DIANNE FEINSTEIN
CALIFORNIA

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United States Senate

WASHINGTON, DC 20510-0504
http://feinstein.senate.gov

July 24, 2017

The Honorable John Kelly
Secretary of Homeland Security
U.S. Department of Homeland Security
Nebraska Avenue Complex
3801 Nebraska Avenue, N.W.
Washington, D.C. 20528

Mr. Kevin K. McAleenan
Acting Commissioners
U.S. Customs and Border Protection
U.S. Department of Homeland Security
1300 Pennsylvania Avenue NW
Washington, D.C. 20004

Dear Secretary Kelly and Mr. McAleenan:

I write to communicate strong concerns over reports that asylum seekers are being turned away when they arrive at the U.S.-Mexico border.[1] Just last week, a lawsuit was filed in a district court in California involving six plaintiffs who fled their home countries after experiencing serious dangers such as sexual assault, domestic violence, and death threats.[2] The plaintiffs allege they were turned away at the San Ysidro, Otay Mesa, and Laredo ports of entry.[3] Many of those turned away were mothers traveling with their small children. These troubling complaints been documented in a number of different instances. As such, I urge you to clarify existing CBP policy on this issue.

U.S. law provides individuals who arrive in the U.S. an opportunity to apply for asylum when they have a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. One of the underlying principles of U.S. asylum law is that our government cannot remove foreign nationals to a country where their lives or freedom are threatened. Consistent with that principle, when individuals who arrive at

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[1] Kate Morrissey, *Lawsuit claims CBP has illegally turned away hundreds of asylum seekers at U.S.-Mexico border*, SAN DIEGO TRIBUNE, July 12, 2017, http://www.sandiegouniontribune.com/news/immigration/sd-me-asylum-lawsuit-20170712-story.html.

[2] *Id.*; *see also* Complaint for Declaratory and Injunctive Relief, Al Otro Lado, Inc. v. Kelly, No. 17-CV-5111 (C.D. Cal. July 12, 2017), *available at* https://ccrjustice.org/sites/default/files/attach/2017/07/AOL%20Complaint%207.12.2017.pdf.

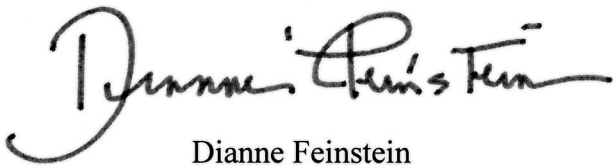
[3] *Id.*

our border express a fear of return or desire to seek asylum, they are referred to a trained U.S. Citizenship and Immigration Services asylum officer for an interview and determination on whether they have a credible fear of persecution. As you are aware, it is not the role of CBP officials to determine the validity of asylum claims.

Recent complaints and reports have raised concerns about whether CBP officials are following proper procedures in cases involving asylum seekers arriving at the U.S.-Mexico border. For instance, there are claims that the agency's officials have falsely informed asylum seekers that there is a "daily quota for asylum cases" and that they need a visa to seek asylum.[4] In some cases, it has been reported that officials have coerced individuals to withdraw their credible fear assertion. These are not singular events. They provide very concerning details suggesting that CBP officials are exceeding their authority and, if true, have the consequence of categorically denying important protections for vulnerable populations fleeing persecution.

Given these concerns, I ask that you provide additional information and answers to the following questions by August 3, 2017. Additionally, I urge you to issue clear guidance to CBP field officials—in the form of a written policy directive—specifying the policies, laws, and procedures they are required to follow when individuals present themselves at the border seeking asylum or expressing a fear of return to their home countries, and underscoring that CBP officials do not have authority to evaluate or decide the validity of asylum claims. I urge your prompt action and look forward to your response on this important matter.

Sincerely,



Dianne Feinstein

CC: John Roth, Inspector General, Department of Homeland Security

1. Provide a copy of the current guidance that CBP field officers are provided regarding the processing of asylum claims. Provide information on the mechanisms the agency uses to track compliance with respect to this existing guidance, as well as information on how the agency receives, reviews, tracks, and responds to complaints against CBP officers with respect to the processing of asylum claims. Provide a copy of the screening tool, guidelines, or forms used to determine whether an individual expresses a fear to return, requests asylum, or other immigration benefit to CBP agents.

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[4] Joshua Partlow, *U.S. border officials are illegally turning away asylum seekers, critics say*, WASHINGTON POST, Jan. 16, 2017, https://www.washingtonpost.com/world/the_americas/us-border-officials-are-illegally-turning-away-asylum-seekers-critics-say/2017/01/16/f7f5c54a-c6d0-11e6-acda-59924caa2450_story.html?utm_term=.8627af1a3d63&tid=a_inl.

2. Provide the number of individuals who have presented themselves at a U.S. port of entry expressing a fear of persecution or intent to apply for asylum in the last year, and whether they have been referred to an asylum officer. If the agency does not track this information, and in particular does not track information about asylum seekers turned back verbally without formal paperwork, please specify. For cases where a person was not referred to an asylum officer after expressing a fear of persecution, provide the legal authority or additional information that served as a basis for the decision to deny a person the opportunity to interview with an asylum officer.

3. What, if any, is the appropriate disciplinary action that follows a CBP officer's failure to follow proper policy and procedure with respect to the processing of asylum claims? In the past five years, have any CBP officers been subjected to review or disciplinary action for this reason?

4. On January 25, 2017, President Trump signed Executive Order 13767 on "Border Security and Immigration Enforcement Improvements." Provide a copy of all memoranda, documents, guidance, and departmental reports that have been issued pursuant to this order. For any of the above the Department cannot provide, list the name, type of document, and date of effectiveness.

5. Section 7 of Executive Order 13767 provides that individuals who arrive on the U.S.-Mexico border from a contiguous territory shall be returned to that territory pending formal removal proceedings. Has the administration taken any steps to implement this section of the executive order? Provide details on the implementation status of this section. Provide any bilateral agreements or commitments the administration has secured from governments in contiguous countries to implement this section. Provide the steps taken, and any associated documents, to ensure that Mexican nationals are not instructed by CBP agents to return to Mexico for the processing of an asylum claim where they express a fear to return.

6. On February 20, 2017, Secretary Kelly issued a memorandum on "Implementing the President's Border Security and Immigration Enforcement Improvements Policies." Section I the memo addresses ways to enhance asylum referrals and credible fear determinations. Specifically, it instructs the Director of USCIS, the Commissioner of CBP, and the Director of ICE to review fraud detection, deterrence, and prevention measures in their agencies and produce a consolidated report within 90 days "regarding fraud vulnerabilities in the asylum and benefits adjudication processes, and propose measures to enhance fraud detection, deterrence, and prevention in these processes." Provide copies of that report, as well as any proposed measures and any relevant attachments. Also provide information on any other changes the administration has implemented pursuant to Section I of the February 20, 2017 memo.

7. In response to a large number of Haitians arriving at the U.S.-Mexico border, officials established a ticketing system to refer Haitian migrants to Mexican officials and allow CBP officers to subsequently process them. What is the status of this ticketing system? To whom did it apply? Has the agency issued updated guidance or memoranda to the

field with respect to this ticketing system? If so, provide a copy of such guidance or memoranda, as well as any assessments about compliance with U.S. law and treaty obligations. Has CBP tracked the number of individuals referred to Mexican authorities under this system and their countries of origin? If so, provide the results of this data collection.