To: Interested Parties
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Subject: Policy Recommendation regarding Updating Statutory Law to Authorize Metering

Background

America's southern border stands at a crossroads: either we restore order, or we continue to face chaos. In 2019, I was on the ground at the southern border when the Trump administration implemented metering at ports of entry. I saw firsthand how limiting the number of asylum seekers processed each day created order in a system that had been overwhelmed. Families waited in line, officers explained capacity, and while it was not perfect, it was structured – the difference between chaos and control.

Courts have struck down metering as unlawful under current law, the CBP One app has created a form of digital metering, and a sweeping port-of-entry asylum ban is being legally challenged. The lesson is clear: without clear congressional action, border policy will swing from one extreme to another, decided by executive orders and lawsuits.

Congress has the authority- and the responsibility – to update the law. Explicitly authorizing metering would provide clarity, restore order, and ensure that asylum is processed in a way that is secure, fair, and sustainable.

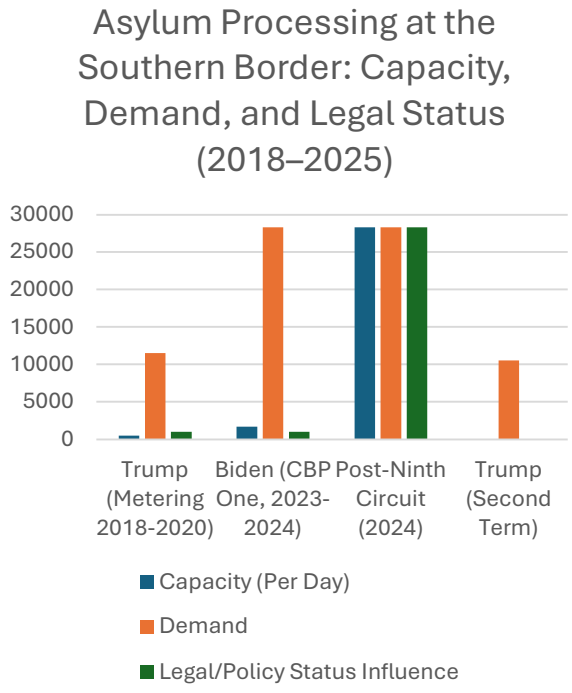
How the Trump Administration Defined Metering

When CBP first implemented *metering* in 2018-2019, the Department of Homeland Security (DHS), it was described as an operational measure to regulate the flow of asylum seekers at ports of entry. DHS defined metering as the practice of instructing individuals to wait until there was sufficient capacity to process them safely and securely.

While DHS justified metering as a necessary tool to maintain safety and order at the border, the policy quickly became one of the most controversial elements of the Trump administration's immigration agenda. To understand why Congress must act now, it is important to review the timeline of how metering developed, how the courts responded, and where the policy stands now.

Legal Challenge and Ninth Circuit Ruling (2024)

In 2024, the Ninth Circuit Court of Appeals ruled in *Al Otro Lado v Mayorkas*[1] that DHS lacked statutory authority to implement metering. The court explained that "under the metering policy, whenever border officials deemed a port of entry to be at capacity, they turned away all people lacking valid travel documents…[including] many…who intended to seek asylum in the United States but were not allowed to even apply."[2] In its statutory analysis, the court concluded that "a noncitizen stopped by officials at the border is eligible to apply for asylum under § 1158(a)(1),"[3] because "Congress crafted a scheme for the inspection of noncitizens both physically present in the United States and on its doorstep."[4] The panel further held that DHS's refusal to inspect these individuals was not a mere delay but an unlawful withholding of a mandatory duty under the Administrative Procedure Act: "when an agency refuses to accept, in any form, a request that it take a required action, it has 'withheld' that duty within the meaning of § 706(1)."[5]



Policy Implications of the Ruling

The Ninth Circuit's ruling highlights the real problem: weak laws written by Congress, not strong enforcement by DHS. Our officers are forced to process unlimited arrivals- an impossible mandate that no other country on earth imposes on its border agents. This is not sustainable, it is not safe, and it is not compassionate. Metgering was never about denying asylum; it was about protecting America's sovereignty and restoring order. Congress aalready imposes deadlines, bars, and elibility conditions on asylum. Updating the law to authorize metering is not radical- it is

[1] *Al Otro Lado v. Mayorkas,* 94 F.4th 1021 (9th Cir. 2024).
[2] *Id.* at 1023
[3] *Id.* at 1038.
[4] *Id.* at 1040
[5] *Id.* at 1033.

common sense. Anything less is a green light for cartels, traffickers, and chaos at our border. [6][7][8]

Recommendation

Congress must act to close the gap exposed by the Ninth Circuit's ruling. The courts have made clear that DHS cannot lawfully meter under existing law. But nothing prevents Congress from updating the Immigration and Nationality Act (INA) to authorize it explicitly. Without such action, border policy will continue to swing wildly between executive orders and lawsuits, leaving frontline officers without clear guidance and communities without security. Authorizing metering is not a partisan agenda – it is a commonsense fix that brings the law in line with operational reality. By clarifying DHS's authority, Congress can restore order at the ports of entry, protect America's sovereignty, and ensure that asylum is processed in a secure, fair, and sustainable manner.

Draft Statutory Fix

Purpose:

To amend Section 208 of the Immigration and Nationality Act (8 U.S.C. § 1158) to explicitly authorize the Department of Homeland Security (DHS) to regulate the flow of asylum applications at ports of entry by establishing daily numerical limits ("metering"), consistent with operational capacity, safety, and humanitarian obligations.

SEC. ___. AUTHORIZATION OF METERING AT PORTS OF ENTRY.

(a) IN GENERAL.—Section 208 of the Immigration and Nationality Act (8 U.S.C. 1158) is amended by adding at the end the following new subsection:

[6] *Al Otro Lado v. Mayorkas,* 94 F.4th 1021, 1033 (9th Cir.2024) ("when an agency refuse to accept, in any form, a request that it take a required action, it has 'withheld' that duty within the meaning of §706(1)"

[7] Immigration and Nationality Act § 208 (8 U.S.C. § 1158(a)(2)) (Congfress has already imposed conditions on asylum, including a one-year filling deadline and bars for criminal conduct).

[8] Immigration and Nationality Act § 103 (8 U.S.C. §1103(a)(1)) (vesting the Secretary of Homeland Security with "the administration and enforcement of this chapter and all other laws relating to the immigration and naturalization of aliens"

"(k) AUTHORITY TO REGULATE PROCESSING OF ASYLUM APPLICATIONS AT PORTS OF ENTRY.—

(1) NUMERICAL LIMITATIONS.—The Secretary of Homeland Security may, notwithstanding subsection (a)(1), establish daily numerical limits on the number of asylum applications processed at any port of entry, based on the operational capacity of such port, provided that such limits—

(A) are necessary to ensure the safe, secure, and orderly inspection of applicants;

(B) are applied in a nondiscriminatory manner consistent with this Act and the international obligations of the United States; and

(C) do not preclude consideration of a applications presenting urgent humanitarian circumstances or involving individuals with heightened vulnerability.

(2) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to deny eligibility to any

alien described in subsection (a)(1); this subsection authorizes only the regulation of timing and capacity of inspections.

(3) ADMINISTRATIVE PROCEDURE.—Any limitations imposed under this subsection shall constitute an 'agency action' under section 551(13) of title 5, United States Code, and shall not be deemed an unlawful withholding under section 706(1) of such title if established pursuant to this authority."

Conclusion

The Ninth Circuit's ruling laid bare a dangerous truth: America's asylum laws are written so weakly that they strip our border agents of the authority to defend our nation. No sovereign country can allow endless, uncontrolled entry and still call itself secure. Congress must not allow activist rulings and outdated statutes to dictate border policy any longer. Lawmakers have a duty to stand up, reassert control, and give DHS the power to meter asylum claims. This is not about politics- it is about sovereignty, safety, and survival. Without congressional action, chaos will remain the law of the land.