

Border Patrol Ignores Asylum Laws, Sends Migrants Back to Mexico



By Sgt. 1st Class Gordon Hyde – <http://www.ngb.army.mil>, Public Domain, Link

In violation of the international Refugee Convention, which the US signed in 1968, the Border Patrol is now using the COVID-19 crisis as a rationale to turn away migrants without giving them any chance to make their legal case for asylum. According to *ProPublica*, a memo issued about two weeks ago instructs border patrol agents to refuse entrance to all unauthorized migrants unless they make a credible case that they will be tortured if returned to their countries of origin.

The new policy, called Operation Capiro, relies on an obscure power given to the Centers for Disease Control and Prevention (CDC) to “ban the entry of people

or things that might spread ‘infectious disease’ in the US” The administration argues that the risk of coronavirus spreading in Customs and Border Patrol facilities, which are not set up to deal with medical needs, is sufficient to justify the new orders.

It’s not news that the Trump administration has implemented numerous policies to make it more difficult for refugees to claim asylum or apply for permanent residency, but the new policy is the first time border patrol agents have been given the authority to expel migrants without any process for hearing their asylum claims. This is different from the “remain in Mexico” policy, which forces migrants to live in Mexico’s border cities until the time of their court hearings.

Under the new policy, within hours of apprehension, border patrol agents take unauthorized migrants to a border crossing and expel them. *ProPublica* reports that 7,000 people have been expelled to Mexico under the order already. The policy also applies to the Canadian border, which has been closed to non-essential traffic in response to the COVID-19 emergency.

The only exception is under the international Convention Against Torture. If a migrant voluntarily, without questioning, makes a credible claim of torture if returned to his or her country of origin, a border patrol agent may take the claim to the chief patrol agent, who has sole authority to grant an exemption. There is no evidence that anyone has been granted such an exemption.

Under the Refugee Convention, the US may not send refugees back to places where they will be harmed. Though asylum claims have been sharply limited in the last few years, until Operation Capiro, the Trump administration continued to allow refugees who claimed they had “fear of persecution” to seek a less permanent legal status called “withholding of removal.” The US Department of Justice has even argued in court that it is abiding by its obligations “by providing withholding of removal and CAT [Convention Against Torture] protection.” Now it appears, the last thread of protection that asylum seekers have is the Convention Against Torture.

A Congressional staffer told *ProPublica*, “If you read between the lines, [the administration] is saying that Title 42 [the chapter of the US Code that includes the CDC’s quarantine power] supersedes Title 8 [which covers immigration law].” The Trump administration, however, has published no legal opinions making the

argument that Title 42 gives them the authority to suspend immigration laws. Nor have the courts yet been asked to issue an opinion—lawsuits have been stymied by the secrecy of Operation Capiro and the current shutdown of so much of the US public life.

Source:

<https://nonprofitquarterly.org/border-patrol-ignores-asylum-laws-sends-migrants-back-to-mexico/>

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