

## CBP Turning Away Asylum Seekers At Mexico Border, Suit Says

By **Nicole Narea**

*Law360, New York (July 12, 2017, 9:17 PM EDT)* -- Asylum seekers and advocacy groups launched a proposed class action in California federal court Wednesday against U.S. Customs and Border Protection, identifying officials' allegedly widespread practice of refusing entry to individuals presenting themselves as asylum seekers at ports of entry along the U.S.-Mexico border in violation of U.S. and international human rights law.

Having observed a proliferation of such practices since President Donald Trump's election, the advocates assert in their complaint that CBP denied immigrants their right to due process, as well as violated the Immigration and Nationality Act, federal administrative procedure statute and international law preventing states from forcing refugees to return to countries where they face reasonable fear of persecution. They asked the court to grant injunctive relief compelling CBP to allow immigrants to enter the U.S. in order to pursue their asylum claims.

"Despite persistent advocacy, and despite [immigrants'] desperate need to seek asylum in the United States, CBP shows no signs of abating its illegal practice," the complaint states. "Absent the court's intervention, CBP's unlawful conduct will continue to imperil the lives and safety of numerous vulnerable asylum seekers."

According to advocacy group Human Rights First, there were 125 documented cases of CBP turning away individuals and families seeking asylum at ports of entry along the U.S.-Mexico border between November 2016 and April 2017.

In January 2017, a coalition of advocacy groups filed an administrative complaint with the Department of Homeland Security's Office of Civil Rights and Civil Liberties asking it to address the same abuses cited in Wednesday's suit, but the agency has yet to address that pending action. And in April, Senators Kamala Harris and Diane Feinstein, both California Democrats, wrote a letter to CBP asking it to examine a case in which a woman and her children were turned away at the border despite repeated attempts to seek asylum, but CBP falsely told the legislators that the woman never expressed fear of returning to Mexico, Erika Pinheiro of advocacy group *Al Otro Lado Inc.* said in a press call Wednesday.

The fruitlessness of prior efforts to bring CBP officer misconduct to the attention of the agency has now prompted affected asylum seekers to instead seek relief in the courts, the advocates said. The plaintiffs include six individuals representing a proposed class of immigrants presenting themselves at ports of entry along the U.S.-Mexico border and seeking asylum in the U.S., as well as advocacy groups *Al Otro Lado*, the American Immigration Council and the Center for Constitutional Rights.

Wednesday's suit cites various instances in which CBP officers allegedly abused their authority, such as one CBP officer telling an asylum seeker that "Donald Trump just signed new laws saying there is no asylum for anyone," and others coercing asylum seekers into signing away their rights, threatening deportation and using physical force. The advocates asked the court to prevent CBP from shirking its legal obligations, requiring it to establish effective oversight and accountability mechanisms in the review and processing of asylum seekers.

Al Otro Lado, an advocacy group based in Los Angeles and Tijuana, Mexico, operates a refugee program and large-scale legal clinics in which their staff has witnessed and documented such illegal interactions firsthand since 2011, Pinheiro said. The group has received increasing numbers of reports of CBP officers wrongfully turning away asylum seekers since it conducted its last legal clinic in October 2016, she added.

"CBP has thrown away our legal filings, threatened asylum seekers and threatened to separate parents from their children," Erica Panero, the director of El Otro Lado, said in a press call Wednesday. "If CBP continues these illegal practices, it's only a matter of time before our clients' persecutors find them."

The complaint accuses CBP of violating the INA, which gives any noncitizen "who is physically present in the United States or who arrives in the United States" the right to apply for asylum. CBP may give the immigrant access to an asylum officer for a credible fear interview or instigate removal proceedings, allowing the immigrant to state his or her case before an immigration judge.

Additionally, the advocacy groups claim that CBP undermined the asylum seekers' right to due process, which has been recognized by multiple courts as "critical in the asylum context and can result in life or death decisions," according to the complaint.

And furthermore, they allege that CBP has violated the non-refoulement doctrine, which is a component of numerous international treaties and prevents a country from removing individuals to countries where they have "well-founded fear of persecution or torture." The doctrine dates back to the 1951 Convention on the Rights of Refugees.

The Department of Justice does not comment on pending litigation.

Counsel information for the government was not available Wednesday.

The asylum seekers are represented by Wayne S. Flick, Manuel A. Abascal, James H. Moon, Kristin P. Housh and Robin A. Kelley of Latham & Watkins LLP, Mellisa Crow, Karolina Walters and Kathryn Shepherd of the American Immigration Council and Baher Azmy, Ghita Schwarz and Angelo Guisado of the Center for Constitutional Rights.

The case is Al Otro Lado Inc. et al. v. John F. Kelly et al, case number 2:17-cv-05111 in the U.S. District Court for the Central District of California.

--Editing by Pamela Wilkinson.

*Correction: This story previously misidentified a federal agency. The error has been corrected.*