

“Blurred Border Lines” by Adam Edward Rothwell, Esq.

The US-Mexican Border is a specific line, but it has become much more symbolic than a line dividing two nations. The US-Mexican Border has become a firestorm, as Americans on all political sides have strong feelings related to policy, humanitarian concerns and the law. And the law itself is a major problem, since US Immigration Law is not nearly as flexible as it should be. Among other problems, the system is unable to handle a massive influx of children at the Border. And if the US Immigration processes are unable to handle the current situation, the actual law becomes even more blurred

Applying for Asylum at the Border

US Immigration Law allows for any foreign citizen who arrives at the US Border with a non-frivolous claim for Asylum to affirmatively apply for Asylum. Similarly there is no maximum quota number on the number of foreign citizens who may proactively apply for Asylum in each fiscal year. There is no maximum number of foreign citizens already in the US who may apply, and there is no maximum number of foreign citizens who may apply for Asylum at the border. Also there are neither filing fees, administrative fees and/or court costs apply for Asylum. These rules are not blurred and have been components of US Immigration Law for years. Yet, many Americans just never gave either Asylum or foreign citizens who apply for Asylum in the US any thought. Because of the current mess at the border though, Americans staunchly opposed to US Immigration now want to blur Asylum lines.

Anti-immigrant Americans want Asylum Law to contain exceptions, so that not everyone with a theoretically non-frivolous claim who arrives at the border may even apply for Asylum. In my opinion, the law is firm and not blurred, so it should stay that way. Conversely, taking away potentially valid Asylum claims opens the federal government, federal employees as well as any local government participants to countless future lawsuits. What could potentially make sense, although I doubt it would ever happen, is for a filing fee to be attached to Asylum Applications.

Right to Counsel in Removal Proceedings

Most immigration advocates strongly believe the law entitles foreign citizens the right to counsel in removal proceedings. This is a grey area. Drafters of the 6th Amendment for example clearly did not comprehend the possibility that foreign citizens in removal proceedings, more or less foreign citizens who have just arrived at the US Border, would ever have a right to defense counsel. However, at the same time drafters of the 6th Amendment would not have been able to comprehend a situation where the US federal government spends literally billions of dollars each year (between all salaries, benefits, court costs, office expenses, removal charges, etc . . .) on removal proceedings.

Two months ago Attorney General Holder authorized \$2 million total in federal grant funds to provide legal defense and services for children caught up in border detainment. With tens of thousands of children caught in the border crisis, \$2 million was practically nothing for assistance. However, I do think this further blurs the line, because it would be fairly unethical for the US federal government to provide legal assistance to some detained foreign citizens and not others. Moreover, if the federal government provides any representation to children who have recently arrived at the US Border, foreign citizens who have been put into removal proceedings after residing in the US for years would definitely deserve appointed counsel.

Adam Edward Rothwell is a US Immigration lawyer based in Baltimore, Maryland. He may be followed on Twitter at: USAImmigration