



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

March 27, 2023

Since passage of the 1980 Refugee Act, individuals fleeing persecution and torture have been legally authorized to seek asylum protection at the U.S.-Mexico border at or between official ports of entry (POEs). Recognizing that asylum seekers often leave their homes in haste with nothing but the proverbial shirt on their back, U.S. domestic law—in conformity with treaty obligations—does not penalize individuals for not having proper entry documents. On this point, the asylum statute is clear: any noncitizen “who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival...), irrespective of [their] status, may apply for asylum.” 8 U.S.C. § 1158(a)(1). The Refugee Convention, to which U.S. law conforms, is equally unequivocal, prohibiting states from imposing penalties on refugees for their manner of entry. Article 31(1). Moreover, U.S. law does not require asylum seekers to make an advanced appointment to make their claim for protection. Nor does it require they apply for protection in a transit country without ensuring that country is capable of providing safe haven.

For the last three years, starting with the Trump administration and continuing with President Biden, the U.S.-Mexico border has been closed to asylum seekers under the pretext of the COVID-19 pandemic (through a policy known as Title 42). During its tenure, Title 42 has caused untold harms and death, forcing hundreds of thousands of asylum seekers to wait at the border for months and even years in vulnerable and [violent conditions](#), only to expel most of them back to the very dangers they escaped to countries such as [Haiti](#) and [Cameroon](#) with no fear screening whatsoever. A series of other draconian measures further attempted to deter individuals from exercising their legal right to seek asylum even prior to Title 42. While these policies may have reduced the numbers of individuals seeking protection at the U.S.-Mexico border, it has not resolved the root causes of refugee flight—instead only offshoring the suffering to our neighbors to the south.

With Title 42’s impending end, scheduled for [May 11, 2023](#), the Biden administration recently announced a proposed rule to restrict asylum. Misleadingly called the [Circumvention of Lawful Pathways](#) rule, the proposed rule makes a mockery of asylum by all but eliminating critical pathways to safety in the United States. If adopted in its current form, the rule would

bar individuals and families from seeking asylum at the U.S.-Mexico border if they traveled through Mexico or another country and did not apply for, and receive a denial of, asylum there. This restriction is predicated neither on the actual safety of asylum seekers nor on those countries' capacity to hear asylum seekers' claims. It is, rather, a thinly veiled attempt at total deterrence, and yet another abrogation of the United States' duty to those fleeing harm.

One of the only exceptions to the ban—which has nothing to do with the individual's claim for protection—is having made an appointment on a newly released smartphone app, [CBP One](#). But, as described herein, making an appointment on CBP One sits out of reach for most asylum seekers languishing in northern Mexico border towns. Beyond requiring access to a smartphone and adequate Wi-Fi or cell service, the app has been riddled with tech glitches since its inception. The administration has done little to nothing to ensure that the affected communities can navigate the app; the factsheet on the Department of Homeland Security's website is wholly inadequate. Families have been forced to separate to obtain one of a very limited number of appointment slots. And many suffer harms in Mexico while they wait.

The information in this report was compiled from interviews conducted by students from the University of California College of the Law, San Francisco's Haiti Justice Partnership, in collaboration with attorneys and advocates from the Center for Gender & Refugee Studies (CGRS), the Haitian Bridge Alliance (HBA), and the École Supérieure Catholique de Droit de Jérémie (ESCDROJ). Over the course of four days—March 4-5 and 11-12, 2023—the delegation spoke with 194 individuals and family units living in shelters or other informal housing arrangements in Tijuana regarding their experiences using the app as well as protections (un)available to them in Mexico and other transit countries en route to the United States.

All names have been changed in this report to protect the identity of the interviewees.

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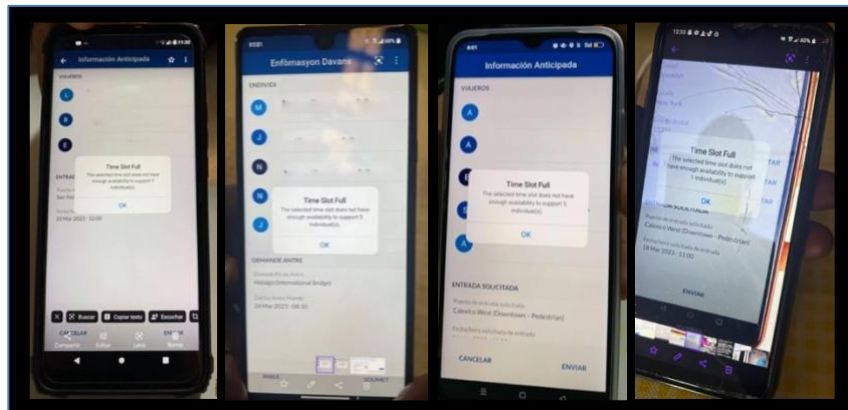
I. The CBP One App is Too Flawed to Fix

A. Limited Appointments Cause Stress and Confusion

In the proposed rule, the administration cynically claims that asylum seekers can avoid the ban by adhering to “legal pathways” by taking advantage of a special parole program for [certain nationalities](#), or by making an appointment on the CBP One app. Using this language, the administration distorts the law, implying it is unlawful to seek asylum by approaching a POE without proper documents or entering outside a POE. Neither international nor domestic law imposes such conditions on seeking protection; and these so-called “legal pathways” are unavailable to the vast majority of asylum seekers, as documented throughout this report. Most of those interviewed had been attempting to schedule an appointment for one month or longer since registering on the app.

First, many individuals do not know about or qualify for the parole program, because they are not nationals of a beneficiary country or they do not have a valid passport or sponsor in the United States. Or even if they might qualify, they cannot wait safely in Mexico for their parole applications to be adjudicated.

And second, the focus of this report, successfully scheduling an appointment on CBP One in advance entails complying with a litany of insurmountable requirements. Asylum seekers must have a smartphone; they must have high-speed data access; they must be able to read and understand the language the app is offered in (indeed, illiterate and elderly asylum seekers are unable to access protection alone); and they must also possess a degree of tech literacy to navigate a poorly designed app by virtually any metric. Perhaps most importantly, in addition to the above, asylum seekers require a stroke of luck to secure one of the extremely limited appointments that by all accounts go within minutes of opening each morning. The delegation spoke with hundreds of people over the course of four days, very few of whom were able to secure an appointment.



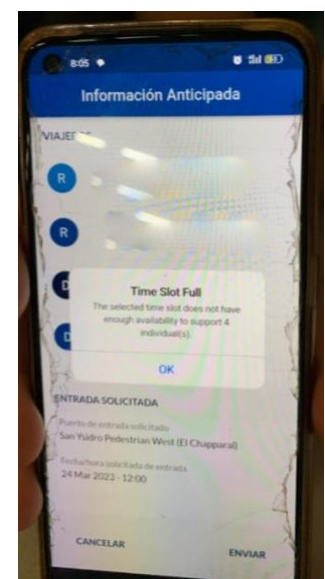
The Perez Family: A family of four fled Cuba due to political persecution. The mother, *Ignacia*, was diagnosed with stage three cervical cancer while en route to the United States. The family successfully scheduled an appointment via the app, but was kidnapped in Mexico and held for one month, so missed the appointment. *Ignacia* was beaten and repeatedly raped while they were held. Their twin seven-year-olds are suffering from panic attacks and are having difficulty sleeping due to the trauma they have experienced. Despite daily attempts, they have been unable to successfully schedule again due to technical issues and the paucity of appointments. There is no mechanism for this family to notify the U.S. government of their circumstances to reschedule either within or outside the app. The family was recently forced to leave the shelter where they were staying due to capacity issues and was sleeping in the street until a non-profit offered to pay for a hotel room temporarily. Multiple doctors have told *Ignacia* that they cannot treat her in Mexico; the family is afraid she will die while waiting to seek asylum in the United States.

B. Families are Forced to Separate to Exercise Their Rights

The CBP One app offers a limited number of appointments for individuals each day, and when it first launched evidently even fewer that could accommodate families. So, many families interviewed made the difficult decision to separate, leaving spouses alone with children in Tijuana. Of the 157 families interviewed, at least 18 specifically reported that their families had separated because of the CBP One app (and many more were contemplating the same). For those that stayed behind in Tijuana, they expressed an overarching fear that they would never obtain an appointment and safely reunite with their families in the United States.

Many interviewees shared stories of initial confusion using the app. The CBP One app, for instance, failed to make clear that for an entire family to cross, all members must be included under one individual's profile. As such, if a parent obtained an appointment but did not include other family members, they would learn at the border that they could not cross together. Officers consistently told parents that they had the "option" of leaving their children behind, sending their children across the border unaccompanied, or attempting to get another appointment together.

Interviewed families shared frustration that they had been shut out of any opportunity to secure an appointment with all family members included in one profile. Often, family members could get one or two individual appointments, but never enough for their whole family. As



a result, many interviewees decided to separate out of desperation, sending some family members ahead, while their spouses stayed in Tijuana with their children.

For separated families, those who remained in Tijuana continue to face difficulty obtaining an appointment and feared for their safety. Even when families divided into smaller groups, interviewees shared that they still could not get appointments, despite trying at the early hours of every morning for over a month. Those families in Tijuana were considering sending their children ahead unaccompanied anyway to remove them from danger.

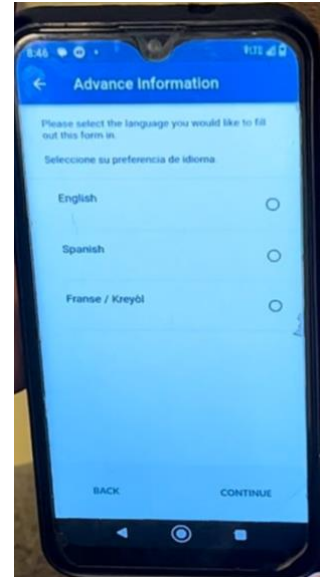
Here are stories of some of the families who separated to improve their chances of entry:

- The *Pierre* family from Haiti—one of the few able to successfully schedule an appointment—presented at the border with their appointment notice that did not list their three-year-old child. A border officer welcomed them with three unenviable options: send one parent through, forgo the appointment altogether, or leave the child behind in Mexico. The family had yet to reschedule after several weeks.
- *Louis* shared that his family, from Haiti, was unable to secure an appointment for himself, his wife, and his young daughter. While languishing in Tijuana, his wife's health deteriorated, and she desperately needed medical attention that was not available there. When they learned that it was easier to get appointments for individuals, they successfully secured an appointment for her. *Louis's* wife entered the United States but is currently alone in a hospital. *Louis* continues to try to get an appointment for himself and his daughter so that he can take care of his wife, but he has not been successful.
- *Emmanuel's* Haitian family was unable to get an appointment that accommodated his entire family through the app. Because his wife is pregnant, she was able to work with an organization to help her cross the border with one of their children while he stayed behind with their other child. *Emmanuel* successfully got an appointment, only learning at the border that he needed to have his child included on the app, so he had to relinquish the appointment.
- *Esther* was unable to get an appointment for herself, her husband, and their two children. Instead, her husband successfully obtained an appointment for himself and entered the United States. Now, *Esther*, from Haiti, is alone with her children in Tijuana. She is very concerned for her family's safety and worries that the program will end before she can reunite her family in the United States.

- *Angeline*, a Haitian woman, is at a shelter in Tijuana with her three-year-old autistic child. She and her husband decided to separate in the hopes it would be easier for her and the child to get an appointment for two instead of three. Her husband entered using CBP One and she has yet to be successful with the app.

C. Limited Language Access

The app is currently only available in English, Spanish, and Haitian Creole. Although the Haitian Creole version—which notably was not available for several weeks after the app first launched—indicates it is also in “French,” delegation members observed this is not the case and no French version exists. While certain words overlap between the languages, they are completely distinct.



Agnes fled Togo after her sisters died from complications as a result of female genital cutting and her uncle threatened her with the same fate. She never learned to read and write because patriarchal norms denied many girls an education. While making the treacherous journey through the notorious Darién Gap, she was sexually assaulted on multiple occasions. Some fellow travelers took her under their wing and helped her reach Tijuana where she is now renting a small room in a temporary housing complex with help from extended family in the United States. When researchers met Agnes, she had yet to download the CBP One app on her phone because she is illiterate. Since getting set up on the app, she has tried to schedule an appointment daily to no avail and continues to report confusion at the error messages she cannot read.

D. Individuals Face a Glitchy App

Whether individuals attempted to secure appointments alone or with their families, nearly all interviewees encountered problems with the app. From faulty facial recognition to constant glitches, CBP One is riddled with software issues that block individuals from attempting to get appointments on a daily basis.

1. Geolocation inaccuracies

At least one individual reported that the app would not schedule an appointment because they were not close enough to the border. However, they were in Tijuana at the time they tried to make the appointment.

2. Photo confirmation issues

To confirm a selected appointment, individuals must take a photo to secure their calendar slot. Because the CBP One app requires photo confirmation at the calendar stage, families struggle to take pictures of all family members within the short confirmation window. Not only is it challenging to get the app to accept photos of all family members, but families also reported waking their young children up as early as one o'clock in the morning to do so. By the time everyone had taken a photo, all of the calendar slots were taken.

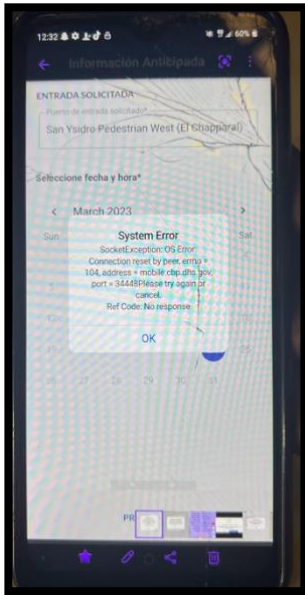
In addition to these difficulties, the app's facial recognition software often does not recognize dark skinned people. Many interviewees were unable to get past the photo confirmation stage because the app failed to recognize their faces. Individuals had to make multiple attempts to get the app to accept their photos, which frequently were never accepted. As a result of the delay, they would lose their opportunity to get an appointment for the day.

3. Freezing and other system errors

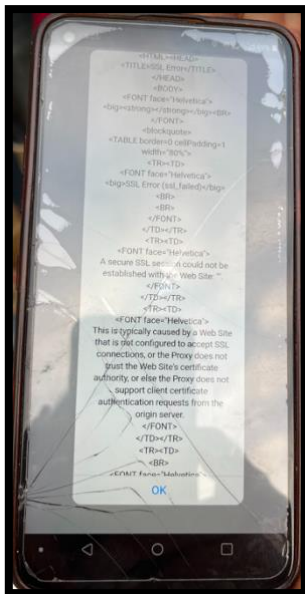
The CBP One app suffers from a variety of software issues that prevent individuals from using the app. Nearly all interviewees reported that the app freezes at various stages of the process, shutting them out during the short time period within which they can attempt to get an appointment before all the available slots are filled. In an attempt to circumvent the constant system errors they experienced, interviewees shared that they have uninstalled and reinstalled the app, updated the app, or removed all other apps from their phone aside from the CBP One app. Despite this, the software issues persist.



Some common issues encountered with CBP One included:



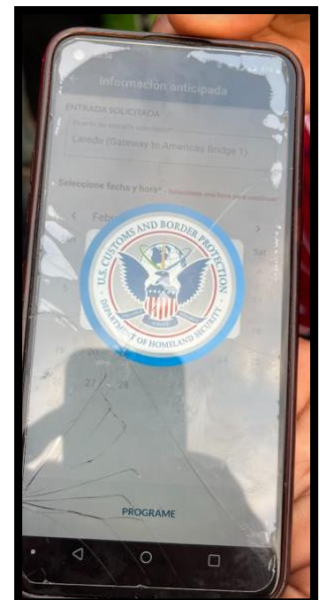
- The app froze just before an individual could take their photo. Typically, a spinning wheel appeared on the page, preventing them from progressing further.
- The app froze on the calendar slot page. A large CBP logo appeared on top of the calendar, preventing individuals from selecting the calendar date and continuing to use the app.
- The app froze entirely, without the CBP logo blocking the calendar, but individuals still could not progress to confirm an appointment.
- The app prevented families from adding their family members under one profile. Parents could add their own information, but the app would freeze or shut down after they did so, preventing them from adding their children and progressing further in the appointment process.



Overall, because pervasive system errors with the CBP One app were not resolved before launching, it fails to serve its stated purpose of enabling individuals at the border to effectively apply for daily appointments.

Moreover, the app seemed to work better for people with higher quality smartphones and strong internet connectivity. Several Haitian interviewees were using new phones when they finally received an appointment, and others had tried up to six different phones before they could secure an appointment. Some interviewees who obtained

appointments had spent upwards of \$500 on their phones, thus creating a system that privileges those with more resources, all but shutting out those who cannot afford a new phone or strong internet.



E. Mexican Asylum Seekers Have Little Hope of Escaping Danger

Mexican nationals will presumably not be subject to the proposed transit bar if adopted because they have not transited through a third country en route to the United States. In practice, however, it is unclear if they will have the ability to even present at a POE without a CBP One appointment even after Title 42 lifts. In the meantime, U.S. policy blatantly violates their right to seek asylum by requiring them to wait in the very country from which they are claiming persecution. Several individuals interviewed had incorrectly been told that the app was not available to Mexicans, and a great deal of confusion persists.

The delegation spoke with 86 Mexican individuals or families, each story more harrowing than the last. Here are just a few examples:

- *Esteban* and his wife and kids fled Michoacan because the cartel wanted *Esteban's* brother to work for them. When his brother refused, the cartel killed the brother, cut off his limbs, sent the body back to the family in a suitcase, and then burned down the family home. They have been waiting at the border since November 2022.
- *Malena* escaped Michoacan with her two-year-old daughter and father-in-law after cartels disappeared her husband and mother-in-law. They are hiding in a shelter attempting to secure a CBP One appointment.
- *Guadalupe* fled Guerrero several months ago after cartels kidnapped her son and threatened to kill her next. She had yet to even download the CBP One app when interviewed because she is living in a rented room without any means of community or basic support.
- *David* and *Yesenia* fled Michoacan after a criminal organization shot *David*, who had been working as a police officer. They have yet to be able to schedule an appointment; the shelter where they were staying is on the outskirts of Tijuana with weak cell service.
- *Jaime* was captured and beaten when he was unable to pay a cartel's extortion fee on his vegetable business. He fled Michoacan with his wife, *Alma*, and their seven-year-old daughter. *Alma* and their daughter have been threatened while staying at a shelter in Tijuana.

II. Asylum Seekers Have Not Been Able to Find Safety in Transit Countries

The proposed rule would create a “rebuttable presumption of asylum [ineligibility](#)” for individuals who do not seek and receive a denial of asylum in at least one country they pass through to reach the U.S.-Mexico border unless they meet the requirements of the administration's new parole programs, manage to secure a CBP One appointment, or meet one of three extremely narrow exceptions. DHS insists that the rule promotes “lawful, safe, and orderly pathways” for those wishing to enter the United States. However, it will put individuals and families in continued danger by ignoring the safety of the countries they pass through and their capacity to process asylum claims.

Only two individuals interviewed had received asylum denials—one in French Guyana and the other in Mexico. The experience of *Ramón*, for instance, highlights the difficulty of seeking asylum in Mexico. He left Haiti after being attacked for participating in anti-corruption protests. In 2022, he began the lengthy process of applying for asylum in Mexico. Despite the Mexican Commission for Refugee Assistance (COMAR) policy of reaching decisions within [45 to 100 business days](#), a surge in applicants has overwhelmed the agency. In 2021, it received more than 130,000 applications but [only processed 38,005](#). With [limited staff](#) to handle this growing demand, the situation has become increasingly challenging. *Ramón* has now been waiting more than four months for a decision on his asylum application and, struggling to find a job, he faces destitution. People reported facing similar insecurity accessing protection in other transit countries.

In sharp contrast to the Biden administration’s message of safety for immigrants, Mexico has seen an [alarming surge](#) in violent crime rates. In 2021, the homicide rate rose to [28 homicides per 100,000](#), and [over 6,000](#) immigrants were violently attacked. Unfortunately, asylum seekers in Mexico [are often targeted](#) and subjected to discrimination by drug cartels and other criminal actors, as well as by Mexican authorities, including the police and migration officials. Not surprisingly, *Adelina's* family (from Honduras) was kidnapped in Tapachula, and the police took all of her money, while *Mayra* (from Guatemala) was subjected to unwanted touching by Mexican authorities. Despite feeling scared and unsafe, both women must continue waiting in Mexico while trying to obtain one of the limited appointments through the CBP One app.

Roseline was a journalist in Haiti with a radio show dedicated to denouncing the rampant crime throughout the country. Threatened with her life, she was forced to flee. Educated, with mastery in three languages, *Roseline* tried to apply for protection in Chile but was overwhelmed by the confusing process and eventually gave up. She came to Mexico with someone who she thought was her friend, but he attacked her and tried to rape her, so she had to flee again. She and her three-year-old son were homeless at the time of interview with nowhere to go (though they were secured a place at a local shelter later that day). *Roseline* had attempted to secure a CBP One appointment every day. She once received an appointment in Mexicali, but border officials turned her away for unclear reasons having to do with the CBP One app.

The following accounts further illustrate the dangers for asylum seekers in Mexico and other transit countries and why applying for asylum in those countries is simply not an option for most:

- The *Perez* family, mentioned above, like many others is too afraid to apply or wait for their asylum claim to be adjudicated in Mexico. A politically connected cartel kidnapped the family in southern Mexico, repeatedly raped the mother, and—before releasing them on a ransom—threatened to kill them should they report anything to the authorities. They are now living in hiding in Tijuana awaiting reunification with family in the United States.
- The *Morales* family, a mother and her thirteen-year-old son, continue to feel unsafe in Mexico after fleeing Honduras. The mother ran a market and owned her own home and car. When she refused the cartel's demands that her son sell drugs, the cartel attacked her, destroyed her vehicle, and tried to kidnap her son. After Honduran authorities refused to get involved, the family fled. The mother did not apply for protection in Guatemala because the same cartel was also active there. Shortly after arriving in Mexico, she received an anonymous call: an unidentified man told her he knew that she and her son were in Mexico. The family is living in isolation in a Tijuana shelter out of fear.
- The *Cortez* family, a mother and three young sons, fled El Salvador when the mother was unable to pay a weekly extortion fee to the cartel from her food and vegetable business. The cartel threatened to kill her or kidnap one of her sons. The mother is scared to stay in Mexico for fear of being found by members of the same cartel.

- *Sandra* fled Honduras with her daughter after her husband was murdered. In Mexico, the family was kidnapped and held for fifteen days during which time the kidnappers subjected her to a brutal beating.

III. The U.S. Should Withdraw the Proposed Rule and Restore Asylum

The stories contained in this report are not unique. Several [news outlets](#) and community based [organizations](#) have reported on these same or similar issues at other locations across the southwest border since release of the CBP One app on January 12, 2023. Members of Congress have [called](#) on the administration to resolve the issues. The dangers in transit countries facing asylum seekers who reach the United States have also been [well documented](#).

The proposed rule betrays the promises the Biden administration made in one of its first [Executive Orders](#) on asylum and in the 2022 [Los Angeles Declaration](#) on Migration and Protection to ensure protections for those in need. The rule will block from asylum individuals who undoubtedly face persecution, torture, and even death. The administration should withdraw the rule, end Title 42, and restore access to asylum at the U.S.-Mexico border.

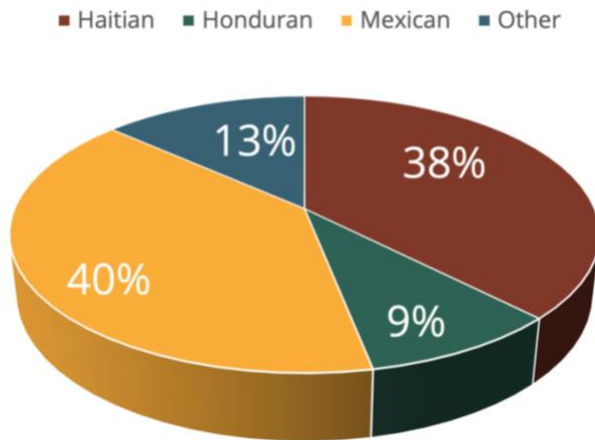
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IV. Appendix

Summary of Interviews with Asylum Seekers in Tijuana, Mexico from March 4-5 and 11-12, 2023

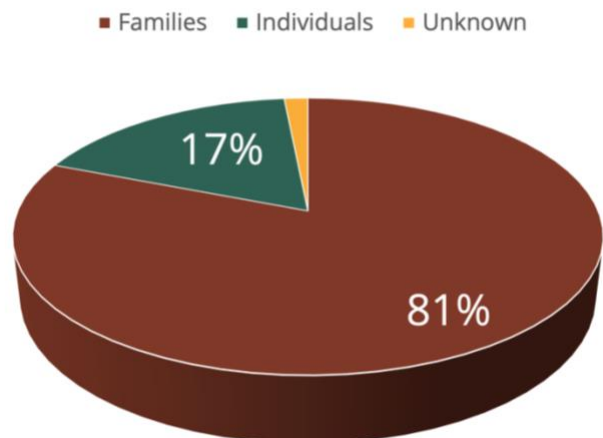
Interviewees by Nationality



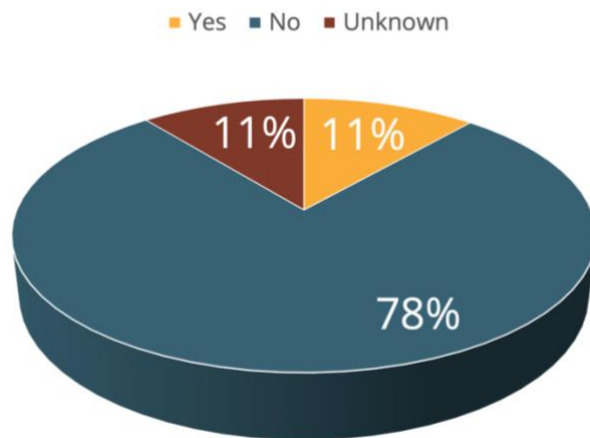
Of the 194 interviews conducted in Tijuana, Mexico, the vast majority of interviewees were either Haitian or Mexican. As shown below, these two groups comprised nearly 80% of all asylum seekers interviewed. The delegation also spoke with a significant number of Hondurans over the four days during which interviews were conducted.

As described above, families are especially impacted by the ongoing volatility and inhumanity of U.S. border policy. The vast majority—at least 81%—of those interviewed were travelling as a family, seeking safety in the United States. While all asylum seekers are adversely impacted by the Biden’s administration’s existing policies and proposed rule, families and parents of young children remain particularly vulnerable—forced to make choices that no parent should have to make.

Families Seeking Asylum



Families Forced to Separate



Many of the families interviewed experienced the “choice” of splitting their family apart in order to increase their chances of obtaining one of the scarce CBP One appointments. At least 11% of those with whom the delegation spoke made the difficult choice to separate and send some family member(s) into the United States while the other remained in Mexico.

Of the 194 interviews conducted, very few had successfully scheduled an upcoming appointment on CBP One. At the time of interview, 97% of families and 92% of individuals had no forthcoming appointment. Of the few who had successfully scheduled an appointment, several noted that their luck in successfully scheduling an appointment only came when they bought a new smart phone.

Upcoming CBP One Appointments

