavery. By turning them back to linger at the border, CBP leaves women and children subject to ongoing violence—indeed often the very same forms of violence they fled from in the first place.

¹⁰ Montoya-Galvez, *U.S. border agents are separating migrant children from their parents to avoid overcrowding, inspector finds*, CBS News (September 16, 2023) available at <https://www.cbsnews.com/news/migrant-children-separated-parents-u-s-border-agents-overcrowding/>.

Pregnant women and people in need of medical attention are especially vulnerable. Remaining stranded at the border for months without adequate support is extremely detrimental to their health, both physical and mental. Lack of access to medical care, uncertainty about asylum status, limited access to nutrition and other basic needs, and exposure to violence intensify these already immense challenges.

Indigenous peoples often encounter the full gamut of deficiencies when attempting to use the CBP One app. As the app is available only in five languages, indigenous asylum seekers must happen to speak one of the available languages to some degree or rely on and trust others for help with interpretation. It is therefore difficult to ensure adequate comprehension of critical information, let alone navigate an onerous system even for those who are literate in an offered language. This leads to potential misunderstandings and miscommunication. Furthermore, literacy rates among Indigenous groups are notoriously low¹¹ which all but precludes access to the right to seek asylum when forced to do so via app. In addition, the extended waiting periods for appointments expose Indigenous asylum seekers to targeted persecution and violence. Indigenous Mexican asylum seekers, for example, are unable even to exit the very country in which the government is failing to protect them from persecution predicated on land disputes, resource extraction, ethnic conflicts, or otherwise.

Conclusion

The problems caused by the CBP One app and the issues at the U.S.-Mexico border are extremely concerning for vulnerable asylum seekers. Parents and children subjected to policies of family separation highlight the serious problems with the current system and the acute threat to life it poses. Women, children, people in need of medical attention, and Indigenous peoples further face intersectional

¹¹ Perez, Alice, *Women's health in Central America: The complexity of issues and the need to focus on indigenous healthcare*, Current Women's Health Reviews (January 2013) available at https://www.researchgate.net/publication/255909874_Women's_health_in_Central_America_The_complexity_of_issues_and_the_need_to_focus_on_indigenous_healthcare.

forms of violence and marginalization simply by virtue of being forced to seek asylum via an app. The myriad inadequacies and failures of the CBP One app not only preclude vulnerable asylum seekers from accessing the right to protection but actually compound the threat of their situation, subjecting them to additional hardship and danger.

We appreciate your consideration of this submission in response to the call for input. Should you have any questions, please contact our director of policy and advocacy, Kate Jastram, at jastramkate@uclawsf.edu.