

# FACING WALLS

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



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**Cover photo:**

*US – Mexico Border in Tijuana, Mexico*

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# GLOSSARY

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

# 1. INTRODUCTION

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

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

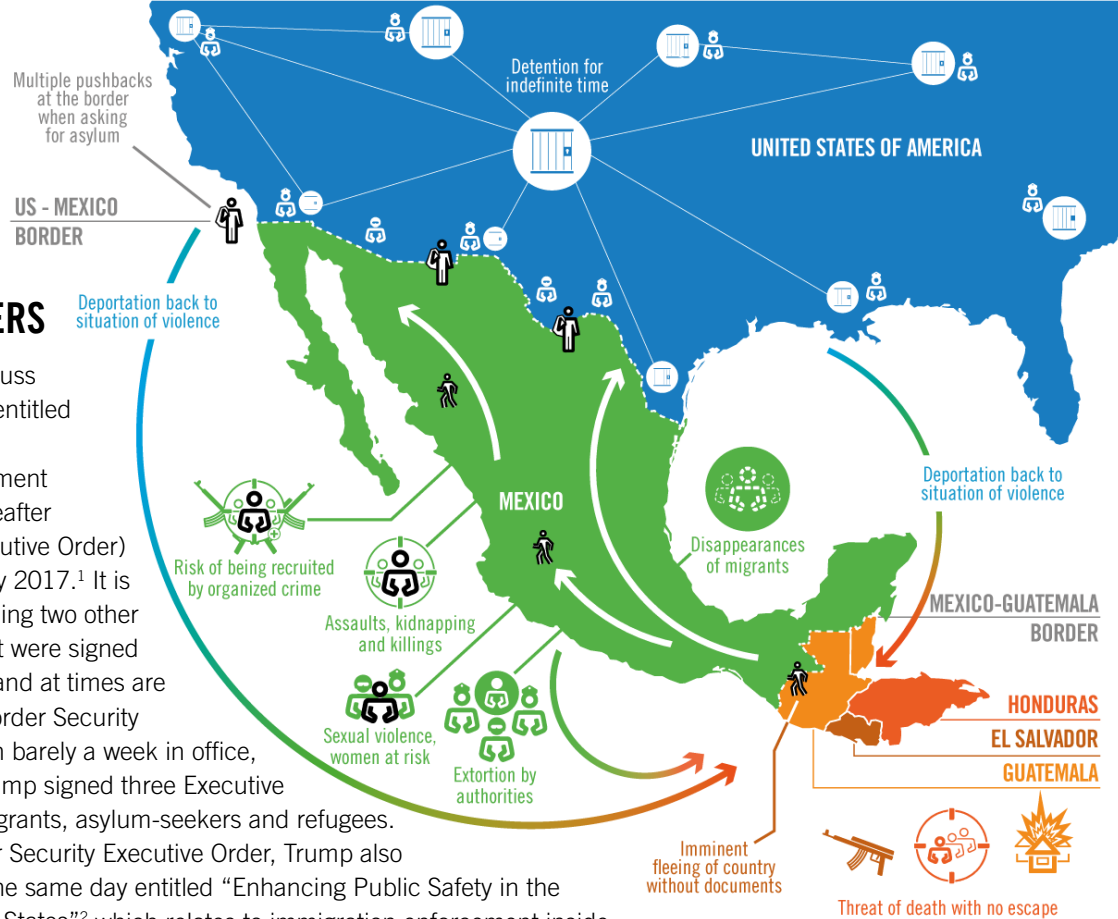
Evidence suggests that hard line border control policies do not stop people migrating or fleeing their countries, but rather condemn them to more precarious routes and strengthen violent criminal networks that fuel people smuggling and result in an increased loss of human life. A large number of the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

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

## THE LETHAL CYCLE FOR ASYLUM-SEEKERS

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

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



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

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

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

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

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

# 2. MYTHS AND REALITIES

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

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

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

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

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

7. Border Security Executive Order, Section 1

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

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

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

11. See figures in previous footnotes.

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

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

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

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

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

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

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

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

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

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

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



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

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

## STORIES OF ESCAPE FROM DEATH

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

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

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

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

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

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

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

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

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

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

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

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



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

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



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

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

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

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

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

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

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

## MYTH: CRACKING DOWN ON MIGRATION MEANS TACKLING CRIMINALS

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

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

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

## REALITY: MIGRANTS ARE NOT CRIMINALS

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

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

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

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

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

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

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

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

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

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

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



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

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

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



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

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

# 3. DEADLY WALLS

## 3.1 FENCES AND WALLS ONLY COST LIVES

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

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

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

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

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

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

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

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

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

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

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

### 3.2 BEYOND WALLS: OTHER ENFORCEMENT MEASURES

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

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

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

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

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

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

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

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

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

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



© Amnesty International

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

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

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



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

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

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

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



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

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

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

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

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

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

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

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

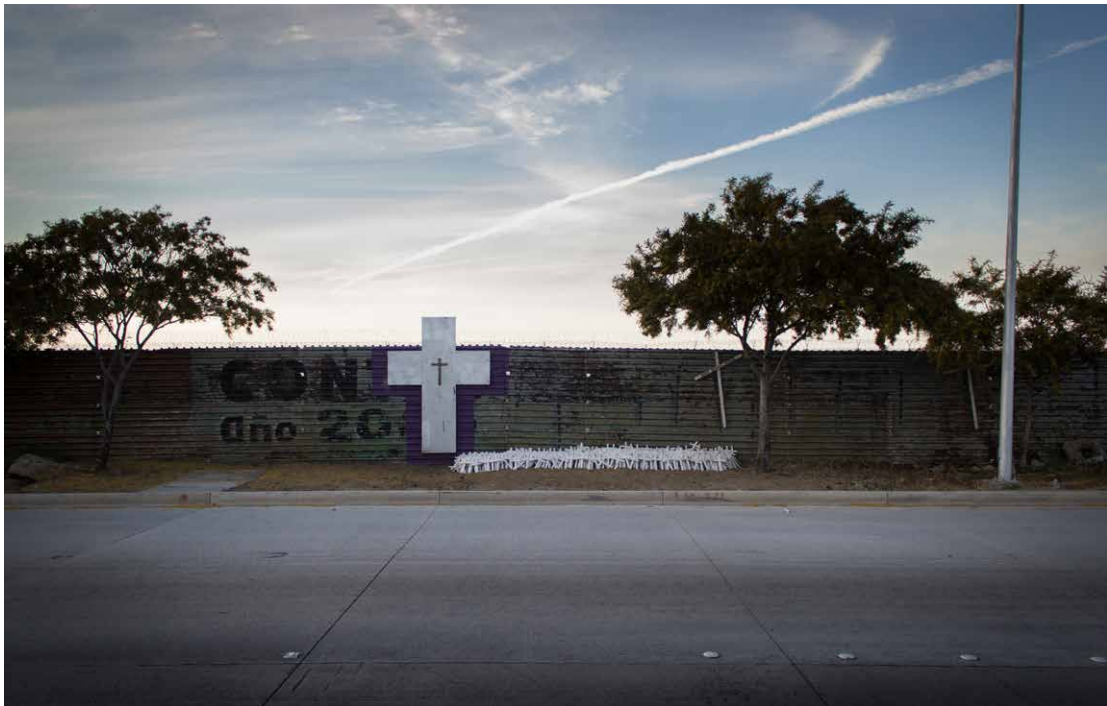
54. OP Cit, Note 51

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

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

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

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



*Mexican border in Tijuana © Sergio Ortiz Borbolla*

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

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

# 4. VIOLATING INTERNATIONAL LAW

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

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

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

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

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

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

62. *ibid*

63. Op Cit Note 61: Paragraph 8

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

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

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

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

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

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

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

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

***“You are full of shit.”***

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

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

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

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

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

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

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

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

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

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

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

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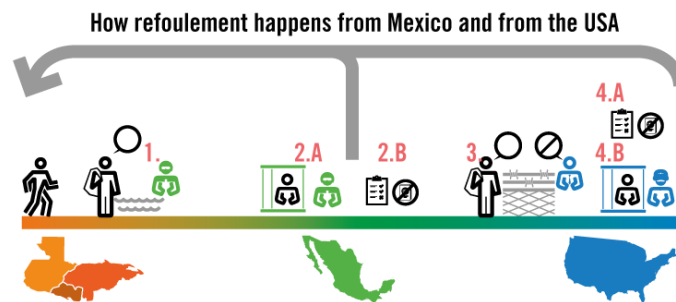
66. This is similar to comments that the UN has made to routine “border rejections” carried out by Spain against people from certain countries United Nations Human Rights Committee recommended that Spain review the law introducing the “border rejections” in Ceuta and Melilla with a view to “ensure that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

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

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

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

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



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

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

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

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

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

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

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

### BEFORE TRUMP'S BORDER SECURITY EXECUTIVE ORDER

Migrants or asylum-seekers apprehended at the border were subject to mandatory detention, often for many months.<sup>73</sup> However **some asylum-seekers were released after having been interviewed and found to have a credible fear of return to their countries and were not locked up during asylum proceedings before a judge.**<sup>74</sup>

Mandatory detention harshly affects asylum-seekers who have no choice but to cross the border without papers and violates Article 9 of ICCPR which calls for an individualized assessment before detaining an individual.

### AFTER TRUMP'S BORDER SECURITY EXECUTIVE ORDER

Migrants and asylum-seekers continue to be subject to mandatory detention and **release from detention will be much harder to obtain. Asylum-seekers will be locked up during the course of court proceedings.** The Executive Order calls for a restrictive reading of the provisions of INA 212(d)(5) which allow for release of certain people for urgent humanitarian reasons or public benefit and requires additional written approval for release from the Deputy Director of ICE, **after** the written approval stipulated by statute has already been obtained.<sup>75</sup>

69. US Constitution, (Amend XIV)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

Migrants or asylum-seekers apprehended at the border, who passed through the interview establishing they had a 'credible fear' were usually allowed to physically see a judge in person.

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

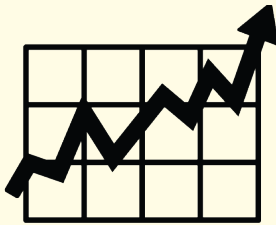
Migrants or asylum-seekers apprehended at the border that go through a process before a judge will now be more likely to have to carry out hearings through a video teleconference system.<sup>84</sup>

While United States immigration law allows for proceedings to happen by video-teleconference (VTC) conference, **their proposed rollout on a large scale now threatens to undermine due process rights of detainees who will find it more difficult to defend themselves before a judge who is not physically there.**<sup>85</sup>

Law enforcement officials were, to a limited extent, relied upon to take on immigration enforcement functions as per Section 287 (g) of the ILA. **Law enforcement officials (eg. police) are not given the same training as immigration officers, especially in relation to the protection of asylum-seekers.**

Executive Order calls for a **widening of the use of law enforcement officials in immigration functions.** In addition, Attorney General Jeff Sessions has followed up the Executive Order with a call for increased use of criminal enforcement of irregular migration at the US – Mexico border.

## 4.3. POURING MONEY INTO LOCKING UP FAMILIES



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

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

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

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

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

87. Department of Homeland Security, 90-day progress Report to the President on Executive Order 13767: Border Security and Immigration Enforcement improvements. Section 5. This figure of 33,500 is arrived at by adding up two separate plans announced in this report – one to increase the capacity for temporary holding centres up to 12,500 places as well as another to identify funding for 21,000 additional bed spaces in detention centres.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

100. “UNHCR’s position regarding the detention of refugee and migrant children in the migration context” (January 2017) clarifying that “children should not be detained for immigration purposes, irrespective of their legal/migratory status or that of their parents, and detention is never in their best interests.”: <http://www.refworld.org/docid/503489533b8.html>

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

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

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

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

***“It’s not fair for a child to spend a year and a half in prison”***

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

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

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

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

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

# 5. THE OTHER WALL: MEXICO

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

114. Amnesty International interview, carried out November 2016

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

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

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

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

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

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

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

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

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

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

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

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

## 5.1 MEXICO BREAKING ITS OWN LAWS AND DETAINING CHILDREN

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

# 4. RECOMMENDATIONS

## **TO THE PRESIDENT OF THE UNITED STATES:**

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

## **TO THE CONGRESS OF THE UNITED STATES:**

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

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

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

granted full reparations.

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

#### **TO THE PRESIDENT OF MEXICO:**

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

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

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

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

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

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

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


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


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



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# FACING WALLS

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

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

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