**Dismantling the (Digital) Wall?**

**Forecasting the Fate of CBP One Under a Second Trump Administration**

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During the vice presidential debate in early October, now vice president-elect J.D. Vance condemned “an application called the CBP One app, where you can go on as an illegal migrant…and be granted legal status at the wave of a Kamala Harris open border wand.”[[1]](#footnote-1) Former President Trump peddled similar rhetoric at a Wisconsin rally, characterizing the CBP One app as “being used by the cartel leaders” who “can just call the app and they say here to drop the illegal migrants.”[[2]](#footnote-2) And newly-tapped “border czar” Tom Homan has attributed past surges in border encounters, at least in part, to “improper use” of the application.[[3]](#footnote-3)

Such mischaracterizations are ludicrous in part because the application was launched in October of 2020[[4]](#footnote-4), when Trump was still in office, and certainly does not function as a shortcut to admission to the United States. CBP One is marketed as a digital platform that hosts a variety of U.S. Customs and Border Protection services, including appointment scheduling for presentment at a port of entry to seek asylum.[[5]](#footnote-5) The Circumvention of Lawful Pathways (CLP) rule, effectuated in May of 2023, confers a presumption of ineligibility for asylum on any noncitizen who presents themselves at a port of entry without a CBP One appointment.[[6]](#footnote-6) Though this presumption does not attach if the asylum seeker can establish that it was impossible “to access or use the CBP One app due to a language barrier, illiteracy, significant technical failure, or other ongoing and serious obstacle,”[[7]](#footnote-7) he or she still bears the additional burden of proving this exception. Thus, it is no shortcut but instead one of many hoops that noncitizens must jump through to lawfully enter the United States.

The absurdity of these statements is thrown into sharper relief by reports that the app is inhibiting, rather than facilitating, those seeking lawful entry pursuant to U.S. and international asylum law. CBP One does not proffer a golden ticket to enter but rather presents a new and formidable “mobile border.”[[8]](#footnote-8) Widespread accounts of technological malfunctioning marked the early months of CBP One’s deployment, with many asylum seekers delayed or deterred.[[9]](#footnote-9) The app’s interface struggled to process mandatory photographic proof of identity for darker-skinned applicants.[[10]](#footnote-10) While many of these issues have been resolved, today the app continues to present significant accessibility barriers: it is only available in three languages and does not provide accommodations for asylum seekers with visual, auditory, intellectual, or physical impairments.[[11]](#footnote-11) Some likewise criticize the app’s use of facial recognition and geolocation tracking technologies as posing unacceptable risks to user privacy.[[12]](#footnote-12) Taken together, these shortcomings indicate at best untenably faulty fledgling technology and at worst, as recent litigation has asserted, a digital manifestation of the practice of turning bona fide asylum seekers away,[[13]](#footnote-13) or “refoulement.”[[14]](#footnote-14)

This may be a violation of international law.[[15]](#footnote-15) Qualifying noncitizens have a statutory right to seek asylum within the United States[[16]](#footnote-16) grounded in the binding international custom of accepting refugees.[[17]](#footnote-17) Absent national security or crime-related bars, asylum seekers are entitled to a hearing (and, possibly, subsequent procedural action) once they are within the United States or at a port of entry.[[18]](#footnote-18) Importantly, this right is not extraterritorial, and therefore those on “the threshold of initial entry” stand on “different footing” with regard to their rights to asylum and due process.[[19]](#footnote-19) The U.S. Justice Department has disclaimed any domestic legal obligations under Article 33 of the 1951 United Nations Convention Relating to the Status of Refugees, which prohibits “refoulement”[[20]](#footnote-20), to those who intend to seek asylum but have not reached the border.[[21]](#footnote-21) This conclusion was subsequently reinforced by the Supreme Court, which held that no international mandates constrained the executive’s ability to turn back Haitian asylum seekers intercepted on the “high seas.”[[22]](#footnote-22) Nonetheless, UNHCR has countered that “access to a fair and efficient refugee status determination procedure is an essential element in the full and inclusive application of the 1951 Convention and its 1967 Protocol.”[[23]](#footnote-23) Therefore, “mobile borders” such as CBP One that systematically hinder this access directly conflict with United Nations guidance.

If President-elect Trump’s promises[[24]](#footnote-24) are upheld, the CBP One app may meet its demise come January. But asylee advocates will not be celebrating, as the end of CBP One under the new administration will signify a broader effort to undermine asylum pathways rather than correct them.[[25]](#footnote-25) Eradicating CBP One may be throwing the baby out with the bathwater by functionally gutting the processing of asylum claims, a decision which could frustrate Trump’s long-term enforcement goals since experts have forecast a possible uptick in unauthorized entries if CBP One is shut down.[[26]](#footnote-26) It may also be an even clearer violation of the internationally-recognized right to seek asylum.

1. Stefan Becket, *Read the Full VP Debate Transcript from the Walz-Vance Showdown*, CBS News (Oct. 2, 2024, 10:18AM) <https://www.cbsnews.com/news/full-vp-debate-transcript-walz-vance-2024/>. [↑](#footnote-ref-1)
2. @Acyn, X (Oct. 1, 2024, 6:49 PM), <https://x.com/Acyn/status/1841248980274942264>. [↑](#footnote-ref-2)
3. Statement Summary of Thomas D. Homan Before the Committee on Oversight and Accountability for United States House of Representatives (Jan. 17, 2024). [↑](#footnote-ref-3)
4. USCIS, *CBP One™ Mobile Application* (Sept. 23, 2024) <https://www.cbp.gov/about/mobile-apps-directory/cbpone>. [↑](#footnote-ref-4)
5. *Id.*  [↑](#footnote-ref-5)
6. DHS, *Fact Sheet: Circumvention of Lawful Pathways Final Rule* (May 11, 2023) <https://www.dhs.gov/news/2023/05/11/fact-sheet-circumvention-lawful-pathways-final-rule>. [↑](#footnote-ref-6)
7. *Id.* [↑](#footnote-ref-7)
8. *See* Austin Kocher, *Glitches in the Digitization of Asylum: How CBP One Turns Migrants’ Smartphones into Mobile Borders*, 13 Societies 149 (June 20, 2023). [↑](#footnote-ref-8)
9. *Id.* [↑](#footnote-ref-9)
10. *Id.*  [↑](#footnote-ref-10)
11. <https://www.aila.org/library/think-immigration-the-cbp-one-app-is-not-enough> [↑](#footnote-ref-11)
12. Molly O’Toole, *Biden Has Quietly Deployed an App for Asylum Seekers*, L.A. Times (June 4, 2021, 2:51PM) <https://www.latimes.com/politics/story/2021-06-04/asylum-bidens-got-an-app-for-that-with-privacy-risks-and-surveillance-beyond-border>. [↑](#footnote-ref-12)
13. *See* Al Otro Lado v. Mayorkas, Order Granting In Part Defendants’ Motion to Dismiss (“The parties dispute whether Customs and Border Protection later resumed a more nuanced version of this turnback procedure. Plaintiffs claim that, following the end of COVID-era restrictions, CBP adopted an unwritten “CBP One Turnback Policy,” in which officers “turned back to Mexico” any asylum applicants who failed to schedule an appointment using the “CBP One” mobile app.”) <https://ccrjustice.org/sites/default/files/attach/2024/10/2024.09.30%20Order%20on%20MTD.pdf> [↑](#footnote-ref-13)
14. Convention Relating to the Status of Refugees, 189 U.N.T.S. 150 (Jul. 28, 1951) art. 33. [↑](#footnote-ref-14)
15. Amnesty International, *CBP One: A Blessing or a Trap?* (May 8, 2024) AMR 51/7985/2024. [↑](#footnote-ref-15)
16. 8 U.S.C. § 1158(a)(1). “Any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien's status, may apply for asylum in accordance with this section…”. [↑](#footnote-ref-16)
17. *Supra* note 14. [↑](#footnote-ref-17)
18. American Bar Association, *Exploration of Legalities of Asylum Amid Claims US Is “Full”* (May 2019) <https://www.americanbar.org/news/abanews/publications/youraba/2019/may-2019/aba-legal-fact-check--an-exploration-of-asylum-legalities-amid-c/> (“At the hearing, asylum seekers typically are asked a series of questions, including whether they have a fear of returning to their country. If they say that they do, then they are required to undergo what’s called a credible fear interview conducted by an asylum officer. If the officer finds that the applicant does not have a credible fear, the asylum seeker can request to have that determination reviewed by an immigration judge in an expedited fashion.”). [↑](#footnote-ref-18)
19. Shaughnessy v. Mezei, 345 US 206, 212 (1953) (holding that noncitizens who have come within the borders of the United States are entitled to due process, but "an alien on the threshold of initial entry stands on a different footing"). [↑](#footnote-ref-19)
20. *Supra* note 14. [↑](#footnote-ref-20)
21. Timothy E. Flanigan, *Legal Obligations of the United States Under Article 33 of the Refugee Convention* (Dec. 1991), 86-90, <https://www.justice.gov/file/150216/dl?inline=>. [↑](#footnote-ref-21)
22. Sale v. Haitian Centers Council, 509 U.S. 155 (1993). [↑](#footnote-ref-22)
23. Comments of the United Nations High Commissioner for Refugees on the Proposed Rule from the U.S. Department of Justice (Executive Office for Immigration Review) and the U.S. Department of Homeland Security (U.S. Citizenship and Immigration Services): “Circumvention of Lawful Pathways”, CIS No. 2736-22, DHS Docket No. USCIS 2022-0016, A.G. Order No. 5605-2023, 20 March 2023, refworld.org/pdfid/6417e6674.pdf. [↑](#footnote-ref-23)
24. Trump has campaigned heavily on curbing noncitizen entry at the U.S.-Mexico border. *See* Elliot Spagat & Gisela Salomon, *Trump’s Return to White House Sets Stage for Far-Reaching Immigration Crackdown*, AP News (Nov. 6, 2024, 5:24 PM) <https://apnews.com/article/trump-immigration-border-asylum-mass-deportation-a681c4980ef25e2b3a7ae670c9094f4a>. [↑](#footnote-ref-24)
25. Steve Inskeep, *Trump Promised the ‘Largest Deportation’ in U.S. History*, NPR (Nov. 14, 2024, 3:26 PM) <https://www.npr.org/2024/11/12/nx-s1-5181962/trump-promises-a-mass-deportation-on-day-1-what-might-that-look-like> (explaining that Trump has expressed an intention to cancel humanitarian parole granted through CBP One). [↑](#footnote-ref-25)
26. Camilo Montoya-Galvez, *While Many U.S. Voters Welcome Trump’s Tougher Border Policies, His Win Puts Migrants on Edge*, CBS News (Nov. 10, 2024, 7:40 PM) <https://www.cbsnews.com/news/trump-immigration-policy-migrant-reaction/>. [↑](#footnote-ref-26)