

LATHAM & WATKINS LLP
Manuel A. Abascal (Bar No. 171301)
manny.abascal@lw.com
Wayne S. Flick (Bar No. 149525)
wayne.s.flick@lw.com
James H. Moon (Bar No. 268215)
james.moon@lw.com
Robin A. Kelley (Bar No. 287696)
robin.kelley@lw.com
Faraz R. Mohammadi (Bar No. 294497)
faraz.mohammadi@lw.com
355 South Grand Avenue, Suite 100
Los Angeles, California 90071-1560
Telephone: +1.213.485.1234
Facsimile: +1.213.891.8763

AMERICAN IMMIGRATION COUNCIL
Melissa Crow (*pro hac vice* pending)
mcrow@immcouncil.org
Karolina Walters (*pro hac vice* pending)
kwalters@immcouncil.org
Kathryn Shepherd (*pro hac vice* pending)
kshepherd@immcouncil.org
1331 G Street, NW, Suite 200
Washington, DC 20005
Telephone: +1.202.507.7523
Facsimile: +1.202.742.5619

Attorneys for Plaintiffs

CENTER FOR CONSTITUTIONAL
RIGHTS
Baher Azmy (*pro hac vice* pending)
bazmy@ccrjustice.org
Ghita Schwarz (*pro hac vice* pending)
gschwarz@ccrjustice.org
Angelo Guisado (*pro hac vice* pending)
aguisado@ccrjustice.org
666 Broadway, 7th Floor
New York, NY 10012
Telephone: +1.212.614.6464
Facsimile: +1.212.614.6499

**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)

**DECLARATION OF DIEGO
INIGUEZ-LOPEZ IN SUPPORT OF
PLAINTIFFS' 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

DECLARATION OF DIEGO INIGUEZ-LOPEZ

I, Diego Iniguez-Lopez, make the following declaration based on my personal knowledge and declare under the penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I was a Legal Services Associate with the Project in Dilley, which provides pro bono legal services to mothers and children detained at the South Texas Family Residential Center in Dilley, Texas (“Dilley facility”) and advocates to protect their rights, with the ultimate goal of ending family detention. In this capacity, I undertook legal research and assisted in drafting declarations and requests for re-interview. I was also responsible for helping with the daily coordination of client intake interviews, meetings, legal counseling sessions, and small group information sessions. In addition, I assisted in training and overseeing teams of pro bono legal volunteers who arrive each week to volunteer with the Project in Dilley.

2. Prior to joining the Project in Dilley, I was a Robert L. Carter Fellow at The Opportunity Agenda. In that capacity, I conducted legal and policy research on issues in immigration law, particularly customs and border practices and family detention, as well as on civil rights and fair housing issues. In law school, I participated in a one-year externship with the American Friends Service Committee, in its Immigrant Rights Program, where I conducted research and drafted briefs for Special Immigrant Juvenile Status cases and helped young immigrants obtain Deferred Action for Childhood Arrivals (“DACA”) status. I also organized and participated in multiple citizenship, DACA, and Temporary Protected Status drives.

3. The statements contained in this declaration are based upon my personal knowledge or upon information provided to me in the course of my work with the Project in Dilley.

4. The Dilley facility opened in December 2014, following public

1 outcry regarding due process violations and poor conditions at a 700-bed family
2 detention center in Artesia, New Mexico that had recently closed. The Dilley
3 facility contains 2,400 beds, almost four times the size of the facility in Artesia,
4 and is the largest family detention center in the United States.

5 5. The Dilley facility was established for the purpose of detaining
6 noncitizen mothers and their children apprehended at or near the U.S.-Mexico
7 border. The vast majority of the mothers and children transferred to the Dilley
8 facility have fled to the United States to seek protection from persecution in
9 their home countries. Most of them are from Honduras, El Salvador and
10 Guatemala, also known as the Northern Triangle.

11 6. Given the remote location of the Dilley facility, which is located
12 about 75 miles from San Antonio, the Project in Dilley is one of the few
13 available pro bono legal service providers for mothers and children detained
14 there. To serve that population, the Project in Dilley recruits between five and
15 thirty-five volunteer attorneys and legal assistants to assist our on-the-ground
16 staff each week from Sunday to Friday. The volunteers travel to Dilley from all
17 over the country at their own expense.

18 7. Together, the Project staff and volunteers may meet with as many
19 as 140 family members on a daily basis. We assist in preparing, representing,
20 and advocating for families in “credible” and “reasonable” fear interviews with
21 asylum officers, immigration judge reviews of negative fear determinations,
22 custody determination hearings before the immigration judge, and, if warranted,
23 requests for re-interview by asylum officers.

24 8. Detained mothers who seek services from the Project in Dilley
25 participate in group intake “*charlas*,” or chats, that consist of a Know-Your-
26 Rights presentation followed by an intake process. The intake process includes
27 the completion of standardized forms and data collection for advocacy
28 purposes. The intake packets include questions about travel, manner of entry

1 into the United States, detention conditions, and contact information for friends
2 or family members with whom the detained mothers and their children will
3 reside upon release. Certain information is aggregated and collated so that the
4 Project in Dilley can track trends relevant for advocacy purposes.

5 9. In some instances, the Project's interactions with a mother, during
6 the intake process or in follow-up meetings, may trigger a more detailed
7 interview. Project staff or trained volunteers collect additional information
8 about the mother's experiences during apprehension, detention, and processing
9 by immigration officers.

10 10. Beginning in December 2016, during intake *charlas*, mothers
11 began to report that they had been turned away from ports of entry ("POEs")
12 along the U.S.-Mexico border during prior attempts to seek asylum in the
13 United States. Some mothers reported as many as four different attempts to
14 seek asylum before they were processed, transferred and detained at the Dilley
15 facility. Almost all of these mothers ultimately crossed the border without
16 inspection because of the prior unsuccessful attempts to cross at a port of entry.

17 11. After receiving several such reports, Project staff began to
18 proactively inquire about these port of entry denials.

19 12. When a mother reports that she has been turned away at a port of
20 entry and prevented from seeking asylum, Project staff conduct a follow-up
21 interview. Between December 1, 2016 and March 3, 2017, we identified over
22 fifty mothers who had previously been turned away at the U.S.-Mexico border
23 and thereby denied access to the U.S. asylum process at least once.

24 13. Interviews with the detained mothers revealed that mistreatment of
25 asylum seekers by U.S. Customs and Border Protection ("CBP") officers is not
26 isolated, but spans the U.S.-Mexico border region. Specifically, we heard
27 accounts from mothers who previously tried to cross the border but were turned
28 away by CBP officers working at ports of entry in the following towns:

Reynosa, Mexico (Hidalgo/McAllen, TX), Nuevo Laredo, Mexico (Laredo, TX), Piedras Negras, Mexico (Eagle Pass, TX), Ciudad Juarez, Mexico (El Paso, TX), and Tijuana, Mexico (San Ysidro, San Diego, CA).

14. The mothers we spoke to consistently reported similar experiences in the course of their efforts to seek asylum in the United States. From these interviews, the following trends became apparent.

Mothers and Their Children Turned Away from a Port of Entry

15. Almost all of the mothers clearly articulated a fear of returning to their home countries or specifically requested asylum, but CBP officers or their agents nonetheless turned them away at the port of entry without providing an opportunity to seek asylum.¹

Mothers and Their Children Given Misinformation about U.S. Asylum Law and the Process for Seeking Asylum in the United States

16. CBP officers or their agents told many of the mothers that the asylum law was no longer in effect.² One mother recounted that an officer in Piedras Negras (Eagle Pass, TX POE) told her he had orders to send away everyone who was asking for asylum.

¹ One mother reportedly told CBP that she was seeking to come to the United States because she was fleeing her country, could not return, and was afraid that if officers made her return to Mexico, she would be deported to her home country. Another specifically asked CBP to help her with asylum because she had fled her country due to threats. A third mother was even more explicit, asking for political asylum specifically and explaining that she feared for her life. One mother even asked for asylum because she had been kidnapped and presented evidence in the form of news articles, photographs from the hospital, and police reports.

² Multiple mothers reported that CBP officers at various POEs – including Reynosa (Hidalgo/McAllen, TX POE), Piedras Negras (Eagle Pass, TX POE), and Tijuana (San Ysidro, San Diego, CA POEs) – told them that the United States had eliminated asylum. CBP officers reportedly told a mother that the United States had eliminated asylum a week before she arrived, while another mother was simply told that the United States was not giving asylum anymore. Other mothers were reportedly told that there was no asylum when they asked for it, with one mother reporting that the CBP officer emphasized that asylum was not available to immigrants at all. One officer even reportedly told a mother the United States was no longer allowing people into the country.

1 17. CBP officers or their agents – including in both Piedras Negras
2 (Eagle Pass, TX POE) and Nuevo Laredo (Laredo, TX POE) – told some
3 mothers that this change in the law applied only to Central Americans, or to one
4 Central American nationality in particular.

5 18. In some cases, beginning after Election Day in 2016, CBP officers
6 or their agents specifically mentioned the Trump Administration as the reason
7 why asylum claims would no longer be considered. One mother reported that
8 when she presented her foreign identification documents, the CBP officer in
9 Reynosa (Hidalgo/McAllen, TX POE) started singing Donald Trump's name
10 and saying that there was no more asylum for immigrants. The same officer
11 reportedly laughed as he sang and then told her that Donald Trump had signed a
12 new law saying that there was no asylum for anyone. Another mother reported
13 that a CBP officer told her that asylum was not available because the new
14 president had given them orders.

15 19. In other cases, CBP officers or their agents told asylum seekers
16 that visas were required in order to cross the border at a port of entry, even if
17 they were seeking asylum. One mother reported that a CBP officer in Reynosa
18 (Hidalgo/McAllen, TX POE) told her explicitly that if she didn't have a visa,
19 she could not enter.³

20 20. In still other cases, CBP officers or their agents told mothers that
21 they could not seek asylum because there was "no more space." For example, a
22 CBP officer reportedly told a mother requesting asylum in Piedras Negras
23 (Eagle Pass, TX POE) that officers were sick of all the same lies and that they
24 did not have space for all the asylum seekers.⁴

25 ³ Another mother, after asking for asylum in Nuevo Laredo (Laredo, TX
26 POE), was reportedly told that only people who arrived at a port of entry with a
27 visa would be processed.

28 ⁴ Other mothers in Reynosa (Hidalgo/McAllen, TX POE) reportedly were told
that they could not enter the United States because there was no space for people in
the office, that they had to go back where they came from because their stories

Mothers and Their Children Repeatedly Turned Away from Ports of Entry

21. CBP officers or their agents turned away many asylum-seeking mothers more than once before the mothers successfully crossed at a port of entry or otherwise entered the United States. These turnaways occurred at the ports of entry in Nuevo Laredo (Laredo POE), Reynosa (Hidalgo/McAllen, TX POE), Piedras Negras (Eagle Pass, TX POE), Ciudad Juarez (El Paso, TX POE), and Tijuana (San Ysidro, San Diego, CA POE).

22. One mother reported attempting to cross at the Hidalgo/McAllen, TX POE in Reynosa, Mexico, four separate times on four separate days. After being denied the opportunity to seek asylum each time, she determined that she had to cross through the river.

23. Another woman attempted to cross at four different ports of entry along the California-Mexico border on the same day. After being turned away at each of the four ports of entry, she made her way by cab to the San Luis Rio Colorado port of entry along the Arizona-Mexico border, where she was finally given the opportunity to seek asylum.

Mothers and Their Children Threatened with Referral to Mexican Immigration or Intimidated By Mexican Immigration Officers

24. Many of the asylum-seeking mothers felt compelled to leave a port of entry following threats by CBP officers to call Mexican immigration or because of intimidation by Mexican immigration officers at the port of entry.

25. One mother reported that a CBP officer in Nuevo Laredo (Laredo, TX POE) threatened that if she didn't leave the port of entry, the CBP officer would call Mexican immigration officers to have her deported to her home country. The mother and her daughter eventually left, both in tears.

26. Another mother made it halfway across the bridge at the Reynosa
were the same as everyone else's and they were totally full, or more generally told that no one was being accepted because CBP was full.

port of entry, when a CBP officer stopped her and her son and called Mexican immigration to come get her. A Mexican immigration officer arrived and escorted the family to the entrance of the bridge. The mother and son were then picked up by another Mexican officer, processed for deportation, imprisoned, and ultimately deported to their home country.

Mothers and Their Children Threatened With Use of Force or Forcibly Removed from a Port of Entry by CBP Officers

27. Numerous asylum-seeking mothers and their children were forcibly turned away from ports of entry by CBP officers or were threatened with the use of force by CBP officers if they did not leave.⁵

28. One mother reported that CBP officers in Reynosa (Hidalgo/McAllen, TX POE) threatened to handcuff her, charge her with crimes, and take her child away from her. Ultimately, the officers ordered three guards to remove the mother and her daughter by force from the port of entry.

29. Another mother who refused to comply with a CBP officer's order to leave was dragged by one arm from the spot where she resisted. The officer then cursed at her, handcuffed her, picked her up, and dragged her towards the U.S.-Mexico border.

30. The officers reportedly physically separated the mother from her son, whom they handed over to Mexican officers. Only after the mother threatened to kill herself rather than be returned to her home country did CBP officers finally agree to process her and her son.

31. Female CBP officers subsequently took the mother, who was badly bruised, to a bathroom where they asked her to remove her shirt and pants

⁵ A CBP officer in Piedras Negras (Eagle Pass, TX POE) reportedly threatened to remove a mother and her children by force if they did not leave and told them not to cry because he would not care. Mothers also reported that CBP officers in Ciudad Juarez (El Paso, TX POE) and Reynosa (Hidalgo/McAllen, TX POE) physically removed them from a POE.

1 and took photographs.

2 32. Yet another mother and her teenage daughter were approached by
3 officers as they reached the end of a bridge to one of the El Paso, TX ports of
4 entry. Despite their requests for help, officers told the mother and child to
5 leave. When they did not comply, one of the officers reportedly pushed the
6 mother with both hands, picked up an automatic weapon hanging from his
7 shoulder, and pointed it at the mother's back, forcing them to leave.

8 ***Mothers and Their Children Verbally Abused and Insulted by CBP Officers***

9 33. CBP officers verbally abused and insulted numerous mothers and
10 their children – including in Nuevo Laredo (Laredo, TX POE), Piedras Negras
11 (Eagle Pass, TX POE), Ciudad Juarez (El Paso, TX POE), and Reynosa
12 (Hidalgo/McAllen, TX POE) to dissuade them from seeking asylum.⁶

13 34. One mother reported that a CBP officer accused her of being a
14 gang member because she had a tattoo and stated that the mother had money to
15 pay for a coyote and to get a tattoo but not to maintain her son.

16 35. The CBP officer reportedly went on to say that poor Central
17 American families think they can just come to the border and the U.S. will
18 accept them.

19 36. Another mother reported that CBP officers cursed at her. When
20 she resisted the CBP officers' attempts to turn her away, one of the officers
21 accused her of being a "bad mother" and scaring her son.

22 37. This officer also reportedly verbally attacked the mother for not
23 having the proper documents, telling her she was "illegal," and asking her if she
24 believed that she could just enter the United States as if it were her house.
25 When the mother began to cry, the CBP officer laughed at her, joked about her

26 ⁶ One officer reportedly asked a mother whether she was looking for someone
27 to support her. Another mother reported that a CBP officer spoke in a dismissive
28 and humiliating manner while making racist remarks. A third mother reported
being accused of being a drug mule.

1 with other officers, and told her to stop crying because her tears did not matter.

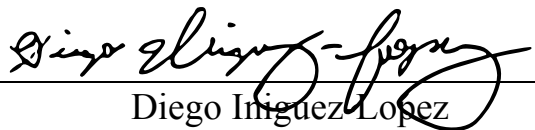
2 38. When the mother was finally processed, another CBP officer
3 warned her to think about entering the United States because she would be in
4 prison for a long time, that they would put her in a cold room, and that she
5 would still be deported.

6 39. Significantly, all of the women, including those who initially were
7 unable to clearly articulate their fears or desire to seek asylum in the United
8 States, ultimately received positive credible fear determinations.

9 40. In sum, the mothers we interviewed at our “*charlas*” reported
10 consistent stories of being turned away from a port of entry after requesting
11 asylum or expressing a fear of returning to their home countries. Although the
12 mothers came from different countries, had different reasons for seeking
13 asylum, and arrived at the U.S.-Mexico border over a period of several months,
14 each reported a strikingly similar experience of being turned away by CBP
15 officers.

16 I declare under penalty of perjury under the laws of the United States that
17 the foregoing is true and correct.

18 Executed this 12th day of November 2017, in the County of Bergen, State of
19 New Jersey.

20
21 
22 Diego Iniguez-Lopez
23
24
25
26
27
28

LATHAM & WATKINS LLP
Manuel A. Abascal (Bar No. 171301)
manny.abascal@lw.com
Wayne S. Flick (Bar No. 149525)
wayne.s.flick@lw.com
James H. Moon (Bar No. 268215)
james.moon@lw.com
Robin A. Kelley (Bar No. 287696)
robin.kelley@lw.com
Faraz R. Mohammadi (Bar No. 294497)
faraz.mohammadi@lw.com
355 South Grand Avenue, Suite 100
Los Angeles, California 90071-1560
Telephone: +1.213.485.1234
Facsimile: +1.213.891.8763

AMERICAN IMMIGRATION COUNCIL
Melissa Crow (*pro hac vice* pending)
mcrow@immcouncil.org
Karolina Walters (*pro hac vice* pending)
kwalters@immcouncil.org
Kathryn Shepherd (*pro hac vice* pending)
kshepherd@immcouncil.org
1331 G Street, NW, Suite 200
Washington, DC 20005
Telephone: +1.202.507.7523
Facsimile: +1.202.742.5619

CENTER FOR CONSTITUTIONAL RIGHTS
Baher Azmy (*pro hac vice* pending)
bazmy@ccrjustice.org
Ghita Schwarz (*pro hac vice* pending)
gschwarz@ccrjustice.org
Angelo Guisado (*pro hac vice* pending)
aguisado@ccrjustice.org
666 Broadway, 7th Floor
New York, NY 10012
Telephone: +1.212.614.6464
Facsimile: +1.212.614.6499

Attorneys for Plaintiffs

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)

**DECLARATION OF BRANTLEY
SHAW DRAKE IN SUPPORT OF
PLAINTIFFS' 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

DECLARATION OF BRANTLEY SHAW DRAKE, ESQ.

I, Brantley Shaw Drake, declare under penalty of perjury and in accord with 28 U.S.C. § 1746 as follows:

1. I am an Equal Justice Works fellow with the Refugee Protection team at Human Rights First. I am admitted to practice law in the State of New York. My current business address is: 75 Broad Street, 31st Floor, New York, New York 10004.
2. Human Rights First is an independent advocacy and action organization that challenges the U.S. government to live up to American ideals in ensuring respect for human rights and the rule of law. Human Rights First also provides *pro bono* representation to asylum seekers through its offices in New York, New York; Washington, D.C.; Houston, Texas; and Los Angeles, California, often in conjunction with major law firms. Our organization's clients include many asylum seekers who have presented themselves at ports of entry, including at the United States' southern border with Mexico.
3. I have been employed with Human Rights First since September 2015. During that time, I conducted research into issues related to access to asylum, due process, and human rights protections for asylum seekers in the United States. My research resulted in two major reports, as well as op-eds, blogs, and policy papers. I am fluent in Spanish and English.
4. In May 2016, Human Rights First learned of rising concerns among local lawyers and advocates that asylum seekers were being improperly turned back into Tijuana, Mexico, by U. S. Customs and Border Protection (CBP) agents at the three ports of entry in San Ysidro, California (the Ped-West port of entry, the San Ysidro port of entry, and the Otay Mesa port of entry), after presenting themselves to these agents and indicating their intention to apply for asylum or a fear of persecution in their home countries. Reports of an appointment system for arriving migrants to receive a specific date and time to present themselves to CBP agents at the Ped-West port of entry raised further concerns that U.S. authorities were blocking asylum seekers from accessing asylum protections in the United States.
5. On July 27, 2016, Human Rights First sent a letter to then Deputy Secretary Alejandro Mayorkas, U.S. Department of Homeland Security, and CBP Commissioner R. Gil Kerlikowske, expressing concern over reports that CBP agents were turning away asylum seekers who were requesting protection at the three San Ysidro ports of entry (Ped-West, San Ysidro, and Otay Mesa ports of entry). The letter raised concerns that some asylum seekers were reportedly told they could not seek asylum at the port of entry; and others were reportedly told that they must first return to Mexico and would not be able to request protection in the United States unless they were brought to the port of entry by one of the migrant shelters in Tijuana. (*See Ex. 1.*)
6. In January 2017, following ongoing reports from organizations and attorneys along the U.S.-Mexico border that asylum seekers were being improperly turned away by CBP

agents, I began to conduct outreach and desk research into the turn back of asylum seekers at multiple ports of entry, including the Ped-West, San Ysidro, Otay Mesa, Nogales, El Paso, Hidalgo, and Brownsville ports of entry.

7. On February 14, 2017, I traveled to El Paso, Texas to research the challenges faced by asylum seekers in the El Paso border sector, including reports of asylum seekers turned back by CBP agents at the El Paso port of entry. The resulting report, "Violations at the Border: The El Paso Sector" [the "El Paso report"], attached as Exhibit 2, details my findings from interviews conducted on February 15, 2017 and February 16, 2017. Local lawyers, non-profit organizations, and shelter staff told me about a number of asylum seekers who had been turned away by CBP agents after expressing their intention to seek asylum or a fear of persecution in their home countries at the official El Paso port of entry.
8. Following publication of the El Paso report, I continued investigating cases of asylum seekers turned back by CBP agents at other ports of entry along the U.S.-Mexico border. The research I conducted between February 28, 2017 and May 3, 2017, along with research conducted by other colleagues at Human Rights First, resulted in the publication of the Human Rights First report, "Crossing the Line: U.S. Border Agents Illegally Reject Asylum Seekers." This report is attached as Exhibit 3.
9. Between March 2 and May 3, 2017, I, along with several colleagues at Human Rights First, conducted interviews with 40 stakeholders, including lawyers, shelter staff, advocates, and officials in the following U.S. and Mexican cities along the border: McAllen, TX; El Paso, TX; San Diego, California; and Matamoros, Reynosa, and Tijuana, Mexico. Those stakeholders reported 76 cases of individuals or families turned away by CBP agents, with the majority occurring between January and April 2017. In all cases, the stakeholders I interviewed worked directly with the asylum seekers who were turned away at the border. Most individuals and families stated that they were turned away multiple times, some at multiple ports of entry, including the Hidalgo, Brownsville, Otay Mesa, San Ysidro, and Ped-West ports of entry.
10. In addition, since April 7, 2017, I reviewed declarations and documentation provided by pro bono attorneys, which detail accounts of an additional 45 cases of individuals and families turned away by CBP agents at multiple ports of entry, including over 32 Mexican nationals turned away by CBP at the Ped-West port of entry in Southern California in November and December 2016.
11. Between March 22 and March 27, 2017, I conducted in-person interviews of four asylum seekers turned away by CBP agents at the Hidalgo, Otay Mesa, San Ysidro, and Ped-West ports of entry between January and March 2017. Three of these interviews and their findings are detailed below in paragraphs 19 and 22.
12. Between March 2 and March 17, 2017, I telephonically interviewed four local stakeholders in the Rio Grande Valley border sector, as well as six colleagues at other legal and human rights organizations that were also investigating incidents of asylum

seekers illegally turned away by CBP agents. These ten stakeholders provided background information on the situation facing asylum seekers in the Rio Grande Valley and San Diego border sectors, as well as confirmation that asylum seekers continued to be turned away by CBP agents at ports of entry.

March 2017 Interviews along the Rio Grande Valley Border Sector

13. On March 20, 2017, I traveled to McAllen, Texas, with Jeanne Martinez-Salazar, a Human Rights First social worker based in D.C., to investigate reports of asylum seekers turned away at the Hidalgo port of entry south of McAllen, Texas, and the Gateway port of entry connecting Brownsville, Texas, with Matamoros, Tamaulipas, Mexico.
14. On March 20, 21, and 22, 2017, I, along with Ms. Martinez-Salazar, conducted 10 in-person interviews of shelter staff, private and pro-bono attorneys, asylum seekers, and other stakeholders in the Rio Grande Valley region in Texas, as well as in Mexico.
15. On March 20, 2017, Ms. Martinez-Salazar and I conducted an in-person interview of a private immigration attorney in McAllen, Texas. This attorney described the situation in the Rio Grande Valley as one where asylum seekers are forced to attempt and re-attempt to request asylum at different ports of entry in the region due to CBP agents turning them away. The attorney also shared instances of clients previously turned away by CBP agents, including a family of Mexican refugees allegedly turned away twice by U.S. officers in June 2016 at the Los Indios port of entry who were ultimately granted asylum by an immigration judge in Texas.
16. On March 20, 2017, Ms. Martinez-Salazar and I conducted an in-person interview of the director of a migrant respite center in McAllen, Texas. The director stated that the center served thousands of migrants in recent months and that many asylum seekers no longer believe they can request asylum at a U.S. port of entry because of CBP's pervasive practice of turning away individuals seeking protection in the United States. The director also stated that asylum seekers reported to her that cartel members increased their surveillance and control of areas surrounding border crossings, waiting outside some ports of entry where they see migrants and asylum seekers as easy targets for kidnappings and extortion. The director further stated that asylum seekers told her about kidnapped asylum seekers being held in large houses in Reynosa, Mexico, with hundreds of other migrants until their families paid ransom.
17. On March 21, 2017, Ms. Martinez-Salazar and I crossed the border into Matamoros, Tamaulipas, Mexico. We conducted an in-person interview of the director of the largest migrant shelter in Matamoros, who told us that CBP agents rejected asylum seekers, including multiple families, at the Gateway port of entry in late 2016 and throughout the first several months of 2017. He knew this because many of those asylum seekers returned to the shelter soon after being turned away. Turn backs into Matamoros reportedly caused many asylum seekers to make the dangerous trip to other ports of entry to find a CBP agent willing to process them. The shelter director also told us that smugglers wait outside the international bridge to offer those turned away from the

Gateway port of entry passage across the Rio Grande.

18. On March 22, 2017, Ms. Martinez-Salazar and I crossed the border into Reynosa, Tamaulipas, Mexico. We conducted in-person interviews of staff members at two migrant shelters and asylum seekers in those shelters. Shelter staff told us that CBP officers gave false information to asylum seekers about U.S. laws and procedures, mocked, and intimidated asylum seekers, or accused them of lying when presenting themselves at the port of entry. The shelter staff also noted an increase in reports of asylum seekers being turned away by CBP agents after the election and inauguration of President Donald Trump, as well as increased hostility toward asylum seekers by CBP agents. Shelter staff also told us that many asylum seekers are subject to kidnapping after being turned away by CBP agents back into Reynosa.
 - a. On March 26, 2017, after reviewing her records, one shelter director told me via WhatsApp messenger that the shelter had received 30 escapees from kidnapping in the last 30 days.
 - b. Staff at both migrant shelters told us that asylum seekers were being forced to enter the United States between ports of entry after CBP agents rejected them at the official crossing points. Between January and March 2017, shelter staff observed an increase in the number of reported drownings, which they presumed to be a result of more migrants crossing between ports of entry, either after being turned away at a port by U.S. authorities or because others had told them U.S. agents would reject their requests to seek asylum at the ports of entry.
 - c. One shelter director told us that between mid-February and mid-March 2017, her staff recorded ten drownings, including an asylum seeker who had been staying at the shelter the week before I interviewed the shelter director.
19. On March 22, 2017, I conducted an in-person interview of a 19-year-old asylum seeker at a migrant shelter in Reynosa, Tamaulipas, Mexico. The young man had been stranded in the migrant shelter for several months, unable to go outside for fear of kidnapping, extortion, or death at the hands of organized crime. He told me that in February 2017, he and his family had approached CBP agents at the Hidalgo port of entry and indicated they were seeking asylum.
 - a. According to the young asylum seeker, the CBP officer told his family, “you cannot be here, no Hondurans . . . if you don’t leave I will have to use force to remove you.” Days later, his family approached the port of entry a second time, and a CBP agent physically removed them from the facility, forcing them to return to Mexico. The family subsequently decided their only option was to cross the Rio Grande River and present themselves to Border Patrol agents.
 - b. During our interview, the young man told me that he and his family fled their home country of Honduras after his older brother, who had sought asylum in the United States, was deported back to Honduras and then killed by the gang from

which he originally fled. After CBP turned him and his family away, the 19-year-old was so afraid that the United States would also deport him to his death that he remained behind in Reynosa while his family made the dangerous river crossing. Eventually, with the assistance of a local lawyer, he again sought asylum at the Hidalgo port and was processed appropriately.

March 2017 Interviews along the San Diego Border Sector

20. On March 24, 2017, I conducted two in-person interviews in Tijuana, Baja California, Mexico—one with a local attorney, the other with a director of a shelter for minors. Both told me that CBP had turned away asylum seekers from the three local ports of entry (Ped-West, San Ysidro, and Otay Mesa) in the preceding weeks. The shelter director also stated that some unaccompanied minors were turned back when they requested asylum at the local ports of entry since the implementation of an appointment system that he understood was aimed at controlling the arrival of Haitian migrants.
21. On March 27, 2017, Eleanor Acer, Human Rights First's senior director of Refugee Protection based in New York; Jenna Gilbert, a Human Rights First staff attorney in Los Angeles; and I conducted five in-person interviews with asylum seekers, shelter staff, and the same local attorney I interviewed on March 24, 2017.
 - a. Shelter staff confirmed that, between January and March 2017, many asylum seekers reported to them that CBP agents refused to process them as asylum seekers when they presented themselves at the ports of entry; CBP officers told them that the United States was not processing asylum applications anymore.
 - b. Shelter staff also told us that the appointment system, run by *Grupos Beta* in Tijuana, refused to issue asylum seekers appointments to request asylum and that *Grupos Beta* officers had told asylum seekers that the United States was not giving asylum anymore. *Grupos Beta* is the humanitarian arm of Mexico's immigration agency, tasked with assisting migrants, traditionally recently repatriated Mexican nationals. Shelter staff also told us that agents from INM (Mexico's immigration enforcement agency) informed Mexican asylum seekers that "Mexicans cannot get asylum in the United States," and that local Mexican police officers turned away Mexican asylum seekers who were attempting to approach the Ped-West port.
 - c. Furthermore, shelter staff told us that asylum seekers reported to them that CBP agents used deceptive or coercive tactics when processing asylum seekers in an attempt to pressure them into dropping their asylum claims and accepting voluntary return to Mexico.

22. Also, on March 27, 2017, Ms. Gilbert and I conducted in-person interviews of two asylum seekers, who remained in migrant shelters since CBP turned them away in February 2017.
- a. In early March 2017, the first—a Salvadoran mother and her child—presented at the Ped-West port of entry, where CBP agents refused to process them as asylum seekers. Instead, according to the mother, CBP agents told her that “the United States is not giving asylum anymore.”
 - b. The second, the mother of a family from El Salvador, told us her family was blocked repeatedly by CBP agents at multiple ports of entry. She further explained to us that in mid-February 2017, her family had approached U.S. agents at the Otay Mesa port of entry, who told them to go to the San Ysidro port of entry. She told us that agents at San Ysidro then told the family to go to the Ped-West port to seek asylum. Following their arrival at Ped-West, private U.S. security guards stopped the family, and CBP agents told them to contact *Grupos Beta* if they wanted an appointment to seek asylum. According to the mother, the family returned to Mexico to seek out *Grupos Beta*; however, Mexican security guards stationed on the Mexican side of the port threatened to call Mexican immigration agents to have them deported if they did not leave.
23. On March 28 and 29, 2017, Eleanor Acer, Jenna Gilbert, and I conducted in-person interviews of three legal-services providers in San Diego, which provided us further information and case examples of clients understood to have previously been summarily turned away by CBP agents at ports of entry.
24. One of the legal-services provider told us about a client, a transgender asylum seeker from El Salvador, who had been detained. According to the client, she and two other transgender asylum seekers arrived in February 2017 at the Otay Mesa port of entry, where CBP agents told them that the United States was “not giving asylum anymore.” The officers then told the asylum seekers to leave. When two of the three asylum seekers refused to return to Mexico, CBP officers began to physically remove one of the women, knocking her to the ground and putting their boots on her neck and groin area. Eventually, because of their persistence, two of the three women were processed as asylum seekers. The other returned to Mexico; her location and security situation were unknown to the legal-services provider as of May 3, 2017.

Collecting Additional Information on Alleged Border Turnbacks

25. Following my time conducting interviews in the Rio Grande Valley and San Diego border sectors, I worked with attorneys and advocates to collect declarations and detailed information on 45 cases of asylum seekers allegedly turned away by CBP agents. I received 14 redacted declarations from asylum seekers previously turned away by CBP agents from December 2016 to February 2017. These declarations include detailed accounts of interactions with CBP agents by asylum seekers from Turkey, Colombia, Mexico, Belize, Guatemala, Honduras, and Guatemala. (*See Ex. 4.*)

26. The asylum seeker declarations, provided to me by the asylum seekers' attorneys, detail the asylum seekers' interactions with CBP agents.
- a. In one instance, a CBP agent at the Ped-West port in February 2017 reportedly told a Mexican asylum seeker, "they are killing people who are Christians. Those are the people we are giving asylum to, not people like you. You don't qualify."
 - b. Seven declarations state that CBP agents at the Ped-West port told asylum seekers to seek an appointment from *Grupos Beta* to present at the port, including as recently as April 9, 2017. Among this group is a declaration concerning a former Guatemalan police officer reportedly turned away six times; each time CBP agents told him to seek an appointment ticket from *Grupos Beta*.

May 2017 Interviews in Southern California

27. On May 22, 2017, I conducted in-person interviews of four asylum seekers detained at the Otay Mesa Detention Center in San Diego, California, regarding prior attempts to seek asylum at the Ped-West port of entry. All reported being initially turned away by CBP agents.
28. Two of the four asylum seekers I interviewed on May 22, 2017, included the father and son of a Salvadoran family, who attempted to seek asylum at the Otay Mesa, San Ysidro, and Ped-West ports of entry in February 2017. According to the father, the CBP officer told the family, "Asylum, there is no more asylum"; another CBP agent threatened to call Mexican immigration authorities if the family did not leave the port. "It was very sad because I thought they would help us, but they rejected us," said the son, who turned 18 while stranded in Tijuana for several months where, he told me, his family members were robbed of their clothes, money, cell phones, and wedding rings. The men told me that when they returned to the Ped-West port on May 7, 2017, CBP agents asked the family, "why did you come here when you know we have a bad new President? We are not going to give you anything." Once appropriately processed in May as part of a public turn-in, the men told me they were held in a cell with 40 other migrants inside the CBP port facility, where they were forced to sleep on the floor and given little food. As of May 22, 2017, the father and son remained in U.S. immigration detention awaiting a credible fear interview with an asylum officer.
29. On May 24, 2017, I conducted an in-person interview of a Mexican family held at the Otay Mesa Detention Center, who told me that they were repeatedly turned away by CBP agents in early, mid-, and late April 2017. One family member told me that CBP turned him and his immediate family away at the Tecate port of entry in late April. He said that CBP agents told him and his family, including six children, that "there is no asylum in the United States for Mexicans." In May 2017, the family again sought protection as part of a public turn-in and were processed by CBP agents, who initially tried to get the family to admit they were coming to the United States to work. CBP agents also reportedly told them, "No one is going to believe you; it's better that you just go back." As of

May 24, 2017, the father remained detained and was awaiting a credible fear interview and a decision on his parole request.

30. Also on May 24, 2017, at the Otay Mesa Detention Center, I conducted an in-person interview of other members of the same Mexican family, who told me that they had been turned away by CBP agents at the San Ysidro and Ped-West ports in mid-April 2017. The family of five, including three children under 5-years-old, approached CBP agents at the San Ysidro port of entry. The first CBP agent to encounter the family reportedly told them, "We are not giving asylum, go away, I don't care what you need, we are not going to help you." CBP agents then reportedly directed the family to the Ped-West port to seek asylum. After one member of the family, who was a U.S. citizen, had been directed to proceed to the port, CBP reportedly told the rest of the family that they had to first get a number from INM, and "the list is extremely long." Knowing they could not trust Mexican government officials, who worked for the very government they were fleeing, the family reportedly went into hiding in Tijuana until they had the opportunity to participate in a public turn-in in early May. Once in CBP custody, the family told me that officers made inappropriate jokes about them and said, "We are not going to accept you, why don't you just accept deportation?" As of May 24, 2017, the male members of the family remained in U.S. immigration detention awaiting credible fear interviews.

Executed on this fourth day of August 2017.



Brantley Shaw Drake, Esq.

Exhibit 1



human rights *first*

American ideals. Universal values.

July 27, 2016

Deputy Secretary Alejandro Mayorkas
Department of Homeland Security
3801 Nebraska Ave NW
Washington, DC 20016

Commissioner R. Gil Kerlikowske
U.S. Customs and Border Protection
Department of Homeland Security
1300 Pennsylvania Ave NW
Washington, DC 20229

Re: Return/rejection of asylum seekers at U.S. southern border

Dear Deputy Secretary Mayorkas and Commissioner Kerlikowske:

We are writing to express our concern about reports that U.S. Customs and Border Protection is turning away asylum seekers who are requesting asylum and U.S. protection at the U.S. southern border San Ysidro port of entry. We urge that adequate staffing be provided immediately to this port of entry and that requests for protection be properly and humanely processed at this port of entry.

As you know the United States is a party to the Protocol Relating to the Status of Refugees and the U.S. Congress created a process for requesting asylum and protection in the United States. In order to adhere to its legal obligations, the United States must allow those seeking protection to be assessed through its asylum and protection processes.

Multiple reports indicate that asylum seekers have been turned away by U.S. CBP officers at the San Ysidro port of entry. Some CBP officers have reportedly indicated that the United States does not have sufficient CBP officers to process asylum seekers at this port of entry. Some asylum seekers have reportedly been told that they can't seek asylum at this port of entry; others have reportedly been told they must return to Mexico to seek U.S. asylum, and will not be able to request protection unless they are brought in by one of the few migrant shelters in Tijuana.

1/2

75 Broad Street, 31st Floor
New York, NY 10004
Tel: 212.845.5200
Fax: 212.845.5299
humanrightsfirst.org

805 15th Street, N.W., #900
Washington, DC 20005
Tel: 202.547.5692
Fax: 202.543.5999

1303 San Jacinto Street, 9th Floor
at South Texas College of Law, Houston, TX 77002
Tel: 713.955.1360
Fax: 713.955.1359

Reports indicate that asylum seekers from Mexico and Haiti have been among those turned away. An asylum seeker from Mexico was turned away twice at the San Ysidro POE and once at Otay Mesa and told that the United States is not accepting any more people for asylum. Just recently, a non-profit attorney working with the ACLU of California witnessed CBP officers at the San Ysidro port of entry turn away a family of Cubans who sought U.S. protection. This family was told to return to Mexico to try to get into a migrant shelter in Mexico, and only then could they approach U.S. officials to request asylum. When a Guatemalan asylum seeker was turned away recently, she reported that a CBP officer told her that the United States is not giving asylum anymore. In addition, recent reports indicate that Mexican authorities are now turning away asylum seekers as they approach the U.S. port-of-entry apparently at the behest of U.S. Customs and Border Protection.

Not only do such actions undermine international law, and contravene U.S. legal commitments, but they encourage other countries to shirk their legal obligations to refugees as well. For the United States to turn away asylum seekers at its border sends the wrong message to nations around the world that are faced with much larger numbers of asylum seekers and refugees. Many of these countries have far less capacity than the United States. This September, President Obama will host a Leaders Summit on Refugees to encourage other nations to do more to protect and assist the world's refugees. U.S. leadership must start at home, and the United States should set a strong example for other nations that are facing much greater challenges.

We greatly appreciate your prompt attention to this urgent matter.

Sincerely,



Eleanor Acer
Senior Director Refugee Protection
Human Rights First

Cc: Shelly Pitterman, Regional Representative, UNHCR
Anne Richard, Asst Secretary of State for PRM
Megan Mack, DHS Civil Rights and Civil Liberties Office
Chris Rickerd, Policy Counsel, American Civil Liberties Union

Exhibit 2



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.

© 2017 Human Rights First All Rights Reserved.

This report is available online at humanrightsfirst.org

ACKNOWLEDGEMENTS

The principle author and researcher of this report was B. Shaw Drake, Equal Justice Works Fellow at Human Rights First. Eleanor Acer, Senior Director for Refugee Protection, contributed additional drafting and editing, and oversees Mr. Drake's fellowship. Daphne Eviatar, Senior Counsel and Meredith Kucherov, Writer/Editor, edited the report and Sarah Graham, Art Director, designed the report. We are particularly thankful to Theodora Simon, Associate Director for Advocacy & Leadership Development, of the Hope Border Institute in El Paso, Texas, for her coordination. We are grateful for the invaluable support of Equal Justice Works and fellowship sponsors Morgan Stanley and Simpson Thacher & Bartlett LLP. Human Rights First also thanks the Oak Foundation, the Libra Foundation, the Heising-Simons Foundation and the Simmons Sisters Fund of The Dallas Foundation for their support of the organization's research and advocacy on access to asylum.

COVER: Jonathan McIntosh / flickr

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.¹ 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,² 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.³ 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.⁴

Although the Rio Grande Valley, Tucson, and San Diego sectors receive more individuals seeking to enter the country⁵, 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.⁶

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 2017.⁷

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.⁸ 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.⁹

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.¹⁰ 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.¹¹

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.¹²

- 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.”¹³

The January 25th 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.¹⁴ 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.”¹⁵

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.¹⁶ 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 25th 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.¹⁷

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.¹⁸

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.¹⁹ 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.²⁰ 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.²¹

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.²²

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.²³ 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.²⁴ 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 Torrance County Detention Facility outside of Albuquerque, New Mexico²⁵

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.²⁶ Neither DHS nor DOJ appear to have mechanisms to prevent referral for prosecutions that violate Article 31 of the Refugee Convention.²⁷

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.²⁸
- 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.²⁹

Parole Denials Prolong Detention of Asylum Seekers

President Trump's January 25th 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.³⁰

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.³¹

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.³² 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.³³

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.³⁴

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.³⁵ The detention of asylum seekers is also limited under the Refugee Convention.³⁶

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 Georgia³⁷, and as of November 2016, ICE was rarely granting parole to asylum seekers in New Jersey.³⁸

On any given night, an estimated 4,000 immigrants are held in three ICE detention facilities in the El Paso sector.³⁹ 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.⁴⁰ 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.⁴¹

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.⁴²

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.⁴³

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.⁴⁴ 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.⁴⁵

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.⁴⁶

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. ■

Endnotes

- ¹ 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>.
- ² See DHS, "Executive Orders on Protecting the Homeland," available at <https://www.dhs.gov/executive-orders-protecting-homeland>.
- ³ 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>.
- ⁴ 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>.
- ⁵ United States Border Patrol, "Sector Profile – Fiscal Year 2016 (Oct. 1st through Sept. 20th)", available at <https://www.cbp.gov/sites/default/files/assets/documents/2017-Jan/USBP%20Stats%20FY2016%20sector%20profile.pdf>.
- ⁶ 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/>.
- ⁷ 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.
- ⁸ 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>.
- ⁹ 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/56307e2a4.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.).

- ¹⁰ 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).
- ¹¹ 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.
- ¹² See American Immigration Council, *supra* note 7.
- ¹³ Human Rights First Correspondence with local advocates, February 22, 2016.
- ¹⁴ 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#>.
- ¹⁵ 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>.
- ¹⁶ See 8 U.S.C. § 1225.
- ¹⁷ The White House *supra* note 1; DHS, *supra* note 14.
- ¹⁸ 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>.
- ¹⁹ 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; See also, Guy S. Goodwin-Gill, *supra* note 17.
- ²⁰ TRAC, "Immigration Now 52 Percent of All Federal Criminal Prosecutions," November 28, 2016, available at <http://trac.syr.edu/tracreports/crim/446/>.
- ²¹ TRAC, "Criminal Immigration Prosecutions Fall 22 Percent," January 20, 2016, available at <http://trac.syr.edu/immigration/reports/412/>.
- ²² 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/>.
- ²³ Human Rights First Interviews, February 15-16, 2017.
- ²⁴ 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/>.
- ²⁵ 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; 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; See also Human Rights First interviews, February 16, 2017.
- ²⁶ 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.
- ²⁷ Human Rights First Interviews, February 15, 2017.
- ²⁸ 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.
- ²⁹ *Ibid* at page 14.
- ³⁰ See The White House, *supra* note 1.
- ³¹ See DHS, *supra* note 14.

- ³² 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
- ³³ See Human Rights First, "Asylum Under Threat," February 2017, available at <http://www.humanrightsfirst.org/sites/default/files/hrf-asylum-under-threat.pdf>.
- ³⁴ See Human Rights First, "Lifeline on Lockdown," August 26, 2017, available at <http://www.humanrightsfirst.org/resource/lifeline-lockdown-increased-us-detention-asylum-seekers>.
- ³⁵ 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>.
- ³⁶ 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>
- ³⁷ See Human Rights First, "Detention of Asylum Seekers in Georgia," September 22, 2016, available at <http://www.humanrightsfirst.org/resource/detention-asylum-seekers-georgia>.
- ³⁸ 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>.
- ³⁹ 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.
- ⁴⁰ 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/>.
- ⁴¹ TRAC, "Detainees Leaving ICE Detention from the El Paso Service Processing Center," available at <http://trac.syr.edu/immigration/detention/201509/EPC/exit/>.
- ⁴² Human Rights First interviews, February 15, 2017; See also Borderland Immigration Council, *supra* note 28.
- ⁴³ *Ibid.*
- ⁴⁴ 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/>.
- ⁴⁵ Human Rights First interviews, February 15-16, 2017.
- ⁴⁶ See Borderland Immigration Council, *supra* note 28; See also Human Rights First correspondence with local advocates, February 26, 2016.



NEW YORK • WASHINGTON • HOUSTON • LOS ANGELES

humanrightsfirst.org • facebook.com/humanrightsfirst • [@HumanRights1st](https://twitter.com/HumanRights1st)

Exhibit 3



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.

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.

© 2017 Human Rights First All Rights Reserved.

This report is available online at humanrightsfirst.org

ACKNOWLEDGEMENTS

This report was written by B. Shaw Drake, Eleanor Acer, and Olga Byrne. Drake was the principle researcher and author of the report. Field research was conducted by Drake, Acer, Jenna Gilbert, Janine Martinez-Salazar, and Natasha Anpriester. Meredith Kuchеров, David Mizner, and Jennifer Quigley, contributed edits to the report. Sarah Graham designed the report. We are grateful for the invaluable support of Equal Justice Works and fellowship sponsors Morgan Stanley and Simpson Thacher & Bartlett LLP. Human Rights First also thank the Oak Foundation, the Libra Foundation, the Heising-Simons Foundation, the Open Society Policy Center, and the Simmons Sisters Fund of The Dallas Foundation for their support of the organization's research and advocacy on access to asylum. We are thankful to all the practitioners, organizations, and experts that provided information to inform this report. Particularly, we thank the numerous asylum seekers and refugees who bravely shared their stories in hopes of bettering the system for all those who seek protection and refuge in the United States.

COVER PHOTO: Getty Images/John Moore

Mexico/U.S. Ports of Entry



PORTS OF ENTRY

- 1 A. Ped-West port of entry
- B. San Ysidro port of entry
- C. Otoy Mesa port of entry
- 2 Nogales port of entry
- 3 El Paso port of entry
- 4 Laredo port of entry
- 5 Hidalgo port of entry
- 6 Gateway port of entry

Contents

Executive Summary	1
I. United States Statute and Treaty Obligations	4
II. U.S. Border Agents are Turning Away Asylum Seekers without Required Protection Screening.....	5
III. Mexican Authorities are Complicit in Barriers to Asylum Seekers Approaching U.S. Ports of Entry	8
A. The Tijuana Appointment System—a Gauntlet and Charade for Asylum Seekers.....	8
B. Mexican Authorities Discourage Asylum Seekers from Presenting at U.S. Entry Points	10
IV. Coercion and Hostility Aimed at Discouraging Asylum Seekers.....	10
A. U.S. Border Agents Use Intimidation and Deception to Pressure Asylum Seekers into Denouncing Fear	11
B. Lawyers’ Involvement to Ensure Asylum Seekers are Processed is Unsustainable and Met with Hostility.....	12
V. Turn-Backs at Border Crossings are Pushing Asylum Seekers to Cross Outside Formal Entry Points	14
VI. Asylum Seekers Face Ongoing Dangers and Lack of Protection in Mexico.....	16
A. Asylum Seekers Turned Away by U.S. Agents Face Increased Dangers in Mexico	16
B. Mexico’s Asylum System is Flawed and Fails to Protect Refugees and Asylum Seekers	18
Endnotes	21

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.¹ This rule of *non-refoulement* applies to rejecting or turning away asylum seekers at a country's borders.²

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.³ 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.⁴

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.⁵ 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.⁶

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."⁷ 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.⁸

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."⁹ 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."¹⁰

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.¹¹

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.¹²

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.”¹³ In other cases, CBP officers gave false information about U.S. laws and procedures, mocked and intimidated asylum seekers, or accused them of lying.¹⁴

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.¹⁵

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.”¹⁶ 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.”¹⁷ 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.¹⁸

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.”¹⁹ 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 2016.²⁰

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.²¹ 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.”²² In February 2017 CBP agents at the Ped-West entry point told an asylum seeker that “the United States is not giving asylum anymore.”²³ 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.”²⁴

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.²⁵ 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.²⁶

■ **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.²⁷

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.²⁸ 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.²⁹

■ **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.³⁰

- **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.³¹

- **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.³²

- **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.³³

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.³⁴ 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 2017.³⁵ 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),³⁶ 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*.³⁷

Since Central Americans are typically not issued a transit visa at Mexico’s southern border, they are effectively blocked from receiving an “appointment.”³⁸ *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.³⁹

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.”⁴⁰ 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."⁴¹

Yet CBP says that the appointment system is still in place,⁴² 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."⁴³ 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."⁴⁴

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.⁴⁵

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.⁴⁶ 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*.⁴⁷

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.⁴⁸

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.⁴⁹

■ **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.⁵⁰

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 2017.⁵¹

Media reports indicate Mexican military agents blocked Cuban asylum seekers from approaching the Laredo port in early April 2017.⁵² 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.⁵³

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.⁵⁴ 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.”⁵⁵

■ **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.⁵⁶

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.”⁵⁷ 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.”⁵⁸ 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.⁵⁹

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 entry⁶⁰ – a trend documented by

various organization even before reports of turn-backs began.⁶¹

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.⁶² 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.⁶³

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.⁶⁴ 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.⁶⁵

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.⁶⁶

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.⁶⁷ 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.⁶⁸ Given the many inaccuracies their researchers observed, USCIRF recommends that these forms should clearly indicate that they are not verbatim statements from the interviewees.⁶⁹

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."⁷⁰ 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?"⁷¹

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.⁷²

■ **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.⁷³

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.⁷⁴ 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.⁷⁵

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.⁷⁶

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.⁷⁷

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."⁷⁸ Similar hostility

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

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.⁸⁰ 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.⁸¹

■ **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.⁸²

- **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.⁸³

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.⁸⁴

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."⁸⁵ 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.⁸⁶ The word has spread that the United States is rejecting refugees at ports of entry.⁸⁷ 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.⁸⁸

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.⁸⁹ The smugglers operating in Reynosa

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

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.⁹¹ 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 2017.⁹²

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.⁹³

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.⁹⁴ 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.⁹⁵

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.”⁹⁶

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.⁹⁷ 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.⁹⁸

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.⁹⁹

■ **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.¹⁰⁰

- **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.¹⁰¹

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."¹⁰²

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.¹⁰³

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.¹⁰⁴ 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.¹⁰⁵

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.¹⁰⁶ 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.¹⁰⁷ 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.¹⁰⁸

Recently, eleven Cubans were kidnapped between Reynosa and Nuevo Laredo.¹⁰⁹ 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.¹¹⁰ 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.¹¹¹

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.¹¹² In Tijuana, one migrant shelter reports multiple kidnappings in the first few months of 2017.¹¹³

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.¹¹⁴

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.¹¹⁵ 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.¹¹⁶ 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.¹¹⁷

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.¹¹⁸ 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."¹¹⁹ Legal service providers in the United States also report that unaccompanied minors are robbed and extorted at the hands of some Mexican officials.¹²⁰

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.¹²¹

- **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.¹²²

- **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.¹²³

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."¹²⁴ 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.¹²⁵

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.¹²⁶ 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.¹²⁷

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.¹²⁸

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.¹²⁹ 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,¹³⁰ 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 2017.¹³¹ 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.¹³²

Despite domestic laws and a recent constitutional amendment acknowledging the right to seek asylum in Mexico,¹³³ 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.¹³⁴ 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.¹³⁵

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.¹³⁶ 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.¹³⁷

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.¹³⁸

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.¹³⁹

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.¹⁴⁰
- **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.¹⁴¹

■ **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.¹⁴² ■

Endnotes

- ¹ 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>.
- ² 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*.
- ³ 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.").
- ⁴ See UNHCR, Supplementary Appeal 2016: Regional Response to the Northern Triangle of Central America Situation, June 2016, p. 5.
- ⁵ Immigration and Nationality Act (INA) § 235 (b)(2)(1)(A)(ii).
- ⁶ 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).
- ⁷ Customs and Border Protection, Inspector's Field Manual, Section 17.15(b)(1), *available at* <http://www.aila.org/File/Related/11120959F.pdf>.
- ⁸ 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.
- ⁹ 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).
- ¹⁰ 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.
- ¹¹ 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.
- ¹² 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.

- ¹³ Human Rights First telephone interview with foreign government official 2, March 24, 2017.
- ¹⁴ 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.
- ¹⁵ 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.
- ¹⁶ Redacted declaration from asylum seeker 1, *available at* <https://drive.google.com/file/d/0BzSmfDxXocoDbjR0UndlaTR5eEE/view?usp=sharing>.
- ¹⁷ Human Rights First interview with pro bono attorney 5, Tijuana, Mexico, March 27, 2017.
- ¹⁸ Human Rights First interview with private attorney 2, El Paso, Texas, February 15, 2017.
- ¹⁹ 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>.
- ²⁰ See American Immigration Council, *supra* note 15.
- ²¹ 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.
- ²² Human Rights First interview with pro bono attorney 4, McAllen, Texas, March 21, 2017; declaration of pro bono attorney 4, January 31, 2017.
- ²³ Human Rights First interview with asylum seeker 3, Tijuana, Mexico, March 27, 2017.
- ²⁴ Human Rights First telephone interview with pro bono attorney 3, March 15, 2017.
- ²⁵ 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.
- ²⁶ Human Rights First interview with legal service provider 3, San Diego, California, March 29, 2017.
- ²⁷ 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.
- ²⁸ 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>.
- ²⁹ Aaron Nelsen, "Immigration officials at Laredo turn-back protesting Cubans," San Antonio Express News, April 9, 2017.
- ³⁰ Human Rights First interview with asylum seeker 1, Reynosa, Mexico, March 22, 2017.
- ³¹ Human Rights First telephone interview with pro bono attorney 3, March 17, 2017.
- ³² Human Rights First interview with pro bono attorney 5, Tijuana, Mexico, March 27, 2017; redacted declaration of asylum seeker 6, January 26, 2017.
- ³³ Human Rights First interview with private attorney 1, McAllen, Texas, March 20, 2017.

- ³⁴ 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.
- ³⁵ 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.
- ³⁶ 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>.
- ³⁷ Human Rights First interview with pro bono attorney 5, Tijuana, Mexico, March 27, 2017.
- ³⁸ See David Noriega, "Waiting Game: Asylum seekers are being turned away illegally at the U.S.-Mexico border," VICE News, February 9, 2017.
- ³⁹ 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.
- ⁴⁰ Joshua Partlow, "U.S. border officials are illegally turning away asylum seekers, critics say," The Washington Post, January 16, 2017.
- ⁴¹ 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.
- ⁴² Human Rights First Interview with legal service provider 2, Tijuana, Mexico, March 28, 2017.
- ⁴³ 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.
- ⁴⁴ 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.
- ⁴⁵ 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.
- ⁴⁶ Human Rights First interview with shelter staff 8, Tijuana, Mexico, March 27, 2017.
- ⁴⁷ 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.
- ⁴⁸ 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.
- ⁴⁹ Human Rights First interview with pro bono attorney 5, Tijuana, Mexico, March 27, 2017; redacted declaration of asylum seeker 11, December 10, 2016.
- ⁵⁰ Redacted declaration of asylum seeker 9, December 10, 2016.
- ⁵¹ 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.
- ⁵² Aaron Nelsen, *supra* note 29.
- ⁵³ 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.
- ⁵⁴ 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.
- ⁵⁵ Human Rights First interview with pro bono attorney 5, Tijuana, Mexico, March 27, 2017.
- ⁵⁶ Human Rights First interview with asylum seeker 4, Tijuana, Mexico, March 27, 2017.

- ⁵⁷ See Roque Planas and Elise Foley, "Border Agents Illegally Turned Away Asylum Seeker And Her Children, Attorney Says," The Huffington Post, April 10, 2017.
- ⁵⁸ See Grace Wyler, "Here's how Trump has already affected the U.S.-Mexico border and immigration," Orange County Register February 16, 2017.
- ⁵⁹ USCIRF (2016), *supra* note 11.
- ⁶⁰ 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.
- ⁶¹ See Human Rights Watch, *supra* note 11; see also American Civil Liberties Union, *supra* note 11.
- ⁶² Human Rights First interview with pro bono attorney 5, Tijuana, Mexico, March 24 and 27, 2017.
- ⁶³ 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.
- ⁶⁴ Lizandra Diaz Blanco, *supra* note 28; Aaron Nelsen, *supra* note 29.
- ⁶⁵ See Julie Hirschfeld Davis and Frances Robles, *supra* note 27.
- ⁶⁶ Human Rights First interview with private attorney 1, McAllen, Texas, March 20, 2017.
- ⁶⁷ Human Rights Watch, *supra* note 11; see also American Civil Liberties Union *supra* note 11.
- ⁶⁸ 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.
- ⁶⁹ USCIRF (2005), *supra* note 11.
- ⁷⁰ 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.
- ⁷¹ Human Rights First interview with legal service provider 1, San Diego, California, March 28, 2017.
- ⁷² See B. Shaw Drake, "A Troubling Trend of U.S. Turning Away Asylum Seekers at Mexico Border," News Deeply, April 13, 2017.
- ⁷³ Human Rights First interview with shelter staff 7, Tijuana, Mexico, March 27, 2017.
- ⁷⁴ Human Rights First interview with shelter staff 2, Matamoros, Mexico, March 21, 2017.
- ⁷⁵ Human Rights First interview with pro bono attorney 5, Tijuana, Mexico, March 24, 2017.
- ⁷⁶ Human Rights First interview with pro bono attorney 5, Tijuana, Mexico, March 24, 2017; document packet for asylum seeker 5, April 9, 2017.
- ⁷⁷ Human Rights First interview with shelter staff 1, McAllen, Texas, March 20, 2017.
- ⁷⁸ Human Rights First telephone interview with pro bono attorney 3, March 17, 2017.
- ⁷⁹ 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.
- ⁸⁰ 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>.
- ⁸¹ Human Rights First interview with private attorney 2, El Paso, Texas, February 15, 2017.
- ⁸² Declaration of pro bono attorney 4, January 31, 2017.
- ⁸³ Redacted declaration of asylum seeker 1, February 7, 2017.
- ⁸⁴ Customs and Border Protection, *supra* note 7.
- ⁸⁵ Exec. Order No. 13767, Presidential Executive Order: Border Security and Immigration Enforcement Improvements, 82 Fed. Reg. 8793 (Jan. 25, 2017).
- ⁸⁶ Human Rights First interview with shelter staff 1, McAllen, Texas March 20, 2017.
- ⁸⁷ Human Rights First interview with legal service provider 2, San Diego, California, March 28, 2017.
- ⁸⁸ Human Rights First interview with asylum seeker 1, Reynosa, Mexico, March 22, 2017.
- ⁸⁹ Human Rights First interview with shelter staff 2, Matamoros, Mexico, March 21, 2017.

- ⁹⁰ 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.
- ⁹¹ 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.
- ⁹² Human Rights First telephone interview with pro bono attorney 3, March 17, 2017.
- ⁹³ Human Rights First interview with pro bono attorney 5, Tijuana, Mexico, March 27, 2017.
- ⁹⁴ Human Rights First email correspondence with pro bono attorney 5, Tijuana, Mexico, April 10, 2017.
- ⁹⁵ Human Rights First interview with pro bono attorney 5, Tijuana, Mexico, March 27, 2017.
- ⁹⁶ 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.
- ⁹⁷ Human Rights First interview with legal service provider 3, San Diego, California March 29, 2017.
- ⁹⁸ U.N. General Assembly, *supra* note 1 at Art. 31.
- ⁹⁹ Human Rights First interview with shelter staff 4, Reynosa, Mexico, March 22, 2017.
- ¹⁰⁰ Human Rights First phone interview with foreign government official 2, March 24, 2017.
- ¹⁰¹ Human Rights First interview with legal service provider 3, San Diego, California March 29, 2017.
- ¹⁰² 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.
- ¹⁰³ Human Rights First interview with shelter staff 1, McAllen, Texas, March 20, 2017.
- ¹⁰⁴ 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.
- ¹⁰⁵ Human Rights First interview with shelter staff 3, Reynosa, Mexico, March 22, 2017.
- ¹⁰⁶ Human Rights First interview with shelter staff 3 and 4, Reynosa, Mexico, March 22, 2017.
- ¹⁰⁷ Human Rights First interview with shelter staff 1, McAllen, Texas, March 20, 2017.
- ¹⁰⁸ Human Rights First interview with legal service provider 1, San Diego, California, March 28, 2017.
- ¹⁰⁹ "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>.
- ¹¹⁰ Human Rights First interview with shelter staff 3, Reynosa, Mexico, March 22, 2017.
- ¹¹¹ 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").
- ¹¹² Human Rights First interview with shelter staff 3, Matamoros, Mexico, March 21, 2017.
- ¹¹³ Human Rights First interview with shelter staff 8, Tijuana, Mexico, March 27, 2017.
- ¹¹⁴ 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.
- ¹¹⁵ 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.
- ¹¹⁶ 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.
- ¹¹⁷ *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].

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

¹¹⁹ *Id.*

¹²⁰ 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.

¹²¹ 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.

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

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

¹²⁴ See U.S. Department of State, Mexico 2015 Human Rights Report.

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

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

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

¹²⁸ 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.

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

¹³⁰ 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 [last accessed on April 24, 2017].

¹³¹ 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).

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

¹³³ 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>.

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

¹³⁵ 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 [last accessed on April 24, 2017].

¹³⁶ International Crisis Group, *supra* note 134 at p. 19.

¹³⁷ *Id.*

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

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

¹⁴⁰ 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.

¹⁴¹ Redacted declaration of asylum seeker 10, January 20, 2017.

¹⁴² Human Rights First interview with asylum seeker 3, Tijuana, March 27, 2017.



NEW YORK • WASHINGTON • HOUSTON • LOS ANGELES

humanrightsfirst.org • facebook.com/humanrightsfirst • [@HumanRights1st](https://twitter.com/HumanRights1st)

Exhibit 4

Declaration of [REDACTED]

1. My name is [REDACTED], and I was born on November 22, 1985 in Belize City, Belize.
2. I departed Belize on October 27, 2016 and arrived in Tijuana on October 30, 2016. I was with my aunt [REDACTED], her son [REDACTED], her one-year-old daughter, her step-son [REDACTED] and her other step son [REDACTED]. We came to request asylum in the United States.
3. When we arrived in Tijuana via bus from Mexico City, and from the Tijuana bus terminal we took a taxi straight to the US-Mexico border.
4. We walked passed the line of people waiting to cross the border and went straight to the US border patrol agents at the border entrance. US Immigration officials stopped us and asked us what we were doing and we told them that we had come to request political asylum in the United States. The US immigration officials told us that they can't help us unless we were brought by Grupos Beta because they were doing a process for asylum seekers. We went to Mexican immigration officials and they told us that there were over 5,000 people waiting for asylum in the US, and we had to get a number so that we could get in the line to get the asylum process started. They told us that asylum seekers had to go stand in line at an INM office by the border to get our number.
5. The next day, October 31, 2016, we showed up at this INM office at 4:00am. When INM officials checked our documents, we were told that we had to wait until the 180 days on our visas ran out until INM would give us a date for our interview with US immigration officials.
6. I didn't trust this so we went to the US consular office and they told us that we had to wait for the Grupos Beta process. They told us we would have to comply with the INM system, and they had a lot of work and that INM probably didn't want to do it.
7. On November 1, 2016, I was feeling skeptical about what we were being told by INM and US immigration so we went to another border crossing called Otay. We waited in line and crossed into the US side and were approaching US immigrations officials when three officers stopped us. We showed the US immigration officials our passports and told them our story and they told us that it didn't matter and that we had to go to Grupos Beta and follow their process if we wanted to request asylum.
8. After we spoke with the US border officials in Otay, they escorted us back to the border line, let us through the physical border gate into the Mexican side, and locked the gate behind us.
9. After we were denied the ability to request asylum again, my family and I were faced with the predicament of running out of money. I spoke with some local advocates in Tijuana and they helped me come to the decision that I would stay and try to figure out how to request asylum in the US and my family would return to Belize. This was a very difficult decision because we are in danger in our country but we didn't have any more money to be able to stay in Tijuana.

10. I tried to cross the border in Tijuana one more time but before I could even get close to the physical border I was stopped by private security that has a booth at the very beginning of the passage from Tijuana to the San Ysidro port of entry. The guard stopped me and told me that I couldn't go that way and wouldn't let me enter. I don't know the law well enough to complain or challenge him, and I don't want to put my case in danger, so I complied and turned around.
11. I found a job at a call center for about five dollars a day, but it wasn't enough to pay for the hotel where I was living.
12. About two weeks ago, I went and spoke with Grupos Beta where they give people with exit visas their interview dates with US immigration officials, and she told me that if I wanted to expedite the process for myself, I would need to go to a border crossing that is twelve hours away. I do not know what that border crossing is called. I asked local advocates if they thought that I should try to cross at this other crossing, and they told me not to risk it because they were just going to deny me as well.
13. I have been in Tijuana for over one month, have been denied the ability to request asylum in the US three times, and no immigration officials from the US or Mexico can explain to me why I have to wait 180 days to request asylum when I haven't done anything wrong and am fleeing real danger in my home country.

I declare under penalty and pains of perjury and under all applicable federal law that the forgoing is true and correct to the best of my ability and knowledge.

[REDACTED]

11/13/2016

December 10, 2016

22/06/2016

LLEGUÉ A LA ENTRADA 4:00pm y me Atendieron
aproximadamente alas 7:00pm

EL OFICIAL GONZALEZ

Lo primero que me pregunto fue que si yo
Sabia que para entrar a los Estados Unidos
tiene uno que tener papeles o visa yo le
dije que si lo Sabia Pero que yo No tenia
entonces a que viene, yo le Contesté que
a pedir asilo a los EUA. y el me pregunto
por que Motivo, yo le dije que tenia mucho
Miedo permanecer en Mex con mi hija
Pequeña x que a mi me habian Secuestrado
y Violado, y me dijo y eso cuando fue
le dije que en Agosto 2015 y el me dijo que
x que espere mucho tiempo y le contesté
que me Espere x que el FBI Me lo
habia pedido así y eso fue todo, no
quizo el paquete se lo di pero me dijo
que guardara eso. y despues me dijo que
quien se hiba hacer cargo de mi en
EUA yo le dije que mi Novio y pregunto
su Nombre, num. tel. dirección, despues me
pidio mi Credencial INE y el Acta de mi
niña y ya me llevo a las oficinas
donde fui revisada y ya me dejo ahí.

La Entrevista que me hicieron el 24/06/2016 me Sacaron del Cuarto donde estaba aproximadamente como a las 8:00pm y termino como a las 9:01pm. Fue una Video llamado en el Monitor solo vi que decia Satelital [REDACTED] un oficial tipo Chicano grosero y descortes. lo primero que me dijo, me Escucha Señora, yo le Contesté Si Señor me dijo Señora sabe usted ya fue deportada dos veces que hace a qui ~~en~~ mi pais, que yo le estaba pidiendo a EUA que me protegiera. el me Contesto Señora NO MAME usted tiene miedo y eso paso hace un año Segun usted fue Secuestrada y Violada o que tiene miedo que le pase eso yo le Contesté No Señor, Necesito a un oficial que hable bien Español x que segun el oficial que me estaba entrevistando no me entendia bien, y luego tomo la llamada otro Oficial solo para preguntarme Señora fue Secuestrada y violada o tiene miedo que le pase eso. le dije no Señor fui Secuestrada y Violada y el oficial se lo tradujo y se puso otra vez el oficial grosero, y me dijo usted tiene tatuajes le dije que si, y me Contesto que yo era una delincuente que todos los delincuentes traen tatuajes, yo le Contesté No Señor yo No soy Eso y despues me dijo que era tambien de pandillas y le dije no Señor yo no soy eso y me dijo Callese solo Contesté Cuando yo le pregunte

algo, despues me pregunto que si
[REDACTED] era mi Novio le
Conteste que si y luego que si sabia
como se llamaba el padre de mi
hija y se lo di ~~en~~ y eso fue
todo casi no quiso hablar mucho,
despues me dejo con los audifonos
puesto y la entrevista ya habia termi-
nado y no me dijo nada no me dijo
Señora la entrevista termino me
dejo la llamada colgada despues vino
otra oficial y me pregunto Señora
ya termino la entrevista le Contes-
te no se el oficial me dijo esperese
ahí un momento pero la llamada
habia terminado.

ATTE: [REDACTED]

PARA: [REDACTED]

Declaration of [REDACTED]
regarding being denied the ability to request asylum in the US at the San Ysidro Port of Entry

1. My name is [REDACTED] and I was born on May 19, 1980 in San Benito, Petén, Guatemala.
2. In 2016 I fled Guatemala after I was the victim of several murder attempts.
3. I arrived in Tijuana, Mexico on November 12, 2016. I went to the Migrant Shelter there and asked the attorney there for advice on how to request asylum in the United States. The attorney told me that I could turn myself into US immigration officials and tell them I was afraid to return to Guatemala and I wanted to request asylum in the US. She said they would interview me about the reason I fled Guatemala and couldn't return.
4. On or around November 20, 2016, I turned myself in to US immigration officials at the San Ysidro port of entry. I was with a Colombian man that also wanted to request asylum in the US who I had met in the migrant shelter. I told the guards at the entrance into the United States that I wanted to request asylum in the US. I thought that the guards at the gate were US immigration officers. They told me that I had to come with Grupos Beta, and that the process was to come with Grupos Beta and that they weren't going to accept any asylum seekers that weren't brought by Grupos Beta.
5. The next day I went and found Grupos Beta. They told me that there were a lot of Haitians and that I would have to come back to Grupos Beta on January 20, 2016 to find out what date I would be able to maybe have an interview with US immigration officials. I reiterated my insecurity and that I was injured and fleeing murder attempts, but they told me that there were too many Haitians for them to help me. They also told me that because I had the temporary protection in Mexico they couldn't help me. They told me they could only help the people that had obtained an exit visa from Mexico in Chiapas. They told me that I would have better luck if I turned myself in at the port of entry in San Luis Rio Colorado, Mexico.
6. On November 25, 2016, I turned myself in to US immigration officials at the San Ysidro port of entry. I was with my friend from Columbia again. I had learned that the guards at the actual gate of entry into the United States were only private security, and they were not US immigration agents. I told them again that I wanted to request asylum. The security guards told us that we had to talk to Grupos Beta. I told them that I wanted to talk with immigration officers. The private security guard called a US immigration officer and told them to come talk to us. The US immigration officer also told us that we had to talk to Grupos Beta.
7. On November 30, 2016 I approached a Mexican immigration officer at the Chaparral port of entry in Tijuana. The Mexican immigration official told me that I had to have an exit visa to be able to get an interview with US immigration officials and ask for asylum. There was also a Honduran family present and the Mexican immigration officer told them that if they wanted to obtain an exit visa they needed to go to Chiapas to get it.

8. I have gone to the port of entry three more times since then to request asylum in the United States, and every time I have been denied entrance, turned away, and told that I have to get assistance from Grupos Beta to be able to speak with US Immigration officials and request asylum.
9. I am so frustrated because I don't know what to do. I thought that I was following all the rules and doing everything correctly to request relief in the US, so I am completely confused about what I am supposed to do. I don't want to break any laws in Mexico or in the United States; and I am just trying to find safety in the US where I have family to keep me safe. I don't feel safe in Mexico because there is so much violence, drugs, and organized crime. I am afraid that I could be the victim of a kidnapping. I have been running and hiding for so long in Mexico, and it is dangerous for me to get pick up money that my family sends me so I can continue to eat while I try to request asylum in the US. I have to ask other people to go pick up the money for me because I'm afraid that I could be kidnapped for ransom.

I declare under penalty and pains of perjury and under all applicable federal law that the forgoing is true and correct to the best of my ability and knowledge.

[REDACTED]
December 10, 2016

I, [REDACTED] am competent to translate from Spanish into English, and certify that the translation of Declaration of [REDACTED] is true and accurate to the best of my abilities.

[REDACTED]
December 10, 2016

1. My name is [REDACTED]. I was born on October 27, 1997. I am 19 years old. I fled El Salvador in October / November of 2015. I left because the gang MS-13 tried to kill me. This same gang killed my sister. We both refused to join the gang, and they killed her. I was a witness when they kidnapped her. Almost all the other people who witnessed the kidnapping are dead.
2. My problems with the gang began in 2010. My sister and I had a friend [REDACTED] who did not have a mother or father. He would come to our house to play, and my parents always fed him. We knew him since we were very little. He lived with his grandmother. As he got older he turned into a gang member, eventually becoming the second person in charge of the MS-13 gang in our area. He got involved with the gang around 11 years old.
3. You can tell right away when someone joins a gang. Because gang members start talking to you more, they pull you over to have conversations in private. And the way they act with the person is different than how they act with regular people. It becomes obvious when someone is recruited.
4. [REDACTED] never tried to recruit us. He always used to give me advice not to join the gang because of everything he had to go through to get in. He would have to charge people renta, and the police would follow him and beat him. Sometimes the gang members would beat him for any little thing he did wrong. Sometimes he would come over and he would cry, and say that he had made a mistake, but he couldn't get out. Because everyone knows once you join, there is no way to get away from those people.

5. My parents are Christian pastors. My sister and I used to go to church with our parents. We were in church several days a week. [REDACTED] used to go with us, but around 2009 he stopped. Once you start getting deeper into the gang, they don't allow you to go to church anymore, or associate with people from the church. You can't go to their house or spend too much time with your friends who are Christian because then the gang views that as you are trying to leave the gang. The gang believes in the Great Beast. It is like the Devil. When they do graffiti they do it with MS and horns, or the face of the Beast, or the horn hand signal. When they threaten you, like they threatened me, they say, "The Beast is going to take you."
6. In 2009 [REDACTED] went to jail. He was accused of a murder and selling drugs. He told me, if anything happens to me or my sister, while he was in jail, that he would take care of it when he got out. In our neighborhood, you are very vulnerable if you don't belong to a gang, unless you know somebody in a gang who can offer you some protection against other gang members.
7. After [REDACTED] went to jail, a new clicka moved in called the Westerns. Attacks on gang members increased because the soldiers were killing gang members and taking many of them prisoner, trying to clean up the area. The gang started losing more people and their strength started decreasing, so they increased their recruiting.
8. My neighborhood was controlled by MS-13. The neighborhood across the river from my neighborhood is the territory of 18th Street. The two gangs would shoot across the river at each other. 18th Street

was trying to move into our neighborhood so they could take over the profits from charging people rent, and to have more territory.

9. One day in 2010, I went to the market with my sister and we were stopped by members of MS-13. They asked if we would join them. They told us that they could offer us protection; that we would be helping to protect our community, and that whatever we needed, like clothes, money, or food, the gang would help provide. It is basically the same thing that they tell everyone, but it was a lie.
10. My sister told them that there was no valid reason that we should join a gang. She told them that we did not need to be in a gang, and that it was not what our mother taught us. The gang members became very angry, and one told my sister "the only reason I don't hit you is because we are in the street and you are a woman. But you're going to see."
11. The gang knew that my grandfather was a sergeant in the police force and that my father was a military veteran. It is well known that if you are the child of a military parent that the parents usually train their children how to fight and defend themselves. My father did train us, but he always told us not to cause problems. It is because we know how to defend ourselves, and know these fighting moves that the gang members wanted us to join. My father and grandfather are kind of well-known in the area for their fighting skills. My father would tell us stories when we were kids about his military days. Some of the kids I grew up, and who knew my father, eventually turned to the gangs.

12. One day, a few weeks later, I came home to find a note on the door to our house that said something along the lines of "have you thought about what we said, think about it very good, either you're with us or you're against us."
13. The gang members always hung around behind our house drinking and playing. But ever since we told them that we would not join the gang, we noticed that more of them would hang out outside our house more frequently.
14. Later, the gang sent a gang member to our house to ask us whether we were going to accept their offer to join. We told him that we were preparing to follow in our parents' footsteps and to become pastors. He warned us that this was a mistake, and we were going to suffer the consequences.
15. I remember one night as we were leaving church that a group of gang members came up to us with guns, and told us to line up against the wall. The pastor came outside and asked why the gang members wanted to hurt us if we were coming from church, and not doing anything bad. He begged the gang members to not hurt us, and asked them why they would hurt us if we all grew up together? The gang members told him "only because you're standing there pastor, we are not going to do anything to them. But they know what is going to happen to them. The one who said that was the guy in charge for that clicka. The pastor called our parents to pick us up. The gang member in charge told us that they would give us five days to disappear.

16. At the time, my sister and I did not pay him any attention because we had grown up with these guys. We did not think they would really do anything to us. Our parents came to get us, but they were not that worried. They thought it was just kids trying to intimidate people, especially because we are Christians. Our parents are true believers, and they told my sister and I to pray about the situation a lot, and then nothing would happen.
17. Some tie later, my sister and I went to the store with our friend and a female cousin. I fell a few blocks behind during the walk. The path we were walking was through the hills. I was on top of one hill, and she was the hill straight ahead. I could see her from where I was walking. I saw a black truck pull up and shove my sister and her friend in the back. They did not take my female cousin. A little while after this happened, my cousin left the town. Although she later returned eventually. The last I heard from one of my aunts, my cousin had gotten a tattoo with three dots. This tattoo means she is a gang.
18. I feel like my cousin was maybe involved with the gang, or getting involved when my sister was taken. I thought then that something was weird because why did they not also take her if she was right there walking with my sister and her friend. I have also been running and hiding for a long time because I was a witness to my sister's kidnapping, and most of the other witnesses were killed. Why has she been allowed to live? It seems like she is involved.
19. After I saw them take my sister, I immediately ran to hide in my aunt's house because she lived close by. I hid there for a little while, and then I ran home to tell my mother. We waited for my father to

come home from the work, and then we started to search for my sister. My father worked around three hours away, and he had to wait for the next shift person to relieve him.

20. My parents refused to file a police report. They are very strict Christians, and in the Bible it says, if somebody does something wrong to you, then you are supposed to turn the other cheek. If someone does harm to you, then you are not supposed to seek revenge or harm against them in return. In a way I understood what my mother was doing, but in another way I never got over it and I thought it was wrong. Because we all knew who was responsible for my sister's murder. It did not make sense to me and I could never get over this.

21. My sister and her friend's bodies were found alongside the road in some brush a week later. They had been strangled. There was a detective who was investigating the case, but he never talked to me at all. I saw him at my sister's wake, but never again. My mother was the one who told me he was a detective because he notified her that my sister's body had been found. My mother never told the detective that I was a witness, because she wanted to stick to her belief not to do others harm even if they have done harm to us. She knew that if I was interviewed, I might tell what I had seen.

22. There were five witnesses: me, my cousin [REDACTED] another cousin, [REDACTED], who I did not know well, an older man, named [REDACTED] and a friend [REDACTED] [REDACTED] is the only one still living. [REDACTED] was killed. He was shot [REDACTED] was chopped with a machete. He was taken to the woods and left to die. He bled to death. My cousin left in 2015 for Guatemala around the same time that I left. We left

because we realized that the gang was killing us one-by-one. [REDACTED] was killed in Guatemala by the gang. They caught up to him. They put 13 gunshots in him.

23. At my sister's wake, I was sitting outside feeling lost and very depressed when two gang members walked up to me and pulled out a revolver. They told me "you're not going to escape this time." Just as this was happening, my cousin [REDACTED] arrived. They began talking to these other gang members and convinced them to leave. My other cousin, [REDACTED] is a high ranking gang member in a different feared clik. My cousins asked the guy with the gun, "Why do want to kill him, because he didn't want to join the gang" These are my cousins, you need to leave them alone." The gang members complied because they were of afraid of my cousins, because they were more powerful." My cousins then came over to me and told me that the gang members were not going to try to hurt me again, and if they tried, that they would come personally to kill them. And for around 2 ½ years that was how it stayed.

24. My mother eventually found out that these cousins were into gang activities, and that I was communicating with them. She forbid me to keep communication, and told me to limit myself to just saying "hello" if I saw them in the street. My cousins didn't really notice because we lived in different towns, so we did not see each other often. My female cousin [REDACTED] the one who I think also got involved with the gangs, and was there the day my sister was kidnapped, was also present when my mother told me this. After this conversation with my mother, I began receiving threats from the gang again.

25. The gang members would demand money from me a lot, and hit me. Even though I knew how to fight, I let them punch me. I knew that if I defended myself, it would only be worse for me.

26. Where I went to school it was in a neutral area called the Congo. Both MS-13 and 18th Street were in that area, but 18th Street was pushing MS-13 out. When the area turned more toward 18th Street, I had to stop going to school there. The gangs there are very strict where I come from. Because I lived in a place known to be controlled by MS-13, I could not go to places controlled by 18th Street. We have to stay within our limits. The gang members in my area were upset with me for going to school in Congo because it was becoming a place controlled by 18th Street. They told me that I should not go to that school anymore. They framed it as a recommendation, but it was really an order. I was also beat up twice by 18th Street at school because I came from an MS-13 neighborhood.

27. One day around 7pm, I went walking to my grandmother's house. As I was walking, a group of gang members began calling me over to them. There were a lot of them, maybe around 10 or 15 guys with bats and homemade guns. I could hear someone say "is this him?" And then another person said "yeah that's him." They told me to stand in the middle of the circle, and told me that I was going to get beat for 13 seconds. I asked them why were they going to hit me, and they told me because I was choosing to go to school in Congo. After the beating, they let me leave. I went straight home. I had scratches and bruises because they threw me on the floor and kicked me a bunch of times. They counted out loud to signal 13 seconds. I did not tell my mother about this for two months because I did not want her to worry.

28. In my town, I had my own soccer team that I put together. People in the area would pay me to play in the league. I would organize games and tournaments. Every player had to pay a dollar per game. The winning team of the tournament would win a cash prize. I didn't really make much money off the team because I had to pay for things like referees.
29. The gang members would say to me "You are old enough, big enough to get in the gang and start controlling stuff around here. All the people who play soccer and follow you, they can be controlling the area." I told them I did not understand what they were trying to say. They got mad and started demanding money from me from what I was collecting through the soccer league.
30. My friend [REDACTED] overheard a conversation that the gang knew I had been a witness to my sister being kidnapped. Because they knew this, they were going to try to do something to me to make sure I never talked. The gang members were meeting and discussing this. The guys who took part in my sister's kidnapping were there. They said "he knows it was us." [REDACTED] overheard their conversation.
31. I called my cousin, [REDACTED] for protection. But he told me that there was not much he could do because the final word had come from higher up gang members in prison. He told me that he had gotten a call from members of the clicka that controlled my neighborhood, and that the men who killed my sister knew that I had seen how they kidnapped her, which made me a liability. It is a rule with the gangs, to leave no witnesses. My cousin warned me—"they will come after you. I can't intervene."

32. This conversation with my cousin took place in October 2015. In the beginning of that month, the gang killed [REDACTED] one of the other witnesses. The guys who killed my sister were the ones who helped the gang rise back to power in my area. Now they have even more power than they did before when they killed her.
33. Because of the dangers, and because we all knew happened to witnesses, my cousin told me that I should leave as soon as possible. I immediately left the place where I was working and went to speak with my boss [REDACTED]. He made arrangements with the guards of our construction site that I would spend the nights and take care of the materials. The next day I went to work like normal, but never returned home. I stayed at the site for around three weeks before leaving El Salvador to go stay with my grandmother in Chiapas, Mexico.
34. The same day that I left for work and didn't come back, the gang members came to my house looking for me. I left for work at 4am and the gangs came for me at my parents' house. They kicked the door in and started yelling to my mother "Where is he? Where is your son? Where does he work?" My mother told them that I was working in El Salvador, but that I was supposed to come back. She told them "Why are you looking for him?" And they told her "Oh we just want to talk to him."
35. I had spoken with my mother about going to my grandmother's house before I left, and she agreed it would be safer if I left. I spoke to my grandmother and she agreed to come pick me up in Tecuman, Guatemala, but she left me stranded. I found a hotel in Guatemala

where I could stay for 20 quetzals a night and sleep on the floor in the hallway. I did not have much money left, and it was all that I could afford.

36. When I arrived in Mexico, I hitched a ride from a combi driver who helped me. He told me to get off the combi before the checkpoints and run around them to meet him further up the road.

37. I arrived in Tapachula the same day I picked up the combi. I found a Catholic church across the street from a park. The priest there allowed me to sleep in an office for the night. The next day he talked with me and gave me the name of a shelter and told me where I could find work.

38. I found work for a woman selling ice. She paid me 80 pesos per day and I worked more than 12 hour days. The lady I worked for also told me about COMAR, where I could start paperwork to become a refugee. She gave me the address for the COMAR office.

39. At COMAR they gave me an interview, and asked me why I was seeking refugee status, why I left El Salvador. I gave them my proofs. I told them what had happened. They told me it would take about three months for the process. In February I was approved for the refugee status. When they approved me, I felt like it was a great opportunity. I thought with the refugee status I was already out of danger and harm's way. This lasted until the beginning of April 2016.

40. Around that time, a friend from home sent me text messages. After soccer one day, he heard people talking about how I had fled. He



told me that the gang members knew where I was in Mexico. My mother also told me the same thing. She told me that the gang members had gone to my house looking for me.

41. A few days later, one of the gang leaders called my cell phone. I don't know how they got my number. He told me "you better turn yourself in to us or you will have it worse. We already know where you are." I lied to him and told him that I was in El Salvador, but he responded that he knew that was a lie. He then told me that "if you go and hide yourself, under the face of earth, I will drag you out personally." I felt like I'm being hunted.

42. I would have stayed in Mexico but the gang made that impossible. Not long after this call, I was walking in the street in Tapachula. There were three guys walking behind me, following me for several blocks. I turned into an alley to try to lose them, and that is when they started running behind me. I looked back to see one of them pulling what looked like a gun from his clothing. I was terrified, and I ran into the only house on the block with the door open. At first the homeowner was angry with me, but then I told him what was happening and he calmed down because he saw I did not mean him any harm. He looked outside to see the guys running down the street. I think he believed me because he let me out back door which led to another street.

43. I stayed at the shelter one night. I then went to work with some mango and banana packers that would take us to other places for work. I went to work in Puerto Madero around 45 minutes away.

44. I soon received a call from my uncle [REDACTED] the father of my cousin [REDACTED]. He sounded worried. He was hiding in San Salvador. The gang had threatened my cousin [REDACTED] and he had no choice but to leave the country. Once they threaten you, it is automatic, you have to get out. It is not something you take lightly. We took it lightly, me and my sister, and look what happened to her. They killed her. So when the gang threatens you, you just have to leave.

45. [REDACTED] mother signed a letter giving my Uncle [REDACTED] permission to take [REDACTED] from the country. [REDACTED] could not let [REDACTED] travel by himself, because we all knew what happened to kids who traveled alone. When they got to Tapachula, I went to meet them and we stayed in the shelter for a few days.

46. After meeting my cousin and uncle, we decided to take a bus to Tutxtla Gutierrez, so we could then catch a bus to the smaller town where we were headed for work in construction with some other Salvadorans. We got off the bus to buy some tamales. I saw a guy with a Santa Muerte tattoo on his arm, and that he was checking us out. I think they could hear our accents and recognized that we were not Mexican. Shortly after this we were kidnapped.

47. We never got back on bus. We started walking from the first bus to take the second bus to the smaller town. It was then two trucks pulled up. Armed men jumped out of car and forced us all to get in. There were six of us from El Salvador.

48. The armed men took us to a house, and put us in a room with many other migrants. They took away our clothes and asked each of us for

a phone number. I gave them my father's phone number. When they would call they would hit us so they could show our family that they were serious. They would take photos of us all beaten up. I think those photos were for their boss. Because when he came to visit the house where they kept us, he knew who each person was, even though we had never met before. My father told me he never received any photos, but that he could hear them beating us.

49. While we were being held, the kidnappers asked me for a number. I gave them my father's number but he did not answer at first. During the time that I was there my kidnappers would take me out of the room with the other people who were kidnapped in order to beat me, sometimes with a bat. They beat me pretty much every day. They kept telling me they should kill me because my father would not answer the phone. They told me that my father told them to just kill me. I didn't believe that my father had said that, but I did believe that they would kill me.
50. At night they would sometimes tie us up, and throw water on us. It felt like they were doing these things for their own amusement. In the place where we were held, there was hardly any water for us to drink, just one large jug that was supposed to last 30 people at least a week. Sometimes they would take the women out to rape them.
51. One day, after we had been moved to another house, someone came and said their boss had been killed. And eventually they told us that they would let us go. I overheard them planning to reorganize themselves and take a month off to do that. They were deciding whether to kill us or set us free.

52. We were held for one month. When they released me, they gave me 500 pesos. I was not released with my family, but instead a day earlier with some other people. They gave everyone 500 pesos and told us to get out of the country. They said "If we get you guys again, we're going to kidnap you probably, get money from your family, but instead of letting you go, we will just kill you. We are one big cartel, we all work together. We have your picture and sent it to the other cartels, so you will die if you stay."

53. When I was released by the kidnappers, I was dropped off in a truck in front of a hotel. We were forced to ride with our knees to our chest and our head down so we couldn't see where we were going. A family who I was released with paid for the hotel but didn't stay. I stayed to wait for my family. I asked the kidnappers when my family would be released, they said they would be released possibly next day which is why I waited. I told the receptionist to please let me know if she saw my family because I would be looking for them.

54. When my family was released the next day they dropped off in front of the hotel. Receptionist told me they were out there. We stayed one more night and then went immediately by bus to Mexico City. When we arrived in Mexico City, we got the address for the Salvadoran consulate and headed there. At the consulate they took us to the PGR to file a criminal complaint. The police told us that we were not the only migrants who had mentioned this same hotel. All the people kidnapped by that cartel were dropped off right there. We brought the receipt for the hotel. We were determined to make



them pay by any means necessary. I wanted to see justice for what we had been through.

55. When we arrived at the consulate, they already knew we had been kidnapped. Our family had filed a complaint with the consulate in El Salvador. The consulate staff helped us communicate with Mexican authorities about what happened to us. We were given an attorney to help us because we had been victims of a crime, and we could get a humanitarian visa in Mexico because of that. We were placed in a house. We didn't have to pay rent. The government was paying for it. We were there for almost 3 months. The problem was that the shelter and the house were in a big gang zone near to where the freight train passed. Everyone knows that those kinds of areas where the train passes are cartel and gang infested, because there are so many migrants riding the top of the train.

56. A little up the street it was a cartel zone. While I was there other migrants had been kidnapped. I felt like the PGR lied to us because they said they would put us in a safe place and would protect us. I felt disappointed and afraid. It felt like everyone disappeared and no one was around to protect us. Fifteen days after the other migrants were kidnapped, near to where we lived, MS members followed [REDACTED] father to work one day. We were afraid of being identified because the gangs and cartels communicate.

57. I received a message from one of my cousins in El Salvador on August 24, 2016, that the gang knew we were in Mexico. One day my mother had left her cell phone on the bed and she left the room. My cousin, [REDACTED] started to look through her phone, and [REDACTED]

when my mother came in she saw her with it. I think that is how they found us by looking through the messages.

58. A friend also messaged me and warned me that he had heard the gang knew we were in Mexico City. We did not have enough money for all of us to travel, so my Uncle [REDACTED] told [REDACTED] that he and I should leave together and head to the U.S. to seek asylum. It was a risk to travel by ourselves, but sometimes you have to take risks to survive.
59. When we arrived to the main bus station in Tijuana we tried to figure out what to do next. We asked a man who was selling things about how we could request asylum. He told us "that's not what you want to do. That's now how you do it. You have to pay to cross and you have to go through the mountains." We were afraid of what he was suggesting, so we went to the gate at the port-of-entry to turn ourselves in.
60. When we got to the port-of-entry, we walked in past the first gate. He asked us for our documents, but we only had our documents from El Salvador. We told him we wanted to seek asylum, and that they were trying to kill us in our country. He told us we could not ask for asylum right then, that we had to be put on a list. The officer told us to go back out the gate and wait there, so we did as we were told. We waited for almost three hours or so for someone to come talk to us, but nobody did. Eventually, an American woman who was an immigration attorney walked up to us and asked us what we were doing. She was there with some other people helping them to turn themselves in to the American officials. She asked us why we were waiting there, and we explained what had happened, and why we

were waiting there. She told us that she would help us, and took us to a youth shelter where we would be safe. She told us that she would work on our cases to help us without charging us. So we decided to stay so she could help us. Besides, the Americans did not seem like they wanted to let us in anyway.

61. While we were waiting for the attorney to help us with our paperwork, I spoke with my father in El Salvador. He said that the gang still hangs out by the house. At least three different times they have asked for me. He always tells them I am working in San Salvador, but I don't think they believe him.

62. Since we first arrived in Tijuana, the attorney who worked with us in Mexico City has shown us photos via text message. The photos of are more people they believe are involved with our kidnapping. There has been progress in the investigation. I have identified some of the kidnappers.

63. I am running a tremendous risk by staying in Mexico, not only because MS is hunting me, but also because of my testimony against the cartel group that kidnapped us. They have been involved in a lot of kidnappings of migrants, and the investigators are using our testimony to try to imprison as many as they can. I feel this makes us even more of a target.

64. One day not long ago, [REDACTED] and I went to the market to buy some t-shirts. There was a lady following us and taking our picture. I don't know if she was connected to gang members or cartels. I'm a witness to crimes by both groups. I don't think it was a coincidence because we were not in a tourist area, or the kind of place you expect people


to be taking photos. And she was taking the photos of us. I do not feel safe in my country, and I do not feel safe in Mexico. I feel the only safe place for me at this time is the United States, where the police can do more to protect me.

I hereby swear, under penalty of perjury, that the foregoing is true and correct to the best of my ability





01/20/2017
Date

I, , certify, under penalty of perjury, that I have read the above declaration in Spanish, his native language, and that I am bilingual in Spanish and English.



01/20/2017
Date

Declaration of [REDACTED]

1. My name is [REDACTED] and I was born on September 21, 1958 in Sircacia, Columbia.
2. I arrived in Tijuana, Mexico on November 9, 2016. I came to Tijuana fleeing persecution in my home country of Columbia, with the intent of requesting asylum in the United States.
3. When I first arrived in Tijuana, I was staying in a hotel near the airport.
4. On November 11, 2016 I went to the port of entry at the US-Mexico border in Tijuana with the intention of turning myself in to US immigration officials and requesting asylum. When I arrived at the border line, there was a security guard at the gate who asked for my identification. I gave him my Colombian passport, and he asked me what I was there for. I told him that I was afraid to return to my country and that I wanted to request asylum in the United States. The guard told me that I couldn't come to the border and ask for asylum, because the process of requesting asylum in the United States starts in Mexico. I turned around and returned because I didn't want to break any laws, but I didn't understand and I was scared because I didn't know what to do.
5. On or around November 13, 2016 I ran out of money for the hotel so I went to ask for help at the migrant shelter. There I met an attorney who told me about my rights and other asylum seekers that encouraged me that I was correct that I had a right to request asylum.
6. On or around November 15, 2016, I went back to the border and the security guards wearing grey denied me the opportunity to request asylum from a US immigration official. They only told me that the process starts in Mexico and didn't give me any more information.
7. On or around November 16, 2016 I went to the border to request asylum for a third time with another man I met at the migrant shelter. This time we were also stopped and denied the ability to speak with US immigration officials, but they told us we needed to speak with Grupos Beta to be able to ask for relief in the US.
8. I went to the Grupos Beta station near the border with my friend to ask them how we request asylum in the US. The representative from Grupos Beta told us that we needed an exit visa to be able to make an appointment with US immigration officials. We told them that we did not have exit visas and asked them how to get them. They told us to go to speak with Mexican Immigration (INM). We went and spoke with INM officials and they told me that I wasn't able to qualify for asylum in the US because of my visa status in Mexico. I told them that I did not understand because I only had a tourist visa in Mexico and I didn't think that wouldn't allow me to request asylum in the US. They told me there was nothing else they could do for me.
9. On or around November 17, 2016, I presented myself at the US-Mexico border for a fourth time and when I got to the border line I asked the security guards to speak directly with a US immigration official. A US immigration official arrived and I greeted him, and told him I wanted to request political asylum in the US. He told me that I had to go talk to Grupos Beta. I told him

that it when I came to the border they send me to the INM, and when I go to the INM, they tell me to go talk to US officials at the border. The US immigration official repeated that I do have to start the process with Grupos Beta.

10. When the US immigration official turned around he told the security guards that I was just lying. I didn't understand because I don't speak English, but my friend understood perfectly because he lived in the states for years and he told me immediately what the US immigration officer had said about me.

I declare under penalty and pains of perjury and under all applicable federal law that the forgoing is true and correct to the best of my ability and knowledge.

[REDACTED]

[REDACTED]

December 10, 2016

I, Ian Philabaum, am competent to translate from Spanish into English, and certify that the translation of *Declaration of Benedicto Wilson Diaz Escobar* is true and accurate to the best of my abilities.

[REDACTED]

December 10, 2016

Declaration of [REDACTED]

I, Suyapa [REDACTED] declare to the best of my knowledge:

1. I am a citizen of Honduras and am 35 years old. My birthdate is January 13, 1982, I make this declaration to support my asylum claim, and am receiving assistance from a pro bono lawyer in Tijuana, Mexico.

2. I was born in San Pedro Sula, Honduras. I have three children. [REDACTED] is age 20, [REDACTED] is age 10, and [REDACTED] is age 6. My oldest daughter, [REDACTED], has her own daughter named [REDACTED]. I lived in San Pedro Sula, Honduras, all my life, until I had to flee.

3. My family led a quiet life in San Pedro Sula until 2015. My daughter lived with her boyfriend of many years, [REDACTED], in a home next to mine. [REDACTED] is the father of [REDACTED]. He worked as a taxi driver, and my daughter worked in a factory. I worked in a medical clinic. We are a close family and spent a lot of time together.

4. Everything changed on September 24, 2015. [REDACTED] was with his daughter, [REDACTED] outside the house, and men came up and shot him dead. He had never had any problems with anyone that I knew of. I think that the 18th Street gang killed him because he would not pay a gang tax.

5. After he was murdered, I went to be with my daughter and granddaughter. [REDACTED] was in complete shock, and her mother tried to comfort her. We were all shocked and afraid. The funeral reception was that evening, at the home of [REDACTED] brother, [REDACTED]. I learned that the men who shot [REDACTED] had come and asked [REDACTED] where [REDACTED] lived. We all understood that the men wanted to kill her and our family, since they clearly knew she had witnessed the murder and told us what she saw.

6. That evening of the funeral [REDACTED] called and warned my daughter and I. He said that men had come to the house asking where [REDACTED] was. He knew that these men were from the 18th street gang. I knew immediately that all of us were in danger, because we knew who killed [REDACTED]. Because we all lived next to each other, I knew that the gang would try to kill not only [REDACTED] but all of us.

7. We immediately decided to flee the country. My daughter, [REDACTED], and my other two children and me grabbed what we could and fled immediately. We did not think of going to the police to report [REDACTED] murder or the threat, because in Honduras it is dangerous to go to the police. They are known to work with the gangs, and they do nothing to protect people. We did not want to put ourselves in greater danger.

8. We fled by bus to Guatemala City, and then went by bus to Mexico. We went to a Church and found help. The church staff helped my granddaughter find counseling. She was so traumatized that she needed psychological help. We settled in Chiapas, and eventually sought asylum. Instead of being granted asylum, the Mexican government granted us permanent residency. I found work sewing uniforms, and started to build a new life for my family. My daughter and I found work at the same business, and my children and [REDACTED] started school and continued recovering from the trauma of losing their father. Darwin's brother [REDACTED] also fled the country, but we have no way to contact him and do not know where he is today or if he is safe.

9. We lived in Mexico for about 16 months. We thought we were safe. But we were wrong. One day Yesmin [REDACTED] his mom and me two men, and told us that these were the men who had killed [REDACTED]. I had picked up [REDACTED] with my daughter, and we were walking with all our children from her school back to our work. I recognized the men as gang members from San Pedro Sula. I knew they were looking for us. The next morning, very early, we saw the same men on the corner of the street outside our home. We immediately decided to flee. Within hours, we packed up three days worth of clothes and fled. We left everything else behind.

10. This time we could not take another chance. We decided to take our children and flee to the United States to seek asylum. We went by bus to Tijuana. We arrived in Tijuana on January 25, 2017. The following day, we all walked towards the U.S. border. I was with my daughter, my granddaughter, and my two kids. We approached the border checkpoint, and a group of armed U.S. agents, in uniform, started yelling at us to go away. They had weapons, and the one of them who spoke Spanish started to draw his gun and yelled at us to go away, saying we were in the wrong place. We were all terrified, and turned away. We did not go back because we were so frightened, and did not know where to go next.

11. We were lucky to find a refuge for women where we are staying now. We are still trying to figure out how to seek asylum, and are seeking advice from agencies in Tijuana on how to seek asylum at the checkpoint. We do not understand why we were turned away.

12. I fear that if I am returned to Honduras, the gang will kill me and my children, and granddaughter. The gang knows that [REDACTED] told us who killed [REDACTED] and will kill us all because we are related to [REDACTED]. They know I am the grandmother living with the entire family. The gang operates throughout Honduras, so we would be found and killed anywhere in the country. We are also at risk of being killed in Mexico for the same reason. The gang has

///
///
///
///
///
///
///

pursued my family all the way to Mexico, and can operate anywhere in Mexico. We will not be safe. If the gang hunted us down in Chiapas, they can do so anywhere in the country.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed at Tijuana, Mexico on February 3, 2017.

By: [REDACTED]

CERTIFICATE OF TRANSLATION

I, [REDACTED], declare that I am fluent in both English and Spanish. I certify that I translated the above declaration from English into Spanish verbally to the best of my ability, in the presence of [REDACTED] on February 3, 2017, and that she indicated that she understood my translation and that the information in the declaration was true and correct prior to signing it.

By: [REDACTED]

Declaration of [REDACTED]

I, [REDACTED] declare to the best of my knowledge:

1. I am a citizen of Honduras and am 20 years old. My birthdate is May 19, 1996, I make this declaration to support my asylum claim, and am receiving assistance from a pro bono lawyer in Tijuana, Mexico.

2. I was born in San Pedro Sula, Honduras. I have one daughter, who is four years old. Her name is [REDACTED]. I lived in San Pedro Sula, Honduras, all my life, until I had to flee.

3. I met [REDACTED] the father of my child [REDACTED] when I was only two-years-old. We grew up in the same neighborhood, and he became my boyfriend when I was 14. We lived in the home of [REDACTED] mother, and we had a nice, quiet life. He worked as a taxi driver, and I worked in a factory. We had all we needed.

4. Everything changed on September 24, 2015 [REDACTED] was with our daughter, [REDACTED] outside the house, and men came up and shot him dead. He had never had any problems with anyone that I knew of. I think that the 18th Street gang killed him because he would not pay a gang tax.

5. After he was murdered, I came out and saw his body. Our daughter [REDACTED] was in complete shock. I took her away, and I was in shock too. The funeral reception at the home of [REDACTED] brother, [REDACTED], was that evening. I did not go because [REDACTED] was in too much shock, and I stayed with her.

6. That evening of the funeral [REDACTED] called me to warn me. He said that men had come to the house asking where our daughter [REDACTED] was. He knew that these men were from the 18th street gang. I knew immediately that all of us were in danger, because we knew who killed [REDACTED]. I immediately told my mother, who lived next to us. She is 35-years-old and has two children, who are 10 and 6. Because we all lived next to each other, I knew that the gang would try to kill not only [REDACTED], but all of us.

7. We immediately decided to flee the country. My mother and her two children and me and my daughter grabbed what we could and fled immediately. We did not think of going to the police to report [REDACTED] murder or the threat, because in Honduras it is dangerous to go to the police. They are known to work with the gangs, and they do nothing to protect people. We did not want to put ourselves in greater danger.

8. We fled by bus to Guatemala City, and then went by bus to Mexico. We went to a Church and found help. The church staff helped my daughter find counseling. She was so traumatized that she needed psychological help. We settled in Chiapas, and eventually sought

asylum. Instead of being granted asylum, the Mexican government granted us permanent residency. I found work sewing uniforms, and started to build a new life for my family. My mother found work at the same business, and my children started school and continued recovering from the trauma of losing their father. [REDACTED] brother Julio also fled the country, but we have no way to contact him and do not know where he is today or if he is safe.

9. We lived in Mexico for about 16 months. We thought we were safe. But we were wrong. One day [REDACTED] showed me two men, and told me that these were the men who had killed [REDACTED]. I had picked up [REDACTED] with my mom, and we were walking with all our children from her school back to our work. I recognized the men as gang members from San Pedro Sula. I knew they were looking for us. The next morning, very early, we saw the same men on the corner of the street outside our home. We immediately decided to flee. Within hours, we packed up three days worth of clothes and fled. We left everything else behind.

10. This time I could not take another chance. I decided to take my family and flee to the United States to seek asylum. We went by bus to Tijuana. We arrived in Tijuana on January 25, 2017. The following day, we all walked towards the U.S. border. I was with my daughter, my mother, and her two kids. We approached the border checkpoint, and a group of armed U.S. agents, in uniform, started yelling at us to go away. They had weapons, and the one of them who spoke Spanish started to draw his gun and yelled at us to go away, saying we were in the wrong place. We were all terrified, and turned away. We did not go back because we were so frightened, and did not know where to go next.

11. We were lucky to find a refuge for women where we are staying now. We are still trying to figure out how to seek asylum, and are seeking advice from agencies in Tijuana on how to seek asylum at the checkpoint. We do not understand why we were turned away.

12. I fear that if I am returned to Honduras with [REDACTED] and the rest of my family, the gang will kill all of us. The gang knows that [REDACTED] told us who killed [REDACTED], and will kill us all because we are related to [REDACTED]. The gang operates throughout Honduras, so we would be found and killed anywhere in the country. We are also at risk of being killed in Mexico for the same reason. The gang has pursued my family all the way to Mexico, and can operate anywhere in Mexico. We will not be safe. If the gang hunted us down in Chiapas, they can do so anywhere in the country.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed at Tijuana, Mexico on February 3, 2017.

By: [REDACTED]

CERTIFICATE OF TRANSLATION

I, [REDACTED] declare that I am fluent in both English and Spanish. I certify that I translated the above declaration from English into Spanish verbally to the best of my ability, in the presence of [REDACTED] on February 3, 2017, and that she indicated that she understood my translation and that the information in the declaration was true and correct prior to signing it.

By: [REDACTED]

Declaration of [REDACTED]

1. My name is [REDACTED] (born 11/28/1984), and I was born in Ahuachapan, El Salvador. I fled El Salvador in June 2016.
2. After I crossed into Mexico from Guatemala I was attacked by organized crime. They threatened to kill me and held a machete to my neck and robbed me of all my possessions.
3. After I was assaulted, I was able to make it to a migrant shelter in Chahuites, Oaxaca, Mexico. There migrant shelter staff helped me file a complaint against my attackers and helped me obtain a temporary humanitarian visa to ensure me safe passage through Mexico to my destination of the US. I then went to the migrant shelter in Ixtepec, Oaxaca, Mexico where I waited until I received my visa. As soon as I received my visa I left for the US-Mexico border in Tijuana.
4. I arrived in Tijuana, Mexico on October 29, 2016. I came to Tijuana fleeing persecution in my home country of El Salvador, with the intent of requesting asylum in the United States.
5. I arrived at the bus station without any idea of where I was, but after asking around, I was able to find the address for a migrant shelter where I was able to sleep and get some food.
6. On November 11, 2016 I went to the Chaparral border crossing to try to turn myself in and request asylum in the US. I got in line and walked all the way up to the actual gate where you enter the United States. There were two guards at the gate and I walked up to them and told them that I wanted to request political asylum in the US. They told me there was nothing they could do for me and that if I wanted asylum in the US I had to go talk to Grupos Beta.
7. The next morning, I went to talk to Grupos Beta at the trailer where they give assistance to migrants. There they told me to go talk to Mexican immigration officials in a different building.
8. Mexican immigration officials asked me if I had any documents to be in Mexico and I showed them my temporary humanitarian visa. They told me that if I try to present myself to US immigration officials that they were going to destroy my Mexican humanitarian visa and deport me to El Salvador. The officer then told me that I should try to fix my status here in Mexico to get permanent visa.
9. I don't have any family in Mexico and don't have any money to live. I do have family in the United States in California, which is why I came to the US when I was forced to flee El Salvador.

I declare under penalty and pains of perjury and under all applicable federal law that the forgoing is true and correct to the best of my ability and knowledge.

[REDACTED]

December 10, 2016

I, [REDACTED], am competent to translate from Spanish into English, and certify that the translation of Declaration of [REDACTED] true and accurate to the best of my abilities.

[REDACTED]

December 10, 2016

Declaration of [REDACTED]

1. My name is [REDACTED] (born 2/19/1991), and I was born in Ahuachapan, El Salvador. I fled El Salvador in June 2016.
2. After I crossed into Mexico from Guatemala I was attacked by organized crime. They threatened to kill me and held machetes to my neck and robbed me of all my possessions.
3. After I was assaulted I was able to make it to a migrant shelter in Chahuities, Oaxaca, Mexico. There migrant shelter staff helped me file a complaint against my attackers and helped me obtain a temporary humanitarian visa to ensure me safe passage through Mexico to my destination of the US. I then went to the migrant shelter in Ixtepec, Oaxaca, Mexico where I waited until I received my visa. As soon as I received my visa I left for the US-Mexico border in Tijuana.
4. I arrived in Tijuana, Mexico on October 29, 2016. I came to Tijuana fleeing persecution in my home country of El Salvador, with the intent of requesting asylum in the United States.
5. I arrived at the bus station without any idea of where I was, but after asking around I was able to find the address for a migrant shelter where I was able to sleep and get some food.
6. On November 11, 2016 I went to the Chaparral border crossing to try to turn myself in and request asylum in the US. I got in line and walked all the way up to the actual gate where you enter the United States. There were two guards at the gate and I walked up to them and told them that I wanted to request political asylum in the US. They told me there was nothing they could do for me and that if I wanted asylum in the US I had to go talk to Grupos Beta.
7. The next morning, I went to talk to Grupos Beta at the trailer where they give assistance to migrants. There they told me to go talk to Mexican Immigration officials in a different building.
8. Mexican immigration officials asked me if I had any documents to be in Mexico and I showed them my temporary humanitarian visa. They told me that if I try to present myself to US immigration officials that they were going to destroy my Mexican humanitarian visa and deport me to El Salvador. The officer then told me that I should try to fix my status here in Mexico to get permanent visa.
9. I don't have any family in Mexico and don't have any money to live. I do have family in the United States in California, which is why I came to the US when I was forced to flee El Salvador.

I declare under penalty and pains of perjury and under all applicable federal law that the forgoing is true and correct to the best of my ability and knowledge.

[REDACTED]

December 10, 2016

I, [REDACTED] am competent to translate from Spanish into English, and certify that the translation of
Declaration of [REDACTED] is true and accurate to the best of my abilities.

[REDACTED]

December 10, 2016



Re: Se solicita comunicación urgente

Fri, Mar 31, 2017 at 10:47 AM

To: [REDACTED]
Cc: [REDACTED]

WOW! Thank you so much!!!!!!!!!!!!!!

2017-03-31 9:37 GMT-07:00 [REDACTED]

----- Forwarded message -----
From: [REDACTED]@cnhdh.org.mx>
Date: 2017-03-30 12:27 GMT-07:00
Subject: Se solicita comunicación urgente
To: [REDACTED]

Estimado señor [REDACTED]

Me refiero a su queja recibida en este Organismo Nacional, mediante la cual hace valer presuntas violaciones a derechos humanos cometidas en su agravio, por servidores públicos del Instituto Nacional de Migración.

En razón de lo anterior, esta Comisión Nacional requirió al INM, información respecto a los hechos constitutivos de la queja, requerimiento que fue atendido en su oportunidad.

Del análisis realizado a su queja y a la respuesta emitida por la autoridad señalada como responsable, se advirtió que existen contradicciones, ya que el INM sostiene que no es función de dicho instituto otorgar cita para el ingreso a Estados Unidos de América a solicitar asilo.

Por lo anterior resulta necesario establecer comunicación inmediata con usted con la finalidad de que manifieste lo que a su derecho convenga y, en su caso, aporte los elementos adicionales de prueba que tenga a su alcance.

Quedo a sus órdenes en el número telefonico [REDACTED]

Saludos cordiales



[REDACTED]
Visitador Adjunto Oficina Tijuana
Comisión Nacional de los Derechos Humanos

De conformidad con el artículo 3 fracciones III y V de la Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental, los correos electrónicos, su contenido y sus archivos adjuntos se consideran documentos e información, por lo que pueden ser objeto de solicitudes de información.

[REDACTED]

This e-mail contains PRIVILEGED and CONFIDENTIAL information intended only for the use of the addressee(s) named above. If you are not the

LATHAM & WATKINS LLP
Manuel A. Abascal (Bar No. 171301)
manny.abascal@lw.com
Wayne S. Flick (Bar No. 149525)
wayne.s.flick@lw.com
James H. Moon (Bar No. 268215)
james.moon@lw.com
Robin A. Kelley (Bar No. 287696)
robin.kelley@lw.com
Faraz R. Mohammadi (Bar No. 294497)
faraz.mohammadi@lw.com
355 South Grand Avenue, Suite 100
Los Angeles, California 90071-1560
Telephone: +1.213.485.1234
Facsimile: +1.213.891.8763

AMERICAN IMMIGRATION COUNCIL	CENTER FOR CONSTITUTIONAL
Melissa Crow (<i>pro hac vice</i> pending)	RIGHTS
<i>mcrow@immcouncil.org</i>	Baher Azmy (<i>pro hac vice</i> pending)
Karolina Walters (<i>pro hac vice</i> pending)	<i>bazmy@ccrjustice.org</i>
<i>kwalters@immcouncil.org</i>	Ghita Schwarz (<i>pro hac vice</i> pending)
Kathryn Shepherd (<i>pro hac vice</i> pending)	<i>gschwarz@ccrjustice.org</i>
<i>kshepherd@immcouncil.org</i>	Angelo Guisado (<i>pro hac vice</i> pending)
1331 G Street, NW, Suite 200	<i>aguisado@ccrjustice.org</i>
Washington, DC 20005	666 Broadway, 7th Floor
Telephone: +1.202.507.7523	New York, NY 10012
Facsimile: +1.202.742.5619	Telephone: +1.212.614.6464
	Facsimile: +1.212.614.6499
<i>Attorneys for Plaintiffs</i>	

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)

**DECLARATION OF LEAH JAHAN
CHAVLA IN SUPPORT OF
PLAINTIFFS' 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

DECLARATION OF LEAH JAHAN CHAVLA OF
THE WOMEN'S REFUGEE COMMISSION

I, Leah Jahan Chavla, hereby declare as follows:

1. I am a Program Officer within the Migrant Rights and Justice (MRJ) Program of the Women's Refugee Commission (WRC), where I have worked on research and policy advocacy since October 2016. For three years prior to joining the WRC, I worked as a junior and senior attorney within the Rapporteurships on the Rights of Migrants and on Human Rights Defenders, respectively, at the Inter-American Commission on Human Rights (IACHR). I am admitted to practice law in New York. I make this declaration based on my personal knowledge except where I have indicated otherwise. If called as a witness, I could and would testify competently and truthfully to these matters.

2. I submit this declaration to document the widespread and systematic denial by the U.S. government of the rights of asylum seekers who present themselves at ports of entry along the U.S.–Mexico border.

The Women's Refugee Commission and the
Migrant Rights and Justice Program

3. The WRC is a non-profit organization that advocates for the rights of women, children, and youth fleeing violence and persecution. The WRC is based in New York, New York; the MRJ Program is based in Washington, D.C.

4. The WRC was founded in 1989, originally as a program within the International Rescue Committee, after having identified a dearth of programming to protect women and girls displaced by humanitarian crises around the world. It subsequently evolved into an independent entity. WRC's mission is to improve the lives and protect the rights of women, children and youth displaced by conflict and crisis.

5. The WRC is a leading expert on the needs of refugee women and children, and the policies and programs that can protect and empower them. The

1 WRC regularly consults displaced women, children, and youth, and works with the
2 community-based organizations that are usually the first responders in any
3 humanitarian crisis. It then raises those needs with policy makers and
4 implementers, including local and national governments, the United Nations, and
5 other international non-governmental organizations that drive humanitarian policy
6 and practice.

7 6. The MRJ program focuses on the right to seek asylum in the United
8 States. It strives to ensure that refugees, including women and children, are
9 provided with humane reception in transit and in the United States, given access to
10 legal protection, and protected from exposure to gender discrimination or gender-
11 based violence. The MRJ program regularly consults with diverse stakeholders,
12 including affected migrants and refugees; community-based, national, and
13 international organizations; policymakers, including Members of Congress and
14 their staff; and federal government officials from several departments and agencies
15 that work on immigration-related issues and conduct oversight.

16 7. Since 1996, the MRJ team has made numerous visits to the southwest
17 border region, including along Mexico's northern border, as well as to immigration
18 detention centers for adult women and families and to shelters housing
19 unaccompanied children throughout the country. Based on the information that we
20 collect on these visits and our legal and policy analysis of the issues, we advocate
21 for improvements through various methods, including meetings with government
22 officials and service providers, and by documenting our findings through fact
23 sheets, reports, backgrounders, and other materials. We make recommendations to
24 address identified or observed gaps or ways in which we believe the corresponding
25 department or agency could improve its compliance with the relevant standards.
26 We use these materials in our advocacy work to inform the perspectives and
27 decisions of policymakers. Although the WRC has not traditionally litigated cases
28 directly, the MRJ program has filed amicus briefs and declarations in pending

1 litigation on issues such as the conditions and standards for the custody of
2 unaccompanied children.

3 **Recent Experiences of Asylum Seekers in**
4 **Encounters with U.S. Authorities**

5 8. Starting in December 2016, a colleague from the MRJ program and I
6 have conducted several visits to the U.S.–Mexico border, after receiving reports
7 from local advocates that asylum seekers were being systematically turned away
8 from U.S. land Ports of Entry. Specifically, in order to investigate these reports,
9 we traveled to: Nogales, Arizona and Nogales, Sonora, Mexico on December 7-8,
10 2016; Calexico, California and Mexicali, Baja California, Mexico on February 14-
11 15, 2017; McAllen, Texas and Reynosa, Tamaulipas, Mexico on February 16-17,
12 2017; and Laredo, Texas and Nuevo Laredo, Tamaulipas, Mexico on March 28-30,
13 2017.

14 9. Each of the visits had a similar structure. We would spend a day or
15 more on the Mexican side of the border in places that migrants passed through,
16 including a *comedor* (cafeteria), shelters, and/or repatriation centers for deported
17 Mexican nationals. The amount of time that migrants spend in these locations
18 ranged from a matter of hours to a few days. In order to enter and exit Mexico, my
19 colleague and I would cross the land border on foot. In every location we visited,
20 we spoke with migrants and asylum seekers about their experiences crossing the
21 border, trying to cross the border, or before attempting to cross the border from
22 Mexico into the United States via a land Port of Entry. All of the asylum seekers
23 we encountered were seeking safe haven in the United States after fleeing targeted
24 violence or other serious harm in their home countries. On these visits, we would
25 also spend a day on the U.S. side of the border, to speak with local organizations,
26 service providers and shelters, and, where possible, government officials to learn
27 more about what they were observing on these same issues.

Manner in Which Asylum Seekers Are Denied Processing

10. During the entire time that we spent at the Nogales Port of Entry, I observed a constant flow of foot traffic through the pedestrian lines. I understand that many persons of Mexican origin cross the border regularly to conduct business, go shopping, for educational purposes, and to visit with family, among other reasons, and that asylum seekers presenting themselves at Ports of Entry constitute a small part of this flow. Nevertheless, in all four Ports of Entry we visited (counting each sister city across the border as a pair), multiple sources confirmed to me that asylum seekers were being systematically refused for processing and turned away from U.S. Ports of Entry.

11. At the time of our interviews with asylum seekers and shelter personnel in Nogales (Sonora), Mexicali, and Nuevo Laredo, they related to us that all asylum seekers, except for those from Mexico, were being told by U.S. border officials that prior to processing or entry they would have to coordinate with certain Mexican immigration authorities known as "Grupo Beta."

12. Asylum seekers and shelter personnel informed us that Grupo Beta officials maintained lists of asylum seekers waiting to present at a specific Port of Entry and would accompany a fixed number of them, as a group, to the Port of Entry at a set time every day. We were told that if an asylum seeker was not accompanied to the Port by a Mexican official, he or she would be turned away by U.S. authorities and refused processing.

13. All of the asylum seekers from Honduras, Guatemala, and El Salvador with whom I spoke expressed fear of coordinating with Mexican immigration authorities to present themselves at the Port of Entry. Their fears were based on previous encounters with Mexican immigration officials, who had either insulted them for being from a Central American country or threatened to have them detained and/or deported. When an asylum seeker approached a Port of Entry and was not accompanied by Grupo Beta, they reported being systematically turned

1 away by CBP. Based on my interviews with asylum seekers, shelter personnel,
2 and advocates in the field, I learned of two or three main responses that U.S.
3 authorities provide to asylum seekers when turning them away from a Port of
4 Entry: (a) “insufficient space” at the Port, sometimes followed by the officer
5 telling the asylum seeker to come back at a later date; (b) “policies have changed,”
6 sometimes coupled with the officer adding that the individual “no longer qualifies
7 for asylum”; and/or (c) “go away,” sometimes coupled with threats to call Mexican
8 immigration authorities to remove the individual from the premises or use of force
9 by the Customs and Border Protection (CBP) officers themselves to remove the
10 individuals from the Port area.

11 14. My colleague and I accompanied asylum seekers on two different
12 occasions as they approached Ports of Entry to observe how U.S. officials treated
13 them and whether they would be admitted for processing. At no point did we ever
14 represent ourselves as the asylum seekers’ attorneys nor did we provide any of
15 them with any legal advice or representation. Our only involvement was to
16 observe their approach to the border and how they were treated and processed to
17 the extent possible. Our observations corroborated the reports of the asylum
18 seekers we interviewed.

19 **A. “Insufficient space”**

20 15. On December 9, 2016, we accompanied three asylum seekers – a
21 young woman from El Salvador and a father and adolescent son from Guatemala –
22 from shelters in Nogales, Sonora to the downtown Nogales Port of Entry.

23 16. The downtown Nogales Port of Entry is reportedly the only Port
24 entrance of three total at Nogales that accepts asylum seekers.

25 17. My colleague and I stood in line immediately behind these three
26 asylum seekers in the pedestrian line. The young woman was the first of the group
27 in line. The first “official” she encountered was a Mexican private security guard,
28 who was stationed immediately in front of the metal gate and turnstile into the port

1 of entry and wore a jacket that said "SEGURIDAD PRIVADA" [Private Security].
2 A patch on the guard's clothing said "VSH Seguridad," which, according to the
3 company's website, is a private security company based in Hermosillo, Sonora,
4 Mexico. A man, whom I identified as an officer from CBP's Office of Field
5 Operations (OFO) based on the uniform he was wearing, was standing directly
6 behind the gate and turnstile and was yelling in English and Spanish to all the
7 people in the line to have their "documents in hand." The private security guard
8 repeated these instructions and cursorily glanced at each person's documents
9 before allowing them to walk through the turnstile.

10 18. We could not hear the entire conversation between the young woman
11 and the security guard since we were a few steps behind the woman. After she
12 spoke to him, I saw the security guard make a quick facial expression and shrug as
13 if he were momentarily confused or did not know exactly what to do in these
14 circumstances; he then indicated that the woman should wait off to the side of the
15 line. The father and son's interaction with the security guard was almost identical.
16 Without saying anything to the private security guard, my colleague and I moved
17 off to the side as well, behind the three asylum seekers.

18 19. After five minutes, I heard the OFO officer, who had been standing
19 immediately behind the turnstile, ask the Mexican private security guard why we
20 were standing there. The OFO officer then motioned for the three asylum seekers
21 to approach him one at a time. Afterwards, he motioned for me to speak with him.
22 He asked me who I was, what I was doing there, and whether I was a U.S. citizen.
23 I gave the officer my name and told him that I worked at the Women's Refugee
24 Commission and that I was accompanying these three asylum seekers to the Port in
25 order to observe and monitor the process. He asked how long I had known them. I
26 had met the three asylum seekers earlier that day, and I told the officer as much. I
27 indicated that I was a U.S. citizen and offered to show him my passport, which he
28 declined. He then asked us all to wait off to a different side which was less

1 crowded (near the Sentri or express line for pre-approved travelers, as opposed to
2 the general line), while he “checked to see if there was enough space” for the three
3 asylum seekers.

4 20. While we waited, two different OFO officers separately approached
5 the gate from inside the port and asked the Guatemalan adolescent through the gate
6 how old he was. They stated that they were verifying capacity at the Port. After
7 about 30 to 35 minutes, the three asylum seekers were accepted into the Port.

8 **B. “Policies have changed.”**

9 21. On February 16, 2017, I accompanied an asylum-seeking woman
10 from Guatemala, who had previously been turned away from the Hidalgo Port of
11 Entry (the Port between Reynosa, Tamaulipas, Mexico and Hidalgo, Texas) back
12 to that same Port. Two attorneys from the Texas RioGrande Legal Aid (TRLA), a
13 Texas-based non-profit organization, were also accompanying this woman. The
14 two attorneys and the asylum seeker explained to me that after CBP officers turned
15 away this woman, she was picked up by cartel members on the McAllen-Hidalgo
16 International Bridge, which straddles the United States and Mexico, before she
17 even finished crossing back into Mexico. She was held captive by the cartel for at
18 least a few weeks until her family paid ransom and she was released.

19 22. After we crossed the international bridge, we walked into the Port
20 building at the Hidalgo Port of Entry, and I waited in line behind the asylum seeker
21 and the two attorneys. When the asylum seeker was called to approach an OFO
22 officer in one of the passport control lines, the attorneys accompanied her. I heard
23 one of the attorneys tell the officer that this woman was seeking protection in the
24 U.S. The officer immediately looked uncomfortable and a little flustered. He did
25 not speak as loudly or as clearly as the attorneys, so I could not hear everything he
26 said. However, I heard him tell the attorneys and the asylum seeker that “[t]he
27 policies have changed.” One of the attorneys questioned the officer’s assertion and
28 insisted that the officer process the woman and refer her for a credible fear

1 interview, as required by law. The officer responded that “things are changing all
2 the time...so it all depends,” and said that he would have to check. When the same
3 attorney again insisted that denying her would violate the law, the officer finally
4 relented and allowed our group to pass into a waiting area off to the side. The
5 waiting area had a separate door and a clear divider that separated it from the
6 passport control lines.

7 23. Once we were in the waiting area, another OFO officer instructed the
8 legal aid attorneys and me to sit in a separate chair bank from the asylum seeker.
9 A couple minutes later, a supervising OFO officer came out of the office adjacent
10 to the waiting area and asked why we were there. After explaining to him who we
11 were and why the legal aid attorneys decided to escort the asylum seeker, the
12 asylum seeker was ultimately admitted for processing.

13 **C. “Go Away”/Forcible Removal**

14 24. Other Central American asylum seekers with whom I spoke on these
15 visits, recounted that CBP agents had told them to “go away” when refusing to
16 process them.

17 25. Asylum seekers also reported to me that when they insisted on being
18 processed or did not leave immediately, CBP officers would sometimes threaten to
19 call Mexican immigration authorities to have them removed from the premises.
20 On other occasions, the officers themselves would forcefully grab an asylum
21 seeker’s arm or forcefully nudge them along a passageway out of the Port area,
22 leading them back to Mexico.

23 26. Members of an asylum-seeking family we spoke with at a shelter in
24 Reynosa indicated at the time of our visit, on February 16, 2017, that they had
25 already attempted to present themselves at the Hidalgo Port of Entry on four
26 occasions between January 15, 2017 and February 16, 2017.

27 27. The family, from Honduras, was comprised of a mother, a father, and
28 their three-year-old daughter. The mother told us that on the first three attempts,

1 CBP officers told her that the Port was full, there was no space, and that her family
2 should come back again, either later that day or the next day.

3 28. On the fourth attempt, she was simply told to go away and not to
4 come back. She told me that she wanted to protest, but was so afraid that the
5 officers would call Mexican immigration authorities, as they had previously
6 threatened other asylum seekers at the shelter, that she and her family complied.

7 29. When we spoke, the mother and father were waiting at the shelter,
8 trying to assess their options. The mother said they no longer had any money.
9 While she was grateful to the shelter for providing them with a place to stay and
10 some food, she was concerned that the food, which consisted mostly of rice and
11 beans, lacked the essential nutrients that her child needed for healthy development,
12 and she could no longer afford to buy any supplements. She also seemed very
13 frightened and anxious and was constantly looking around and speaking in soft
14 tones. Although she never told me specifically why she and her family fled
15 Honduras, she said she was very afraid and did not want to return.

16 **Threatening Conditions along Mexico's Northern Border**

17 30. During my visits, I saw and spoke with many asylum seekers who
18 reported that CBP had refused to process them. These individuals, who were
19 waiting in shelters in northern Mexico while figuring out what to do next were in a
20 very vulnerable situation. Unable to afford other accommodations, these asylum
21 seekers were dependent on non-governmental entities to provide them with lodging
22 and food.

23 31. Asylum seekers stranded along Mexico's northern border are
24 particularly susceptible to opportunistic or predatory behavior of the cartel in this
25 area.

26 32. In Reynosa, for example, asylum seekers told me that "the cartel owns
27 the [international] bridge [leading to the Hidalgo port of entry] and the river."
28 They explained to me that if an individual cannot pay the cartel to cross either the

1 bridge or the river into the U.S., the cartel may abduct that person; beat, torture,
2 rape, or kill him or her; and/or extort his or her family for ransom. They explained
3 further that the cartel sometimes tortures people who disobey them, for example by
4 cutting off an ear, and then releases that person to “send a message.”

5 33. Personnel and migrants at both shelters I visited in Reynosa told me
6 they were afraid that the cartel might come into the shelter “at any moment.” They
7 also told me that the cartel has agents that infiltrate shelters or monitor shelter
8 activity.

9 34. One asylum seeker from El Salvador, who was badly injured in a car
10 accident on his way north through Mexico, was recuperating in a shelter when I
11 met him. He was waiting until he could walk again before attempting to present
12 himself at the Hidalgo Port of Entry. The man told me that he was terrified of
13 leaving the shelter and would not do so on his own, as “everyone knows who is
14 from Reynosa and who isn’t.” If you are not from Reynosa, he told me, “te
15 levantan” [they pick you up], referring to the cartel. He told me this in whispers,
16 after looking around the room nervously.

17 35. I also personally observed the presence of cartel agents in Nogales
18 and in Nuevo Laredo. For example, in Nogales, Sonora, after crossing the border
19 into Mexico via the pedestrian lane at the Mariposa entrance, there is a sidewalk
20 that stretches under a bridge from where, as I kept walking, I made eye contact
21 with a man standing on the side of the bridge, dressed in all black with a black ski
22 mask over his nose and mouth. Our local contact, who works for an organization
23 that provides food and shelter to migrants, told me to look away and not to make
24 eye contact again. She explained that there are cartel members stationed at the
25 bridge all the time to watch who is coming and going.

26 36. As we continued walking towards the *comedor* (cafeteria), which is
27 located approximately 300 feet from this bridge in Mexico, I noticed a hill off to
28 the right, and I saw a figure standing at the top of the hill. Our local contact

1 informed me that the cartel stations another lookout on the top of the hill. Every
2 time I had the opportunity to look at that spot on the top of the hill – at mid-
3 morning, lunchtime, and when we were headed back to the United States – there
4 was always someone standing there, watching.

5 37. In Nuevo Laredo, the priest who runs the migrant shelter told me that
6 the neighboring area and buildings across the street from the shelter are “staging
7 areas” for organized crime. He indicated that it was “not safe” to walk or spend
8 time outside around the shelter. The priest also told me that there is an unofficial
9 9:00 p.m. curfew in place for Nuevo Laredo, since violent crime picks up at
10 nighttime.

11 38. In my role at the WRC, I continue to monitor this issue. Due to the
12 worsening security situation in the Mexican state of Tamaulipas, which abuts
13 southern Texas from Brownsville to Laredo, largely consisting of frequent
14 shootouts between the cartels and Mexican law enforcement, my organization has
15 prohibited me for the moment from conducting any field work there until the
16 situation improves. WRC continues to remain very concerned about this trend and
17 will continue to invest resources in monitoring this issue, due to the serious
18 impacts that turnbacks have on the rights and well-being of asylum seeking
19 individuals arriving at the U.S. border.

20
21 I declare under penalty of perjury under the laws of the United States of
22 America that the foregoing is true and correct.

23 Executed on June 21, 2017 at Washington, DC.

24

25

26

27

28



Leah Jahan Chavla

LATHAM & WATKINS LLP
Manuel A. Abascal (Bar No. 171301)
manny.abascal@lw.com
Wayne S. Flick (Bar No. 149525)
wayne.s.flick@lw.com
James H. Moon (Bar No. 268215)
james.moon@lw.com
Robin A. Kelley (Bar No. 287696)
robin.kelley@lw.com
Faraz R. Mohammadi (Bar No. 294497)
faraz.mohammadi@lw.com
355 South Grand Avenue, Suite 100
Los Angeles, California 90071-1560
Telephone: +1.213.485.1234
Facsimile: +1.213.891.8763

AMERICAN IMMIGRATION COUNCIL
Melissa Crow (*pro hac vice* pending)
mcrow@immcouncil.org
Karolina Walters (*pro hac vice* pending)
kwalters@immcouncil.org
Kathryn Shepherd (*pro hac vice* pending)
kshepherd@immcouncil.org
1331 G Street, NW, Suite 200
Washington, DC 20005
Telephone: +1.202.507.7523
Facsimile: +1.202.742.5619

CENTER FOR CONSTITUTIONAL
RIGHTS
Baher Azmy (*pro hac vice* pending)
bazmy@ccrjustice.org
Ghita Schwarz (*pro hac vice* pending)
gschwarz@ccrjustice.org
Angelo Guisado (*pro hac vice* pending)
aguisado@ccrjustice.org
666 Broadway, 7th Floor
New York, NY 10012
Telephone: +1.212.614.6464
Facsimile: +1.212.614.6499

Attorneys for Plaintiffs

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)

**DECLARATION OF JENNIFER
HARBURY IN SUPPORT OF
PLAINTIFFS' 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

DECLARATION OF JENNIFER HARBURY

My name is Jennifer Kristina Harbury, my date of birth is October 27, 1951, and I am a citizen of the United States. I swear under penalty of perjury that the following is true and correct.

1. I am a practicing attorney and I reside in Weslaco, Texas, a town located near the Texas-Mexico border. I graduated from the Harvard School of Law in 1978, and moved to the Rio Grande Valley then. I specialize in civil rights and international human rights issues.
2. I am quite familiar with the city of Reynosa, Mexico. It takes approximately a half an hour to drive there from my home. Years ago, my friends I greatly enjoyed spending time there, taking in the arts, cuisine, music, scenery and culture of northern Mexico.
3. Reynosa is a large, populous, industrial city, and is located directly on the Rio Grande. It is quite close to central Mexico, in comparison to cities like Nogales or Tijuana. These characteristics, unfortunately, have made it very valuable to the cartels and local gangs dedicated to trafficking narcotics and human beings. In turn this has caused extreme violence when competing cartels/gangs engage in turf wars with one another, or battle the Mexican military for control of the area. The cartels and gangs also engage in widespread violence against any civilians refusing to collaborate with the cartels and gangs. Kidnappings, rapes, shootings and robberies of civilians have become commonplace. As discussed below, immigrants, whether northward-bound, or recently deported from the United States, are currently a primary target.
4. By 2000, Reynosa had become a dangerous city. Tourists began to avoid it altogether. My friends no longer spend time there unless necessary. United States officials, including U.S. Border Patrol agents, were, and still are, strongly advised not to cross into Mexico at all.
5. In 2009, by way of example, a young Mexican woman was illegally removed from Texas by U.S. Border Patrol agents, despite the protests by her and her friends that she would be killed in Reynosa. As they explained, her abusive ex-partner lived there and was working with the cartels.

The woman was nevertheless forced to return without a hearing. She was found strangled and burned in an incinerated car days later.

6. Although there have been some years that inspired hope that the killings might subside, 2017 has been extraordinarily violent. The Mexican army has been clashing with competing cartels, resulting in numerous and deadly gun battles. Civilians have been killed or injured in the cross fire. Worse yet, kidnappings have become a standard method of obtaining funds. The cartels/gangs in Reynosa have learned that most refugees heading north, and/or deportees left in Reynosa, are likely to have friends or relatives in the United States who will somehow come up with the ransom. As a result there have been constant kidnappings of persons between the refugee shelters and the international bridge, or between these locations and the Reynosa bus station. Persons who appear to be Central American, or African or Haitian are prime targets. Mexican citizens who were obviously apprehended in the United States and dumped in Reynosa without funds, local relatives, appropriate clothing or in some cases even shoe laces, are equally at risk.
7. Meanwhile, the cartel/gang related violence in Central America has also reached untenable levels. The murder rate for this region is one of the highest in the world. This has caused a great surge of refugees, many of them young women with their children, northwards to the US-Mexico border. This began in 2014, and peaked again in late 2016.
8. I have remained closely informed about the human rights situation in Reynosa over the recent years. In part, this has been through friends and clients who still live on the Mexican side of the border, or who visit close family there on a regular basis. I also read the local Mexican newspapers such as El Manana, listen to the local radio, and review web sites posting news about the ongoing events such as gun fights, the discovery of wounded or dead persons, cartel stops and other matters.

9. Since January 2017 I have visited Reynosa frequently and discussed conditions with refugees, deportees, and human rights persons closely involved with these groups.
10. I have found this to be the most reliable way to learn about current events there. Most people know that if they report any cartel/gang activities, the consequences could be death to themselves or their families. Only a fraction of the violence is reported to or by the authorities, who also fear the cartels/gangs. Because, since January 2017, I have travelled to Reynosa at least once a week, the refugee community as well as the human rights and social workers have shared far more complete information with me.
11. In late 2016 I had received a number of reports that refugees seeking to legally present themselves at the U.S. Ports of Entry to request political asylum, were being denied the right to apply at all. Instead of being referred to the required credible fear officer, the U.S. Port of Entry officers were telling them they could not apply anymore, that things had changed after the election here. Some people were taken by the arm and physically removed from the U.S. offices. In some areas like Tijuana, people were told they had to schedule their application request with certain groups on the Mexican side. However, when the person signed up for such a meeting, it was never scheduled at all. In other areas we heard that groups in Mexico were forcing Central Americans and Haitians away from the international crossing, on the request of U.S. officials. Sometimes people were told to come back some other time. But no matter how many times they arrived, they were always sent back.
12. In Texas, this forced the refugees to take the dangerous and illegal route across the Rio Grande with a coyote. This is very costly, as the cartels must be paid for crossing rights. A couple with two small children for example, would have to pay \$2000 or even more.

13. One report we received in Texas was from a woman with a small child. She was raped the night of her forced return to Mexico. She had been turned away at the U.S. Port of Entry. As discussed below, many others have been kidnapped by the local cartels/gangs.

14. In mid-January 2017 I went to the Reynosa Hidalgo International Bridge to observe the conditions. On the north-bound walkway, I encountered a group of Mexican officers near the halfway point on the bridge. I asked why they were so far from their station on the Mexican side of the river. They stated that they were on the lookout for people who "might not be Mexican" who were trying to head north. I asked if they were working with the U.S. government on this and they stated that yes, they were working in collaboration with "CBP".

15. When I returned a few weeks later, the Mexican officers were no longer stationed at mid-bridge. However, a U.S. Port of Entry officer emerged from the U.S. offices, pulling a couple with a small child towards the Mexican side. They looked frightened so I asked where they were from. They replied, "Honduras", which as we know, has one of the highest murder rates in the world.

16. In late February I visited the two immigrant shelters in Reynosa. Several people there asked me for assistance. I received the following accounts from three refugees:

A. Ms. "A" is from Central America. She was in grave danger in her homeland so she took her eight year old daughter with her and fled to the United States. In northern Mexico, they were in a terrible accident. The child was killed, as were several others. Ms. "A" survived, with fractures to her legs, pelvis, and arm, as well as other injuries. When she was released from the hospital, she crossed the Reynosa- Hidalgo Bridge on her walker on December 18, 2016. At the United States Port of Entry, she told the officers that she was in danger. They told her to go back to Mexico and return some other time. They did not say when or make

an appointment. There were numerous empty seats available and the office is always open.

It was obvious that she could barely walk. She struggled back across the bridge and was kidnapped as she reached the Mexican side. Her family was able to pay the ransom, and she was finally released.

- B. Next, she sought our help. On Feb. 16, 2017 my colleagues and I accompanied her to the U.S. side of the same bridge. We reminded the officers there that she had the right to a credible fear interview. We also informed them that she had been improperly turned away earlier, resulting in her kidnapping. Although clearly angry, the officers referred her to the credible fear hearing, which she has passed.
- C. Mr. "JM" is a 19 year old from Central America. Two of his brothers have been killed by the local gangs; one shortly after being deported from the United States. The entire family became so endangered that they were all forced to flee. They reached Reynosa and understood that they were in grave danger there as well. The family tried once to cross the Reynosa Hidalgo Bridge in early 2017 but were told by U.S. officials they could not apply for asylum there. The parents tried again and were turned away by the U.S. officers a second time. They finally crossed the Rio Grande. JM did not go with them because he feared he would be sent back to Central America and killed, like his brother. I accompanied him across in person, again explaining to the U.S. officers that he had the right to be referred for a credible fear interview. He too was later found to have a credible fear.
- D. I also assisted a young couple and their three year old daughter from Central America, "Family C". The father had a scar on his torso from a bullet hole, confirming his story that the gangs intended to kill them. They had been turned away by U.S. officials at the U.S. Port of Entry at the Hidalgo- Reynosa Bridge some six times in January-February 2017. The officers said they did not have room for the family. They were terrified that if they kept

trying to cross they too would be kidnapped. They were finally taken into U.S. custody when a colleague and I accompanied them. They were found to have credible fear.

17. Credible sources in Reynosa who work with the refugee community tell me that from November 2016 through the present, most refugees who tried to seek asylum at the U.S. Port of Entry were point-blank turned away.

18. Because of the extreme Cartel battles during the last month, as well as the threats of the current administration to separate parents from their children, there are few northbound refugees at this time in Reynosa. I predict that a surge will recur however, given the impossibility of remaining in Central America

19. Meanwhile, the illegal rejections continue. In June 2017 a young woman, "Ms. L", from Central America did attempt to cross the Rio Grande into Texas. She was fleeing gang violence, and has a very visible, broad scar that runs from her nose downwards then along her jaw. A gang member did this to her with a piece of broken glass, because she had not paid her "taxes". After crossing the river, she was quickly apprehended by a U.S. Border Patrol officer. While he arranged to send her straight back to Reynosa, she asked if he didn't at least wish to hear why she was fleeing her homeland. He told her that she could not apply for asylum, and that things had changed under President Trump. On her second attempt she explained the danger she faced, but she was summarily removed to Reynosa anyway.

20. On June 14, 2017 I accompanied "Mr. B", a minor from Central America, to the U.S. Port of Entry at the Reynosa Hidalgo International Bridge. He had fled specific threats from local gangs because he refused to work for them. Two neighborhood youths had been killed within the last year for this reason, and others in his own family have been killed by gang members as well. When we entered the U.S. office, the U.S. officer at the passport turnstile asked B about his papers. B explained that he was there to ask for asylum because he was in danger.

21. The officer promptly became aggressive, asking B if any government officer was responsible for the dangers, or if this was simply a matter of widespread violence. He was not allowing B to enter the processing room and was visibly angry and argumentative. I intervened and the officer then argued with me as well. Finally B was allowed into the processing room.

22. I have no doubt that officials at the U.S. Ports of Entry will continue to turn away refugees seeking asylum if they are not accompanied by human rights observers or attorneys. I predict that many U.S. Border Patrol agents will also continue to expeditiously deport refugees without the mandatory credible fear interview. This is a double, and illegal, refoulement, as people are in serious danger both in their homelands as well as in Reynosa. See below.

23. Sending refugees back to Reynosa places them in direct jeopardy. There have been especially heavy gun battles between rival gangs, and also with the Mexican army, for most of May 2017. This has caused dozens of civilian deaths and injuries. Indeed, such shoot-outs have been frequent for many years there, although this time it is intense and prolonged. Worse yet, as noted above, the cartels/gangs are no longer content with the fees they charge all travelers for the right to cross the river. They have found it highly profitable to kidnap all immigrants and deportees they encounter, whatever their nationality, and hold them for ransom. It is assumed, usually correctly, that the person will have friends or family in the United States who will try desperately to assist them. When I visited one shelter in February, a group of very upset Cuban immigrants arrived, stating that three of their members had just been kidnapped. Well informed local sources were telling me that many refugees were being pulled off the local busses when they tried to reach the shelters.

24. I have also been hearing from clients and refugee groups that Mexican immigrants deported from the U.S. are often dumped in Reynosa, where they have never lived, and have no family or friends. The gangs await them at the foot of the bridge and often kidnap them. The bus terminal

in Reynosa for some time has been protected by police officers dressed in black from head to toe, and carrying automatic rifles. I visited the terminal in May 2017 and saw them take a woman from Michoacan aside, check her tickets, then accompany her into the station and to her gate. They were wearing ski masks to protect themselves and their family from cartel retaliation. I asked if people were safe in the terminal with these officers present. I was told that most were, but that they were at risk of kidnapping when they tried to reach the bus station, or to leave it. A smaller city bus taking people from the bridge to the shelters was being followed by an armed escort provided by the City. I heard from a knowledgeable source that last month in Nuevo Laredo, which is suffering a similar situation, some 20 deportees were taken out of the bus station during a sweep by gang.

25. An additional danger is imposed on these refugees when they are forced to cross illegally.

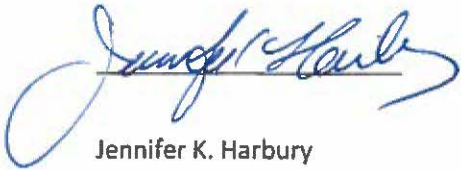
Persons working in this community estimate that at least six people have drowned between January and March 2017 in the Reynosa region. Although in many places the river is shallow, there are strong currents and treacherous weeds that hinder swimming. When coyotes use flimsy or overcrowded rafts, they frequently capsize. Worse yet, the cartels, as noted, control the river. Even if paid, they can decide to traffick or enslave a person.

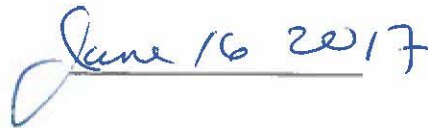
26. To summarize, I find it clear that U.S. Border Patrol, ICE and other Port of Entry officials working in Hidalgo country have a practice of summarily turning away asylum seekers who lawfully cross the Reynosa Hidalgo Bridge to present themselves to U.S. officials. They are sent back with no processing of any kind, and no evaluation of the grave dangers they face in Reynosa or their homelands. Likewise, many Mexican immigrants who have lived for years in the United States, are now being deported. They are simply abandoned in Reynosa. These people are not from

Reynosa or even a nearby area, they have no ties there, and no family or friends to assist them.

They are being targeted for kidnapping as well. This is refoulement.

27. To summarize, bona fide refugees and deportees are being placed in serious danger of imminent harm by the above described unlawful actions by U.S. officials.


Jennifer K. Harbury


DATE

Signed and Sworn to on this 16th day of Jun 2017 before me a notary public in and for the state of Texas.


Notary Public


Date



LATHAM & WATKINS LLP
Manuel A. Abascal (Bar No. 171301)
manny.abascal@lw.com
Wayne S. Flick (Bar No. 149525)
wayne.s.flick@lw.com
James H. Moon (Bar No. 268215)
james.moon@lw.com
Robin A. Kelley (Bar No. 287696)
robin.kelley@lw.com
Faraz R. Mohammadi (Bar No. 294497)
faraz.mohammadi@lw.com
355 South Grand Avenue, Suite 100
Los Angeles, California 90071-1560
Telephone: +1.213.485.1234
Facsimile: +1.213.891.8763

AMERICAN IMMIGRATION COUNCIL
Melissa Crow (*pro hac vice* pending)
mcrow@immcouncil.org
Karolina Walters (*pro hac vice* pending)
kwalters@immcouncil.org
Kathryn Shepherd (*pro hac vice* pending)
kshepherd@immcouncil.org
1331 G Street, NW, Suite 200
Washington, DC 20005
Telephone: +1.202.507.7523
Facsimile: +1.202.742.5619

Attorneys for Plaintiffs

CENTER FOR CONSTITUTIONAL
RIGHTS
Baher Azmy (*pro hac vice* pending)
bazmy@ccrjustice.org
Ghita Schwarz (*pro hac vice* pending)
gschwarz@ccrjustice.org
Angelo Guisado (*pro hac vice* pending)
aguisado@ccrjustice.org
666 Broadway, 7th Floor
New York, NY 10012
Telephone: +1.212.614.6464
Facsimile: +1.212.614.6499

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)

**DECLARATION OF JOANNA
WILLIAMS IN SUPPORT OF
PLAINTIFFS' 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

DECLARATION OF JOANNA WILLIAMS

I, Joanna Williams, hereby declare as follows:

1. I am the Director of Advocacy and Education for the Kino Border Initiative (KBI), a non-profit Catholic organization that offers humanitarian services to migrants and advocates on their behalf. I make this declaration based on my personal knowledge except where I have indicated otherwise. If called as a witness, I could and would testify competently and truthfully to these matters.
2. Founded in 2009, the Kino Border Initiative is a partnership of the Society of Jesus, California Province and Mexican Province, the Missionary Sisters of the Eucharist, the Diocese of Tucson, the Diocese of Nogales, and Jesuit Refugee Services. The Kino Border Initiative is located in Nogales, Sonora, Mexico and Nogales, Arizona. Our organization offers food, clothing, medical attention, and other humanitarian services in our aid center in Nogales, Mexico, known as the Centro de Atención al Migrante Deportado (Aid Center for Deported Migrants) – CAMDEP or Aid Center. KBI also offers shelter to women traveling alone and to certain men at high risk of violence in the city of Nogales, Mexico.
3. In addition to our humanitarian services, KBI documents abuses that migrants report to staff members, and advocates for humane, just, and workable migration policy in the United States and Mexico.
4. KBI staff give an intake survey to every individual who receives services at the Aid Center in Nogales, Mexico. In that survey, KBI requests basic information on country of origin, reason for migration, and any abuses that the individual has suffered in Mexico or the United States. If the individual has suffered abuses, KBI staff ask for

1 more details and offer to assist in filing a complaint with the
2 appropriate authorities in either Mexico or the United States.

- 3 5. In Mexico, when migrants describe instances of police abuse or
4 barriers to reporting crimes and pursuing investigations when they
5 have been victims of crimes, KBI staff assist in filing police reports
6 with the Procuraduría General de la República (Mexican Attorney
7 General's Office) - PGR..
- 8 6. When migrants describe instances of abuse by Customs and Border
9 Protection (CBP) in the United States and other obstacles to accessing
10 protection in the United States for those who are fleeing persecution,
11 KBI staff assist in filing complaints with CBP and the Department of
12 Homeland Security's Office of Inspector General (OIG) and Office
13 for Civil Rights and Civil Liberties (CRCL).
- 14 7. KBI maintains an internal database that tracks the basic information
15 from the intake survey, as well as all complaints filed with either the
16 U.S. or Mexican authorities. KBI does not keep detailed information
17 about abuses suffered where the individual has chosen not to pursue a
18 complaint.
- 19 8. When individuals indicate that they have come to the United States to
20 escape persecution, KBI staff give them an orientation on the
21 requirements for asylum and the asylum process in order to assist
22 them in deciding whether to present themselves at a United States Port
23 of Entry (POE) to request asylum. This orientation highlights the
24 possibility of detention prior to having an asylum claim adjudicated.
25 KBI staff also provide information about the process of crossing the
26 U.S.-Mexico border at a POE and, depending on the situation, will
27 offer to accompany asylum seekers to the POE.

- 1 9. There are three pedestrian POEs located along the border of Nogales,
2 Mexico and Nogales, Arizona. The KBI Aid Center in Nogales,
3 Mexico, is located right next to the Mariposa POE. KBI staff also
4 provide information about and accompany asylum seekers to the
5 DeConcini POE in downtown Nogales.
- 6 10. KBI only receives a portion of the total number of individuals who
7 present themselves at a POE in Nogales, Mexico to request asylum,
8 since many individuals fleeing persecution go directly to a POE and
9 do not come to the KBI Aid Center.
- 10 11. According to KBI's internal database, in 2016, the organization
11 received a total of 8,372 migrants at its Aid Center. Of those, 90%
12 were from Mexico and about 8.66% from Central America. Since
13 2014, KBI has received an increasing number of individuals reporting
14 violence as their primary reason for migration. In 2016, 5.8% of
15 Mexicans reported that violence was their primary reason for
16 migration, as well as 37% of Hondurans, 73% of Salvadorans and
17 23% of Guatemalans.

18
19 **January to Mid-October 2016**

- 20 12. From January to mid-October 2016, KBI staff conducted asylum
21 orientations with at least one hundred individuals from Mexico and
22 Central America.
- 23 13. For example, on April 15, 2016, I met with a Mexican mother at our
24 Aid Center in Nogales, Mexico. She arrived with her three minor
25 children after fleeing persecution and violence from the drug cartel in
26 their hometown in Mexico.
- 27 14. The mother told me that she and her children had gone to the

DeConcini POE in Nogales, Arizona, on the morning of April 15, 2016. When they arrived at passport control, she told the officer at the desk that she was afraid and wanted to seek asylum. This officer then sent the family into a holding cell at the port. After approximately an hour, another CBP officer approached the family. The mother told the officer that she wanted to seek asylum and tried to explain some of the threats she had faced in her home town. However, the CBP officer interrupted her, explaining, "If I help you, then everyone will want to come." The officer then told the mother that she needed a visa to enter the United States.

15. The CBP officer took photos and fingerprints of the mother and her children and placed them back into a holding cell for about another hour. Then, she asked the mother to sign about 20 forms. The officer did not explain what the paperwork was, and the mother did not understand what she was signing because the paperwork was only in English. After signing, the CBP officer told the mother to leave the port.
16. Later that day, the mother returned to the DeConcini POE to again try to seek asylum, but one of the officers at the port recognized her from the morning, approached her, and explained that, by signing the papers, she had renounced her right to enter the U.S. and she would have to wait five years to obtain a visa.
17. The mother told this CBP officer that she had come to ask for political asylum. He responded that if she wanted asylum, then she needed to bring evidence with her and that it was not his problem anyway.
18. After being turned away from the POE a second time, the mother learned about the KBI Aid Center from other individuals at the port.

- 1 19. The next day, I accompanied the mother and her children to the
2 Mariposa POE in Nogales, Arizona, where the mother again
3 expressed her fear to a CBP officer. It was only on this third attempt,
4 when I accompanied the mother and her children, that they were
5 appropriately allowed to access the asylum process.
- 6 20. Another example involves a 21-year-old Guatemalan mother and her
7 four-year-old son. After fleeing their country, the mother and her son
8 had been kidnapped by six armed men in Santa Ana, Sonora, Mexico,
9 and robbed and subjected to threats of serious harm.
- 10 21. When they arrived at the KBI Aid Center, the mother reported that she
11 and her son had presented themselves at the DeConcini POE and she
12 expressed her fear of return to her home country, but were turned
13 away. The mother reported that when she and her son entered the
14 POE, a CBP officer stopped them and asked for their identification
15 documents. The mother told the CBP officer that she was being
16 threatened in her country, had been robbed in Santa Ana, Sonora,
17 Mexico, and needed help. The CBP officer told the mother to leave
18 because she could not help her. Despite the mother's pleas for help,
19 the CBP officer told her to get out because she was in the way and
20 preventing others from walking through the turnstile.
- 21 22. The CBP officer ultimately forced the mother and her son to leave the
22 POE building and return to Mexico. The CBP officer called the
23 Mexican police. After about thirty minutes, the mother reported that a
24 Mexican police officer arrived and told the mother that she had to
25 leave the entire POE area, including the area approaching the POE on
26 the Mexican side of the border. He then called another police officer
27 and they brought the mother and son to the KBI Aid Center in

1 Nogales, Mexico.

- 2 23. It was only when KBI staff accompanied the mother and her son to
3 the Mariposa POE the next day that they were finally allowed to
4 access the asylum process.

5
6 **Mid-October to January 2017**

- 7 24. KBI staff who accompany asylum seekers to Nogales POEs used to
8 walk with the asylum seeker into the port building and stand directly
9 behind the individual as the asylum seeker asserted his/her fear.
10 However, around May 2016, CBP officers accused KBI staff and
11 volunteers of aiding and abetting the asylum seekers. After that
12 incident, port leadership told KBI staff that they were not to enter the
13 port building and could only observe asylum seekers presenting
14 themselves at the POEs from a distance.
- 15 25. As long as CBP officers were processing asylum seekers at the
16 Nogales POEs, KBI staff abided by CBP's request in order to try to
17 maintain a working relationship with CBP and to avoid any ill-will
18 towards the asylum seekers they accompanied.
- 19 26. However, once KBI staff began to hear of more instances in which
20 asylum seekers were turned back from the Nogales POEs without
21 being granted access to the asylum process, KBI staff began again to
22 accompany asylum seekers into the port building.
- 23 27. On October 25, 2016, local CBP officers told KBI that asylum seekers
24 were no longer being accepted for processing at the Mariposa POE,
25 and would only be accepted at the DeConcini POE.
- 26 28. The next asylum seekers who tried to present at the Mariposa POE
27 reported to KBI staff at the nearby Aid Center that they were

1 handcuffed, walked 200 yards away from the POE building, and
2 forced to return to Mexico.

3 29. Simultaneously, beginning on October 25, 2016, the number of
4 individuals prevented from seeking asylum when presenting
5 themselves at the DeConcini POE increased dramatically. From
6 October 25 through December 31, 2016, KBI identified at least
7 seventeen cases in which either individuals or families were turned
8 away from the DeConcini POE.

9 30. It is likely that other asylum seekers were turned away without the
10 knowledge of KBI staff, since the KBI Aid Center is located 1.8 miles
11 to the west of the DeConcini POE, just south of the Mariposa POE.

12 31. During this period, officers on duty at the DeConcini POE repeatedly
13 told asylum seekers and KBI staff that either there was no space to
14 process individuals who presented themselves at the POE or that CBP
15 was no longer accepting asylum seekers.

16 32. KBI staff reached out to the DeConcini POE leadership on three
17 separate occasions, and subsequently to the CBP Chief of Staff to try
18 to resolve these access issues. Each time, local port leadership told
19 KBI staff that every individual who arrived at the DeConcini POE and
20 expressed fear of return to his or her home country was being
21 processed for asylum at the time of arrival. The CBP Chief of Staff
22 told KBI staff that according to protocol all individuals arriving and
23 expressing fear at the port of entry should be referred to the asylum
24 process.

25 33. In some instances, KBI staff witnessed coordination between U.S.
26 authorities and Mexican authorities to deny people access to the
27 DeConcini POE. For example, once asylum seekers were turned

1 away from the POE, CBP officers would call the Mexican authorities
2 to pick up the individuals.

3 34. Private Mexican security guards working at the POE also would keep
4 asylum seekers away from the POE. At this time, Haitian migrants
5 were being processed at POEs in Nogales, and there was a special line
6 for processing Haitians established at the DeConcini POE. When
7 CBP officers turned away asylum seekers from countries other than
8 Haiti, the private Mexican security officers would not let the asylum
9 seekers join the line of Haitians who were requesting parole.

10 35. Asylum seekers turned away from the DeConcini POE during this
11 time period included families from Mexico, unaccompanied minors
12 from Central America, a single adult from Cameroon, and families
13 from Central America.

14 36. The KBI Aid Center also received multiple asylum-seeking
15 individuals and families who came to Nogales after having been
16 turned away from the San Ysidro/Otay Mesa POEs in Tijuana,
17 Mexico. KBI staff learned that once the practice of turning away
18 asylum seekers at the San Ysidro/Otay Mesa POEs became common,
19 asylum seekers would get on buses and work their way along the
20 U.S.-Mexico border hoping that they would be allowed to access the
21 asylum process at other POEs. Some of these asylum-seeking
22 individuals and families came as far as Nogales, Mexico.

23 37. For example, on November 27, 2016, two women who fled death
24 threats in Guatemala arrived at the KBI women's shelter in Nogales,
25 Mexico. The two women explained that they had previously tried to
26 seek asylum at one of the San Ysidro POEs in Tijuana, Mexico, on
27 November 7, 2016. At the POE entrance, an officer from the

1 humanitarian arm of the Mexican National Migration Institute (INM),
2 known as "Grupo Beta," stopped the two women from joining the line
3 to enter the United States. When the officer asked if they were
4 Mexican, the women said they had fled threats in Guatemala. He
5 responded that it was not his problem and that the women would be
6 told the same thing upon entering the POE. The Grupo Beta officer
7 told the women that in order to seek asylum in the United States, they
8 would have to go back into Mexico and obtain an "hoja de salida," an
9 immigration document indicating that the women had entered Mexico
10 from Guatemala.

11 38. The next day, the two women again attempted to seek asylum at the
12 same POE entrance and again were turned away by a Grupo Beta
13 officer who insisted, even more aggressively than the first, that they
14 were unable to seek asylum. After the second turn away, the two
15 women decided to travel by bus to Nogales, Mexico.

16 39. Prior to arriving at the KBI Aid Center, on November 27, 2016, the
17 two women tried once more to seek asylum, this time at the
18 DeConcini POE in Nogales. The two women presented themselves to
19 a CBP officer, who told them to wait. Shortly thereafter, INM
20 officials arrived and ordered both of the women to leave the port,
21 including the approach area to the port on the Mexican side of the
22 border. The Mexican officials took the two women to the INM office
23 in Nogales, Mexico, and told them that Mexican authorities would
24 detain them if they attempted to seek asylum in the United States
25 again.

26 40. The same day, KBI staff received the two women at the KBI women's
27 shelter in Nogales, Mexico. KBI staff gave them an orientation about

1 the asylum process in the United States, after which they spent a few
2 weeks at the shelter. On December 16, 2016, KBI's Mexico
3 Advocacy Director, Marla Conrad, accompanied the two women to
4 the DeConcini POE, where they again expressed fear of returning to
5 Guatemala and a desire to seek asylum. On that day, with the support
6 of KBI staff, the two women were finally able to access the asylum
7 process.

8 41. Also on November 27, 2016, our Assistant Program Director, Jorge
9 Capistrán Hernandez, accompanied a man fleeing persecution in
10 Honduras for being gay to the DeConcini POE, where the man
11 expressed a desire to seek asylum. After the asylum seeker passed
12 through the first turnstile at the port, a CBP officer stopped him. The
13 CBP officer asked the asylum seeker where he was from and what he
14 was doing in the United States. The asylum seeker responded that he
15 was from Honduras and wanted to ask for asylum because he was
16 fleeing from his country and also was afraid of being in Mexico.
17 The CBP officer told the asylum seeker that he had to wait outside the
18 POE (i.e. in Mexico) and opened the gate for him to leave the POE
19 building, but told the asylum seeker that someone from CBP would
20 return to process him.

21 42. After about twenty minutes, Mexican police arrived at the POE. The
22 Mexican police officers told the asylum seeker to come with them
23 because he could not stay at the POE and CBP had asked them to
24 detain him. The Mexican police also told the asylum seeker that U.S.
25 officials did not want to help him.

26 43. During the time period when asylum seekers were systematically
27 turned away from Nogales POEs, occasionally people were still

1 processed for asylum. In most of these cases, a member of our staff,
2 usually either myself or KBI's Mexico Advocacy Director Marla
3 Conrad, accompanied the asylum seekers to the POE and advocated
4 with CBP on their behalf. Only after such advocacy were these
5 individuals allowed to enter the U.S. and seek asylum.

- 6 44. Part of our concern with the rejection of asylum seekers at the
7 DeConcini POE is the extreme violence that individuals face in the
8 city of Nogales, as well as other Mexican border cities. One
9 Guatemalan family was kidnapped in Nogales, Mexico, prior to
10 attempting to seek asylum at the DeConcini POE, from which they
11 were subsequently turned away. Another asylum-seeking family also
12 was kidnapped in Nogales after being turned away at a different POE.
13 Such violence is common.
- 14 45. In 2016, KBI staff helped eleven individuals file police reports
15 regarding crimes of violence that they had suffered in or near Nogales,
16 Mexico. Most of those police reports were about kidnapping. The
17 vast majority of the individuals KBI staff encounter who have been
18 targets of crimes of violence either do not report the crimes to KBI
19 staff or are too afraid to file a police report.

20
21 **January to April 2017**

- 22 46. From January to April 2017, KBI received fewer Central Americans
23 fleeing violence than in the period from September to December
24 2016.
- 25 47. In April 2017, one Honduran family told KBI staff that the Honduran
26 government is not allowing single parents to flee with their children
27 without notarized authorization from the other parent. This

1 requirement delayed that particular family's exit and has similarly
2 prevented other families from departing from Honduras.

3 48. KBI continues to conduct orientations with asylum-seeking
4 individuals and families and to accompany them to the POE.

5 49. Since May 2017, the number of people fleeing violence from Central
6 America received at KBI's Aid Center in Nogales, Mexico, has been
7 increasing.
8

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on August 31, 2017 at Nogales, AZ.

A handwritten signature in black ink, appearing to read "Joanna Williams", is written over a horizontal line.

Joanna Williams

LATHAM & WATKINS LLP
Manuel A. Abascal (Bar No. 171301)
manny.abascal@lw.com
Wayne S. Flick (Bar No. 149525)
wayne.s.flick@lw.com
James H. Moon (Bar No. 268215)
james.moon@lw.com
Robin A. Kelley (Bar No. 287696)
robin.kelley@lw.com
Faraz R. Mohammadi (Bar No. 294497)
faraz.mohammadi@lw.com
355 South Grand Avenue, Suite 100
Los Angeles, California 90071-1560
Telephone: +1.213.485.1234
Facsimile: +1.213.891.8763

AMERICAN IMMIGRATION COUNCIL
Melissa Crow (*pro hac vice* pending)
mcrow@immcouncil.org
Karolina Walters (*pro hac vice* pending)
kwalters@immcouncil.org
Kathryn Shepherd (*pro hac vice* pending)
kshepherd@immcouncil.org
1331 G Street, NW, Suite 200
Washington, DC 20005
Telephone: +1.202.507.7523
Facsimile: +1.202.742.5619

CENTER FOR CONSTITUTIONAL RIGHTS
Baher Azmy (*pro hac vice* pending)
bazmy@ccrjustice.org
Ghita Schwarz (*pro hac vice* pending)
gschwarz@ccrjustice.org
Angelo Guisado (*pro hac vice* pending)
aguisado@ccrjustice.org
666 Broadway, 7th Floor
New York, NY 10012
Telephone: +1.212.614.6464
Facsimile: +1.212.614.6499

Attorneys for Plaintiffs

**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)

**DECLARATION OF CLARA LONG IN
SUPPORT OF PLAINTIFFS' 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

DECLARATION OF CLARA LONG

I, Clara Long, hereby declare as follows:

1. I make this declaration based on my personal knowledge except where I have indicated otherwise. If called as a witness, I could and would testify competently and truthfully to these matters.

2. I am a Senior Researcher in the U.S. Program of Human Rights Watch, and I am making this declaration in my professional capacity as a representative of Human Rights Watch. Prior to joining Human Rights Watch, I was a Teaching Fellow with the Stanford Law School International Human Rights and Conflict Resolution Clinic. I have researched and advocated for human rights in Bolivia, Brazil, Panama, and the United States. I am the co-producer of an award-winning documentary, Border Stories, about perspectives on immigration enforcement from both sides of the U.S.-Mexico border. I have also represented detained immigrants with the Florence Immigrant and Refugee Rights Project.

3. Human Rights Watch is a non-profit, non-governmental organization and the largest international human rights organization based in the United States. Among other human rights issues, we defend the rights of refugees, asylum seekers, and displaced people worldwide. Since 1978, Human Rights Watch has investigated allegations of human rights violations in more than 90 countries around the world, including the United States, by interviewing witnesses, gathering information from a variety of sources, and issuing detailed reports. Where human

1 rights violations are found, Human Rights Watch advocates for the enforcement of
2 those rights with governments and international organizations and in the court of
3 public opinion.
4

5 4. My area of specialization at Human Rights Watch is immigration and
6 border policy in the United States. In that capacity, I have written and researched
7 human rights reports and other Human Rights Watch materials on the treatment of
8 asylum seekers at the United States' borders since 2014.
9

10 5. In 2014, I authored a report for Human Rights Watch, entitled *You*
11 *Don't Have Rights Here: U.S. Border Screening and Returns of Central Americans*
12 *to Risk of Serious Harm*, which is available at
13 [https://www.hrw.org/report/2014/10/16/you-dont-have-rights-here/us-border-](https://www.hrw.org/report/2014/10/16/you-dont-have-rights-here/us-border-screening-and-returns-central-americans-risk)
14 [screening-and-returns-central-americans-risk](https://www.hrw.org/report/2014/10/16/you-dont-have-rights-here/us-border-screening-and-returns-central-americans-risk). The report found that some Customs
15 and Border Protection (CBP) officers applying expedited removal procedures
16 failed to refer Hondurans who had a fear of returning to their country for credible
17 fear interviews as required by U.S. law and in furtherance of the United States'
18 obligations under the Protocol Relating to the Status of Refugees which includes
19 the central guarantees of the 1951 Refugee Convention.
20
21
22
23

24 6. This data and interviews I conducted in 2014 with 25 Hondurans
25 returned to Honduras raised grave concerns about CBP's long time practices
26 relating to the protection of asylum seekers arriving at the U.S. southern border.
27
28

1 7. Since the publication of that report, I have received a set of documents
2 from U.S. Citizenship and Immigration Services (USCIS) in response to a Freedom
3 of Information Act request filed by Human Rights Watch and the American
4 Immigration Council on November 17, 2015. Some of the documents indicate that
5 CBP's mistreatment of asylum seekers at ports of entry along the southwest border
6 was a matter of concern for USCIS asylum officers who subsequently encountered
7 these same noncitizens during their credible fear interviews. A copy of the FOIA
8 request is attached as Exhibit A.
9

10
11
12 8. The records I received reference several incidents of mistreatment of
13 asylum seekers by officers from CBP's Office of Field Operations (OFO). These
14 incidents range from CBP officers providing noncitizens with false or intimidating
15 information to dissuade them from pursuing their asylum claims, to failing to ask
16 about an applicant's fear of return to his or her country, to alleged sexual assault of
17 an asylum applicant by a CBP officer.
18

19
20 9. For example, the records include a redacted USCIS memorandum
21 regarding a complaint by a Mexican asylum seeker who said she entered the U.S.
22 via the Otay Mesa port of entry on June 4, 2015. The woman told the USCIS
23 officer that, on that day, a CBP officer at the Otay Mesa port of entry told her that
24 the U.S. government would take her two U.S. citizen children away if she pursued
25 her asylum claim. This USCIS memorandum is attached as Exhibit B.
26
27
28

1 10. An asylum officer documented another case from May 2014 in
2 a separate memo, which states:

3
4 Applicant testified that he informed the interviewing CBP officer
5 [redacted] that he feared returning to Ecuador and wanted to “fight my
6 case.” Applicant testified that Officer [redacted] told him that if he
7 declared a fear of return to his home country he would spend three to
8 four months locked up in the “icebox” [a name commonly applied to
9 CBP detention facilities]. Applicant testified that he then changed his
10 testimony to agree with what the officer wanted him to say regarding
11 his fear of return to Ecuador.
12

13
14 This USCIS memorandum is attached as Exhibit C.
15

16 11. In another memo regarding an incident at the Hidalgo port of entry in
17 May 2014, an asylum officer wrote:

18 Applicant testified that he requested assistance from interviewing
19 CBP officer [redacted] because he feared returning to El Salvador.
20

21 Applicant testified that officer replied that he couldn’t provide
22 assistance because his job was to arrest and deport the applicant.
23

24 Applicant testified that interviewing officer did not read back sworn
25 statement; rather officer told him to sign for his deportation. I-867 A
26 & B [Record of Sworn Statement] show that applicant was recorded
27 as stating that he did not have a fear of returning to El Salvador.
28

1 This USCIS memorandum is attached as Exhibit D.

2 11. The documents also include a memo from an asylum officer regarding
3 a Salvadoran woman who entered at an unnamed U.S. port of entry on September
4 20, 2015 to seek asylum. During her credible fear interview with the asylum
5 officer, the woman provided the following testimony:
6

7
8 I entered the Garrita [port of entry] on September 20, and I asked for
9 asylum, for the problem which I fled El Salvador. A female officer
10 talked to me and told me that because my child was a U.S. citizen, the
11 U.S. government was going to take him from me. She said that at that
12 time, she could take my son and turn him over to the government and
13 deport me at that time. I asked for someone who could speak Spanish
14 who could explain it to me better. She yelled at me when I asked for
15 someone who spoke Spanish, and she pushed my hand away, and she
16 said that if I came to the U.S., I had to speak English. She took me in
17 and pushed me, and then she told me that I have to open very wide
18 and she touched my intimate parts, and she hit me there with a lot of
19 force, and she touched me really hard. I said "I don't understand, I'm
20 fleeing my country, how am I going to hide something in my intimate
21 parts?" And she continued touching it; I just don't understand.
22
23
24
25
26

27 This USCIS memorandum is attached as Exhibit E.

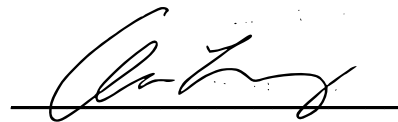
28 12. In addition to the above-referenced complaints documented by USCIS

1 asylum officers and contained in the FOIA production, Human Rights Watch has
2 spoken with several Mexican and Central American families who have attempted
3 to seek asylum at U.S. ports of entry on the southern border since April 2017. All
4 of them reported telling CBP officers that they were afraid of returning to their
5 countries of origin, but being denied access to the asylum process.
6

7
8 13. Taken together, Human Rights Watch's previous research, the
9 recorded concerns of USCIS asylum officers contained in records provided to us
10 under the Freedom of Information Act, and our recent interviews with families
11 who have been denied the right to seek asylum raise serious concerns about CBP's
12 practices involving asylum seekers.
13

14
15 14. I declare under penalty of perjury under the laws of the United States
16 that the foregoing is true and correct.

17 Executed on November 9, 2017 at New York, New York.
18
19

20
21 
22

23 Clara Long
24
25
26
27
28

Exhibit A



November 17, 2015

U.S. Citizenship and Immigration Services
National Records Center, FOIA/PA Office
P. O. Box 648010
Lee's Summit, MO 64064-8010

uscis.foia@uscis.dhs.gov

VIA First Class Mail and Electronic Mail

To Whom It May Concern:

This letter constitutes a joint request to United States Citizenship and Immigration Services ("USCIS") pursuant to the Freedom of Information Act ("FOIA")¹ and DHS's FOIA regulations² (the "Request"), submitted by Human Rights Watch ("HRW") and the American Immigration Council ("Council"), collectively referred to as the "Requesters" (or "we," or "our").

I. Request For Information

The Requesters seek all records held by the USCIS Asylum Division and prepared by USCIS asylum officers relating to, and/or mentioning or referring to alleged due process violations or other alleged misconduct by Customs and Border Protection (CBP) (hereinafter called "alleged violations or other alleged misconduct"). "Alleged violations or other misconduct" means any alleged or asserted due process violations; alleged conduct inconsistent or in violation of agency policy or regulations; alleged conduct outside the scope of the law, allegations that CBP failed to record fear of return expressed by migrants at the border; and alleged intimidation, coercion and physical abuse. This request include all records referring to due process violations by CBP agents discovered by asylum officers during credible fear interviews with noncitizens.

¹ 5 U.S.C. § 552.

² 6 C.F.R. § 5.1 *et seq.*

For the time period beginning on October 1, 2006 and continuing through the present day, individual-level data on records of alleged violations or misconduct committed by CBP staff with variables about each instance of such violations or misconduct including but not limited to:

- i. The date the instance of an alleged violation or other misconduct was recorded;
- ii. The date on which the alleged violation or other misconduct occurred;
- iii. Border Patrol station or CBP port of entry in which the alleged violation or other misconduct took place;
- iv. Border Patrol sector in which the alleged violation or other misconduct took place;
- v. Nationality of the person who the record alleges suffered as a result of the alleged violation or other misconduct;
- vi. Immigration status of the person who the record alleges suffered as a result of the alleged violation or other misconduct;
- vii. Age or date of birth of the person who the record alleges suffered as a result of the alleged violation or other misconduct;
- viii. Gender of the person who the record alleges suffered as a result of the alleged violation or other misconduct
- ix. The nature of the due process alleged violation or other misconduct, including a full description of the allegation
- x. All communications between asylum officers and the Asylum Division headquarters regarding the alleged violation or other misconduct committed by CBP.

We request electronic copies of this data in a workable format, such as Excel, pursuant to 5 U.S.C. § 552 (a)(3)(C), but we also seek all records, as defined above, which respond to this request. We also request that we receive current translation files for any fields containing coded entries.

II. Request For Public Interest Fee Waiver

The Requesters respectfully request a waiver of fees to process this Request. The Requesters are entitled to a fee waiver if “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”³ The Request meets this standard, and the Requesters are thus entitled to a fee waiver.

³ 5 U.S.C. § 552 (a)(4)(A)(iii); 6 C.F.R. § 5.11(k)(1).

- A. The Requesters are primarily engaged in disseminating information in order to inform the public about actual or alleged government activity.

DHS regulations set forth four factors to determine whether the disclosure of information is in the public interest: (1) whether the subject of the requested record concerns the operations or activities of the government; (2) whether the disclosure is likely to contribute to an understanding of government operations or activities; (3) whether the disclosure of the requested information will contribute to public understanding; and (4) whether the disclosure is likely to contribute “significantly” to public understanding of government operations or activities.⁴ This Request is subject to a fee waiver because it satisfies all four factors.

1. The requested Information concerns the operations and activities of the government.

The Requesters seek information that would illustrate how the United States immigration officers with CBP are treating asylum seekers. This implicates operations within the DHS, a government agency. The requested information, therefore, clearly concerns the operations and activities of the government.

2. Disclosure of the requested Information is likely to contribute to an understanding of government operations and activities.

This factor focuses on whether this Request will result in disclosure of meaningful Information that is not already public knowledge.⁵ The information sought by the Requesters is not in the public domain.⁶ Without disclosure of the Information, it is difficult, if not impossible, for the public to clearly understand the subject government activities.

Second, this Request concerns Information that is of significant value to the public. The Requesters seek to obtain and synthesize information about the characteristics and handling of instances of alleged misconduct and/or due process violations committed by CBP officials. The general public will gain meaningful understanding of government policies and practices relating to treatment of migrants at U.S. borders.⁷ Among other things, the requested information will inform the public on the procedures for referring asylum seekers to credible fear interviews to assess their asylum claims. The requested information, therefore, is likely to contribute to an understanding of government operations and activities.

⁴ 6 C.F.R. § 5.11(k)(2)(i)-(iv).

⁵ 6 C.F.R. § 5.11(k)(2)(ii); *see also Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 106 (D.D.C. 2006) (same).

⁶ *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1315 (D.C. Cir. 2003) (granting fee waiver where “nothing in the record before us suggests that the [information] has been disclosed to anyone”).

⁷ *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006) (finding that public will gain meaningful information through request about “the individuals and organizations that influence, or attempt to influence, public opinion regarding HHS and its policies and programs”).

3. Disclosure of the requested Information will contribute to public understanding.

This factor concerns how the requester will convey the information to the general public.⁸ Courts will consider the requester's expertise in the subject area, and its ability to convey information to a reasonably broad audience interested in the subject matter.⁹ First, the Requesters have significant experience in conducting research and disseminating information relating to human rights. HRW is an international organization that employs over 400 professionals, including journalists, lawyers, and academics. Similarly, the Council employs dedicated staff focused on advocating for sensible and humane immigration policies through targeted research and publications. These professionals work to uncover and report on human rights issues and immigration issues in the U.S. and around the world, often analyzing and disseminating information obtained through FOIA requests.¹⁰

Second, the Requesters have the capacity to disseminate the information gained from this request to a broad audience, making it available in print and on their respective websites.¹¹ Each of the Requesters publishes detailed reports¹² and issues press releases.¹³ HRW and the Council regularly publish op-eds and blogs on their websites.¹⁴ The Requesters also use their extensive media contacts to draw greater attention to the information they disseminate.¹⁵ In this case, the

⁸ 6 C.F.R. § 5.11(k)(2)(iii); *see also* *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Whether the releasable records are likely to contribute to the general public’s understanding of the agency’s operations or activities (*e.g.*, how will the requester convey the information to the general public)”); *Nat’l Sec. Counselors v. Dep’t of Justice*, No. 13-CV-0556 (TSC), 2015 WL 674289, at *10 (D.D.C. Feb. 18, 2015) (“In evaluating this factor, ‘[a] requester’s expertise in the subject area and ability and intention to effectively convey information to the public shall be considered.’”) (quoting 28 C.F.R. 16.11(k)(2)(iii)).

⁹ 6 C.F.R. § 5.11(k)(2)(iii).

¹⁰ *See* *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (holding that plaintiff satisfied its burden where it “described several methods it uses to make information available to the public [and] it has a record of conveying to the public information obtained through FOIA requests, and it has stated its intent to do so in this case”).

¹¹ *See* *Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 116 (D.D.C. 2006) (plaintiff demonstrated intent and capacity to disseminate through reports, memoranda, and its website).

¹² *Reports*, HUMAN RIGHTS WATCH, <http://www.hrw.org/publications/reports>; *Research and Publications*, AMERICAN IMMIGRATION COUNCIL, <http://www.immigrationpolicy.org/research-publications>.

¹³ *News Releases*, HUMAN RIGHTS WATCH, <http://www.hrw.org/news/list/40> (last visited June 22, 2015); *Press Releases*, AMERICAN IMMIGRATION COUNCIL, <http://www.americanimmigrationcouncil.org/news-media/press-releases>.

¹⁴ *Commentary*, HUMAN RIGHTS WATCH, <http://www.hrw.org/news/list/41> (last visited June 22, 2015); *Immigration Impact*, AMERICAN IMMIGRATION COUNCIL, <http://immigrationimpact.org>.

¹⁵ From January 1, 2014 to January 1, 2015, Human Rights Watch appeared in Agence France Press 1,257 times, Reuters News 1,917 times, Associated Press Newswires 974 times, All Africa 1,789 times, CNN Newswire 2,185 times, BBC News 468 times, *The Guardian* (UK) 365 times, and *The New York Times* 1,124 times. Additionally, Human Rights Watch often appears in major US papers such as *The Washington Post*, *The Wall Street Journal*, *USA Today*, *The Pittsburgh Post-Gazette*, *The Los Angeles Times*, *The Chicago Tribune*,

Requesters seek the requested information to publish and disseminate a report or other publication(s) to better inform the public and shape government policy concerning the treatment of asylum seekers in expedited removal. The requested information, therefore, will contribute to public understanding.

4. Disclosure of the requested Information is likely to contribute significantly to public understanding of government operations and activities.

This factor concerns the significance of the Information's contribution to the general public's understanding, as compared to the level of public understanding before the disclosure.¹⁶ This Request concerns the U.S. treatment of asylum seekers at its borders. Significant understanding of government activities will be gained because there is no comparable source of information or analysis of complaints heard by USCIS officers by would-be asylum seekers.¹⁷ The information is likely to increase the public's understanding by revealing alleged CBP abuses reported to USCIS asylum officers. This is important to provide insight to the public about how its borders are being managed and operated by each agency, and how its tax dollars are being expended.¹⁸ This data will also be published in order to increase the public's understanding of the federal government's operations, and to help inform ongoing public and Congressional debate as to where, and to what extent, the United States should be allocating its resources. The requested Information, therefore, is likely to contribute significantly to public understanding of government operations and activities.

B. The Request is not for commercial purposes.

DHS regulations set forth two factors to determine whether the disclosure of information is for commercial purposes: (1) whether the requester has a commercial interest that would be furthered by the requested disclosure; and (2) if so, whether any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that

The Houston Chronicle, and others. Internationally, Human Rights Watch has been cited by *The International Herald Tribune*, *Der Spiegel* (Germany), *The Toronto Star* (Canada), *The Jakarta Post* (Indonesia), *El Pais* (Spain), *Le Monde* (France), *The Sydney Morning Herald* (Australia), *The Times* (London), *Le Progres Egyptien* (Egypt), *Mail and Guardian* (South Africa), *The Ottawa Citizen* (Canada), as well as hundreds of other print news sources around the world. Likewise, the Council has received significant media coverage. See, e.g., *The Council in the News*, AMERICAN IMMIGRATION COUNCIL, <http://www.americanimmigrationcouncil.org/news-media/in-the-news>.

¹⁶ 6 C.F.R. § 5.11(k)(2)(iv); see also *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("The significance of the contribution to the general public's understanding of the agency's operations or activities (e.g., is the information contained in the releasable records already available to the general public)").

¹⁷ See *Citizens for Responsibility & Ethics in Washington v. U.S. Dep't of Health & Human Servs.*, 481 F. Supp. 2d 99, 117 (D.D.C. 2006) (holding that plaintiff fulfilled burden of showing that disclosure will significantly contribute to public understanding in part because "there has been no comparable report specifically addressing what CREW seeks to discover from the requested documents").

¹⁸ *Prison Legal News v. Lappin*, 436 F. Supp. 2d 17, 26 (D.D.C. 2006) (finding informative value in requested information that would "provide insight to the public about how its federal prisons are being managed and operated, and how its tax dollars are being expended").

disclosure is primarily in the commercial interest of the requester.¹⁹ This Request satisfies both factors, and thus the Requesters are entitled to a fee waiver.

The Requesters seek the Information in order to publish a report that will educate the public and promote the protection of civil liberties, human rights, and the fair and just administration of the immigration laws. We do so without a private commercial interest. Each Requester is or represents a nonprofit organization financed through contributions from private individuals, foundations, or a parent institution. Information gained from the present Request will be analyzed and disseminated by the Requesters without charge to consumers, such as by media reports or freely on their websites. Because the Requesters' primary interest is in distributing useful information to the public, granting a fee waiver in this case would fulfill Congress' legislative intent of liberally construing in favor of waivers of noncommercial requesters.²⁰ Our request, therefore, is submitted without a commercial purpose and is entitled to a fee waiver.

III. Response

Please submit the requested Information to:

Clara Long, Researcher
US Program, Human Rights Watch
350 Sansome St., Suite 1000
San Francisco, CA 94104
E-mail: longc@hrw.org

IV. Certification

We certify that the above statements are true and correct to the best of our knowledge and belief.

[Signatures on following page]

¹⁹ 6 C.F.R. § 5.11(k)(3)(i)-(ii).

²⁰ See *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (quoting 132 CONG. REC. 27, 190 (1986) (Sen. Leahy)) ("Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers of noncommercial requesters'").

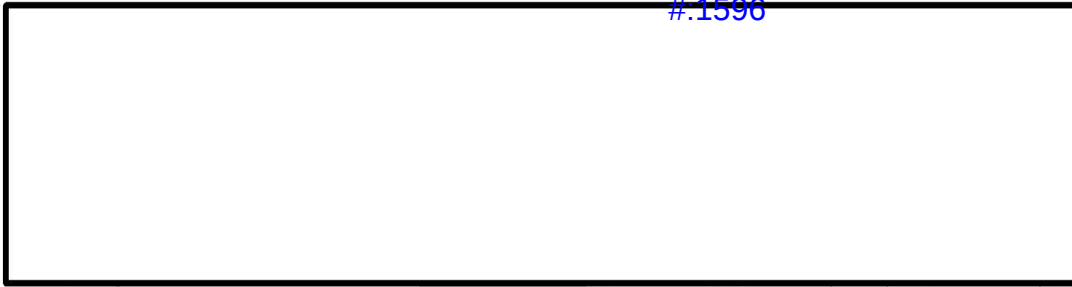
Signed:



Clara Long
Researcher, US Program
Human Rights Watch
350 Sansome St., Suite 1000
San Francisco, CA 94104
E-mail: longc@hrw.org

Guillermo Cantor
Deputy Director for Research
American Immigration Council
1331 G Street NW
Washington, DC 20005
E-mail: gcantor@immcouncil.org

Exhibit B



Attachments: [redacted] Memo to CRCL regarding detainee complaint.doc



Subject: OIG Complaint FYI and Memo

Good Afternoon,

Attached please find a memo detailing a complaint by Credible Fear Applicant [redacted]
[redacted] Ms. [redacted] was given a sworn statement. During her interview, Ms. [redacted] was asked how
she was being treated at the detention center. To this Ms. [redacted] stated that she was mistreated by an
immigration officer before she arrived at her place of detention (San Diego Service Processing Center/CCA Otay
Detention Facility in San Diego, CA). Ms. [redacted] testified that the officer was intimidating her by stating that the
U.S. government would take her two U.S. citizen daughters away and that he insisted that she tell him that she could go
live elsewhere. I have submitted a complaint online at: <http://www.oig.dhs.gov/hotline/hotline.php> on behalf of Ms. [redacted]
[redacted] on June 29, 2015.

Respectfully,



(b)(6)



U.S. Citizenship
and Immigration
Services

(b)(6)

Memorandum

(b)(6)

To:

From:

Re:

On June 25, 2015, the above detainee (herein Ms. [REDACTED]) was interviewed for Credible Fear in a telephonic interview. Ms. [REDACTED] was given a sworn statement. During her interview, Ms. [REDACTED] was asked how she was being treated at the detention center. To this Ms. [REDACTED] stated that she was mistreated by an immigration officer before she arrived at her place of detention (San Diego Service Processing Center/CCA Otay Detention Facility in San Diego, CA). Ms. Rivas Peregrino testified that the officer was intimidating her by stating that the U.S. government would take her two U.S. citizen daughters away and that he insisted that she tell him that she could go live elsewhere.

The following are excerpts of the statements she provided during her Credible Fear interview:

"One time they scared me in Otay, the officer that interviewed me, they told me the State would take my children away and I would be deported to Mexico, he told me that none of my cousins would be able to pick them up, only my father or husband... He mistreated me. I was telling him that my cousin could pick them up and he said only my father could and said my U.S. citizen brother couldn't pick them up, that they would be taken by the U.S. government so I was frightened. I don't remember what I said during the interview because I was thinking about my daughters and that they were going to take them away from me. I commented to the officer that my oldest child needed a back operation and they said that it didn't matter, that the State would take care of it and that I wouldn't be able to be with her... I think it was to intimidate me, I was scared, I was crying the entire day."

"He was asking why I didn't go to Brazil or other places. I said I didn't know anyone, he would insist that I tell him that I go someplace else..."

According to service records and M [REDACTED] testimony, this event occurred on June 4, 2015 at the Otay Mesa Port of Entry, California with CBP Officer [REDACTED]. I have submitted a complaint online at: <http://www.oig.dhs.gov/hotline/hotline.php> on behalf of Ms. [REDACTED] on June 29, 2015. On June 29, 2015, Supervisory Asylum Officer [REDACTED] received a confirmation from OIG stating that the complaint submitted online would be reviewed and addressed. Please feel free to contact me at [REDACTED] if you need any further information. Thank you.

CO

(b)(6)

Exhibit C



U.S. Citizenship
and Immigration
Services

(b)(6)
**APSO Request for Documentation
Memo to File**

DATE: 06/20/2014		A-NUMBER [REDACTED]	
REFERRING APSO NUMBER [REDACTED]	TYPE: <input checked="" type="checkbox"/> CF <input type="checkbox"/> RF		
REFERRING SUPERVISOR [REDACTED]	LOCATION: <input type="checkbox"/> ESM <input type="checkbox"/> DHD <input type="checkbox"/> NWK <input type="checkbox"/> VRK <input type="checkbox"/> BOS <input checked="" type="checkbox"/> BTV <input type="checkbox"/> YRK <input type="checkbox"/> BRK <input type="checkbox"/> OTH		
RELATED FILES: [REDACTED]		REPORTATION OFFICER: [REDACTED]	
Post-Decision, submitted for <input type="checkbox"/> Documentation <input checked="" type="checkbox"/> Inquiry <input type="checkbox"/> Applicant alleges human rights violation(s) (e.g. solitary confinement, physical abuse) <input checked="" type="checkbox"/> Applicant alleges due process violation(s) in detention: <input type="checkbox"/> lack of access to phones <input type="checkbox"/> delayed ICE referral <input type="checkbox"/> obstructing access to or presentation of evidence <input checked="" type="checkbox"/> other <input checked="" type="checkbox"/> Sworn statement (I-867A) conflicts with applicant's testimony at interview <input type="checkbox"/> Withdrawal or dissolution where applicant expresses present fear of return <input type="checkbox"/> Other			

APPLICANT INFORMATION	
(b)(6)	
(Each subject requires an individual information box, cut and paste as required)	
Full Name [REDACTED]	Date of Birth [REDACTED]
Aliases: [REDACTED]	Country of Citizenship: Ecuador
Place of Entry: HID	
Date of Entry: 05/20/2014	Attorney/Representative: Ronald R. Higgins

REQUIRED: ARTICULATE REASON FOR DOCUMENTATION
Please Provide a Detailed Narrative /Derogatory Information derived from Interview(s), including relevant testimony: Applicant testified that he informed the interviewing CBP officer [REDACTED] that he feared returning to Ecuador and wanted to "fight my case." Applicant testified that Officer [REDACTED] told him that if he declared a fear of return to his home country he would spend three to four months locked up in the "icebox." Applicant testified that he then changed his testimony to agree with what the officer wanted him to say regarding his fear of return to Ecuador.
Detailed Narrative /Derogatory Information derived from other sources (i.e. related files, data systems, tip letter):

FOR OUTPROCESSING USE ONLY		
Date Entered into Database [REDACTED]	ZNK [REDACTED]	Initials [REDACTED]

Exhibit D



U.S. Citizenship
and Immigration
Services

(b)(6)

APSO Request for Documentation
Memo to File

DATE: 06/19/2014	A-NUMBER [REDACTED]
REFERRING APSO NUMBER [REDACTED]	TYPE: <input checked="" type="checkbox"/> CF <input type="checkbox"/> RF
REFERRING [REDACTED]	LOCATION: <input type="checkbox"/> ESM <input type="checkbox"/> DHD <input type="checkbox"/> NWK <input type="checkbox"/> VRK
SUPERVISOR [REDACTED]	<input type="checkbox"/> BOS <input checked="" type="checkbox"/> BTV <input type="checkbox"/> YRK <input type="checkbox"/> BRK <input type="checkbox"/> OTH
RELATED FILES:	DEPORTATION OFFICER:
Post-Decision, submitted for <input type="checkbox"/> Documentation <input checked="" type="checkbox"/> Inquiry <input type="checkbox"/> Applicant alleges human rights violation(s) (e.g. solitary confinement, physical abuse) <input checked="" type="checkbox"/> Applicant alleges due process violation(s) in detention: <input type="checkbox"/> lack of access to phones <input type="checkbox"/> delayed ICE referral <input type="checkbox"/> obstructing access to or presentation of evidence <input type="checkbox"/> other <input checked="" type="checkbox"/> Sworn statement (I-867A) conflicts with applicant's testimony at interview <input type="checkbox"/> Withdrawal or dissolution where applicant expresses present fear of return <input type="checkbox"/> Other	

(b)(6)

APPLICANT INFORMATION	
(Each subject requires an individual information box, cut and paste as required)	
Full Name [REDACTED]	Date of Birth [REDACTED]
Aliases: None	Country of Citizenship: El Salvador
Place of Entry: HID	
Date of Entry: 05/21/2014	Attorney/Representative: None

(b)(6)

REQUIRED: ARTICULATE REASON FOR DOCUMENTATION
Please Provide a Detailed Narrative /Derogatory Information derived from Interview(s), including relevant testimony: Applicant testified that he requested assistance from interviewing CBP officer [REDACTED] because he feared returning to El Salvador. Applicant testified that officer replied that he couldn't provide assistance, because his job was to arrest and deport the applicant. Applicant testified that interviewing officer did not read back sworn statement; rather officer told him to sign for his deportation. I-867A & B show that applicant was recorded as stating that he did not have a fear of returning to El Salvador.
Detailed Narrative /Derogatory Information derived from other sources (i.e. related files, data systems, tip letter):

FOR OUTPROCESSING USE ONLY
Date Entered into Database _____ ZNK _____ Initials _____

Exhibit E

I'm copied Ops for their input with regard to that issue and to whether there's anything we can do with respect to family unity in this case, as the applicant was separated from her son at entry and had her son determined to be a UAC.

Thanks,



(b)(6)



Subject: Concerning case FW: ZLA CF, POS, A [redacted] 10/12/15



I wanted to reach out and see how we would like to handle this case. It is a gang extortion claim where the applicant and her domestic partner were extorted because they were believed to be wealthy on account of his American citizenship. The case is written up as a positive based on the applicant's relationship to her domestic partner. I am inclined not to concur because it seems like a straight extortion case in which this family is believed to be wealthy.

But the really concerning part of the case is the applicant's testimony about her treatment in detention. She entered with her UAC son who was taken from her because he was a UAC. The applicant provides the following testimony.

Q	How were you mistreated there?
A	I entered the Garrita on September 20, and I asked for asylum, for the problem which I fled El Salvador. A female officer talked to me and told me that because my child was a U.S. citizen, the U.S. government was going to take him from me. She said that at that time, she could take my son and turn him over to the government and deport me at that time. I asked for someone who could speak Spanish who could explain it to me better. She yelled at me when I asked for someone who spoke Spanish, and she pushed my hand away, and she said that if I came to the U.S., I had to speak English. She took me in, and pushed me, and she told me that I have to open very wide, and she touched my intimate parts, and she hit me there with a lot of force, and she touched me really hard. I said "I don't understand, I'm fleeing my country, how am I going to hide something in my intimate parts?" And she continued touching it; I just don't understand.
Q	You said that the officer hit you in your intimate parts?
A	Well she was checking my parts, but she shoved her hand really strongly, and I felt that she pushed against my intimate parts for no reason.

How are we currently handling cases of alleged abuse in the detention centers?

Thanks,



(b)(6)