

LITIGATION

Challenging Customs and Border Protection's Unlawful Practice of Turning Away Asylum Seekers

Al Otro Lado, Inc. v. Wolf, No. 3:17-cv-02366-BAS-KSC (S.D. Cal.)

[Border Enforcement](#) [Asylum](#)

This case challenges the government's policy – the Turnback Policy – of turning away asylum seekers at ports of entry (POEs) across the U.S.-Mexico border since 2016.

The plaintiffs in the case are Al Otro Lado, a non-profit legal services organization that serves indigent deportees, migrants and refugees in Los Angeles and Tijuana, along with individual, courageous asylum seekers who experienced CBP's unlawful conduct firsthand. Their experiences demonstrate that CBP has used a variety of tactics – including misrepresentation, threats and intimidation, verbal abuse and physical force, metering, and coercion—to deny bona fide asylum seekers the opportunity to pursue their claims.

In April 2018, the government issued guidance formalizing and focusing the Turnback Policy through a policy of metering. Under the metering policy, CBP officials assert a lack of capacity and refuse to inspect and process asylum seekers, forcing them to wait in Mexico.

The complaint alleges that CBP's refusal to allow asylum seekers access to the asylum process violates the Immigration and Nationality Act (INA), the Administrative Procedure Act (APA), the Due Process Clause of the Fifth Amendment, and the doctrine of *non-refoulement* under international law.

Plaintiffs are represented by the American Immigration Council, the Southern Poverty Law Center, the Center for Constitutional Rights, and Mayer Brown LLP.

On August 6, 2020, the district court granted Plaintiffs' motion for class certification, allowing the case to proceed on behalf of all asylum seekers along the U.S.-Mexico border who were or will be prevented from accessing the asylum process at ports of entry as a result of the government's Turnback Policy. Specifically, the court certified a class consisting of "all noncitizens who seek or will seek to access the U.S. asylum process by presenting themselves at a Class A [POE] on the U.S.-Mexico border, and were or will be denied access to the U.S. asylum process by or at the instruction of [CBP] officials on or after January 1, 2016." The court also certified a subclass consisting of "all noncitizens who were or will be denied access to the U.S. asylum process at a Class A POE on the U.S.-Mexico border as a result of Defendants' metering policy on or after January 1, 2016."

Preliminary Injunction Addressing the Intersection of Metering and the Application of the Asylum Transit Ban

While this case has been pending, and asylum seekers remain stranded in Mexico under the Turnback Policy, the Trump administration issued an interim final rule (the "Asylum Ban") barring individuals from asylum eligibility in the United States if they transited through a third country and did not seek protection there first. On September 26, 2019, Plaintiffs filed a motion for preliminary injunction and a motion seeking provisional class certification asking the district court to keep Defendants from applying the Asylum Ban to provisional class members, in order to maintain their eligibility for asylum until the court rules on the legality of the Trump administration's metering policy in this case.

On November 19, 2019, the court provisionally certified a class consisting of "all non-Mexican asylum seekers who were unable to make a direct asylum claim at a U.S. [port of entry] before July 16, 2019 because of the U.S. Government's metering policy, and who continue to seek access to the U.S. asylum process." The court also blocked Defendants from applying the Asylum Ban to members of the provisional class and ordered that Defendants apply pre-Asylum Ban practices for processing the asylum applications of members of the class.

On December 4, 2019, Defendants appealed the district court's order to the Ninth Circuit Court of Appeals. On March 5, 2020, the Ninth Circuit denied Defendants' motion for a stay of the order until the appellate court decides the merits of the appeal. In doing so, the Ninth Circuit lifted its previously imposed emergency temporary stay of the order. At this time, the district court's order is in effect.

Class counsel prepared a Frequently Asked Questions resource to address common questions about the court's order, class membership, and implementation. The FAQ resource will be updated with developments and is available [here](#).

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