Commentary | Data counters U.S. claim on asylum processing

David J. Bier

February 7, 2019

Last week, the U.S. government started to force asylum seekers processed through San Diego's port of entry back into Mexico as their cases proceed in U.S. courts. This "Remain in Mexico" policy builds on the government's existing practice of capping how many it will even process at almost all ports along the border, pushing everyone else back south. Officials claim that they lack resources to process asylum seekers, but the data undermine this claim.

In December, Department of Homeland Security (DHS) Secretary Kirstjen Nielsen testified before Congress that ports all along the border — including in San Diego — had reached their "capacity" and simply couldn't handle any more asylum seekers. For this reason, she claimed, officers simply had to limit how many people they would process.

But new research from the Cato Institute — based on the government's own data — shows that those same ports had admitted twice as many undocumented immigrants in October 2016 as in December 2018. The Obama administration steadily increased processing at ports, allowing the flow of undocumented immigrants to triple from 2012 to October 2016. Under Nielsen, DHS halved the flow.

Nielsen's claims about hitting "capacity" simply do not match the numbers. Undocumented arrivals at the border — both at ports and between ports — fell 9 percent from October 2016 to December 2018. If fewer migrants came overall, DHS can't justify not processing more at legal points of entry. Yet DHS still halved the share of migrants it processed at ports, cutting it from 32 to 16 percent.

DHS's policy of turning away migrants has clearly resulted in more illegalimmigration. The DHS Office of Inspector General concluded as much in September 2018. It wrote that it "saw evidence that limiting the volume of asylum-seekers entering at ports of entry leads some aliens who would otherwise seek legal entry into the United States to cross the border illegally."

DHS has offered a laundry list of excuses for turning away people at ports of entry. None of them hold up. In September, the DHS Office of Inspector General found no supposed "extreme overcrowding," as DHS claimed. In October, CBP officers told Amnesty International that ports hadn't reached capacity more than "a couple of times per year."

DHS points to the record number of families and children — who may have more resourceintensive needs — as a main issue, but the number of families and children processed at ports is also down 43 percent from October 2016 to December 2018.

DHS claims that the holdup might be a lack of detention capacity down the line at Immigration and Customs Enforcement (ICE), which takes custody of the asylees after processing. But from 2016 to 2018, the detention bed space increased dramatically from 34,000 to almost 45,000. In 2019, it is already up to about 48,000.

The excuses just don't add up. So what's going on? The answer is that the government does not want these asylum seekers processed anywhere. President Trump has flatly said, "I don't want them in our country." He tweeted repeatedly about stopping Central American asylum seekers in April 2018, and almost continuously, the share processed at ports has declined.

Nielsen wants them all forced back into Mexico, which is exactly why she has rolled out her new Remain in Mexico plan last week. The plan will send people who finally do get processed at the San Diego port of entry after weeks or months back to Mexico for months or years more of waiting homeless just out of sight of the United States. The goal is, as Trump has said, "When people come into our country illegally, we must immediately escort them back out."

These policies violate the law which requires the government to process asylum seekers at ports of entry and not to remove them. They also encourage unlawful entry, which is why Border Patrol opposes the Remain in Mexico policy. Finally, turning away asylum seekers is dangerous. Cartels already killed two Hondurans waiting in Tijuana, and we know that forcing two children to make crossings in remote areas contributed to their deaths in Border Patrol custody last year.

Before Congress even considers funding a border wall, it should demand answers for why the government will not process asylum seekers at ports. If funding truly is the issue, use the border wall money for that. By letting people get processed legally, it would do more to deter illegal immigration than a wall anyway.

Bier is an immigration policy analyst at the Cato Institute.