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**UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA**

Al Otro Lado, Inc., *et al.*,  
  
 Plaintiffs,  
  
 v.

Elaine C. Duke, *et al.*,  
  
 Defendants.

Case No.: 2:17-cv-5111 JFW (JPRx)  
 Honorable John F. Walter

**PLAINTIFFS' REQUEST FOR  
 JUDICIAL NOTICE IN SUPPORT OF  
 MOTION FOR CLASS CERTIFICATION**

***[Motion for Class Certification and  
 Declarations in Support Filed Concurrently]***

Hearing

Date: December 11, 2017  
 Time: 1:30 p.m.  
 Place: Courtroom 7A

Pursuant to Federal Rule of Evidence 201, Plaintiffs Al Otro Lado, Inc., Abigail Doe, Beatrice Doe, Carolina Doe, Dinora Doe, Ingrid Doe and Jose Doe (“Plaintiffs”) hereby request that this Court take judicial notice of certain publications and news media described below. This request and documents are submitted in support of Plaintiffs’ Motion for Class Certification filed concurrently.

**A. Online Publications Are Judicially Noticeable**

Rule 201 provides that a court may take judicial notice of documents that are generally known within the territorial jurisdiction of the trial court, or capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Pursuant to Rule 201, courts routinely take judicial notice of online publications. *Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 960 (9th Cir. 2010); *Barber v. Nestlé USA, Inc.*, 154 F. Supp. 3d 954, 958 n.1 (C.D. Cal. 2015) (taking judicial notice of news articles and other publications); *Grill v. Lincoln Nat’l Life Ins. Co.*, No. 14-0051, 2014 WL 12588652, at \*3 (C.D. Cal. June 3, 2014) (taking judicial notice of “ten news publications from The Wall Street Journal, The New York Times, The Chicago Tribune, The L.A. Times, The Washington Post, Newsday, and The San Diego Tribune”) (emphasis omitted); *Madrigal v. Tommy Bahama Grp., Inc.*, No. 09-08924, 2011 WL 10511339, at \*1-2 (C.D. Cal. June 27, 2011) (granting a request for judicial notice of publically available publications); *Patel v. Parnes*, 253 F.R.D. 531, 549 (C.D. Cal. 2008) (“It is appropriate for the court to take judicial notice of news articles . . . .”); *U.S. v. Alisal Water Corp.*, 326 F. Supp. 2d 1032, 1036 n.5 (N.D. Cal. 2004) (taking judicial notice of newspaper articles and publications downloaded from public websites for context regarding “the totality of the circumstances under which Defendants’ violations occurred”), *aff’d*, 427 F.3d 597 (9th Cir. 2005).

1           **B. Description of Documents**

2           Pursuant to Rule 201, Plaintiffs request that this Court take judicial notice of  
3 the following publically available documents, which are attached as exhibits hereto  
4 as follows:

- 5           • Exhibit A: *Facing Walls USA and Mexico's Violations of the Rights of*  
6 *Asylum-Seekers*, AMNESTY INT'L (June 15, 2017), available at  
7 [https://www.amnestyusa.org/reports/facing-walls-usa-mexicos-violation-](https://www.amnestyusa.org/reports/facing-walls-usa-mexicos-violation-rights-asylum-seekers/)  
8 [rights-asylum-seekers/](https://www.amnestyusa.org/reports/facing-walls-usa-mexicos-violation-rights-asylum-seekers/).
- 9           • Exhibit B: *Here's What Violence Along the U.S.-Mexico Border Really*  
10 *Looks Like*, Juan Carlos Garzón-Vergara, DEMOCRACIAABIERTA (June 3,  
11 2017), available at  
12 [https://www.opendemocracy.net/democraciaabierta/juan-carlos-garzon-](https://www.opendemocracy.net/democraciaabierta/juan-carlos-garzon-vergara/here-s-what-violence-along-us-mexico-border-really-look)  
13 [vergara/here-s-what-violence-along-us-mexico-border-really-look](https://www.opendemocracy.net/democraciaabierta/juan-carlos-garzon-vergara/here-s-what-violence-along-us-mexico-border-really-look).
- 14           • Exhibit C: *Crossing the Line – U.S. Border Agents Illegally Reject*  
15 *Asylum Seekers*, HUMAN RIGHTS FIRST (May 2017), available at  
16 [http://www.humanrightsfirst.org/sites/default/files/hrf-crossing-the-line-](http://www.humanrightsfirst.org/sites/default/files/hrf-crossing-the-line-report.pdf)  
17 [report.pdf](http://www.humanrightsfirst.org/sites/default/files/hrf-crossing-the-line-report.pdf).
- 18           • Exhibit D: *USA-Mexico: Trump's Border Crackdown Pushes Refugees*  
19 *into Dangerous Limbo*, AMNESTY INT'L (June 15, 2017), available at  
20 [https://www.amnesty.org/en/latest/news/2017/06/usa-mexico-trumps-](https://www.amnesty.org/en/latest/news/2017/06/usa-mexico-trumps-border-crackdown-pushes-refugees-into-dangerous-limbo/)  
21 [border-crackdown-pushes-refugees-into-dangerous-limbo/](https://www.amnesty.org/en/latest/news/2017/06/usa-mexico-trumps-border-crackdown-pushes-refugees-into-dangerous-limbo/).
- 22           • Exhibit E: *Turmoil in Mexico's Criminal Underworld is Intensifying the*  
23 *Violence in a Valuable Border Territory*, Christopher Woody, BUSINESS  
24 INSIDER (June 29, 2017, 7:59 PM), available at  
25 [http://www.businessinsider.com/cartel-gang-violence-in-reynosa-nuevo-](http://www.businessinsider.com/cartel-gang-violence-in-reynosa-nuevo-laredo-matamoros-mexico-border-2017-6)  
26 [laredo-matamoros-mexico-border-2017-6](http://www.businessinsider.com/cartel-gang-violence-in-reynosa-nuevo-laredo-matamoros-mexico-border-2017-6).
- 27           • Exhibit F: *2 Major Mexican Cartels Have Put Tijuana in 'Imminent*  
28 *Danger,' and Violence is Rising*, Christopher Woody, BUSINESS INSIDER

(Oct. 9, 2016. 2:00 PM), *available at*

<http://www.businessinsider.com/drug-related-violence-tied-to-jalisco-sinaloa-cartels-up-in-tijuana-2016-10>.

- Exhibit G: *Complaint: Border Officials Illegally Turn Away Asylum Seekers*, Kate Morrissey, The San Diego Union Tribune (Jan. 19, 2017, 1:00 PM), *available at*  
<http://www.sandiegouniontribune.com/news/immigration/sd-me-asylum-seeker-20170119-story.html>.
- Exhibit H: *Violations at the Border – The El Paso Sector*, HUMAN RIGHTS FIRST (Feb. 2017), *available at*  
<http://www.humanrightsfirst.org/sites/default/files/hrf-violations-at-el-paso-border-rep.pdf>.

Dated: November 13, 2017

Respectfully submitted,

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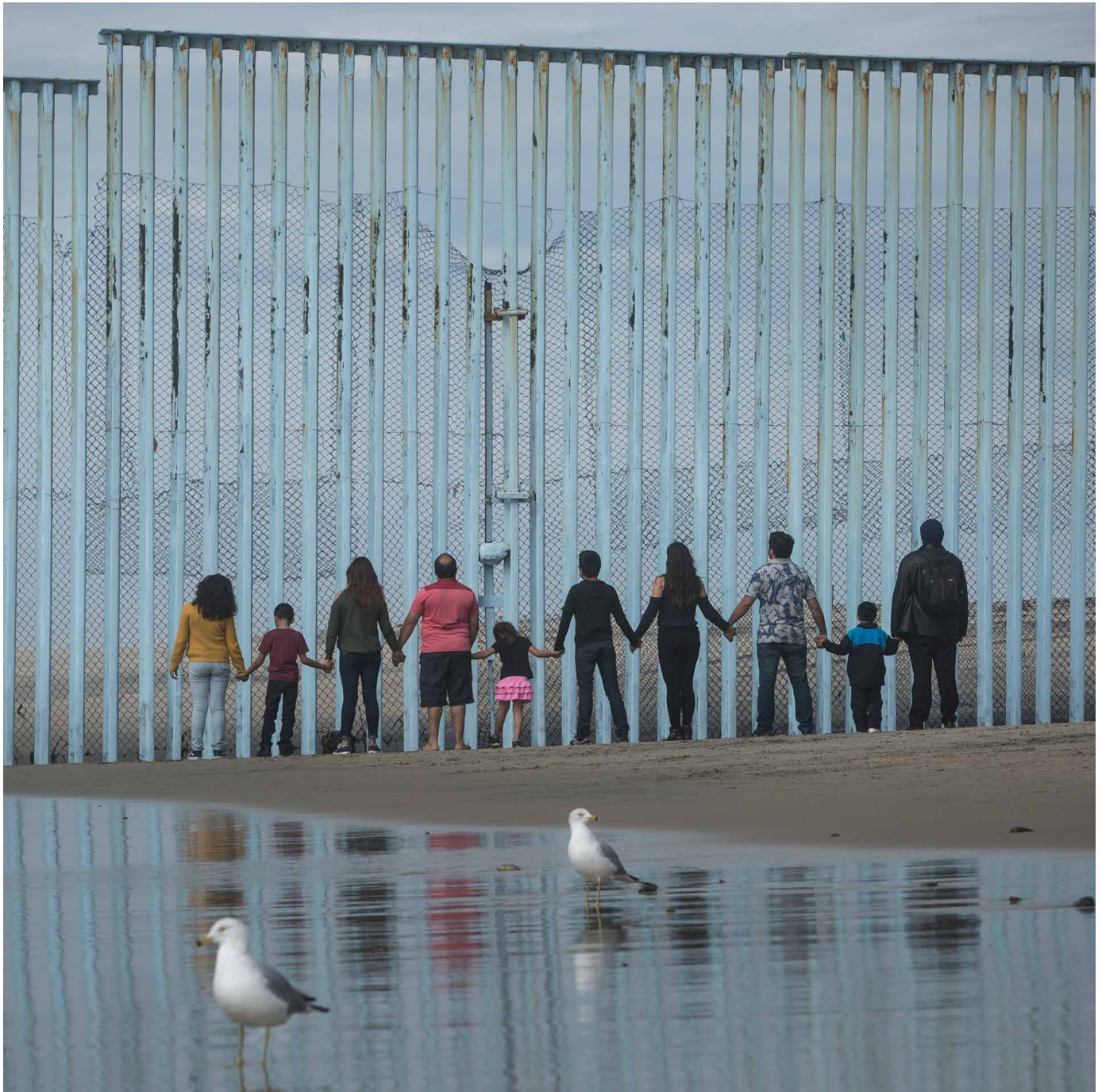
By /s/ Wayne S. Flick

Wayne S. Flick

*Attorneys for Plaintiffs*



# Exhibit A



# FACING WALLS

USA AND MEXICO'S VIOLATIONS OF THE RIGHTS OF ASYLUM-SEEKERS



**I WELCOME**

**AMNESTY  
INTERNATIONAL**



**Amnesty International is a global movement of more than 7 million people who campaign for a world where human rights are enjoyed by all.**

**Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.**

**We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.**

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**Cover photo:**

*US – Mexico Border in Tijuana, Mexico*

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# GLOSSARY

TERM	DESCRIPTION
<b>FISCAL YEAR</b>	The United States government classifies many different pieces of official information by Fiscal Years which run from October 1 to September 30 of each year.
<b>REFUGEE</b>	A refugee is a person who has fled from their own country because they have a well-founded fear of persecution and their government cannot or will not protect them. Asylum procedures are designed to determine whether someone meets the legal definition of a refugee. When a country recognizes someone as a refugee, it gives them international protection as a substitute for the protection of their home country.
<b>ASYLUM-SEEKER</b>	An asylum-seeker is someone who has left their country seeking protection but has yet to be recognized as a refugee. During the time that their asylum claim is being examined, the asylum-seeker must not be forced to return to their country of origin. Under international law, being a refugee is a fact-based status, and arises before the official, legal grant of asylum.
<b>MIGRANT</b>	A migrant is a person who moves from one country to another to live and usually to work, either temporarily or permanently, or to be reunited with family members. Regular migrants are foreign nationals who, under domestic law, are entitled to stay in the country. Irregular migrants are foreign nationals whose migration status does not comply with the requirements of domestic immigration legislation and rules. They are also called “undocumented migrants”. The term “irregular” refers only to a person’s entry or stay. Amnesty International does not use the term “illegal migrant.”
<b>UN REFUGEE CONVENTION AND PROTOCOL</b>	The 1951 Convention Relating to the Status of Refugees is the core binding international treaty that serves as the basis for international refugee law. The 1967 Protocol relating to the Status of Refugees retakes the entire content of the 1951 Convention and simply adds an extension on its application to all refugees, not just those arising from specific time bound conflicts in the 1940s and 50s. Mexico has ratified both the Convention and the Protocol while the USA has ratified only the Protocol, which gives it identical obligations. This treaty, along with the International Covenant on Civil and Political Rights of 1966, ratified by both USA and Mexico, provide a series of fundamental rights to be enjoyed by all humans.
<b>REFOULEMENT</b>	Refolement is the forcible return of an individual to a country where they would be at real risk of serious human rights violations (the terms “persecution” and “serious harm” are alternatively used). Individuals in this situation are entitled to international protection; it is prohibited by international law to return refugees and asylum-seekers to the country they fled – this is known as the principle of non-refoulement. The principle also applies to other people (including irregular migrants) who risk serious human rights violations such as torture, even if they do not meet the legal definition of a refugee. Indirect refolement occurs when one country forcibly sends them to a place where they are at risk of onwards refolement; this is also prohibited under international law.
<b>MARA</b>	Colloquial name commonly given to organized groups from the Northern Triangle of Central America that are characterized by violent criminal activities and generally associated with territorial control.
<b>ICE</b>	Immigrations and Customs Enforcement (ICE) is an agency of the United States government that falls under the Department of Homeland Security (DHS). ICE is generally charged with carrying out detentions and deportations of irregular migrants. Its functions normally pertain to the interior of the United States, rather than the border areas.
<b>CBP</b>	Customs and Border Protection (CBP) is an agency of the United States government that falls under the Department of Homeland Security (DHS). Unlike ICE (see above), CBP generally operates at the border and entry points of the United States.
<b>PORT OF ENTRY</b>	Ports of Entry are official customs border entry points into the United States where travellers are asked to show their passport and other pertinent documents in be permitted entry.
<b>BORDER CONTROL</b>	The United States Border Patrol was established in 1924 and includes thousands of agents that carry out field activities along the US border areas on horse, bicycle, vehicle and by foot, with the aim of detecting arms and drug flows. In more recent years, this force has been widened in its scope to include the apprehension of irregular migrants.



# 1. INTRODUCTION

On 17 March 2017, the United States Customs and Border Protection announced the tender for one of the largest walls on earth: a nine-metre tall construction to complete the barrier along the most transited border in the world, travelling through mountainous terrain, desert, and flat pastures irrigated by a large winding river. Perhaps more than the physical wall, the inhumane walls of cruelty that this barrier represents are most relevant. This briefing examines the implications of US President Donald Trump's Executive Order of 25 January 2017 entitled "Border Security and Immigration Enforcement Improvements," which not only called for the construction of a wall, but also ordered measures that will affect thousands of vulnerable people, many of whom have no choice but to flee their countries to save their lives. This Executive Order is currently being implemented by the Department of Homeland Security (DHS) and other US government agencies and violates international law and human rights standards, allowing for the forcible return of people to life-threatening situations as well as increasing the detention of asylum-seekers and families for months on end. In addition, this briefing demonstrates the role that the Mexican government plays in replicating these human rights violations against thousands of asylum-seekers who are fleeing extreme violence from Central America's Northern Triangle, an area which comprises the countries of Honduras, El Salvador and Guatemala and who in many cases are eligible to receive refugee status either in Mexico or the United States (USA). This briefing is in fact published contemporaneously with a high level conference on security and governance issues relating to the Northern Triangle hosted by the USA and Mexican governments in Miami from 14 to 16 June 2017.

Amnesty International does not oppose border control and recognizes the sovereign decision of States to regulate entry into their territory. However, such controls must be consistent with international human rights and refugee protection frameworks. The United States has failed, for many years, to live up to these standards and its pre-existing border control policies violate international law. Added to this, the new Trump administration has relied on hateful rhetoric against migrants and asylum-seekers.

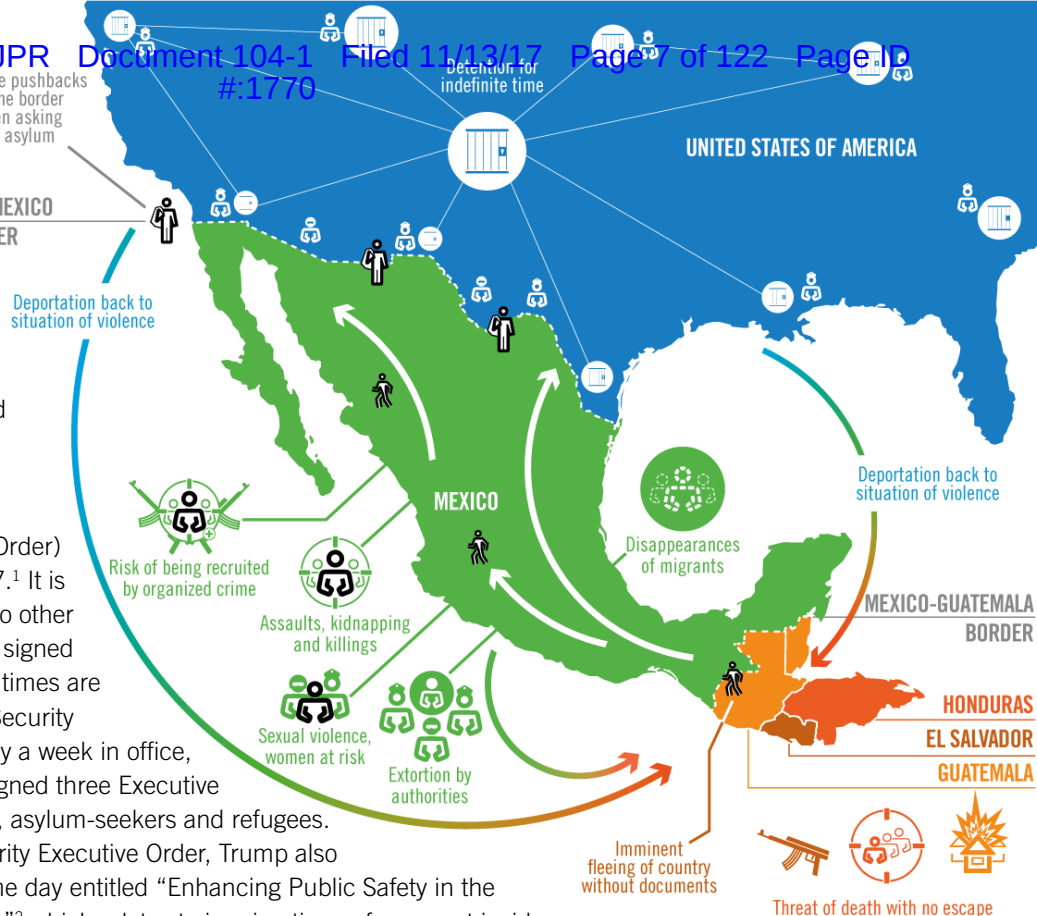
Evidence suggests that hard line border control policies do not stop people migrating or fleeing their countries, but rather condemn them to more precarious routes and strengthen violent criminal networks that fuel people smuggling and result in an increased loss of human life. A large number of the people that are crossing the USA's southern border now include asylum-seekers that are fleeing extreme violence from Central America's Northern Triangle. Asylum claims in the USA are also placed by Mexicans who flee violence and persecution. The aggregate effect and indeed the sought-after outcome of Trump's new actions is to undermine the rights of asylum-seekers in the USA and to permit an inhumane and punitive regime for migrants entering irregularly. In addition, the Mexican government plays an important role in illegally detaining, deporting and returning thousands of people to situations of danger, at times relying on US funding to do so.

This briefing is based on over one year of field research by Amnesty International in Honduras, Guatemala, El Salvador, Mexico and the United States and interviews with over 120 asylum-seekers and migrants as well as approximately 25 government officials and 40 civil society organizations and review of official documents. It demonstrates the effect that harsh immigration enforcement measures have on families, women, men, children, and lesbian, gay, bisexual, transgender and intersex (LGBTI) people migrating from Central America and Mexico. Where interviewees have been placed with an asterisk\* next to their name, they have been given a pseudonym. In many cases, this is testament to the fear they have for their life. Amnesty International is grateful to the interviewees who gave their testimony as well as the lawyers, advocates, human rights defenders and government officials who agreed to provide information for this briefing.

## THE LETHAL CYCLE FOR ASYLUM-SEEKERS

This briefing will discuss the Executive Order entitled “Border Security and Immigration Enforcement Improvements” (hereafter Border Security Executive Order) signed on 25 January 2017.<sup>1</sup> It is worth briefly mentioning two other Executive Orders that were signed contemporaneously and at times are confused with the Border Security Executive Order. With barely a week in office, President Donald Trump signed three Executive Orders that affect migrants, asylum-seekers and refugees. As well as the Border Security Executive Order, Trump also signed an order on the same day entitled “Enhancing Public Safety in the interior of the United States”<sup>2</sup> which relates to immigration enforcement inside the United States, increasing the functions and number of agents of Immigration and Customs Enforcement (ICE), prioritizing deportation for all immigrants especially those suspected of crimes, and the cancellation of funding for “Sanctuary cities” which do not cooperate with ICE and other federal authorities in apprehending irregular migrants within their jurisdiction.

Two days later, on 27 January, President Trump signed an Executive Order which became known as the “Muslim Ban.”<sup>3</sup> After this ban was suspended by courts, a new and very similar Executive Order was signed on 6 March, banning entry of people from six majority Muslim countries and calling for a suspension of the Refugee Admissions Programme for (RAP) for 120 days. Amnesty International analyzed this order in a recent briefing.<sup>4</sup> It is currently being discussed in different legal challenges throughout the country and is likely to end in the Supreme Court. Other measures in this order are of concern, such as the decision to lower the total number of refugees to be admitted to the United States from 110,000 to 50,000. This measure has the potential to affect Central American refugees, namely the Central American Minors In-Country Refugee/Parole (CAM). This programme was created in 2014 and by March 2017 had relocated over 2,600 children and family members to the United States<sup>5</sup> after special in-country processing in Central America under strict guidelines requiring a family member to be lawfully present in the US. Those successful under CAM are admitted to the country as refugees or under humanitarian parole. Despite the gravity of this issue, Amnesty International will only analyze in this briefing the situation of asylum-seekers who flee from their countries to travel to the United States or Mexico to apply for refugee status through an asylum process, rather than through the RAP and CAM.



1. The White House, Office of the Press Secretary, *Executive Order: Border Security and Immigration Enforcement Improvements*, 25 January 2017, (Hereafter Border Security Executive Order in following footnotes) available at: <https://www.whitehouse.gov/the-press-office/2017/01/25/executive-order-border-security-and-immigration-enforcement-improvements>. Last accessed 21 May 2017

2. The White House, Office of the Press Secretary, *Executive Order: Enhancing Public Safety in the Interior of the United States*, 25 January 2017, available at: <https://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united>. Last accessed 21 May 2017

3. The White House, Office of the Press Secretary, *EXECUTIVE ORDER: PROTECTING THE NATION FROM FOREIGN TERRORIST ENTRY INTO THE UNITED STATES*, 27 January 2017, available at: <https://www.whitehouse.gov/the-press-office/2017/01/27/executive-order-protecting-nation-foreign-terrorist-entry-united-states>. Last accessed 21 May 2017

4. Amnesty International, *My Family was in Shock*, AMR5162072017, May 12, 2017, available at: <https://www.amnesty.org/.../AMR5162072017ENGLISH.PDF>

5. United States Department of State staff email to Amnesty International, 8 April, 2016



## 2. MYTHS AND REALITIES

### MYTH: THE UNITED STATES IS BEING FLOODED WITH MEXICAN MIGRATION

While candidate to President, Donald Trump's public rhetoric highlighted Mexicans as a threat to the United States and famously described them using hateful terms.<sup>6</sup> These statements were not retracted once Trump became President. In fact, as President, Trump's Border Security Executive Order stated that "continued illegal immigration presents a clear and present danger to the interests of the United States."<sup>7</sup> The combination of these public statements fosters a myth that Mexican immigration is a threat that is overwhelming the USA.

### REALITY: FEWER MEXICANS ARE MIGRATING TO THE USA THAN EVER

Trump is mistaken on a number of accounts. While there have been some increases in overall apprehensions along the US – Mexico border since 2014, levels of irregular entries into the USA are much lower than 2008 levels, and even lower compared to earlier decades. While it is impossible to determine the total number of people crossing the USA's southern border irregularly, US Border Patrol publishes the numbers of people apprehended, which serves as a proxy yet does not count the people who are not intercepted by authorities. Apprehensions of Mexicans at US borders started rising from the 1970s onwards and reached their peak in the 1980s and 1990s, only to start plummeting after 2000.<sup>8</sup> Apprehensions of Mexicans by the US Border Patrol dropped from 1.6 million in 2000 to 192,000 in 2016. In 2014 and again in 2016,<sup>9</sup> apprehensions of Mexicans crossing irregularly into the United States were overtaken by those from other nationalities classified as "Non-Mexicans" by US government data.<sup>10</sup> Many of these people come from the Northern Triangle of Central America.<sup>11</sup> While US Border Control does not publish a breakdown of the nationalities apprehended that are "Non-Mexican", between Fiscal Year 2013 and 2016, 27% of those apprehended at the border were Family Units or Unaccompanied Children.<sup>12</sup> In Fiscal Year 2016, 91% of the Family Units apprehended by US

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6. By way of example, although this is not the only one, when Donald Trump announced his presidential campaign in June 2015, he famously described immigrants from Mexico as "rapists" and "criminals". See the stenographic version of this speech at: "*Full Text: Donald Trump announces a presidential bid*", June 16, 2015, available at: [https://www.washingtonpost.com/news/post-politics/wp/2015/06/16/full-text-donald-trump-announces-a-presidential-bid/?utm\\_term=.7b7b0f33edf0](https://www.washingtonpost.com/news/post-politics/wp/2015/06/16/full-text-donald-trump-announces-a-presidential-bid/?utm_term=.7b7b0f33edf0)

7. Border Security Executive Order, Section 1

8. See for example, Brookings Institute, *Why Undocumented Immigration from Latin America to the US will slow to a Crawl*, March 2017, available at: <https://www.brookings.edu/blog/brookings-now/2017/03/23/why-undocumented-immigration-from-latin-america-to-the-u-s-will-slow-to-a-crawl-even-without-a-border-wall/>. Last accessed 16 May 2017.

9. See United States Border Patrol, *Total Illegal Alien Apprehensions by Fiscal Year*, available at: <https://www.cbp.gov/sites/default/files/assets/documents/2016-Oct/BP%20Total%20Apps%2C%20Mexico%2C%20OTM%20FY2000-FY2016.pdf>. Last accessed 21 May 2017.

10. In 2014, 53% of apprehensions carried out by the US Border Patrol were classified as "Non-Mexicans". In 2016, once again, 54% of the irregular migrants apprehended by Border Patrol were made up of "Non Mexicans". Figures analyzed by Amnesty International from the file named: United States Border Patrol, *Total Illegal Alien Apprehensions by Fiscal Year*, (ibid).

11. See figures in previous footnotes.

12. Between Fiscal Year 2013 and Fiscal Year 2016, a total of 259,204 people travelling in Family Units were apprehended, and 235,577 unaccompanied children were apprehended, in proportion to a total of 1,833,141 people apprehended at the border. This calculation was arrived at by reviewing the data from the following official data from US Border Patrol: *APPREHENSIONS ON THE SOUTHWEST BORDER (BORDER PATROL)* for the years FY 2013, 2014, 2015 and 2016, data available at: <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics> and <https://www.cbp.gov/newsroom/stats/sw-border-migration>. Last accessed 21 May 2017.

Border Control came from Central America's Northern Triangle, while 79% of Unaccompanied Children came from the Northern Triangle.<sup>13</sup> This of course does not account for the many adults who could be travelling alone or in groups, in many cases fleeing violence.

## MYTH: THOSE CROSSING THE US SOUTHERN BORDER ARE COMING TO TAKE AMERICAN JOBS

The idea of the "American dream" has changed significantly over the last few decades. Multiple research findings have provided evidence of a sharp decline in economically motivated immigration from Latin America from 2000 onwards, with predictions for total immigration to reach zero by 2050.<sup>14</sup> The irony is that the border control model that Trump seeks to expand will likely do little to stem the tide of people entering into the USA, which, rather than being economic migrants, are increasingly the product of forced migration as they are fleeing extreme violence in their countries. Rather than trying to deter economic migrants, the Border Security Executive Order will be overwhelmingly affecting people who are seeking asylum in the USA.

## REALITY: MANY PEOPLE ENTERING THE USA ARE FLEEING FOR THEIR LIVES

El Salvador is a small country that is approximately the size of the state of New Jersey, United States.<sup>15</sup> It is a place where daily life for many citizens involves extortions, sexual violence, threats, and especially for young people, forced recruitment into powerful criminal groups known as *maras* that control certain sections of the country, especially urban areas, although rural areas are not exempt. In many cases *maras* render the government practically ineffective. The struggle for territory between the gangs has left invisible fault lines throughout the country, which people are not allowed to cross, no matter if their relatives, job or school lies on the other side. This particularly affects the poorest and most marginalized communities. Young people and children face the prospect of forced recruitment and woman are particularly at risk of sexual exploitation. Honduras, El Salvador's neighbouring country, is slightly larger, almost the size of the state of Arizona or the Mexican state of Durango. Along with Guatemala, these three countries are commonly referred to as Central America's "Northern Triangle". Asylum claims from these countries lodged globally rose by 555% between 2010 and 2015.<sup>16</sup> For a number of years, El Salvador and Honduras have been ranked as some of the deadliest places on the planet outside of a conflict zone, with homicide rates from eight to ten times higher than the level considered by the World Health Organization to be an "epidemic."<sup>17</sup> Typically homicides and deaths

13. Amnesty International analysis of figures contained here: US Customs and Border Protection, Southwest Border Migration: available at: <https://www.cbp.gov/newsroom/stats/sw-border-migration>. Last accessed 21 May 2017

14. See for example, Brookings Institute, *Why Undocumented Immigration from Latin America to the US will slow to a Crawl*, March 2017, available at: <https://www.brookings.edu/blog/brookings-now/2017/03/23/why-undocumented-immigration-from-latin-america-to-the-u-s-will-slow-to-a-crawl-even-without-a-border-wall/>. Last accessed 16 May 2017. Also see: Pew Research Centre, *More Mexicans Leaving than coming to the US*, Nov 19, 2015: <http://www.pewhispanic.org/2015/11/19/more-mexicans-leaving-than-coming-to-the-u-s/>, accessed on 31 March 2017.

15. According to the World Bank Data Bank, El Salvador has a territory of 21,040 square kilometers, see The World Bank, *Surface Area*: available at: <http://data.worldbank.org/indicator/AG.SRF.TOTL.K2>. According to the United States Census, New Jersey comprehends 22,591 square kilometers. See figures available from United States Census Bureau here: <https://www.census.gov/geo/reference/state-area.html>

16. Amnesty International, *Home Sweet Home? Honduras, Guatemala and El Salvador's role in a deepening refugee crisis*, 14 October 2016, AMR 01/4865/2016

17. A homicide rate higher than 10 per 100,000 inhabitants is considered by the World Health Organization (WHO) as an epidemic level. See United Nations Development Programme (UNDP), *Regional Human Development Report 2013-14: Citizen Security with a Human Face – Evidence and Proposals for Latin America*, 2013, available at: [http://hdr.undp.org/sites/default/files/citizen\\_security\\_with\\_a\\_human\\_face\\_-\\_executivesummary.pdf](http://hdr.undp.org/sites/default/files/citizen_security_with_a_human_face_-_executivesummary.pdf), p. 1. Last accessed 21 May 2017. The biannual figures from the United Nations are yet to be released for 2017, but in the meantime the government of Honduras has reported a homicide rate of 62.88 for 2016: see figures here from the Public Security Ministry: <https://www.sepol.hn/artisistem/images/sepol-images/files/cant%20homicidios.PNG> (last accessed 21 May 2017). While this homicide rate reported by government sources represents a slight decrease from earlier years, it is still among the highest in the world. In 2015, UN figures placed El Salvador the most deadly place on the planet, with a homicide rate of 108 murders per 100,000. For 2016, the government of El Salvador reported a homicide rate of 85.91 according to figures published by the Legal Medicine Institute, available here: <http://www.transparencia.og.gob.sv/Filemaster/InformacionGeneral/documentacion/c-40/8142/HOMICIDIOS%20A%C3%91O%202016.pdf>. Last accessed 21 May 2017

from armed conflicts are counted separately, however using certain measures that combine both homicides and deaths from armed conflict, El Salvador and Honduras were shown to be more deadly in 2012 and 2015 than many well-known conflict zones such as Iraq and Afghanistan<sup>18</sup>. Guatemala, while not reaching the same stratospheric levels as Honduras and El Salvador<sup>19</sup>, is still one of the most violent countries in Latin America and many asylum claims from this country often have more complex causes, including gender-based violence.

In addition to the problem of violence in these countries, the rule of law is extremely weak, meaning that their governments are not effective in protecting their own citizens. In 2016, Honduras was ranked 102<sup>nd</sup> on a comprehensive and independent index of the rule of law of 113 countries, in the same scale as countries such as Uganda, while Guatemala ranked 97<sup>th</sup>. El Salvador was ranked 75<sup>th</sup> on an index measuring factors such as corruption, civil and criminal justice, and order and security.<sup>20</sup>

### STORIES OF ESCAPE FROM DEATH

**Of 113 people from the Northern Triangle of Central America whose reasons for migrating were explained to Amnesty International, 86% alleged major threats to their life, direct attacks or extortion through "war taxes" from *maras* in their home country.**

Crossing to the other side of town is a risk. Going to school is a risk. Amnesty International met a fireman and his wife from Honduras. The fireman said he arrived in Mexico still wearing his fireman uniform, as he had fled without a moment's notice after the gang came to kill him. A young girl told Amnesty International that the *mara* will punish girls for wearing certain clothes or dying their hair. *Mara* criminal gangs charge extortions across large sectors of the population and different businesses, known as "war taxes". Refusing to pay these extortions effectively puts one's life at risk. Amnesty International found that direct threats were a very common phenomenon.

**Of the 113 testimonies where Amnesty International had information on the reasons for leaving, 27% mentioned the murder of a close family member or close contact in recent years.**

Beto,\* a community worker in El Salvador, was working in a local emergency rescue team and saw his 14-year-old colleague wiped out with a bullet in front of him.

**Most young people between 13 and 20 Amnesty International spoke to had been targeted by *maras* to attempt forced recruitment into their ranks.<sup>21</sup> This phenomenon often affects the young.**

A 23-year-old wept to Amnesty International while he related how he was just 13 when he was forced to join a *mara* in Honduras. At that young age he had no parents, and so the gang told him "we are your father now". He fled his country a few years later. Nearly all interviewees that Amnesty International talked to with children between the ages of 11 to 18 were at higher risk because their children were at a "recruitable age."

18. David Cantor, "As deadly as armed conflict? Gang violence and forced displacement in the Northern Triangle of Central America," *Agenda Internacional*, Año XXIII No 34, 2016, p 82.

19. Government figures from the Instituto Nacional de Ciencias Forenses placed Guatemala's homicide rate in 2016 at 32.74 per 100,000 inhabitants. <http://www.inacif.gob.gt/docs/estadisticas/anual/AnualM2016.pdf>

20. World Justice Project, *Rule of Law Index 2016*, available at: [https://worldjusticeproject.org/sites/default/files/documents/RoLI\\_Final-Digital\\_0.pdf](https://worldjusticeproject.org/sites/default/files/documents/RoLI_Final-Digital_0.pdf)

21. The United Nations High Commissioner for Refugees (UNHCR) outlines that "Refusals to succumb to a gang's demands and/or any actions that challenge or thwart the gang are perceived as acts of disrespect, and thus often trigger a violent and/or punitive response. [O]nce an individual or family has been targeted for retaliation, the gravity of the threat does not diminish over time." *UNHCR Guidance Note Relating to Victims of Organized Gangs*, March 2010 available at: <http://www.unhcr.org/56fc266f4.pdf> Page 93 (Annex).



## Emilia\* and José's dilemma: "My heart was pounding, thinking how they were trying to recruit my little boy."

Two weeks after Donald Trump was elected president, Amnesty International interviewed a family of nine from El Salvador who were sharing a small, cramped room on the border of Mexico and Guatemala. Forty-four-year-old Emilia worked in a bakery and her husband José\* worked as a bus driver in San Salvador, El Salvador's capital. Together they had eight children, yet the two eldest sons were killed in almost identical circumstances. The first son was working as a bus conductor at age 17 and was killed by *mara* in broad daylight in 2009 as he was coming off the bus. The *mara* had taken revenge on the transport line for not paying the "war tax" imposed by the gang. Emilia told Amnesty International how five years after her eldest son was killed, she "couldn't believe it, the same story repeated itself again." Her second son, also a bus conductor, was killed in July 2014. Emilia told Amnesty International she fainted when she heard the news of the second death. In 2015, Emilia's brother, who had been living in Mexico for 35 years, decided to go back to El Salvador in order to convince his sister it was time to leave and to help her flee. Emilia persuaded her brother to wait a few months in order for her children to finish the school year before they left. Reluctantly at first, Emilia's brother agreed and spent Christmas 2015 with the family and soon obtained temporary work. In mid-2016, this very same brother was also killed simply because as an outsider in the neighbourhood the *mara* suspected him of allegiances to one of their rivals. Emilia told Amnesty International how her brother died in her arms as the *mara* shot him while they were walking home from work together one day. In the same attack, the *mara* also tried to kill Emilia's daughter who was walking with them, but failed as they did not have any more bullets in their pistol (according to Emilia's testimony they held a gun to her head and tried to shoot). Her daughter had been at risk for many years and already received threats, as she went to school in another part of town in a rival area, which meant the *mara* suspected her of collaboration with their rivals. However it was the only school that the family could afford. After the death of her two sons and her brother, the *maras* continued to threaten the family, trying to recruit Emilia's other sons into their ranks. Emilia, a devout Christian, told Amnesty International she had responded to the *maras'* threats saying: **"We know the word of God, and we do not know how to commit evil."** Emilia and her family were granted international protection in Mexico in April 2017. Her grandchild was born during their flight and arrival in Mexico.



***“In my neighbourhood often bodies are found in the street, people are shot dead, killed. So many things. Even if I wanted, I can’t go back to my country.”***

Camilo\*, a 17-year-old Honduran currently seeking asylum in the US interviewed by Amnesty in February 2017.



Those fleeing violence are not only from Central America. Amnesty International has also received a number of reports of residents of the Mexican states of Michoacán and Guerrero having fled to the US – Mexico border from 2013 onwards, ostensibly in relation to drug related violence.<sup>22</sup> Other reports of asylum claims have come from particularly violent northern border states such as Tamaulipas, as well as some Mexican journalists filing asylum claims in the USA due to persecution for their reporting work. In May 2016, a special report by Mexico’s National Human Rights Commission identified at least 35,433 victims of internal displacement due to violence caused by clashes between drug cartels and government forces in Mexico, while international estimates such as those by the Internal Displacement Monitoring Centre, calculated as many as 287,000 internally displaced people as of 2015.<sup>23</sup> Between 7,000 and 10,000 Mexicans have requested asylum in the US each year since 2011.<sup>24</sup> While many immigration tribunals in the United States will be inclined to refuse Mexicans asylum<sup>25</sup> by alleging that Mexico is a large country and Mexican citizens have the option of relocating internally, known commonly as “internal flight”, the concept of “internal flight” is not contained in the 1951 UN Convention Relating to the Status of Refugees (UN Refugee Convention) nor the 1984 UN Convention against Torture when defining who is entitled to protection from forced return. The United States is obliged to give an individualized assessment to each Mexican citizen who alleges to be fleeing persecution.<sup>26</sup>

Amnesty International believes that the mere absence of a risk of persecution in a substantial part of a territory is not enough to determine the existence of an internal protection alternative. No refugee should be returned to another area of their country of origin unless an examination of the individual case shows that the human rights situation there is stable, and that the individual will have real and effective access to protection in this area. Any policy or practice to reject a category of asylum applications based on a general assumption that internal protection is available for that type of person violates the principle of non-refoulement. The individual must also be protected against indirect refoulement towards a territory where they may be subjected to persecution. If any of these criteria cannot be satisfied, there is no internal flight alternative.

22. Amnesty International collected multiple testimonies from social workers at migrants shelters in Tijuana Mexico between September 2016 and February 2017 which pointed to a significant group of Mexican citizens from Michoacán and Guerrero arriving in this border city in order to cross into the US and seek asylum. By February 2017 this phenomenon had decreased, however it was noted to have occurred from 2013 onwards.

23. See Internal Displacement Monitoring Centre, Mexico Country Information, available at: <http://internal-displacement.org/database/country/?iso3=MEX>. See also National Human Rights Commission (CNDH) (Mexico) *Informe Especial sobre el Desplazamiento Forzado Interno de México*, May 2016, available at: [http://www.cndh.org.mx/sites/all/doc/Informes/Especiales/2016\\_IE\\_Desplazados.pdf](http://www.cndh.org.mx/sites/all/doc/Informes/Especiales/2016_IE_Desplazados.pdf)

24. See US Department of Justice asylum statistics, available at: <https://www.justice.gov/eoir/file/asylum-statistics/download>

25. Asylum grant rates for Mexicans are notably lower than other nationalities applying for asylum, and Amnesty International has documented some cases where Board of Immigration Judges in the United States use the justification of internal flight to deny Mexican asylum claims.

26. See UNHCR Guidelines on Protection: *Internal Flight or Relocation Alternative*, HCR/GIP/03/04 23 July 2003, available at: <http://www.unhcr.org/uk/publications/legal/3f28d5cd4/guidelines-international-protection-4-internal-flight-relocation-alternative.html>. This section is relevant: “International law does not require threatened individuals to exhaust all options within their own country first before seeking asylum; that is, it does not consider asylum to be the last resort. The concept of internal flight or relocation alternative should therefore not be invoked in a manner that would undermine important human rights tenets underlying the international protection regime, namely the right to leave one’s country, the right to seek asylum and protection against refoulement. Moreover, since the concept can only arise in the context of an assessment of the refugee claim on its merits, it cannot be used to deny access to refugee status determination procedures.”

## MYTH: CRACKING DOWN ON MIGRATION MEANS TACKLING CRIMINALS

***“And it is here that criminal aliens and the coyotes and the document-forgers seek to overthrow our system of lawful immigration..... we first take our stand against this filth.”***

US Attorney General Jeff Sessions, stenographic version of address from the US – Mexico border in Arizona on 11 April 2017.<sup>27</sup>

President Trump and members of his cabinet have called for measures to stop the flow of criminals into the United States as well as tackle human trafficking and other criminal activities. These comments have conflated irregular migrants with criminals, something which flies in the face of evidence and international law.

## REALITY: MIGRANTS ARE NOT CRIMINALS

***“Seeking asylum is not a crime, and neither is entering a country irregularly.”***

UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, 2015.<sup>28</sup>

It is not a crime under international or US domestic law to be present in the United States in an irregular manner. US law outlines this as a civil violation, not a criminal one, notwithstanding the fact that more recent policies have prioritized criminal prosecution of so-called “illegal entry” and “illegal re-entry” by imposing criminal penalties on undocumented immigrants or criminally prosecuting them instead of relying on civil enforcement mechanisms for entering the country without authorization on inspection.<sup>29</sup> In fact, the UN Special Rapporteur on Migrants and others have criticized<sup>30</sup> states that implement measures that treat migrants as criminals and has called for irregular migration to never be criminalized. Unfortunately, leaders have repeatedly used misleading and stigmatizing terms such as “criminal aliens” labels that are not even present in US law. Under the UN Refugee Convention and its 1967 Protocol, states are not allowed to apply punitive measures to those seeking asylum.<sup>31</sup>

Unfortunately, President Trump and many of his high-ranking officials have pursued a hateful rhetoric against irregular migrants and asylum-seekers since they have taken office. In particular, both President Trump and Attorney General Jeff Sessions have mistakenly conflated two different groups of people: irregular migrants and asylum-seekers, and powerful *maras* such as the MS13. The irregular migrants and asylum-seekers leave their countries, such as Honduras, Guatemala and El Salvador, because they have no other choice. As outlined above, these countries are plagued by territorial control by gangs like the MS13. It is highly mistaken and irresponsible for the leaders of the US to conflate the identity of desperate asylum-seekers with those very criminal groups, which due to their extreme violence, have forced innocent citizens to flee. The MS13 is a transnational organization that was founded in Los Angeles in the 1980s, and ample evidence has shown that United States deportation policies were instrumental in building up this criminal network in El Salvador and Honduras alongside the lack of proper control of these groups by their home countries' governments.<sup>32</sup> *Mara* activity increased along with the influx of gang members deported back from the United States and the influence of Mexican drug cartels in the region. The United States government designated the MS13

27. See stenographic version of speech by Attorney General Jeff Sessions at 11 April 2017, Department of Justice website: <https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-announcing-department-justice-s-renewed>. Last accessed 25 April 2017

28. Statement by the UN Human Rights Commissioner Zeid Ra'ad Al Hussein, 17 September 2015, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16449&LangID=E>, accessed 31 March 2017

29. See United States Code sections 1325 and 1326. For more information see American Civil Liberties Union (ACLU): *Issue Brief: Criminalizing Undocumented Immigrants*, February 2010.

30. United Nations Human Rights Council, Report of the Special Rapporteur on the human rights of migrants, François Crépeau, 2 April 2012, A/HRC/20/24 paragraph 13

31. 1951 UN Convention on Refugees, Article 31. Full text of the Convention available at: <http://www.unhcr.org/3b66c2aa10>

32. Marc R. Rosenblum and Daniel J. Tichenor (eds) *The Oxford Handbook of the Politics of International Migration*, Oxford University Press, 2012. Page 520 notes US immigration enforcement played a role in building up *maras* in the 1990s in Central America.

as an international target for its national strategy to combat transnational crime, acknowledging the harmful effect that the organization has on Latin American citizens.<sup>33</sup>



**MYTH: IMMIGRANTS PUT CITIZENS AT RISK OF CRIME**

**REALITY: IMMIGRANTS COMMIT LESS CRIME THAN CITIZENS DO**

**EVIDENCE OVERWHELMINGLY HAS SHOWN THAT IMMIGRATION HAS NO CORRELATION WITH HIGHER CRIME RATES<sup>34</sup> AND IS ON THE CONTRARY RELATED TO LOWER CRIME RATES**



33. US Department of Treasury, Press Release: *Treasury Sanctions Latin American Criminal Organization*, 11 October 2012 <https://www.treasury.gov/press-center/press-releases/Pages/tg1733.aspx>, last accessed 25 April 2017

34. Robert J. Sampson, Jeffrey D. Morenoff and Stephen Raudenbush, *Social Anatomy of Racial and Ethnic Disparities in Violence*, *American Journal of Public Health* (2005); Ramiro Martinez, Jr., Matthew T. Lee, and A.L. Nielsen, *Segmented Assimilation, Local Context and Determinants of Drug Violence in Miami and San Diego: Does Ethnicity and Immigration Matter*, *International Migration Review* (March 2004). 2 Ruben G. Rumbaut and Walter A. Ewing, *The Myth of Immigrant Criminality and the Paradox of Assimilation: Incarceration Rates Among Native and Foreign-Born Men*, *Immigration Policy Center Special Report* (Spring 2007). Stuart Anderson: *Immigrants and Crime, Perception versus reality*. June 2010, Cato Institute, available at: [https://object.cato.org/sites/cato.org/files/pubs/pdf/irb\\_june2010.pdf](https://object.cato.org/sites/cato.org/files/pubs/pdf/irb_june2010.pdf): This article refers to a number of official data such as the US Census and Department of Justice figures, and research that has shown that cities whose rate of immigration increase also experienced drastic drop in crime rates.



# 3. DEADLY WALLS

## 3.1 FENCES AND WALLS ONLY COST LIVES

Amnesty International has for many years documented efforts by countries around the world to erect physical barriers in an attempt to prevent people from moving across their borders. The organization's research has shown that such barriers have not succeeded in deterring people from seeking asylum from violence, but rather have provoked the creation of new migration routes that have proven infinitely more deadly and have cost thousands of human lives. Such examples include the Spanish government's increasingly harsh approaches to block migration to Europe from Africa through their Spanish enclaves of Ceuta and Melilla in Morocco, with the construction of a fence around these areas in the 1990s. This was later complemented with a high level System of External Surveillance in 2002 and subsequent raising of the height of the fence including the addition of razor wire in 2005.<sup>35</sup> According to Frontex, the European Agency for the management of border operations within the European Union, the fence improvements in May 2014 that made it even harder for refugees and migrants to jump the fence, were a key reason that many migrants and refugees began to use the now infamous and deadly sea routes into Europe from 2014 onwards.<sup>36</sup>

The decision by the Greek government in 2012 to construct a 10 km fence along its Evros region bordering Turkey prevented many people from entering, meaning that more and more refugees and migrants started to opt for the dangerous sea route to the Greek islands.<sup>37</sup> Beginning in 2013, the numbers of refugees using this sea route skyrocketed from the thousands to the hundreds of thousands by 2015, 84% of whom came from Syria, Afghanistan and Iraq as well as other key refugee producing countries, according to UN High Commissioner for Refugees (UNHCR).<sup>38</sup>

Following the example of Greece, the Hungarian Government announced in 2015 that it would begin construction of fences along its borders with Croatia and Serbia and subsequently completed construction. There is no evidence that these measures were successful in deterring people from leaving their countries in order to enter Europe.<sup>39</sup>

The border wall proposed by President Trump only threatens to put more lives at risk. In addition, a recent report by the Washington Office on Latin America (WOLA) compiled predictions to estimate that the wall could cost between \$8 billion and \$66.9 billion USD. The report also demonstrates that the wall would largely be ineffective in stemming the tide of illicit drugs flowing into the United States, as it is calculated that as many as 70% of the illicit drugs trafficked into the country come through the ports of entry, rather than crossing the border in open spaces, like the Sonoran desert.<sup>40</sup>

35. Amnesty International, *Fear and Fences: Europe's Approach to Keeping Refugees at bay*, 12 November 2015, EUR 03/2544/2015, available at: <https://www.amnesty.org/es/documents/eur03/2544/2015/en/>

36. Frontex, *Annual Risk Analysis – 2015 – April 2015*, available at: [http://frontex.europa.eu/assets/Publications/Risk\\_Analysis/Annual\\_Risk\\_Analysis\\_2015.pdf](http://frontex.europa.eu/assets/Publications/Risk_Analysis/Annual_Risk_Analysis_2015.pdf) (accessed 1 April 2017). Page 24 of report refers to the upgrading of the fence leading to an increase in the number of detections of sea arrivals.

37. Amnesty International, *Fear and Fences*, op cit, p 49

38. UNHCR, *Global Trends Forced Displacement in 2015*, available at: <http://www.unhcr.org/576408cd7.pdf>, page 32

39. Amnesty International, *Fear and Fences*, op cit p 77 Also see Amnesty International, 2015, and see also: Amnesty International: *Fenced Out: Hungary's violations of the rights of refugees*, 2015: EUR27261420

40. Adam Isacson, Washington Office on Latin America (WOLA): *Throwing Money at the Wall: An Overview of the Trump Administration's Border Wall Funding Requests* 31 March 2017, <https://www.wola.org/analysis/throwing-money-wall-overview-trump-administrations-border-wall-funding-requests/> (accessed 1 April 2017)



On 28 April 2017, the US Congress effectively blocked President Trump's proposed \$999 million budget for the construction of the wall that had been included in his 16 March request for the rest of 2017.<sup>41</sup> In the formal budget blueprint for Fiscal Year 2018 submitted on 18 March<sup>42</sup> the President requested \$2.6 billion to include funding for the construction of the wall. According to Congressional timelines, the budget for Fiscal Year 2018 (which commences on 1 October 2017), must be approved by Congress by September 2017. It is important to take into account that the President's Budget for Fiscal Year 2018 not only includes funding for the wall, but also a much intensified programme for border control and immigration detention centres, which will be analyzed in more detail below.

### 3.2 BEYOND WALLS: OTHER ENFORCEMENT MEASURES

The border control measures proposed by President Trump will intensify a pre-existing enforcement and deterrence-based strategy that began to take effect as early as the mid-1990s and continued in different degrees throughout the George W. Bush and Barack Obama administrations. From 2008 to 2016, the Obama administration increased the number of Border Patrol agents from 15,000 to 23,861.<sup>43</sup> President Trump's Border Security Executive Order proposes to increase this workforce by another 5,000. The border control measures put in place by the Obama administration from 2008 to 2016 were accompanied by an initial drop in the number of people being apprehended on the border, with the exception of a slight uptake from 2013 to 2016. Yet evidence shows that this overall reduction of border apprehensions compared to 2008 levels was not necessarily only due to the administration's border efforts, but in large part given the slump in Mexican migration after the recession in the US, as well as demographic changes and economic improvements in Mexico.<sup>44</sup>

One point is certain: border control measures implemented since 2008 did not stem the flow of people arriving from El Salvador, Honduras and Guatemala, and more importantly, from 2014 onward there was a significant upsurge in people coming from this region, most notably unaccompanied children and family units. Rather than responding to what he called a "humanitarian situation"<sup>45</sup> with a different approach fitting the vulnerable people that were arriving in the USA, President Obama and the DHS proceeded to expand detention facilities for families, as well as announcing new enforcement priorities that were aimed at providing maximum deterrence to those recent arrivals entering the USA and apprehended at the border, effectively placing asylum-seekers as top priority for apprehension, detention, and removal.<sup>46</sup> These measures place extra trauma on people who, in many cases, are already fleeing violence. The revamped version of these policies under President Trump, discussed in further detail below, will no doubt continue to do so.

41. Final supplement budget for FY 2017: <https://www.congress.gov/bills/115/congress/house/bills/244/text>; Whitehouse statement on consolidated budget: <https://www.whitehouse.gov/the-press-office/2017/05/05/statement-president-donald-j-trump-signing-hr-244-law>

42. US Office of Management and Budget: *America First: A Budget Blueprint to Make America Great Again*, available at: [https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/2018\\_blueprint.pdf](https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/2018_blueprint.pdf)

43. See statement from Jeh Johnson, 2014: <https://www.dhs.gov/news/2014/09/08/statement-secretary-johnson-about-situation-along-southwest-border> (accessed 2 April 2017) and US Customs and Border Protection, *Performance and Accountability report: Fiscal Year 2016*, <https://www.cbp.gov/sites/default/files/assets/documents/2017-Mar/FY-2016-CBP-PAR-508C.pdf>

44. See for example, Brookings Institute, *Why Undocumented Immigration from Latin America to the US will slow to a Crawl*, March 2017, available at: <https://www.brookings.edu/blog/brookings-now/2017/03/23/why-undocumented-immigration-from-latin-america-to-the-u-s-will-slow-to-a-crawl-even-without-a-border-wall/>. Last accessed 16 May 2017; "Better lives for Mexicans cut allure of going north", The New York Times, 6 July 2011

45. The White House, Office of the Press Secretary, *Statement by the President on Immigration*, July 9, 2014, available at: <https://obamawhitehouse.archives.gov/the-press-office/2014/07/09/statement-president-immigration>. Last accessed 21 May 2017.

46. On November 20, 2014, the Department of Homeland Security announced policies through a memo that made aliens apprehended at the border an enforcement priority for detention and removal. See: *Policies for the Apprehension, Detention and Removal of Undocumented Immigrants*, available at [https://www.dhs.gov/sites/default/files/publications/14\\_1120\\_memo\\_prosecutorial\\_discretion.pdf](https://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf). Last accessed 21 May 2017. This policy focus has been widely interpreted to allow for enforcement actions to prioritize asylum-seekers. Also see Joint letter from 231 human rights organizations to Secretary Jeh Johnson, 31 October 2016. Available at: <http://www.humanrightsfirst.org/sites/default/files/NGO-Letter-To-Johnson-Increased-Detention-2016-10-31.pdf>

***"I left everything behind. My community was really fond of me. This year I was going to graduate from college and contribute to my community. That was my dream."***

A 34-year-old woman from El Salvador who was forced to flee her rural community alongside her four sons after *maras* beat her son and husband, raided her house and threatened to kill them.



© Amnesty International

Indeed, official government assessments of the first major wave of deterrence-based border operations from 1994 onwards have concluded that they were not successful in reducing migration, and rather shifted it to new areas and harsher routes.<sup>47</sup> In addition, these measures were widely held to have provoked an increase in the smuggling industry.<sup>48</sup> Most telling are statements by former high level immigration officials who spoke publicly about how such operations led to more undesired consequences than intended ones, such as an expansion of the smuggling industry and larger numbers of undocumented migrants remaining in the US permanently or for longer stretches of time, as well an increase in deaths.<sup>49</sup>

***"Before Trump came to power, a lot of people would try and turn themselves in at the bridge port of entry to ask for asylum. Now, lots of people are trying to cross over the river."***

Comment from social worker at a migrants' shelter in Nuevo Laredo, Tamaulipas state, Mexico, across the border from the port of entry at Laredo, Texas.



Río Grande in Reynosa, Tamaulipas, that divides the USA from Mexico. © Amnesty International

47. US General Accounting Office, *Illegal Immigration: Status of Southwest Border Strategy Implementation*: May 1999 p17-21, available at: <http://www.gao.gov/archive/1999/gg99044.pdf>

48. W Cornelius, *Death at the Border: The efficacy and "unintended" consequences of US Immigration Control Policy 1993 – 2000*, The Center for Comparative Immigration Studies, University of California, San Diego, December 2001

49. Doris Meissner, former Immigration and Naturalization Service Commissioner responsible for overseeing the implementation of Operation Gatekeeper and the 1994 Plan: see M. Cooper "On the Border of Hypocrisy: The unintended consequences of getting touch on illegal immigration", *LA Weekly*, 4 December 2003, available at <http://www.laweekly.com/2003-12-04/news/on-the-border-of-hypocrisy/>. See also W Cornelius, *ibid*

In many ways, the “new Trump era”<sup>50</sup> appears to be using the same failed strategy that has already been proven counterproductive. The Secretary of Department of Homeland Security, John Kelly, recently announced that apprehensions of irregular migrants on the US – Mexico border had dropped by 40% since Donald Trump was elected President in November 2016.<sup>51</sup> What Secretary Kelly’s announcement fails to recognize is that there was a sharp increase in the number of family units and unaccompanied children arriving from the Northern Triangle in November and December 2016.<sup>52</sup> Indeed, while the figures from February 2017 onwards show an overall drop of apprehensions across the board, including for unaccompanied children and families, this does not take away from the fact that arrivals of these groups up until that point had been steadily rising, and 2016 showed historic levels of family unit arrivals. While travelling along the US – Mexico border in February and March 2017, Amnesty International researchers witnessed very few unaccompanied children or family units staying in the migrant shelters along the established routes to enter the United States. It is too early to point to definitive reasons for these changes in flows, yet one possibility is that many unaccompanied children or families could be being swept up into other, more clandestine routes, that are infinitely more dangerous and more tightly controlled by criminal networks. Experts have noted that each time the government adopts new immigration enforcement measures the numbers fall, only to rebound, in some cases higher than before.<sup>53</sup>

***“I have seen the statistics of children crossing going up, but I ask myself, where have they all gone?”***

Advocate working on cases of children in detention in Arizona, commenting on the initial surge in arrivals of unaccompanied children after Donald Trump was elected president.

Since November 2016, the price for people smugglers across the US – Mexico border has risen significantly, according to official estimates.<sup>54</sup> Those who spoke to Amnesty International in the field echoed this statement on numerous occasions, commenting that the price of the journey from the Northern Triangle of Central America had as much as doubled since Trump came to power. Unfortunately, for people fleeing violence and persecution, price hikes will provide little deterrence. The most vulnerable people such as children and families may have no choice but to rely on these criminal networks and thus put themselves at great risk of extortion or violence during their crossing into the United States. Under Article 5 of the UN Protocol against the Smuggling of Migrants (Supplementary to the UN Convention against Transnational Organized Crime, ratified by the United States in 2005), migrants must not be liable for having been the object of people smuggling.<sup>55</sup> In this sense, plans by the Department of Homeland Security under the Border Security Executive Order<sup>56</sup> to allow for removal or criminal prosecution of parents who pay for smugglers to bring their children into the United States go against international law. Furthermore, evidence has repeatedly demonstrated how hardline border control measures tend to strengthen criminal smuggling networks rather than weaken them by swelling their financial resources and their control of alternative routes. Any conclusions that interpret the decrease in apprehensions as a sign that the overall migration flow has decreased would be hasty judgements that do not take into account other possibilities, such as asylum-seekers being refused

50. See Stenographic version of speech from Attorney General Jeff Sessions, 11 April 2017, op cit.

51. Department of Homeland Security, Statement by Secretary of Homeland Security John Kelly, March 8, 2017, available at: <https://www.dhs.gov/news/2017/03/08/statement-secretary-homeland-security-john-kelly-southwest-border-security>, Last accessed 18 May 2017

52. U.S. Border Patrol Apprehensions FY2017 YTD (October 1 - April 30), available at: <https://www.cbp.gov/newsroom/stats/sw-border-migration>

53. See quote from Faye Hipsman, a policy analyst at the Migration Policy Institute, a nonpartisan think tank based in Washington, D.C. <http://www.latimes.com/nation/la-na-border-apprehensions-20170309-story.html>

54. OP Cit, Note 51

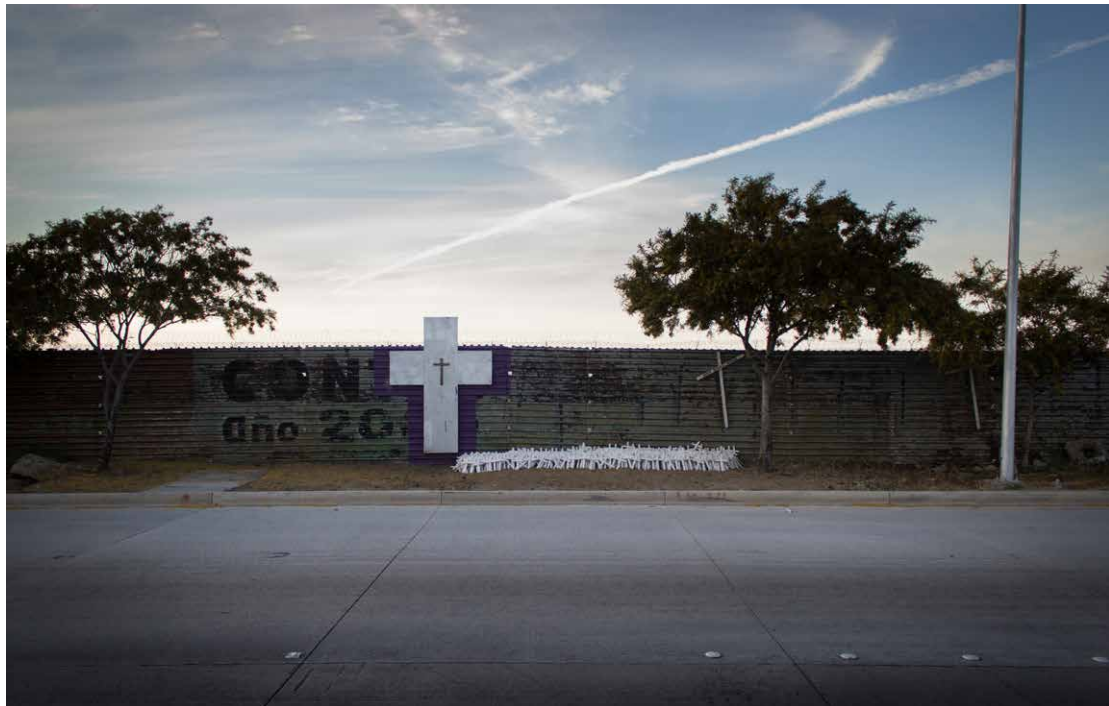
55. See United Nations Office on Drugs and Organized Crime, *United Nations Convention Against Transnational Organized Crime and the Protocols Thereto*, (General Assembly Resolution 55/25 of 15 November 2000 (ratified by the United States, available at: [https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED\\_NATIONS\\_CONVENTION\\_AGAINST\\_TRANSNATIONAL\\_ORGANIZED\\_CRIME\\_AND\\_THE\\_PROTOCOLS\\_THERETO.pdf](https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THERETO.pdf)

56. See Department of Homeland Security: Implementing Memo on the President’s Border Security Enforcement Policies – February 21, [https://www.dhs.gov/sites/default/files/publications/17\\_0220\\_S1\\_Implementing-the-Presidents-Border-Security-Immigration-Enforcement-Improvement-Policies.pdf](https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Implementing-the-Presidents-Border-Security-Immigration-Enforcement-Improvement-Policies.pdf)



admission by border officials (as described in the following section), or new and more dangerous routes opening up. Above all, the Border Security Executive Order will disproportionality affect vulnerable groups. Thus far in Fiscal Year 2017, unaccompanied children and family units have accounted for 43% of the apprehensions at the US – Mexico border, which represents the highest proportion of child and family apprehensions as per the total since Fiscal Year 2013.<sup>57</sup>

**By way of example, migrant deaths registered in Pima County in the Arizona desert since Trump was elected President, between November 2016 and April 2017, are almost double those registered in the same period one year earlier.<sup>58</sup>**



*Mexican border in Tijuana © Sergio Ortiz Borbolla*

57. Amnesty International analysis of figures contained in official data, available at: <https://www.cbp.gov/newsroom/stats/sw-border-migration-and-https://www.cbp.gov/sites/default/files/assets/documents/2017-Feb/BP%20Southwest%20Border%20Family%20Units%20and%20UAC%20Apps%20-%20Jan%202017.pdf>. Figures consulted and analyzed by Amnesty International.

58. Between November 2016 and April 2017 there were 71 deaths, as opposed to 43 registered between November 2015 and April 2016: Arizona OpenGIS Initiative for Deceased Migrants. This web site is the result of ongoing partnership between the Pima County Office of the Medical Examiner, or Pima County OME, and Humane Borders, Inc. The information is available at: <http://humaneborders.info/>

# 4. VIOLATING INTERNATIONAL LAW

## 4.1 VIOLATION OF THE NON REFOULEMENT PRINCIPLE : PUSHBACKS AT THE BORDER

Numerous lawyers, non-governmental organizations, migrants and human rights defenders have told Amnesty International that US Customs and Border Protection (CBP) officials have refused entry to asylum-seekers at ports of entry along the length of the US – Mexico border. While these refusals are not a blanket custom, evidence demonstrates that they are certainly not uncommon. These practices are unlawful. Under international law, non-admission of asylum-seekers at the border directly violates the principle of non-refoulement, which is binding on the US as a party to the 1967 Protocol of the 1951 UN Convention Relating to the Status of Refugees and as a principle of international customary law. The non-refoulement principle, provided for in Article 33 of the Convention, provides that states must not return persons to territories where their “life or freedom” would be threatened.<sup>59</sup> This principle is the cornerstone of all international law on refugees and considered completely non-derogable by states. An advisory opinion interpreting the Convention from the UNHCR<sup>60</sup> holds that this principle is violated in situations of non-admission at the border<sup>61</sup> and applies to return not only to countries of origin but to “any other place” where a person has reason to fear for their life.<sup>62</sup> Most importantly, it holds that “States will be required to grant individuals seeking international protection access to the territory and to fair and efficient asylum procedures.”<sup>63</sup> In addition, US law requires immigration officers to refer those people who seek asylum for an interview with an asylum officer.<sup>64</sup>

Amnesty International has documented incidences of non-admission of asylum-seekers at the border as early as 2015. Evidence gathered by Amnesty International in 2017 at six different major ports of entry<sup>65</sup> along the length of the entire border concludes that this has continued on a frequent basis. Given that CBP agents operate under administrative guidelines that often allow them wide discretion, they often take arbitrary decisions that violate US and international law. There is no written record of interactions with asylum-seekers by CBP officers, and internal compliance bodies rarely conduct supervision visits to ports of entry. Asylum-seekers are routinely told that they cannot apply for asylum in the United States, that they need to go back to Mexico, and at times wrongly told, without much explanation, they are not eligible to ask for asylum in the US, thereby denying them the right to have their case heard by the relevant authorities.

59. United Nations Convention and Protocol Relating to the Status of Refugees, Article 33, available at <http://www.unhcr.org/3b66c2aa10>

60. The legal status of Advisory Opinions of the UNHCR is explained in the Statute of the Office of the UNHCR, available at: <http://www.unhcr.org/4d944e589.pdf>. These are generally seen as guidance for compliance with the UN Refugee Convention.

61. UNHCR, Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol <http://www.refworld.org/pdfid/45f17a1a4.pdf> Paragraph 7

62. *ibid*

63. Op Cit Note 61: Paragraph 8

64. 8 U.S. Code § 1225 a (2) - Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing:

65. Port of Entry at cities of San Diego, California, Nogales, Arizona, El Paso, Texas, Laredo, Texas, McCallen Texas and Bronwsville, Texas.

***“We are not going to let you in sir. Right now, we do not accept asylum-seekers here.”***

Customs and Border Patrol officer's response to an asylum-seeker from Eastern Europe at the border crossing of San Diego – Tijuana on 26 January 2017.

Amnesty International has documented testimony from multiple sources as well as in many cases documentary evidence of pushbacks during 2016 and 2017 in ports of entry in San Diego, California, Nogales, Arizona, and the Texas ports of entry of Laredo, McCallen and Brownsville. There is no evidence that these practices have ceased under the new administration. A human rights worker at a migrant shelter in Nuevo Laredo, Mexico, told Amnesty International that from November 2016 to February 2017, asylum-seekers he had accompanied to port of entry had only successfully crossed into the United States in 28% of the attempts that he witnessed. Amnesty International also collected significant evidence of this practice in relation to the San Diego-Tijuana border crossing from Nicole Ramos, a US attorney that had accompanied 71 asylum-seekers to the San Diego-Tijuana border crossing since December 2015 to April 2017. On nearly all occasions, CBP officers either attempted to deny asylum-seekers entry, or quoted incorrect procedures such as telling the asylum-seeker they needed to go to the US consulate in Mexico, effectively denying the asylum-seeker entry into the USA. On more than one occasion, CBP officers appeared to wilfully misinform, by at first telling the asylum-seeker that that they could not pass through the border, but when faced with insistence from an attorney, revealed themselves to be fully aware of the correct procedure to be followed.

***“How do you feel, aren't you ashamed to be helping 'terrorists'?”***

Comment by CBP Officer in May 2016 to a human rights social worker at a migrant shelter on the Mexican side of the border with Arizona who escorted an asylum-seeker to the border to help him understand the process.

A husband and wife who had fled Honduras with their daughter after the husband was assaulted and shot by the *mara* who subsequently persecuted him, told Amnesty International that they were turned away from the port of entry to McCallen, Texas, on six repeated occasions within a three-day period in January 2017, despite presenting themselves to CBP officers to ask for asylum.

***“You are full of shit.”***

Customs and Border Protection officer's comments to a Mexican woman in June 2016 who reported gender-based violence and persecution by a transnational criminal organization, reported in a sworn legal document provided to Amnesty International.

Amnesty International has also collected evidence pertaining to the routine rejection of Mexican asylum-seekers who seek entry into the USA. On numerous occasions, asylum-seekers' lawyers at different points of the border told Amnesty International that CBP routinely tells Mexican citizens that “there is no asylum in the United States for Mexicans” and “asylum ended for Mexicans a long time ago.” This directly breaches the requirement that all persons seeking international protection have



**ALEJANDRO\*, FLEEING FROM HONDURAS: STRANDED AT THE BORDER MISINFORMED OF HIS RIGHTS**

"My aunt in Chicago told me that that man Trump has now taken away the protection for us. She told me that on January 20 they closed the door for asylum in the United States." [Quote from Interview with Amnesty International 27 February 2017]

Note: it is important to note that nothing in Trump's Border Security Executive Order makes it illegal for asylum-seekers to enter the United States.

By contrast, Trump's so called "Muslim ban" originally suspended the entry for 120 days of already recognized refugees into the USA for resettlement. These refugees are people in their countries who had applied through an international process regulated under US law. Yet this ban never called for a complete closure of the land border to people who sought international protection that is asylum-seekers who were seeking to be recognised as refugees by a United States Immigration judge.

access to an individualized assessment.<sup>66</sup> Amnesty International has evidence to suggest that this situation has worsened since October 2016. Since that time, the organization has received at least six reports of Mexican asylum-seekers and families who were admitted through a port of entry only to be verbally coerced by CBP officers to recant their account of fearing for their lives on video, and threatened with punitive deportation if they did not. Amnesty International has received evidence in one case where a Mexican woman made repeated attempts to enter the USA, only to be returned to Mexico within 24 hours. When she was finally given an asylum interview on a subsequent entry, CBP officers filmed her and did not allow her to express her fear of returning to Mexico. The officers forced the woman to sign a voluntary return paper under the threat that if she did not, she would be deported and never allowed into the USA again.

**MARÍA\* AND HER FAMILY FROM HONDURAS: FLED THEIR HOUSE AS MARA ARRIVED TO BURN IT DOWN, TOLD BY CBP OFFICER THEY "COULD NOT APPLY FOR ASYLUM AT THIS TIME"**

A family of six (two parents, a grandmother and three children) fled their home in Honduras after María, the mother managed to escape a kidnapping situation where she was held for a week by *maras* in late 2016. Following her escape, the family received death threats and had to flee out the back door of their house as the *mara* had arrived with cans of gasoline in front of their house in order to burn the family alive.

The family presented themselves to the Pedwest port of entry to San Diego, California, on 15 November 2016, where a CBP officer told them at the gate that they would have to seek a ticket from Mexican authorities, and that they could not apply for asylum at that time. The family was accompanied by an attorney who pointed out that the Mexican authorities were not giving out tickets for those who did not have the voluntary departure documents that were usually given to Haitian migrants but not Central Americans. (This system is described below). After much discussion, the family was finally accepted for processing.

Certain border crossings, especially those near Tijuana, Mexico, experienced an extraordinary influx of immigrants from Haiti between May and December 2016. The saturation of this land crossing provoked the creation of a "ticketing system" from May 2016 onwards, whereby CBP officers turned

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66. This is similar to comments that the UN has made to routine "border rejections" carried out by Spain against people from certain countries. United Nations Human Rights Committee recommended that Spain review the law introducing the "border rejections" in Ceuta and Melilla with a view to "ensure that all persons seeking international protection have access to fair procedures for individualized assessment and protection against *refoulement* without discrimination, and access to an independent mechanism with authority to suspend negative decisions". The Human Rights Committee, Concluding observations on the sixth periodic report of Spain (CCPR/C/ESP/6) adopted at its meeting (CCPR/C/ SR.3192) held on 20 July 2015, para. 18, available at (Spanish): [tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/ESP/CO/6&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/ESP/CO/6&Lang=En) (accessed 14 September 2015).

back asylum-seekers and told them they needed to get a ticket which is dispensed by Grupo Beta, a humanitarian wing of Mexico's National Institute of Migration (Instituto Nacional de Migración, INM). Despite the fact that the flow of Haitians arriving diminished in early 2017, the ticket system remains in place. The ticket gives the person a date, usually a number of weeks in advance, at which point they are allowed to approach the port of entry. This system was implemented primarily to cater to the large Haitian population who wished to enter the United States before a special humanitarian parole they applied for expired. The system has been administered by Mexican authorities in collusion with US Customs and Border Protection. Not only is it unlawful, since it facilitates refusals at the border, but it also discriminates against those nationalities who are most at risk of being detained and deported in Mexico. Haitian nationals are generally issued with voluntary departure documents by Mexico's INM, which allow them to stay in the country temporarily without being detained or deported. This is largely due to operational reasons, including the fact that Mexico does not have the resources to fly back thousands of Haitians to their country. By contrast, asylum-seekers from Central America are generally not given these voluntary departure documents, and if interdicted by the INM are much more likely to be detained and deported to their countries via bus.

The aggregate effect of these measures and of the "ticketing system" has served as an arbitrary justification for many Central Americans to be turned back to Mexico, despite the fact that presenting themselves to the INM to ask for a ticket puts them at greater risk of being detained by the authorities. Human rights defenders working in Mexico have repeatedly denounced this ticketing system, yet publicly, Mexico's INM denies its existence.<sup>67</sup> For its part, CBP has vacillated between denying the existence of the ticketing system and publicly acknowledging it, yet saying that it was a practice put in place by Mexico that had nothing to do with the United States.<sup>68</sup>

## ***"You shouldn't need an attorney in order to seek asylum at the border."***

Nicole Ramos, US Attorney who provides pro bono legal assistance to asylum-seekers on the Tijuana – San Diego border.



1. Crossing the border into Mexico: Most asylum-seekers enter Mexico without documents, by land or river. Few ask for asylum at official border crossings. Most will try and make their way to a COMAR (Mexico's Refugee Agency) office to ask for asylum.
- 2.A. Once in Mexico, some asylum-seekers are apprehended by INM, and even though they express a fear of returning, they are not referred to COMAR in order to lodge an asylum claim and they are simply detained and quickly deported.
- 2.B. Some asylum-seekers may be returned to their countries after the COMAR denies their claim for protection. This is considered refoulement only if they had no access to an appeal, or their detention conditions effectively induced them to abandon their claim.
3. Border USA - Mexico: people often get refused admission at the border even though they express fear of return and wish to request asylum. This is a clear violation of the non-refoulement principle.
- 4.A. Asylum-seekers in USA apprehended by Border Patrol or ICE, get deported despite expressing fear of returning = refoulement
- 4.B. Asylum-seekers detained while awaiting hearing on their lodged claim. Refoulement can occur during process, before or after a hearing, because of due process violations.

67. This Information is based on analysis by Amnesty International of testimonies and information provided as to official Mexican government comments

68. Information provided to Amnesty International based on public speeches by CBP representatives attended by advocates.

## 4.2 TRUMP'S EXECUTIVE ORDER: A HUMAN WALL

Despite the fact that the United States Constitution calls for equality before the law,<sup>69</sup> legislation and regulations have, for the last two decades, effectively worn down the due process rights for irregular migrants and asylum-seekers crossing the border. In 1996 legislation and regulations ushered in a regime of mandatory detention for these persons, in violation of the United States' treaty obligations under Article 9 of the International Covenant on Civil and Political Rights (ICCPR) which prohibits arbitrary detention.<sup>70</sup> The Trump administration now threatens to further erode these rights.

For detention – including immigration detention – to not be arbitrary, it must be prescribed by law, necessary in the specific circumstances and proportionate to the legitimate aim pursued, and detainees must be told why they are being deprived of their liberty. The presumption against detention must be prescribed in law. Any decision to detain should always be based on a detailed individualized assessment showing that detention is necessary and proportionate, and that less restrictive alternatives will not be effective.

Rather than having a presumption against detention established in the law, the United States Immigration and Nationality Act (INA) states that all individuals apprehended at the border shall be detained.<sup>71</sup> Given that arrivals at the border include a significant flow of asylum-seekers, this effectively violates the 1967 Protocol on the UN Convention on Refugees, which obliges<sup>72</sup> the United States to ensure that asylum-seekers are not met with punitive responses to their crossing borders without proper documentation.

BEFORE TRUMP'S BORDER SECURITY EXECUTIVE ORDER	AFTER TRUMP'S BORDER SECURITY EXECUTIVE ORDER
<p>Migrants or asylum-seekers apprehended at the border were subject to mandatory detention, often for many months.<sup>73</sup> However <b>some asylum-seekers were released after having been interviewed and found to have a credible fear of return to their countries and were not locked up during asylum proceedings before a judge.</b><sup>74</sup></p> <p>Mandatory detention harshly affects asylum-seekers who have no choice but to cross the border without papers and violates Article 9 of ICCPR which calls for an individualized assessment before detaining an individual.</p>	<p>Migrants and asylum-seekers continue to be subject to mandatory detention and <b>release from detention will be much harder to obtain. Asylum-seekers will be locked up during the course of court proceedings.</b> The Executive Order calls for a restrictive reading of the provisions of INA 212(d)(5) which allow for release of certain people for urgent humanitarian reasons or public benefit and requires additional written approval for release from the Deputy Director of ICE, <b>after</b> the written approval stipulated by statute has already been obtained.<sup>75</sup></p>

69. US Constitution, (Amend XIV)

70. In addition, The UN Working Group on Arbitrary Detention has explicitly stated that where the detention of unauthorized immigrants is mandatory, regardless of their personal circumstances, it violates the prohibition of arbitrary detention in Article 9 of the UDHR and Article 9 of the ICCPR. See Report of the Working Group on Arbitrary Detention on its visit to the United Kingdom, E/ CN.4/1999/63/Add.3, 18 December 1998, Recommendation 33

71. Immigration and Nationality Act (INA) Section 235 (b)]. Major reforms of 1996 under the Illegal Immigration Reform and Immigrant Responsibility Act (IIRA) amended this section 235 of the INA and allowed for mandatory detention for arriving aliens, which overwhelmingly affect those people that arrive at the land border, i.e. asylum-seekers.

72. UN 1951 Convention on the Status of Refugees, Article 31

73. In the 9<sup>th</sup> Circuit, if a person is held in mandatory detention, he/she has the right to a bond hearing within 6 months of detention. The bond hearing is before an immigration judge in a court hearing. In a recent course case entitled Jennings vs. Rodríguez that had originated in the ninth circuit, it may soon be possible that the Supreme Court is considering whether immigrants held in mandatory detention under U.S.C. § 1225(b), 1226(c), or 1226(a) are entitled to bond hearings if detained for six months.

74. While directives from 2009 that remained in force at the end of 2016 have allowed for the release on parole on a case by case basis of asylum-seekers who establish a credible fear of persecution and demonstrate "urgent humanitarian reasons" or "significant public benefit" and under the discretion of Immigrations and Customs Enforcement officers, this has been undercut by the new Executive Orders that call for limited reliance on this discretion.

75. According to US law, "urgent humanitarian reasons" or "significant public benefit" can be used as justification to release individuals on parole, as decided on a case-by-case basis where "aliens" have a) serious medical condition b) pregnant women who have been medically certified as such c) Juveniles (which under US law means children under the age of 18); See § Sec. 212.5 Parole of aliens into the United States. This law only requires for one written sign off, by a designated authority. However, in the February 21 Memo published by the Department of Homeland Security, Section A, paragraph 5 calls for "the written concurrence of the Deputy Director of ICE or the Deputy Commissioner of CBP". See: Implementing Memo, Op Cit, Note 56. Further details on this memo mentions: "Although catch and release will be abolished, the Department of Homeland Security says that ankle monitors will still be issued on a case by case basis." – see Q and A sheet, <https://www.dhs.gov/news/2017/02/21/qa-dhs-implementation-executive-order-border-security-and-immigration-enforcement>

**BEFORE TRUMP'S BORDER SECURITY EXECUTIVE ORDER**

Migrants or asylum-seekers who were apprehended within 100 miles of the border and within first 14 days of entry<sup>76</sup> subjected to "Expedited Removal"<sup>77</sup>, no right to review by a judge unless the "aliens" in expedited removal claim asylum and establish in their initial interview they have a credible fear<sup>78</sup> of returning to their country and they are then afforded the opportunity to present their claim in a full hearing in an immigration court. If in the interview the asylum-seeker is found not to have a "credible fear" during their interview with an asylum officer, they go before a judge for a hearing where they have no right to present evidence and no right to an appeal, as do migrants in normal immigration proceedings.<sup>79</sup>

Expedited removal is effectively a **fast-track deportation process** that has been heavily criticized for violating people's due process rights as well as flouting international law.<sup>80</sup>

Migrants or asylum-seekers apprehended at the border were allowed to stay in the United States, albeit often detained.

**AFTER TRUMP'S BORDER SECURITY EXECUTIVE ORDER**

"Expedited removal" **will now apply to people apprehended anywhere within the US within two years of entering the country**<sup>81</sup>, meaning that **ICE could effectively act as the judge and jailer for the vast majority of irregular migrants and asylum-seekers.**

**Migrants and asylum-seekers crossing the US – Mexico land border at ports of entry to be returned to Mexican territory**, where many of them have no legal status or protection and are at risk of kidnapping and abuse.<sup>82</sup>

**NOTE:** The Mexican government has publicly refused this proposal.<sup>83</sup>

76. See Notice Designating Aliens Subject to Expedited Removal Under Section 235(b)(1)(A)(iii) of the Immigration and Nationality Act, 67 Fed. Reg. 68924 (Nov. 13, 2002); Designating Aliens For Expedited Removal, 69 Fed. Reg. 48877 (Aug. 11, 2004); Press release DHS *Department of Homeland Security Streamlines Removal Process Along Entire US Border*, 30 January 2006: Details that Expedited Removal at the southwest border has existed since 1996, applies to those 100 miles from the border and with 14 days of entry.

77. Created in 1996, expedited removal is codified in section 235 of the INA. That section provides, in relevant part, that if "an immigration officer determines that an alien" is inadmissible because he/she lacks appropriate documentation or has sought to obtain a visa, other documentation, or admission by fraud or misrepresentation, "the officer shall order the alien removed from the United States without further hearing or review." 8 U.S.C. §1225(b)(1)(A)(i); see id. §§1182(a)(6)(C), 1182(a)(7).

78. Individuals subject to expedited removal who indicate an intention to apply for asylum or evince a fear of persecution are interviewed by an asylum officer to determine if the individual has a credible fear of persecution. No formal record is made of this credible fear interview, which usually takes place without the assistance of counsel and addresses the substance of the asylum claim in only a cursory manner. Individuals referred to an asylum officer must be detained, with very limited exceptions.

79. "Aliens" who establish a "credible fear" of return to their country are transferred to regular removal proceedings (as stipulated under INA article 240) at which time they are given an opportunity to demonstrate eligibility for international protection. At the government's discretion, the asylum-seeker may be released from detention until an immigration judge rules on his/her claim. If the asylum officer finds that an individual does not have a credible fear of persecution, the individual can seek review by a judge but this review does not include the type of evidentiary hearing that judge conducts in a regular removal case. The asylum-seeker is not given an opportunity to review the evidence against him/her, to cross-examine witnesses, or to marshal evidence in support of his/her claim. The review process is to occur within seven days of the asylum officer's decision and is frequently conducted telephonically. The immigration judge's decision is the final word; the individual has no right to appeal to the Board of Immigration Appeals, as in standard immigration court proceedings. If the appeal is denied, the asylum-seeker is ordered removed and usually removed promptly. The only judicial review is through a *habeas* petition.

80. Which the bipartisan U.S. Commission on International Religious Freedom and other groups have repeatedly raised. For example, the Commission found that "in 15 percent (12/79) of observed cases when an arriving alien expressed a fear of return to the inspector, the alien was not referred [to a credible fear interview by an asylum officer]: Quotes in Human Rights First FACT Sheet November 2015, available at: <http://www.humanrightsfirst.org/sites/default/files/FAQ-asylum-seekers-and-the-expedited-removal-process.pdf>.

81. Department of Homeland Security: Implementing Memo on the President's Border Security Enforcement Policies – February 21, 2017, Section G: In reference to the timeframe that will be used for Expedited Removal, Secretary Kelly announces that a new Notice on this matter will soon be published in the Federal Register [https://www.dhs.gov/sites/default/files/publications/17\\_0220\\_S1\\_Implementing-the-Presidents-Border-Security-Immigration-Enforcement-Improvement-Policies.pdf](https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Implementing-the-Presidents-Border-Security-Immigration-Enforcement-Improvement-Policies.pdf)

82. Border Security Executive Order: Sec. 7. Return to Territory. The Secretary shall take appropriate action, consistent with the requirements of section 1232 of title 8, United States Code, to ensure that aliens described in section 235(b)(2)(C) of the INA (8 U.S.C. 1225(b)(2)(C)) are returned to the territory from which they came pending a formal removal proceeding.

83. See: BBC News, 23 February 2017, *Mexico's foreign minister rejects Trump deportation policy*, available at: <http://www.bbc.com/news/world-latin-america-39054999>, Last accessed 18 May 2017

BEFORE TRUMP'S BORDER SECURITY EXECUTIVE ORDER	AFTER TRUMP'S BORDER SECURITY EXECUTIVE ORDER
Migrants or asylum-seekers apprehended at the border, who passed through the interview establishing they had a 'credible fear' were usually allowed to physically see a judge in person.	Migrants or asylum-seekers apprehended at the border that go through a process before a judge will now be more likely to have to carry out hearings through a video teleconference system. <sup>84</sup>  While United States immigration law allows for proceedings to happen by video-teleconference (VTC) conference, <b>their proposed rollout on a large scale now threatens to undermine due process rights of detainees who will find it more difficult to defend themselves before a judge who is not physically there.</b> <sup>85</sup>
Law enforcement officials were, to a limited extent, relied upon to take on immigration enforcement functions as per Section 287 (g) of the ILA. <b>Law enforcement officials (eg. police) are not given the same training as immigration officers, especially in relation to the protection of asylum-seekers.</b>	Executive Order calls for a <b>widening of the use of law enforcement officials in immigration functions.</b> In addition, Attorney General Jeff Sessions has followed up the Executive Order with a call for increased use of criminal enforcement of irregular migration at the US – Mexico border.

## 4.3. POURING MONEY INTO LOCKING UP FAMILIES



**DESPITE THE MARKED DECREASE IN ARRIVALS OF IRREGULAR IMMIGRANTS OVER THE LAST FIFTEEN YEARS, THE NUMBER OF DETENTION BEDS FUNDED BY US CITIZENS HAS DRASTICALLY INCREASED, PASSING FROM A CAPACITY OF 8,000 DAILY BEDS TO A CURRENT LEVEL OF 34,000, WITH PLANS UNDER PRESIDENT TRUMP THAT THREATEN TO DOUBLE THIS TO EXCEED 70,000 BEDS PER DAY.**

In 2009, Amnesty International published a major report on the United States' immigration detention system highlighting its unlawful and inhumane practices.<sup>86</sup> Eight years on, the US immigration detention system continues to be an example of a cruel regime only getting crueler. For Fiscal Year 2018, President Trump has requested an increase of an additional \$1.5 billion for detention – this on top of the Fiscal Year 2017 supplemental request for \$1.15 billion. If approved, the US will be spending over \$4.5 billion a year on immigrant detention, which is more than double the amount currently allocated. The Department of Homeland Security released a document in April 2017 revealing plans to locate up to 33,500 more spaces for beds to hold people in detention, potentially allowing for the US' daily detention capacity to exceed 70,000, far beyond a congressionally imposed bed quota of 34,000 per day.<sup>87</sup> As opposed to the presidential budget blueprints for previous years, President Trump's budget blueprint for Fiscal Year 2018 makes no mention of funding for alternatives to detention and instead asks for significant increases to funding for detention centres.<sup>88</sup>

84. See Department of Homeland Security: 90 Day Progress Report to the President on Executive Order 1367: Border Security and Immigration Enforcement Improvements, Section 7. 25 April 2017

85. See Immigration and Nationality Act, Section 240 (2) (A)

86. Amnesty International, *Jailed Without Justice, Immigration Detention in the USA*, available at: <https://www.amnestyusa.org/reports/usa-jailed-without-justice/>

87. Department of Homeland Security, 90-day progress Report to the President on Executive Order 1367: Border Security and Immigration Enforcement improvements. Section 5. This figure of 33,500 is arrived at by adding up two separate plans announced in this report – one to increase the capacity for temporary holding centres up to 12,500 places as well as another to identify funding for 21,000 additional bed spaces in detention centres.

88. Executive Office of the President of the United States, Office of Management and Budget: *America First: A Budget Blueprint to Make America Great Again*, page 23. This is in contrast to the previous government's Budget outline originally submitted in February 2016 which proposed \$126 million for alternatives to detention for 53,000 average daily participants in the Alternatives to Detention (ATD) program for those individuals who are not considered a threat to our communities., see: <https://www.dhs.gov/news/2016/02/09/fact-sheet-dhs-fy-2017->

Amnesty International is generally opposed to the use of detention for the purposes of immigration control as it violates the rights to freedom of movement and protection from arbitrary detention that should be respected for all persons, regardless of their migratory status or nationality.<sup>89</sup> Alternatives to detention should always be considered before a state decides to place irregular migrants in closed detention conditions. Unfortunately, the US immigration detention system falls far short of complying with international law.

**The system of mandatory detention for irregular immigrants entails a level of cruelty which unduly goes beyond what is permitted for administrative detention. Immigrants should not be subject to punitive conditions, yet in the US they can be detained in prison facilities with barbed wire and cells, alongside those serving time for criminal convictions. Adults are often handcuffed and forced to wear uniforms. Amnesty International has also received reports that prior to deportation, shackles are placed on detainees' feet for 24 to 48 hours.**

Such conditions have been highlighted by the UN Special Rapporteur on the Human Rights of Migrants as disproportionate and stigmatizing immigrants as criminals<sup>90</sup> Keeping a person in a detention centre is estimated to cost the US government between \$126 and \$161 per day, whereas alternative measures to detention cost as little as \$6 a day per person.<sup>91</sup>

**The expansion of detention is largely justified by US leaders as being a deterrent to further irregular immigration. However, not only has evidence shown that detention is not an effective measure at deterring irregular migration,<sup>92</sup> but the very use of deterring asylum-seekers through detention is unlawful.<sup>93</sup>**

The United States has effectively expanded its use of detentions centres in recent years and currently operates the largest immigration detention system in the world. In 2016, 352,882 individuals were in civil immigration detention centres.<sup>94</sup> This does not include irregular migrants incarcerated in federal prisons.<sup>95</sup>

The expansion of detention centres came largely in response to the upsurge of unaccompanied children arriving at the border in the summer of 2014. When over 67,000 unaccompanied children flooded the US – Mexico border in the summer of 2014, the US government significantly increased the use of detention for children and families, in a matter of months morphing from just one small facility in Berks County, Pennsylvania, to four functioning centres with over 3,600 beds for families.<sup>96</sup> Artesia, one of the family detention centres that was opened following this spike, was quickly closed in 2015 due to human rights abuses. These included concerns about the centre's isolation from legal services, inadequate childcare and education facilities, and problems with telephone communications and meals, which in many cases led to drastic weight loss among children due to the stress of incarceration and control on meal times.

89. See: Amnesty International, *Irregular Migrants and Asylum-seekers: alternatives to immigration detention* (Index: POL 33/001/2009), available at: <https://www.amnesty.org/en/documents/POL33/001/2009/en/>

90. Special rapporteur on the Human Rights of Migrants, Report of the Special Rapporteur, 43, delivered to the Human Rights Council, A/HRC/7/12, 25 February 2008. See also, Report of the Special Rapporteur on the Mission to the Border between Mexico and the United States of America, 43 and 73, E/CN.4/2003/85/Add.3, 30 October 2002.

91. Calculations based on Page 38 of 2017 Fiscal Year 2017 Budget Request, DHS: <https://www.dhs.gov/sites/default/files/publications/FY2017BIB.pdf>

92. See: International Detention Coalition: *There are alternatives: A handbook for preventing unnecessary immigration detention*. Melbourne: (2011), p. 11, available at <http://idcoalition.org/cap/handbook/capfindings/>

93. 3 United Nations High Commissioner for Refugees (UNHCR), Detention Guidelines, Guidelines 2, 4.1.4 (2012), available at [UNHCR.org/505b10ee9.html](http://www.unhcr.org/505b10ee9.html) (“[D]etention for the sole reason that the person is seeking asylum is not lawful under international law”);

94. ICE FY report gives the total detention numbers: <https://www.ice.gov/news/releases/dhs-releases-end-fiscal-year-2016-statistics#wcm-survey-target-id> ICE placed 352,882 individuals in a civil detention facility in FY 2016.

95. Which are at least 60,000 according to calculations from Syracuse university, see here: <http://trac.syr.edu/immigration/reports/430/>

96. <http://www.detentionwatchnetwork.org/sites/default/files/reports/DWN%20Expose%20and%20Close%20Artesia%20Report.pdf> page 3



Despite comprehensive critiques of family detention in recent years including significant legal rulings against its use,<sup>97</sup> recommendations from the Family Detention Advisory Committee to bring family detention to an end, and even despite admissions from the former Secretary of DHS that the practice of family detention needed “substantial changes”,<sup>98</sup> the use of family detention centres remains intact, and current plans will only facilitate its expansion.

Amnesty International opposes the detention of children solely for immigration purposes, whether they are unaccompanied, separated or held together with their family members, as it can never be justified as being in their best interests. These practices fly in the face of international standards,<sup>99</sup> and UNHCR guidelines call for children in principle not to be detained at all.<sup>100</sup> While the United States has not ratified the UN Convention on the Rights of the Child, it is a signatory to the treaty. Under international treaty law, having signed a convention obliges a state to refrain, in good faith, from actions that would defeat the object and purpose of the treaty.<sup>101</sup> Indeed, the principle of the best interest of the child is at the core of the UN Convention of the Rights of the Child. There is significant evidence to suggest that the policy of family and child detention carried out in the United States harshly ignores the best interests of the child.

While nothing in US law specifically prohibits the detention of children, a 1997 court settlement set nationwide standards that still apply relating to the minimum conditions to be applied to children in custody of immigration authorities.<sup>102</sup> Known widely as the Flores Settlement, these standards call for children to be placed in “the least restrictive setting appropriate” and require the provision of a number of services such as structured classroom education from Monday through Friday, recreation and leisure activities, and at least one individual counselling session per week as well as twice weekly group counselling sessions. It also requires the government to release children from immigration detention without delay.

Berks County Residential Center (“Berks”), a 95-bed facility in the state of Pennsylvania, is an example of a facility that is clearly violating the Flores Settlement. Children are placed in dorms with six people, along with unrelated adults, in breach of the Flores Settlement, which specifically calls for children not to be detained with unrelated adults. An example of the violations in the facility includes the conviction of a guard at the facility in 2016 for sexually assaulting of a 19-year-old Honduran woman.<sup>103</sup> Mothers and children are not permitted to sleep in the same bed at night, and are awoken every 15 minutes for “bed checks.”

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97. These rulings were subsequently appealed by the Obama administration.

98. Former DHS Secretary Jeh Johnson: “We have concluded that we must make substantial changes to our detention practices when it comes to families.” See: Department of Homeland Security, Statement by Secretary Jeh Johnson, June 24, 2015, available at: <https://www.dhs.gov/news/2015/06/24/statement-secretary-jeh-c-johnson-family-residential-centers>

99. General comment Human Rights Committee on Article 9: Children should not be deprived of liberty, except as a measure of last resort and for the shortest appropriate period of time, taking into account their best interests as a primary consideration with regard to the duration and conditions of detention, and also taking into account the extreme vulnerability and need for care of unaccompanied minors 1050/2002.

100. “UNHCR’s position regarding the detention of refugee and migrant children in the migration context” (January 2017) clarifying that “children should not be detained for immigration purposes, irrespective of their legal/migratory status or that of their parents, and detention is never in their best interests.”: <http://www.refworld.org/docid/50348953b8.html>

101. Arts.10 and 18, Vienna Convention on the Law of Treaties 1969

102. The full text of the Flores settlement can be found online at this link: [https://www.aclu.org/sites/default/files/assets/flores\\_settlement\\_final\\_plus\\_extension\\_of\\_settlement011797.pdf](https://www.aclu.org/sites/default/files/assets/flores_settlement_final_plus_extension_of_settlement011797.pdf)

103. “Immigration facility guard given jail time for sexual assault of detainee”, *The Guardian*, 23 April 2016, available at: <https://www.theguardian.com/us-news/2016/apr/23/immigration-detention-center-guard-sexual-assault-prison>



## **Four mothers and their children detained in Berks centre for near 600 days and counting**

### ***"It's not fair for a child to spend a year and a half in prison"***

Marlene\*, 24-year-old woman from El Salvador currently locked up in detention with her seven-year-old in Berks.

Antonio (7 years old)\*, Carlos (4 years old)\*, Josué (3 years old)\*, Michael (16 old)\* and their mothers Marlene\*, Lorena\*, Teresa\* and Maribel\* have been held at the Berks County Residential Center for almost 600 days. Each family is seeking asylum in the US after fleeing traumatic and life-threatening events, including kidnapping threats and severe physical and sexual violence, in their home countries of Honduras and El Salvador. The Berks centre currently holds 34 families, many for more than a year.

The families report declining physical and mental health in the detention centre. Josué suffers from severe allergies, and his mother has been diagnosed with post-traumatic stress disorder and depression, which, according to an independent psychological evaluation, is worsening in part due to detention. An independent doctor diagnosed Michael with depression.

### **Three-year-old Josué learned how to walk while being locked up in the Berk detention facility**

Authorities granted all four children Special Immigrant Juvenile Status (SIJS) in late 2016 and each have pending applications for legal permanent residence. Additionally, each of the four families has an unchallenged sponsor in the US who is willing to take them in and ensure their appearance in court. Their mothers are currently challenging a deportation order arising from the denial of their asylum claim. Despite this, their SIJ status, compelling grounds for asylum and protection, and mental and physical health concerns, ICE officials refuse to release these four children and their mothers. There is no justification under US or international law to continue to detain them.

## 5.THE OTHER WALL: MEXICO

***“We try to make the return to their countries as quick as possible.”***

Official of Mexico's National Institute of Migration in Mexico's southern border state of Chiapas, interviewed 23 November 2016.

The traditional perception of Mexico as a transit country for Central Americans has changed dramatically in recent years. Increasingly, people from Honduras, El Salvador and Guatemala claim asylum to become permanent residents in Mexico. In 2016 a record 8,788 asylum claims were lodged in Mexico in comparison to 1,296 in 2013.<sup>104</sup> Ninety-one per cent of these claims came from citizens of the Northern Triangle, and the UNHCR has estimated that claims will continue to rise exponentially and could reach 20,000 in 2017.<sup>105</sup> While Mexico's Refugee Agency (Comisión Mexicana de Ayuda a Refugiados, COMAR), has increased its rate of recognition of refugees and plans are being implemented to increase its capacity, more can be done to improve the response to this refugee flow.<sup>106</sup> Concernedly, only a small proportion of people lodge claims before COMAR in comparison to the estimated more than 400,000 persons crossing Mexico's southern border irregularly each year.<sup>107</sup> International reports have calculated that as many as half of the people who enter Mexico irregularly could qualify for international protection.<sup>108</sup> The fact that so few people claim asylum in Mexico points to failures by authorities to properly inform migrants of their right to claim asylum as well as inadequate screening for protection needs. These responsibilities correspond to Mexico's INM, who is also charged with detaining and deporting irregular migrants back to Central America.

In 2016, the INM detained 188,595 irregular migrants, 81% of these from Central America, and returned 147,370 to their countries of origin.<sup>109</sup> Ninety-seven per cent of those returned were from Central America. INM's procedures are technically designed to follow Mexico's migration law which

104. Comisión Mexicana de Ayuda a Refugiados, COMAR, *Estadísticas 2016*, available at: [http://www.comar.gob.mx/work/models/COMAR/Resource/267/6/images/ESTADISTICAS\\_2013-2017\\_1er\\_Trim.pdf](http://www.comar.gob.mx/work/models/COMAR/Resource/267/6/images/ESTADISTICAS_2013-2017_1er_Trim.pdf)

105. See “Alerta ACNUR de incremento de solicitudes como refugiados”, *El Economista*, 10 February 2017, see: <http://eleconomista.com.mx/sociedad/2017/02/10/alerta-acnur-incremento-solicitudes-como-refugiados>

106. Although Mexico's legislation on refugee protection provides for broad protection and incorporates broad standards such as the Cartagena Declaration of 1984 which allows for refugee status beyond the definition of the 1951 Convention, the proceedings before the COMAR continue to demonstrate areas for improvement, in relation to the right of claimants to legal assistance, determinations by the COMAR which overlook important elements of the case, as well as the fact that the COMAR currently only has 3 offices in the whole of the country.

107. Words of President Enrique Peña Nieto in 71 UN General Assembly September 2016, <http://www.gob.mx/presidencia/prensa/palabras-del-presidente-enrique-pena-nieto-durante-la-cumbre-de-lideres-sobre-refugiados-en-el-marco-de-la-71-asamblea-general-de-la-onu>

108. UNHCR, *Children on the Run*, 2014 available at: <http://www.unhcr.org/about-us/background/56fc266f4/children-on-the-run-full-report.html>. Doctors without Borders, *Forced to Flee Central America's Northern Triangle. A Neglected Humanitarian Crisis*, May 11, 2017 available at: <http://www.doctorswithoutborders.org/article/report-forced-flee-central-americas-northern-triangle-neglected-humanitarian-crisis>

109. Mexican Ministry of the Interior (SEGOB), Unit of Migratory Policy, Statistics: *Foreigners presented and returned* [http://www.politicamigratoria.gob.mx/es\\_mx/SEGOB/Extranjeros\\_alojados\\_y\\_devueltos\\_2016](http://www.politicamigratoria.gob.mx/es_mx/SEGOB/Extranjeros_alojados_y_devueltos_2016), last accessed 21 May 2017

requires INM officials to inform migrants of their right to seek protection and refer any potential claims promptly to COMAR.<sup>110</sup> However, in practice they often fall short of these standards. Numerous asylum-seekers in Mexico told Amnesty International that they had been returned on a number of occasions to their countries yet INM agents never informed them of their right to seek asylum. The majority of asylum-seekers that Amnesty International interviewed became aware of their right to seek asylum through good fortune or word of mouth in their journeys, or by humanitarian workers at migrant shelters.

On repeated occasions, people fleeing violence in the Northern Triangle told Amnesty International that when they expressed fear of returning to their country, INM agents ignored their comments or at times made derogatory or mocking remarks about them. At other times, immigration agents made comments to asylum-seekers that discouraged them from lodging claims. Irregular migrants detained by INM are given a one-page form with very small letters on the issue at the bottom of the page. Migrants are given this form when they are detained and this happens during a process where a lot of other actions are taking place, including their deprivation of liberty, their belongings being stowed away and ticketed, and their fingerprints being taken. INM officials told Amnesty International that each irregular migrant is given an interview of approximately one hour when detained, where the right to protection is explained.<sup>111</sup> However, Amnesty International collected a number of testimonies from migrants and lawyers who routinely visit migration detention centres that report that interviews are not carried out with such depth and in fact are often very brief with no proper explanation.<sup>112</sup> Procedures taken by the INM to ensure that migrants are properly informed of their right to seek protection are in urgent need of revision. In this regard, Mexican President Enrique Peña Nieto announced a series of seven actions before the UN General Assembly in September 2016, one of which promises the use of informative campaigns by authorities in order to better publicize the right to asylum.<sup>113</sup> Such initiatives must be accompanied by a review of the practices of INM agents who carry out the detentions and returns of migrants and asylum-seekers.

***“I’ve been deported 27 times from Mexico. The Mexican migration agents don’t care why you’re leaving your country. They make fun of you.”***

Testimony from a 23-year-old Honduran man who had left his country five years earlier because his life was at risk as the *mara* was looking for him after he had fled the ranks of a gang that he had been forcibly recruited into at the age of 13.<sup>114</sup>

Since 2014 the Mexican government has increasingly relied on a securitized approach to migration along its southern border, which has had direct consequences on the human rights of irregular migrants and asylum-seekers. The spike in arrivals was accompanied by Mexico’s new immigration enforcement programme, known as the Southern Border Plan. Announced by Mexican President Enrique Peña Nieto on 7 July 2014,<sup>115</sup> the Plan is ostensibly aimed at ensuring safety for migrants crossing over Mexico’s southern border with Guatemala and Belize, including strengthened security and infrastructure. The implementation of the Plan has had negative consequences on the ability of Central Americans in need of international protection to seek and receive asylum. To date, public information on the Southern Border Plan has been limited to general announcements and speeches without any transparency or monitoring mechanisms detailed in public documents.<sup>116</sup>

110. See *Ley sobre Refugiados, Protección Complementaria y Asilo Político*, available at: [http://www.comar.gob.mx/work/models/COMAR/pdf/LSRPCYAP\\_DOF\\_30102014.pdf](http://www.comar.gob.mx/work/models/COMAR/pdf/LSRPCYAP_DOF_30102014.pdf)

111. Interview and meeting between Amnesty International and officials of the National Institute of Migration (INM) on May 2, 2017.

112. This information is based on multiple testimonies with experienced migration lawyers, as well as migrants

113. Words of President Enrique Peña Nieto in 71 UN General Assembly September 2016, <http://www.gob.mx/presidencia/prensa/palabras-del-presidente-enrique-pena-nieto-durante-la-cumbre-de-lideres-sobre-refugiados-en-el-marco-de-la-71-asamblea-general-de-la-onu>

114. Amnesty International interview, carried out November 2016

115. Presidency of Mexico Press Release, 7 July 2014: *Pone en marcha el Presidente Enrique Peña Nieto el Programa Frontera Sur*, available at: <http://www.gob.mx/presidencia/prensa/pone-en-marcha-el-presidente-enrique-pena-nieto-el-programa-frontera-sur>

116. The only official public document that exists is a public decree in the Official Gazette on 8 July 2014 creating a new unit within the Ministry of the Interior in relation to Mexico’s southern border. Available at: [http://www.dof.gob.mx/nota\\_detalle.php?codigo=5351463&fecha=08/07/2014](http://www.dof.gob.mx/nota_detalle.php?codigo=5351463&fecha=08/07/2014).

The Southern Border Plan has led to a surge in security operations on the Mexican border with Guatemala and Belize, and has been associated with frequent reports of extortions, kidnappings and other human rights abuses against migrants. This is due in part to the crackdown by authorities along traditional migration routes, placing migrants at further risk and forcing them onto more precarious routes. The Southern Border Plan has also led to an increase in detentions and deportations of irregular migrants.

The Plan has been widely criticized for its harsh approach that significantly increases the involvement of police and military in enforcement operations<sup>117</sup> that are primarily focused on apprehending refugees and migrants and returning them to their countries of origin. In June 2015 the Inter-American Commission on Human Rights expressed its concern regarding an increase in reports of human rights violations along Mexico's southern border in the wake of the implementation of the Plan.<sup>118</sup>

### **Alberto\*: Mexican government returned him 14 times to Honduras, and he kept coming back by foot**

Alberto is a 62-year-old man who had a simple life selling newspapers on a street corner of Tegucigalpa, Honduras. In September 2014, this started to be a problem for him as the *mara* tried to forcibly recruit him to be an informant for them regarding movements of the police in the area. When Alberto refused to work with them, he knew his days were numbered. The day after he said no to the *mara*, he came home to his house to find all his belongings burnt. Alberto decided to flee that very day. Before he left, he passed by his brother's house who said to him "You've got to go right now, because the *mara* just called my house, I have no idea how they got this number." His brother quickly gave him some clothes and some bread and Alberto made his way to the bus station. However, since he did not have any money, he made most of the journey to Mexico by foot. Alberto told Amnesty International that on his first day after fleeing his home, he walked 60 kilometres.

Alberto tried to migrate to Mexico on 13 occasions before he was successfully granted asylum in October 2016 by a claim through the COMAR. Astonishingly, on none of these occasions did Mexican INM officials properly inform Alberto of his rights to seek asylum. Within a one-year period, INM officials repeatedly picked up Alberto without properly detecting his protection needs, on a number of occasions mocking him in the process of detaining and deporting him. Finally Alberto learnt of the possibility to seek asylum in Mexico, only thanks to a Honduran public servant working at the reception centre on the highway entering Honduras where Mexican government buses would drop off Alberto, where he would spend a couple of hours in his country before turning around to start his journey to Mexico again.

US government funds from the Merida Initiative, a security assistance package that has existed since 2007, allocated \$75 million USD in support to Mexico for "security and migration enforcement"<sup>119</sup> along Mexico's southern border in 2016, including for the construction of new naval bases, among other measures. While the Trump administration has made signs that the Merida Initiative may be amended or discontinued, the involvement of United States armed forces along Mexico's southern border remains clear. A conference in April 2017 between the US Southern Command and Mexican and Central American officials outlined plans for increased land and aerial patrols of Mexico's southern

117. See Graphic 1: "Participation of Security and Justice Agencies in Migration Enforcement Operations" in *An Uncertain Path: Justice for Crimes and Human Rights Violations against Migrants and Refugees in Mexico*, Washington Office on Latin America (WOLA) et al., November 2015, page 11.

118. Inter American Human Rights Commission IACHR Expresses Concern over Mexico's Southern Border Plan, 10 June 2015, available at: <http://www.oas.org/es/cidh/prensa/comunicados/2015/065.asp>.

119. US Congressional Research Service, *US – Mexico Security Cooperation: The Mérida Initiative and Beyond*, February 22, 2016, available at <https://www.fas.org/sgp/crs/row/R41349.pdf> page 15

border and enhanced participation of the US military with Mexican and Central American governments in addressing migration and transnational organized crime.<sup>120</sup> While drug trafficking and organized crime are indeed realities in the region, addressing the issue of migration as part of this focus overlooks important issues related to the protection of people whose human rights are at risk of being violated when such frameworks are not designed with human rights as a key priority.

## 5.1 MEXICO BREAKING ITS OWN LAWS AND DETAINING CHILDREN

Despite the fact that Mexican law expressly prohibits the detention of children<sup>121</sup>, Mexico detained 40,542 children in migration detention centres in 2016.<sup>122</sup> Mexico has 54 migration detention centres, which are inadequate for housing children and exhibit highly controlled facilities. The UN Special Rapporteur on Torture and other cruel, inhuman and degrading punishment noted having received reports of beatings, threats, humiliation and insults experienced by migrants in Mexico's migration detention centres in his visit to Mexico in 2014.<sup>123</sup> In the case of children, Mexico's National Human Rights Commission noted in a 2016 report that the conditions of migration detention centres in Mexico are inadequate for housing children.<sup>124</sup> The detention of children or adolescents may last short periods, yet often last for weeks or months. Amnesty International documented a number of cases where children as young as one have been detained for a month or more in a detention centre, with very little access to outdoor activities or suitable childcare services. In a number of cases children or adolescents are taken out of detention centres and placed in more specialized government shelters. Nevertheless, these shelters, run by the government social security institution (Sistema Nacional DIF), are also limited in their scope as comprehensive alternatives to detention. Adolescents are deprived of their liberty for months on end in the DIF shelters. Amnesty International witnessed one case of a Honduran adolescent in Ciudad Juárez, Chihuahua, who had not been let out of a DIF shelter for over 500 days.

Prolonged detention can be a major reason why some asylum-seekers choose to abandon their asylum claim as they cannot bear to await the outcome of their proceeding deprived of liberty. Diana\*, from Honduras, told Amnesty International that despite fearing for her life in Honduras, her young boy could no longer bear to be locked up in a detention centre and so rather than appealing the decision of the COMAR to deny her asylum, she decided to accept being returned to Honduras so as to be released. At times the detention of children and families can amount to constructive refoulement, when the ongoing detention is an overwhelming factor that induces the detainees to abandon their claim for protection and puts them at risk on return to their country of origin.

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120. US Southern Command, Press Release *Northcom Commander Highlights Partnerships to Counter Transnational Crime*, 25 April 2017, available at: <http://www.southcom.mil/MEDIA/NEWS-ARTICLES/Article/1162984/northcom-commander-highlights-partnerships-to-counter-transnational-crime/> Last accessed 6 May 2017

121. See Regulation on the General Law on Rights of Children and Adolescents, Article 111, available at: [http://www.dof.gob.mx/nota\\_detalle.php?codigo=5418303&fecha=02/12/2015](http://www.dof.gob.mx/nota_detalle.php?codigo=5418303&fecha=02/12/2015)

122. Mexican Ministry of the Interior (SEGOB), Unit of Migratory Policy, Statistics: *Foreigners presented and returned* [http://www.politicamigratoria.gob.mx/es\\_mx/SEGOB/Extranjeros\\_alojados\\_y\\_devueltos\\_2016](http://www.politicamigratoria.gob.mx/es_mx/SEGOB/Extranjeros_alojados_y_devueltos_2016), last accessed 21 May 2017

123. Informe del Relator Especial sobre la tortura y otros tratos o penas crueles, inhumanos o degradantes, Juan E. Méndez, presentado al Consejo de Derechos Humanos de Naciones Unidas 29 Diciembre de 2014, A/HRC/28/68/Add.3, párr. 72-73

124. See Comisión Nacional de Derechos Humanos, Informe 7/2016 del Mecanismo Nacional de Prevención de la Tortura, 29 septiembre de 2016, available at: [http://www.cndh.org.mx/sites/all/doc/PrevTortura/7\\_2016.pdf](http://www.cndh.org.mx/sites/all/doc/PrevTortura/7_2016.pdf)

## **Telsa, seeking asylum and locked up with her three infants: "I'm going to go crazy in here."**

Twenty-eight-year-old Telsa L.H.Z, from northern Honduras, was kept in the "Siglo XXI" Migration Detention Centre in Tapachula in southern Mexico for over 20 days in November 2016 with her three children aged one, three and five. This was the second time Telsa had fled her country after being deported by Mexican authorities a month earlier. Telsa lodged her asylum claim soon after being apprehended by migration agents who had placed her and her small children in the detention centre. Her claim for protection was based on threats and sexual violence against her in Honduras. Her family was placed in a dormitory with a total of 10 people and very little stimulation for the two boys and one baby girl, nor sufficient psychological support. While in detention, Telsa told human rights lawyers that "I'm going to go crazy in here." On 23 November 2016 Telsa filed a criminal complaint before Mexican authorities because during her second attempt to enter Mexico in October 2016, criminals had attacked her and the people she was travelling with, and temporarily kidnapped her three-year-old son near Tenosique, Tabasco state. Despite having recently suffered this traumatic episode, Telsa's son was not given proper psychological support while being locked up in "Siglo XXI" Migration Detention Centre. After pressure on authorities from local advocates and Amnesty International, Telsa was eventually released from detention and placed in a local migrant shelter with her children.

Mexican authorities have made some progress in recent months to programmes that allow for the release of asylum-seekers from detention centres while awaiting the outcome of their asylum claims. The INM has confirmed<sup>125</sup> to Amnesty International that during mid-2016 an agreement was reached between the COMAR, INM and UNHCR in order to facilitate a series of "orderly releases" of asylum-seekers from detention centres. According to UNHCR, one thousand asylum-seekers had been released from immigration detention centres between July 2016 and May 2017.<sup>126</sup> While these measures certainly constitute a step in the right direction, the current agreement between these three institutions has not been made public, nor have the criteria under which releases of asylum-seekers are to be decided. Institutionalizing such mechanisms will provide for greater protection for families and children that are detained.

## **5.2 PASSING THROUGH MEXICO, RISKING ONE'S LIFE**

Migrants and asylum-seekers are frequently subject to muggings, extortions, kidnappings and killings on their journey through Mexico. Amnesty International has collected dozens of testimonies of migrants and asylum-seekers that during their transit through Mexico have been victim to such crimes. Women are particularly at risk of sexual violence, and unconfirmed reports have been received of women migrants that often take contraceptive pills before taking their journey as rape is so common along the way. Organized criminal groups operating in Mexico often see migrants as an opportunity for economic gain, by kidnapping them for ransom until their relatives in their home countries or the United States wire a certain amount of money for their release. Other modus operandi of organized crime include forced labour of migrants for the criminal groups. In 2009 and 2011, Mexico's National Human Rights Commission released two in-depth reports on the issue of kidnappings of migrants and acknowledged that Mexican officials at times have colluded with the criminal groups that carry out these kidnappings. The first report pointed to 9,758 kidnappings of migrants reported in a five-month period, and the 2011 update reported 11,333 kidnappings in just six months.<sup>127</sup> While no major statistical update has been published since this time, the phenomenon continues to be widespread. By way of example, the

125. Interview of Delegate of INM with Amnesty International, 23 November 2016. Meeting with Director of Migrant Protection of INM with Amnesty International, 2 May 2017.

126. Social media content from UNHCR Mexico office, May 2017

127. See Special Report by the CNDH, available at: [http://www.cndh.org.mx/sites/all/doc/Informes/Especiales/2011\\_secsmigrantes](http://www.cndh.org.mx/sites/all/doc/Informes/Especiales/2011_secsmigrantes).



INM reported attending to 11 times more kidnappings of migrants in 2014 than 2013.<sup>128</sup> Massacres of migrants are also not uncommon, and a series of mass graves and discoveries of dismembered bodies of migrants involving hundreds of victims were discovered between 2010 and 2012 in the northern border states of Nuevo León and Tamaulipas. In June 2015, Amnesty International documented an armed attack against a group of approximately 120 Central American migrants travelling in the northern border state of Sonora. Such attacks are reported on a frequent basis.

Along the migrant route through Mexico there are certain points of the journey that are hotspots for abuses against migrants. A shelter for migrants and asylum-seekers operating in Tenosique on Mexico's south-eastern border Tabasco state recently reported a 75% increase in kidnappings registered in 2016 in the testimonies collected by the shelter, with municipalities such as Cardenas in the south of Veracruz state also being hotspots.<sup>129</sup> In February 2017, Amnesty International researchers interviewed a Honduran woman who said she was travelling with a group of six other Central American migrants through southern Mexico near Tierra Blanca, Veracruz, when they were kidnapped by a group of 10 armed men and kept in a house for eight days tied to a plastic chair until they agreed to call their families to demand they pay \$3,000 USD for their release.

Other hotspots for kidnapping include Tamaulipas state, which borders the United States. During February and March 2017, Amnesty International interviewed dozens of migrants and asylum-seekers in the border cities of Nuevo Laredo, Reynosa and Matamoros in this northern state. Two thirds of the interviewees who reported a kidnapping along the US - Mexico border to Amnesty International reported its occurrence in the state of Tamaulipas. During the three days that Amnesty International visited these cities, researchers spoke to a number of asylum-seekers who had very recently escaped from a kidnapping. One Guatemalan woman told Amnesty International that she was denied entry when she asked for asylum in the United States at the port of entry bridge to Laredo, Texas, on 18 December 2016. When she was turned back by CBP officers, she walked back on the bridge into Nuevo Laredo, Tamaulipas, and as she came off the bridge she took a taxi together with the woman who was accompanying her. When the taxi stopped at a petrol station she was kidnapped and taken to a house for three days, only being released after her father was able to pay the kidnappers \$500.

Both the United States and Mexican authorities have the responsibility to protect migrants in their territory from the high prevalence of kidnappings, killings and abuses along many parts of the US – Mexico border. Proposals by President Trump to return asylum-seekers to the contiguous territories from which they came pose great risks for those being returned to border areas which are rife with such abuses. Amnesty International has for years called on the Mexican government to protect migrants in transit against such abuses and effectively investigate them when they occur.<sup>130</sup> A recent agreement announced by Mexico's National Human Rights Commission in consort with federal and state authorities and civil society organizations to create a "safe corridor" between a well-known dangerous route of southern Veracruz state opens the opportunity to carry out similar initiatives in other parts of the country.<sup>131</sup> It is important that such initiatives ensure that increased security presence in these areas is not accompanied by increased arbitrary persecution of migrants by authorities, and instead focuses on protection.

128. Response to a Freedom of Information Request filed by a member of the public: Infomex Folio 0411100008815, available at [www.infomex.gob.mx](http://www.infomex.gob.mx)

129. Report by "La 72" Migrants Shelter, Tenosique, Tabasco, April 2017: *En los límites de la frontera, quebrando los límites. Situación de los derechos humanos de las personas migrantes y refugiadas en Tenosique, Tabasco.*

130. Amnesty International *Invisible Victims, Migrants on the Move*, 28 April 2010, index number: AMR 41/014/2010, available at: <https://www.amnesty.org/en/documents/AMR41/014/2010/en/>

131. Comisión Nacional de Derechos Humanos, Comunicado de Prensa, *Acuerdan CNDH, Autoridades Federales, estatales, municipales y organizaciones de la sociedad civil fortalecer la vigilancia el corredor Coatzacoalcos – Acayucan, para impedir secuestro y agresiones a migrantes*: 17 April 2017

## 5.3 ASYLUM-SEEKERS AT RISK IN TRANSIT: THE CASE OF TRANSGENDER PEOPLE

Certain groups of people are particularly at risk within the already dangerous journey which involves fleeing one's home country to seek safety further north. While government statistics of murders of LGBTI people are hard to come by, the Inter-American Commission on Human Rights (IACHR) and UN Office of the High Commissioner for Human Rights have found that members of the LGBTI community are often targeted for abuse in Northern Triangle countries.<sup>132</sup> They are at high risk for violence and extortions by gangs and organized criminal groups, hate crimes, and abuses by authorities.<sup>133</sup>



© Amnesty International / Benjamín Alfaro Velázquez

### ***“In Honduras, the mara spat on me and insulted me”***

Brenda\*, trans woman who had to flee Honduras because of repeated physical attacks against her.

Amnesty interviewed 10 transgender women fleeing violence who had arrived in Mexico. Most of them were in Tapachula, at the southern border, awaiting Mexican authorities to decide on their humanitarian visas or asylum claims, which can take months. The majority of these transgender women reported they did not feel completely safe in Tapachula due to the presence of some of the same criminal gangs who attacked them in their home countries and forced them to leave. Several transgender women even told Amnesty International they had suffered discrimination or violent attacks by gangs while in Tapachula.

132. United Nations, *Annual report of the High Commissioner for Human Rights on the activities of his office in Guatemala A/HRC/34/3/Add.1*, January 2017, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/004/56/PDF/G1700456.pdf>; *Annual report of the High Commissioner for Human Rights on the activities of his office in Honduras A/HRC/34/3/Add.2*, February 2017, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/029/29/PDF/G1702929.pdf>; and Inter-American Commission on Human Rights, *Violencia contra Personas Lesbianas, Gay, Bisexuales, Trans e Intersex en América*, 12 November 2015, pp. 172-173, available at [www.oas.org/es/cidh/informes/pdfs/ViolenciaPersonasLGBTI.pdf](http://www.oas.org/es/cidh/informes/pdfs/ViolenciaPersonasLGBTI.pdf)

133. Latin AMERICA WORKING GROUP, *LGBTQI Women*, 2017. Available at <http://www.lawg.org/component/taxonomy/term/summary/223/>

Transgender women show the importance of providing individualized assessments to asylum claims. It is important for the Mexican government to evaluate the specific protection needs of each person and also the need for some vulnerable groups to be transferred to certain parts of the country rather than awaiting the outcome of their claims in areas which can keep them in a situation of risk. Transgender women in Tapachula face specific risks due to the particular characteristics of the work opportunities that they may have, such as sex work, and the specific networks of criminal groups that operate along the border in relation to this sector.

## **Katherine\*: In limbo on Mexico's southern border**

***"I don't want to place a foot in El Salvador ever again. I know if I return they are just going to kill me."***

The experience of Katherine, a transgender woman of Nicaraguan nationality living in El Salvador, is an example of how Trump's fear factor and Mexico's other wall is affecting people's lives. Katherine survived an attempted murder in El Salvador: she was shot in December 2014 by a man when trying to help a transgender sex worker who was being attacked by this same person.

Although she was a key witness and her identity was supposedly protected, Katherine and her partner kept receiving death threats to make her dismiss herself from the case. Her partner was attacked in his house and threatened in June 2016.

A sentence was issued in December 2016 but the aggressor did not serve any prison sentence. Eight days before the hearing, another witness in the case (the transgender woman Katherine was trying to help that night) was shot. Katherine tried for a number of months to move internally in different parts of El Salvador, but was not successful and she continued to be followed by the *maras* who were responsible for the murders.

Katherine and her partner thus fled El Salvador and arrived in Tapachula, on Mexico's southern border on 6 March 2017. Katherine applied for asylum in Mexico and is now waiting for the three or four months that the application takes. She does not want to go to USA due to Trump.

## 4. RECOMMENDATIONS

### TO THE PRESIDENT OF THE UNITED STATES:

- Publically affirm that asylum-seekers are fully eligible to enter the United States and seek protection.
- Rectify previous public statements that erroneously conflate asylum-seekers and migrants with criminals.

### TO THE CONGRESS OF THE UNITED STATES:

- Pass legislation to override the Border Security Executive Order and provide strengthened protection for irregular migrants and asylum-seekers, including a presumption against detention and improved provisions for access to asylum procedures and due process and judicial review during removal processes.
- Ensure that all laws related to immigration, including migration control and immigration enforcement, respect immigrants' and asylum-seekers' rights and are in accordance with obligations under international law.
- Urgently deny the appropriation of funding given to the unlawful and arbitrary detention of asylum-seekers, families and children in immigration detention centres in the United States.
- Reform the Immigration and Nationality Act to prohibit the unlawful and arbitrary detention of asylum-seekers, families and children as well as abolish the congressionally imposed bed quota for detention.

### TO THE DEPARTMENT OF HOMELAND SECURITY (DHS):

- Emit clear guidelines that prohibit refusals of asylum-seekers by Officials of Customs and Border Protection (CBP) and Border Patrol at ports of entry and along the border, and ensure that these persons are referred to an asylum officer for an individualized interview in line with US law.
- Examine asylum claims on their merits in a full and fair asylum process with all procedural and substantial safeguards, such as provision of information, quality interpretation and access to legal aid.
- Call on all Customs and Border Agents to submit a registry of entries attended to each day, and cooperate with the DHS's Office of the Inspector General to comply with the requirements to carry out on-the-spot inspections of ports of entry.
- Discontinue plans outlined in the Border Security Executive Order to return arriving asylum-seekers to Mexico to await their asylum proceedings in that territory, which would be in violation of international law.
- End detention of children, whether accompanied or unaccompanied, separated or held together with their family, as it is never in their best interest.
- Urgently curtail the use of immigration detention for asylum-seekers, migrants and their families. Ensure that the detention of asylum-seekers and migrants is exceptional and only resorted to when it is determined to be lawful, necessary in the specific circumstances and proportionate to a legitimate purpose based on an assessment of the individual's particular circumstances.
- Ensure that all allegations of unlawful detention and deportation are promptly and effectively investigated, that all those found to be responsible are held to account and that the victims are

granted full reparations.

- Urgently ensure that ICE (Immigration and Customs Enforcement) cancels the recently renewed contracts signed for the Dilly Detention Centre for Families in Texas in December 2016 and moves to close the Berks detention facility.

**TO THE PRESIDENT OF MEXICO:**

- Urgently order a review of screening processes implemented by the National Institute of Migration (INM) to prevent illegal practices of refoulement and ensure they are sanctioned and followed up with disciplinary measures against the public servant involved.
- In line with Mexican law, ensure that no child remains in immigration detention.

**TO THE NATIONAL INSTITUTE OF MIGRATION: (INM):**

- Ensure that all procedures related to returns and transfers of individuals to countries of origin involve human rights guarantees, among others allowing the individuals effective access to legal counsel and the opportunity to challenge the lawfulness of any return decisions before competent judicial bodies.
- Urgently implement a review of screening processes implemented by the National Institute of Migration (INM) to ensure irregular migrants who are apprehended and detained are properly informed of their right to seek asylum in Mexico and ensure their access to asylum procedures faces no obstacles. This review must have the aim of curbing illegal practices of refoulement and ensure they are met with administrative sanction.
- Continue with the pilot programme to release asylum-seekers from detention and ensure that no child remains in immigration detention centres, in line with the best interest of the child. Ensure that releasing children from detention does not entail traumatic and unnecessary family separation.
- Review the implementation of the Southern Border Plan to ensure that its implementation does not put vulnerable groups at further risk.

**TO THE FEDERAL ATTORNEY GENERAL (PGR), NATIONAL HUMAN RIGHTS COMMISSION (CNDH) AND STATE ATTORNEYS GENERAL AND SECURITY AUTHORITIES:**

- Ensure that all reports of abuses of migrants and asylum-seekers in transit, regardless of whether the perpetrator is a state agent or non-state actor, are promptly, impartially and effectively investigated, so that those responsible are brought to justice and victims receive reparations.
- Consider replicating the use of “safe corridor” initiatives which allow for coordination between security and investigative authorities along well known areas of kidnapping, attacks and abuses against migrants. Ensure that these initiatives place the safety of migrants in transit as first priority, regardless of their migratory status.

**TO THE MEXICAN COMMISSION FOR ATTENTION TO REFUGEES (COMAR):**

- Put in place special mechanisms for vulnerable groups of asylum-seekers that may need to be urgently transferred from border areas to other parts of the country to await the outcome of their asylum proceedings, with a special emphasis on LGTBI communities.

**TO THE GOVERNMENTS OF HONDURAS, EL SALVADOR, GUATEMALA:**


- Design interview questions for consular services and reception centres to be able to identify and protect deportees in danger when returning to their communities of origin.
- Improve coordination between consular services abroad and national reception centres to identify cases of deported people in need of protection.






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# FACING WALLS

## USA AND MEXICO'S VIOLATIONS OF THE RIGHTS OF ASYLUM-SEEKERS

Hundreds of thousands of people flee extreme violence in El Salvador, Honduras and Guatemala each year and seek asylum in Mexico and the United States. This briefing analyses the harsh effect that President Donald Trump's Executive Order on border security will have on these people, as well as the complicit role that the Mexican government plays in pushing people back to danger. Beyond a physical wall, there are a number of inhumane walls that exist and violate international law, including increasing detention of asylum seekers and families, and violations of the non-refoulement principle that effectively return helpless people to life threatening situations.

Index: AMR 01/6426/2017

June 2017

[amnesty.org](http://amnesty.org)



# Exhibit B

## Here's What Violence Along the U.S.-Mexico Border Really Looks Like

 [opendemocracy.net/democraciaabierta/juan-carlos-garzon-vergara/here-s-what-violence-along-us-mexico-border-really-look](https://www.opendemocracy.net/democraciaabierta/juan-carlos-garzon-vergara/here-s-what-violence-along-us-mexico-border-really-look)

Juan Carlos Garzón-Vergara



Northern Mexican cities are among the hemisphere's most violent. Across the border, it's a different story. [Español](#)

This article is published as part of the campaign [Instinto de Vida](#).



Border fence between San Diego's border patrol offices in California (left) and Tijuana, Mexico (right). Public domain.

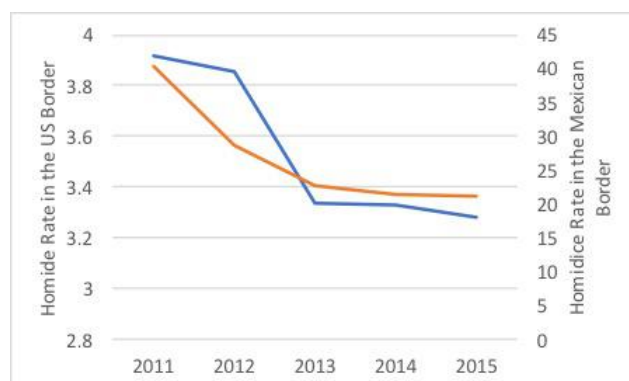
Part of the justification for President Donald Trump's "great wall" is that it is needed to keep America protected from what lies below – northern Mexico is rife with drug violence and there exists a very real risk of that violence spilling over into American cities and towns.

But the dynamics of the drug trade – and the numbers – point to a different reality.

At the Igarapé Institute, we've compiled the most up-to-date official homicide data from both sides of the border. The results show that towns along the U.S. side are among the safest in the country; northern Mexico, meanwhile, is one of the most violent places in the hemisphere. They also suggest that the threat of spillover violence is unlikely to increase or decrease with the presence of a physical wall.

In 2015, the average homicide rate in the 23 U.S. border counties was 3.2 murders per 100,000 inhabitants, lower than the national homicide rate for the same year, 5.3 per 100,000 habitants. U.S. City Crime Rankings does not list a single U.S. border city among the 60 most dangerous metropolises in America. Meanwhile, in the same year the 35 Mexican border municipalities had an average rate of 20.8 per 100,000, that is, 6.5 times more than its northern neighbor.

Is the physical barrier that already exists between the U.S. and Mexico responsible for "keeping America safe?" Not likely. Drug cartels already operate on both sides of the border (that's what their business is based on) and guns and ammunition are easier to come by in the U.S. than they are in Mexico. Rather, the border dynamic is costlier for Mexico than it is for the U.S. because limited points of access to U.S. markets generate violent competition between those who wish to control them. In other words, the border itself is part of what makes northern Mexico so violent. As [Joan Grillo](#), author of *Gangster Warlords* has argued, the wall only makes illegal transactions more expensive, which in turn gives more money to criminal networks.



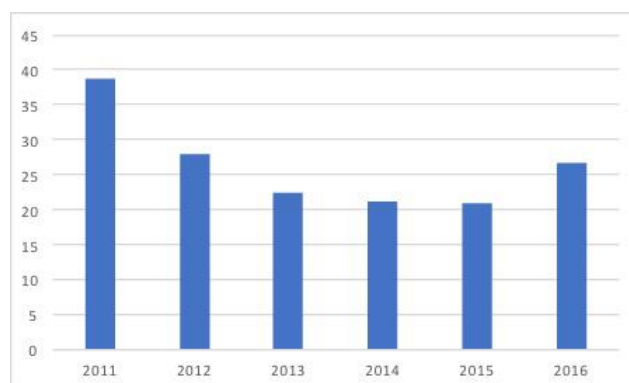
Homicide Rates in the US–Mexico Borderland, 2011-2015

This dynamic is even more evident when examining violence levels over time. Omar García-Ponce and Hannah Postel of the *Center for Global Development* in Washington, DC, demonstrated how in the past two decades the US homicide rates have remained consistently low, while the Mexican side has always been more violent, with murder rates fluctuating between 15 and 20 homicides per 100,000. According to García-Ponce and Postel, between 2007 and 2010, this murder rates spiked drastically, coinciding with violent territorial disputes among drug cartels and between these and the Mexican government's militarized response.

The most recent data show that this trend changed between 2011 and 2015, with a consistent drop in homicide rates on both sides of the border. During those five years, the average homicide rate in the Mexican border municipalities decreased from 38.6 (2,692 murders) to 20.8 (1,529 murders). At the same time, in the US counties along the border the homicide rate fell from 3.9 (393 murders) to 3.2 (339 murders). This could, at first glance, suggest a positive relationship between violence on either side of the border – but while this drop in violence in Mexico was accompanied by a (smaller) drop in the U.S., spikes in murders south of the border to not show a similar correlation to rising violence north of it.

#### Homicide Rates in the US–Mexico Borderland, 2011-2015

The bad news is that the situation in Mexico has changed during the last year. In 2016 the homicide rate in the border municipalities rose again, with an increase from 20.8 per 100.000 inhabitants to 26.5 – six points in just 12 months. This change is related to the gradual fracturing of the cartels and many small clashes between less stable and predictable groups. Murder rates jumped in municipalities like Tecate (from 19.8 to 50.6) and Tijuana (from 35.5 to 49.8) in Baja California, and Ciudad Juarez in Chihuahua (from 18.9 to 32.7). But again, there was no concomitant rise in border counties in the U.S. – a rise that would be expected if spillover violence were an urgent threat.



Homicide Rates in the US–Mexico Borderlands, 2011-2016

Given this reality, to prevent the deterioration of security conditions along the border, the proposal to build “great, great wall” and the order given by president Trump to fight head-on against “the cartels” are unfortunate and probably irrelevant. The border doesn't need a new wall to contain cartels that are on the verge of extinction in the criminal world. The border requires a serious cooperative strategy, based on the co-responsibility of both countries in the problem of transnational organized crime, to protect US and Mexican communities and to reduce the number of homicide victims on both sides. The US can have a positive role – building a wall probably shouldn't be part of it.

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# Exhibit C



American ideals. Universal values.



## Crossing the Line

### U.S. Border Agents Illegally Reject Asylum Seekers

May 2017

**ON HUMAN RIGHTS**, the United States must be a beacon. Activists fighting for freedom around the globe continue to look to us for inspiration and count on us for support. Upholding human rights is not only a moral obligation; it's a vital national interest. America is strongest when our policies and actions match our values.

Human Rights First is an independent advocacy and action organization that challenges America to live up to its ideals. We believe American leadership is essential in the struggle for human rights so we press the U.S. government and private companies to respect human rights and the rule of law. When they don't, we step in to demand reform, accountability, and justice. Around the world, we work where we can best harness American influence to secure core freedoms.

We know that it is not enough to expose and protest injustice, so we create the political environment and policy solutions necessary to ensure consistent respect for human rights. Whether we are protecting refugees, combating torture, or defending persecuted minorities, we focus not on making a point, but on making a difference. For over 30 years, we've built bipartisan coalitions and teamed up with frontline activists and lawyers to tackle issues that demand American leadership.

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COVER PHOTO: Getty Images/John Moore



#1812



Mexico/U.S. Ports of Entry



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## Executive Summary

The U.S. government is illegally turning away asylum seekers at official land crossings all along the southern border. Border agents must refer a person seeking asylum or expressing a fear of persecution to a protection screening interview or an immigration court proceeding where they can seek asylum. Instead, some border agents are blocking access to asylum by refusing to process protection requests. This practice violates both U.S. law and U.S. treaty obligations. It also clashes with the ideals of a nation that has often led globally on refugee protection, a nation that President Reagan aptly described as a “beacon” to people searching for freedom.

U.S. government entities have raised concerns about the treatment of asylum seekers. In 2016, for example, the bipartisan U.S. Commission on International Religious Freedom (USCIRF) cited some Customs and Border Protection (CBP) officers’ “outright skepticism, if not hostility, toward asylum claims and inadequate quality assurance procedures.” Also in 2016 Human Rights First and other non-governmental organizations raised concerns about reports that the government was turning away asylum seekers in San Ysidro, California as CPB officers struggled to manage an increase in arrivals.

This practice proliferated after the November 2016 election and persists even as the number of arrivals has fallen sharply. In the wake of the election and President Trump’s January executive orders relating to refugees, CPB agents have in some cases claimed the United States is no longer accepting asylum seekers. For example, a CBP officer in south Texas reportedly told a Central American asylum seeker, “Trump says we don’t have to let you in.” In San Ysidro a CPB officer reportedly told a Mexican asylum seeker, “[Christians] are the people we are giving asylum to, not people like you.”

CBP officers are improperly rejecting asylum seekers at small ports of entry and major ones across the border, including in Brownsville, McAllen, Laredo, El Paso, and San Diego. When they are blocked from protection, asylum seekers face continued danger in Mexico, often immediately. Cartels, smugglers, and traffickers—who control areas around border crossings and wait outside some ports of entry where they see migrants and asylum seekers as easy prey—have kidnapped, raped, and robbed asylum seekers wrongly turned away by the U.S. government.

In February, March, and April, Human Rights First researchers visited the border regions of California, Texas, and Arizona, and the Mexican border cities of Reynosa, Matamoros, Nogales, and Tijuana. They interviewed asylum seekers, attorneys, non-profit legal staff, faith-based groups assisting refugees, and migrant shelter staff. While recent data shows CBP agents referred some 8,000 asylum seekers at ports of entry from December 2016 to March 2017, an unknown number of asylum seekers have been unlawfully rejected.

This report is based on 125 cases of individuals and families wrongfully denied access to U.S. asylum procedures at U.S. ports of entry. Many more have likely suffered a similar fate as these abuses often goes unreported due to the security threats faced by those who are turned away, the dearth of legal counsel, and the lack of effective compliance mechanisms and monitoring of CBP practices.

Human Rights First’s findings include:

- The United States is unlawfully turning away some asylum seekers at official ports of entry across the southern border without referring them, as required under U.S. law and treaty commitments, to asylum protection screenings or immigration proceedings. Documented cases of asylum seekers improperly turned away

include: an artist from Colombia fleeing political persecution at the hands of violent paramilitaries, a Turkish opposition political party member, a former Guatemalan police officer who resisted gangs, a Salvadoran child of Christian pastors who witnessed the gang murder of his sister, a Mexican fleeing police kidnapping after reporting cartel violence, Cubans requesting asylum, and transgender women from El Salvador, among others.

- The United States and Mexico collaborated to block access to U.S. ports of entry and create an appointment system in Tijuana, Mexico that CBP agents continue to use as a reason to turn away asylum seekers. Asylum seekers are turned away if they do not have an appointment given to them by Mexican officials, which Mexican officials often refuse to provide.
- Numerous attorneys, non-profit and private legal service providers, humanitarian workers, and shelter staff report that CBP and Mexican officials are telling migrants that the United States is no longer accepting asylum claims at its borders.
- Asylum seekers turned away by CBP agents, including Cubans and Central Americans, have been kidnapped, raped, and robbed upon return to Mexico, and some face continued risk of persecution.
- CBP's practice of turning away asylum seekers from established ports of entry leaves some with little choice but to attempt unauthorized and dangerous border crossings. The practice also puts asylum seekers at increased risk of trafficking, kidnapping, violence, and exploitation by smugglers.
- Even when CBP brings asylum seekers into the port of entry facility for processing, agents have in some cases pressured asylum seekers to recant their statements expressing fear, or have taken steps to produce statements that falsely

indicate no fear. Attorneys attempting to assist clients requesting asylum at ports of entry have been met with hostility by some border agents.

To address the flawed and illegal practices identified in this report, the U.S. government should take the following steps:

**The Department of Homeland Security (DHS) and CBP should:**

- Stop turning away asylum seekers without referring them for a protection screening or immigration court proceedings and instruct CBP officers to comply with U.S. legal obligations.
- Strengthen safeguards to identify and properly refer individuals in need of protection, including by strengthening the implementation of protection safeguards in the expedited removal process, as recommended by the bipartisan U.S. Commission on International Religious Freedom.
- Immediately end the appointment system, currently run by *Grupos Beta* in Tijuana, Mexico, and issue clear and public instructions to all CBP agents that asylum seekers are not required to receive an appointment to be processed at a U.S. port of entry.
- Work with Mexican officials to put an end to the practice carried out by various Mexican entities, including the military and *Grupos Beta*, of preventing some asylum seekers from accessing U.S. ports of entry.
- Abandon any formal plans to turn away asylum seekers at U.S. borders in circumvention of U.S. law and treaty commitments, including by turning them away to Mexico.
- Fully cooperate with any investigation by the DHS Office of Inspector General (OIG) into complaints that asylum seekers have been improperly turned away. The inspector general should launch a thorough inquiry, or expand any existing inquiry.



**President Trump** should rescind the “Border Security and Immigration Enforcement Improvements” executive order, which blocks access to asylum, undermines due process, and violates U.S. treaty commitments.

**The U.S. Congress should**, through its oversight of DHS and CBP, take steps to ensure those agencies comply with the law to safeguard access to asylum including:

- Request the DHS OIG thoroughly investigate all allegations of CBP officers illegally and improperly turning away asylum seekers at the southern border and review CBP’s monitoring and evaluation procedures to ensure officers are in compliance with U.S. law and treaty commitments;
- Require that DHS and CBP develop training materials for CBP officers to comply with U.S. domestic law and treaty commitments; and

- Request that DHS provide Congress with a report of all complaints filed against CBP officers for violations of U.S. domestic law and treaty commitments related to refugee protection and asylum and the resolution of said complaints over the past year.

Only a tiny fraction of the millions of travelers who pass through U.S. ports of entry request asylum. The vast majority of the world’s refugees are hosted by developing countries on the frontlines of the world’s displacement crises. While the numbers who request protection at U.S. border entry points are small in comparison, the U.S. response to those requests sets an example for the rest of the world. To provide effective global leadership and adhere to American ideals, the United States should abide by its laws and treaty obligations.

## I. United States Statute and Treaty Obligations

In the wake of World War II, the United States helped lead efforts to draft the Convention Relating to the Status of Refugees. The United States subsequently became a party to the Refugee Protocol, committing to abide by the Refugee Convention's requirements, including its prohibition on the expulsion or return of refugees in any manner whatsoever to places where their lives or freedom would be threatened.<sup>1</sup> This rule of *non-refoulement* applies to rejecting or turning away asylum seekers at a country's borders.<sup>2</sup>

Congress created legal processes for arriving asylum seekers to request protection and have their claims adjudicated in accordance with the Refugee Protocol. Section 208(a) of the Immigration and Nationality Act (INA) confirms that any individual who is physically present in the United States or who arrives in the United States at a port of entry or otherwise may apply for asylum, irrespective of the person's immigration status.<sup>3</sup> Since 2009, asylum requests, particularly among Central Americans who are fleeing endemic violence, have increased both in the United States as well as in neighboring countries of the region.<sup>4</sup>

Under U.S. immigration law, asylum seekers who have been placed into expedited removal proceedings by CBP cannot be summarily deported before having an asylum officer conduct a screening. When CBP invokes expedited removal and the individual indicates an intent to apply for asylum or a fear of persecution, the CBP officer must, under U.S. law, refer that asylum seeker for a "credible fear" interview with an asylum officer.<sup>5</sup> From December 2016 through March 2017, about 8,000 asylum seekers were referred for protection screening interviews from U.S. ports of entry, including U.S. airports. Asylum seekers are held in U.S. detention facilities during

these screenings, and even those who pass this screening often remain in immigration detention facilities for months.<sup>6</sup>

CBP's own field manual instructs officers to refer an individual to an asylum officer for a credible fear interview upon indication "in any fashion or at any time during the inspections process, that he or she has a fear of persecution, or that he or she suffered or may suffer torture."<sup>7</sup> Alternatively, CBP officers may place asylum seekers into regular immigration court proceedings before an immigration judge under section 240 of the Immigration and Nationality Act, rather than invoking expedited removal.<sup>8</sup>

The Trump administration has acknowledged U.S. legal obligations to asylum seekers. President Trump's March 6, 2017 executive order, "Protecting the Nation From Foreign Terrorist Entry Into The United States," states, "Nothing in this order shall be construed to limit the ability of an individual to seek asylum, withholding of removal, or protection under the Convention Against Torture, consistent with the laws of the United States."<sup>9</sup> Similarly, CBP officials have confirmed that the United States continues to recognize its obligation to process asylum seekers. In March 2017 a CBP spokesperson told reporters, "CBP has not changed any policies affecting asylum procedures. These procedures are based on international law and are focused on protecting some of the world's most vulnerable and persecuted people."<sup>10</sup>

However, gaps between the law and its implementation have long been documented. The bipartisan USCIRF detailed in a series of reports issued since 2005, with the most recent in 2016, a history of failure to properly implement the required steps to identify and refer individuals who indicate an intent to apply for asylum or a fear of harm.<sup>11</sup>

## II. U.S. Border Agents are Turning Away Asylum Seekers without Required Protection Screening

*“We are not seeking the American dream, we are fleeing for our lives.”*

– Edwin, a 19-year-old asylum seeker turned away by CBP at the Hidalgo port of entry.<sup>12</sup>

U.S. border agents have turned away asylum seekers, without referring them for the required protection screening or immigration court proceedings, at official ports of entry across the southern border.

In some cases, asylum seekers report that CBP officers simply ignored their request to seek asylum or their statements about fearing return, or said, for example, “We are deporting you now.”<sup>13</sup> In other cases, CBP officers gave false information about U.S. laws and procedures, mocked and intimidated asylum seekers, or accused them of lying.<sup>14</sup>

Mexican asylum seekers in particular report that CBP agents discount their fear claims and tell them Mexicans cannot get asylum in the United States. “We’re not accepting any political asylum applicants anymore,” agents told one wheelchair-bound Mexican asylum seeker in January, despite visible scars on his head from cartel attacks.<sup>15</sup>

CBP told Magdalena, another Mexican asylum seeker at the Ped-West port of entry in February, “they are killing people who are Christians. Those are the people we are giving asylum to, not people like you. You don’t qualify.”<sup>16</sup> A mentally disabled Mexican asylum seeker and his lawyer were told “we don’t give asylum here ... we are not going to give asylum here.”<sup>17</sup> Martin, a Mexican journalist whose persecution has been

documented by Reporters without Borders requested asylum at the El Paso port of entry and was told that Mexicans could not receive asylum in the United States, according to his attorney who witnessed the incident and was able to press CBP to process the protection request.<sup>18</sup>

Human Rights First wrote to DHS in July 2016 and urged that “requests for protection be properly and humanely processed at [the San Ysidro] port of entry.”<sup>19</sup> Yet the turn-backs continued and appeared to expand to multiple ports of entry along the southern border. A January 2017 complaint filed with the DHS Office of Civil Rights and Civil Liberties and the DHS Inspector General by the American Immigration Council, among other groups, detailed examples of turn-backs at multiple ports of entry in Texas, Arizona, and California between September and December 2016.<sup>20</sup>

Since November 2016 reports of CBP officers turning back asylum seekers have continued, with some officers reportedly invoking the change of administration in their refusal to process asylum seekers, particularly in the wake of the January 2017 executive orders relating to refugees and the border. Human Rights First interviews with asylum seekers and their lawyers indicate that there has been a marked shift in the conduct of some CBP officers towards asylum seekers since the election of President Trump.<sup>21</sup> CBP officers have reportedly made a range of statements to the effect that the United States is no longer granting asylum and that asylum seekers are no longer allowed to seek protection at U.S. ports.

Lawyers reported to Human Rights First that CBP agents at the Hidalgo port told asylum seekers, “Trump says we don’t have to let you in,” and “you can’t just show up here.”<sup>22</sup> In February 2017 CBP agents at the Ped-West entry point told an asylum seeker that “the United States is not giving asylum anymore.”<sup>23</sup> CBP agents told other asylum seekers they needed a visa to enter the United

States, or that “the U.S. is not processing asylum for people from your country anymore.”<sup>24</sup>

Between February and April 2017 Human Rights First researchers traveled to border areas in California, Texas, and Arizona, and visited Mexican border cities of Matamoros, Reynosa, Nogales, and Tijuana. Human Rights First requested to meet with CBP at the San Ysidro port of entry, but CBP canceled that meeting and denied Human Rights First’s request to visit CBP at the Hidalgo port of entry. Through interviews with local non-profit agencies, asylum seekers, and lawyers, as well as follow-up interviews and research, Human Rights First gathered information concerning asylum seekers who were turned away at the Gateway Bridge, Hidalgo, El Paso, Nogales, Otay Mesa, San Ysidro, and Ped-West ports of entry.<sup>25</sup> These asylum seekers have come from a range of countries, including Turkey, Colombia, Cuba, Mexico, Guatemala, Honduras, and El Salvador. Examples include:

■ **Transgender asylum seekers told the United States is “not giving asylum anymore.”** In February 2017 three transgender women who had fled El Salvador arrived at the Otay Mesa port of entry outside of Tijuana and requested protection. CBP agents told them that the United States was “not giving asylum anymore,” according to the women. The officers then told the asylum seekers to leave.

When two of the three refused to return to Mexico, CBP officers reportedly began to physically remove one woman, Maria, knocking her to the ground and putting their boots on her neck and groin area. Eventually as a result of their persistence, two of the three women were processed as asylum seekers. The other returned to Mexico and her location and security situation is currently unknown.<sup>26</sup>

■ **Cuban asylum seekers denied access to the U.S. asylum system, told “the law has**

**changed, you have to go back.”** Reports from January through April 2017 indicate that CBP agents are turning away some Cuban asylum seekers. In January agents at the Laredo port of entry told Cuban asylum seekers to go back to Mexico and wait until Trump took over to see if he would change the so-called, “wet-foot, dry-foot” policy.<sup>27</sup>

After President Trump’s inauguration CBP told a woman seeking asylum from Cuba that the law for asylum “does not exist anymore. To go to the United States, you have to get a visa from a consulate.” While the Obama Administration changed a policy that had allowed Cubans to be automatically paroled into the United States, a Cuban national at a U.S. port of entry can still seek asylum from the United States through the processes generally applicable to asylum seekers.

When the woman refused to turn around, the CBP agent threatened to call Mexican immigration to remove her.<sup>28</sup> On April 8, 2017, as reported by *The San Antonio Express*, a group of 500 Cubans, including many asylum seekers, approached the port in Laredo, after getting past Mexican military which tried to stop them. CBP agents told them, “the law has changed, you have to go back,” after one Cuban told the officer they were seeking asylum.<sup>29</sup>

■ **U.S. agents turned away Honduran family twice, forcing them to cross the Rio Grande.** A Honduran family’s eldest son, Dany, was under threat from Mara Salvatrucha (MS) gang, so he sought asylum in the United States. An immigration judge denied his case and he was deported. Two weeks later, MS murdered him. Fearing for their lives, the entire family fled. On their first attempt to seek asylum at the Hidalgo port, a CBP officer told them “you cannot be here, no Hondurans... if you don’t leave I will have to use force to remove you.” The second

time, CBP agents physically removed the family from the facility and forced them to return to Mexico. The family decided their best chance was to make a dangerous crossing of the Rio Grande river outside of Reynosa, Mexico and present themselves to Border Patrol agents there to seek asylum. But one of the sons, Edwin, was too afraid that CBP would detain and deport him and that he would end up murdered like his older brother. He remained stranded at a migrant shelter in Reynosa for months, too afraid to go outside due to the risk of kidnapping. Eventually a lawyer helped him seek asylum at the Hidalgo port again and ensured CBP processed him appropriately.<sup>30</sup>

■ **Honduran asylum seeker with bullet wounds, and his family, turned away by U.S. agents who threatened to call Mexican immigration.**

In January 2017 CBP agents at the Hidalgo port turned Daniel and his family away six times, each time saying that port holding cells were full. On one occasion Daniel lifted his shirt to show CBP agents the bullet hole wound from when Honduran gang members attempted to kill him. CBP agents threatened to call Mexican immigration authorities to deport the man and his family back to Honduras. The family tried again in February 2017 with the assistance of an attorney who successfully requested CBP process them as asylum seekers.<sup>31</sup>

■ **Turkish member of the political opposition turned back into Mexico by border agents.**

CBP agents turned away Burak, a high-profile opposition party member from Turkey at the Ped-West port in late January 2017, saying he needed his passport to enter the United States and that he could not apply for asylum. Jailed for over one hundred days and under death threats, he fled Turkey after the government had confiscated his passport, which contained a valid U.S. tourist visa. "No one wants to leave

their home country, I had to escape to save my life. I would like to live in a democratic country that respects justice," he said after being turned away. CBP appropriately processed him as an asylum seeker the following month after a group of lawyers and a journalist accompanied him to the port of entry.<sup>32</sup>

■ **Family of Mexican refugees turned away twice by U.S. officers.** In June 2016, Carla, a Mexican woman and her children sought protection at the Hidalgo port of entry after her father, son, grandfather, and uncle were killed in a span of seven days by cartels targeting the family. The family was turned away by CBP agents twice at the Los Indios port of entry in south Texas. After the family sought assistance from a private attorney, CBP officers finally processed them appropriately on the third attempt. A U.S. immigration judge in Texas recently ruled that the family were indeed refugees and granted the entire family asylum.<sup>33</sup>

Shelters and lawyers throughout the Rio Grande Valley report that these turn-aways are leading to a "ping-pong" effect, causing asylum seekers to attempt and re-attempt to request asylum at different ports of entry in the region. Asylum seekers turned away from the U.S. port of entry near Matamoros, Mexico sometimes attempt again at the Hidalgo port of entry (which connects Reynosa, Mexico with McAllen, Texas), or at smaller, less crowded ports such as Los Indios International Bridge in San Benito, Texas.<sup>34</sup> However, even at smaller ports of entry, asylum seekers have reported that they have been turned away without referral for protection screening or asylum adjudication.

Human Rights First and other groups have documented at least 125 cases of asylum seekers turned away by CBP officers at ports of entry between November 2016 and April 2017.<sup>35</sup> However, given the lack of legal and social



services available to asylum seekers when they present at the border, as well as the ongoing situation of violence in Central America and other regions that is pushing many people to flee, that number likely represents only a small fraction of the asylum seekers whom CBP improperly blocked from asylum protection assessments. As described throughout this report, in some cases, it was only through incredible perseverance, the assistance of a lawyer, or even media attention, that CBP has followed the law by referring asylum seekers to the appropriate procedures.

### III. Mexican Authorities are Complicit in Barriers to Asylum Seekers Approaching U.S. Ports of Entry

Refugees who intend to request asylum at U.S. ports of entry along the southern border face a barrage of barriers in Mexico. Some are prevented from approaching U.S. officials by Mexican private security guards or Mexican immigration enforcement agents, who say the United States is no longer giving asylum. Many who do reach CBP officers at the ports in southern California are turned back to Mexico and told they must first have an “appointment” from Mexican officials in order to meet with CBP officers at the U.S. port of entry. In reality, Mexican officials decline to issue “appointments” to many asylum seekers.

#### A. The Tijuana Appointment System—a Gauntlet and Charade for Asylum Seekers

The Tijuana appointment system was initially developed by U.S. and Mexican officials as an ad hoc response to the arrival of large numbers of Haitians at three ports of entry in the San Diego border sector during the summer of 2016. The

plan tasked *Grupos Beta*, the humanitarian branch of the Mexican immigration enforcement agency (INM),<sup>36</sup> with providing these “appointments” for migrants and asylum seekers who did not have entry documents, to present themselves to CBP at a later day and time.

This flawed appointment system was plagued with misinformation and abuse, leaving many asylum seekers stranded in Mexico. It has continued at the San Ysidro port of entry long after the number of Haitians attempting to enter the United States fell—and despite the much-touted decrease in arrivals along the border.

It does not appear that there has ever been uniform understanding between CBP agents and *Grupos Beta* as to which individuals they would refer to the appointment system. CBP agents at the San Ysidro-area ports of entry seem to require most migrants and asylum seekers without entry documents to first obtain an appointment, yet *Grupos Beta* initially provided appointments only to Haitians arriving with temporary transit visas, known as *oficios de salida*, that were previously issued by Mexican officials in southern Mexico. It later set appointments for migrants of other nationalities, as long as they held an *oficio de salida*.<sup>37</sup>

Since Central Americans are typically not issued a transit visa at Mexico’s southern border, they are effectively blocked from receiving an “appointment.”<sup>38</sup> *Grupos Beta* has also refused appointments for individuals with legal status in Mexico, such as a tourist visa, blocking other nationalities that enter Mexico on visas from approaching U.S. officials to seek asylum.<sup>39</sup>

In January 2017 the head of Mexico’s immigration office in Tijuana, Rodolfo Figueroa, told *The Washington Post* that “Mexican authorities refuse to issue numbers to [other migrants] because the system is designed to handle only Haitians.”<sup>40</sup> INM confirmed, in response to a complaint filed

with Mexico's National Commission for Human Rights in April 2017, that the Mexican immigration agency "is not responsible for giving asylum seekers tickets to seek asylum in the United States."<sup>41</sup>

Yet CBP says that the appointment system is still in place,<sup>42</sup> stating to the media in February 2017 that "CBP has coordinated and continues to work with the Mexican authorities in regards to border security and humanitarian causes to improve the processing and humanitarian assistance of those individuals with no legal status to enter the United States."<sup>43</sup> As recently as April 2017, CBP agents told asylum seekers of various nationalities to "go to *Grupos Beta* first because they will give you an appointment with us."<sup>44</sup>

Beyond the functional challenges and misinformation, turning away asylum seekers and subjecting them to an "appointment system" contravenes U.S. law and treaty commitments, and places many of them in danger, as described in Section VI below. Mexican nationals were initially subjected to the appointment system, forcing asylum seekers to approach government officials from the very country they were fleeing.<sup>45</sup>

In September 2016, after complaints about the direct return of Mexican asylum seekers, Mexican officials told migrant shelters that Mexican nationals were exempted from the appointment system.<sup>46</sup> However, despite that announcement, Human Rights First received multiple reports indicating that CBP agents have in some cases continued to tell Mexican asylum seekers to get an appointment from *Grupos Beta*.<sup>47</sup>

Many asylum seekers from other countries are also afraid to approach Mexican officials to request an appointment, fearing detention and return to persecution by Mexican immigration authorities. According to local lawyers, it is not uncommon for *Grupos Beta* to refer Central Americans and other asylum seekers to the

Tijuana INM office, where they could face detention and deportation back to their country of feared persecution.<sup>48</sup>

Examples of asylum seekers turned away by CBP agents and told to seek an appointment from Mexican authorities include:

■ **Colombian asylum seeker turned away, told U.S. asylum process "starts in Mexico."** CBP agents turned away Andres, a Colombian asylum seeker, four times at the Ped-West port in November 2016. The asylum seeker had fled political persecution in Colombia after paramilitary members shot his sister and threatened to kill him. His family had spoken out against the murder of his brother and sister-in-law.

CBP agents reportedly told Andres he could not come to the border to ask for asylum "because the process for requesting asylum in the United States starts in Mexico." *Grupos Beta* agents then told Andres he needed an *oficio de salida* from Mexican authorities to get an appointment to seek asylum in the United States. The man also approached Mexican INM agents to ask for a U.S. appointment ticket. The INM agents told Andres he could not be issued an appointment with CBP because he was currently on a valid tourist visa in Mexico.<sup>49</sup>

■ **Guatemalan asylum seeker turned away six times, sent to *Grupos Beta* for appointment it would not provide.** Between November 2016 and January 2017, U.S. agents turned away Diego, a former Guatemalan police officer, six times, each time informing him to seek an appointment with *Grupos Beta*. But *Grupos Beta* officers told him that they could only help people who had previously obtained an *oficio de salida* from Mexican authorities in southern Mexico, and that he would have better luck seeking asylum at another U.S. port of entry.

On his third attempt to seek asylum at the Ped-West port, Mexican private security guards and Mexican immigration agents stopped him on the Mexican side of the port, along with a Honduran family seeking asylum. The officials reportedly told him and the family that they required an *oficio de salida* from Mexican authorities in southern Mexico to get an appointment to seek asylum in the United States.<sup>50</sup>

## B. Mexican Authorities Discourage Asylum Seekers from Presenting at U.S. Entry Points

INM agents and *Grupos Beta* officials continue to prevent and discourage asylum seekers from approaching U.S. ports of entry, according to multiple interviews conducted by Human Rights First with shelters, non-profits, lawyers, and asylum seekers on both sides of the border. In some cases, Mexican officers told people that the United States is no longer accepting asylum seekers.

Human Rights First researchers observed *Grupos Beta*, INM agents, and Mexican military when approaching the border crossing points in Matamoros, Reynosa, and Tijuana. Local lawyers report that Mexican authorities turned away asylum seekers in Reynosa, Mexico who were attempting to approach the U.S. Hidalgo port of entry in January 2017.<sup>51</sup>

Media reports indicate Mexican military agents blocked Cuban asylum seekers from approaching the Laredo port in early April 2017.<sup>52</sup> Several shelters in Tijuana report that INM agents have informed Mexican asylum seekers that “Mexicans cannot get asylum in the United States,” and that local Mexican police officers have turned away Mexican asylum seekers who were attempting to approach the Ped-West port.<sup>53</sup>

Multiple reports also indicate that *Grupos Beta* is informing Mexican and Central American asylum

seekers that the United States is no longer giving people asylum.<sup>54</sup> According to local advocates in Mexico, *Grupos Beta* officials have told them, “stop lying to people, CBP told us they are not giving asylum in the United States anymore.”<sup>55</sup>

■ **Family of asylum seekers from El Salvador repeatedly blocked from requesting asylum at border, Mexican security guards threatened to have them deported.** In mid-February 2017, Laura, her husband and two children, arrived in Tijuana after fleeing their home in El Salvador, where gang members recently killed their third child. U.S. agents turned them away at the Otay Mesa port of entry just outside of Tijuana. Later, agents at the San Ysidro port of entry in downtown Tijuana told them to go to the Ped-West port. At Ped-West, private U.S. security guards stopped the family and CBP agents told them to contact *Grupos Beta*. The family returned to Mexico but could not locate any *Grupos Beta* officers. Finally, Mexican security guards, stationed at the entrance to the Ped-West port, threatened to call INM agents if the family did not leave. As of mid-March the family was still stranded and at risk in Tijuana.<sup>56</sup>

## IV. Coercion and Hostility Aimed at Discouraging Asylum Seekers

Even in cases where asylum seekers manage to speak with CBP officers, some encounter officers who press them to abandon their asylum requests, appear to make personal, arbitrary decisions on who is eligible for asylum, or fill out CBP interview forms with inaccurate, misleading, or false information.

This gauntlet of barriers to requesting asylum is so challenging that some asylum seekers have turned to lawyers to help make sure the

appropriate legal processes are followed. Asylum seekers, and sometimes lawyers, have been berated by CBP officers for urging them to process and properly refer protection requests.

Consistent with U.S. law, as detailed above, CBP officers at ports of entry are charged with referring individuals who express a fear of return or request asylum to trained United States Citizenship and Immigration Services (USCIS) asylum officers who make the legal determination of whether the asylum seeker has a significant possibility of establishing eligibility for asylum.

CBP officers, who are immigration enforcement officers, are not charged with making legal determinations about whether or not an individual may be eligible for asylum, and should not be turning away or urging asylum seekers to abandon requests for U.S. protection based on their personal opinions.

In April 2017, a CBP spokesperson confirmed, “our officers are not authorized to determine or evaluate the validity of the fear expressed.”<sup>57</sup> In mid-February the CBP spokesperson stated, consistent with U.S. law, that “the applicant does not have to specifically request asylum, they simply must express fear of being returned to their country.”<sup>58</sup> However, some CBP officers are failing to follow these processes. USCIRF documented general skepticism and hostility toward asylum seekers by CBP in a 2016 report.<sup>59</sup>

### **A. U.S. Border Agents Use Intimidation and Deception to Pressure Asylum Seekers into Denouncing Fear**

In late 2016 and early 2017, shelters, organizations, and lawyers heard reports from asylum seekers turned away by CBP that some agents were using improper, deceptive or coercive tactics when processing asylum seekers at U.S. ports of entry<sup>60</sup> – a trend documented by

various organization even before reports of turn-backs began.<sup>61</sup>

One pro bono lawyer has represented six Mexican families who were pressured by CBP into recanting their fear of return on video at the Ped-West port of entry.<sup>62</sup> Pro bono lawyers in the Rio Grande Valley also received reports from asylum seeking clients indicating that some CBP officers had forced asylum seekers to sign voluntary removal documents, despite their clear expressions of fear and intent to seek asylum.<sup>63</sup>

In January 2017 CBP agents at the Laredo port reportedly pressured Cuban asylum seekers into “voluntarily” returning to Mexico, explaining that they should wait for President Trump to take office and see if he changed U.S. policy towards Cubans. Cuban asylum seekers who approached the same port after President Trump took office were told that the law has changed and they could not seek asylum.<sup>64</sup> Cubans, like individuals of other nationalities, can request asylum from the United States at a port of entry, but as of January 2017 they no longer have access to a special parole program (known as the “wet-foot, dry-foot” policy) that allowed them to enter the country and then later become legal permanent residents without applying for asylum.<sup>65</sup>

Experienced lawyers have reported that CBP is using “copy/paste” responses on its official screening forms (I-867A and B), stating that an individual did not express a fear of return, including in cases of asylum seekers with genuine fears of harm who were ultimately ruled eligible for asylum.<sup>66</sup>

The information provided by CBP on those screening forms is notoriously unreliable, yet government lawyers frequently use them in immigration court to challenge asylum seekers’ credibility.<sup>67</sup> In one case, for example, CBP agents submitted a form saying that a three-year-old child told them he was coming to the United

States to work.<sup>68</sup> Given the many inaccuracies their researchers observed, USCIRF recommends that these forms should clearly indicate that they are not verbatim statements from the interviewees.<sup>69</sup>

Asylum seekers also report improper questioning and misleading conduct by some CBP agents. For example, in one case a CBP officer reportedly asked an asylum seeker, "What will you do if you are granted asylum in the United States? Work? Okay, so you are here to work."<sup>70</sup> The CBP agent then wrote on the form that the asylum seeker had come to the United States to work, creating the misimpression that the asylum seeker did not come to seek U.S. protection from persecution.

CBP agents have also reportedly asked some asylum seekers, "Do you know what asylum is?" If they answer "yes," the agents claim that they have been coached and therefore are not credible. If they answer "no," the agents ask, "then how do you know you qualify for asylum?"<sup>71</sup>

Examples of these tactics include:

- **Mexican asylum seeker threatened and coerced into recanting fear on video.** In late January and early February 2017, CBP agents turned away Magdalena, a Mexican asylum seeker, at the Ped-West port of entry on three separate occasions. Each time CBP agents pressured or manipulated her into appearing to deny her fear of return on video. She had fled her home in Guerrero, Mexico after cartel members sexually assaulted her, forced her to watch a video of a torture victim, and demanded she turn over her son to join their ranks.

On her second attempt to seek asylum at the border, a CBP officer asked her if she knew about the new president of the United States, and the officer told her that the United States was only giving asylum to Christians. On the same attempt CBP agents asked her, "Are you

afraid to go with these Mexican officials right here?" referring to Mexican immigration agents in Tijuana. She said she was afraid to go back to Mexico, to which the CPB agent responded, "no that is not what I am asking, are you afraid to go with these officials right here?" She explained that she did not know those officials so was not afraid of those individuals. "Well then you have to answer 'no' to the question 'are you afraid?'" the CBP agent said and turned on the video recorder.

She attempted to request asylum again the same day in early February, this time accompanied by a lawyer. A CBP officer told her, "You will never get asylum in the United States," and CBP turned her back into Mexico again. She is currently in hiding in Mexico.<sup>72</sup>

- **Mexican family threatened with jail if they continued to claim that they feared persecution by the Mexican government.** In February 2017 a Mexican family fled to the Ped-West port of entry to seek asylum after suffering violence and receiving death threats from a major cartel. A CBP officer reportedly asked if they had any proof of the violence and asked if they reported the incidents to the police. One family member explained that the police were involved with the cartel so they could not safely report the incidents to the police. The CBP agent told the young man he was defaming the Mexican government and if he continued to do so the CBP agent would call Mexican authorities to put him in jail. CBP agents turned the family of asylum seekers back into Mexico and the family remains in hiding in Tijuana.<sup>73</sup>

## **B. Lawyers' Involvement to Ensure Asylum Seekers are Processed is Unsustainable and Met with Hostility**

Because of the extraordinary efforts of CBP and Mexican officials to block access to asylum some



asylum seekers have enlisted lawyers to ensure that CBP officers follow U.S. law and properly process asylum requests. Some lawyers at migrant shelters now inform clients that they may need to attempt to collect additional evidence, such as death certificates of murdered relatives, before even requesting asylum at a U.S. port of entry, a difficult or impossible task for many refugees.<sup>74</sup> Some lawyers have had to help clients fill out asylum applications and organize evidence before arriving at the port, even though these measures are not required until much later in the process, just to ensure that CBP does not refuse to process the request for protection and properly refers it for a screening interview with a trained asylum officer.<sup>75</sup>

Despite such advocacy and preparation, lawyers have reported that CBP officers still claimed that asylum seekers expressed no fear of return and sent them away. For example, one attorney in Tijuana reported three clients were turned away at the Ped-West port after they arrived and presented a cover letter explaining their fear, a signed form confirming counsel in the United States, identity documents, and materials about the conditions in their country of origin.<sup>76</sup>

Several lawyers in the Rio Grande Valley, El Paso, Nogales, and Tijuana have personally accompanied asylum seekers to border crossings to ensure CBP appropriately processed them. In most cases, the presence of an attorney to advocate for their client results in proper processing. Others have resorted to preparing full asylum applications for their clients prior to approaching the U.S. border.<sup>77</sup>

In some cases lawyers are met with hostile reactions and their clients are still turned back into Mexico within 24 hours. Agents at the Hidalgo port have questioned asylum seekers about how they found a lawyer, and intimidated other lawyers, stating, "We know who you are."<sup>78</sup> Similar hostility

toward attorneys has reportedly occurred at the El Paso port of entry and the Ped-West crossing.<sup>79</sup>

Other examples of lawyers' effort to secure appropriate processing for asylum seekers include:

■ **Persecuted Mexican journalist required U.S. lawyer to ensure he was not turned away by U.S. agents at El Paso port.**

In early February 2017, Martin, a persecuted Mexican journalist arrived with his attorney at the El Paso port of entry. Martin had covered police violence in Guerrero, Mexico, and had been attacked by police officers and received multiple death threats. The international organization, Reporters without Borders, had documented the persecution of Martin and many others in Mexico, which is one of the most dangerous countries for journalists.<sup>80</sup> At the U.S. port of entry, a CBP agent told the attorney that Mexicans could not get asylum in the United States. After a protracted negotiation, the lawyer eventually convinced CBP to appropriately process his client as an asylum seeker. Martin has now been held in an Immigration and Customs Enforcement (ICE) detention center in west Texas for over two months.<sup>81</sup>

■ **Family stuck on international bridge at Hidalgo after U.S. agents turned them away, required attorney assistance to be processed.**

In late January 2017 a Honduran family of five arrived at the Hidalgo port of entry and requested asylum. CBP agents reportedly told the family to "go get a visa in Matamoros," the closest U.S. embassy to Reynosa. U.S. embassies do not issue visas to request asylum. The family was afraid to return to Mexico and remained on the international bridge between Reynosa and McAllen for several hours until a local attorney, contacted by relatives in the United States, arrived at the port. CBP processed the family as asylum

seekers on their second attempt with the attorney's assistance.<sup>82</sup>

- **Mexican asylum seeker questioned about her U.S. lawyer, CBP says the lawyer is a "fraud."** In February 2017, Magdalena, a Mexican asylum seeker was questioned by CBP agents about her U.S. attorney. CBP agents reportedly stated, "Do you know who this lady is? Do you know that she is an imposter, that she is a fake? How much is she charging you? We're not stupid. We know she's charging you." When Magdalena explained that her lawyer was taking her case pro bono, the agents said, "She may not charge you right now, but when you get a bond, she will charge you \$1,500 to get you out. No attorneys work for free." Such comments appear aimed at undercutting the asylum seeker's relationship with her lawyer.<sup>83</sup>

While this heightened level of legal representation has led to proper processing in some cases, legal representation should not be required to ensure that U.S. asylum laws and treaty commitments are respected at U.S. ports of entry. Non-profit legal resources are already extremely overstretched and the limited number of pro bono lawyers do not have the capacity to take on this type of legal representation, which should not be necessary in the first place. Moreover, the vast majority of asylum seekers cannot and should not be expected to secure evidence and make legal arguments about their asylum eligibility on their arrival at a port of entry. Arriving at a port of entry is just the first procedural step in the asylum process. A full screening interview by an asylum officer, and in many cases a full hearing before an immigration judge, will be held to determine if the person qualifies for asylum status. CBP is simply not tasked, based on existing law, with reviewing evidence at this stage. In fact, CBP's manual makes clear that detailed questioning about the

nature of an asylum seeker's fear of persecution or torture is the role of the asylum officer.<sup>84</sup>

## V. Turn-Backs at Border Crossings are Pushing Asylum Seekers to Cross Outside Formal Entry Points

Turning back asylum seekers at established border crossing points not only violates U.S. statutory and treaty obligations, it is pushing some asylum seekers to dangerously cross the border between formal entry points. The Trump Administration has stated that people entering the United States without inspection "present a significant threat to national security and public safety."<sup>85</sup> Yet CBPs own actions push asylum seekers to enter without inspection, instead of through an orderly process at established border crossing points. This places vulnerable asylum seekers at additional risk of kidnapping, exploitation, trafficking, smugglers, and death in remote areas.

According to respite center staff in the United States that have seen thousands of migrants in recent months, many asylum seekers do not believe that they can request asylum at a U.S. port of entry.<sup>86</sup> The word has spread that the United States is rejecting refugees at ports of entry.<sup>87</sup> For example, Human Rights First interviewed one asylum seeker, Javier, a taxi driver from Guatemala, who thought his only option was to cross the Rio Grande because other migrants told him U.S. or Mexican authorities would turn him away. This kind of crossing requires paying the cartel that controls access to the river to allow passage.<sup>88</sup>

In Matamoros, smugglers reportedly wait at the international bridge to offer those turned away from the U.S. port of entry passage across the Rio Grande.<sup>89</sup> The smugglers operating in Reynosa

often kidnap and hold their victims for ransom, only letting them cross the river if the ransom is paid.<sup>90</sup>

In the Rio Grande Valley, lawyers and shelters have observed an increase in the number of drownings in the area since January 2017, when CBP at the Hidalgo port began turning back asylum seekers.<sup>91</sup> One shelter in Mexico reports ten known drownings between mid-February and mid-March, including a woman who had stayed at the shelter in early March 2017.<sup>92</sup>

Some reports also suggest that CBP agents have forced some asylum seekers back into Mexico between ports of entry. Several Guatemalan and Salvadoran asylum seekers reported that they were forced back over the border fence, or were walked back into Mexico by Border Patrol agents in the California desert, after explaining their intention to seek asylum.<sup>93</sup>

Border Patrol agents reportedly walked a family of Salvadoran asylum seekers, who had been apprehended within the United States near the border outside San Ysidro, back into Mexico without processing them or referring them for protection screening, despite their expressed intention to seek asylum.<sup>94</sup> Border Patrol agents told the family to get an “appointment” from *Grupos Beta*. The family had fled El Salvador after the father testified against gang members, who then sexually assaulted the mother, according to their lawyer.<sup>95</sup>

A Guatemalan mother and her two-year-old child were reportedly forced back into Mexico near Anapra, New Mexico in late 2016. The mother recounted that a CBP officer grabbed her by the shoulder, turned her around to face Mexico and stated, “we don’t want Guatemalans here.”<sup>96</sup>

Compounding these problems, legal service providers in California indicate that immigration judges sometimes deny release on bond to detained asylum seekers if they did not seek

asylum at a port of entry and instead crossed the border before requesting protection.<sup>97</sup> Under Article 31 of the Refugee Convention and Protocol, asylum seekers should not be penalized for their manner of entry, whether they requested asylum at a port of entry or crossed the border irregularly.<sup>98</sup>

Examples of the negative impact of asylum seekers forced to cross between ports of entry include:

■ **Family kidnapped and held for ransom by smugglers after U.S. agents turned them away.** In January 2017 a family with two children crossed the Rio Grande River near Reynosa after being turned away by CBP agents at the Hidalgo port twice. The family had fled Honduras after their daughter was raped by gang members and the family was targeted by the gang. In late December 2016 CBP agents at the Hidalgo port of entry had told the family to come back a week later. They returned to the port in early January and CBP officers told them they could not be processed for asylum in the United States. As a result, the couple and their children returned to Mexico across the pedestrian bridge where they were approached by smugglers. The smugglers kidnapped the family and forced them to pay a ransom for their release.<sup>99</sup>

■ **Woman and child from El Salvador risked river crossing after U.S. border officers turned them away.** In February 2017, Patricia, a Salvadoran woman and her young son arrived at a local respite center in McAllen, Texas after crossing the border. Patricia had attempted to request asylum, along with her child, at the Hidalgo port of entry on two different occasions. Each time she was turned away. She then crossed the border without authorization, paying a smuggler to cross the river. After crossing the Rio Grande undetected she presented herself to U.S. immigration

agents in McAllen and was given a notice to appear for an immigration court hearing on her asylum claim.<sup>100</sup>

- **Fleeing kidnapping by Mexican police, an asylum seeker crossed the border after being turned away at San Ysidro.** In late February 2017, Eduardo, a Mexican asylum seeker sought protection in the United States after escaping a kidnapping by Mexican police. The kidnapping attempt appears to be retaliation for a report he filed about cartel violence in the area. He was turned away from the U.S. port of entry at San Ysidro, and not referred for a protection screening interview. After he was turned back he crossed the border outside Tijuana and then requested asylum once CBP apprehended him.<sup>101</sup>

## VI. Asylum Seekers Face Ongoing Dangers and Lack of Protection in Mexico

By rejecting asylum seekers at its borders, the United States is turning them away to face danger persecution, torture, kidnappings, and potential trafficking in Mexico. Turning back Mexican asylum seekers to their country of feared persecution puts them at direct risk from the very forces they were trying to flee; these border rejections also put non-Mexican asylum seekers at increased risk of onward *refoulement* to their countries of persecution. The Mexican immigration system lacks the mechanisms necessary to safeguard refugees from deportation, and even those who are able to apply for asylum in Mexico are often denied asylum due to the deficiencies in the Mexican asylum system. Further, in Mexico the authorities cannot offer them actual protection from harm.

### A. Asylum Seekers Turned Away by U.S. Agents Face Increased Dangers in Mexico

Robbery, rape, and extortion are common experiences for migrants in Mexico, including in Mexico's border towns, such as Nogales, Reynosa, Matamoros, Ciudad Juárez, and Tijuana.

Expert testimony submitted to the Inter-American Committee on Human Rights in March 2017 notes, "Violence and crimes against migrants in Mexico's northern border states have long been documented to include cases of disappearances, kidnappings, rape, trafficking, extortion, executions, and sexual and labor exploitation by state and non-state actors." Turning back migrants from ports of entry exposes individuals, families, and children "to organized crime and smugglers as well as corrupt state authorities unable to protect them or investigate the crimes they have suffered."<sup>102</sup>

In recent months, smugglers have increased their prices, demanding higher payments to allow or guide people across the border between ports.

Cartel members have increased their surveillance and control of areas around border crossings, waiting outside some ports of entry where they see migrants and asylum seekers as easy targets.<sup>103</sup>

In Reynosa, lawyers and shelter staff report that most—if not all—migrants they encounter who had been turned away from the port of entry have been kidnapped and held for ransom, as cartel members wait outside the Hidalgo port.<sup>104</sup> One shelter in Reynosa receives migrants every week who have escaped or were released from kidnappings. Kidnapping victims have increased in number—in March 2017 alone the shelter encountered 30 people who had escaped from kidnappers.<sup>105</sup>

CBP at the Hidalgo port of entry reportedly set a limit on the number of asylum seekers it would process each day, forcing many to arrive early in the morning and therefore placing them at increased danger of kidnapping and violence.<sup>106</sup> Kidnapped asylum seekers report being held in large houses in Reynosa with hundreds of other migrants until their families send money to ransom them from captivity.<sup>107</sup> Many children are also kidnapped and held for ransom in Mexico, presumed to have family members in the United States who may be able to pay.<sup>108</sup>

Recently, eleven Cubans were kidnapped between Reynosa and Nuevo Laredo.<sup>109</sup> In one case a Cuban refugee who was reportedly denied entry at the Hidalgo port of entry in January 2017, was kidnapped and later found dead.<sup>110</sup> In late January 2017, *The Miami Herald* reported that Cuban families in the United States were outraged by the apparent extortion attempts from Mexican immigration officials at detention facilities who demanded money for the release of their family members, who had intended to seek asylum in the United States.<sup>111</sup>

Migrant shelters report that Mexican authorities provide no protection for migrants near the port of entry and migrants are afraid to report kidnappings to police due to threats from their kidnappers. Shelter staff fear for their own safety in the area. In March 2017 one shelter had to stop admitting migrants following a shoot-out between cartels and Mexican police.<sup>112</sup> In Tijuana, one migrant shelter reports multiple kidnappings in the first few months of 2017.<sup>113</sup>

Cartels often attempt to infiltrate the shelters to recruit and kidnap migrants, leaving migrants vulnerable anywhere they seek safety and undermining shelter staff members' ability to protect particularly vulnerable migrants such as women and children.<sup>114</sup>

Violence in other border cities also present acute problems for asylum seekers. Neighboring El Paso, Ciudad Juárez was once deemed the most dangerous city in the world and violence is again on the rise.<sup>115</sup> The U.S. State Department and other experts have warned that violence in Juárez remains a serious issue. The rate of murder and kidnapping in the region has increased over the last year, with migrants frequently targeted.

The Sonora region, neighboring Arizona, also remains particularly dangerous for migrants, as they are frequent targets of kidnapping and abuse.<sup>116</sup> Migrants are routinely victimized by Mexican migration authorities and municipal police as well as organized criminal groups who have perpetrated heinous violence against migrants, including homicide.<sup>117</sup>

Migrants and asylum seekers also report that not only do Mexican authorities fail to protect them, they are often the perpetrators of extortion and mistreatment. An official from El Salvador, who wished to remain anonymous, indicated it is widely known in the Salvadoran community that Mexican officials seek to extort Salvadoran migrants.<sup>118</sup> The same source, familiar with the journey through Mexico said, "it's so bad ... that Salvadoran women are advised by their community members to get a birth control shot before they go on their journey to Mexico because they are likely to be raped and police in Mexico won't do anything about it."<sup>119</sup> Legal service providers in the United States also report that unaccompanied minors are robbed and extorted at the hands of some Mexican officials.<sup>120</sup>

Examples of dangers faced by asylum seekers turned away by CBP include:

- **Guatemalan woman kidnapped immediately after U.S. agents turned her away at the Hidalgo port.** In February 2017 a Guatemalan woman was kidnapped in Reynosa immediately after she was turned away by CBP agents after



she requested protection at the Hidalgo port of entry. This woman had already suffered the tragedy of her child's death during their journey north, as they fled gang violence in Guatemala. She eventually escaped her kidnappers. An attorney assisted her on her second attempt to request asylum at the Hidalgo port of entry. With her lawyer's help, she was properly processed. She is currently held at a U.S. immigration detention facility while her asylum case is pending.<sup>121</sup>

- **Family with three children kidnapped after turned away three times.** In February 2017, Alma, a Honduran woman and her three children were kidnapped in Reynosa after CBP officials turned them away at the Hidalgo port of entry when they asked for asylum. Alma had fled Honduras after her other child was killed by gang members. Between December 2016 and February 2017 the family had presented at the port on three separate occasions, carrying documentation that would support their asylum claims. Each time CBP informed the family that U.S. facilities were full and she would have to turn around and return to Mexico.<sup>122</sup>

- **Woman raped in Mexico after three attempts to seek protection at U.S. port.** In December 2016, Paola and her young child were turned away by CBP agents three times. After her third attempt to seek protection at a U.S. port of entry she was raped in Mexico in the presence of her child. The family eventually crossed into the United States between established ports and were detained by Border Patrol agents and sent to a detention facility in Texas.<sup>123</sup>

## **B. Mexico's Asylum System is Flawed and Fails to Protect Refugees and Asylum Seekers**

Asylum seekers turned away by U.S. authorities not only face grave dangers in Mexico, but the Mexican asylum system, which is riddled with

deficiencies, does not effectively protect them from return to persecution. As a preliminary matter, Mexican migration enforcement efforts often fail to identify and refer asylum seekers to asylum or protection assessments. Those who do manage to seek asylum in Mexico face ongoing barriers to meaningful protection. Moreover, some refugees who have been granted asylum quickly discover that Mexico cannot protect them from their persecutors.

The 2015 U.S. Department of State report on Mexico's human rights record found that "the government failed to screen migrants properly for refugee status."<sup>124</sup> Furthermore, Mexican government data indicates that only a small percentage of the over 425,000 citizens of the Northern Triangle, which comprises El Salvador, Guatemala, and Honduras, that were deported from Mexico since 2014 received asylum interviews, despite studies showing that the majority of Central American migrants seek protection.<sup>125</sup>

Individuals who do file asylum claims while detained are held in mandatory detention until Mexican Commission for Refugee Assistance (COMAR) agents adjudicate their asylum cases.<sup>126</sup> Asylum seekers can expect to wait several months in detention, and poor detention conditions often lead asylum seekers to drop their claims instead of remaining there.<sup>127</sup>

Those turned back by U.S. officials cannot seek asylum near the border in Mexico without approaching Mexican immigration enforcement agents, who are not trusted, because there are no Mexican COMAR protection officers stationed along the U.S.-Mexico border. COMAR, only maintains offices in the capital, Mexico City, and southern states of Veracruz and Chiapas.

Immigration enforcement agents from the INM occasionally conduct protection interviews but asylum seekers do not trust them to adjudicate

their claims fairly. INM agents also lack training and capacity to conduct protection interviews, and simply forward interview notes to COMAR for final adjudication.<sup>128</sup>

The Mexican asylum system is under-resourced and understaffed, limiting COMAR's ability to properly screen and interview asylum seekers. Between November 2016 and March 2017 asylum applications in Mexico increased 150 percent.<sup>129</sup> Although COMAR recently entered into an agreement with the U.N. Refugee Agency (UNHCR) to add 29 staff positions in Mexico City, Tabasco, Chiapas, and Veracruz,<sup>130</sup> its proposed 2017 budget is 1.6 million pesos less than in 2015, despite the near doubling of asylum claims in 2016 and the expected continued increase in 2017.<sup>131</sup> Without adequate staffing the system will quickly become overwhelmed, further eroding its ability to screen and adjudicate claims. Many asylum seekers have already been wrongfully deported from Mexico back to their countries of persecution.<sup>132</sup>

Despite domestic laws and a recent constitutional amendment acknowledging the right to seek asylum in Mexico,<sup>133</sup> many who pursue asylum in Mexico face procedural and legal barriers to receiving legal status. For example, asylum seekers must apply for asylum with COMAR within 30 days of entering Mexico. This filing deadline blocks access to asylum for many refugees with well-founded fears of persecution, leaving them without protection in Mexico.

While awaiting a decision, they cannot travel or work and must report weekly to local authorities.<sup>134</sup> There is currently no mechanism to appeal a negative asylum decision issued by COMAR, meaning that those who are incorrectly denied asylum will be blocked from protection.<sup>135</sup>

The International Crisis Group reports that COMAR denies many applications from the Northern Triangle on the grounds of "internal flight

alternatives," despite strong evidence that few internal flight alternatives exist in small Northern Triangle countries where gangs dominate much of the territory.<sup>136</sup> Local advocates have moreover reported that COMAR issues "copy/paste" decisions rather than individualized assessments on asylum eligibility. These copy/paste decisions appear to be designed to exclude bona fide refugees from asylum rather than to protect refugees.<sup>137</sup>

In addition to flaws in the asylum system, Mexico cannot adequately protect those who are granted asylum or humanitarian protection, particularly those fleeing persecution at the hands of transnational gangs in Central America. Multiple reports from migrant shelter staff and lawyers indicate that persecutors have followed asylum seekers all the way to the U.S. border.<sup>138</sup>

One woman's abuser followed her to Tijuana, while another family was notified that gang members involved in the murder of their child followed them to the border. Mexican asylum seekers fleeing violent southern states of Guerrero and Michoacán also report to shelter staff that they continue to receive threats from their persecutors.<sup>139</sup>

For example:

- **Honduran refugees in Mexico found by gang members that murdered their family.** In 2015, a family from Honduras was granted humanitarian protection in Mexico and resettled in southern Mexico. However, the same gang members involved in their relative's murder in Honduras appeared near the families' new home in Mexico. Fearing for their lives, the family fled to Tijuana to seek asylum in the United States. In February 2017, CBP agents turned away the family, including children and grandchildren.<sup>140</sup>
- **Salvadoran child of Christian pastors, granted asylum in Mexico, forced to flee**

**following cartel kidnapping and gang**

**threats.** In 2015, David, a 17-year-old child of Christian pastors fled El Salvador after the Mara Salvatrucha (MS) gang killed his sister and attempted to kill him. He and his sister had resisted gang recruitment because they planned to follow their parents' footsteps to become Christian ministers.

David witnessed his sister's murder. The gang began killing other witnesses, so he fled. His cousin, also a witness to the murder, left El Salvador around the same time. Gang members caught up to the cousin in Mexico and shot him 13 times, killing him.

In February 2016, COMAR granted David asylum status in Mexico. Soon after, friends and family in El Salvador informed him that gang members knew his whereabouts. Due to ongoing threats another cousin and an uncle also fled El Salvador and joined him in Mexico. After exiting a bus station in southern Mexico, the three men were kidnapped along with three other Salvadorans. They were beaten for several days and witnessed the rape of female migrants. The kidnappers, presumed to be Mexican cartel members, eventually released the group, which reported the kidnapping to Mexican national police.

Meanwhile, the family in El Salvador continued to hear that MS gang members were looking for

David and the other family members in Mexico. "I am running a tremendous risk staying in Mexico, not only because the MS [gang] is after me, but also because of my complaint against the cartel group that kidnapped us," David explained in a sworn declaration. In late 2016 David arrived at the U.S. Ped-West port of entry and requested asylum. The CBP officers said, "You cannot ask for asylum right now, you have to be put on a list" and turned him away.<sup>141</sup>

■ **Salvadoran asylum seeker detained by Mexican immigration authorities for weeks, received no protection screening or asylum interview.** In November 2016, Camila, a Salvadoran woman and her three-year-old child, who were attempting to reach safety in the United States, were detained by Mexican immigration authorities. The mother and child were held in migration detention in Mexico City for 18 days and then removed to El Salvador. Mexican immigration agents did not screen the family for protection needs or refer them for asylum processing. Facing ongoing persecution, the family fled El Salvador a second time. In early March 2017, CBP agents at the Ped-West port refused to process the mother and child as asylum seekers. Instead, CBP turned them back into Mexico. They remain stranded and at risk in Tijuana.<sup>142</sup> ■

## Endnotes

- <sup>1</sup> U.N. General Assembly, Convention Relating to the Status of Refugees, July 28, 1951, United Nations, Treaty Series, vol. 189, Art. 33, *available at* <http://www.refworld.org/docid/3be01b964.html>.
- <sup>2</sup> Drafters of the Refugee Convention understood non-refoulement to prohibit turning away asylum seekers at borders. Louis Henkin, United States representative to the convention drafting conference, explicitly stated: "Whether it was a question of closing the frontier to a refugee who asked admittance, or of turning him back after he had crossed the frontier, or even of expelling him after he had been admitted to residence in the territory, the problem was more or less the same. Whatever the case might be, whether or not the refugee was in a regular position, he must not be turned back to a country where his life or freedom could be threatened." See UN Ad Hoc Committee on Refugees and Stateless Persons, Ad Hoc Committee on Statelessness and Related Problems, First Session: Summary Record of the Twentieth Meeting Held at Lake Success, New York, on Wednesday, 1 February 1950, at 2.30. p.m., 10 February 1950, E/AC.32/SR.20, *available at* <http://www.refworld.org/docid/3ae68c1c0.html>. Legal scholars concur that the non-refoulement obligations include a prohibition against return "in any manner whatsoever to countries where they may face persecution," and "is applicable to rejection at the frontier of a potential host State." In other words, the concept of non-refoulement "encompasses both non-return and non-rejection." See Mark R. von Sternberg, "Reconfiguring the Law of *Non-Refoulement*: Procedural and Substantive Barriers for Those Seeking to Access Surrogate International Human Rights Protection," 2 *Journal on Migration and Human Security* 4: 329- (2014) (citing Noll, Gregor. 2005. "*Seeking Asylum at Embassies: A Right to Enter under International Law*." *International Journal of Refugee Law* 17(3): 542-73 and Goodwin-Gill, Guy S. and McAdam, Jane. 2007. *The Refugee in International Law*. 3rd ed. New York: Oxford University Press); see also Guy S. Goodwin-Gill, *The Refugee in International Law*, *Second Edition*.
- <sup>3</sup> 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 or, where applicable, section 1225(b) of this title.").
- <sup>4</sup> See UNHCR, Supplementary Appeal 2016: Regional Response to the Northern Triangle of Central America Situation, June 2016, p. 5.
- <sup>5</sup> Immigration and Nationality Act (INA) § 235 (b)(2)(1)(A)(ii).
- <sup>6</sup> U.S. Citizenship and Immigration Services, Asylum Division, Credible Fear Workload Report Summary, FY 2017 Port of Entry (POE) Caseload (data from Oct. 2016 through March 2017).
- <sup>7</sup> Customs and Border Protection, Inspector's Field Manual, Section 17.15(b)(1), *available at* <http://www.aila.org/File/Related/11120959F.pdf>.
- <sup>8</sup> The Board of Immigration Appeals (BIA) and DHS agree that the use of expedited removal is in the discretion of DHS. See Matter of E-R-M- & L-R-M-, U.S. Department of Justice, Executive Office for Immigration Review, Board of Immigration Appeals, June 3, 2011.
- <sup>9</sup> Exec. Order No 13780, Presidential Executive Order: Protecting the Nation From Foreign Terrorist Entry Into the United States, 82 Fed. Reg. 13209 (March 06, 2017).
- <sup>10</sup> Roque Planas and Elise Foley, "Trump Officials Credit Him for Fewer Border Crossings. It's Not That Simple." *The Huffington Post*, March 9, 2017, *available at* [http://www.huffingtonpost.com/entry/trump-border-apprehensions\\_us\\_58c1cf64e4b054a0ea69479a](http://www.huffingtonpost.com/entry/trump-border-apprehensions_us_58c1cf64e4b054a0ea69479a).
- <sup>11</sup> In 2005, the U.S. Commission on International Religious Freedom (USCIRF) found that U.S. immigration officials failed to read required information advising individuals to ask for protection if they feared return in more than half of the observed interviews. In 86.5 percent of cases in which a fear question was not asked, CBP officers nevertheless indicated on the screening form that the question was asked and answered. U.S. Commission on International Religious Freedom (USCIRF), Report on Asylum Seekers in Expedited Removal, (Feb. 2005); see also USCIRF, Expedited Removal Study Report Card: Two Years On (2007); USCIRF, Special Report: Assessing the U.S. Government's Detention of Asylum Seekers: Further Action Needed to Fully Implement Reforms (Apr. 2013); USCIRF, Barriers to Protection: The Treatment of Asylum Seekers in Expedited Removal (2016), p. 19.; see also American Civil Liberties Union, *American Exile: Rapid Deportations That Bypass the Courtroom*, page 37, December 2014; see also Human Rights Watch, "You Don't Have Rights Here": US Border Screening and Returns of Central Americans to Risk of Serious Harm, October 16, 2014.
- <sup>12</sup> Human Rights First has given all asylum seekers in this report pseudonyms. Many face ongoing dangers or prefer to keep their identity anonymous for fear of reprisals. Human Rights First interview with asylum seeker 2, Reynosa, Mexico, March 22, 2017.

- <sup>13</sup> Human Rights First telephone interview with foreign government official 2, March 24, 2017.
- <sup>14</sup> Human Rights First telephone interview with pro bono attorney 3, March 17, 2017; Human Rights First interview with pro bono attorney 4, McAllen, Texas, March 21, 2017; Human Rights First interview with shelter staff 2, Matamoros, Mexico, March 21, 2017; Human Rights First interview with shelter staff 3 and 4, Reynosa, Mexico, March 22, 2017; Human Rights interview with shelter staff 7 and 8, Tijuana, Mexico, March 27, 2017; declaration of pro bono attorney 4, January 31, 2017; redacted declaration of asylum seeker 4, February 7, 2017; redacted declaration of asylum seeker 6, January 26, 2017; redacted declaration of asylum seeker 8, June 22, 2016; redacted declaration of asylum seeker 11, December 10, 2016; redacted declaration of asylum seeker 13, February 3, 2017; redacted declaration of asylum seeker 14, December 10, 2016.
- <sup>15</sup> See Martha Pskowski, "Attorneys: U.S. Border Patrol systematically violates asylum seekers' rights," Univision News, February 28, 2017; see also American Immigration Council, Complaint Re: U.S. Customs and Border Protection's Systemic Denial of Entry to Asylum Seekers at Ports of Entry on U.S.-Mexico Border filed with DHS Office of Civil Rights and Civil Liberties and DHS Inspector General, January 13, 2017, *available at* [https://www.americanimmigrationcouncil.org/sites/default/files/general\\_litigation/cbp\\_systemic\\_denial\\_of\\_entry\\_to\\_asylum\\_seekers\\_advocacy\\_document.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/cbp_systemic_denial_of_entry_to_asylum_seekers_advocacy_document.pdf).
- <sup>16</sup> Redacted declaration from asylum seeker 1, *available at* <https://drive.google.com/file/d/0BzSmfDxXocoDbjR0UndlaTR5eEE/view?usp=sharing>.
- <sup>17</sup> Human Rights First interview with pro bono attorney 5, Tijuana, Mexico, March 27, 2017.
- <sup>18</sup> Human Rights First interview with private attorney 2, El Paso, Texas, February 15, 2017.
- <sup>19</sup> Human Rights First letter to Deputy Secretary Alejandro Mayorkas and Commissioner R. Gil Kerlikowske, July 27, 2016, *available at* <http://www.humanrightsfirst.org/resource/letter-deputy-secretary-mayorkas-and-commissioner-kerlikowske-san-ysidro-border>.
- <sup>20</sup> See American Immigration Council, *supra* note 15.
- <sup>21</sup> Human Rights First interviews with foreign government official 1, McAllen, Texas, March 20, 2017; Human Rights First interview with pro bono attorney 4, McAllen, Texas, March 21, 2017; Human Rights First interview with shelter staff 5, McAllen, Texas, March 23, 2017; Human Rights First interview with shelter staff 3, Reynosa, Mexico, March 22, 2017; Human Rights First interview with pro bono attorney 5, Tijuana, Mexico, March 24, 2017; Human Rights First interview with shelter staff 8, Tijuana, Mexico, March 27, 2017.
- <sup>22</sup> Human Rights First interview with pro bono attorney 4, McAllen, Texas, March 21, 2017; declaration of pro bono attorney 4, January 31, 2017.
- <sup>23</sup> Human Rights First interview with asylum seeker 3, Tijuana, Mexico, March 27, 2017.
- <sup>24</sup> Human Rights First telephone interview with pro bono attorney 3, March 15, 2017.
- <sup>25</sup> Some reports indicate that the problem at the Arizona ports of entry may have abated in February and March; however, one non-profit attorney continues to receive reports of turn-aways from the Arizona ports of entry. Human Rights First interview with pro bono attorney 9, Tucson, Arizona, April 20, 2017; Human Rights First interview with shelter staff, Nogales, Mexico, April 20, 2017.
- <sup>26</sup> Human Rights First interview with legal service provider 3, San Diego, California, March 29, 2017.
- <sup>27</sup> The so called "wet-foot dry-foot" policy began in 1995 and allowed Cubans who made it onto U.S. soil to stay and eventually apply for legal permanent residency. See Julie Hirschfeld Davis and Frances Robles, "Obama Ends Exemptions for Cubans Who Arrive Without Visas," The New York Times, January 12, 2017. The revocation of this policy means Cuban national are subject to removal, just as any other person arriving in the United States without documentation, unless they qualify for humanitarian relief, such as asylum. see The White House, Statement by the President on Cuban Immigration Policy, January 12, 2017.
- <sup>28</sup> Lizandra Diaz Blanco, "'Me engañaron': Cubanos tras intentar asilo en frontera Mexicana con EEUU" [The tricked me: Cubans after trying to seek asylum at the Mexican border with the U.S.], *Marti Noticias*, January 25, 2017, *available at* <http://www.martinoticias.com/a/me-engannaron-cubanos-tras-intentar-asilo-frontera/137902.html>.
- <sup>29</sup> Aaron Nelsen, "Immigration officials at Laredo turn-back protesting Cubans," San Antonio Express News, April 9, 2017.
- <sup>30</sup> Human Rights First interview with asylum seeker 1, Reynosa, Mexico, March 22, 2017.
- <sup>31</sup> Human Rights First telephone interview with pro bono attorney 3, March 17, 2017.
- <sup>32</sup> Human Rights First interview with pro bono attorney 5, Tijuana, Mexico, March 27, 2017; redacted declaration of asylum seeker 6, January 26, 2017.
- <sup>33</sup> Human Rights First interview with private attorney 1, McAllen, Texas, March 20, 2017.



- <sup>34</sup> Human Rights First telephone interview with pro bono attorney 3, March 17, 2017; Human Rights First interview with private attorney 1, McAllen, Texas, March 20, 2017; Human Rights First interview with shelter staff 2, Matamoros, Mexico, March 21, 2017.
- <sup>35</sup> Human Rights First researchers conducted interviews with 40 stakeholders on both sides of the U.S.-Mexico border. Those stakeholders reported 76 cases of individuals or families turned away by CBP agents, with the vast majority occurring between January and April 2017. Most individuals and families were turned away multiple times, some at multiple ports of entry. In addition, Human Rights First reviewed declarations and documentation provided by pro bono attorneys, which detailed accounts of 45 cases of individuals and families turned away by CBP agents at multiple ports of entry, including over 32 Mexican nationals refused by CBP at the Ped-West port-of-entry in southern California in November and December 2016 alone. Human Rights First researchers conducted direct interviews with four asylum seekers recently turned away by CBP agents.
- <sup>36</sup> See Instituto Nacional de Migración, Grupos Beta de protección a migrantes, *available at* <http://www.gob.mx/inm/acciones-y-programas/grupos-beta-de-proteccion-a-migrantes>.
- <sup>37</sup> Human Rights First interview with pro bono attorney 5, Tijuana, Mexico, March 27, 2017.
- <sup>38</sup> See David Noriega, "Waiting Game: Asylum seekers are being turned away illegally at the U.S.-Mexico border," VICE News, February 9, 2017.
- <sup>39</sup> Redacted declaration asylum seeker 11, December 10, 2016; Human Rights First interview with pro bono attorney 5, Tijuana, Mexico, March 24, 2017; Human Rights First interview with shelter staff 7 and 8, Tijuana, Mexico, March 27, 2017.
- <sup>40</sup> Joshua Partlow, "U.S. border officials are illegally turning away asylum seekers, critics say," The Washington Post, January 16, 2017.
- <sup>41</sup> Declaration of pro bono attorney 6, April 9, 2017; correspondence between pro bono attorney 5 and Mexico's National Commission for Human Rights, March 31, 2017.
- <sup>42</sup> Human Rights First Interview with legal service provider 2, Tijuana, Mexico, March 28, 2017.
- <sup>43</sup> See Martha Pskowski, *supra* note 15; see also Riley Stevenson, "Why are asylum seekers being turned away at the U.S.-Mexico border?," Medium, February 5, 2017.
- <sup>44</sup> Redacted declaration of asylum seeker 3, February 3, 2017; redacted declaration of asylum seeker 6, January 26, 2017; redacted declaration of asylum seeker 7, December 10, 2016; redacted declaration of asylum seeker 9, December 10, 2016; redacted declaration of asylum seeker 11, December 10, 2017; redacted declaration of asylum seeker 14, December 10, 2016; Declaration of pro bono attorney 6, April 9, 2017.
- <sup>45</sup> Human Rights First interview with shelter staff 8, Tijuana, Mexico, March 27, 2017; Human Rights First interview with pro bono attorney 5, Tijuana, Mexico, March 27, 2017.
- <sup>46</sup> Human Rights First interview with shelter staff 8, Tijuana, Mexico, March 27, 2017.
- <sup>47</sup> Redacted declaration of asylum seeker 1, February 7, 2017; redacted declaration of asylum seeker 3, February 3, 2017; redacted declaration of asylum seeker 4, February 7, 2017; details of 32 Mexican nationals turned away in November and December 2016, provided by pro bono advocates 7 and 8; Human Rights First interview with pro bono attorney 5, Tijuana, Mexico, March 27, 2017.
- <sup>48</sup> Human Rights First interview with pro bono attorney 5, Tijuana, Mexico, March 24, 2017; Human Rights First interview with shelter staff 8, Tijuana, Mexico, March 27, 2017; redacted declaration of asylum seeker 7, December 10, 2016.
- <sup>49</sup> Human Rights First interview with pro bono attorney 5, Tijuana, Mexico, March 27, 2017; redacted declaration of asylum seeker 11, December 10, 2016.
- <sup>50</sup> Redacted declaration of asylum seeker 9, December 10, 2016.
- <sup>51</sup> Human Rights First telephone interview with pro bono attorney 3, March 17, 2017; Human Rights First interview with pro bono attorney 4, McAllen, Texas, March 21, 2017.
- <sup>52</sup> Aaron Nelsen, *supra* note 29.
- <sup>53</sup> Human Rights First interview with shelter staff 7, Tijuana, Mexico, March 27, 2017; Human Rights First interview with shelter staff 8, Tijuana, Mexico, March 27, 2017.
- <sup>54</sup> Human Rights First interview with pro bono attorney 5, Tijuana, Mexico, March 27, 2017; Human Rights First interview with shelter staff 6, Tijuana, Mexico, March 24, 2017; Human Rights First interview with shelter staff 7 and 8, Tijuana, Mexico, March 27, 2017.
- <sup>55</sup> Human Rights First interview with pro bono attorney 5, Tijuana, Mexico, March 27, 2017.
- <sup>56</sup> Human Rights First interview with asylum seeker 4, Tijuana, Mexico, March 27, 2017.

- <sup>57</sup> See Roque Planas and Elise Foley, "Border Agents Illegally Turned Away Asylum Seeker And Her Children, Attorney Says," The Huffington Post, April 10, 2017.
- <sup>58</sup> See Grace Wyler, "Here's how Trump has already affected the U.S.-Mexico border and immigration," Orange County Register February 16, 2017.
- <sup>59</sup> USCIRF (2016), *supra* note 11.
- <sup>60</sup> Human Rights First interview with pro bono attorney 5, Tijuana, Mexico, March 27, 2017; Human Rights First telephone interview with pro bono attorney 3, March 17, 2017; Human Rights First interview with shelter staff 2, Matamoros, Mexico, March 21, 2017; Human Rights First interview with shelter staff 7, Tijuana, Mexico, March 27, 2017.
- <sup>61</sup> See Human Rights Watch, *supra* note 11; see also American Civil Liberties Union, *supra* note 11.
- <sup>62</sup> Human Rights First interview with pro bono attorney 5, Tijuana, Mexico, March 24 and 27, 2017.
- <sup>63</sup> Human Rights First telephone interview with pro bono attorney 3, March 17, 2017; Human Rights First interview with pro bono attorney 4, McAllen, Texas, March 21, 2017; Human Rights First interview with private attorney 1, McAllen, Texas, March 20, 2017.
- <sup>64</sup> Lizandra Diaz Blanco, *supra* note 28; Aaron Nelsen, *supra* note 29.
- <sup>65</sup> See Julie Hirschfeld Davis and Frances Robles, *supra* note 27.
- <sup>66</sup> Human Rights First interview with private attorney 1, McAllen, Texas, March 20, 2017.
- <sup>67</sup> Human Rights Watch, *supra* note 11; see also American Civil Liberties Union *supra* note 11.
- <sup>68</sup> See American Immigration Lawyers Association (AILA), Brief of Amicus, American Immigration Lawyers Association, in the Matter of M-R-R-, Board of Immigration Appeals, June 2015.
- <sup>69</sup> USCIRF (2005), *supra* note 11.
- <sup>70</sup> Human Rights First interview with legal service provider 2, San Diego, California, March 28, 2017; Human Rights First interview with pro bono attorney 9, Tucson, Arizona, April 20, 2017.
- <sup>71</sup> Human Rights First interview with legal service provider 1, San Diego, California, March 28, 2017.
- <sup>72</sup> See B. Shaw Drake, "A Troubling Trend of U.S. Turning Away Asylum Seekers at Mexico Border," News Deeply, April 13, 2017.
- <sup>73</sup> Human Rights First interview with shelter staff 7, Tijuana, Mexico, March 27, 2017.
- <sup>74</sup> Human Rights First interview with shelter staff 2, Matamoros, Mexico, March 21, 2017.
- <sup>75</sup> Human Rights First interview with pro bono attorney 5, Tijuana, Mexico, March 24, 2017.
- <sup>76</sup> Human Rights First interview with pro bono attorney 5, Tijuana, Mexico, March 24, 2017; document packet for asylum seeker 5, April 9, 2017.
- <sup>77</sup> Human Rights First interview with shelter staff 1, McAllen, Texas, March 20, 2017.
- <sup>78</sup> Human Rights First telephone interview with pro bono attorney 3, March 17, 2017.
- <sup>79</sup> Human Rights First interview with private attorney 2, El Paso, Texas, February 15, 2017; Human Rights First interview with pro bono attorney 5, Tijuana, Mexico, March 27, 2017; redacted declaration of asylum seeker 1.
- <sup>80</sup> Reporters Without Borders, "Mexican journalist held at US border for past two months," April 4, 2017, *available at* <https://rsf.org/en/news/mexican-journalist-held-us-border-past-two-months>.
- <sup>81</sup> Human Rights First interview with private attorney 2, El Paso, Texas, February 15, 2017.
- <sup>82</sup> Declaration of pro bono attorney 4, January 31, 2017.
- <sup>83</sup> Redacted declaration of asylum seeker 1, February 7, 2017.
- <sup>84</sup> Customs and Border Protection, *supra* note 7.
- <sup>85</sup> Exec. Order No. 13767, Presidential Executive Order: Border Security and Immigration Enforcement Improvements, 82 Fed. Reg. 8793 (Jan. 25, 2017).
- <sup>86</sup> Human Rights First interview with shelter staff 1, McAllen, Texas March 20, 2017.
- <sup>87</sup> Human Rights First interview with legal service provider 2, San Diego, California, March 28, 2017.
- <sup>88</sup> Human Rights First interview with asylum seeker 1, Reynosa, Mexico, March 22, 2017.
- <sup>89</sup> Human Rights First interview with shelter staff 2, Matamoros, Mexico, March 21, 2017.

- <sup>90</sup> Human Rights First interview with shelter staff 3 and 4, Reynosa, Mexico, March 22, 2017; Human Rights First interviews with pro bono attorney 4, McAllen, Texas, March 21, 2017; Human Rights First interview with private attorney 1, McAllen Texas, March 20, 2017.
- <sup>91</sup> Human Rights First telephone interview with pro bono attorney 2, March 15, 2017; Human Rights First interview with shelter staff 3, Reynosa, Mexico, March 22, 2017.
- <sup>92</sup> Human Rights First telephone interview with pro bono attorney 3, March 17, 2017.
- <sup>93</sup> Human Rights First interview with pro bono attorney 5, Tijuana, Mexico, March 27, 2017.
- <sup>94</sup> Human Rights First email correspondence with pro bono attorney 5, Tijuana, Mexico, April 10, 2017.
- <sup>95</sup> Human Rights First interview with pro bono attorney 5, Tijuana, Mexico, March 27, 2017.
- <sup>96</sup> Human Rights First email correspondence with shelter staff 9, February 22, 2016; *see also* Borderland Immigration Council, "Discretion to Deny: Family Separation, Prolonged Detention, and Deterrence of Asylum Seekers at the Hands of Immigration Authorities Along the US-Mexico Border," February 2017, *available at* [http://media.wix.com/ugd/e07ba9\\_72743e60ea6d4c3aa796becc71c3b0fe.pdf](http://media.wix.com/ugd/e07ba9_72743e60ea6d4c3aa796becc71c3b0fe.pdf).
- <sup>97</sup> Human Rights First interview with legal service provider 3, San Diego, California March 29, 2017.
- <sup>98</sup> U.N. General Assembly, *supra* note 1 at Art. 31.
- <sup>99</sup> Human Rights First interview with shelter staff 4, Reynosa, Mexico, March 22, 2017.
- <sup>100</sup> Human Rights First phone interview with foreign government official 2, March 24, 2017.
- <sup>101</sup> Human Rights First interview with legal service provider 3, San Diego, California March 29, 2017.
- <sup>102</sup> Washington Office on Latin America, Latin American Working Group, and Kino Border Initiative, "Situation of Impunity and Violence in Mexico's Northern Border Region," March 2017.
- <sup>103</sup> Human Rights First interview with shelter staff 1, McAllen, Texas, March 20, 2017.
- <sup>104</sup> Human Rights First telephone interview with pro bono attorney 3, March 17, 2017; Human Rights First interview with shelter staff 3 and 4, Reynosa, Mexico, March 22, 2017.
- <sup>105</sup> Human Rights First interview with shelter staff 3, Reynosa, Mexico, March 22, 2017.
- <sup>106</sup> Human Rights First interview with shelter staff 3 and 4, Reynosa, Mexico, March 22, 2017.
- <sup>107</sup> Human Rights First interview with shelter staff 1, McAllen, Texas, March 20, 2017.
- <sup>108</sup> Human Rights First interview with legal service provider 1, San Diego, California, March 28, 2017.
- <sup>109</sup> "Secuestran a 11 cubanos en Reynosa" [11 Cubans kidnapped in Reynosa], *El Manana*, February 2, 2017, *available at* <http://elmanana.com.mx/noticia/126819/Secuestran-a-11-cubanos-en-Reynosa.html>.
- <sup>110</sup> Human Rights First interview with shelter staff 3, Reynosa, Mexico, March 22, 2017.
- <sup>111</sup> Mario J. Penton, "U.S.-bound Cubans stranded in Mexico say they are victims of extortion and more," *Miami Herald*, February 14, 2017 ("For weeks, we have been getting calls from somebody demanding money if we want to see our family members again," said the mother of one of the stranded Cubans. She asked not to be identified for fear of retribution against her son. The woman, who lives in Miami, recounted how half an hour after receiving a call from her son from the detention center, the telephone rang again and again from different numbers in Mexico").
- <sup>112</sup> Human Rights First interview with shelter staff 3, Matamoros, Mexico, March 21, 2017.
- <sup>113</sup> Human Rights First interview with shelter staff 8, Tijuana, Mexico, March 27, 2017.
- <sup>114</sup> Human Rights First telephone interview with pro bono attorney 3, March 17, 2017; Human Rights First interview with pro bono attorney 4, McAllen, Texas, March 21, 2017; Human Rights First interview with shelter staff 3 and 4, Reynosa, Mexico, March 22, 2017.
- <sup>115</sup> Human Rights First interview with shelter staff 9, El Paso, Texas, February 16, 2017; *See* Sam Quinones, "Once the World's Most Dangerous City, Juarez Returns to Life," *National Geographic*, June 2016; *see also* Kirk Semple, "Mexico Grapples With a Surge in Violence," *The New York Times*, December 13, 2016.
- <sup>116</sup> Human Rights First interview with pro bono attorney 9, Tucson, Arizona, April 20, 2017; Human Rights First interview with shelter staff, Nogales, Mexico, April 20, 2017.
- <sup>117</sup> *See* Washington Office on Latin America, Latin American Working Group and Kino Border Initiative, *supra* note 102; *see also* U.S. Department of State, Mexico Travel Warning, *available at* <https://travel.state.gov/content/passports/en/alertswarnings/mexico-travel-warning.html> [last accessed on April 24, 2017].

<sup>118</sup> Human Rights First phone interview with foreign government official 2, March 24, 2017.

<sup>119</sup> *Id.*

<sup>120</sup> Human Rights First interview with legal service provider 1, San Diego, California, March 28, 2017; Human Rights First interview with legal service provider 3, San Diego, California, March 29, 2017.

<sup>121</sup> Human Rights First telephone interview with pro bono attorney 3, March 17, 2017; Human Rights First interview with pro bono attorney 4, McAllen, Texas, March 21, 2017.

<sup>122</sup> Human Rights First interview with shelter staff 4, Reynosa, Mexico, March 22, 2017.

<sup>123</sup> Human Rights First attorney visit, South Texas Family Residential Center, Dilley, Texas, December 2016.

<sup>124</sup> See U.S. Department of State, Mexico 2015 Human Rights Report.

<sup>125</sup> Washington Office on Latin America (WOLA), A Trail of Impunity: Thousands of Migrants in Transit Face Abuses amid Mexico's Crackdown, October 20, 2016.

<sup>126</sup> UNHCR, Mexico: Progress under Global Strategy Beyond Detention 2014-2019, Mid-2016, *available at* <http://www.unhcr.org/57b583c57.pdf>.

<sup>127</sup> Human Rights First interview with pro bono attorney 5, Tijuana, Mexico, March 24, 2017.

<sup>128</sup> INM employs child protection officers (OPIs) to screen unaccompanied minors for protection needs and conduct best interest assessments. See Instituto Nacional de Migración, Oficiales de Protección a la Infancia (OPI), *available at* <http://www.gob.mx/inm/acciones-y-programas/oficiales-de-proteccion-a-la-infancia-opi> [last accessed on April 24, 2017]; However, in July 2015 the UN Committee on the Rights of the Child criticized Mexico for not establishing a best interest determination process for deciding protection needs of migrant children. Committee on the Rights of the Child, Concluding Observations, Mexico, UN Doc. CRC/C/MEX/CO/4-5 (July 3, 2015), para. 60(c). Additionally, a 2014 study by UNHCR found that over 70 percent of boys and over 80 percent of girls held in Mexican detention centers had not met with child protection officials. United Nations High Commission for Refugees (UNHCR), "Arrancados de Raíz," 2014, *available at* <http://www.acnur.org/fileadmin/scripts/doc.php?file=fileadmin/Documentos/Publicaciones/2014/9828>; see also Human Rights Watch, Closed Doors: Mexico's Failure to Protect Central American Refugee and Migrant Children, March 31, 2016, p. 52; see also WOLA, Increased Enforcement at Mexico's Southern Border, November 2015.

<sup>129</sup> Gabriel Stargardter, "Exclusive: Asylum applications in Mexico surge after Trump election win," Reuters, April 18, 2017.

<sup>130</sup> UNHCR, Hiring announcement for 29 additional COMAR agents, October 17, 2016, *available at* [http://www.gob.mx/cms/uploads/attachment/file/153000/Anuncio\\_General\\_de\\_Vacantes\\_UNOPS\\_COMAR.pdf](http://www.gob.mx/cms/uploads/attachment/file/153000/Anuncio_General_de_Vacantes_UNOPS_COMAR.pdf) [last accessed on April 24, 2017].

<sup>131</sup> See Maureen Meyer, "Migrants in Transit Face Crimes and Human Rights Abuses," WOLA, (*citing* Jose Knippen and Paulina Castano, "Sin garantía de derechos: migración en el Proyecto del PEF 2017" [Without Without a guarantee of rights: migration in the Project PEF 2017], FUNDAR Centro de Análisis e Investigación).

<sup>132</sup> See *Id.*; Human Rights Watch, *supra* note 11; see also American Civil Liberties Union, *supra* note 11.

<sup>133</sup> See Victor Manuel Colli Ek, "Improving Human Rights in Mexico: Constitutional Reforms, International Standards, and New Requirements for Judges," Center of the Universidad Autónoma de Campeche, México, *available at* <https://www.wcl.american.edu/hrbrief/20/1ek.pdf>.

<sup>134</sup> International Crisis Group, Easy Prey: Criminal Violence and Central American Migration, Latin America Report No. 57, July 28, 2016.

<sup>135</sup> Comisión Mexicana de Ayuda a Refugiados (COMAR), Procedimiento para ser reconocidos [process to be recognized], *available at* [http://www.comar.gob.mx/es/COMAR/Procedimiento\\_para\\_ser\\_reconocidos](http://www.comar.gob.mx/es/COMAR/Procedimiento_para_ser_reconocidos) [last accessed on April 24, 2017].

<sup>136</sup> International Crisis Group, *supra* note 134 at p. 19.

<sup>137</sup> *Id.*

<sup>138</sup> Human Rights First interview with pro bono attorney 5, Tijuana, Mexico, March 27, 2017; Human Rights First interview, Tijuana, Mexico, March 27, 2017.

<sup>139</sup> Human Rights First interview with shelter staff 8, Tijuana, Mexico, March 27, 2017.

<sup>140</sup> Honduran Refugee Turned Away by US Border Officials (Video), *available at* <https://www.youtube.com/watch?v=hmUd8TJNOTo>; redacted declaration of asylum seeker 13, February 3, 2017.

<sup>141</sup> Redacted declaration of asylum seeker 10, January 20, 2017.

<sup>142</sup> Human Rights First interview with asylum seeker 3, Tijuana, March 27, 2017.



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# Exhibit D

NEWS AMERICAS REFUGEES

## USA-Mexico: Trump's border crackdown pushes refugees into dangerous limbo

15 June 2017, 05:00 UTC

An already dangerous journey for tens of thousands of refugees has become deadlier thanks to President Trump's Executive Order on border control and immigration as well as entrenched reckless practices in Mexico, Amnesty International said in a new report based on intensive investigations on both sides of the border.

***Facing Walls: USA and Mexico's violation of the rights of asylum*** seekers explores the catastrophic impact of a catalogue of new policies and ongoing practices that result in unlawful push-backs of asylum seekers at the USA-Mexico border, and threaten to unlawfully lock up thousands more families, including babies and children, in immigration detention centres in the USA.

**“ The USA and Mexico are partners in crime in brewing up a burgeoning human rights catastrophe. The USA is building a cruel water-tight system to prevent people in need from receiving international protection and Mexico is all too willing to play the role of the USA's gatekeeper ”**

Erika Guevara-Rosas, Americas Director at Amnesty International





*Hans Máximo-Musielik/Amnesty International*

“The USA and Mexico are partners in crime in brewing up a burgeoning human rights catastrophe. The USA is building a cruel water-tight system to prevent people in need from receiving international protection and Mexico is all too willing to play the role of the USA's gatekeeper,” said Erika Guevara-Rosas, Americas Director at Amnesty International.

“President Trump's border wall strategy fails to acknowledge that these are people with no other choice but to flee their homes if they want to live. His wall, questionable orders and ever-expanding immigration detention centres will not stop people from trying to enter the USA. Instead, they will only be forced to take deadly routes through the desert, river and sea.”



*Sergio Ortiz Borbolla/Amnesty International*

“In this sick cat-and-mouse game, the only losers are the hundreds of thousands desperately fleeing extreme and deadly violence in the Central American countries of El Salvador, Honduras and Guatemala. Instead of pushing people to their likely death, the USA must override its Border Security Executive Order and go back to the drawing board when it comes to immigration enforcement.”

**“ In this sick cat-and-mouse game, the only losers are the hundreds of thousands desperately fleeing extreme and deadly violence in the Central American countries of El Salvador, Honduras and Guatemala ”**

Erika Guevara-Rosas, Americas Director at Amnesty International

#### **Push-backs and unlawful detention**

Following intensive field research on both sides of the US-Mexico border since February this year, Amnesty International found that President Trump's catalogue of measures aimed at "tackling immigration" violate international law. These include the 25 January 2017 Executive Order on "Border Security and Immigration Enforcement Improvements," and a series of other measures which allow for the forcible return of people to life-threatening situations, and increase the unlawful mandatory detention of asylum-seekers and families for months on end.

Asylum seekers at the USA-Mexico border told Amnesty International the new measures forced them to risk extortion or violence by paying smugglers to cross into the USA. Areas of the Arizona desert have registered a doubling in migrant deaths since Trump's election.



*Hans Máximo-Musielik/Amnesty International*

According to numerous lawyers, non-governmental organizations, migrants and human rights defenders, US Customs and Border Protection (CBP) officials are illegally refusing entry to asylum-seekers at ports of entry along the border.

A husband and wife who fled Honduras with their daughter after the husband was assaulted, shot and persecuted by a powerful criminal gang (*mara*), told Amnesty International that they were turned away from the McAllen, Texas border crossing six times over a three-day period in January 2017, despite presenting themselves to CBP officers to ask for asylum.

Nicole Ramos, a US lawyer who accompanied 71 asylum seekers to the San Diego-Tijuana border crossing between December 2015 and April 2017 told Amnesty International that on nearly all occasions, CBP officers either attempted to deny asylum seekers entry, or gave incorrect instructions such as re-directing people to the US consulate in Mexico.

President Trump's Border Security Executive Order also includes increasing the capacity of existing detention centres for migrants and asylum seekers.





*Lene Christensen/Amnesty International*

According the Department of Homeland Security, there are plans to allocate up to 33,500 more spaces for beds in immigration detention centres, potentially almost doubling the country's daily detention capacity. This goes far beyond a congressionally imposed bed quota of 34,000 per day – reinforcing the cruelty behind what is already the world's largest immigration detention system.

Amnesty International has documented cases of families with babies and children who have been locked up for more than 600 days. In the coming months, the US Congress will debate whether to fund such cruelty in the 2018 budget. Keeping a person in a detention centre is estimated to cost the US government between USD 126 and USD 161 a day, whereas alternative measures to detention cost as little as USD 6 a day per person.



*Sergio Ortiz Borbolla/Amnesty International*

### **Mexico, the USA's gatekeeper?**

Amnesty International has also found that Mexico is failing in its responsibility to protect the increasing number of Central Americans seeking protection in the country.

According to official figures, in 2016 a record 8,788 asylum claims were lodged in Mexico in comparison to 1,296 in 2013. Thirty-five per cent of these were recognized as refugees. Ninety-one per cent of these claims came from citizens of the violence-wracked "Northern Triangle" of Central America (Honduras, El Salvador and Guatemala), and the UN Refugee Agency forecasts a possible 20,000 claims in 2017.

Instead of providing protection, Mexico is pushing people back to extremely dangerous situations. In 2016, Mexico's National Institute of Migration detained 188,595 irregular migrants, 81% of these from Central America, and returned 147,370 to their countries of origin. Ninety-seven per cent of people deported were from El Salvador, Honduras and Guatemala.





*Sergio Ortiz Borbolla/Amnesty International*

Many were not informed of their rights to seek protection through an asylum claim. One 23-year-old man left Honduras five years ago fearing for his life has been deported from Mexico more than two dozen times. After being forcibly recruited as an orphan age 13, a *mara* wants to kill him for fleeing its ranks. “I’ve been deported 27 times from Mexico. The Mexican migration agents don’t care why you’re leaving your country. They make fun of you.”

**“ I’ve been deported 27 times from Mexico. The Mexican migration agents don’t care why you’re leaving your country. They make fun of you ”**

Honduran Migrant

When Amnesty International raised the issue with the authorities, an official of Mexico’s National Institute of Migration in the southern border state of Chiapas said: “We try to make the return to their countries as quick as possible.”



*Sergio Ortiz Borbolla/Amnesty International*

Facing Walls: USA and Mexico’s violation of the rights of asylum seekers (Report, 15 June 2017)

**Topics**

**AMERICAS**

**UNITED STATES OF AMERICA**

**MEXICO**

**EL SALVADOR**

**HONDURAS**

**GUATEMALA**

**REFUGEES**

**DISCRIMINATION**

## **REFUGEE CRISIS IN NUMBERS**

**555%**

Asylum claims from El Salvador, Honduras and Guatemala between 2010 and 2015

---

**10,000**

Mexicans have requested asylum in the US each year since 2011

---

**79%**

of unaccompanied children came from Central America's Northern Triangle, comprising the countries of Honduras, El Salvador and Guatemala

---

**400,000**

people cross Mexico's southern border irregularly each year

---

**188,595**

Irregular migrants were detained by Mexico's National Institute for Migration

---

**147,370**

Irregular migrants were returned to their countries of origin. 97% of those returned were from Central America

---

**40,542**

Children were detained in Mexico in 2016

# Exhibit E

# BUSINESS INSIDER

## Turmoil in Mexico's criminal underworld is intensifying the violence in a valuable border territory

CHRISTOPHER WOODY  
JUN. 29, 2017, 7:59 PM

The



Soldiers arrest an alleged member of a kidnapping gang in Reynosa, Mexico, March 17, 2009.

(AP Photo/Alexandre Meneghini)

fracturing and fragmentation of Mexico's major criminal groups has pushed deadly violence to [new, grim peaks](#) in recent months.

As weakened groups compete with newcomers for lucrative trafficking territories, or plazas, some areas of the country have become hotspots for violence — border cities, and their entryways to the US, in particular.

Tamaulipas in Mexico's northeast corner is valuable territory because of its proximity to the Gulf of Mexico and the US border, highways that cross it, and the [energy infrastructure in the area](#).

The state has been wracked by violence over the years as cartels competed for power and influence. It was long the redoubt of the Gulf cartel, and over the last decade it has become a major operating area for the Zetas cartel, which formed as the Gulf's armed wing before breaking away in the late 2000s.

Those two cartels, as well as rivals with designs on controlling the territory, have been responsible for much of the violence in Tamaulipas over the last 20 years. The border cities of Reynosa, Nuevo Laredo, and Matamoros appear to be straining under a new wave of bloodshed driven by inter and intra-cartel feuding.



The pervasive influence of criminal groups has undermined police in the state, and those groups are believed to have won political influence through intimidation and inducement.



Christopher Woody/Google Maps

The political changeover in the state last summer may have inflamed longstanding instability. Francisco Cabeza de Vaca of the conservative National Action Party [won the governor's race](#) in June 2016, beating out an incumbent coalition led by the center-right Institutional Revolutionary Party.

The PRI has long been [accused of links to cartels](#), and previous Tamaulipas governors from the PRI have been implicated in wrongdoing. Tomas Yarrington, PRI governor from 1999 to 2004, was accused of [links to the Gulf cartel](#) and went into hiding in 2012. He was [arrested in Italy](#) in April.

These suspected links between politicians and criminals, and disruptions of them, are thought to contribute to violence in Tamaulipas [and elsewhere](#).

"What happens is that a lot of these officials are highly corrupt and they're tied to some of the criminal organizations," Mike Vigil, former chief of international operations for the US Drug Enforcement Administration, told Business Insider.

"So when a new political leader or official takes place, the alliances may change, and once those alliances change the ones that are already entrenched there are going to be fighting for survival," Vigil added, "and then that political official may tie his wagon to another group, and that group is going to try to take over that territory, so then that leads to a lot of the violence."

#1853

Whatever turmoil was stirred by the political shift has likely been exacerbated by both fighting between cartels and fighting among factions of weakened criminal groups.

The latter kind of fighting appears to have been roiling the border city of Reynosa in recent months, spiking in the wake of the April 22 killing of Juan Manuel Loisa Salinas, a local Gulf cartel chief nicknamed Comandante Toro who was thought to run a group of hit men operating in Tamaulipas and Texas.



Tamaulipas Gov. Francisco Cabeza de Vaca speaking earlier this year.

There were violent incidents prior to his death, including clashes involving Mexican marines, but the killing hit a new crescendo after he was gunned down by Mexican troops.

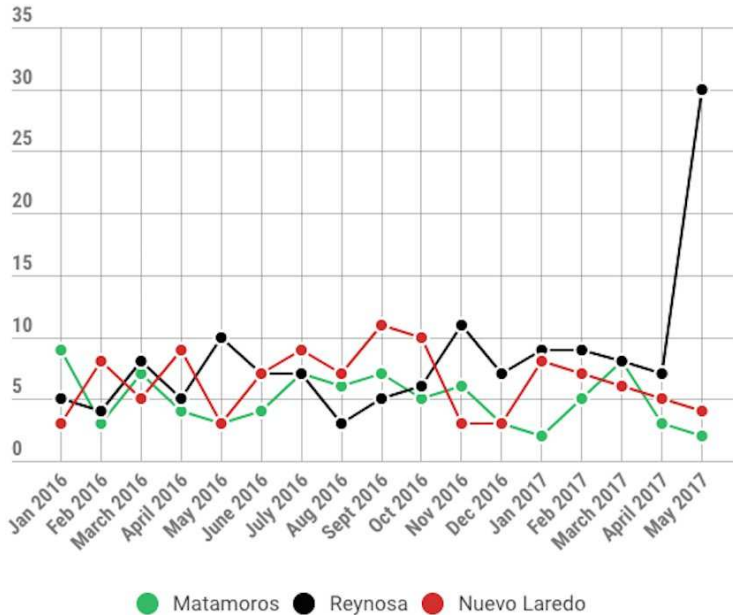
Twitter/Francisco Cabeza de Vaca

By the first weekend in May, violence in the city that month had already left at least 20 dead and six wounded and caused three red alerts warning residents of danger.

On May 20, 70 "elite" marines had been dispatched to the city — the first elements of a military and federal-police deployment to the area to quell the violence.



# Homicides in Tamaulipas, January 2016-May 2017



Source: Mexican government data

Christopher Woody/Mexican government data

The violence has continued in June, with the city seeing shootouts, roadblocks, and clashes between gunmen and security forces lasting



Carjackings reportedly went up 80% in Reynosa in June, with one incident reportedly leading to the shooting death of a 7-year-old boy.

Mexican police and military personnel have come under attack, and US Customs and Border Patrol has reportedly cautioned agents about violence in the area.

Official statistics (which are believed to often obscure the total number of killings) put the total dead in Reynosa through May at 30, while other outlets reported 41. The deaths were accompanied by an increase in robberies and the torching of homes and vehicles.

The post-Toro spike in deadly violence in Reynosa appears to be driven in large part by "an internal feud," Vigil said.



Tamaulipas is one of Mexico's most violent states, with 5,700 of 28,000 people who have been reported missing in the past decade

© AFP/File Ronaldo Schemidt

With Toro's demise, two factions of the Gulf cartel seem to be jockeying for control of the Reynosa plaza, which is worth at least \$3 million a month, according to Mexican news site Proceso.

One of those factions appears to have been formed by Toro's nephew, Alberto "Betillo" Salinas, and includes other members of the Gulf cartel. The competing faction appears to be led by Jesus "Guero Jessi" Garcia, who was once a collaborator with Toro.

With the recent spike in violence in Reynosa, Tamaulipas, northern frontier remains one of Mexico's deadliest areas.

Last summer, Nuevo Laredo to the northwest and Matamoros to the east were named two of the most violent places in the state. (The state capital, Ciudad Victoria, was the third.)

In September, 15 people were abducted from a bus traveling through Nuevo Laredo.

That same month, Mexican soldiers were ambushed outside Nuevo Laredo. The troops returned fire and killed eight assailants before giving chase, leading to another firefight in which two more attackers were killed.



Police vehicles outside a hotel in Nuevo Laredo, Mexico, July 16, 2013.

(AP Photo/Christopher Sherman)

In December, federal officials exhumed six of eight bodies found buried near the city, some thought to be the victims of extrajudicial executions by the Mexican military.

The city got a violent start to this year — one rivaling the bloodshed of 2011 and driven by factions of the Zetas cartel and other criminal groups. Among those killed in January were several officials from the state and local prosecutors' offices. Four officials sent to investigate the deaths were killed in a car wreck that appeared to be an accident.

Nuevo Laredo is reportedly the focal point of a fight between factions of the Zetas cartel: the Cartel del Noreste and the Vieja Escuela Z. Both groups are suspected of committing brutal acts of violence befitting the Zetas' legacy of cruelty. Zetas leader Miguel Angel Treviño was captured in a town southwest of Nuevo Laredo in July 2013.



#1856



A Mexican Federal Police officer holds a newspaper with the headline "ex-police!" over pictures from a recent murder in Nuevo Laredo, Mexico, January 25, 2006.

AP Photo/Gregory Bull

Matamoros — across from Brownsville, Texas, and not far from the Gulf coast — has withered under periods of violence in the past, driven in part by feuds within the Gulf cartel, which has been strained by battles for succession in recent years. Gulf cartel leader Osiel Cardenas Guillen [was arrested in the city in 2003](#) after a battle between hundreds of his bodyguards and Mexican soldiers.

In February 2015, amid ongoing violence in the city, the municipal mayor, Leticia Salazar Vazquez of the conservative PAN, [appealed](#) to both federal forces and God for a return peace in the area. A month later, the mayor's convoy [came under attack](#) from gunmen while traveling on the outskirts of the city.

In January 2016, a defense secretariat convoy traveling in the city [came under attack](#) from gunmen. Soldiers in the convoy returned fire, and one of the attackers was killed.

In February 2016, a shootout [killed seven](#) suspected criminals and a 13-year-old girl, prompting the Brownsville police chief to tell residents to use extreme caution when going to Matamoros.

So far this year, gunmen believed to be part of various Gulf cartel factions have [clashed](#) with each other and authorities in and around the city, leaving behind grisly displays.

Multiple Mexican governments had made efforts to ratchet down the bloodshed in Tamaulipas.

Exhibit E - Page 096





A wounded soldier is evacuated after a shootout with reputed drug lord Osiel Cardenas, March 14, 2003, in Matamoros.

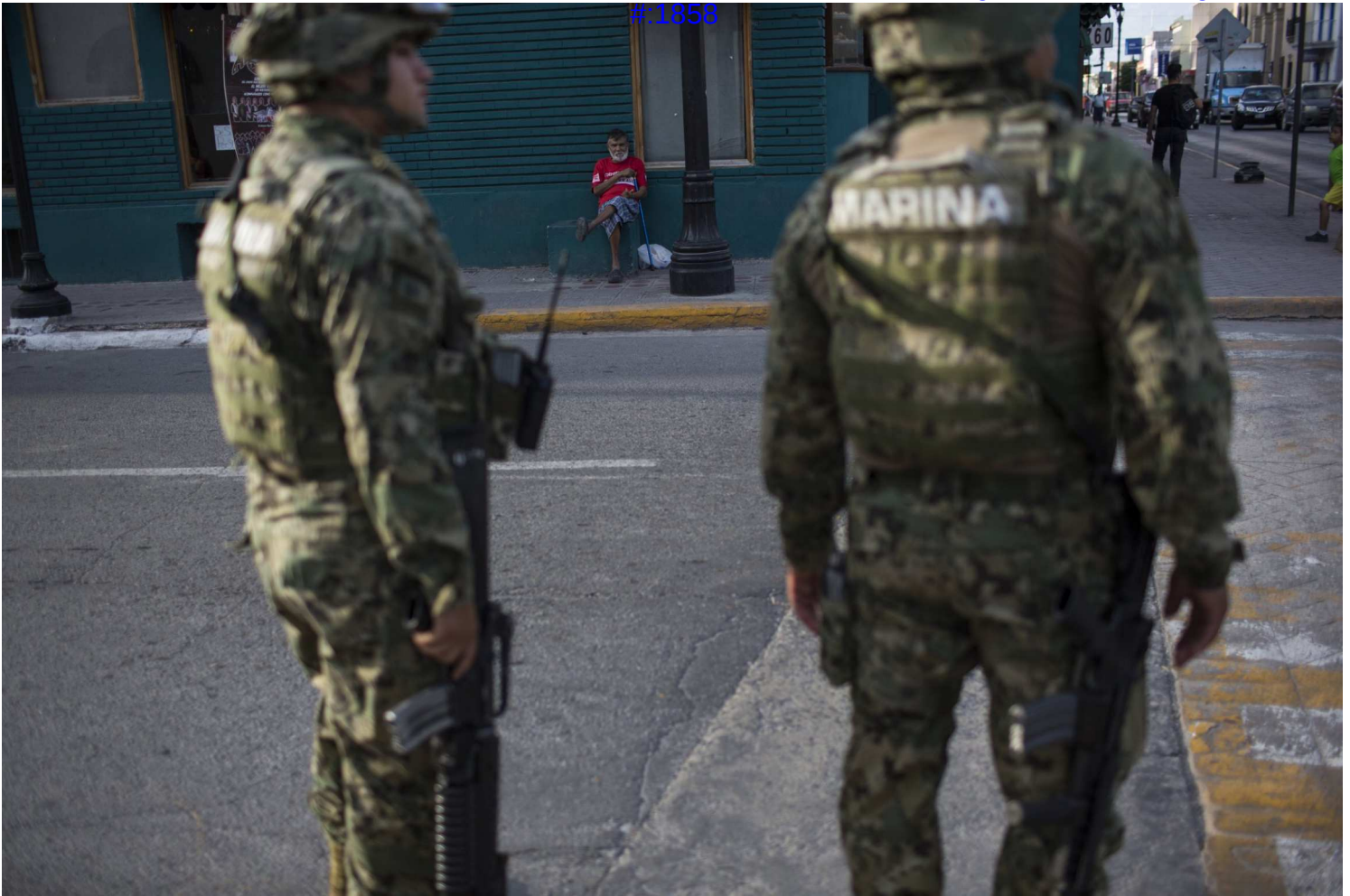
(AP Photo/El Imparcial)

In 2005, then-President Vicente Fox of the PAN **deployed troops** to Tamaulipas and other states as part of Operation Secure Mexico.

Fox's predecessor, Felipe Calderon, also of the PAN, **expanded and intensified** the effort. Within six months of taking office in December 2006, Calderon **sent thousands** of troops to Tamaulipas, neighboring Nuevo Leon, and other states around the country. All told, he increased the number of troops deployed around the country **from 20,000 to 50,000**.

Enrique Peña Nieto, Calderon's successor and the current Mexican president from the PRI, has also tried to address Tamaulipas' insecurity situation.

In mid-2014 — when the state had the country's **highest kidnapping rate** — federal and state security officials unveiled **Plan Tamaulipas**, which was meant to dismantle criminal groups, close smuggling routes, and strengthen public-security bodies.



Mexican marines patrol downtown Matamoros, March 22, 2017, across the border from Brownsville, Texas.

(AP Photo/Rodrigo Abd)

That plan appears to have failed. Between 2013 and 2016, homicides in the state [rose 32%](#). Now, in Reynosa, fractions of the Gulf cartel have attacked residents and businesses and much of the city's periphery is wracked by violence.

"Terrible," local journalist Francisco Rojas [told the San Antonio Express-News](#) in May of conditions in city. "Despite the years of violence, we've never seen this before."

Reynosa, like much of Mexico, has become particularly dangerous for journalists. Reporters like Rojas have to be discreet, and many pick their story topics carefully or avoid some subjects completely. [Anonymous sources for reporting](#) in the region have formed to reach audiences in Mexican and the US.

Many in the region have turned to social media for information and alerts about violence, though online reporting has not been a guarantee of [accuracy or anonymity](#).

As in other instances of cartel power vacuums in Mexico, the fight for control of the Reynosa plaza and the surrounding area has drawn in other criminal groups.



A woman walks past Mexican soldiers guarding a hotel in Reynosa, January 9, 2008.

(AP Photo/Dario Lopez-Mills, File)

While factions of the Gulf cartel are the main drivers of violence in and around Reynosa, remnants of the Zetas cartel, which have a longstanding presence in Nuevo Leon, Coahuila, and Veracruz states, are [present](#) in the area.

Social-media [posts also have warned](#) of the arrival of Los Ciclonos, hit men from nearby Matamoros, as well as [Los Antrax](#), an armed group linked to the Sinaloa cartel, and [Los Mazatlecos](#), a Sinaloa-based armed group believed to be aligned against the embattled "El Chapo" Guzman clan.

"Keep in mind that it's not only the Zetas," Vigil told Business Insider, "but it's also the Jalisco New Generation cartel that is starting to move into that area in tandem with their allies, which is La Linea, which was the enforcement arm of the Juarez cartel."

Jalisco, [a relatively new group](#), is pushing into Tamaulipas in an expansionary effort, Vigil said. "And then you're having what I would call some of the Zetas plaza bosses and some of the remnants of the Zetas fighting to maintain control over certain areas there, because right now the Zetas just are extraordinarily crippled," he added.

"Narco trafficking and corruption have expanded like a weed through society," [said Rojas](#), the Reynosa journalist, in May. "Your neighbor could be one of them, you never know."



# Exhibit F



# BUSINESS INSIDER

## 2 major Mexican cartels have put Tijuana in 'imminent danger,' and violence is rising

CHRISTOPHER WOODY  
OCT. 9, 2016, 2:00 PM

A



Forensic workers stand over and around the headless body of a man in Tijuana October 12, 2010.

REUTERS/Jorge Duenes

simmering struggle between two of Mexico's most powerful cartels continues to drive violence in Tijuana, a major Mexican city and focal point for trafficking activity just a few miles from San Diego.

Through August this year, the Tijuana municipality recorded 518 intentional-homicide cases, a sharp increase from the 382 registered over the same period in 2015.

The violence appears to be driven by two of Mexico's major cartels — the Jalisco New Generation cartel (CJNG), one of Mexico's most powerful organized-crime groups, and the Sinaloa Cartel, led by imprisoned drug lord Joaquín "El Chapo" Guzmán.

Tijuana's 2016 homicide tally has put it [on track](#) to have its most violent year since 2010. The [89 homicides](#) in September made that month the most violent so far this year. Some have drawn comparisons to the violence between 2008 and 2010, when the Sinaloa cartel and the then-powerful Arellano Felix Organization went to war over the drug-trafficking territory in and around Tijuana.

Though the cartels appear to be driving the violence, the lion's share of those involved are dealers who have criminal records and problems with drugs, law-enforcement officials told Sandra Dibble of [The San Diego Union-Tribune](#).

The current fighting in Tijuana has yet to reach the scale seen during the final years of the 2000s, William Sherman, special agent in charge of the US Drug Enforcement Administration in San Diego, [told](#) The Union-Tribune.

Exhibit F - Page 102



A policeman carries a child away during a gun battle in Tijuana, in Mexico's state of Baja California, January 17, 2008. A shootout, after police agents moved in on a drug -cartel group, left four people injured and forced the emergency evacuation of a school in Tijuana, according to the local media.

REUTERS/Jorge Duenes

Over the last year, a [number of reports](#) have detailed the growing presence of the CJNG in Tijuana, where it is believed to be [partnering](#) with remnants of the Arellano Felix Organization (AFO) to take on Sinaloa.

According to a US State Department [report](#) on crime and safety for Tijuana from March:

"In 2015, there was a noticeable increase in public announcements (normally done by placing banners in public places or near/on murdered bodies) by self-proclaimed members of rival cartels (AFO and CJNG) against the Sinaloa cartel and conversely boasts from the Sinaloa Cartel of their continued dominance over the 'plaza.'"

A message left at the scene of [a homicide in February this year](#) announced that "The cleansing continues in Baja [California] on the part of El Mencho," referring to the leader of the CJNG.

The following month, Gualberto Ramírez Gutiérrez, the head of the kidnapping unit within the Mexican attorney general's office, announced the arrest of a suspected Sinaloa cartel operative who [he said was fighting with Sinaloa's rivals in the area](#), namely the CJNG.

A grisly development in September saw a **dismembered** body crash through the windshield of woman driving under a bridge in Tijuana.

At the scene, authorities **found** two more mutilated bodies, and signs purportedly from the Sinaloa cartel threatening their CJNG rivals.

There have also been reports that both Sinaloa operators in the area and their counterparts tied to the CJNG have **made threats** against local security forces.

Tijuana's homicide rate **jumped** from 28 per 100,000 residents in 2012 to 39 per 100,000 in 2015, which made it the **35th-most-violent city** in the world that year, according to a Mexican think tank. The homicide rate has only gone up, reaching 44.45 homicides per 100,000 in 2016, **according** to Mexican news site Animal Politico.

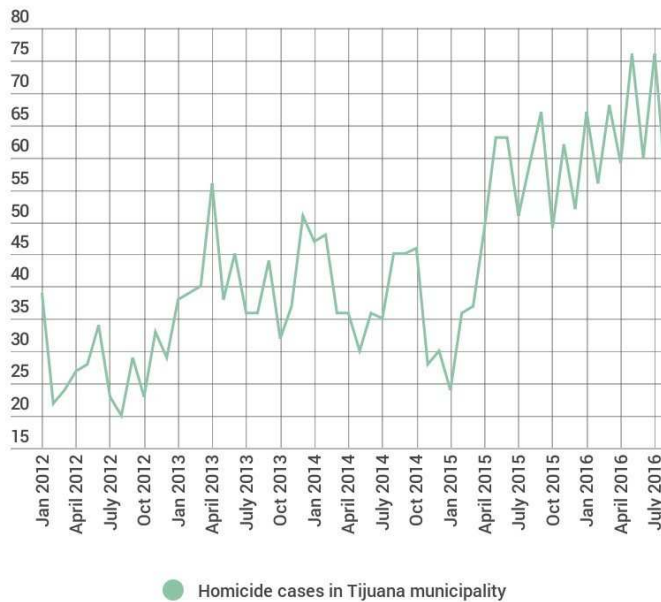
Criminality in Tijuana has likely been exacerbated by weaknesses in the city's police, which are not only suspected of being **deeply corrupted** but are also understaffed, **according** to the director of the city's police. According to locals, police respond to calls promptly but **provide** few services.

## 'Nobody's controlling the plaza like they used to'

The recent violence has conjured up unwelcomed memories about the cartel-related violence the city experienced in the late 2000s.

At that time, the ascendant Sinaloa cartel, led by "El Chapo" Guzmán, had moved into the area and grappled with the then-dominant Arellano Felix Organization for control.

### Monthly homicides in Tijuana, 2012-2016



Note: 2016 data runs through August

Source: Mexican National Public Security System

Homicides cases opened in Tijuana have steadily risen over the last four years.

*Mexican government data*





Alleged members of the Mexican drug cartel Arellano Felix Organization and weaponry are presented to the media in Tijuana, February 10, 2010.

*STRINGER Mexico/REUTERS*

This period not only saw spikes in homicides, but a rise in other kinds of crime, a consequence of decreased cartel control opening spaces for lower-level criminal groups to operate.

While these groups and their leaders may have had ties to or the backing of the Sinaloa cartel or AFO, they didn't have the same resources and "didn't quite have the operational capabilities that the Arellano Felix or the Sinaloans had and wound up resorting to other kinds of criminal endeavors to finance" their activities, David Shirk, a professor at the University of San Diego, told Business Insider.

"So kidnapping became a huge problem around 2007 to 2009 ... We saw kidnapping cells. We saw grand theft or larceny as a huge problem," Shirk, who heads USD's Justice in Mexico program, added.

In January 2007, then-President Felipe Calderon, just a month into his term, deployed about 3,000 troops and federal police to the city, part of [a nationwide surge meant to crack down on organized crime](#).



Mexican soldiers inspect vehicles at a checkpoint on a highway in Tijuana, January 4, 2007. Hundreds of soldiers and federal police descended on the border city of Tijuana to probe corruption by local police and open a new front in then-President Felipe Calderon's war on drug violence.

REUTERS/Tomas Bravo

Those federal forces assumed the top roles in many local civilian law-enforcement agencies, as local and municipal police forces were outgunned and often riven by corruption.

The spike in violence was accompanied by economic struggles, as tourism diminished, businesses suffered, and jobs disappeared. By 2009, 700 of the 1,000 businesses on the city's main avenue had closed, [according to BuzzFeed](#).

After 2010, however, the Sinaloa cartel assumed control of the city, dominating drug-trafficking in the region. With a single organization in control, homicides dropped, falling from more than 650 in 2010 to less than 350 in 2012.

Since then, Tijuana has seen an upswing, attracting investment and tourism and undergoing a gentrification that has seen much of the city improve but that has also marginalized many of the area's poor residents — including many of the [1.1 million deportees](#) who settled in the city between 2003 and 2011.

The vulnerability of the city's poor residents to these criminal groups, coupled with the more assertive presence those criminal groups, have some warning that dark days could soon return to Tijuana.

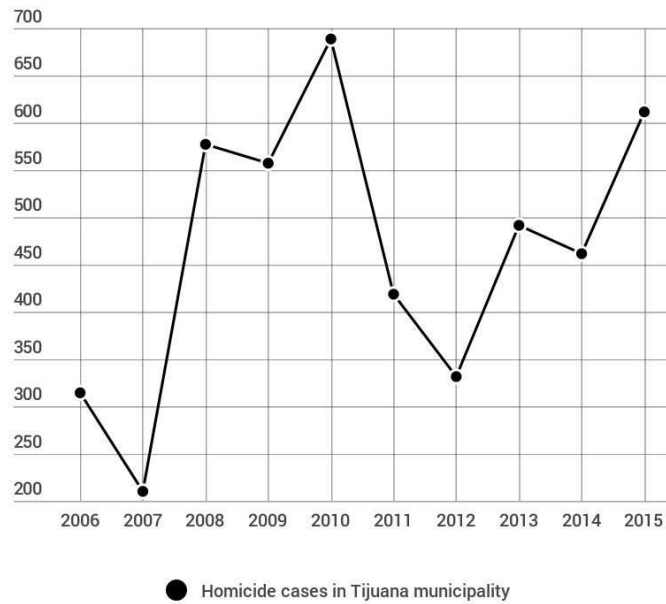
"It's a false calm," Adela Navarro, general director of Tijuana-based investigative magazine Zeta, [told BuzzFeed](#) in May.

"Tijuana is sitting on imminent danger," she added.



Sherman, the DEA agent in charge in San Diego, told The Union-Tribune this month that sources on the ground had not reported a looming cartel war, though he noted that, "Nobody's controlling the plaza like they used to."

## Homicides in Tijuana, 2006-2015



Source: Baja California State Public Security Secretariat

Homicides in Tijuana are on the rise after declining from peaks a few years ago.

*Mexican government data*



# Exhibit G

Ad Place your ad here. Click triangle to begin. ◀ ?

# Complaint: Border officials illegally turn away asylum seekers



By **Kate Morrissey**

JANUARY 19, 2017, 1:00 PM

Eight immigrant rights organizations have sent a complaint to the [Department of Homeland Security](#) alleging that officers at legal crossing points along the southwest border were illegally turning away asylum seekers.

The complaint — signed by the American Immigration Council, American Immigration Lawyers Association and American Civil Liberties Union, among others — urges Homeland Security officials to investigate what’s happening at the border. It recounts the testimony of several asylum seekers who were turned back at San Ysidro and Otay Mesa ports of entry without getting to speak to anyone about their claims.

“The United States has long adhered to international laws and conventions allowing people to seek asylum on grounds that they are being persecuted because of their race, religion, nationality, political beliefs or other factors,” said Carlos Diaz, spokesman for [U.S. Customs and Border Protection](#) when asked about the complaint. “The applicant does not have to specifically request asylum, they simply must express fear of being returned to their country.

“CBP has coordinated and continues to work with Mexican authorities in regards to border security and humanitarian causes,” Diaz added. “In this case, CBP has collaborated with the Mexican authorities to improve the processing and humanitarian assistance of those individuals with no legal status to enter the U.S. This is being done to temporarily house the individuals in a more comfortable location and out of the elements. Prior to establishing this orderly process there were hundreds of people on the streets of Tijuana for days at a time.”

The United States, under both U.S. and international law, has obligations to screen those asking for asylum to determine whether their requests for protection are legitimate and to protect them if they are.

If a person comes to the border saying that he or she is afraid to go back home and asking for asylum, the person is supposed to be taken for a credible fear interview, an interview with a trained asylum officer who determines whether the asylum seeker has a valid claim.

If the claim is not valid, the asylum seeker is sent back. If the claim is found to be valid, the asylum seeker moves on through the process to immigration court, where a judge makes the final determination in the case.

The Jan. 13 complaint addresses several incidents in Texas, in addition to two in San Diego.

One man whose testimony is documented in the complaint, a Mexican police officer who stood up to a cartel and was subsequently attacked and hospitalized, was turned back at San Ysidro and Otay Mesa “on multiple occasions” this past summer, the complaint claims.

In the complaint, the man’s daughter said she pushed him in his wheelchair to the San Ysidro border to ask for protection in July 2016, and a Customs and Border Protection officer told them, “We’re not accepting any more people.”

Four asylum seekers from Guatemala, three teenage boys and one 21-year-old man reported a similar experience when trying to come through San Diego’s entry points, according to the complaint. They said they were told they needed to have passports or visas to apply for asylum. Asylum seekers do not need to have such documents. The four Guatemalans later met an immigration attorney, Nicole Ramos, who accompanied them back to the port of entry.

Ramos convinced border officials that they had to take the four through the asylum application process. As recounted in the complaint, Ramos and her paralegal overheard the officers “speaking very harshly” to the four asylum seekers. Another officer saw them and told the other officers to “keep it down” because “there are attorneys watching,” according to the complaint.

Several of the asylum seekers in the complaint tried crossing the border illegally because officers would not let them take the legal route at the ports of entry. When they were apprehended after crossing, they were put in asylum proceedings.

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**This 'attr(data-c-typename)' is related to:** [U.S. Customs and Border Protection](#), [U.S. Department of Homeland Security](#)





# Exhibit H



American ideals. Universal values.



# Violations at the Border

## The El Paso Sector

February 2017



**ON HUMAN RIGHTS**, the United States must be a beacon. Activists fighting for freedom around the globe continue to look to us for inspiration and count on us for support. Upholding human rights is not only a moral obligation; it's a vital national interest. America is strongest when our policies and actions match our values.

Human Rights First is an independent advocacy and action organization that challenges America to live up to its ideals. We believe American leadership is essential in the struggle for human rights so we press the U.S. government and private companies to respect human rights and the rule of law. When they don't, we step in to demand reform, accountability, and justice. Around the world, we work where we can best harness American influence to secure core freedoms.

We know that it is not enough to expose and protest injustice, so we create the political environment and policy solutions necessary to ensure consistent respect for human rights. Whether we are protecting refugees, combating torture, or defending persecuted minorities, we focus not on making a point, but on making a difference. For over 30 years, we've built bipartisan coalitions and teamed up with frontline activists and lawyers to tackle issues that demand American leadership.

*Human Rights First is a nonprofit, nonpartisan international human rights organization based in New York and Washington D.C. To maintain our independence, we accept no government funding.*

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This report is available online at [humanrightsfirst.org](http://humanrightsfirst.org)

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COVER: Jonathan McIntosh / flickr

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## Introduction

On January 25, 2017, President Trump signed the “Border Security and Immigration Enforcement Improvements” executive order. On February 20, Homeland Security Secretary John Kelly issued a memorandum implementing it. Although the executive order’s stated aim is to establish “control of the border,” one of its primary—and likely intended—consequences will be to restrict lawful access to asylum through policies that block access to protection at the border, increase the criminal prosecution of asylum seekers, and subject those who pursue asylum requests to arbitrary and lengthy detentions.<sup>1</sup> These policies violate U.S. law and treaty commitments relating to refugee protection.

But even before Trump’s executive order, Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) have ignored the protections that Congress created for asylum seekers in a number of cases, disregarding official ICE guidance on detention of asylum seekers, and violating U.S. human rights and refugee obligations. These abuses occurred in a number of locations, including in the El Paso region, where a Human Rights First researcher visited earlier this month.

Some examples of violations include asylum seekers arriving at U.S. ports of entry being turned away, some being criminally prosecuted, and many asylum seekers landing in lengthy detentions due to automatic parole denials. Through the executive order and its implementing memorandum,<sup>2</sup> the Trump Administration is essentially converting these rights-violating practices into official U.S. policy.

The El Paso sector, one of nine Border Patrol sectors that run along the southwest border of the United States with Mexico, is one of the largest and most populated, encompassing 125,500

square miles including the entire state of New Mexico and part of west Texas.<sup>3</sup> In fiscal year 2016 the El Paso sector saw a 364 percent increase in the number of families seeking to enter the United States, and a 134 percent increase in the number of unaccompanied children.<sup>4</sup>

Although the Rio Grande Valley, Tucson, and San Diego sectors receive more individuals seeking to enter the country<sup>5</sup>, the El Paso sector is home to three immigration detention facilities, a temporary processing center to house recent arrivals, and a network of local nonprofit organizations that provide legal representation to asylum seekers.<sup>6</sup>

The dangers asylum seekers turned back at the border face, the prosecution of asylum seekers for the crime of “illegal reentry,” and the near moratorium on parole make El Paso a microcosm of the border region, and an illustrative example of the likely impact the government’s new policies will have on asylum seekers.

The Trump Administration should rescind this executive order and abandon policies that are inconsistent with and aimed at circumventing U.S. law and treaty commitments. Instead, the United States should address the protection requests at the U.S. border as part of a regional refugee and displacement crisis. The United States has the capacity to both safeguard its borders and adhere to its treaty commitments. As they continue to take steps to implement this flawed order, the Departments of Homeland Security and Department of Justice must uphold U.S. human rights and refugee protection obligations.

## Vulnerable Asylum Seekers Turned Back to Danger

According to a January 2017 complaint filed with the Office of Civil Rights and Civil Liberties and the DHS Inspector General, Customs and Border Protection agents have been turning back some



asylum seekers at official ports of entry across the U.S.-Mexico border since July 2016. This includes cases of asylum seekers turned back from the El Paso port of entry into Ciudad Juarez, Mexico as well as asylum seekers turned back from the San Ysidro port of entry, initially due to lack of processing space during ongoing construction.

Cases documented between July 2016 and January 2017 demonstrate turn-backs occurred at several locations across the border in the first three months of FY 2017.<sup>7</sup>

In the first quarter of FY 2017, El Paso experienced a surge in the number of unaccompanied minors and families arriving at the border. Similar to trends in other sectors, the number of families increased 261 percent and the number of unaccompanied minors increased 92 percent when compared to the same period the prior year.<sup>8</sup> The U.N. Refugee Agency (UNHCR), has recognized these populations—unaccompanied minors and women with children from the Northern Triangle of Central America—as part of a regional refugee crisis.<sup>9</sup>

Also in the first quarter of FY 2017, local advocates and immigration lawyers reported an increase in the number of asylum seekers turned away by CBP agents when they requested asylum at the official port of entry along the border. For example, one attorney reported that in mid-February 2017 a CBP agent at the El Paso port of entry told a Mexican journalist who was seeking asylum that Mexicans cannot claim asylum. The applicant's attorney successfully corrected the officer and his client was processed.<sup>10</sup> However, such reports raise concerns that others may be turned back when seeking asylum without legal assistance.

U.S. law has established processes for individuals to request asylum both within the United States and at formal ports of entry. Under U.S. law, asylum seekers who request protection at the

U.S. border but are inadmissible are not to be immediately returned. Instead, they should be referred for an interview with an asylum officer, and if they pass that screening they can file an application for asylum before the immigration courts.

Asylum seekers who were summarily rejected at the border were left at risk of being deported back to persecution in their home countries, in contravention of U.S. law and treaty commitments; for those who were Mexican, the violation of non-refoulement (the obligation to not return people to possible persecution) was immediate. In addition, asylum seekers rejected at the El Paso port of entry were turned back to Ciudad Juarez, which was once deemed the most dangerous city in the world and where violence is again on the rise.<sup>11</sup>

These misguided practices at the border penalize asylum seekers who seek protection at an official port of entry, and ironically, push some to attempt to cross the border illegally after U.S. agents wrongly deny them access to the U.S. asylum system.

Some examples of this practice in the El Paso sector include:

- In November 2016, a Guatemalan woman and her fourteen-year-old daughter attempted to seek asylum at the El Paso port of entry after receiving death threats in Guatemala. After crossing the El Paso Bridge, two CBP agents reportedly told her to turn around and refused to process the family, despite her request for assistance and presentation of documents about her asylum claim.

The mother reported that one officer pushed her and pointed a gun at her before she turned around and left the bridge. She feared leaving the port “because of the threats [she] faced in Guatemala and because of the danger of [her] daughter being kidnapped and

raped in Mexico.” The family crossed the Rio Grande River three days later, were detained by Border Parole agents and received a positive fear determination following interviews with the Asylum Office.<sup>12</sup>

- In October 2016, a young Guatemalan mother and her two-year-old son were turned back in Anapra, New Mexico. The mother reported a CBP officer grabbed her by the shoulder, turned her around to face Mexico and told her to leave, stating “we don’t want Guatemalans here.”<sup>13</sup>

The January 25<sup>th</sup> executive order and subsequent DHS memorandum, citing INA section 235(b)(2)(C), direct ICE and CBP “to the extent appropriate and reasonably practicable” to return some arriving individuals to contiguous territories (Mexico and Canada) while they await removal proceedings, which will apparently be conducted by video teleconference.<sup>14</sup> The DHS memorandum states that such action would be undertaken “to the extent otherwise consistent with the law and U.S. international treaty obligations.”

Neither the order nor the memorandum explain how such a scheme would be consistent with U.S. law and treaty commitments relating to refugee protection and asylum.

Last week Mexico’s interior secretary, Miguel Angel Osorio Chong, told both Secretary of State Rex Tillerson and Homeland Security Secretary John Kelly during their visit to Mexico City that Mexico would not accept non-Mexican nationals turned away by the United States. “We told them it is impossible,” reported Secretary Osorio Chong. “There is no way, legally, nor is there capacity.”<sup>15</sup>

The Refugee Convention and Protocol bar the United States from returning refugees to persecution “in any manner whatsoever.” U.S. immigration and refugee law has established processes for arriving asylum seekers to request

protection and for the adjudication of their claims.<sup>16</sup> If the proposed scheme were applied to asylum seekers, the United States would adopt a policy of turning asylum seekers away to face danger, persecution, torture and potential trafficking in Mexico, and would put non-Mexican asylum seekers at grave risk of onward refoulement to their countries of persecution.

Such a system, applied to Mexican and/or non-Mexican asylum seekers would directly violate U.S. domestic law and treaty obligations. It would also place already vulnerable refugees in grave peril, further erode U.S. global leadership as a nation that protects the vulnerable, and encourage other countries to likewise shirk their responsibilities under international law and treaties.

## Expanding Criminal Prosecutions Undermines Protection

President Trump’s January 25<sup>th</sup> order and DHS’s implementation memorandum encourage an increase in prosecutions for illegal entry, re-entry, and other entry-related offences, without any mechanism to exempt asylum seekers from prosecutions. The criminal prosecution of asylum seekers on account of their illegal entry or presence violates U.S. treaty commitments.<sup>17</sup>

Under Article 31 of the Refugee Convention, the United States is barred from penalizing refugees “on account of their illegal entry or presence,” a provision that certainly includes criminal prosecutions for illegal entry and other entry-related offenses.<sup>18</sup>

In May 2015, the DHS Office of Inspector General found that the CBP was referring asylum seekers for criminal prosecutions for illegal reentry after they expressed a fear of return to their home country, noting that such referrals may violate the Refugee Convention and Protocol.<sup>19</sup> Further

expansion of such prosecutions and the lack of clear guidance to safeguard asylum seekers will result in further violations of individuals' human rights and U.S. legal obligations.

During FY 2016, over 64,000 cases of illegal entry and reentry were prosecuted in U.S. District Courts—over half of all federal criminal prosecutions.<sup>20</sup> West Texas and New Mexico federal district courts, both within the El Paso sector, prosecuted the second and third most cases of illegal reentry, behind just the Southern District of Texas.<sup>21</sup>

In December 2016, U.S. Attorney Damon Martinez in southern New Mexico capped the number of nonviolent border crosser cases to 150 per month based on his determination that his office's resources would be better spent fighting violent crime.<sup>22</sup>

In the El Paso sector, CBP (at ports of entry) and Border Patrol agents continue to refer asylum seekers for criminal prosecution, and DOJ prosecutors continue to prosecute individuals who clearly express a fear of return to their home country.<sup>23</sup> As a result, asylum seekers are subjected to criminal prosecutions due to their illegal entry, which, as a result, could impact their asylum case.

In July 2016, the Justice Department's Bureau of Prisons closed a privately run 1,200-bed facility in New Mexico, which housed non-violent border crossers who had been subjected to criminal prosecutions, after three questionable deaths of inmates were uncovered and the facilities' medical standards fell short of federal requirements.<sup>24</sup> In October 2016, the same facility was reopened to house immigrants detained under ICE's administrative detention authority. Bed space for immigrants who are criminally prosecuted for entry related offences has also been expanded at the Tarrant County Detention Facility outside of Albuquerque, New Mexico<sup>25</sup>

While some may be afforded belated access to U.S. protection channels after being subjected to criminal prosecutions, these asylum seekers have already been penalized.<sup>26</sup> Neither DHS nor DOJ appear to have mechanisms to prevent referral for prosecutions that violate Article 31 of the Refugee Convention.<sup>27</sup>

Two examples documented in a report issued by Borderland Immigration Council include:

- A Honduran asylum seeker was criminally prosecuted after requesting asylum at the El Paso port of entry. After requesting asylum, along with his mother, the asylum seeker was criminally prosecuted for illegal entry. After he was prosecuted and moved from criminal detention into immigration detention, ICE denied his request for parole, claiming that he was a "flight risk" and that he attempted to "elude inspection." His attorneys report that their client did not elude inspection, noting that he requested asylum at the official port of entry. His mother was paroled into the United States to reside with her U.S. legal permanent resident daughter. The asylum seeker had been held in detention for over one year.<sup>28</sup>
- In 2016, a Mexican woman was denied entry at the El Paso port of entry after a CBP officer reportedly told her "Mexicans don't get asylum." She was fleeing Mexico after drug cartels raped her. Upon returning to the port of entry to again attempt to seek asylum, she was detained and criminally charged with illegal re-entry.<sup>29</sup>

## Parole Denials Prolong Detention of Asylum Seekers

President Trump's January 25<sup>th</sup> executive order calls for non-citizens who have not been admitted to the United States to be held in detention facilities for the duration of their immigration and asylum proceedings, and calls for the issuance or

revision of regulations to the extent that they are inconsistent with the guidance.<sup>30</sup>

DHS's implementation memorandum calls for an end to policies it describes as "catch-and-release," identifies a very limited list of circumstances under which an immigrant or asylum seeker can be considered for release on a case-by-case basis, and states that ICE's parole authority should be used only "sparingly." It lists limited scenarios where release from detention would be appropriate, including where release is required by statute, by a binding settlement agreement or order issued by a competent judicial or administrative authority, or when an arriving alien who has passed the credible fear screening process "affirmatively establishes" certain criteria.<sup>31</sup>

The memorandum specifically confirms that the ICE parole directive relating to asylum seekers who initially arrived at official ports of entry is still in effect.<sup>32</sup> It also however indicates that the parole directive remains in effect "pending further review", evaluation, and the issuance of additional ICE guidance.

Requiring an asylum seeker to "affirmatively establish" that he/she meets the requirements for parole signals that DHS may no longer assess each asylum seeker who passes the credible fear screening for release, which would leave the many asylum seekers who do not have the resources to pay for legal counsel stuck in detention for the duration of their proceedings even if they meet the relevant release criteria.<sup>33</sup>

ICE officers have in many cases failed to follow the official ICE parole directive, applied the parole criteria inconsistently, or failed to release asylum seekers from detention even when they present evidence that they satisfy the parole criteria. In a series of reports issued in 2016, Human Rights First documented these arbitrary and costly

detention and parole practices that leave many asylum seekers in detention unnecessarily.<sup>34</sup>

Article 9 of the International Covenant on Civil and Political Rights requires prompt court review of immigration detention and prohibits the use of immigration detention in ways that are arbitrary, including when its use is unnecessary and disproportionate to achieving the government objective.<sup>35</sup> The detention of asylum seekers is also limited under the Refugee Convention.<sup>36</sup>

Government data, accounts of local nonprofit attorneys, and a report by the Borderland Immigration Council all indicate that despite the ICE parole directive and U.S. human rights and refugee protection treaty obligations, ICE in the El Paso sector denies asylum seekers parole even when they meet the ICE parole directive guidelines for release. In September 2016, Human Rights First found the same to be true in Georgia<sup>37</sup>, and as of November 2016, ICE was rarely granting parole to asylum seekers in New Jersey.<sup>38</sup>

On any given night, an estimated 4,000 immigrants are held in three ICE detention facilities in the El Paso sector.<sup>39</sup> Most recently available data indicates that ICE paroled zero individuals from the Otero County facility and two from the West Texas Detention Facility in Sierra Blanca during a 12-month period.<sup>40</sup> At the El Paso Service Processing Center, ICE paroled 185 detainees during the same period but transferred over 1,900 to other facilities within the region that granted almost no paroles.<sup>41</sup>

Local attorneys report that many of their asylum seeker clients are transferred from the El Paso Service Processing Center to more remote centers such as the facility in Sierra Blanca, where pro bono lawyers cannot afford to travel and where parole is essentially unavailable.<sup>42</sup>

Additionally, local attorneys report bonds are set extremely high, often between ten and thirty

thousand dollars. These amounts are far too high for indigent asylum seekers to pay, leaving them detained for extended periods of time. Attorneys also report that custody hearings to set bond often turn into mini-asylum hearings, with immigration judges expecting nearly full presentation of the underlying asylum claim before setting or reducing bond amounts.<sup>43</sup>

The Borderland Immigration Council, a coalition of private and nonprofit attorneys, documented a rise in parole denials and prolonged detention after the arrival of a new ICE Field Office Director in December 2015. The new director had previously served as Deputy Field Office Director in Atlanta, Georgia, during the time data shows zero immigrants were paroled from Georgia detention facilities.<sup>44</sup> Lawyers in El Paso report that parole requests for their asylum seeker clients that were previously granted as they met the parole criteria are now instead denied despite appearing to meet the official ICE parole criteria.<sup>45</sup>

For example:

- A Mexican asylum seeker was denied release on parole even though he had extensive documentation of his U.S. family ties and identity. In 2015, a Mexican national presented at the El Paso port of entry to seek asylum after his twin brother and a cousin were detained and tortured by members of the Mexican federal police in 2013. After he was determined to meet the credible fear screening standard, his attorney submitted a parole request. His parole request included evidence of eight U.S. citizen or legal permanent resident family members, school and immunization records, a letter from his church attesting to his identity, along with letters and photographs from his family members in the United States. Despite ample evidence to the contrary, ICE denied parole in a form letter claiming he was a flight risk and danger to the community. He was held in

detention for two years in the West Texas Detention Facility in Sierra Blanca before a writ of habeas corpus was granted and he was released on an ankle bracelet. His case was subsequently denied and he was deported in June before his attorneys could appeal a stay of removal.<sup>46</sup>

## Recommendations

### Human Rights First urges the Trump Administration to:

- Rescind provisions of the “Border Security and Immigration Enforcement Improvements” executive order that block access to asylum, undermine due process, and violate U.S. treaty commitments.
- Abandon schemes that turn away asylum seekers at U.S. borders in circumvention of U.S. law and treaty commitments and further restrict access to asylum.

### Human Rights First urges the Department of Homeland Security to:

- Stop the practice of turning away asylum seekers without referring them for protection processing or asylum proceedings and strengthen safeguards to identify and properly refer individuals in need of protection, including by strengthening the implementation of protection safeguards in the expedited removal process, as recommended by the bipartisan U.S. Commission on International Religious Freedom.
- Instruct Customs and Border Patrol to cease the practice of referring asylum seekers for criminal prosecution on matters relating to their illegal entry or presence, as such prosecutions generally constitute a violation of Article 31 of the Refugee Convention. Instead, agents should refer them to appropriate protection screening interviews. The



Department of Justice should also cease initiating such prosecutions.

- Ensure local ICE offices follow the ICE asylum parole directive, work with DOJ to provide access to immigration custody hearings for

asylum seekers, and ensure that any future ICE guidance or regulatory changes comply with U.S. treaty commitments under the Refugee Convention and Article 9 of the International Covenant on Civil and Political Rights. ■

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## Endnotes

- <sup>1</sup> The Executive Order's aims include, "establishing operational control of the border, establishing and controlling a physical barrier, detaining illegal aliens at or near the border, ending the practice of "catch and release," and returning "aliens" to the territory from which they came pending formal proceedings"; See The White House, "Executive Order: Border Security and Immigration Enforcement Improvements," January 25, 2017, available at <https://www.whitehouse.gov/the-press-office/2017/01/25/executive-order-border-security-and-immigration-enforcement-improvements>; See also Department of Homeland Security (DHS), "Fact Sheet: Executive Order: Border Security and Immigration Enforcement Improvements," February 21, 2017, available at <https://www.dhs.gov/news/2017/02/21/fact-sheet-executive-order-border-security-and-immigration-enforcement-improvements>.
- <sup>2</sup> See DHS, "Executive Orders on Protecting the Homeland," available at <https://www.dhs.gov/executive-orders-protecting-homeland>.
- <sup>3</sup> U.S. Customs and Border Protection, El Paso Sector Texas, available at <https://www.cbp.gov/border-security/along-us-borders/border-patrol-sectors/el-paso-sector-texas>.
- <sup>4</sup> United States Border Patrol, Southwest Border Sectors, "Family Unit and Unaccompanied Alien Children (0-17) apprehensions FY 16, compared to the same time period for FY 15 and FY 14," available at <https://www.cbp.gov/sites/default/files/assets/documents/2016-Oct/BP%20Southwest%20Border%20Family%20Units%20and%20UAC%20Apps%20-%20FY16.pdf>.
- <sup>5</sup> United States Border Patrol, "Sector Profile – Fiscal Year 2016 (Oct. 1<sup>st</sup> through Sept. 20<sup>th</sup>)", available at <https://www.cbp.gov/sites/default/files/assets/documents/2017-Jan/USBP%20Stats%20FY2016%20sector%20profile.pdf>.
- <sup>6</sup> See U.S. Immigration and Customs Enforcement (ICE), Detention Facility Locator, available at <https://www.ice.gov/detention-facilities>; See also Aaron Martinez, "Temporary migrant processing site set for Tornillo," El Paso Times, November 17, 2016, available at <http://www.elpasotimes.com/story/news/local/el-paso/2016/11/17/cbp-opens-temporary-tornillo-detention-center/94040092/>.
- <sup>7</sup> See Human Rights First Letter to Deputy Secretary Alejandro Mayorkas and Commissioner R. Gil Kerlikowske, July 27, 2016; See also American Immigration Council, Complaint Re: U.S. Customs and Border Protection's Systemic Denial of Entry to Asylum Seekers at Ports of Entry on U.S.-Mexico Border filed with DHS Office of Civil Rights and Civil Liberties and DHS Inspector General, January 13, 2017, available at [https://www.americanimmigrationcouncil.org/sites/default/files/general\\_litigation/cbp\\_systemic\\_denial\\_of\\_entry\\_to\\_asylum\\_seekers\\_advocacy\\_document.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/cbp_systemic_denial_of_entry_to_asylum_seekers_advocacy_document.pdf).
- <sup>8</sup> U.S. Customs and Border Protection, "U.S. Border Patrol Southwest Border Apprehensions by Sector," available at <https://www.cbp.gov/newsroom/stats/usbp-sw-border-apprehensions>.
- <sup>9</sup> See UN High Commissioner for Refugees (UNHCR), "Women on the Run: First-hand Accounts of Refugees Fleeing El Salvador, Guatemala, Honduras, and Mexico," October 26, 2015, available at <http://www.refworld.org/docid/56307e2a.html>; See also UN High Commissioner for Refugees (UNHCR), Children on the Run: Unaccompanied children leaving Central America and Mexico and the Need for International Protection, 2014, available at <http://www.unhcr.org/en-us/about-us/background/56fc266f4/children-on-the-run-full-report.html>; See also UNHCR, "UNHCR warns of looming refugee crisis as women flee Central America and Mexico," October 28, 2015, (In connection with the release of Women on the Run, UNHCR stated: "The dramatic refugee crises we are witnessing in the world today are not confined to the Middle East or Africa," Guterres said. "We are seeing another refugee situation unfolding in the Americas. This report is an early warning to raise awareness of the challenges refugee women face and a call to action to respond regionally to a looming refugee crisis."); UNHCR, "U.S. announcement on Central America refugees highlights seriousness of situation, UNHCR," January 14, 2016, (In connection with the U.S. announcement of refugee

processing in the region, UNHCR stated: "The U.S. initiative to resettle Central American refugees is a welcome step to help address the growing refugee crisis." The UN refugee agency reiterated its serious concern for the welfare of large numbers of people who continue to flee deadly violence in El Salvador, Guatemala and Honduras – the Northern Triangle of Central America.).

- <sup>10</sup> Human Rights First Interview, February 15, 2017 (A Human Rights First researcher met with a total of seven lawyers and 16 local leaders and advocates, from 14 different organizations).
- <sup>11</sup> Human Rights First Interviews, February 16, 2017; Sam Quinones, "Once the World's Most Dangerous City, Juarez Returns to Live," National Geographic, June 2016, available at <http://www.nationalgeographic.com/magazine/2016/06/juarez-mexico-border-city-drug-cartels-murder-revival/>; Kirk Semple, "Mexico Grapples With a Surge in Violence," The New York Times, December 13, 2016, available at [https://www.nytimes.com/2016/12/13/world/americas/mexico-drug-war-violence-donald-trump-wall.html?\\_r=0](https://www.nytimes.com/2016/12/13/world/americas/mexico-drug-war-violence-donald-trump-wall.html?_r=0).
- <sup>12</sup> See American Immigration Council, *supra* note 7.
- <sup>13</sup> Human Rights First Correspondence with local advocates, February 22, 2016.
- <sup>14</sup> See The White House, *supra* note 1; DHS, "Implementing the President's Border Security and Immigration Enforcement Improvement Policies," February 20, 2017, available at <https://www.dhs.gov/publication/implementing-presidents-border-security-and-immigration-enforcement-improvement-policies#>.
- <sup>15</sup> Patrick J. McDonnell, "Mexico rejects U.S. plan to deport Central Americans to Mexico," Los Angeles Times, February 24, 2017, available at <http://www.latimes.com/politics/washington/la-na-essential-washington-updates-mexico-rejects-u-s-plan-to-deport-1487988401-htmlstory.html>.
- <sup>16</sup> See 8 U.S.C. § 1225.
- <sup>17</sup> The White House *supra* note 1; DHS, *supra* note 14.
- <sup>18</sup> See Guy S. Goodwin-Gill, Article 31 of the 1951 Convention Relating to the Status of Refugees: non-penalization, detention, and protection, UNHCR, available at <http://www.unhcr.org/en-us/publications/legal/419c778d4/refugee-protection-international-law-article-31-1951-convention-relating.html>.
- <sup>19</sup> See DHS Office of Inspector General, "Streamline: Measuring Its Effect on Illegal Border Crossing," May 15, 2015, available at [https://www.oig.dhs.gov/assets/Mgmt/2015/OIG\\_15-95\\_May15.pdf](https://www.oig.dhs.gov/assets/Mgmt/2015/OIG_15-95_May15.pdf); See also, Guy S. Goodwin-Gill, *supra* note 17.
- <sup>20</sup> TRAC, "Immigration Now 52 Percent of All Federal Criminal Prosecutions," November 28, 2016, available at <http://trac.syr.edu/tracreports/crim/446/>.
- <sup>21</sup> TRAC, "Criminal Immigration Prosecutions Fall 22 Percent," January 20, 2016, available at <http://trac.syr.edu/immigration/reports/412/>.
- <sup>22</sup> Lauren Villagran, "Immigration cases swamp federal court system," Albuquerque Journal, December 27, 2016, available at <http://www.lcsun-news.com/story/news/local/new-mexico/2016/12/27/immigration-cases-swamp-federal-court-system/95882220/>.
- <sup>23</sup> Human Rights First Interviews, February 15-16, 2017.
- <sup>24</sup> Seth Freed Wessler, "The Feds Will Shut Down the Troubled Private Prison in a 'Nation' Investigation," The Nation, August 15, 2016, available at <https://www.thenation.com/article/feds-will-shut-down-troubled-private-prison-in-nation-investigation/>.
- <sup>25</sup> ACLU, "ACLU calls on HSAC to urge immediate moratorium on expansion of immigration detention," October 26, 2016, available at [https://www.aclu.org/sites/default/files/field\\_document/aclu\\_letter\\_to\\_hsac\\_10.26.16\\_reduced.pdf](https://www.aclu.org/sites/default/files/field_document/aclu_letter_to_hsac_10.26.16_reduced.pdf); See also Matt Zapotosky, "The Justice Department closed this troubled private prison. Immigration authorities are reopening it," The Washington Post, October 27, 2016, available at [https://www.washingtonpost.com/world/national-security/the-justice-department-closed-this-troubled-private-prison-immigration-authorities-are-reopening-it/2016/10/27/6e52855e-9b87-11e6-a0ed-ab0774c1eaa5\\_story.html?utm\\_term=.0c0a3c32c6f0](https://www.washingtonpost.com/world/national-security/the-justice-department-closed-this-troubled-private-prison-immigration-authorities-are-reopening-it/2016/10/27/6e52855e-9b87-11e6-a0ed-ab0774c1eaa5_story.html?utm_term=.0c0a3c32c6f0); See also Human Rights First interviews, February 16, 2017.
- <sup>26</sup> Similar to Credible Fear Interviews, Reasonable Fear Interviews are conducted with immigrants who are subject to expedited removal, claim a fear of return to their home country, and have been previously removed from the United States.
- <sup>27</sup> Human Rights First Interviews, February 15, 2017.
- <sup>28</sup> Borderland Immigration Council, "Discretion to Deny: Family Separation, Prolonged Detention, and Deterrence of Asylum Seekers at the Hands of Immigration Authorities Along the US-Mexico Border," February 2017, available at [http://media.wix.com/ugd/e07ba9\\_72743e60ea6d4c3aa796becc71c3b0fe.pdf](http://media.wix.com/ugd/e07ba9_72743e60ea6d4c3aa796becc71c3b0fe.pdf).
- <sup>29</sup> *Ibid* at page 14.
- <sup>30</sup> See The White House, *supra* note 1.
- <sup>31</sup> See DHS, *supra* note 14.

- <sup>32</sup> U.S. Immigration and Customs Enforcement, "Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture," December 8, 2009, available at [https://www.ice.gov/doclib/dro/pdf/11002.1-hd-parole\\_of\\_arriving\\_alien\\_found\\_credible\\_fear.pdf](https://www.ice.gov/doclib/dro/pdf/11002.1-hd-parole_of_arriving_alien_found_credible_fear.pdf)
- <sup>33</sup> See Human Rights First, "Asylum Under Threat," February 2017, available at <http://www.humanrightsfirst.org/sites/default/files/hrf-asylum-under-threat.pdf>.
- <sup>34</sup> See Human Rights First, "Lifeline on Lockdown," August 26, 2017, available at <http://www.humanrightsfirst.org/resource/lifeline-lockdown-increased-us-detention-asylum-seekers>.
- <sup>35</sup> See UN Working Group on Arbitrary Detention, "United Nations Basic Principles and Guidelines on the right of anyone deprived of their liberty to bring proceedings before a court," WGD/CRP.1/2015, May 4, 2015, available at <http://www.ohchr.org/Documents/Issues/Detention/DraftBasicPrinciples/March2015/WGAD.CRP.1.2015.pdf>.
- <sup>36</sup> See James C. Hathaway, *The Rights of Refugees Under International Law*, 2005; See also UNHCR, *Detention Guidelines*, available at <http://www.unhcr.org/en-us/publications/legal/505b10ee9/unhcr-detention-guidelines.html>
- <sup>37</sup> See Human Rights First, "Detention of Asylum Seekers in Georgia," September 22, 2016, available at <http://www.humanrightsfirst.org/resource/detention-asylum-seekers-georgia>.
- <sup>38</sup> See Human Rights First, "Detention of Asylum Seekers in New Jersey," November 17, 2016, available at <http://www.humanrightsfirst.org/resource/detention-asylum-seekers-new-jersey>.
- <sup>39</sup> ICE does not release bed space numbers for the facilities it runs in the El Paso area; See Borderland Immigration Council, *supra* note 28, at page 5.
- <sup>40</sup> TRAC, "Detainees Leaving ICE Detention from the Otero County Processing Center," available at <http://trac.syr.edu/immigration/detention/201509/OTRPCNM/exit/>; TRAC, "Detainees Leaving ICE Detention from the West Texas Detention Facility," available at <http://trac.syr.edu/immigration/detention/201509/WTXDFTX/exit/>.
- <sup>41</sup> TRAC, "Detainees Leaving ICE Detention from the El Paso Service Processing Center," available at <http://trac.syr.edu/immigration/detention/201509/EPC/exit/>.
- <sup>42</sup> Human Rights First interviews, February 15, 2017; See also Borderland Immigration Council, *supra* note 28.
- <sup>43</sup> *Ibid.*
- <sup>44</sup> See Borderland Immigration Council, *supra* note 28; See also Corey Price, LinkedIn <https://www.linkedin.com/in/corey-price-50a57889/>; see also TRAC, "Detainees Leaving ICE Detention from the Stewart Detention Center," available at <http://trac.syr.edu/immigration/detention/201509/STWRTGA/exit/>.
- <sup>45</sup> Human Rights First interviews, February 15-16, 2017.
- <sup>46</sup> See Borderland Immigration Council, *supra* note 28; See also Human Rights First correspondence with local advocates, February 26, 2016.



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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

Al Otro Lado, Inc., *et al.*,

Plaintiffs,

v.

Elaine C. Duke, *et al.*,

Defendants.

Case No.: 2:17-cv-5111 JFW (JPRx)  
Hon. John F. Walter (Courtroom 7A)

**[PROPOSED] ORDER GRANTING  
PLAINTIFFS' REQUEST FOR  
JUDICIAL NOTICE IN SUPPORT  
OF ITS MOTION FOR CLASS  
CERTIFICATION**

Hearing Date: December 11, 2017  
Hearing Time: 1:30 p.m.

Pre-Trial Conf.: July 20, 2018  
Trial: July 31, 2018



**[PROPOSED] ORDER**

Plaintiffs Al Otro Lado, Inc., Abigail Doe, Beatrice Doe, Carolina Doe, Dinora Doe, Ingrid Doe and Jose Doe (“Plaintiffs”) have, pursuant to Rule 201 of the Federal Rules of Evidence, requested judicial notice of documents in support of their Motion for Class Certification. The Court, having considered Plaintiffs’ request, and good cause appearing, hereby GRANTS Plaintiffs’ Request for Judicial Notice as to Exhibits A-H.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Honorable John F. Walter  
United States District Judge

Submitted by:

LATHAM & WATKINS LLP

By /s/ Wayne S. Flick  
Wayne S. Flick

*Attorneys for Plaintiffs*