No. 19-1212

In the Supreme Court of the United States

CHAD WOLF, ACTING SECRETARY OF HOMELAND SECURITY, ET AL., PETITIONERS

v.

INNOVATION LAW LAB, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOINT APPENDIX
(VOLUME 1)

JEFFREY B. WALL
Acting Solicitor General
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

Counsel of Record
for Petitioners

JUDY RABINOVITZ
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, N.Y. 10004
jrabinovitz@aclu.org
(212) 549-2618

Counsel of Record
for Respondents

PETITION FOR A WRIT OF CERTIORARI FILED: APR. 10, 2020
CERTIORARI GRANTED: OCT. 19, 2020

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Volume 1

[†] The administrative record included a public notice describing this document, rather than the document itself. See Pet. App. 164a-165a. All parties agree that this document is part of the administrative record.

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Docket No. 19-15716

INNOVATION LAW LAB; CENTRAL AMERICAN RESOURCE CENTER OF NORTHERN CALIFORNIA; CENTRO LEGAL DE LA RAZA; UNIVERSITY OF SAN FRANCISCO SCHOOL OF LAW IMMIGRATION AND DEPORTATION DEFENSE CLINIC; AL OTRO LADO; TAHIRIH JUSTICE CENTER, PLAINTIFFS-APPELLEES

v.

CHAD F. WOLF, ACTING SECRETARY OF HOMELAND SECURITY, IN HIS OFFICIAL CAPACITY; U.S. DEPARTMENT OF HOMELAND SECURITY; KENNETH T. CUCCINELLI, DIRECTOR, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, IN HIS OFFICIAL CAPACITY; ANDREW DAVIDSON, CHIEF OF ASYLUM DIVISION, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, IN HIS OFFICIAL CAPACITY; UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES; TODD C. OWEN, EXECUTIVE ASSISTANT COMMISSIONER, OFFICE OF FIELD OPERATIONS, U.S. CUSTOMS AND BORDER PROTECTION, IN HIS OFFICIAL CAPACITY; U.S. CUSTOMS AND BORDER PROTECTION; MATTHEW ALBENCE, ACTING DIRECTOR, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, IN HIS OFFICIAL CAPACITY; US IMMIGRATION AND CUSTOMS ENFORCEMENT, DEFENDANTS-APPELLANTS

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
4/10/19	1	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. SEND MQ: Yes.

DATE	DOCKET NUMBER	PROCEEDINGS
		The schedule is set as follows: Mediation Questionnaire due on 04/17/2019. Transcript ordered by 05/10/2019. Transcript due 06/10/2019. Appellants Lee Francis Cissna, John L. Lafferty, Kevin K. McAleenan, Kirstjen Nielsen, Todd C. Owen, U.S. Customs and Border Protection, U.S. Department of Homeland Security, US Immigration and Customs Enforcement, United States Citizenship and Immigration Services and Ronald D. Vitiello opening brief due 07/19/2019. Appellees Al Otro Lado, Central American Resource Center of Northern California, Centro Legal De La Raza, Innovation Law Lab, Tahirih Justice Center and University of San Francisco School of Law Immigration and Deportation Defense Clinic answering brief due 08/19/2019. Appellant's optional reply brief is due 21 days after service of the answering brief due 08/19/2019. [11259911] (JMR) [Entered: 04/10/2019 03:53 PM]

* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
4/11/19	3	Filed (ECF) Appellants Lee Francis Cissna, John L. Lafferty, Kevin K. McAleenan, Kirstjen Nielsen, Todd C. Owen, U.S. Customs and Border Protection, US Immigration and Customs Enforcement, USCIS, USDHS and Ronald D. Vitiello EMERGENCY Motion to stay lower court action. Date of service: 04/11/2019. [11261528] [19-15716] (Reuveni, Erez) [Entered: 04/11/2019 09:03 PM]
4/12/19	4	Filed (ECF) Appellees Al Otro Lado, Central American Resource Center of Northern California, Centro Legal De La Raza, Innovation Law Lab, Tahirih Justice Center and University of San Francisco School of Law Immigration and Deportation Defense Clinic response opposing motion ([3] Motion (ECF Filing), [3] Motion (ECF Filing)). Date of service: 04/12/2019. [11261704] [19-15716] (Rabinovitz, Judy) [Entered: 04/12/2019 09:08 AM]
4/12/19	5	Filed (ECF) Appellants US Immigration and Customs Enforcement, Lee Francis Cissna, John L. Lafferty, Kevin K. McAleenan,

DATE	DOCKET NUMBER	PROCEEDINGS
		Kirstjen Nielsen, Todd C. Owen, U.S. Customs and Border Protection, USCIS, USDHS and Ronald D. Vitiello reply to response (). Date of service: 04/12/2019. [11262595] [19-15716] (Reuveni, Erez) [Entered: 04/12/2019 03:25 PM]
4/12/19	6	Filed order (DIARMUID F. O'SCANNLAIN, WILLIAM A. FLETCHER and PAUL J. WATFORD) The court has received appellants' emergency motion for a stay. The district court's April 8, 2019 preliminary injunction order is temporarily stayed pending resolution of the emergency stay motion. The opposition to the emergency motion is due at 9:00 a.m. Pacific Time on April 16, 2019. The optional reply in support of the emergency motion is due at 9:00 a.m. Pacific Time on April 17, 2019. [11262714] (ME) [Entered: 04/12/2019 04:16 PM]
4/15/19	7	Filed (ECF) Appellants Lee Francis Cissna, John L. Lafferty, Kevin K. McAleenan, Kirstjen Nielsen, Todd C. Owen, U.S. Customs and Border Protection, US

DATE	DOCKET NUMBER	PROCEEDINGS
		Immigration and Customs Enforcement, USCIS, USDHS and Ronald D. Vitiello Mediation Questionnaire. Date of service: 04/15/2019. [11264025] [19-15716] (Reuveni, Erez) [Entered: 04/15/2019 02:10 PM]
		* * * * *
4/16/19	9	Filed (ECF) Appellees Al Otro Lado, Central American Resource Center of Northern California, Centro Legal De La Raza, Innovation Law Lab, Tahirih Justice Center and University of San Francisco School of Law Immigration and Deportation Defense Clinic response opposing motion ([3] Motion (ECF Filing), [3] Motion (ECF Filing)). Date of service: 04/16/2019. [11264929] [19-15716] (Rabinovitz, Judy) [Entered: 04/16/2019 08:29 AM]
4/16/19	10	Filed (ECF) Appellees Al Otro Lado, Central American Resource Center of Northern California, Centro Legal De La Raza, Innovation Law Lab, Tahirih Justice Center and University of San Francisco School of Law Immigration and Deportation Defense

DATE	DOCKET NUMBER	PROCEEDINGS
		Clinic Correspondence: Exhibits for response to motion [9]. Date of service: 04/16/2019. [11264934] [19-15716]—[COURT UPDATE: Updated docket text to reflect correct ECF filing type. 04/17/2019 by SLM] (Rabinovitz, Judy) [Entered: 04/16/2019 08:31 AM]
4/17/19	11	Filed (ECF) Appellants Lee Francis Cissna, John L. Lafferty, Kevin K. McAleenan, Kirstjen Nielsen, Todd C. Owen, U.S. Customs and Border Protection, US Immigration and Customs Enforcement, USCIS, USDHS and Ronald D. Vitiello reply to response( ). Date of service: 04/17/2019. [11266493] [19-15716] (Reuveni, Erez) [Entered: 04/17/2019 08:16 AM]
		* * * * *
4/23/19	18	Filed (ECF) Appellees Al Otro Lado, Central American Resource Center of Northern California, Centro Legal De La Raza, Innovation Law Lab, Tahirih Justice Center and University of San Francisco School of Law Immigration and Deportation Defense

DATE	DOCKET NUMBER	PROCEEDINGS
		Clinic citation of supplemental authorities. Date of service: 04/23/2019. [11274563] [19-15716] (Rabinovitz, Judy) [Entered: 04/23/2019 05:15 PM]
4/24/19	19	Filed Audio recording of oral argument. **Note**: Video recordings of public argument calendars are available on the Court's website, at http://www.ca9.uscourts.gov/media/[11275675] (BJK) [Entered: 04/24/2019 01:55 PM]
		* * * * *
5/6/19	21	Filed letter dated 05/03/2019 re: Non party letter from Sallie E. Shawl—misc statements in support of plaintiffs/appellees. Paper filing deficiency: None. [11289641] (CW) [Entered: 05/07/2019 02:45 PM]
5/7/19	22	Filed Per Curiam Opinion (DIARMUID F. O'SCANNLAIN, WILLIAM A. FLETCHER and PAUL J. WATFORD) (Concurrences by Judge Watford and Judge Fletcher) In January 2019, the Department of Homeland Security (DHS) issued the Migrant Protection Protocols

DATE	DOCKET NUMBER	PROCEEDINGS
		(MPP), which initiated a new inspection policy along the southern border. Before the MPP, immigration officers would typically process asylum applicants who lack valid entry documentation for expedited removal. If the applicant passed a credible fear screening, DHS would either detain or parole the individual until her asylum claim could be heard before an immigration judge. (SEE OPINION FOR FULL TEXT) The motion for a stay pending appeal is GRANTED. [11289987] (RMM) [Entered: 05/07/2019 04:45 PM]
5/13/19	23	Filed (ECF) Appellees Al Otro Lado, Central American Resource Center of Northern California, Centro Legal De La Raza, Innovation Law Lab, Tahirih Justice Center and University of San Francisco School of Law Immigration and Deportation Defense Clinic motion for reconsideration of non-dispositive Judge Order of 05/07/2019. Date of service: 05/13/2019. [11295040] [19-15716] (Rabinovitz, Judy) [Entered: 05/13/2019 12:39 PM]

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
5/22/19	26	Submitted (ECF) Opening Brief for review. Submitted by Appellants Lee Francis Cissna, John L. Lafferty, Kevin K. McAleenan, Todd C. Owen, U.S. Customs and Border Protection, US Immigration and Customs Enforcement, USCIS, USDHS and Ronald D. Vitiello. Date of service: 05/22/2019. [11306600] [19-15716] (Ramkumar, Archith) [Entered: 05/22/2019 08:15 PM]
5/22/19	27	Submitted (ECF) excerpts of record. Submitted by Appellants Lee Francis Cissna, John L. Lafferty, Kevin K. McAleenan, Todd C. Owen, U.S. Customs and Border Protection, US Immigration and Customs Enforcement, USCIS, USDHS and Ronald D. Vitiello. Date of service: 05/22/2019. [11306603] [19-15716] (Ramkumar, Archith) [Entered: 05/22/2019 08:22 PM]
5/23/19	28	Filed clerk order: The opening brief [26] submitted by appellants is filed. Within 7 days of the filing of this order, filer is ordered

DATE	DOCKET NUMBER	PROCEEDINGS
		to file 7 copies of the brief in paper format, accompanied by certification (attached to the end of each copy of the brief) that the brief is identical to the version submitted electronically. Cover color: blue. The Court has reviewed the excerpts of record [27] submitted by appellants. Within 7 days of this order, filer is ordered to file 4 copies of the excerpts in paper format securely bound on the left side, with white covers. The paper copies shall be submitted to the principal office of the Clerk. [11307022] (LA) [Entered: 05/23/2019 10:29 AM]
5/24/19	29	Filed order (DIARMUID F. O'SCANNLAIN, WILLIAM A. FLETCHER and PAUL J. WATFORD): Appellees' motion for reconsideration of the panel's decision to publish the stay order (Dkt. [23]) is DENIED. [11308257] (AF) [Entered: 05/24/2019 08:41 AM]
		* * * * *
6/19/19	34	Submitted (ECF) Answering Brief for review. Submitted by

DATE	DOCKET NUMBER	PROCEEDINGS
		Appellees Al Otro Lado, Central American Resource Center of Northern California, Centro Legal De La Raza, Innovation Law Lab, Tahirih Justice Center and University of San Francisco School of Law Immigration and Deportation Defense Clinic. Date of service: 06/19/2019. [11338415] [19-15716] (Rabinovitz, Judy) [Entered: 06/19/2019 11:42 PM]
6/19/19	35	Submitted (ECF) supplemental excerpts of record. Submitted by Appellees Al Otro Lado, Central American Resource Center of Northern California, Centro Legal De La Raza, Innovation Law Lab, Tahirih Justice Center and University of San Francisco School of Law Immigration and Deportation Defense Clinic. Date of service: 06/19/2019. [11338416] [19-15716]—[COURT UPDATE: Attached corrected PDF of excerpts. 06/20/2019 by RY] (Rabinovitz, Judy) [Entered: 06/19/2019 11:45 PM]
6/19/19	36	Filed (ECF) Appellees Al Otro Lado, Central American Resource Center of Northern California,

DATE	DOCKET NUMBER	PROCEEDINGS
		Centro Legal De La Raza, Innovation Law Lab, Tahirih Justice Center and University of San Francisco School of Law Immigration and Deportation Defense Clinic Motion to take judicial notice of. Date of service: 06/19/2019. [11338418] [19-15716] (Rabinovitz, Judy) [Entered: 06/19/2019 11:49 PM]
6/20/19	37	Filed clerk order: The answering brief [34] submitted by appellees is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification (attached to the end of each copy of the brief) that the brief is identical to the version submitted electronically. Cover color: red. The Court has reviewed the supplemental excerpts of record [35] submitted by appellees. Within 7 days of this order, filer is ordered to file 4 copies of the excerpts in paper format securely bound on the left side, with white covers. The paper copies shall be submitted to the principal office of the Clerk.

DATE	DOCKET NUMBER	PROCEEDINGS
		[11339490] (KT) [Entered: 06/20/2019 02:32 PM]
		* * * * *
6/26/19	39	Submitted (ECF) Amicus brief for review (by government or with consent per FRAP 29(a)). Submitted by LOCAL 1924. Date of service: 06/26/2019. [11345407] [19-15716] (Mangi, Adeel) [Entered: 06/26/2019 01:33 PM]
		* * * * *
6/26/19	41	Filed clerk order: The amicus brief [39] submitted by Local 1924 is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification (attached to the end of each copy of the brief) that the brief is identical to the version submitted electronically. Cover color: green. The paper copies shall be submitted to the principal office of the Clerk. [11345524] (LA) [Entered: 06/26/2019 02:05 PM]
6/26/19	43	Submitted (ECF) Amicus brief for review (by government or with consent per FRAP 29(a)).

DATE	DOCKET NUMBER	PROCEEDINGS
		Submitted by Former U.S. Government Officials. Date of service: 06/26/2019. [11345820] [19-15716] (Schoenfeld, Alan) [Entered: 06/26/2019 03:29 PM]
6/26/19	44	Submitted (ECF) Amicus brief for review (by government or with consent per FRAP 29(a)). Submitted by Amnesty International, The Washington Office on Latin America, The Latin America Working Group, and The Institute for Women in Migration ("IMUMI"). Date of service: 06/26/2019. [11345933] [19-15716] (Wang, Xiao) [Entered: 06/26/2019 04:05 PM]
		* * * * *
6/26/19	46	Filed clerk order: The amicus brief [43] submitted by Former U.S. Government Officials is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification (attached to the end of each copy of the brief) that the brief is identical to the version submitted electronically. Cover color: green. The paper copies shall be

DATE	DOCKET NUMBER	PROCEEDINGS
		submitted to the principal office of the Clerk. [11346140] (LA) [Entered: 06/26/2019 05:44 PM]
6/26/19	47	Filed clerk order: The amicus brief [44] submitted by Amnesty International-USA, Washington Office on Latin America, Latin America Working Group, and IMUMI is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification (attached to the end of each copy of the brief) that the brief is identical to the version submitted electronically. Cover color: green. The paper copies shall be submitted to the principal office of the Clerk. [11346144] (LA) [Entered: 06/26/2019 05:45 PM]
6/26/19	48	Submitted (ECF) Amicus brief for review (by government or with consent per FRAP 29(a)). Submitted by The Office of the United Nations High Commissioner for Refugees. Date of service: 06/26/2019. [11346192] [19-15716]—[COURT UPDATE: Attached corrected PDF of brief,

DATE	DOCKET NUMBER	PROCEEDINGS
		removed unnecessary motion, updated docket text to reflect content of filing. 07/02/2019 by LA] (Reyes, Ana) [Entered: 06/26/2019 07:00 PM]
6/26/19	49	Submitted (ECF) Amicus brief for review (by government or with consent per FRAP 29(a)). Submitted by HUMAN RIGHTS FIRST. Date of service: 06/26/2019. [11346211] [19-15716] (Igra, Naomi) [Entered: 06/26/2019 10:05 PM]
		* * * * *
6/27/19	51	Filed clerk order: The amicus brief [49] submitted by Human Rights First is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification (attached to the end of each copy of the brief) that the brief is identical to the version submitted electronically. Cover color: green. The paper copies shall be submitted to the principal office of the Clerk. [11346596] (LA) [Entered: 06/27/2019 10:24 AM]

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
7/2/19	56	Filed clerk order: The amicus brief [48] submitted by Office of the United Nations High Commissioner for Refugees is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification (attached to the end of each copy of the brief) that the brief is identical to the version submitted electronically. Cover color: green. The paper copies shall be submitted to the principal office of the Clerk. [11352606] (LA) [Entered: 07/02/2019 03:28 PM]
		* * * * *
7/10/19	59	Submitted (ECF) Reply Brief for review. Submitted by Appellants Lee Francis Cissna, John L. Lafferty, Kevin K. McAleenan, Todd C. Owen, U.S. Customs and Border Protection, US Immigration and Customs Enforcement, USCIS, USDHS and Ronald D. Vitiello. Date of service: 07/10/2019. [11359989]

DATE	DOCKET NUMBER	PROCEEDINGS
		[19-15716] (Reuveni, Erez) [Entered: 07/10/2019 07:27 PM]
7/11/19	60	Filed clerk order: The reply brief [59] submitted by appellants is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification (attached to the end of each copy of the brief) that the brief is identical to the version submitted electronically. Cover color: gray. The paper copies shall be submitted to the principal office of the Clerk. [11360213] (LA) [Entered: 07/11/2019 09:32 AM]
		* * * * *
10/1/19	70	ARGUED AND SUBMITTED TO FERDINAND F. FERNANDEZ, WILLIAM A. FLETCHER and RICHARD A. PAEZ. [11450728] (ER) [Entered: 10/01/2019 05:35 PM]
10/1/19	71	Filed Audio recording of oral argument. **Note**: Video recordings of public argument calendars are available on the Court's website, at http://www.ca9.uscourts.

DATE	DOCKET NUMBER	PROCEEDINGS
		gov/media/ [11451490] (BJK) [Entered: 10/02/2019 12:10 PM]
10/3/19	72	Filed (ECF) Appellees Al Otro Lado, Central American Resource Center of Northern California, Centro Legal De La Raza, Innovation Law Lab, Tahirih Justice Center and University of San Francisco School of Law Immigration and Deportation Defense Clinic Correspondence: Plaintiffs' correction to representation made in oral argument. Date of service: 10/03/2019 [11452728] [19-15716] (Rabinovitz, Judy) [Entered: 10/03/2019 10:48 AM]
10/30/19	73	Filed (ECF) Appellants Lee Francis Cissna, John L. Lafferty, Kevin K. McAleenan, Todd C. Owen, U.S. Customs and Border Protection, US Immigration and Customs Enforcement, USCIS, USDHS and Ronald D. Vitiello citation of supplemental authorities. Date of service: 10/30/2019. [11483551] [19-15716] (Reuveni, Erez) [Entered: 10/30/2019 02:13 PM]
10/31/19	74	Filed (ECF) Appellees Al Otro Lado, Central American Resource

DATE	DOCKET NUMBER	PROCEEDINGS
		Center of Northern California, Centro Legal De La Raza, Innovation Law Lab, Tahirih Justice Center and University of San Francisco School of Law Immigration and Deportation Defense Clinic citation of supplemental authorities. Date of service: 10/31/2019. [11485256] [19-15716] (Rabinovitz, Judy) [Entered: 10/31/2019 03:18 PM]
11/13/19	75	Filed (ECF) Appellees Al Otro Lado, Central American Resource Center of Northern California, Centro Legal De La Raza, Innovation Law Lab, Tahirih Justice Center and University of San Francisco School of Law Immigration and Deportation Defense Clinic citation of supplemental authorities. Date of service: 11/13/2019. [11497729] [19-15716] (Rabinovitz, Judy) [Entered: 11/13/2019 01:24 PM]
11/14/19	76	Filed (ECF) Appellants Lee Francis Cissna, John L. Lafferty, Kevin K. McAleenan, Todd C. Owen, U.S. Customs and Border Protection, US Immigration and Customs Enforcement, USCIS,

DATE	DOCKET NUMBER	PROCEEDINGS
		USDHS and Ronald D. Vitiello citation of supplemental authorities. Date of service: 11/14/2019. [11499071] [19-15716] (Reuveni, Erez) [Entered: 11/14/2019 12:11 PM]
		* * * * *
11/21/19	81	Filed (ECF) Appellees Al Otro Lado, Central American Resource Center of Northern California, Centro Legal De La Raza, Innovation Law Lab, Tahirih Justice Center and University of San Francisco School of Law Immigration and Deportation Defense Clinic citation of supplemental authorities. Date of service: 11/21/2019. [11506691] [19-15716] (Rabinovitz, Judy) [Entered: 11/21/2019 09:44 AM]
11/26/19	82	Filed (ECF) Appellants Lee Francis Cissna, John L. Lafferty, Kevin K. McAleenan, Todd C. Owen, U.S. Customs and Border Protection, US Immigration and Customs Enforcement, USCIS, USDHS and Ronald D. Vitiello citation of supplemental authorities. Date of service: 11/26/2019. [11512235] [19-15716] (Reuveni,

DATE	DOCKET NUMBER	PROCEEDINGS
		Erez) [Entered: 11/26/2019 06:30 AM]
12/2/19	83	Filed (ECF) Appellants Lee Francis Cissna, John L. Lafferty, Kevin K. McAleenan, Todd C. Owen, U.S. Customs and Border Protection, US Immigration and Customs Enforcement, USCIS, USDHS and Ronald D. Vitiello citation of supplemental authorities. Date of service: 12/02/2019. [11516626] [19-15716] (Reuveni, Erez) [Entered: 12/02/2019 06:29 AM]
12/3/19	84	Filed (ECF) Appellees Al Otro Lado, Central American Resource Center of Northern California, Centro Legal De La Raza, Innovation Law Lab, Tahirih Justice Center and University of San Francisco School of Law Immigration and Deportation Defense Clinic citation of supplemental authorities. Date of service: 12/03/2019. [11519502] [19-15716] (Rabinovitz, Judy) [Entered: 12/03/2019 01:59 PM]

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DATE	DOCKET NUMBER	PROCEEDINGS
2/28/20	87	Appellants Kevin K. McAleenan, Lee Francis Cissna, John L. Lafferty and Ronald D. Vitiello in 19-15716 substituted by Appellants Chad F. Wolf, Kenneth T. Cuccinelli, Andrew Davidson and Matthew Albence in 19-15716 [11612131] (TYL) [Entered: 02/28/2020 08:47 AM]
2/28/20	88	Filed order (FERDINAND F. FERNANDEZ, WILLIAM A. FLETCHER and RICHARD A. PAEZ) Appellees' motion for judicial notice (Dkt. Entry 36) is hereby GRANTED. [11612163] (AKM) [Entered: 02/28/2020 08:57 AM]
2/28/20	89	FILED OPINION (FERDINAND F. FERNANDEZ, WILLIAM A. FLETCHER and RICHARD A. PAEZ) We lift the emergency stay imposed by the motions panel, and we affirm the decision of the district court. AFFIRMED. Judge: FFF Dissenting, Judge: WAF Authoring. FILED AND ENTERED JUDGMENT. [11612187] —[Edited 02/28/2020 (attached corrected PDF—typos corrected) by AKM]—[Edited 03/02/2020

DATE	DOCKET NUMBER	PROCEEDINGS
		(attached corrected PDF—additional typos corrected) by AKM] (AKM) [Entered: 02/28/2020 09:08 AM]
2/28/20	90	Filed (ECF) Appellants Matthew Albence, Kenneth T. Cuccinelli, Andrew Davidson, Todd C. Owen, U.S. Customs and Border Protection, US Immigration and Customs Enforcement, USCIS, USDHS and Chad F. Wolf EMERGENCY Motion for miscellaneous relief [Emergency motion under Circuit Rule 27-3 for an immediate stay pending disposition of petition for certiorari or an immediate administrative stay]. Date of service: 02/28/2020. [11613665] [19-15716] (Reuveni, Erez) [Entered: 02/28/2020 05:21 PM]
2/28/20	91	Filed (ECF) Appellants Matthew Albence, Kenneth T. Cuccinelli, Andrew Davidson, Todd C. Owen, US Immigration and Customs Enforcement, USCIS, USDHS and Chad F. Wolf EMERGENCY Motion for miscellaneous relief [(CORRECTED) Emergency motion under Circuit Rule 27-3 for an immediate stay pending

DATE	DOCKET NUMBER	PROCEEDINGS
		disposition of petition for certiorari or an immediate administrative stay]. Date of service: 02/28/2020. [11613675] [19-15716] (Reuveni, Erez) [Entered: 02/28/2020 05:28 PM]
2/28/20	92	Filed (ECF) Appellants Matthew Albence, Kenneth T. Cuccinelli, Andrew Davidson, Todd C. Owen, US Immigration and Customs Enforcement, U.S. Customs and Border Protection, USCIS and Chad F. Wolf EMERGENCY Motion for miscellaneous relief [CORRECTED (operative version) Emergency motion under Circuit Rule 27-3 for an immediate stay pending disposition of petition for certiorari or an immediate administrative stay]. Date of service: 02/28/2020. [11613700] [19-15716] (Reuveni, Erez) [Entered: 02/28/2020 05:50 PM]
2/28/20	93	Filed order (FERDINAND F. FERNANDEZ, WILLIAM A. FLETCHER and RICHARD A. PAEZ) The emergency request for an immediate stay of this court's February 28, 2020 deci-

DATE	DOCKET NUMBER	PROCEEDINGS
		sion pending disposition of a petition for certiorari is granted pending further order of this court. Appellees are directed to file a response by the close of business on Monday, March 2, 2020. Any reply is due by the close of business on Tuesday, March 3, 2020.—[COURT UPDATE—replaced order with corrected version, corrected typo—02/28/2020 by SVG][11613715] (SVG) [Entered: 02/28/2020 07:05 PM]
3/2/20	94	Filed (ECF) Appellees Al Otro Lado, Central American Resource Center of Northern California, Centro Legal De La Raza, Innovation Law Lab, Tahirih Justice Center and University of San Francisco School of Law Immigration and Deportation Defense Clinic response to motion ([92] Motion (ECF Filing), [92] Motion (ECF Filing)). Date of service: 03/02/2020. [11615573] [19-15716] (Rabinovitz, Judy) [Entered: 03/02/2020 04:42 PM]
3/3/20	95	Filed (ECF) Appellants Matthew Albence, Kenneth T. Cuccinelli, Andrew Davidson, Todd C. Owen,

DATE	DOCKET NUMBER	PROCEEDINGS
		U.S. Customs and Border Protection, US Immigration and Customs Enforcement, USCIS, USDHS and Chad F. Wolf reply to response (). Date of service: 03/03/2020. [11617160] [19-15716] (Reuveni, Erez) [Entered: 03/03/2020 04:34 PM]
3/4/20	96	Filed Order for PUBLICATION (FERDINAND F. FERNANDEZ, WILLIAM A. FLETCHER and RICHARD A. PAEZ) (Partial Concurrence & Partial Dissent by Judge Fernandez) We stay, pending disposition of the Government's petition for certiorari, the district court's injunction insofar as it operates outside the Ninth Circuit. We decline to stay, pending disposition of the Government's petition for certiorari, the district court's injunction against the MPP insofar as it operates within the Ninth Circuit. The Government has requested in its March 3 reply brief, in the event we deny any part of their request for a stay, that we "extend the [administrative] stay by at least seven days, to March 10, to afford the Supreme Court an

DATE	DOCKET NUMBER	PROCEEDINGS
		orderly opportunity for review." We grant the Government's request and extend our administrative stay entered on Friday, February 28, until Wednesday, March 11. If the Supreme Court has not in the meantime acted to reverse or otherwise modify our decision, our partial grant and partial denial of the Government's request for a stay of the district court's injunction, as described above, will take effect on Thursday, March 12. So ordered on March 4, 2020. [11618488]—[Edited 03/11/2020 (attached reformatted pdf) by AKM] (AKM) [Entered: 03/04/2020 03:56 PM]
3/11/20	97	Received copy of US Supreme Court order filed on 03/11/2020—. The application for stay presented to Justice Kagan and by her referred to the Court is granted, and the district court's April 8, 2019 order granting a preliminary injunction is stayed pending the timely filing and disposition of a petition for a writ of certiorari. Should the petition for a writ of certiorari be denied, this stay

DATE	DOCKET NUMBER	PROCEEDINGS
		shall terminate automatically. In the event the petition for a writ of certiorari is granted, the stay shall terminate upon the sending down of the judgment of this Court. Justice Sotomayor would deny the application. PANEL [11626152] (CW) [Entered: 03/11/2020 11:41 AM]
		* * * * *
4/15/20	99	**Supreme Court Case Info** Case number: 19-1212 Filed on: 04/10/2020 Cert Petition Action 1: Pending [11661959] (RR) [Entered: 04/15/2020 01:51 PM]
10/19/20	100	**Supreme Court Case Info** Case number: 19-1212 Filed on: 04/10/2020 Cert Petition Action 1: Granted, 10/19/2020 [11864022] (JFF) [Entered: 10/19/2020 02:44 PM]
		* * * * *

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
(SAN FRANCISCO)

Docket No. 3:19-cv-00807-RS

INNOVATION LAW LAB; CENTRAL AMERICAN RESOURCE CENTER OF NORTHERN CALIFORNIA; CENTRO LEGAL DE LA RAZA; UNIVERSITY OF SAN FRANCISCO SCHOOL OF LAW IMMIGRATION AND DEPORTATION DEFENSE CLINIC; AL OTRO LADO; TAHIRIH JUSTICE CENTER, PLAINTIFFS-APPELLEES

v.

CHAD F. WOLF, ACTING SECRETARY OF HOMELAND SECURITY, IN HIS OFFICIAL CAPACITY; U.S. DEPARTMENT OF HOMELAND SECURITY; KENNETH T. CUCCINELLI, DIRECTOR, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, IN HIS OFFICIAL CAPACITY; ANDREW DAVIDSON, CHIEF OF ASYLUM DIVISION, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, IN HIS OFFICIAL CAPACITY; UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES; TODD C. OWEN, EXECUTIVE ASSISTANT COMMISSIONER, OFFICE OF FIELD OPERATIONS, U.S. CUSTOMS AND BORDER PROTECTION, IN HIS OFFICIAL CAPACITY; U.S. CUSTOMS AND BORDER PROTECTION; MATTHEW ALBENCE, ACTING DIRECTOR, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, IN HIS OFFICIAL CAPACITY; US IMMIGRATION AND CUSTOMS ENFORCEMENT, DEFENDANTS-APPELLANTS

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
2/14/19	1	COMPLAINT for Declaratory and Injunctive Relief against Lee

DATE	DOCKET NUMBER	PROCEEDINGS
		Francis Cissna, John Lafferty, Kevin K. McAleenan, Kirstjen Nielsen, Todd C. Owen, U.S. Citizenship and Immigration Services, U.S. Customs and Border Protection, U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, Ronald D. Vitello (Filing fee $400.00, receipt number 0971-13093503.). Filed by Central American Resource Center of Northern California, Innovation Law Lab, Tahirih Justice Center, Centro Legal de la Raza, Immigration and Deportation Defense Clinic at the University of San Francisco School of Law, Al Otro Lado. (Attachments: # 1 Civil Cover Sheet) (Newell, Jennifer) (Filed on 2/14/2019) Modified on 2/22/2019 (gbaS, COURT STAFF). (Entered: 02/14/2019)
2/14/19	2	Case assigned to Magistrate Judge Joseph C. Spero. Counsel for plaintiff or the removing party is responsible for serving the Complaint or Notice of Removal, Summons and the assigned judge's standing orders and all other new case documents

DATE	DOCKET NUMBER	PROCEEDINGS
		upon the opposing parties. For information, visit *E-Filing A New Civil Case* at http://cand.uscourts.gov/ecf/caseopening. Standing orders can be downloaded from the court's web page at www.cand.uscourts.gov/judges. Upon receipt, the summons will be issued and returned electronically. Counsel is required to send chambers a copy of the initiating documents pursuant to L.R. 5-1(e)(7). A scheduling order will be sent by Notice of Electronic Filing (NEF) within two business days. Consent/Declination due by 2/28/2019. (as, COURT STAFF) (Filed on 2/14/2019) (Entered: 02/14/2019)
		* * * * *
2/14/19	4	ADMINISTRATIVE MOTION for Leave to Proceed Pseudonymously filed by Al Otro Lado, Central American Resource Center of Northern California, Centro Legal de la Raza, Immigration and Deportation Defense Clinic at the University of San Francisco School of Law, Innovation Law Lab, Tahirih Justice Center.

DATE	DOCKET NUMBER	PROCEEDINGS
		Responses due by 2/19/2019. (Attachments: # 1 Declaration, # 2 Proposed Order)(Newell, Jennifer) (Filed on 2/14/2019) (Entered: 02/14/2019)
2/15/19	5	Declaration of John Doe; Gregory Doe; Bianca Doe; Dennis Doe; Alex Doe; Christopher Doe; Evan Doe; Frank Doe; Kevin Doe; Howard Doe; Ian Doe in Support of 4 ADMINISTRATIVE MOTION for Leave to Proceed Pseudonymously filed by Al Otro Lado, Central American Resource Center of Northern California, Centro Legal de la Raza, Immigration and Deportation Defense Clinic at the University of San Francisco School of Law, Innovation Law Lab, Tahirih Justice Center. (Attachments: # 1 Declaration of John Doe, # 2 Declaration of Gregory Doe, # 3 Declaration of Bianca Doe, # 4 Declaration of Dennis Doe, # 5 Declaration of Alex Doe, # 6 Declaration of Christopher Doe, # 7 Declaration of Evan Doe, # 8 Declaration of Frank Doe, # 9 Declaration of Kevin Doe, # 10 Declaration of Howard Doe, # 11 Declaration of

DATE	DOCKET NUMBER	PROCEEDINGS
		Ian Doe) (Related document(s) 4) (Newell, Jennifer) (Filed on 2/15/2019) (Entered: 02/15/2019)
		* * * * *
2/15/19	10	CONSENT/DECLINATION to Proceed Before a US Magistrate Judge by Al Otro Lado, Central American Resource Center of Northern California, Centro Legal de la Raza, Immigration and Deportation Defense Clinic at the University of San Francisco School of Law, Innovation Law Lab, Tahirih Justice Center.. (Newell, Jennifer) (Filed on 2/15/2019) (Entered: 02/15/2019)
		* * * * *
2/15/19	12	CONSENT/DECLINATION to Proceed Before a US Magistrate Judge by Al Otro Lado, Central American Resource Center of Northern California, Centro Legal de la Raza, Immigration and Deportation Defense Clinic at the University of San Francisco School of Law, Innovation Law Lab, Tahirih Justice Center.. (Newell, Jennifer) (Filed on 2/15/2019) (Entered: 02/15/2019)

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
2/19/19	14	CLERK'S NOTICE of Impending Reassignment to U.S. District Judge (klhS, COURT STAFF) (Filed on 2/19/2019) (Entered: 02/19/2019)
		* * * * *
2/19/19	16	**ORDER, Case reassigned to Judge Richard Seeborg. Magistrate Judge Joseph C. Spero no longer assigned to the case. This case is assigned to a judge who participates in the Cameras in the Courtroom Pilot Project. See General Order 65 and http://cand.uscourts.gov/cameras. Signed by Executive Committee on 2/19/19. (Attachments: # 1 Notice of Eligibility for Video Recording) (haS, COURT STAFF) (Filed on 2/19/2019) (Entered: 02/19/2019)**
		* * * * *
2/20/19	19	CLERK'S NOTICE re Motion to Consider Whether Cases Should Be Related (Dkt. No. 110 in 3:18-cv-06810-JST East Bay Sanctuary Covenant et al v. Trump et al). The court has reviewed the motion and determined that no

DATE	DOCKET NUMBER	PROCEEDINGS
		cases are related and no reassignments shall occur. (wsn, COURT STAFF) (Filed on 2/20/2019) (Entered: 02/20/2019)
2/20/19	20	MOTION for Temporary Restraining Order filed by Al Otro Lado, Central American Resource Center of Northern California, Centro Legal de la Raza, Immigration and Deportation Defense Clinic at the University of San Francisco School of Law, Innovation Law Lab, Tahirih Justice Center. (Attachments: # 1 Memorandum in Support of Temporary Restraining Order, # 2 Declaration of Taslim Tavarez, # 3 Declaration of Rubi Rodriguez, # 4 Declaration of Tahirih Justice Center, # 5 Declaration of Centro Legal de la Raza, # 6 Declaration of Innovation Law Lab, # 7 Declaration of Al Otro Lado, # 8 Declaration of CARECEN of Northern CA, # 9 Declaration of USF Law School Deportation Defense Clinic, # 10 Declaration of Adam Isacson, # 11 Declaration of Kathryn Shepherd, # 12 Declaration of Aaron Reichlin-

DATE	DOCKET NUMBER	PROCEEDINGS
		Melnick, # 13 Declaration of Daniella Burgi-Palomino, # 14 Declaration of Stephen W. Manning, # 15 Declaration of Steven H. Schulman, # 16 Declaration of Cecilia Menjivar, # 17 Declaration of Jeremy Slack, # 18 Proposed Order, # 19 Complaint) (Newell, Jennifer) (Filed on 2/20/2019) (Entered: 02/20/2019)
		* * * * *
2/25/19	35	Certificate of Interested Entities by Al Otro Lado, Central American Resource Center of Northern California, Centro Legal de la Raza, Immigration and Deportation Defense Clinic at the University of San Francisco School of Law, Innovation Law Lab, Tahirih Justice Center (Newell, Jennifer) (Filed on 2/25/2019) (Entered: 02/25/2019)
		* * * * *
2/25/19	37	MOTION to Transfer Case *to the Southern District of California* filed by Lee Francis Cissna, John L. Lafferty, Kevin K. McAleenan, Kirstjen Nielsen, Todd C. Owen, U.S. Citizenship and Immigration

DATE	DOCKET NUMBER	PROCEEDINGS
		Services, U.S. Customs and Border Protection, U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement. Responses due by 3/11/2019. Replies due by 3/18/2019. (Attachments: # 1 Exhibit A—CDCal Transfer Order, # 2 Exhibit B—NDCAL MTI Order, # 3 Proposed Order Granting Transfer) (York, Thomas) (Filed on 2/25/2019) (Entered: 02/25/2019)
		* * * * *
3/1/19	42	OPPOSITION/RESPONSE (re 20 MOTION for Temporary Restraining Order) filed by Lee Francis Cissna, John L. Lafferty, Kevin K. McAleenan, Kirstjen Nielsen, Todd C. Owen, U.S. Citizenship and Immigration Services, U.S. Customs and Border Protection, U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, Ronald D. Vitiello. (Attachments: # 1 Proposed Order) (Reuveni, Erez) (Filed on 3/1/2019) (Entered: 03/01/2019)

DATE	DOCKET NUMBER	PROCEEDINGS
3/1/19	43	NOTICE by Lee Francis Cissna, John L. Lafferty, Kevin K. McAleenan, Kirstjen Nielsen, Todd C. Owen, U.S. Citizenship and Immigration Services, U.S. Customs and Border Protection, U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, Ronald D. Vitiello (*filing of the administrative record) (Reuveni, Erez*) (Filed on 3/1/2019) (Additional attachment(s) added on 4/23/2019: **Administrative Record** # 1 Part 1, # 2 Part 2, # 3 Part 3, # 4 Part 4, # 5 Part 5, # 6 Part 6, # 7 Part 7, # 8 Part 8, # 9 Part 9, # 10 Part 10 (1 of 2), # 11 Part 10 (2 of 2)) (gbaS, COURT STAFF). (Entered: 03/01/2019)
3/1/19	44	Administrative Motion to File Under Seal filed by Lee Francis Cissna, John L. Lafferty, Kevin K. McAleenan, Kirstjen Nielsen, Todd C. Owen, U.S. Citizenship and Immigration Services, U.S. Customs and Border Protection, U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, Ronald D. Vitiello. (Attachments: # 1

DATE	DOCKET NUMBER	PROCEEDINGS
		Declaration of Archith Ramkumar, # 2 Proposed Order, # 3 Unredacted Version of Exhibit A) (Ramkumar, Archith) (Filed on 3/1/2019) (Entered: 03/01/2019)
3/1/19	45	MOTION to Strike 20 MOTION for Temporary Restraining Order filed by Lee Francis Cissna, John L. Lafferty, Kevin K. McAleenan, Kirstjen Nielsen, Todd C. Owen, U.S. Citizenship and Immigration Services, U.S. Customs and Border Protection, U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, Ronald D. Vitiello. Responses due by 3/6/2019. Replies due by 3/8/2019. (Attachments: # 1 Proposed Order) (Ramkumar, Archith) (Filed on 3/1/2019) (Entered: 03/01/2019)
3/4/19	46	OPPOSITION/RESPONSE (re 37 MOTION to Transfer Case *to the Southern District of California*) filed by Al Otro Lado, Central American Resource Center of Northern California, Centro Legal de la Raza, Immigration and Deportation Defense Clinic at the University of San Francisco School of Law, Innovation Law

DATE	DOCKET NUMBER	PROCEEDINGS
		Lab, Tahirih Justice Center. (Attachments: # 1 Declaration (Supplemental) of Laura Victoria Sanchez (CARECEN), # 2 Declaration (Supplemental) of Jacqueline Brown Scott (USF Clinic), # 3 Declaration (Supplemental) of Eleni Wolfe-Roubatis (Centro Legal), # 4 Declaration (Third) of Stephen W. Manning (Law Lab), # 5 Declaration (Supplemental) of Rena Cutlip-Mason (Tahirih), # 6 Declaration of Miguel Marquez (Santa Clara County), # 7 Declaration of Emilia Garcia and Exhibits) (Eiland, Katrina) (Filed on 3/4/2019) (Entered: 03/04/2019)
		* * * * *
3/6/19	49	Amicus Curiae Brief by Immigration Reform Law Institute. (gbaS, COURT STAFF) (Filed on 3/6/2019) (Entered: 03/06/2019)
3/6/19	50	OPPOSITION/RESPONSE (re 45 MOTION to Strike 20 MOTION for Temporary Restraining Order) filed by Al Otro Lado, Central American Resource Center of Northern California, Centro Legal de la Raza, Immigration

DATE	DOCKET NUMBER	PROCEEDINGS
		and Deportation Defense Clinic at the University of San Francisco School of Law, Innovation Law Lab, Tahirih Justice Center. (Attachments: # 1 Proposed Order for Briefing Schedule, # 2 Proposed Order for Consideration of Plaintiffs' Evidence) (Veroff, Julie) (Filed on 3/6/2019) (Entered: 03/06/2019)
3/6/19	51	MOTION Consideration of Plaintiffs' Evidence re 20 MOTION for Temporary Restraining Order filed by Al Otro Lado, Central American Resource Center of Northern California, Centro Legal de la Raza, Immigration and Deportation Defense Clinic at the University of San Francisco School of Law, Innovation Law Lab, Tahirih Justice Center. Responses due by 3/8/2019. (Attachments: # 1 Proposed Order for Briefing Schedule, # 2 Proposed Order for Consideration of Plaintiffs' Evidence) (Veroff, Julie) (Filed on 3/6/2019) (Entered: 03/06/2019)
3/7/19	52	REPLY (re 20 MOTION for Temporary Restraining Order) filed by Al Otro Lado, Central

DATE	DOCKET NUMBER	PROCEEDINGS
		American Resource Center of Northern California, Centro Legal de la Raza, Immigration and Deportation Defense Clinic at the University of San Francisco School of Law, Innovation Law Lab, Tahirih Justice Center. (Rabinovitz, Judy) (Filed on 3/7/2019) (Entered: 03/07/2019)
3/7/19	53	REPLY (re 37 MOTION to Transfer Case *to the Southern District of California*) filed by Lee Francis Cissna, John L. Lafferty, Kevin K. McAleenan, Kirstjen Nielsen, Todd C. Owen, U.S. Citizenship and Immigration Services, U.S. Customs and Border Protection, U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, Ronald D. Vitiello. (York, Thomas) (Filed on 3/7/2019) (Entered: 03/07/2019)
		* * * * *
3/8/19	55	REPLY (re 45 MOTION to Strike 20 MOTION for Temporary Restraining Order) filed by Lee Francis Cissna, John L. Lafferty, Kevin K. McAleenan, Kirstjen Nielsen, Todd C. Owen,

DATE	DOCKET NUMBER	PROCEEDINGS
		U.S. Citizenship and Immigration Services, U.S. Customs and Border Protection, U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, Ronald D. Vitiello. (Ramkumar, Archith) (Filed on 3/8/2019) (Entered: 03/08/2019)
3/8/19	56	OPPOSITION/RESPONSE (re 51 MOTION Consideration of Plaintiffs' Evidence re 20 MOTION for Temporary Restraining Order) filed by Lee Francis Cissna, John L. Lafferty, Kevin K. McAleenan, Kirstjen Nielsen, Todd C. Owen, U.S. Citizenship and Immigration Services, U.S. Customs and Border Protection, U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, Ronald D. Vitiello. (Ramkumar, Archith) (Filed on 3/8/2019) (Entered: 03/08/2019)
3/8/19	57	Statement *regarding scheduling motion practice on Plaintiffs yet-to-be-filed Motion to Set a Briefing Schedule for a Motion to Complete the Record"* by Lee Francis Cissna, John L. Lafferty, Kevin K. McAleenan, Kirstjen

DATE	DOCKET NUMBER	PROCEEDINGS
		Nielsen, Todd C. Owen, U.S. Citizenship and Immigration Services, U.S. Customs and Border Protection, U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, Ronald D. Vitiello. (Reuveni, Erez) (Filed on 3/8/2019) (Entered: 03/08/2019)
3/18/19	58	NOTICE by Lee Francis Cissna, John L. Lafferty, Kevin K. McAleenan, Kirstjen Nielsen, Todd C. Owen, U.S. Citizenship and Immigration Services, U.S. Customs and Border Protection, U.S. Department of Homeland Security (York, Thomas) (Filed on 3/18/2019) (Entered: 03/18/2019)
		* * * * *
3/22/19	64	**Minute Entry for proceedings held before Judge Richard Seeborg: Motion for Preliminary Injunction Hearing held on 3/22/2019. Motion taken under submission; Court to issue an order. Total Time in Court: 2 hours 10 minutes. Court Reporter: Jo Ann Bryce.** **Plaintiff Attorney: Judy Rabinovitz, Katrina Eiland, Eunice**

DATE	DOCKET NUMBER	PROCEEDINGS
		Lee, Julie Veroff, Lee Gelernt, Melissa Crow, Blaine Bookey, Jennifer Chang Newell. Defendant Attorney: Scott Stewart, Erez Reuveni. ***(This is a text-only entry generated by the court. There is no document associated with this entry.)*** **(cl, COURT STAFF) (Date Filed: 3/22/2019) (Entered: 03/22/2019)**
		* * * * *
3/27/19	67	Transcript of Proceedings held on 3/22/19, before Judge Richard Seeborg. Court Reporter Jo Ann Bryce, telephone number 510-910-5888, joann_bryce@cand.uscourts.gov. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerk's Office public terminal or may be purchased through the Court Reporter until the deadline for the Release of Transcript Restriction after 90 days. After that date, it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. (Re 65 Tran-

DATE	DOCKET NUMBER	PROCEEDINGS
		script Order,) Release of Transcript Restriction set for 6/25/2019. (Related documents(s) 65) (jabS, COURTSTAFF) (Filed on 3/27/2019) (Entered: 03/27/2019)
		* * * * *
4/2/19	69	NOTICE by Lee Francis Cissna, John L. Lafferty, Kevin K. McAleenan, Kirstjen Nielsen, Todd C. Owen, U.S. Citizenship and Immigration Services, U.S. Customs and Border Protection, U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, Ronald D. Vitiello (York, Thomas) (Filed on 4/2/2019) (Entered: 04/02/2019)
4/3/19	70	Supplemental Brief re 68 Order filed byLee Francis Cissna, John L. Lafferty, Kevin K. McAleenan, Kirstjen Nielsen, Todd C. Owen, U.S. Citizenship and Immigration Services, U.S. Customs and Border Protection, U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, Ronald D. Vitiello. (Related document(s) 68) (Reuveni, Erez) (Filed on 4/3/2019) (Entered:

DATE	DOCKET NUMBER	PROCEEDINGS
		04/03/2019)
4/3/19	71	Supplemental Brief re 68 Order filed by University of San Francisco School of Law Immigration and Deportation Defense Clinic, Al Otro Lado, Central American Resource Center of Northern California, Centro Legal de la Raza, Innovation Law Lab, Tahirih Justice Center. (Related document(s) 68) (Rabinovitz, Judy) (Filed on 4/3/2019) (Entered: 04/03/2019)
		* * * * *
4/8/19	73	**ORDER GRANTING MOTION FOR PRELIMINARY INJUNCTION. Signed by Judge Richard Seeborg on 4/8/19. (cl, COURT STAFF) (Filed on 4/8/2019) (Entered: 04/08/2019)**
4/8/19	74	**ORDER Granting Motion to File Under Seal re 44 Administrative Motion to File Under Seal filed by Ronald D. Vitiello. Signed by Judge Richard Seeborg on 4/8/19. (cl, COURT STAFF) (Filed on 4/8/2019) (Entered: 04/08/2019)**
4/10/19	75	NOTICE OF APPEAL to the 9th

DATE	DOCKET NUMBER	PROCEEDINGS
		Circuit Court of Appeals filed by Lee Francis Cissna, John L. Lafferty, Kevin K. McAleenan, Kirstjen Nielsen, Todd C. Owen, U.S. Citizenship and Immigration Services, U.S. Customs and Border Protection, U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, Ronald D. Vitiello. Appeal of Order, Terminate Motions 73 (Appeal fee FEE WAIVED.) (Reuveni, Erez) (Filed on 4/10/2019) (Entered: 04/10/2019)
		* * * * *
4/22/19	77	USCA Case Number **19-15716** for 75 Notice of Appeal, filed by Ronald D. Vitiello, U.S. Department of Homeland Security, U.S. Customs and Border Protection, John L. Lafferty, Todd C. Owen, U.S. Immigration and Customs Enforcement, U.S. Citizenship and Immigration Services, Kirstjen Nielsen, Kevin K. McAleenan, Lee Francis Cissna. (gbaS, COURT STAFF) (Filed on 4/22/2019) (Entered: 04/22/2019)

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
5/16/19	83	OPINION of USCA as to 75 Notice of Appeal, filed by Ronald D. Vitiello, U.S. Department of Homeland Security, U.S. Customs and Border Protection, John L. Lafferty, Todd C. Owen, U.S. Immigration and Customs Enforcement, U.S. Citizenship and Immigration Services, Kirstjen Nielsen, Kevin K. McAleenan, Lee Francis Cissna. (Attachments: # 1 Concurrence, # 2 Dissent) (gbaS, COURT STAFF) (Filed on 5/16/2019) (Entered: 05/16/2019)
		* * * * *
5/20/19	87	MOTION to Stay filed by Lee Francis Cissna, John L. Lafferty, Kevin K. McAleenan, Kirstjen Nielsen, Todd C. Owen, U.S. Citizenship and Immigration Services, U.S. Customs and Border Protection, U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, Ronald D. Vitiello. Responses due by 6/3/2019. Replies due by 6/10/2019. (Attachments: # 1 Proposed Order)

DATE	DOCKET NUMBER	PROCEEDINGS
		(Ramkumar, Archith) (Filed on 5/20/2019) (Entered: 05/20/2019)
		* * * * *
5/24/20	90	ORDER of USCA as to 75 Notice of Appeal, filed by Ronald D. Vitiello, U.S. Department of Homeland Security, U.S. Customs and Border Protection, John L. Lafferty, Todd C. Owen, U.S. Immigration and Customs Enforcement, U.S. Citizenship and Immigration Services, Kirstjen Nielsen, Kevin K. McAleenan, Lee Francis Cissna. **USCA No. 19-15716**. (wsnS, COURT STAFF) (Filed on 5/24/2019) (Entered: 05/24/2019)
		* * * * *
6/3/19	92	OPPOSITION/RESPONSE (re 87 MOTION to Stay) filed by University of San Francisco School of Law Immigration and Deportation Defense Clinic, Al Otro Lado, Central American Resource Center of Northern California, Centro Legal de la Raza, Immigration Reform Law Institute, Innovation Law Lab, Tahirih Justice Center. (Rabinovitz, Judy) (Filed

DATE	DOCKET NUMBER	PROCEEDINGS
		on 6/3/2019) (Entered: 06/03/2019)
6/10/19	93	REPLY (re 87 MOTION to Stay) filed by Lee Francis Cissna, John L. Lafferty, Kevin K. McAleenan, Kirstjen Nielsen, Todd C. Owen, U.S. Citizenship and Immigration Services, U.S. Customs and Border Protection, U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, Ronald D. Vitiello. (Ramkumar, Archith) (Filed on 6/10/2019) (Entered: 06/10/2019)
7/15/19	94	**ORDER by Judge Richard Seeborg granting 87 Motion to Stay. (cl, COURT STAFF) (Filed on 7/15/2019) (Entered: 07/15/2019)**
		* * * * *
10/15/19	98	Statement *Jointly Filed Regarding Status of Appeal* by Lee Francis Cissna, John L. Lafferty, Kevin K. McAleenan, Kirstjen Nielsen, Todd C. Owen, U.S. Citizenship and Immigration Services, U.S. Customs and Border Protection, U.S. Department of Homeland Security, U.S. Immigration and Customs Enforce-

DATE	DOCKET NUMBER	PROCEEDINGS
		ment, Ronald D. Vitiello. (Ramkumar, Archith) (Filed on 10/15/2019) (Entered: 10/15/2019)
		* * * * *
1/10/20	104	JOINT Statement Regarding Status of Appeal by Lee Francis Cissna, John L. Lafferty, Kevin K. McAleenan, Kirstjen Nielsen, Todd C. Owen, U.S. Citizenship and Immigration Services, U.S. Customs and Border Protection, U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, Ronald D. Vitiello. (Ramkumar, Archith) (Filed on 1/10/2020) Modified on 1/12/2020 (gbaS, COURT STAFF). (Entered: 01/10/2020)
		* * * * *
2/28/20	106	ORDER of USCA as to 75 Notice of Appeal, filed by Ronald D. Vitiello, U.S. Department of Homeland Security, U.S. Customs and Border Protection, John L. Laf-

DATE	DOCKET NUMBER	PROCEEDINGS
		ferty, Todd C. Owen, U.S. Immigration and Customs Enforcement, U.S. Citizenship and Immigration Services, Kirstjen Nielsen, Kevin K. McAleenan, Lee Francis Cissna. (gbaS, COURT STAFF) (Filed on 2/28/2020) (Entered: 02/28/2020)
2/28/20	107	USCA Opinion as to 75 Notice of Appeal, filed by Ronald D. Vitiello, U.S. Department of Homeland Security, U.S. Customs and Border Protection, John L. Lafferty, Todd C. Owen, U.S. Immigration and Customs Enforcement, U.S. Citizenship and Immigration Services, Kirstjen Nielsen, Kevin K. McAleenan, Lee Francis Cissna. (gbaS, COURT STAFF) (Filed on 2/28/2020) (Entered: 02/28/2020)
2/28/20	108	ORDER of USCA as to 75 Notice of Appeal **19-15716**. *The emergency request for an immediate stay of this court's February 28, 2020 decision pending disposition of a petition for certiorari is granted pending further order of this court.* (wsnS, COURT

DATE	DOCKET NUMBER	PROCEEDINGS
		STAFF) (Filed on 2/28/2020) (Entered: 03/02/2020)
3/4/20	109	ORDER of USCA as to 75 Notice of Appeal **19-15716**. (wsnS, COURT STAFF) (Filed on 3/4/2020) (Entered: 03/05/2020)
		* * * * *
3/18/20	111	ADR Certification (ADR L.R. 3-5 b) of discussion of ADR options (Rabinovitz, Judy) (Filed on 3/18/2020) (Entered: 03/18/2020)
3/18/20	112	ADR Certification (ADR L.R. 3-5 b) of discussion of ADR options (Reuveni, Erez) (Filed on 3/18/2020) (Entered: 03/18/2020)
		* * * * *
4/16/20	114	U.S. Supreme Court Notice that the petition for a writ of certiorari was filed on 4/10/2020 and placed on the docket 4/14/2020 as No. **19-1212**. (gbaS, COURT STAFF) (Filed on 4/16/2020) (Entered: 04/16/2020)
		* * * * *
10/19/20	118	U.S. Supreme Court Notice that the petition for a writ of certiorari is granted. (gbaS, COURT STAFF) (Filed on

DATE	DOCKET NUMBER	PROCEEDINGS	
		10/19/2020)	(Entered:
		10/20/2020)	

Policy Number:
11088.1

FEA Number:
306-112-002b

Office of the Director

U.S. Department of Homeland Security
500 12th Street SW
Washington, DC 20536

U.S. Immigration and Customs Enforcement

Feb. 12, 2019

MEMORANDUM FOR: Executive Associate Directors
Principal Legal Advisor

FROM: Ronald D. Vitiello
/s/ RONALD D. VITIELLO
Deputy Director and
Senior Official Performing
the Duties of the Director

SUBJECT: Implementation of the Migrant Protection Protocols

On January 25, 2019, Secretary Nielsen issued a memorandum entitled *Policy Guidance for Implementation of the Migrant Protection Protocols*, in which she provided guidance for the implementation of the Migrant Protection Protocols (MPP) announced on December 20, 2018, an arrangement between the United States and Mexico to address the migration crisis along our southern border. Pursuant to the Secretary's direction, this memorandum provides guidance to U.S. Immigration and Customs Enforcement (ICE) about its role in the implementation of the MPP.

Section 235(b)(2)(C) of the Immigration and Nationality Act (INA) allows the Department of Homeland Security

(DHS), in its discretion, with regard to certain aliens who are "arriving on land (whether or not at a designated port of arrival) from a foreign territory contiguous to the United States, . . . [to] return the alien[s] to that territory pending a proceeding under [INA] section 240." Consistent with the MPP, third-country nationals (i.e., aliens who are not citizens or nationals of Mexico) who are arriving in the United States by land from Mexico may be returned to Mexico pursuant to INA section 235(b)(2)(C) for the duration of their INA section 240 removal proceedings. DHS will not use the INA section 235(b)(2)(C) process in the cases of unaccompanied alien children, aliens placed into the expedited removal (ER) process of INA section 235(b)(1), and other aliens determined, in the exercise of discretion, not to be appropriate for such processing (which may include certain aliens with criminal histories, individuals determined to be of interest to either Mexico or the United States, and lawful permanent residents of the United States).

The direct placement of an alien into INA section 240 removal proceedings (and, in DHS's discretion, returning the alien to Mexico pursuant to INA section 235(b)(2)(C) pending those proceedings) is a separate and distinct process from ER. Processing determinations, including whether to place an alien into ER or INA section 240 proceedings (and, as applicable, to return an alien placed into INA section 240 proceedings to Mexico under INA section 235(b)(2)(C) as part of MPP), or to apply another processing disposition, will be made by U.S. Customs and Border Protection (CBP), in CBP's enforcement discretion.

MPP implementation began at the San Ysidro port of entry on or about January 28, 2019, and it is intended that MPP implementation will expand eventually across the southern border. In support of MPP, ICE Enforcement and Removal Operations (ERO) will provide appropriate transportation when necessary, for aliens returned to Mexico under the MPP, from the designated port of entry to the court facility for the scheduled removal hearings before an immigration judge and back to the port of entry for return to Mexico by CBP after such hearings. ERO also will be responsible for effectuating removal orders entered against aliens previously processed under INA section 235(b)(2)(C), including post- removal order detention. ICE attorneys will represent DHS in the related removal proceedings pursuant to 6 U.S.C. § 252(c).

As instructed by the Secretary, in exercising prosecutorial discretion concerning the potential return of third-country nationals to Mexico under INA section 235(b)(2)(C), DHS officials should act consistently with the *non-refoulement* principles contained in Article 33 of the 1951 Convention Relating to the Status of Refugees and Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Specifically, a third-country national who affirmatively states a fear of return to Mexico (including while in the United States to attend a removal hearing) should not be involuntarily returned under INA section 235(b)(2)(C) if the alien would more likely than not be persecuted on account of race, religion, nationality, membership in a particular social group, or political opinion (unless described in INA section 241(b)(3)(B) as having engaged in certain criminal, persecutory, or terrorist activity), or would more likely than not be tortured, if so

returned pending removal proceedings. *Non-refoulement* assessments will be made by U.S. Citizenship and Immigration Services (USCIS) asylum in accordance with guidance issued by the Director of USCIS.

Within ten (10) days after this memorandum, relevant ICE program offices are directed to issue further guidance to ensure that MPP is implemented in accordance with the Secretary's memorandum, this memorandum, and policy guidance and procedures, in accordance with applicable law.

This document provides internal ICE policy guidance, which may be modified, rescinded, or superseded at any time without notice. This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. Likewise, no limitations are placed by this guidance on the otherwise lawful enforcement or litigative prerogatives of DHS.

Attachment:

DHS Secretary Memorandum, *Policy Guidance for Implementation of Migrant Protection Protocols*, dated January 25, 2019.

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 208

RIN 1615-AC34

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Parts 1003 and 1208

[EOIR Docket No. 18-0501; A.G. Order No. 4327-2018]

RIN 1125-AA89

Aliens Subject to a Bar on Entry Under Certain Presidential Proclamations; Procedures for Protection Claims

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security; Executive Office for Immigration Review, Department of Justice.

ACTION: Interim final rule; request for comment.

SUMMARY: The Department of Justice and the Department of Homeland Security ("DOJ," "DHS," or, collectively, "the Departments") are adopting an interim final rule governing asylum claims in the context of aliens who are subject to, but contravene, a suspension or limitation on entry into the United States through the southern border with Mexico that is imposed by a presidential proclamation or other presidential order ("a proclamation") under section 212(f) or 215(a)(1) of the Immigration and Nationality Act ("INA"). Pursuant to statutory authority, the Departments are amending their respective existing regulations to provide that aliens subject to such a proclamation concerning the

southern border, but who contravene such a proclamation by entering the United States after the effective date of such a proclamation, are ineligible for asylum. The interim rule, if applied to a proclamation suspending the entry of aliens who cross the southern border unlawfully, would bar such aliens from eligibility for asylum and thereby channel inadmissible aliens to ports of entry, where they would be processed in a controlled, orderly, and lawful manner. This rule would apply only prospectively to a proclamation issued after the effective date of this rule. It would not apply to a proclamation that specifically includes an exception for aliens applying for asylum , nor would it apply to aliens subject to a waiver or exception provided by the proclamation. DHS is amending its regulations to specify a screening process for aliens who are subject to this specific bar to asylum eligibility. DOJ is amending its regulations with respect to such aliens. The regulations would ensure that aliens in this category who establish a reasonable fear of persecution or torture could seek withholding of removal under the INA or protection from removal under regulations implementing U.S. obligations under Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT").

DATES:

Effective date: This rule is effective November 9, 2018.

Submission of public comments: Written or electronic comments must be submitted on or before January 8, 2019. Written comments postmarked on or before that date will be considered timely. The electronic

Federal Docket Management System will accept comments prior to midnight eastern standard time at the end of that day.

ADDRESSES: You may submit comments, identified by EOIR Docket No. 18-0501, by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2616, Falls Church, VA 22041. To ensure proper handling, please reference EOIR Docket No. 18-0501 on your correspondence. This mailing address may be used for paper, disk, or CD-ROM submissions.

• *Hand Delivery/Courier:* Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2616, Falls Church, VA 22041, Contact Telephone Number (703) 305-0289 (not a toll-free call).

FOR FURTHER INFORMATION CONTACT:

Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2616, Falls Church, VA 22041, Contact Telephone Number (703) 305-0289 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this rule. The Departments also invite comments that relate to the economic or federalism effects that might result from this rule. To provide the most assistance to the Departments, comments should reference a specific portion of the rule; explain the reason for any recommended change; and include data, information, or authority that supports the recommended change.

All comments submitted for this rulemaking should include the agency name and EOIR Docket No. 18-0501. Please note that all comments received are considered part of the public record and made available for public inspection at *www.regulations.gov.* Such information includes personally identifiable information (such as a person 's name, address, or any other data that might personally identify that individual) that the commenter voluntarily submits.

If you want to submit personally identifiable information as part of your comment, but do not want it to be posted online, you must include the phrase "PERSONALLY IDENTIFIABLE INFORMATION" in the first paragraph of your comment and precisely and prominently identify the information of which you seek redaction.

If you want to submit confidential business information as part of your comment , but do not want it to be posted online, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first

paragraph of your comment and precisely and prominently identify the confidential business information of which you seek redaction. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *www.regulations.gov.* Personally identifiable information and confidential business information provided as set forth above will be placed in the public docket file of DOJ's Executive Office of Immigration Review ("EOIR"), but not posted online. To inspect the public docket file in person, you must make an appointment with EOIR. Please see the **FOR FURTHER INFORMATION CONTACT** paragraph above for the contact information specific to this rule.

II. Purpose of This Interim Final Rule

This interim final rule ("interim rule" or "rule") governs eligibility for asylum and screening procedures for aliens subject to a presidential proclamation or order restricting entry issued pursuant to section 212(f) of the INA, 8 U.S.C. 1182(f), or section 215(a)(1) of the INA, 8 U.S.C. 1185(a)(1), that concerns entry to the United States along the southern border with Mexico and is issued on or after the effective date of this rule. Pursuant to statutory authority, the interim rule renders such aliens ineligible for asylum if they enter the United States after the effective date of such a proclamation, become subject to the proclamation, and enter the United States in violation of the suspension or limitation of entry established by the proclamation. The interim rule, if applied to a proclamation suspending the entry of aliens who cross the southern border unlawfully, would bar such aliens from eligibility for asylum and thereby chan-

nel inadmissible aliens to ports of entry, where such aliens could seek to enter and would be processed in an orderly and controlled manner. Aliens who enter prior to the effective date of an applicable proclamation will not be subject to this asylum eligibility bar unless they depart and reenter while the proclamation remains in effect. Aliens also will not be subject to this eligibility bar if they fall within an exception or waiver within the proclamation that makes the suspension or limitation of entry in the proclamation inapplicable to them, or if the proclamation provides that it does not affect eligibility for asylum.

As discussed further below, asylum is a discretionary immigration benefit. In general, aliens may apply for asylum if they are physically present or arrive in the United States, irrespective of their status and irrespective of whether or not they arrive at a port of entry, as provided in section 208(a) of the INA, 8 U.S.C. 1158(a). Congress, however, provided that certain categories of aliens could not receive asylum and further delegated to the Attorney General and the Secretary of Homeland Security ("Secretary") the authority to promulgate regulations establishing additional bars on eligibility that are consistent with the asylum statute and "any other conditions or limitations on the consideration of an application for asylum" that are consistent with the INA. *See* INA 208(b)(2)(C), (d)(5)(B), 8 U.S.C. 1158(b)(2)(C), (d)(5)(B).

In the Illegal Immigration Reform and Immigration Responsibility Act of 1996 ("IIRIRA"), Public Law 104-208, Congress, concerned with rampant delays in proceedings to remove illegal aliens, created expedited pro-

cedures for removing inadmissible aliens, and authorized the extension of such procedures to aliens who entered illegally and were apprehended within two years of their entry. *See generally* INA 235(b), 8 U.S.C. 1225(b). Those procedures were aimed at facilitating the swift removal of inadmissible aliens, including those who had entered illegally, while also expeditiously resolving any asylum claims. For instance, Congress provided that any alien who asserted a fear of persecution would appear before an asylum officer, and that any alien who is determined to have established a "credible fear"—meaning a "significant possibility . . . that the alien could establish eligibility for asylum" under the asylum statute—would be detained for further consideration of an asylum claim. *See* INA 23S(b)(1), (b)(1)(B)(v), 8 U.S.C. 1225(b)(1), (b)(1)(B)(v).

When the expedited procedures were first implemented approximately two decades ago, relatively few aliens within those proceedings asserted an intent to apply for asylum or a fear of persecution. Rather, most aliens found inadmissible at the southern border were single adults who were immediately repatriated to Mexico. Thus, while the overall number of illegal aliens apprehended was far higher than it is today (around 1.6 million in 2000), aliens could be processed and removed more quickly, without requiring detention or lengthy court proceedings.

In recent years, the United States has seen a large increase in the number and proportion of inadmissible aliens subject to expedited removal who assert an intent to apply for asylum or a fear of persecution during that process and are subsequently placed into removal proceedings in immigration court. Most of those aliens

unlawfully enter the country between ports of entry along the southern border. Over the past decade, the overall percentage of aliens subject to expedited removal and referred, as part of the initial screening process, for a credible-fear interview jumped from approximately 5% to above 40%, and the total number of credible-fear referrals for interviews increased from about 5,000 a year in Fiscal Year ("FY") 2008 to about 97,000 in FY 2018. Furthermore, the percentage of cases in which asylum officers found that the alien had established a credible fear—leading to the alien's placement in full immigration proceedings under section 240 of the INA, 8 U.S.C. 1229a—has also increased in recent years. In FY 2008, when asylum officers resolved a referred case with a credible-fear determination, they made a positive finding about 77% of the time. That percentage rose to 80% by FY 2014. In FY 2018, that percentage of positive credible-fear determinations has climbed to about 89% of all cases. After this initial screening process, however, significant proportions of aliens who receive a positive credible-fear determination never file an application for asylum or are ordered removed in absentia. In FY 2018 , a total of about 6,000 aliens who passed through credible-fear screening (17% of all completed cases, 27% of all completed cases in which an asylum application was filed, and about 36% of cases where the asylum claim was adjudicated on the merits) established that they should be granted asylum.

Apprehending and processing this growing number of aliens who cross illegally into the United States and invoke asylum procedures thus consumes an ever increasing amount of resources of DHS, which must surveil, apprehend, and process the aliens who enter the country. Congress has also required DHS to detain all

aliens during the pendency of their credible-fear proceedings, which can take days or weeks. And DOJ must also dedicate substantial resources: Its immigration judges adjudicate aliens' claims, and its officials are responsible for prosecuting and maintaining custody over those who violate the criminal law. The strains on the Departments are particularly acute with respect to the rising numbers of family units, who generally cannot be detained if they are found to have a credible fear, due to a combination of resource constraints and the manner in which the terms of the Settlement Agreement in *Flores* v. *Reno* have been interpreted by courts. *See* Stipulated Settlement Agreement, *Flores* v. *Reno,* No. 85-cv-4544 (N.D. Cal. Jan. 17, 1997).

In recent weeks, United States officials have each day encountered an average of approximately 2,000 inadmissible aliens at the southern border. At the same time, large caravans of thousands of aliens, primarily from Central America, are attempting to make their way to the United States, with the apparent intent of seeking asylum after entering the United States unlawfully or without proper documentation. Central American nationals represent a majority of aliens who enter the United States unlawfully, and are also disproportionately likely to choose to enter illegally between ports of entry rather than presenting themselves at a port of entry. As discussed below, aliens who enter unlawfully between ports of entry along the southern border, as opposed to at a port of entry, pose a greater strain on DHS's already stretched detention and processing resources and also engage in conduct that seriously endangers themselves, any children traveling with them, and the U.S. Customs and Border Protection ("CBP") agents who seek to apprehend them.

The United States has been engaged in sustained diplomatic negotiations with Mexico and the Northern Triangle countries (Honduras, El Salvador, and Guatemala) regarding the situation on the southern border, but those negotiations have, to date, proved unable to meaningfully improve the situation.

The purpose of this rule is to limit aliens' eligibility for asylum if they enter in contravention of a proclamation suspending or restricting their entry along the southern border. Such aliens would contravene a measure that the President has determined to be in the national interest. For instance, a proclamation restricting the entry of inadmissible aliens who enter unlawfully between ports of entry would reflect a determination that this particular category of aliens necessitates a response that would supplement existing prohibitions on entry for all inadmissible aliens. Such a proclamation would encourage such aliens to seek admission and indicate an intention to apply for asylum at ports of entry. Aliens who enter in violation of that proclamation would not be eligible for asylum. They would, however, remain eligible for statutory withholding of removal under section 241(b)(3) of the INA, 8 U.S.C. 1231(b)(3), or for protections under the regulations issued under the authority of the implementing legislation regarding Article 3 of the CAT.

The Departments anticipate that a large number of aliens who would be subject to a proclamation-based ineligibility bar would be subject to expedited-removal proceedings. Accordingly, this rule ensures that asylum officers and immigration judges account for such aliens' ineligibility for asylum within the expedited-removal process, so that aliens subject to such a bar will

be processed swiftly. Furthermore, the rule continues to afford protection from removal for individuals who establish that they are more likely than not to be persecuted or tortured in the country of removal. Aliens rendered ineligible for asylum by this interim rule and who are referred for an interview in the expedited-removal process are still eligible to seek withholding of removal under section 241(b)(3) of the INA, 8 U.S.C. 1231(b)(3), or protections under the regulations issued under the authority of the implementing legislation regarding Article 3 of the CAT. Such aliens could pursue such claims in proceedings before an immigration judge under section 240 of the INA, 8 U.S.C. 1229a, if they establish a reasonable fear of persecution or torture.

III. Background

A. Joint Interim Rule

The Attorney General and the Secretary of Homeland Security publish this joint interim rule pursuant to their respective authorities concerning asylum determinations.

The Homeland Security Act of 2002, Public Law 107-296, as amended, transferred many functions related to the execution of federal immigration law to the newly created Department of Homeland Security. The Homeland Security Act of 2002 charges the Secretary "with the administration and enforcement of this chapter and all other laws relating to the immigration and naturalization of aliens," 8 U.S.C. 1103(a)(1), and grants the Secretary the power to take all actions "necessary for carrying out" the provisions of the INA, *id.* 1103(a)(3). The Homeland Security Act of 2002 also transferred to

DHS some responsibility for affirmative asylum applications, *i.e.,* applications for asylum made outside the removal context. *See* 6 U.S.C. 271(b)(3). Those authorities have been delegated to U.S. Citizenship and Immigration Services ("USCIS"). USCIS asylum officers determine in the first instance whether an alien's affirmative asylum application should be granted. *See* 8 CFR 208.9.

But the Homeland Security Act of 2002 retained authority over certain individual immigration adjudications (including those related to defensive asylum applications) in DOJ, under the Executive Office for Immigration Review ("EOIR") and subject to the direction and regulation of the Attorney General. *See* 6 U.S.C. 521; 8 U.S.C. 1103(g). Thus, immigration judges within DOJ continue to adjudicate all asylum applications made by aliens during the removal process (defensive asylum applications), and they also review affirmative asylum applications referred by USCIS to the immigration court. *See* INA 101(b)(4), 8 U.S.C. 1101(b)(4); 8 CFR 1208.2; *Dhakal* v. *Sessions,* 895 F.3d 532, 536-37 (7th Cir. 2018) (describing affirmative and defensive asylum processes). The Board of Immigration Appeals ("BIA" or "Board"), also within DOJ, in turn hears appeals from immigration judges' decisions. 8 CFR 1003.1. In addition, the INA provides "[t]hat determination and ruling by the Attorney General with respect to all questions of law shall be controlling." INA 103(a)(1), 8 U.S.C. 1103(a)(1). This broad division of functions and authorities informs the background of this interim rule.

B. Legal Framework for Asylum

Asylum is a form of discretionary relief under section 208 of the INA, 8 U.S.C. 1158, that precludes an alien from being subject to removal, creates a path to lawful permanent resident status and citizenship, and affords a variety of other benefits, such as allowing certain alien family members to obtain lawful immigration status derivatively. *See R-S-C* v. *Sessions,* 869 F.3d 1176, 1180 (10th Cir. 2017); *see also, e.g.,* INA 208(c)(1)(A), (C), 8 U.S.C. 1158(c)(1)(A), (C) (asylees cannot be removed and can travel abroad with prior consent); INA 208(b)(3), 8 U.S.C. 1158(b)(3) (allowing derivative asylum for asylee's spouse and unmarried children); INA 209(b), 8 U.S.C. 1159(b) (allowing the Attorney General or Secretary to adjust the status of an asylee to that of a lawful permanent resident); INA 316(a), 8 U.S.C. 1427(a) (describing requirements for naturalization of lawful permanent residents). Aliens who are granted asylum are authorized to work in the United States and may receive certain financial assistance from the federal government. *See* INA 208(c)(1)(B), (d)(2), 8 U.S.C. 1158(c)(1)(B), (d)(2); 8 U.S.C. 1612(a)(2)(A), (b)(2)(A); 8 U.S.C. 1613(b)(1); 8 CFR 274a.12(a)(5); *see also* 8 CFR 274a.12(c)(8) (providing that asylum applicants may seek employment authorization 150 days after filing a complete application for asylum).

Aliens applying for asylum must establish that they meet the definition of a "refugee," that they are not subject to a bar to the granting of asylum, and that they merit a favorable exercise of discretion. INA 208(b)(1), 240(c)(4)(A), 8 U.S.C. 1158(b)(1), 1229a(c)(4)(A); *see Moncrieffe* v. *Holder,* 569 U.S. 184, 187 (2013) (describ-

ing asylum as a form of "discretionary relief from removal"); *Delgado* v. *Mukasey,* 508 F.3d 702, 705 (2d Cir. 2007) ("Asylum is a discretionary form of relief. . . . Once an applicant has established eligibility . . . it remains within the Attorney General's discretion to deny asylum."). Because asylum is a discretionary form of relief from removal, the alien bears the burden of showing both eligibility for asylum and why the Attorney General or Secretary should exercise discretion to grant relief. *See* INA 208(b)(1), 240(c)(4)(A), 8 U.S.C. 1158(b)(1), 1229a(c)(4)(A); *Romilus* v. *Ashcroft,* 385 F.3d 1, 8 (1st Cir. 2004).

Section 208 of the INA provides that, in order to apply for asylum, an applicant must be "physically present" or "arriv[e]" in the United States, "whether or not at a designated port of arrival" and "irrespective of such alien's status"—but the applicant must also "apply for asylum in accordance with" the rest of section 208 or with the expedited-removal process in section 235 of the INA. INA 208(a)(1), 8 U.S.C. 1158(a)(1). Furthermore, to be granted asylum, the alien must demonstrate that he or she meets the statutory definition of a "refugee," INA 208(b)(1)(A), 8 U.S.C. 1158(b)(1)(A), and is not subject to an exception or bar, INA 208(b)(2), 8 U.S.C. 1158(b)(2). The alien bears the burden of proof to establish that he or she meets these criteria. INA 208(b)(1)(B)(i), 8 U.S.C. 1158(b)(1)(B)(i); 8 CFR 1240.8(d).

For an alien to establish that he or she is a "refugee," the alien generally must be someone who is outside of his or her country of nationality and "is unable or unwilling to return to . . . that country because of persecution or a well-founded fear of persecution on account

of race, religion, nationality, membership in a particular social group, or political opinion." INA 101(a)(42)(A), 8 U.S.C. 1101(a)(42)(A).

In addition, if evidence indicates that one or more of the grounds for mandatory denial may apply, an alien must show that he or she does not fit within one of the statutory bars to granting asylum and is not subject to any "additional limitations and conditions . . . under which an alien shall be ineligible for asylum" established by a regulation that is "consistent with" section 208 of the INA. INA 208(b)(2)(C), 8 U.S.C. 1158(b)(2)(C); *see* 8 CFR 1240.8(d). The INA currently bars a grant of asylum to any alien: (1) Who "ordered, incited, assisted, or otherwise participated in the persecution of any person on account of" a protected ground; (2) who, "having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States"; (3) for whom there are serious reasons to believe the alien "has committed a serious nonpolitical crime outside the United States" prior to arrival in the United States; (4) for whom "there are reasonable grounds for regarding the alien as a danger to the security of the United States"; (5) who is described in the terrorism-related inadmissibility grounds, with limited exceptions; or (6) who "was firmly resettled in another country prior to arriving in the United States." INA 208(b)(2)(A)(i)-(vi), 8 U.S.C. 1158(b)(2)(A)(i)-(vi).

An alien who falls within any of those bars is subject to mandatory denial of asylum. Where there is evidence that "one or more of the grounds for mandatory denial of the application for relief may apply," the applicant in immigration court proceedings bears the burden of establishing that the bar at issue does not apply.

8 CFR 1240.8(d); *see also, e.g., Rendon* v. *Mukasey,* 520 F.3d 967, 973 (9th Cir. 2008) (applying 8 CFR 1240.8(d) in the context of the aggravated felony bar to asylum); *Gao* v. *U.S. Att'y Gen.,* 500 F.3d 93, 98 (2d Cir. 2007) (applying 8 CFR 1240.8(d) in the context of the persecutor bar); *Chen* v. *U.S. Att'y Gen.,* 513 F.3d 1255, 1257 (11th Cir. 2008) (same).

Because asylum is a discretionary benefit, aliens who are eligible for asylum are not automatically entitled to it. After demonstrating eligibility, aliens must further meet their burden of showing that the Attorney General or Secretary should exercise his or her discretion to grant asylum. *See* INA 208(b)(1)(A), 8 U.S.C. 1158(b)(1)(A) (the "Secretary of Homeland Security or the Attorney General may grant asylum to an alien" who applies in accordance with the required procedures and meets the definition of a "refugee"). The asylum statute's grant of discretion "is a broad delegation of power, which restricts the Attorney General's discretion to grant asylum only by requiring the Attorney General to first determine that the asylum applicant is a 'refugee.'" *Komarenko* v. *INS,* 35 F.3d 432, 436 (9th Cir. 1994), *overruled on other grounds by Abebe* v. *Mukasey,* 554 F.3d 1203 (9th Cir. 2009) (en banc) (per curiam). Immigration judges and asylum officers exercise that delegated discretion on a case-by-case basis. Under the Board's decision in *Matter of Pula,* 19 I&N Dec. 467 (BIA 1987), and its progeny, "an alien's manner of entry or attempted entry is a proper and relevant discretionary factor" and "circumvention of orderly refugee procedures" can be a "serious adverse factor" against exercising discretion to grant asylum, *id.* at 473, but "[t]he dan-

ger of persecution will outweigh all but the most egregious adverse factors," *Matter of Kasinga*, 21 I&N Dec. 357, 367 (BIA 1996).

C. Establishing Bars to Asylum

The availability of asylum has long been qualified both by statutory bars and by administrative discretion to create additional bars. Those bars have developed over time in a back-and-forth process between Congress and the Attorney General. The original asylum provisions, as set out in the Refugee Act of 1980, Public Law 96-212, simply directed the Attorney General to "establish a procedure for an alien physically present in the United States or at a land border or port of entry, irrespective of such alien's status, to apply for asylum, and the alien may be granted asylum in the discretion of the Attorney General if the Attorney General determines that such alien is a refugee" within the meaning of the title. *See* 8 U.S.C. 1158(a) (1982); *see also INS* v. *Cardoza-Fonseca*, 480 U.S. 421, 427-29 (1987) (describing the 1980 provisions).

In the 1980 implementing regulations, the Attorney General, in his discretion, established several mandatory bars to granting asylum that were modeled on the mandatory bars to eligibility for withholding of deportation under the existing section 243(h) of the INA. *See* Refugee and Asylum Procedures, 45 FR 37392, 37392 (June 2, 1980) ("The application will be denied if the alien does not come within the definition of refugee under the Act, is firmly resettled in a third country, or is within one of the undesirable groups described in section 243(h) of the Act, *e.g.*, having been convicted of a serious crime, constitutes a danger to the United States.").

Those regulations required denial of an asylum application if it was determined that (1) the alien was "not a refugee within the meaning of section 101(a)(42)" of the INA, 8 U.S.C. 1101(a)(42); (2) the alien had been "firmly resettled in a foreign country" before arriving in the United States; (3) the alien "ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular group, or political opinion"; (4) the alien had "been convicted by a final judgment of a particularly serious crime" and therefore constituted "a danger to the community of the United States"; (5) there were "serious reasons for considering that the alien ha[d] committed a serious non-political crime outside the United States prior to the arrival of the alien in the United States"; or (6) there were "reasonable grounds for regarding the alien as a danger to the security of the United States." *See id.* at 37394-95.

In 1990, the Attorney General substantially amended the asylum regulations while retaining the mandatory bars for aliens who persecuted others on account of a protected ground, were convicted of a particularly serious crime in the United States, firmly resettled in another country, or presented reasonable grounds to be regarded as a danger to the security of the United States. *See* Asylum and Withholding of Deportation Procedures, 55 FR 30674, 30683 (July 27, 1990); *see also Yang* v. *INS,* 79 F.3d 932, 936-39 (9th Cir. 1996) (upholding firm-resettlement bar); *Komarenko,* 35 F.3d at 436 (upholding particularly-serious-crime bar). In the Immigration Act of 1990, Public Law 101-649, Congress added an additional mandatory bar to applying for or being granted asylum for "[a]n[y] alien who has been

convicted of an aggravated felony." Public Law 101-649, sec. 515.

In IIRIRA and the Antiterrorism and Effective Death Penalty Act of 1996, Public Law 104-132, Congress amended the asylum provisions in section 208 of the INA, 8 U.S.C. 1158. Among other amendments, Congress created three exceptions to section 208(a)(1)'s provision that an alien may apply for asylum, for (1) aliens who can be removed to a safe third country pursuant to bilateral or multilateral agreement; (2) aliens who failed to apply for asylum within one year of arriving in the United States; and (3) aliens who have previously applied for asylum and had the application denied. Public Law 104-208, div. C, sec. 604(a); *see* INA 208(a)(2)(A)-(C), 8 U.S.C. 1158(a)(2)(A)-(C).

Congress also adopted six mandatory exceptions to the authority of the Attorney General or Secretary to grant asylum that largely reflect pre-existing bars set forth in the Attorney General's asylum regulations. These exceptions cover (1) aliens who "ordered, incited, or otherwise participated" in the persecution of others on account of a protected ground; (2) aliens convicted of a "particularly serious crime"; (3) aliens who committed a "serious nonpolitical crime outside the United States" before arriving in the United States; (4) aliens who are a "danger to the security of the United States"; (5) aliens who are inadmissible or removable under a set of specified grounds relating to terrorist activity; and (6) aliens who have "firmly resettled in another country prior to arriving in the United States." Public Law 104-208, div. C, sec. 604(a); *see* INA 208(b)(2)(A)(i)-(vi), 8 U.S.C. 1158(b)(2)(A)(i)-(vi). Congress further added that aggravated felonies, defined in 8 U.S.C. 1101(a)(43), would

be considered "particularly serious crime[s]." Public Law 104-208, div. C, sec. 604(a); *see* INA 201(a)(43), 8 U.S.C. 1101(a)(43).

Although Congress enacted specific exceptions, that statutory list is not exhaustive. Congress, in IIRIRA, expressly authorized the Attorney General to expand upon two of those exceptions-the bars for "particularly serious crimes" and "serious nonpolitical offenses." While Congress prescribed that all aggravated felonies constitute particularly serious crimes, Congress further provided that the Attorney General may "designate by regulation offenses that will be considered" a "particularly serious crime" that "constitutes a danger to the community of the United States." INA 208(b)(2)(A)(ii), (B)(ii), 8 U.S.C. 1158(b)(2)(A)(ii), (B)(ii). Courts and the Board have long held that this grant of authority also authorizes the Board to identify additional particularly serious crimes (beyond aggravated felonies) through case-by-case adjudication. *See, e.g., Ali* v. *Achim*, 468 F.3d 462, 468-69 (7th Cir. 2006); *Delgado* v. *Holder*, 648 F.3d 1095, 1106 (9th Cir. 2011) (en banc). Congress likewise authorized the Attorney General to designate by regulation offenses that constitute "a serious nonpolitical crime outside the United States prior to the arrival of the alien in the United States." INA 208(b)(2)(A)(iii), (B)(ii), 8 U.S.C. 1158(b)(2)(A)(iii), (B)(ii). Although these provisions continue to refer only to the Attorney General, the Departments interpret these provisions to also apply to the Secretary of Homeland Security by operation of the Homeland Security Act of 2002. *See* 6 U.S.C. 552; 8 U.S.C. 1103(a)(1).

Congress further provided the Attorney General with the authority, by regulation, to "establish additional limitations and conditions, consistent with [section 208 of the INA], under which an alien shall be ineligible for asylum under paragraph (1)." INA 208(b)(2)(C), 8 U.S.C. 1158(b)(2)(C). As the Tenth Circuit has recognized, "the statute clearly empowers" the Attorney General to "adopt[] further limitations" on asylum eligibility. *R-S-C,* 869 F.3d at 1187 & n.9. By allowing the imposition by regulation of "additional limitations and conditions," the statute gives the Attorney General and the Secretary broad authority in determining what the "limitations and conditions" should be. The additional limitations on eligibility must be established "by regulation," and must be "consistent with" the rest of section 208 of the INA. INA 208(b)(2)(C), 8 U.S.C. 1158(b)(2)(C).

Thus, the Attorney General in the past has invoked section 208(b)(2)(C) of the INA to limit eligibility for asylum based on a "fundamental change in circumstances" and on the ability of an applicant to safely relocate internally within the alien's country of nationality or of last habitual residence. *See* Asylum Procedures, 65 FR 76121, 76126 (Dec. 6, 2000). The courts have also viewed section 208(b)(2)(C) as conferring broad discretion, including to render aliens ineligible for asylum based on fraud. *See R-S-C,* 869 F.3d at 1187; *Nijjar* v. *Holder,* 689 F.3d 1077, 1082 (9th Cir. 2012) (noting that fraud can be "one of the 'additional limitations . . . under which an alien shall be ineligible for asylum' that the Attorney General is authorized to establish by regulation").

Section 208(d)(5) of the INA, 8 U.S.C. 1158(d)(5), also establishes certain procedures for consideration of asylum applications. But Congress specified that the Attorney General "may provide by regulation for any other conditions or limitations on the consideration of an application for asylum," so long as those limitations are "not inconsistent with this chapter." INA 208(d)(5)(B), 8 U.S.C. 1158(d)(5)(B).

In sum, the current statutory framework leaves the Attorney General (and, after the Homeland Security Act, the Secretary) significant discretion to adopt additional bars to asylum eligibility. Beyond providing discretion to further define particularly serious crimes and serious nonpolitical offenses, Congress has provided the Attorney General and Secretary with discretion to establish by regulation any additional limitations or conditions on eligibility for asylum or on the consideration of applications for asylum, so long as these limitations are consistent with the asylum statute.

D. Other Forms of Protection

Aliens who are not eligible to apply for or be granted asylum, or who are denied asylum on the basis of the Attorney General's or the Secretary's discretion, may nonetheless qualify for protection from removal under other provisions of the immigration laws. A defensive application for asylum that is submitted by an alien in removal proceedings is also deemed an application for statutory withholding of removal under section 241(b)(3) of the INA, 8 U.S.C. 1231(b)(3). *See* 8 CFR 208.30(e)(2)-(4), 1208.3(b), 1208.16(a). An immigration judge may also consider an alien's eligibility for withholding and deferral of removal under regulations is-

sued pursuant to the authority of the implementing legislation regarding Article 3 of the CAT. *See* Foreign Affairs Reform and Restructuring Act of 1998, Public Law 105-277, div. G, sec. 2242(b); 8 CFR 1208.3(b); *see also* 8 CFR 1208.16-1208.17.

These forms of protection bar an alien's removal to any country where the alien would "more likely than not" face persecution or torture, meaning that the alien would face a clear probability that his or her life or freedom would be threatened on account of a protected ground or a clear probability of torture. 8 CFR 1208.16(b)(2), (c)(2); *see Kouljinski* v. *Keisler,* 505 F.3d 534, 544-45 (6th Cir. 2007); *Sulaiman* v. *Gonzales,* 429 F.3d 347, 351 (1st Cir. 2005). Thus, if an alien proves that it is more likely than not that the alien's life or freedom would be threatened on account of a protected ground, but is denied asylum for some other reason—for instance, because of a statutory exception, an eligibility bar adopted by regulation, or a discretionary denial of asylum—the alien may be entitled to statutory withholding of removal if not otherwise barred for that form of protection. INA 241(b)(3), 8 U.S.C. 1231(b)(3); 8 CFR 208.16, 1208.16; *see also Garcia* v. *Sessions,* 856 F.3d 27, 40 (1st Cir. 2017) ("[W]ithholding of removal has long been understood to be a mandatory protection that must be given to certain qualifying aliens, while asylum has never been so understood."). Likewise, an alien who establishes that he or she will more likely than not face torture in the country of removal will qualify for CAT protection. *See* 8 CFR 208.16(c), 1208.16(c). But, unlike asylum, statutory withholding and CAT protection do not: (1) Prohibit the Government from removing the alien to a third country where the alien would not face the requisite probability of persecution

or torture; (2) create a path to lawful permanent resident status and citizenship; or (3) afford the same ancillary benefits (such as protection for derivative family members). *See R-S-C,* 869 F.3d at 1180.

E. Implementation of Treaty Obligations

The framework described above is consistent with certain U.S. obligations under the 1967 Protocol Relating to the Status of Refugees ("Refugee Protocol"), which incorporates Articles 2 to 34 of the 1951 Convention Relating to the Status of Refugees ("Refugee Convention"), as well as U.S. obligations under Article 3 of the CAT. Neither the Refugee Protocol nor the CAT is self-executing in the United States. *See Khan* v. *Holder,* 584 F.3d 773, 783 (9th Cir. 2009) ('[T]he [Refugee] Protocol is not self-executing."); *Auguste* v. *Ridge,* 395 F.3d 123, 132 (3d Cir. 2005) (the CAT "was not self-executing"). These treaties are not directly enforceable in U.S. law, but some of the obligations they contain have been implemented through domestic implementing legislation. For example, the United States has implemented the non-refoulement provisions of these treaties —i.e., provisions prohibiting the return of an individual to a country where he or she would face persecution or torture—through the withholding of removal provisions at section 241(b)(3) of the INA and the CAT regulations, not through the asylum provisions at section 208 of the INA. *See Cardoza-Fonseca,* 480 U.S. at 440-41; Foreign Affairs Reform and Restructuring Act of 1998, Public Law 105-277, div. G, sec. 2242(b); 8 CFR 208.16(c), 208.17-208.18; 1208.16(c), 1208.17-1208.18.

Limitations on the availability of asylum that do not affect the statutory withholding of removal or protection under the CAT regulations are consistent with these

provisions. *See RS-C,* 869 F.3d at 1188 & n.11; *Cazun* v. *Att'y Gen.,* 856 F.3d 249, 257 & n.16 (3d Cir. 2017); *Ramirez-Mejia* v. *Lynch,* 813 F.3d 240, 241 (5th Cir. 2016).

Limitations on eligibility for asylum are also consistent with Article 34 of the Refugee Convention, concerning assimilation of refugees, as implemented by section 208 of the INA, 8 U.S.C. 1158. Section 208 of the INA reflects that Article 34 is precatory and not mandatory, and accordingly does not provide that all refugees shall receive asylum. *See Cardoza-Fonseca,* 480 U.S. at 441; *Garcia,* 856 F.3d at 42; *Cazun,* 856 F.3d at 257 & n. 16; *Mejia* v. *Sessions,* 866 F.3d 573, 588 (4th Cir. 2017); *R-S-C,* 869 F.3d at 1188; *Ramirez-Mejia,* 813 F.3d at 241. As noted above, Congress has long recognized the precatory nature of Article 34 by imposing various statutory exceptions and by authorizing the creation of new bars to asylum eligibility through regulation.

Courts have likewise rejected arguments that other provisions of the Refugee Convention require every refugee to receive asylum. Courts have held, in the context of upholding the bar on eligibility for asylum in reinstatement proceedings under section 241(a)(5) of the INA, 8 U.S.C. 1231(a)(5), that limiting the ability to apply for asylum does not constitute a prohibited "penalty" under Article 31(1) of the Refugee Convention. *Cazun,* 856 F.3d at 257 & n.16; *Mejia,* 866 F.3d at 588. Courts have also rejected the argument that Article 28 of the Refugee Convention, governing the issuance of international travel documents for refugees "lawfully staying" in a country's territory, mandates that every person who might qualify for statutory withholding must also be

granted asylum. *Garcia*, 856 F.3d at 42; *R-S-C*, 869 F.3d at 1188.

IV. Regulatory Changes

A. Limitation on Eligibility for Asylum for Aliens Who Contravene a Presidential Proclamation Under Section 212(f) or 215(a)(1) of the INA Concerning the Southern Border

Pursuant to section 208(b)(2)(C) of the INA, 8 U.S.C. 1158(b)(2)(C), the Departments are revising 8 CFR 208.13(c) and 8 CFR 1208.13(c) to add a new mandatory bar on eligibility for asylum for certain aliens who are subject to a presidential proclamation suspending or imposing limitations on their entry into the United States pursuant to section 212(f) of the INA, 8 U.S.C. 1182(f), or section 215(a)(1) of the INA, 8 U.S.C. 1185(a)(1), and who enter the United States in contravention of such a proclamation after the effective date of this rule. The bar would be subject to several further limitations: (1) The bar would apply only prospectively, to aliens who enter the United States after the effective date of such a proclamation; (2) the proclamation must concern entry at the southern border; and (3) the bar on asylum eligibility would not apply if the proclamation expressly disclaims affecting asylum eligibility for aliens within its scope, or expressly provides for a waiver or exception that entitles the alien to relief from the limitation on entry imposed by the proclamation.

The President has both statutory and inherent constitutional authority to suspend the entry of aliens into the United States when it is in the national interest. *See United States ex rel. Knauff* v. *Shaughnessy*, 338

U.S. 537, 542 (1950) ("The exclusion of aliens is a fundamental act of sovereignty" that derives from "legislative power" and also "is inherent in the executive power to control the foreign affairs of the nation."); *see also Proposed Interdiction of Haitian Flag Vessels,* 5 Op. O.L.C. 242, 244-45 (1981) ("[T]he sovereignty of the Nation, which is the basis of our ability to exclude all aliens, is lodged in both political branches of the government," and even without congressional action, the President may "act[] to protect the United States from massive illegal immigration.").

Congress, in the INA, has expressly vested the President with broad authority to restrict the ability of aliens to enter the United States. Section 212(f) states: "Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate." 8 U.S.C. 1182(f). "By its plain language, [8 U.S.C.] § 1182(f) grants the President broad discretion to suspend the entry of aliens into the United States," including the authority "to impose additional limitations on entry beyond the grounds for exclusion set forth in the INA." *Trump* v. *Hawaii,* 138 S. Ct. 2392, 2408-12 (2018). For instance, the Supreme Court considered it "perfectly clear that 8 U.S.C. 1182(f) . . . grants the President ample power to establish a naval blockade that would simply deny illegal Haitian immigrants the ability to disembark on our shores," thereby preventing them from entering the United

States and applying for asylum. *Sale* v. *Haitian Ctrs. Council, Inc.*, 509 U.S. 155, 187 (1993).

The President's broad authority under section 212(f) is buttressed by section 215(a)(1), which states it shall be unlawful "for any alien to depart from or enter or attempt to depart from or enter the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President may prescribe." 8 U.S.C. 1185(a)(1). The presidential orders that the Supreme Court upheld in *Sale* were promulgated pursuant to both sections 212(f) and 215(a)(1)—*see* 509 U.S. at 172 & n.27; *see also* Exec. Order 12807 (May 24, 1992) ("Interdiction of Illegal Aliens"); Exec. Order 12324 (Sept. 29, 1981) ("Interdiction of Illegal Aliens") (revoked and replaced by Exec. Order 12807)—as was the proclamation upheld in *Trump* v. *Hawaii*, *see* 138 S. Ct. at 2405. Other presidential orders have solely cited section 215(a)(1) as authority. *See, e.g.*, Exec. Order 12172 (Nov. 26, 1979) ("Delegation of Authority With Respect to Entry of Certain Aliens Into the United States") (invoking section 215(a)(1) with respect to certain Iranian visa holders).

An alien whose entry is suspended or limited by a proclamation is one whom the President has determined should not enter the United States, or only should do so under certain conditions. Such an order authorizes measures designed to prevent such aliens from arriving in the United States as a result of the President's determination that it would be against the national interest for them to do so. For example, the proclamation and order that the Supreme Court upheld in *Sale*, Proc. 4865 (Sept. 29, 1981) ("High Seas Interdiction of Illegal Aliens"); Exec. Order 12324, directed the Coast Guard to

interdict the boats of tens of thousands of migrants fleeing Haiti to prevent them from reaching U.S. shores, where they could make claims for asylum. The order further authorized the Coast Guard to intercept any vessel believed to be transporting undocumented aliens to the United States, "[t]o make inquiries of those on board, examine documents, and take such actions as are necessary to carry out this order," and "[t]o return the vessel and its passengers to the country from which it came, or to another country, when there is reason to believe that an offense is being committed against the United States immigration laws." Exec. Order 12807, sec. 2(c).

An alien whose entry is suspended or restricted under such a proclamation, but who nonetheless reaches U.S. soil contrary to the President's determination that the alien should not be in the United States, would remain subject to various procedures under immigration laws. For instance, an alien subject to a proclamation who nevertheless entered the country in contravention of its terms generally would be placed in expedited-removal proceedings under section 235 of the INA, 8 U.S.C. 1225, and those proceedings would allow the alien to raise any claims for protection before being removed from the United States, if appropriate. Furthermore, the asylum statute provides that "[a]ny alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival)," and "irrespective of such alien's status, may apply for asylum in accordance with this section or, where applicable, [8 U.S.C.] 1225(b)." INA 208(a)(1), 8 U.S.C. 1158(a)(1). Some past proclamations have accordingly made clear that aliens subject to an entry bar

may still apply for asylum if they have nonetheless entered the United States. *See, e.g.,* Proc. 9645, sec. 6(e) (Sept. 24, 2017) ("Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats") ("Nothing in this proclamation shall be construed to limit the ability of an individual to seek asylum, refugee status, withholding of removal, or protection under the Convention Against Torture, consistent with the laws of the United States.").

As noted above, however, the asylum statute also authorizes the Attorney General and Secretary "by regulation" to "establish additional limitations and conditions, consistent with [section 208 of the INA], under which an alien shall be ineligible for asylum," INA 208(b)(2)(C), 8 U.S.C. 1158(b)(2)(C), and to set conditions or limitations on the consideration of an application for asylum, INA 208(d)(5)(B), 8 U.S.C. 1158(d)(5)(B). The Attorney General and the Secretary have determined that this authority should be exercised to render ineligible for a grant of asylum any alien who is subject to a proclamation suspending or restricting entry along the southern border with Mexico, but who nonetheless enters the United States after such a proclamation goes into effect. Such an alien would have engaged in actions that undermine a particularized determination in a proclamation that the President judged as being required by the national interest: That the alien should not enter the United States.

The basis for ineligibility in these circumstances would be the Departments' conclusion that aliens who contravene such proclamations should not be eligible for asylum. Such proclamations generally reflect sensitive

determinations regarding foreign relations and national security that Congress recognized should be entrusted to the President. *See Trump* v. *Hawaii,* 138 S. Ct. at 2411. Aliens who contravene such a measure have not merely violated the immigration laws, but have also undercut the efficacy of a measure adopted by the President based upon his determination of the national interest in matters that could have significant implications for the foreign affairs of the United States. For instance, previous proclamations were directed solely at Haitian migrants, nearly all of whom were already inadmissible by virtue of other provisions of the INA, but the proclamation suspended entry and authorized further measures to ensure that such migrants did not enter the United States contrary to the President's determination. *See, e.g.,* Proc. 4865; Exec. Order 12807.

In the case of the southern border, a proclamation that suspended the entry of aliens who crossed between the ports of entry would address a pressing national problem concerning the immigration system and our foreign relations with neighboring countries. Even if most of those aliens would already be inadmissible under our laws, the proclamation would impose limitations on entry for the period of the suspension against a particular class of aliens defined by the President. That judgment would reflect a determination that certain illegal entrants—namely, those crossing between the ports of entry on the southern border during the duration of the proclamation—were a source of particular concern to the national interest. Furthermore, such a proclamation could authorize additional measures to prevent the entry of such inadmissible aliens, again reflecting the national concern with this subset of inadmis-

sible aliens. The interim final rule reflects the Departments' judgment that, under the extraordinary circumstances presented here, aliens crossing the southern border in contravention of such a proclamation should not be eligible for a grant of asylum during the period of suspension or limitation on entry. The result would be to channel to ports of entry aliens who seek to enter the United States and assert an intention to apply for asylum or a fear of persecution, and to provide for consideration of those statements there.

Significantly, this bar to eligibility for a grant of asylum would be limited in scope. This bar would apply only prospectively. This bar would further apply only to a proclamation concerning entry along the southern border, because this interim rule reflects the need to facilitate urgent action to address current conditions at that border. This bar would not apply to any proclamation that expressly disclaimed an effect on eligibility for asylum. And this bar would not affect an applicant who is granted a waiver or is excepted from the suspension under the relevant proclamation, or an alien who did not at any time enter the United States after the effective date of such proclamation.

Aliens who enter in contravention of a proclamation will not, however, overcome the eligibility bar merely because a proclamation has subsequently ceased to have effect. The alien still would have entered notwithstanding a proclamation at the time the alien entered the United States, which would result in ineligibility for asylum (but not for statutory withholding or for CAT protection). Retaining eligibility for asylum for aliens who entered the United States in contravention of the proclamation, but evaded detection until it had ceased, could

encourage aliens to take riskier measures to evade detection between ports of entry, and would continue to stretch government resources dedicated to apprehension efforts.

This restriction on eligibility to asylum is consistent with section 208(a)(1) of the INA, 8 U.S.C. 1158(a)(1). The regulation establishes a condition on asylum eligibility, not on the ability to apply for asylum. *Compare* INA 208(a), 8 U.S.C. 1158(a) (describing conditions for applying for asylum), *with* INA 208(b), 8 U.S.C. 1158(b) (identifying exceptions and bars to granting asylum). And, as applied to a proclamation that suspends the entry of aliens who crossed between the ports of entry at the southern border, the restriction would not preclude an alien physically present in the United States from being granted asylum if the alien arrives in the United States through any border other than the southern land border with Mexico or at any time other than during the pendency of a proclamation suspending or limiting entry.

B. Screening Procedures in Expedited Removal for Aliens Subject to Proclamations

The rule would also modify certain aspects of the process for screening claims for protection asserted by aliens who have entered in contravention of a proclamation and who are subject to expedited removal under INA 235(b)(1), 8 U.S.C. 1225(b)(1). Under current procedures, aliens who unlawfully enter the United States may avoid being removed on an expedited basis by making a threshold showing of a credible fear of persecution at a initial screening interview. At present, those aliens are often released into the interior of the United

States pending adjudication of such claims by an immigration court in section 240 proceedings especially if those aliens travel as family units. Once an alien is released, adjudications can take months or years to complete because of the increasing volume of claims and the need to expedite cases in which aliens have been detained. The Departments expect that a substantial proportion of aliens subject to an entry proclamation concerning the southern border would be subject to expedited removal, since approximately 234,534 aliens in FY 2018 who presented at a port of entry or were apprehended at the border were referred to expedited-removal proceedings.[1] The procedural changes within expedited removal would be confined to aliens who are ineligible for asylum because they are subject to a regulatory bar for contravening an entry proclamation.

1. Under existing law, expedited-removal procedures —streamlined procedures for expeditiously reviewing claims and removing certain aliens—apply to those individuals who arrive at a port of entry or those who have entered illegally and are encountered by an immigration officer within 100 miles of the border and within 14 days of entering. *See* INA 235(b), 8 U.S.C. 1225(b); Designating Aliens For Expedited Removal, 69 FR 48877, 48880 (Aug. 11, 2004). To be subject to expedited removal, an alien must also be inadmissible under INA 212(a)(6)(C) or (a)(7), 8 U.S.C. 1182(a)(6)(C) or (a)(7),

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[1] As noted below, in FY 2018, approximately 171,511 aliens entered illegally between ports of entry, were apprehended by CBP, and were placed in expedited removal. Approximately 59,921 inadmissible aliens arrived at ports of entry and were placed in expedited removal. Furthermore, ICE arrested some 3,102 aliens and placed them in expedited removal.

meaning that the alien has either tried to procure documentation through misrepresentation or lacks such documentation altogether. Thus, an alien encountered in the interior of the United States who entered in contravention of a proclamation and who is not otherwise amenable to expedited removal would be placed in proceedings under section 240 of the INA. The interim rule does not invite comment on existing regulations implementing the present scope of expedited removal.

Section 235(b)(1) of the INA, 8 U.S.C. 1225(b)(1), prescribes procedures in the expedited-removal context for screening an alien's eligibility for asylum. When these provisions were being debated in 1996, legislators expressed particular concern that "[e]xisting procedures to deny entry to and to remove illegal aliens from the United States are cumbersome and duplicative," and that "[t]he asylum system has been abused by those who seek to use it as a means of 'backdoor' immigration." *See* H.R. Rep. No. 104-469, pt. 1, at 107 (1996). Members of Congress accordingly described the purpose of expedited removal and related procedures as "streamlin[ing] rules and procedures in the Immigration and Nationality Act to make it easier to deny admission to inadmissible aliens and easier to remove deportable aliens from the United States." *Id.* at 157; *see Am. Immigration Lawyers Ass'n* v. *Reno,* 18 F. Supp. 2d 38, 41 (D.D.C. 1998), *aff'd,* 199 F.3d 1352 (DC Cir. 2000) (rejecting several constitutional challenges to IIRIRA and describing the expedited-removal process as a "summary removal process for adjudicating the claims of aliens who arrive in the United States without proper documentation").

Congress thus provided that aliens "inadmissible under [8 U.S.C.] 1182(a)(6)(C) or 1182(a)(7)" shall be "removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under [8 U.S.C. 1158] or a fear of persecution." INA 235(b)(1)(A)(i), 8 U.S.C. 1225(b)(1)(A)(i); *see* INA 235(b)(1)(A)(ii), 8 U.S.C. 1225(b)(1)(A)(ii) (such aliens shall be referred "for an interview by an asylum officer"). On its face, the statute refers only to proceedings to establish eligibility for an affirmative grant of asylum and its attendant benefits, not to statutory withholding of removal or CAT protection against removal to a particular country.

An alien referred for a credible-fear interview must demonstrate a "credible fear," defined as a "significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum under [8 U.S.C. 1158]." INA 235(b)(1)(B)(v), 8 U.S.C. 1225(b)(1)(B)(v). According to the House report, "[t]he credible-fear standard [wa]s designed to weed out nonmeritorious cases so that only applicants with a likelihood of success will proceed to the regular asylum process." H.R. Rep. No. 104-69, at 158.

If the asylum officer determines that the alien lacks a credible fear, then the alien may request review by an immigration judge. INA 235(b)(1)(B)(iii)(III), 8 U.S.C. 1225(b)(1)(B)(iii)(III). If the immigration judge concurs with the asylum officer's negative credible-fear determination, then the alien shall be removed from the United States without further review by either the Board or the courts. INA 235(b)(1)(B)(iii)(I), (b)(1)(C),

8 U.S.C. 1225(b)(1)(B)(iii)(I), (b)(1)(C); INA 242(a)(2)(A)(iii), (e)(5), 8 U.S.C. 1252(a)(2)(A)(iii), (e)(5); *Pena v. Lynch,* 815 F.3d 452, 457 (9th Cir. 2016). By contrast, if the asylum officer or immigration judge determines that the alien has a credible fear-i.e., "a significant possibility . . . that the alien could establish eligibility for asylum," INA 235(b)(1)(B)(v), 8 U.S.C. 1225(b)(1)(B)(v)-then the alien, under current regulations, is placed in section 240 proceedings for a full hearing before an immigration judge, with appeal available to the Board and review in the federal courts of appeals, *see* INA 235(b)(1)(B)(ii), (b)(2)(A), 8 U.S.C. 1225(b)(1)(B)(ii), (b)(2)(A); INA 242(a), 8 U.S.C. 1252(a); 8 CFR 208.30(e)(5), 1003.1. The interim rule does not invite comment on existing regulations implementing this framework.

By contrast, section 235 of the INA is silent regarding procedures for the granting of statutory withholding of removal and CAT protection; indeed, section 235 predates the legislation directing implementation of U.S. obligations under Article 3 of the CAT. *See* Foreign Affairs Reform and Restructuring Act of 1998, Public Law 105-277, sec. 2242(b) (requiring implementation of CAT); IIRIRA, Public Law 104-208, sec. 302 (revising section 235 of the INA to include procedures for dealing with inadmissible aliens who intend to apply for asylum). The legal standards for ultimately granting asylum on the merits versus statutory withholding or CAT protection are also different. Asylum requires an applicant to ultimately establish a "well-founded fear" of persecution, which has been interpreted to mean a "reasonable possibility" of persecution—a "more generous" standard than the "clear probability" of persecution or torture standard that applies to statutory withholding or

CAT protection. *See INS* v. *Stevic,* 467 U.S. 407, 425, 429-30 (1984); *Santosa* v. *Mukasey,* 528 F.3d 88, 92 & n.1 (1st Cir. 2008); *compare* 8 CFR 1208.13(b)(2)(i)(B) *with* 8 CFR 1208.16(b)(2), (c)(2). As a result, applicants who establish eligibility for asylum are not necessarily eligible for statutory withholding or CAT protection.

Current regulations instruct USCIS adjudicators and immigration judges to treat an alien's request for asylum in expedited-removal proceedings under section 1225(b) as a request for statutory withholding and CAT protection as well. *See* 8 CFR 208.3(b), 208.30(e)(2)-(4), 1208.3(b), 1208.16(a). In the context of expedited-removal proceedings, "credible fear of persecution" is defined to mean a "significant possibility" that the alien "could establish eligibility for asylum under section 1158," not CAT or statutory withholding. INA 235(b)(1)(B)(v), 8 U.S.C. 1225(b)(1)(B)(v). Regulations nevertheless have generally provided that aliens in expedited removal should be subject to the same process for considering statutory withholding of removal claims under INA 241(b)(3), 8 U.S.C. 1231(b)(3), and claims for protection under the CAT, as they are for asylum claims. *See* 8 CFR 208.30(e)(2)-(4).

Thus, when the Immigration and Naturalization Service provided for claims for statutory withholding of removal and CAT protection to be considered in the same expedited-removal proceedings as asylum, the result was that if an alien showed that there was a significant possibility of establishing eligibility for asylum and was therefore referred for removal proceedings under section 240 of the INA, any potential statutory withholding and CAT claims the alien might have were referred as well. This was done on the assumption that that it

would not "disrupt[ ] the streamlined process established by Congress to circumvent meritless claims." Regulations Concerning the Convention Against Torture, 64 FR 8478, 8485 (Feb. 19, 1999). But while the INA authorizes the Attorney General and Secretary to provide for consideration of statutory withholding and CAT claims together with asylum claims or other matters that may be considered in removal proceedings, the INA does not require that approach, *see Foti* v. *INS,* 375 U.S. 217, 229-30 & n.16 (1963), or that they be considered in the same way.

Since 1999, regulations also have provided for a distinct "reasonable fear" screening process for certain aliens who are categorically ineligible for asylum and can thus make claims only for statutory withholding or CAT protections. *See* 8 CFR 208.31. Specifically, if an alien is subject to having a previous order of removal reinstated or is a non-permanent resident alien subject to an administrative order of removal resulting from an aggravated felony conviction, then he is categorically ineligible for asylum. *See id.* § 208.31(a), (e). Such an alien can be placed in withholding-only proceedings to adjudicate his statutory withholding or CAT claims, but only if he first establishes a "reasonable fear" of persecution or torture through a screening process that tracks the credible-fear process. *See id.* § 208.31(c), (e). Reasonable fear is defined by regulation to mean a "reasonable possibility that [the alien] would be persecuted on account of his or her race, religion, nationality, membership in a particular social group or political opinion, or a reasonable possibility that he or she would be tortured in the country of removal." *Id.* § 208.31(c). "This . . . screening process is modeled on the credible-fear screening process, but requires the alien to meet a

higher screening standard." Regulations Concerning the Convention Against Torture, 64 FR at 8485; *see also Garcia* v. *Johnson,* No. 14-CV-01775, 2014 WL 6657591, at *2 (N.D. Cal. Nov. 21, 2014) (describing the aim of the regulations as providing "fair and efficient procedures" in reasonable-fear screening that would comport with U.S. international obligations).

Significantly, when establishing the reasonable-fear screening process, DOJ explained that the two affected categories of aliens should be screened based on the higher reasonable-fear standard because, "[u]nlike the broad class of arriving aliens who are subject to expedited removal, these two classes of aliens are ineligible for asylum," and may be entitled only to statutory withholding of removal or CAT protection. Regulations Concerning the Convention Against Torture, 64 FR at 8485. "Because the standard for showing entitlement to these forms of protection (a probability of persecution or torture) is significantly higher than the standard for asylum (a well-founded fear of persecution), the screening standard adopted for initial consideration of withholding and deferral requests in these contexts is also higher." *Id.*

2. Drawing on the established framework for considering whether to grant withholding of removal or CAT protection in the reasonable-fear context, this interim rule establishes a bifurcated screening process for aliens subject to expedited removal who are ineligible for asylum by virtue of entering in contravention of a proclamation, but who express a fear of return or seek statutory withholding or CAT protection. The Attorney General and Secretary have broad authority to implement the immigration laws, *see* INA 103, 8 U.S.C. 1103,

including by establishing regulations, *see* INA 103, 8 U.S.C. 1103(a)(3), and to regulate "conditions or limitations on the consideration of an application for asylum," *id.* 1158(d)(5)(B). Furthermore, the Secretary has the authority—in her "sole and unreviewable discretion," the exercise of which may be "modified at any time"—to designate additional categories of aliens that will be subject to expedited-removal procedures, so long as the designated aliens have not been admitted or paroled nor continuously present in the United States for two years. INA 235(b)(1)(A)(iii), 8 U.S.C. 1225(b)(1)(A)(iii). The Departments have frequently invoked these authorities to establish or modify procedures affecting aliens in expedited-removal proceedings, as well as to adjust the categories of aliens subject to particular procedures within the expedited-removal framework.[2]

This rule does not change the credible-fear standard for asylum claims, although the regulation would expand the scope of the inquiry in the process. An alien who is subject to a relevant proclamation and nonetheless has entered the United States after the effective date of such a proclamation in contravention of that proclamation would be ineligible for asylum and would thus not be able to establish a "significant possibility . . . [of]

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[2] *See, e.g.,* Eliminating Exception to Expedited Removal Authority for Cuban Nationals Arriving by Air, 82 FR 4769 (Jan. 17, 2017); Designating Aliens For Expedited Removal, 69 FR 48877; Implementation of the Agreement Between the Government of the United States of America and the Government of Canada Regarding Asylum Claims Made in Transit and at Land Border Ports-of-Entry, 69 FR 10620 (March 8, 2004); New Rules Regarding Procedures for Asylum and Withholding of Removal, 63 FR 31945 (June 11, 1998); Asylum Procedures, 65 FR 76121; Regulations Concerning the Convention Against Torture, 64 FR 8478 (Feb. 19, 1999).

eligibility for asylum under section 1158." INA 235(b)(1)(B)(v), 8 U.S.C. 1225(b)(1)(B)(v). As current USCIS guidance explains, under the credible-fear standard, "[a] claim that has no possibility, or only a minimal or mere possibility, of success, would not meet the 'significant possibility' standard." USCIS, Office of Refugee, Asylum, & Int'l Operations, Asylum Div., *Asylum Officer Basic Training Course, Lesson Plan on Credible Fear* at 15 (Feb. 13, 2017). Consistent with section 235(b)(1)(B)(iii)(III) of the INA, the alien could still obtain review from an immigration judge regarding whether the asylum officer correctly determined that the alien was subject to a limitation or suspension on entry imposed by a proclamation. Further, consistent with section 235(b)(1)(B) of the INA, if the immigration judge reversed the asylum officer's determination, the alien could assert the asylum claim in section 240 proceedings.

Aliens determined to be ineligible for asylum by virtue of contravening a proclamation, however, would still be screened, but in a manner that reflects that their only viable claims would be for statutory withholding or CAT protection pursuant to 8 CFR 208.30(e)(2)-(4) and 1208.16(a). After determining the alien's ineligibility for asylum under the credible-fear standard, the asylum officer would apply the long-established reasonable-fear standard to assess whether further proceedings on a possible statutory withholding or CAT protection claim are warranted. If the asylum officer determined that the alien had not established the requisite reasonable fear, the alien then could seek review of that decision from an immigration judge (just as the alien may under existing 8 CFR 208.30 and 208.31), and would be subject to removal only if the immigration judge agreed with the

negative reasonable-fear finding. Conversely, if either the asylum officer or the immigration judge determined that the alien cleared the reasonable-fear threshold, the alien would be put in section 240 proceedings, just like aliens who receive a positive credible-fear determination for asylum. Employing a reasonable-fear standard in this context, for this category of ineligible aliens, would be consistent with the Department of Justice's longstanding rationale that "aliens ineligible for asylum," who could only be granted statutory withholding of removal or CAT protection, should be subject to a different screening standard that would correspond to the higher bar for actually obtaining these forms of protection. *See* Regulations Concerning the Convention Against Torture, 64 FR at 8485 ("Because the standard for showing entitlement to these forms of protection . . . is significantly higher than the standard for asylum . . . the screening standard adopted for initial consideration of withholding and deferral requests in these contexts is also higher.").

The screening process established by the interim rule will accordingly proceed as follows. For an alien subject to expedited removal, DHS will ascertain whether the alien seeks protection, consistent with INA 235(b)(1)(A)(ii), 8 U.S.C. 1225(b)(1)(A)(ii). All aliens seeking asylum, statutory withholding of removal, or CAT protection will continue to go before an asylum officer for screening, consistent with INA 235(b)(1)(B), 8 U.S.C. 1225(b)(1)(B). The asylum officer will ask threshold questions to elicit whether an alien is ineligible for a grant of asylum pursuant to a proclamation entry bar. If there is a significant possibility that the alien is not subject to the eligibility bar (and the alien oth-

erwise demonstrates sufficient facts pertaining to asylum eligibility), then the alien will have established a credible fear.

If, however, an alien lacks a significant possibility of eligibility for asylum because of the proclamation bar, then the asylum officer will make a negative credible-fear finding. The asylum officer will then apply the reasonable-fear standard to assess the alien's claims for statutory withholding of removal or CAT protection.

An alien subject to the proclamation-based asylum bar who clears the reasonable-fear screening standard will be placed in section 240 proceedings, just as an alien who clears the credible-fear standard will be. In those proceedings, the alien will also have an opportunity to raise whether the alien was correctly identified as subject to the proclamation ineligibility bar to asylum, as well as other claims. If an immigration judge determines that the alien was incorrectly identified as subject to the proclamation, the alien will be able to apply for asylum. Such aliens can appeal the immigration judge's decision in these proceedings to the BIA and then seek review from a federal court of appeals.

Conversely, an alien who is found to be subject to the proclamation asylum bar and who does not clear the reasonable-fear screening standard can obtain review of both of those determinations before an immigration judge, just as immigration judges currently review negative credible-fear and reasonable-fear determinations. If the immigration judge finds that either determination was incorrect, then the alien will be placed into section 240 proceedings. In reviewing the determinations, the immigration judge will decide de novo whether the alien is subject to the proclamation asylum bar. If, however,

the immigration judge affirms both determinations, then the alien will be subject to removal without further appeal, consistent with the existing process under section 235 of the INA. In short, aliens subject to the proclamation eligibility bar to asylum will be processed through existing procedures by DHS and EOIR in accordance with 8 CFR 208.30 and 1208.30, but will be subject to the reasonable-fear standard as part of those procedures with respect to their statutory withholding and CAT protection claims.[3]

2. The above process will not affect the process in 8 CFR 208.30(e)(5) for certain existing statutory bars to asylum eligibility. Under that regulatory provision, many aliens who appear to fall within an existing statutory bar, and thus appear to be ineligible for asylum, can nonetheless be placed in section 240 proceedings if they are otherwise eligible for asylum and obtain immigration judge review of their asylum claims, followed by further review before the BIA and the courts of appeals. Specifically, with the exceptions of stowaways and aliens

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[3] Nothing about this screening process or in this interim rule would alter the existing procedures for processing alien stowaways under the INA and associated regulations. An alien stowaway is unlikely to be subject to 8 CFR 208.13(c)(3) and 1208.13(c)(3) unless a proclamation specifically applies to stowaways or to entry by vessels or aircraft. INA 101(a)(49), 8 U.S.C. 1101(a)(49). Moreover, an alien stowaway is barred from being placed into section 240 proceedings regardless of the level of fear of persecution he establishes. INA 235(a)(2), 8 U.S.C. 1225(a)(2). Similarly, despite the incorporation of a reasonable-fear standard into the evaluation of certain cases under credible-fear procedures, nothing about this screening process or in this interim rule implicates existing reasonable-fear procedures in 8 CFR 208.31 and 1208.31.

entering from Canada at a port of entry (who are generally ineligible to apply for asylum by virtue of a safe-third-country agreement), 8 CFR 208.30(e)(5) provides that "if an alien is able to establish a credible fear of persecution or torture but appears to be subject to one or more of the mandatory bars to applying for, or being granted, asylum contained in section 208(a)(2) and 208(b)(2) of the [INA] . . . [DHS] shall nonetheless place the alien in proceedings under section 240 of the [INA] for full consideration of the alien's claim."

The language providing that the agency "shall nonetheless place the alien in proceedings under section 240 of the [INA]" was promulgated in 2000 in a final rule implementing asylum procedures after the 1996 enactment of IIRIRA. *See* Asylum Procedures, 65 FR at 76137. The explanation for this change was that some commenters suggested that aliens should be referred to section 240 proceedings "regardless of any apparent statutory ineligibility under section 208(a)(2) or 208(b)(2)(A) of the [INA]. The Department has adopted that suggestion and has so amended the regulation." *Id.* at 76129.

This rule will avoid a textual ambiguity in 8 CFR 208.30(e)(5), which is unclear regarding its scope, by adding a new sentence clarifying the process applicable to an alien barred under a covered proclamation. *See* 8 CFR 208.30(e)(5) (referring to an alien who "appears to be subject to one or more of the mandatory bars to . . . asylum contained in section 208(a)(2) and 208(b)(2) of the [INA]"). By using a definite article ("the mandatory bars to . . . asylum") and the phrase "contained in," 8 CFR 208.30(e)(5) may refer only to aliens who are subject to the defined mandatory bars

"contained in" specific parts of section 208 of the INA, such as the bar for aggravated felons, INA 208(b)(2)(B)(i), 8 U.S.C. 1558(b)(2)(B)(i), or the bar for aliens reasonably believed to be a danger to U.S. security, INA 208(b)(2)(A)(iv), 8 U.S.C. 1158(b)(2)(A)(iv). It is thus not clear whether an alien subject to a further limitation or condition on asylum eligibility adopted pursuant to section 208(b)(2)(C) of the INA would also be subject to the procedures set forth in 8 CFR 208.30(e)(5). Notably, the preamble to the final rule adopting 8 CFR 208.30(e)(5) indicated that it was intended to apply to "any apparent statutory ineligibility under section 208(a)(2) or 208(b)(2)(A) of the [INA]," and did not address future regulatory ineligibility under section 208(b)(2)(C) of the INA, 8 U.S.C. 1158(b)(2)(C). Asylum Procedures, 65 FR at 76129. This rule does not resolve that question, however, but instead establishes an express regulatory provision dealing specifically with aliens subject to a limitation under section 212(f) or 215(a)(1) of the INA.

C. Anticipated Effects of the Rule

1. The interim rule aims to address an urgent situation at the southern border. In recent years, there has been a significant increase in the number and percentage of aliens who seek admission or unlawfully enter the United States and then assert an intent to apply for asylum or a fear of persecution. The vast majority of such assertions for protection occur in the expedited-removal context, and the rates at which such aliens receive a positive credible-fear determination have increased in the last five years. Having passed through the credible-fear screening process, many of these aliens are re-

leased into the interior to await further section 240 removal proceedings. But many aliens who pass through the credible-fear screening thereafter do not pursue their claims for asylum. Moreover, a substantial number fail to appear for a section 240 proceeding. And even aliens who passed through credible-fear screening and apply for asylum are granted it at a low rate.

Recent numbers illustrate the scope and scale of the problems caused by the disconnect between the number of aliens asserting a credible fear and the number of aliens who ultimately are deemed eligible for, and granted, asylum. In FY 2018, DHS identified some 612,183 inadmissible aliens who entered the United States, of whom 404,142 entered unlawfully between ports of entry and were apprehended by CBP, and 208,041 presented themselves at ports of entry. Those numbers exclude the inadmissible aliens who crossed but evaded detection, and interior enforcement operations conducted by U.S. Immigration and Customs Enforcement ("ICE"). The vast majority of those inadmissible aliens—521,090—crossed the southern border. Approximately 98% (396,579) of all aliens apprehended after illegally crossing between ports of entry made their crossings at the southern border, and 76% of all encounters at the southern border reflect such apprehensions. By contrast, 124,511 inadmissible aliens presented themselves at ports of entry along the southern border, representing 60% of all port traffic for inadmissible aliens and 24% of encounters with inadmissible aliens at the southern border.

Nationwide, DHS has preliminarily calculated that throughout FY 2018, approximately 234,534 aliens who presented at a port of entry or were apprehended at the

border were referred to expedited-removal proceedings. Of that total, approximately 171,511 aliens were apprehended crossing between ports of entry; approximately 59,921 were inadmissible aliens who presented at ports of entry; and approximately 3,102 were arrested by ICE and referred to expedited removal.[4] The total number of aliens of all nationalities referred to expedited-removal proceedings has significantly increased over the last decade, from 161,516 aliens in 2008 to approximately 234,534 in FY 2018 (an overall increase of about 45%). Of those totals, the number of aliens from the Northern Triangle referred to expedited-removal proceedings has increased from 29,206 in FY 2008 (18% of the total 161,516 aliens referred) to approximately 103,752 in FY 2018 (44% of the total approximately 234,534 aliens referred, an increase of over 300%). In FY 2018, nationals of the Northern Triangle represented approximately 103,752 (44%) of the aliens referred to expedited-removal proceedings; approximately 91,235 (39%) were Mexican; and nationals from other countries made up the remaining balance (17%). As of the date of this rule, final expedited-removal statistics for FY 2018 specific to the southern border are not available. But the Departments' experience with immigration enforcement

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[4] All references to the number of aliens subject to expedited removal in FY 2018 reflect data for the first three quarters of the year and projections for the fourth quarter of FY 2018. It is unclear whether the ICE arrests reflect additional numbers of aliens processed at ports of entry. Another approximately 130,211 aliens were subject to reinstatement, meaning that the alien had previously been removed and then unlawfully entered the United States again. The vast majority of reinstatements involved Mexican nationals. Aliens subject to reinstatement who express a fear of persecution or torture receive reasonable-fear determinations under 8 CFR 208.31.

has demonstrated that the vast majority of expedited-removal actions have also occurred along the southern border.

Once in expedited removal, some 97,192 (approximately 41% of all aliens in expedited removal) were referred for a credible-fear interview with an asylum officer, either because they expressed a fear of persecution or torture or an intent to apply for protection. Of that number, 6,867 (7%) were Mexican nationals, 25,673 (26%) were Honduran, 13,433 (14%) were Salvadoran, 24,456 (25%) were Guatemalan, and other nationalities made up the remaining 28% (the largest proportion of which were 7,761 Indian nationals).

In other words: Approximately 61% of aliens from Northern Triangle countries placed in expedited removal expressed the intent to apply for asylum or a fear of persecution and triggered credible-fear proceedings in FY 2018 (approximately 69% of Hondurans, 79% of Salvadorans, and 49% of Guatemalans). These aliens represented 65% of all credible-fear referrals in FY 2018. By contrast, only 8% of aliens from Mexico trigger credible-fear proceedings when they are placed in expedited removal, and Mexicans represented 7% of all credible-fear referrals. Other nationalities compose the remaining 26,763 (28%) referred for credible-fear interviews.

Once these 97,192 aliens were interviewed by an asylum officer, 83,862 cases were decided on the merits (asylum officers closed the others).[5] Those asylum officers found a credible fear in 89% (74,574) of decided

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[5] DHS sometimes calculates credible-fear grant rates as a proportion of all cases (positive, negative, and closed cases). Because this

cases—meaning that almost all of those aliens' cases were referred on for further immigration proceedings under section 240, and many of the aliens were released into the interior while awaiting those proceedings.[6] As noted, nationals of Northern Triangle countries represent the bulk of credible-fear referrals (65%, or 63,562 cases where the alien expressed an intent to apply for asylum or asserted a fear). In cases where asylum officers decided whether nationals of these countries had a credible fear, they received a positive credible-fear finding 88% of the time.[7] Moreover, when aliens from

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rule concerns the merits of the screening process and closed cases are not affected by that process, this preamble discusses the proportions of determinations on the merits when describing the credible-fear screening process. This preamble does, however, account for the fact that some proportion of closed cases are also sent to section 240 proceedings when discussing the number of cases that immigration judges completed involving aliens referred for a credible-fear interview while in expedited-removal proceedings.

[6] Stowaways are the only category of aliens who would receive a positive credible-fear determination and go to asylum-only proceedings, as opposed to section 240 proceedings, but the number of stowaways is very small. Between FY 2013 and FY 2017, an average of roughly 300 aliens per year were placed in asylum-only proceedings, and that number includes not only stowaways but all classes of aliens subject to asylum-only proceedings. 8 CFR 1208.2(c)(1) (describing 10 categories of aliens, including stowaways found to have a credible fear, who are subject to asylum-only proceedings).

[7] Asylum officers decided 53,205 of these cases on the merits and closed the remaining 10,357 (but sent many of the latter to section 240 proceedings). Specifically, 25,673 Honduran nationals were interviewed; 21,476 of those resulted in a positive screening on the merits, 2,436 received a negative finding, and 1,761 were closed-meaning that 90% of all Honduran cases involving a merits determination resulted in a positive finding, and 10% were denied. Some 13,433 Salvadoran nationals were interviewed; 11,034 of those resulted in a positive screening on the merits 1,717 were denied, and

those countries sought review of negative findings by an immigration judge, they obtained reversals approximately 18% of the time, resulting in some 47,507 cases in which nationals of Northern Triangle countries received positive credible-fear determinations.[8] In other words: Aliens from Northern Triangle countries ultimately received a positive credible-fear determination 89% of the time. Some 6,867 Mexican nationals were interviewed; asylum officers gave them a positive credible-fear determination in 81% of decided cases (4,261), and immigration judges reversed an additional 91 negative credible-fear determinations, resulting in some 4,352 cases (83% of cases decided on the merits) in which Mexican nationals were referred to section 240 proceedings after receiving a positive credible-fear determination.

These figures have enormous consequences for the asylum system writ large. Asylum officers and immigration judges devote significant resources to these screening interviews, which the INA requires to happen within a fixed statutory timeframe. These aliens must also be detained during the pendency of expedited-removal proceedings. *See* INA 235(b), 8 U.S.C.

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682 were closed-meaning that 86% of all Salvadoran cases involving a merits determination resulted in a positive finding, and 14% were denied. Some 24,456 Guatemalan nationals were interviewed; 14,183 of those resulted in a positive screening on the merits, 2,359 were denied, and 7,914 were closed-meaning that 8696 of all Guatemalan cases involving a merits determination resulted in a positive finding, and 14% were denied. Again, the percentages exclude closed cases so as to describe how asylum officers make decisions on the merits.

[8] Immigration judges in 2018 reversed 18% (288) of negative credible-fear determinations involving Hondurans, 19% (241) of negative credible-fear determinations involving Salvadorans, and 17% (285) of negative credible-fear determinations involving Guatemalans.

1225(b); *Jennings* v. *Rodriguez*, 138 S. Ct. 830, 834 (2018). And assertions of credible fear in expedited removal have rapidly grown in the last decade—especially in the last five years. In FY 2008, for example, fewer than 5,000 aliens were in expedited removal (5%) and were thus referred for a credible-fear interview. In FY 2014, 51,001 referrals occurred (representing 21% of aliens in expedited removal). The credible-fear referral numbers today reflect a 190% increase from FY 2014 and a nearly 2000% increase from FY 2008. Furthermore, the percentage of cases in which asylum officers found that aliens had established a credible fear—leading to the aliens being placed in section 240 removal proceedings—has also increased in recent years. In FY 2008, asylum officers found a credible fear in about 3,200 (or 77%) of all cases. In FY 2014, asylum officers found a credible fear in about 35,000 (or 80%) of all cases in which they made a determination. And in FY 2018, asylum officers found a credible fear in nearly 89% of all such cases.

Once aliens are referred for section 240 proceedings, their cases may take months or years to adjudicate due to backlogs in the system. As of November 2, 2018, there were approximately 203,569 total cases pending in the immigration courts that originated with a credible-fear referral—or 26% of the total backlog of 791,821 removal cases. Of that number, 136,554 involved nationals of Northern Triangle countries (39,940 cases involving Hondurans; 59,702 involving Salvadoran nationals; 36,912 involving Guatemalan nationals). Another 10,736 cases involved Mexican nationals.

In FY 2018, immigration judges completed 34,158 total cases that originated with a credible-fear referral.[9] Those aliens were likely referred for credible-fear screening between 2015 and 2018; the vast majority of these cases arose from positive credible-fear determinations as opposed to the subset of cases that were closed in expedited removal and referred for section 240 proceedings. In a significant proportion of these cases, the aliens did not appear for section 240 proceedings or did not file an application for asylum in connection with those proceedings. In FY 2018, of the 34,158 completions that originated with a credible-fear referral, 24,361 (71%) were completed by an immigration judge with the issuance of an order of removal. Of those completed cases, 10,534 involved in absentia removal orders, meaning that in approximately 31% of all initial completions in FY 2018 that originated from a credible-fear referral, the alien failed to appear at a hearing. Moreover, of those 10,534 cases, there were 1,981 cases where an asylum application was filed, meaning 8,553 did not file an asylum application and failed to appear at a hearing. Further, 40% of all initial completions originating with a credible-fear referral (or 13,595 cases, including the

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[9] All descriptions of case outcomes before immigration judges reflect initial case completions by an immigration judge during the fiscal year unless otherwise noted. All references to applications for asylum generally involve applications for asylum, as opposed to some other form of protection, but EOIR statistics do not distinguish between, for instance, the filing of an application for asylum or the filing of an application for statutory withholding. As noted, an application for asylum is also deemed an application for other forms of protection, and whether an application will be for asylum or only for some other form of protection is often a post-filing determination made by the immigration judge (for instance, because the one-year filing bar for asylum applies).

8,553 aliens just discussed) were completed in FY 2018 without an alien filing an application for asylum. In short, in nearly half of the cases completed by an immigration judge in FY 2018 involving aliens who passed through a credible-fear referral, the alien failed to appear at a hearing or failed to file an asylum application.

Those figures are consistent with trends from FY 2008 through FY 2018, during which time DHS pursued some 354,356 cases in the immigration courts that involved aliens who had gone through a credible-fear review (*i.e.,* the aliens received a positive credible-fear determination or their closed case was referred for further proceedings). During this period, however, only about 53% (189,127) of those aliens filed an asylum application, despite the fact that they were placed into further immigration proceedings under section 240 because they alleged a fear during expedited-removal proceedings.

Even among those aliens who received a credible-fear interview, filed for asylum, and appeared in section 240 proceedings to resolve their asylum claims—a category that would logically include the aliens with the greatest confidence in the merits of their claims—only a very small percentage received asylum. In FY 2018 immigration judges completed 34,158 cases that originated with a credible-fear referral; only 20,563 of those cases involved an application for asylum, and immigration judges granted only 5,639 aliens asylum. In other words, in FY 2018, less than about 6,000 aliens who passed through credible-fear screening (17% of all completed cases, 27% of all completed cases in which an asylum application was filed, and about 36% of cases where the asylum claim was adjudicated on the merits) estab-

lished that they should be granted asylum. (An additional 322 aliens received either statutory withholding or CAT protection.) Because there may be multiple bases for denying an asylum application and immigration judges often make alternative findings for consideration of issues on appeal, EOIR does not track reasons for asylum denials by immigration judges at a granular level. Nevertheless, experience indicates that the vast majority of those asylum denials reflect a conclusion that the alien failed to establish a significant possibility of persecution, rather than the effect of a bar to asylum eligibility or a discretionary decision by an immigration judge to deny asylum to an alien who qualifies as a refugee.

The statistics for nationals of Northern Triangle countries are particularly illuminating. In FY 2018, immigration judges in section 240 proceedings adjudicated 20,784 cases involving nationals of Northern Triangle countries who were referred for credible-fear interviews and then referred to section 240 proceedings (*i.e.*, they expressed a fear and either received a positive credible-fear determination or had their case closed and referred to section 240 proceedings for an unspecified reason). Given that those aliens asserted a fear of persecution and progressed through credible-fear screening, those aliens presumably would have had the greatest reason to then pursue an asylum application. Yet in only about 54% of those cases did the alien file an asylum application. Furthermore, about 38% of aliens from Northern Triangle countries who were referred for credible-fear interviews and passed to section 240 proceedings did not appear, and were ordered removed in absentia. Put differently: Only a little over half of aliens from Northern Triangle countries who claimed a

fear of persecution and passed threshold screening submitted an application for asylum, and over a third did not appear at section 240 proceedings.[10] And only 1,889 aliens from Northern Triangle countries were granted asylum, or approximately 9% of completed cases for aliens from Northern Triangle countries who received a credible-fear referral, 17% of the cases where such aliens filed asylum applications in their removal proceedings, and about 23% of cases where such aliens' asylum claims were adjudicated on the merits. Specifically, in FY 2018, 536 Hondurans, 408 Guatemalans, and 945 Salvadorans who initially were referred for a credible-fear interview (whether in FY 2018 or earlier) and progressed to section 240 proceedings were granted asylum.

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[10] These percentages are even higher for particular nationalities. In FY 2018, immigration judges adjudicated 7,151 cases involving Hondurans whose cases originated with a credible-fear referral in expedited-removal proceedings. Of that 7,151, only 49% (3,509) filed an application for asylum, and 44% (3,167) had their cases completed with an in absentia removal order because they failed to appear. Similarly, immigration judges adjudicated 5,382 cases involving Guatemalans whose cases originated with a credible-fear referral; only 46% (2,457) filed an asylum application, and 41% (2,218) received in absentia removal orders. The 8,251 Salvadoran cases had the highest rate of asylum applications (filed in 65% of cases, or 5,341), and 31% of the total cases (2,534) involved in absentia removal orders. Numbers for Mexican nationals reflected similar trends. In FY 2018, immigration judges adjudicated 3,307 cases involving Mexican nationals who progressed to section 240 proceedings after being referred for a credible-fear interview; 49% of them filed applications for asylum in these proceedings, and 25% of the total cases resulted in an in absentia removal order.

The Departments thus believe that these numbers underscore the major costs and inefficiencies of the current asylum system. Again, numbers for Northern Triangle nationals—who represent the vast majority of aliens who claim a credible fear—illuminate the scale of the problem. Out of the 63,562 Northern Triangle nationals who expressed an intent to apply for asylum or a fear of persecution and received credible-fear screening interviews in FY 2018, 47,507 received a positive credible-fear finding from the asylum officer or immigration judge. (Another 10,357 cases were administratively closed, some of which also may have been referred to section 240 proceedings.) Those aliens will remain in the United States to await section 240 proceedings while immigration judges work through the current backlog of nearly 800,000 cases—136,554 of which involve nationals of Northern Triangle countries who passed through credible-fear screening interviews. Immigration judges adjudicated 20,784 cases involving such nationals of Northern Triangle countries in FY 2018; slightly under half of those aliens did not file an application for asylum, and over a third were screened through expedited removal but did not appear for a section 240 proceeding. Even when nationals of Northern Triangle countries who passed through credible-fear screening applied for asylum (as 11,307 did in cases completed in FY 2018), immigration judges granted asylum to only 1,889, or 17% of the cases where such aliens filed asylum applications in their removal proceedings. Immigration judges found in the overwhelming majority of cases that the aliens had no significant possibility of persecution.

These existing burdens suggest an unsustainably inefficient process, and those pressures are now coupled

with the prospect that large caravans of thousands of aliens, primarily from Central America, will seek to enter the United States unlawfully or without proper documentation and thereafter trigger credible-fear screening procedures and obtain release into the interior. The United States has been engaged in ongoing diplomatic negotiations with Mexico and the Northern Triangle countries (Guatemala, El Salvador, and Honduras) about the problems on the southern border, but those negotiations have, to date, proved unable to meaningfully improve the situation.

2. In combination with a presidential proclamation directed at the crisis on the southern border, the rule would help ameliorate the pressures on the present system. Aliens who could not establish a credible fear for asylum purposes due to the proclamation-based eligibility bar could nonetheless seek statutory withholding of removal or CAT protection, but would receive a positive finding only by establishing a reasonable fear of persecution or torture. In FY 2018, USCIS issued nearly 7,000 reasonable-fear determinations (*i.e.,* made a positive or negative determination)—a smaller number because the current determinations are limited to the narrow categories of aliens described above. Of those determinations, USCIS found a reasonable fear in 45% of cases in 2018, and 48% of cases in 2017. Negative reasonable-fear determinations were then subject to further review, and immigration judges reversed approximately 18%.

Even if rates of positive reasonable-fear findings increased when a more general population of aliens became subject to the reasonable-fear screening process, this process would better filter those aliens eligible for

that form of protection. Even assuming that grant rates for statutory withholding in the reasonable-fear screening process (a higher standard) would be the same as grant rates for asylum, this screening mechanism would likely still allow through a significantly higher percentage of cases than would likely be granted. And the reasonable-fear screening rates would also still allow a far greater percentage of claimants through than would ultimately receive CAT protection. Fewer than 1,000 aliens per year, of any nationality, receive CAT protection.

To the extent that aliens continued to enter the United States in violation of a relevant proclamation, the application of the rule's bar to eligibility for asylum in the credible-fear screening process (combined with the application of the reasonable-fear standard to statutory withholding and CAT claims) would reduce the number of cases referred to section 240 proceedings. Finally, the Departments emphasize that this rule would not prevent aliens with claims for statutory withholding or CAT protection from having their claims adjudicated in section 240 proceedings after satisfying the reasonable-fear standard.

Further, determining whether an alien is subject to a suspension of entry proclamation would ordinarily be straightforward, because such orders specify the class of aliens whose entry is restricted. Likewise, adding questions designed to elicit whether an alien is subject to an entry proclamation, and employing a bifurcated credible-fear analysis for the asylum claim and reasonable-fear review of the statutory withholding and CAT claims, will likely not be unduly burdensome. Although DHS has generally not applied existing mandatory bars

to asylum in credible-fear determinations, asylum officers currently probe for this information and note in the record where the possibility exists that a mandatory bar may apply. Though screening for proclamation-based ineligibility for asylum may in some cases entail some additional work, USCIS will account for it under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, as needed, following issuance of a covered proclamation. USCIS asylum officers and EOIR immigration judges have almost two decades of experience applying the reasonable-fear standard to statutory withholding and CAT claims, and do so in thousands of cases per year already (13,732 in FY 2018 for both EOIR and USCIS). *See, e.g.*, Memorandum for All Immigration Judges, et al., from The Office of the Chief Immigration Judge, Executive Office for Immigration Review at 6 (May 14, 1999) (explaining similarities between credible-fear and reasonable-fear proceedings for immigration judges).

That said, USCIS estimates that asylum officers have historically averaged four to five credible-fear interviews and completions per day, but only two to three reasonable-fear case completions per day. Comparing this against current case processing targets, and depending on the number of aliens who contravene a presidential proclamation, such a change might result in the need to increase the number of officers required to conduct credible-fear or reasonable-fear screenings to maintain current case completion goals. However, current reasonable-fear interviews are for types of aliens (aggravated felons and aliens subject to reinstatement) for whom relevant criminal and immigration records take time to obtain, and for whom additional interviewing and administrative processing time is typically required. The population of aliens who would be subject to this

rule would generally not have the same type of criminal and immigration records in the United States, but additional interviewing time might be necessary. Therefore, it is unclear whether these averages would hold once the rule is implemented.

If an asylum officer determines that credible fear has been established but for the existence of the proclamation bar, and the alien seeks review of such determination before an immigration judge, DHS may need to shift additional resources towards facilitating such review in immigration court in order to provide records of the negative credible-fear determination to the immigration court. However, ICE attorneys, while sometimes present, generally do not advocate for DHS in negative credible-fear or reasonable-fear reviews before an immigration judge.

DHS would, however, also expend additional resources detaining aliens who would have previously received a positive credible-fear determination and who now receive, and challenge, a negative credible-fear and reasonable-fear determination. Aliens are generally detained during the credible-fear screening, but may be eligible for parole or release on bond if they establish a credible fear. To the extent that the rule may result in lengthier interviews for each case, aliens' length of stay in detention would increase. Furthermore, DHS anticipates that more negative determinations would increase the number of aliens who would be detained and the length of time they would be detained, since fewer aliens would be eligible for parole or release on bond. Also, to the extent this rule would increase the number of aliens who receive both negative credible-fear and

reasonable-fear determinations, and would thus be subject to immediate removal, DHS will incur increased and more immediate costs for enforcement and removal of these aliens. That cost would be counterbalanced by the fact that it would be considerably more costly and resource-intensive to ultimately remove such an alien after the end of section 240 proceedings, and the desirability of promoting greater enforcement of the immigration laws.

Attorneys from ICE represent DHS in full immigration proceedings, and immigration judges (who are part of DOJ) adjudicate those proceedings. If fewer aliens are found to have credible fear or reasonable fear and referred to full immigration proceedings, such a development will allow DOJ and ICE attorney resources to be reallocated to other immigration proceedings. The additional bars to asylum are unlikely to result in immigration judges spending much additional time on each case where the nature of the proclamation bar is straightforward to apply. Further, there will likely be a decrease in the number of asylum hearings before immigration judges because certain respondents will no longer be eligible for asylum and DHS will likely refer fewer cases to full immigration proceedings. If DHS officers identify the proclamation-based bar to asylum (before EOIR has acquired jurisdiction over the case), EOIR anticipates a reduction in both in-court and out-of-court time for immigration judges.

A decrease in the number of credible-fear findings and, thus, asylum grants would also decrease the number of employment authorization documents processed by DHS. Aliens are generally eligible to apply for and receive employment authorization and an Employment

Authorization Document (Form 1-766) after their asylum claim has been pending for more than 180 days. *See* INA 208(d)(5)(A)(iii), 8 U.S.C. 1158(d)(5)(A)(iii); 8 CFR 1208.7(a)(1)(2). This rule and any associated future presidential proclamations would also be expected to have a deterrent effect that could lessen future flows of illegal immigration.

3. The Departments are not in a position to determine how all entry proclamations involving the southern border could affect the decision calculus for various categories of aliens planning to enter the United States through the southern border in the near future. The focus of this rule is on the tens of thousands of aliens each year (97,192 in FY 2018) who assert a credible fear in expedited-removal proceedings and may thereby be placed on a path to release into the interior of the United States. The President has announced his intention to take executive action to suspend the entry of aliens between ports of entry and instead to channel such aliens to ports of entry, where they may seek to enter and assert an intent to apply for asylum in a controlled, orderly, and lawful manner. The Departments have accordingly assessed the anticipated effects of such a presidential action so as to illuminate how the rule would be applied in those circumstances.

a. *Effects on Aliens.* Such a proclamation, coupled with this rule, would have the most direct effect on the more than approximately 70,000 aliens a year (as of FY 2018) estimated to enter between the ports of entry and

then assert a credible fear in expedited-removal proceedings.[11] If such aliens contravened a proclamation suspending their entry unless they entered at a port of entry, they would become ineligible for asylum, but would remain eligible for statutory withholding or CAT protection. And for the reasons discussed above, their claims would be processed more expeditiously. Conversely, if such aliens decided to instead arrive at ports of entry, they would remain eligible for asylum and would proceed through the existing credible-fear screening process.

Such an application of this rule could also affect the decision calculus for the estimated 24,000 or so aliens a year (as of FY 2018) who arrive at ports of entry along the southern border and assert a credible fear in expedited-removal proceedings.[12] Such aliens would likely face increased wait times at a U.S. port of entry, meaning that they would spend more time in Mexico.

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[11] The Departments estimated this number by using the approximately 171,511 aliens in FY 2018 who were referred to expedited removal after crossing illegally between ports of entry and being apprehended by CBP. That number excludes the approximately 3,102 additional aliens who were arrested by ICE, because it is not clear at this time whether such aliens were ultimately processed at a port of entry. The Departments also relied on the fact that approximately 41% of aliens in expedited removal in FY 2018 triggered credible-fear screening.

[12] The Departments estimated this number by using the approximately 59,921 aliens in FY 2018 who were referred to expedited removal after presenting at a port of entry. That number excludes the approximately 3,102 additional aliens who were arrested by ICE, because it is not clear at this time whether such aliens were ultimately processed at a port of entry. The Departments also relied on the fact that approximately 41% of aliens in expedited removal in FY 2018 triggered credible-fear screening.

Third-country nationals in this category would have added incentives to take advantage of Mexican asylum procedures and to make decisions about travel to a U.S. port of entry based on information about which ports were most capable of swift processing.

Such an application of this rule could also affect aliens who apply for asylum affirmatively or in removal proceedings after entering through the southern border. Some of those asylum grants would become denials for aliens who became ineligible for asylum because they crossed illegally in contravention of a proclamation effective before they entered. Such aliens could, however, still obtain statutory withholding of removal or CAT protection in section 240 proceedings.

Finally, such a proclamation could also affect the thousands of aliens who are granted asylum each year. Those aliens' cases are equally subject to existing backlogs in immigration courts, and could be adjudicated more swiftly if the number of non-meritorious cases declined. Aliens with meritorious claims could thus more expeditiously receive the benefits associated with asylum.

b. *Effects on the Departments' Operations.* Applying this rule in conjunction with a proclamation that channeled aliens seeking asylum to ports of entry would likely create significant overall efficiencies in the Departments' operations beyond the general efficiencies discussed above. Channeling even some proportion of aliens who currently enter illegally and assert a credible fear to ports of entry would, on balance, be expected to help the Departments more effectively leverage their resources to promote orderly and efficient processing of inadmissible aliens.

At present, CBP dedicates enormous resources to attempting to apprehend aliens who cross the southern border illegally. As noted, CBP apprehended 396,579 such aliens in FY 2018. Such crossings often occur in remote locations, and over 16,000 CBP officers are responsible for patrolling hundreds of thousands of square miles of territory, ranging from deserts to mountainous terrain to cities. When a United States Border Patrol ("Border Patrol" or "USBP") agent apprehends an alien who enters unlawfully, the USBP agent takes the alien into custody and transports the alien to a Border Patrol station for processing—which could be hours away. Family units apprehended after crossing illegally present additional logistical challenges, and may require additional agents to assist with the transport of the illegal aliens from the point of apprehension to the station for processing. And apprehending one alien or group of aliens may come at the expense of apprehending others while agents are dedicating resources to transportation instead of patrolling.

At the Border Patrol station, a CBP agent obtains an alien's fingerprints, photographs, and biometric data, and begins asking background questions about the alien's nationality and purpose in crossing. At the same time, agents must make swift decisions, in coordination with DOJ, as to whether to charge the alien with an immigration-related criminal offense. Further, agents must decide whether to apply expedited-removal procedures, to pursue reinstatement proceedings if the alien already has a removal order in effect, to authorize voluntary return, or to pursue some other lawful course of action. Once the processing of the alien is completed, the USBP temporarily detains any alien who is referred for removal proceedings. Once the USBP determines

that an alien should be placed in expedited-removal proceedings, the alien is expeditiously transferred to ICE custody in compliance with federal law. The distance between ICE detention facilities and USBP stations, however, varies. Asylum officers and immigration judges review negative credible-fear findings during expedited-removal proceedings while the alien is in ICE custody.

By contrast, CBP officers are able to employ a more orderly and streamlined process for inadmissible aliens who present at one of the ports of entry along the southern border-even if they claim a credible fear. Because such aliens have typically sought admission without violating the law, CBP generally does not need to dedicate resources to apprehending or considering whether to charge such aliens. And while aliens who present at a port of entry undergo threshold screening to determine their admissibility, see INA 235(b)(2), 8 U.S.C. 1225(b)(2), that process takes approximately the same amount of time as CBP's process for obtaining details from aliens apprehended between ports of entry. Just as for illegal entrants, CBP officers at ports of entry must decide whether inadmissible aliens at ports of entry are subject to expedited removal. Aliens subject to such proceedings are then generally transferred to ICE custody so that DHS can implement Congress's statutory mandate to detain such aliens during the pendency of expedited-removal proceedings. As with stations, ports of entry vary in their proximity to ICE detention facilities. The Departments acknowledge that in the event all of the approximately 70,000 aliens per year who cross illegally and assert a credible fear instead decide to present at a port of entry, processing times at ports

of entry would be slower in the absence of additional resources or policies that would encourage aliens to enter at less busy ports. Using FY 2018 figures, the number of aliens presenting at a port of entry would rise from about 124,511 to about 200,000 aliens if all illegal aliens who assert a credible fear went to ports of entry. That would likely create longer lines at U.S. ports of entry, although the Departments note that such ports have variable capacities and that wait times vary considerably between them. The Departments nonetheless believe such a policy would be preferable to the status quo. Nearly 40% of inadmissible aliens who present at ports of entry today are Mexican nationals, who rarely claim a credible fear and who accordingly can be processed and admitted or removed quickly.

Furthermore, the overwhelming number of aliens who would have an incentive under the rule and a proclamation to arrive at a port of entry rather than to cross illegally are from third countries, not from Mexico. In FY 2018, CBP apprehended and referred to expedited removal an estimated 87,544 Northern Triangle nationals and an estimated 66,826 Mexican nationals, but Northern Triangle nationals assert a credible fear over 60% of the time, whereas Mexican nationals assert a credible fear less than 10% of the time. The Departments believe that it is reasonable for third-country aliens, who appear highly unlikely to be persecuted on account of a protected ground or tortured in Mexico, to be subject to orderly processing at ports of entry that takes into account resource constraints at ports of entry and in U.S. detention facilities. Such orderly processing would be impossible if large proportions of third-country nationals continue to cross the southern border illegally.

To be sure, some Mexican nationals who would assert a credible fear may also have to spend more time waiting for processing in Mexico. Such nationals, however, could still obtain statutory withholding of removal or CAT protection if they crossed illegally, which would allow them a safeguard against persecution. Moreover, only 178 Mexican nationals received asylum in FY 2018 after initially asserting a credible fear of persecution in expedited-removal proceedings, indicating that the category of Mexican nationals most likely to be affected by the rule and a proclamation would also be highly unlikely to establish eligibility for asylum.

Regulatory Requirements

A. Administrative Procedure Act

While the Administrative Procedure Act ("APA") generally requires agencies to publish notice of a proposed rulemaking in the Federal Register for a period of public comment, it provides an exception "when the agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(B). This exception relieves agencies of the notice-and-comment requirement in emergency situations, or in circumstances where "the delay created by the notice and comment requirements would result in serious damage to important interests." *Woods Psychiatric Inst.* v. *United States,* 20 Cl. Ct. 324, 333 (1990), *aff'd,* 925 F.2d 1454 (Fed. Cir. 1991); *see also Nat'l Fed'n of Federal Emps.* v. *Nat'l Treasury Emps. Union,* 671 F.2d 607, 611 (D.C. Cir. 1982); *United States* v. *Dean,* 604 F.3d 1275, 1279 (11th Cir. 2010). Agencies have previously relied on this exception in promulgating a host of

immigration-related interim rules.[13] Furthermore, DHS has invoked this exception in promulgating rules related to expedited removal-a context in which Congress recognized the need for dispatch in addressing large volumes of aliens by giving the Secretary significant discretion to "modify at any time" the classes of aliens who would be subject to such procedures. *See* INA 235(b)(1)(A)(iii)(I), 8 U.S.C. 1225(b)(1)(A)(iii)(I).[14]

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[13] *See, e.g.,* Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended, 81 FR 5906, 5907 (Feb. 4, 2016) (interim rule citing good cause to immediately require additional documentation from certain Caribbean agricultural workers to avoid "an increase in applications for admission in bad faith by persons who would otherwise have been denied visas and are seeking to avoid the visa requirement and consular screening process during the period between the publication of a proposed and a final rule"); Suspending the 30-Day and Annual Interview Requirements From the Special Registration Process for Certain Nonimmigrants, 68 FR 67578, 67581 (Dec. 2, 2003) (interim rule claiming good cause exception for suspending certain automatic registration requirements for nonimmigrants because "without [the] regulation approximately 82,532 aliens would be subject to 30-day or annual re-registration interviews" over six months).

[14] *See, e.g.,* Eliminating Exception to Expedited Removal Authority for Cuban Nationals Arriving by Air, 82 FR at 4770 (claiming good cause exception because the ability to detain certain Cuban nationals "while admissibility and identity are determined and protection claims are adjudicated, as well as to quickly remove those without protection claims or claims to lawful status, is a necessity for national security and public safety"); Designating Aliens For Expedited Removal, 69 FR at 48880 (claiming good cause exception for expansion of expedited-removal program due to "[t]he large volume of illegal entries, and attempted illegal entries, and the attendant risks to national security presented by these illegal entries," as well as "the need to deter foreign nationals from undertaking dangerous border crossings, and thereby prevent the needless deaths and

The Departments have concluded that the good-cause exceptions in 5 U.S.C. 553(b)(B) and (d)(3) apply to this rule. Notice and comment on this rule, along with a 30-day delay in its effective date, would be impracticable and contrary to the public interest. The Departments have determined that immediate implementation of this rule is essential to avoid creating an incentive for aliens to seek to cross the border during pre-promulgation notice and comment under 5 U.S.C. 553(b) or during the 30-day delay in the effective date under 5 U.S.C. 553(d).

DHS concluded in January 2017 that it was imperative to give immediate effect to a rule designating Cuban nationals arriving by air as eligible for expedited removal because "pre-promulgation notice and comment would . . . endanger[] human life and hav[e] a potential destabilizing effect in the region." Eliminating Exception to Expedited Removal Authority for Cuban Nationals Arriving by Air, 82 FR at 4770. DHS in particular cited the prospect that "publication of the rule as a proposed rule, which would signal a significant change in policy while permitting continuation of the exception for Cuban nationals, could lead to a surge in migration of Cuban nationals seeking to travel to and enter the United States during the period between the publication of a proposed and a final rule." *Id.* DHS found that "[s]uch a surge would threaten national security and public safety by diverting valuable Government resources from counterterrorism and homeland security responsibilities. A surge could also have a destabilizing effect on the region, thus weakening the security of

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crimes associated with human trafficking and alien smuggling operations").

the United States and threatening its international relations." *Id.* DHS concluded: "[A] surge could result in significant loss of human life." *Id.; accord, e.g.,* Designating Aliens For Expedited Removal, 69 FR 48877 (noting similar destabilizing incentives for a surge during a delay in the effective date); Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended, 81 FR at 5907 (finding the good-cause exception applicable because of similar short-run incentive concerns).

These same concerns would apply here as well. Prepromulgation notice and comment, or a delay in the effective date, could lead to an increase in migration to the southern border to enter the United States before the rule took effect. For instance, the thousands of aliens who presently enter illegally and make claims of credible fear if and when they are apprehended would have an added incentive to cross illegally during the comment period. They have an incentive to cross illegally in the hopes of evading detection entirely. Even once apprehended, at present, they are able to take advantage of a second opportunity to remain in the United States by making credible-fear claims in expedited-removal proceedings. Even if their statements are ultimately not found to be genuine, they are likely to be released into the interior pending section 240 proceedings that may not occur for months or years. Based on the available statistics, the Departments believe that a large proportion of aliens who enter illegally and assert a fear could be released while awaiting section 240 proceedings. There continues to be an "urgent need to deter foreign nationals from undertaking dangerous border crossings, and thereby prevent the needless deaths and crimes associated with human trafficking and alien

smuggling operations." Designating Aliens For Expedited Removal, 69 FR at 48878.

Furthermore, there are already large numbers of migrants—including thousands of aliens traveling in groups, primarily from Central America—expected to attempt entry at the southern border in the coming weeks. Some are traveling in large, organized groups through Mexico and, by reports, intend to come to the United States unlawfully or without proper documentation and to express an intent to seek asylum. Creating an incentive for members of those groups to attempt to enter the United States unlawfully before this rule took effect would make more dangerous their already perilous journeys, and would further strain CBP's apprehension operations. This interim rule is thus a practical means to address these developments and avoid creating an even larger short-term influx; an extended notice-and-comment rulemaking process would be impracticable.

Alternatively, the Departments may forgo notice-and-comment procedures and a delay in the effective date because this rule involves a "foreign affairs function of the United States." 5 U.S.C. 553(a)(1). The flow of aliens across the southern border, unlawfully or without appropriate travel documents, directly implicates the foreign policy interests of the United States. *See, e.g.,* Exec. Order 13767 (Jan. 25, 2017). Presidential proclamations invoking section 212(f) or 215(a)(1) of the INA at the southern border necessarily implicate our relations with Mexico and the President's foreign policy, including sensitive and ongoing negotiations with

Mexico about how to manage our shared border.[15] A proclamation under section 212(f) of the INA would reflect a presidential determination that some or all entries along the border "would [be] detrimental to the interests of the United States." And the structure of the rule, under which the Attorney General and the Secretary are exercising their statutory authority to establish a mandatory bar to asylum eligibility resting squarely on a proclamation issued by the President, confirms the direct relationship between the President's foreign policy decisions in this area and the rule.

For instance, a proclamation aimed at channeling aliens who wish to make a claim for asylum to ports of entry at the southern border would be inextricably related to any negotiations over a safe-third-country agreement (as defined in INA 208(a)(2)(A), 8 U.S.C. 1158(a)(2)(A)), or any similar arrangements. As noted, the vast majority of aliens who enter illegally today come from the Northern Triangle countries, and large portions of those aliens assert a credible fear. Channeling those aliens to ports of entry would encourage these aliens to first avail themselves of offers of asylum from Mexico.

Moreover, this rule would be an integral part of ongoing negotiations with Mexico and Northern Triangle

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[15] For instance, since 2004, the United States and Mexico have been operating under a memorandum of understanding concerning the repatriation of Mexican nationals. Memorandum of Understanding Between the Department of Homeland Security of the United States of America and the Secretariat of Governance and the Secretariat of Foreign Affairs of the United Mexican States, on the Safe, Orderly, Dignified and Humane Repatriation of Mexican Nationals (Feb. 20, 2004). Article 6 of that memorandum reserves the movement of third-country nationals through Mexico and the United States for further bilateral negotiations.

countries over how to address the influx of tens of thousands of migrants from Central America through Mexico and into the United States. For instance, over the past few weeks, the United States has consistently engaged with the Security and Foreign Ministries of El Salvador, Guatemala, and Honduras, as well as the Ministries of Governance and Foreign Affairs of Mexico, to discuss how to address the mass influx of aliens traveling together from Central America who plan to seek to enter at the southern border. Those ongoing discussions involve negotiations over issues such as how these other countries will develop a process to provide this influx with the opportunity to seek protection at the safest and earliest point of transit possible, and how to establish compliance and enforcement mechanisms for those who seek to enter the United States illegally, including for those who do not avail themselves of earlier offers of protection. Furthermore, the United States and Mexico have been engaged in ongoing discussions of a safe-third-country agreement, and this rule will strengthen the ability of the United States to address the crisis at the southern border and therefore facilitate the likelihood of success in future negotiations.

This rule thus supports the President's foreign policy with respect to Mexico and the Northern Triangle countries in this area and is exempt from the notice-and-comment and delayed-effective-date requirements in 5 U.S.C. 553. *See Am. Ass'n of Exporters & Importers-Textile & Apparel Grp.* v. *United States,* 751 F.2d 1239, 1249 (Fed. Cir. 1985) (noting that foreign affairs exception covers agency actions "linked intimately with the Government's overall political agenda concerning relations with another country"); *Yassini* v. *Crosland,* 618 F.2d 1356, 1361 (9th Cir. 1980) (because an immigration

directive "was implementing the President's foreign policy," the action "fell within the foreign affairs function and good cause exceptions to the notice and comment requirements of the APA").

Invoking the APA's foreign affairs exception is also consistent with past rulemakings. In 2016, for example, in response to diplomatic developments between the United States and Cuba, DHS changed its regulations concerning flights to and from the island via an immediately effective interim final rule. This rulemaking explained that it was covered by the foreign affairs exception because it was "consistent with U.S. foreign policy goals"—specifically, the "continued effort to normalize relations between the two countries." Flights to and From Cuba, 81 FR 14948, 14952 (Mar. 21, 2016). In a similar vein, DHS and the State Department recently provided notice that they were eliminating an exception to expedited removal for certain Cuban nationals. The notice explained that the change in policy was subject to the foreign affairs exception because it was "part of a major foreign policy initiative announced by the President, and is central to ongoing diplomatic discussions between the United States and Cuba with respect to travel and migration between the two countries." Eliminating Exception To Expedited Removal Authority for Cuban Nationals Encountered in the United States or Arriving by Sea, 82 FR at 4904-05.

For the foregoing reasons, taken together, the Departments have concluded that the foreign affairs exemption to notice-and-comment rulemaking applies.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). A regulatory flexibility analysis is not required when a rule is exempt from notice-and-comment rulemaking.

C. Unfunded Mandates Reform Act of 1995

This interim final rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

D. Congressional Review Act

This interim final rule is not a major rule as defined by section 804 of the Congressional Review Act. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

E. Executive Order 12866, Executive Order 13563, and Executive Order 13771 (Regulatory Planning and Review)

This interim final rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 because the rule is exempt under the foreign-affairs exemption in section 3(d)(2) as part of the actual exercise of diplomacy. The rule is consequently also exempt from Executive Order 13771 because it is not a significant regulatory action under Executive Order 12866. Though the potential costs, benefits, and transfers associated with some proclamations may have any of a range of economic impacts, this rule itself does not have an impact aside from enabling future action. The Departments have discussed what some of the potential impacts associated with a proclamation may be, but these impacts do not stem directly from this rule and, as such, they do not consider them to be costs, benefits, or transfers of this rule.

This rule amends existing regulations to provide that aliens subject to restrictions on entry under certain proclamations are ineligible for asylum. The expected effects of this rule for aliens and on the Departments' operations are discussed above. As noted, this rule will result in the application of an additional mandatory bar to asylum, but the scope of that bar will depend on the substance of relevant triggering proclamations. In addition, this rule requires DHS to consider and apply the proclamation bar in the credible-fear screening analysis, which DHS does not currently do. Application of the new bar to asylum will likely decrease the number of asylum grants. By applying the bar earlier in the process, it will lessen the time that aliens who are ineligible for asylum and who lack a reasonable fear of persecution or torture will be present in the United States. Finally, DOJ is amending its regulations with respect to aliens who are subject to the proclamation bar to asylum

eligibility to ensure that aliens who establish a reasonable fear of persecution or torture may still seek, in proceedings before immigration judges, statutory withholding of removal under the INA or CAT protection.

Executive Order 13132 (Federalism)

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

G. Paperwork Reduction Act

This rule does not propose new or revisions to existing "collection[s] of information" as that term is defined under the Paperwork Reduction Act of 1995, Public Law 104-13, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320.

List of Subjects

8 CFR Part 208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 1003

Administrative practice and procedure, Aliens, Immigration, Legal services, Organization and functions (Government agencies).

8 CFR Part 1208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

Regulatory Amendments

DEPARTMENT OF HOMELAND SECURITY

Accordingly, for the reasons set forth in the preamble, the Secretary of Homeland Security amends 8 CFR part 208 as follows:

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

• 1. The authority citation for part 208 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1158, 1226, 1252, 1282; Title VII of Public Law 110-229, 8 CFR part 2.

• 2. In § 208.13, add paragraph (c)(3) to read as follows:

§ 208.13 Establishing asylum eligibility.

* * * * *

(c) * * *

(3) *Additional limitation on eligibility for asylum.* For applications filed after November 9, 2018, an alien shall be ineligible for asylum if the alien is subject to a presidential proclamation or other presidential order suspending or limiting the entry of aliens along the southern border with Mexico that is issued pursuant to subsection 212(f) or 215(a)(1) of the Act on or after November 9, 2018 and the alien enters the United States after the effective date of the proclamation or order contrary to the terms of the proclamation or order. This limitation on eligibility does not apply if the proclamation or order expressly provides that it does not affect eligibility for asylum, or expressly provides for a waiver or exception that makes the suspension or limitation inapplicable to the alien.

• 3. In § 208.30, revise the section heading and add a sentence at the end of paragraph (e)(5) to read as follows:

§ 208.30 Credible fear determinations involving stowaways and applicants for admission who are found inadmissible pursuant to section 212(a)(6)(C) or 212(a)(7) of the Act or whose entry is limited or suspended under section 212(f) or 215(a)(1) of the Act.

* * * * *

(e) * * *

(5) * * * If the alien is found to be an alien described in 8 CFR 208.13(c)(3), then the asylum officer shall enter a negative credible fear determination with respect to the alien's application for asylum. The Department shall nonetheless place the alien in proceedings under section 240 of the Act for full consideration

of the alien's claim for withholding of removal under section 241(b)(3) of the Act, or for withholding or deferral of removal under the Convention Against Torture if the alien establishes a reasonable fear of persecution or torture. However, if an alien fails to establish, during the interview with the asylum officer, a reasonable fear of either persecution or torture, the asylum officer will provide the alien with a written notice of decision, which will be subject to immigration judge review consistent with paragraph (g) of this section, except that the immigration judge will review the reasonable fear findings under the reasonable fear standard instead of the credible fear standard described in paragraph (g) and in 8 CFR 1208.30(g).

* * * * *

Approved:

Dated: November 5, 2018.

Kirstjen M. Nielsen,

Secretary of Homeland Security.

DEPARTMENT OF JUSTICE

Accordingly, for the reasons set forth in the preamble, the Attorney General amends 8 CFR parts 1003 and 1208 as follows:

PART 1003—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

• 4. The authority citation for part 1003 continues to read as follows:

Authority: 5 U.S.C. 301; 6 U.S.C 521; 8 U.S.C. 1101, 1103, 1154, 1155, 1158, 1182, 1226, 1229, 1229a, 1229b, 1229c, 1231, 1254a, 1255, 1324d, 1330, 1361, 1362; 28

U.S.C. 509, 510, 1746; sec. 2 Reorg. Plan No. 2 of 1950; 3 CFR, 1949-1953 Comp., p. 1002; section 203 of Pub. L. 105-100, 111 Stat. 2196-200; sections 1506 and 1510 of Pub. L. 106-386, 114 Stat. 1527-29, 1531-32; section 1505 of Pub. L. 106-554, 114 Stat. 2763A-326 to -328.

• 5. In § 1003.42, add a sentence at the end of paragraph (d) to read as follows:

§ 1003.42 Review of credible fear determination.

* * * * *

(d) * * * If the alien is determined to be an alien described in 8 CFR 208.13(c)(3) or 1208.13(c)(3) and is determined to lack a reasonable fear under 8 CFR 208.30(e)(5), the immigration judge shall first review de novo the determination that the alien is described in 8 CFR 208.13(c)(3) or 1208.13(c)(3) prior to any further review of the asylum officer's negative determination.

* * * * *

PART 1208-PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

• 6. The authority citation for part 1208 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1158, 1226, 1252, 1282; Title VII of Public Law 110-229.

• 7. In § 1208.13, add paragraph (c)(3) to read as follows:

§ 1208.13 Establishing asylum eligibility.

* * * * *

(c) * * *

(3) *Additional limitation on eligibility for asylum.* For applications filed after November 9, 2018, an alien shall be ineligible for asylum if the alien is subject to a presidential proclamation or other presidential order suspending or limiting the entry of aliens along the southern border with Mexico that is issued pursuant to subsection 212(f) or 215(a)(1) of the Act on or after November 9, 2018 and the alien enters the United States after the effective date of the proclamation or order contrary to the terms of the proclamation or order. This limitation on eligibility does not apply if the proclamation or order expressly provides that it does not affect eligibility for asylum, or expressly provides for a waiver or exception that makes the suspension or limitation inapplicable to the alien.

• 8. In § 1208.30, revise the section heading and add paragraph (g)(1) to read as follows:

§ 1208.30 Credible fear determinations involving stowaways and applicants for admission who are found inadmissible pursuant to section 212(a)(6)(C) or 212(a)(7) of the Act or whose entry is limited or suspended under section 212(f) or 215(a)(1) of the Act.

* * * * *

(g) * * *

(1) *Review by immigration judge of a mandatory bar finding.* If the alien is determined to be an alien described in 8 CFR 208.13(c)(3) or 1208.13(c)(3) and is determined to lack a reasonable fear under 8 CFR 208.30(e)(5), the immigration judge shall first review de novo the determination that the alien is described in 8 CFR 208.13(c)(3) or 1208.13(c)(3). If the immigration judge finds that the alien is not described in 8 CFR

208.13(c)(3) or 1208.13(c)(3), then the immigration judge shall vacate the order of the asylum officer, and DHS may commence removal proceedings under section 240 of the Act. If the immigration judge concurs with the credible fear determination that the alien is an alien described in 8 CFR 208.13(c)(3) or 1208.13(c)(3), the immigration judge will then review the asylum officer's negative decision regarding reasonable fear made under 8 CFR 208.30(e)(5) consistent with paragraph (g)(2) of this section, except that the immigration judge will review the findings under the reasonable fear standard instead of the credible fear standard described in paragraph (g)(2).

* * * * *

Dated: Nov. 6, 2018.

Jefferson B. Sessions III,

Attorney General.

[FR Doc. 2018-24594 Filed 11-8-18; 4:15 pm]

BILLING CODE 4410-30-P; 9111-97-P

Position of Mexico on the Decision of the U.S. Government to Invoke Section 235(b)(2)(C) of its Immigration and Nationality Act

Press Release 14

Press Release

Autor
Secretaría de Relaciones Exteriores

Fecha de publicación
20 de diciembre de 2018

Categoría
Comunicado

At 8 a.m. this morning, the Government of the United States informed the Mexican Government that the U.S. Department of Homeland Security (DHS) intends to invoke a section of its immigration law that would enable it to return non-Mexican individuals to our country for the duration of their immigration proceedings in the United States.

Mexico reaffirms its sovereign right to implement its immigration policy and admit or deny entry into its territory to foreign citizens. Therefore, the Government of Mexico has decided to take the following steps on behalf of migrants, especially minors, whether accompanied or not, and to protect the right of those who wish to begin and continue the process of applying for asylum in United States territory:

1. For humanitarian reasons, it will authorize the temporary entrance of certain foreign individuals coming from the United States who entered that country at a port of entry or who were detained between ports of entry, have been interviewed by U.S. immigration authorities, and have received a notice to appear before an immigration judge. This is based on current Mexican legislation and the international commitments Mexico has signed, such as the Convention Relating to the Status of

Refugees, its Protocol, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, among others.

2. It will allow foreigners who have received a notice to appear to request admission into Mexican territory for humanitarian reasons at locations designated for the international transit of individuals and to remain in national territory. This would be a "stay for humanitarian reasons" and they would be able to enter and leave national territory multiple times.

3. It will ensure that foreigners who have received their notice to appear have all the rights and freedoms recognized in the Constitution, the international treaties to which Mexico is a party, and its Migration Law. They will be entitled to equal treatment with no discrimination whatsoever and due respect will be paid to their human rights. They will also have the opportunity to apply for a work permit for paid employment, which will allow them to meet their basic needs.

4. It will ensure that the measures taken by each government are coordinated at a technical and operational level in order to put mechanisms in place that allow migrants who have receive a notice to appear before a U.S. immigration judge have access without interference to information and legal services, and to prevent fraud and abuse.

The actions taken by the governments of Mexico and the United States do not constitute a Safe Third Country arrangement, in which migrants in transit would be required to apply for asylum in Mexico. They are aimed at facilitating the follow-up to applications for asylum in

the United States. This does not imply that foreign individuals face any obstacles to applying for asylum in Mexico.

The Government of Mexico reiterates that all foreign individuals must comply with the law while they are in national territory.

Contesta nuestra encuesta de satisfacción.

Twittear

Compartir (https://www.facebook.com/sharer/sharer.php?

u=http://www.gob.mx/sre/prensa/155060&src=sdkpreparse)

Imprime la página completa

FY2016-2019 YTD ATD FAMU vs. Non-FAMU Absconder Rates

FY16 ATD Absconder Rates: FAMU vs. Non-FAMU			
Metric	FAMU	Non-FAMU	Overall
Absconders	2,626	1,567	4,193
Terminations	8,459	12,921	21,380
Absconder Rate	31.0%	12.1%	19.6%

FY17 ATD Absconder Rates: FAMU vs. Non-FAMU			
Metric	FAMU	Non-FAMU	Overall
Absconders	4,628	2,424	7,052
Terminations	20,131	16,053	36,184
Absconder Rate	23.0%	15.1%	19.5%

FY18 ATD Absconder Rates: FAMU vs. Non-FAMU			
Metric	FAMU	Non-FAMU	Overall
Absconders	8,299	3,182	11,481
Terminations	30,322	19,903	50,225
Absconder Rate	27.4%	16.0%	22.9%

FY19 through November Absconder Rates: FAMU vs. Non-FAMU			
Metric	FAMU	Non-FAMU	Overall
Absconders	2,281	539	2,820
Terminations	8,911	4,364	13,275
Absconder Rate	25.6%	12.4%	21.2%

USBP Arrest Data 10/1/2013 through 11/30/2018.
Data from BI Inc. Participants Reports, 9/30/2016, 9/30/2017, & 9/30/2018.
Family Unit (FAMU) subject apprehensions represent all OBP apprehensions of adults (18 years old and over) with a FAMU classification.

Fiscal Year 2018 ICE Enforcement and Removal Operations Report

Overview

This report summarizes U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) activities in Fiscal Year (FY) 2018. ERO identifies, arrests, and removes aliens who present a danger to national security or a threat to public safety, or who otherwise undermine border control and the integrity of the U.S. immigration system. ICE shares responsibility for administering and enforcing the nation's immigration laws with U.S. Customs and Border Protection (CBP) and U.S. Citizenship and Immigration Services.

During FY2018, ICE ERO continued its focus on priorities laid out by two primary directives issued in 2017. On January 25, 2017, President Donald J. Trump issued Executive Order 13768, *Enhancing Public Safety in the Interior of the United States* (EO), which set forth the Administration's immigration enforcement and removal priorities. Subsequently, the Department of Homeland Security's (DHS) February 20, 2017 implementation memorandum, *Enforcement of the Immigration Laws to Serve the National Interest* provided further direction for the implementation of the policies set forth in the EO. Together, the EO and implementation memorandum expanded ICE's enforcement focus to include removable aliens who (1) have been convicted of any

criminal offense; (2) have been charged with any criminal offense that has not been resolved; (3) have committed acts which constitute a chargeable criminal offense; (4) have engaged in fraud or willful misrepresentation in connection with any official matter before a governmental agency; (5) have abused any program related to receipt of public benefits; (6) are subject to a final order of removal but have not complied with their legal obligation to depart the United States; or (7) in the judgment of an immigration officer, otherwise pose a risk to public safety or national security. The Department continued to operate under the directive that classes or categories of removable aliens are not exempt from potential enforcement.

ICE ERO continued efforts under the direction of the 2017 EO and implementation memorandum by placing a significant emphasis on interior enforcement by protecting national security and public safety and upholding the rule of law. This report represents an analysis of ICE ERO's FY2018 year-end statistics and illustrates how ICE ERO successfully fulfilled its mission while furthering the aforementioned policies.

FY2018 Enforcement and Removal Statistics

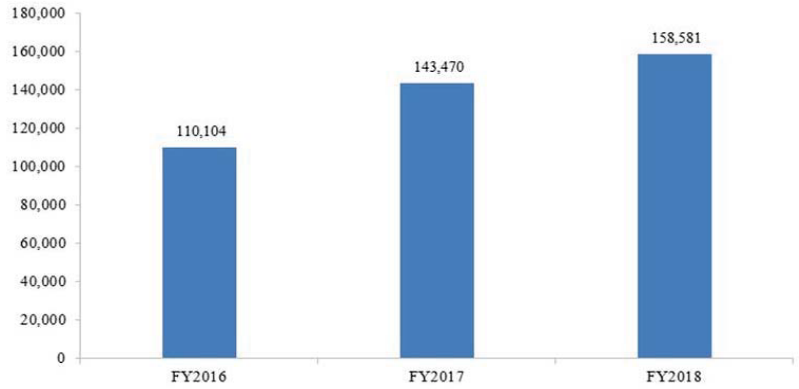
As directed in the EO and implementation memorandum, ICE does not exempt classes or categories of removable aliens from potential enforcement. This policy directive is reflected in ERO's FY2018 enforcement statistics, which show consistent increases from previous fiscal years in the following enforcement metrics: (1) ICE ERO overall administrative arrests; (2) an accompanying rise in overall ICE removals tied to interior enforcement efforts; (3) ICE removals of criminal aliens from interior enforcement; (4) ICE removals of sus-

pected gang members and known or suspected terrorists; (5) positive impact on ICE removals from policy initiatives including visa sanctions and diplomatic relations; (6) ICE ERO total book-ins and criminal alien book-ins; and (7) ICE ERO Detainers.

ICE ERO Administrative Arrests

An administrative arrest is the arrest of an alien for a civil violation of U.S. immigration laws, which is subsequently adjudicated by an immigration judge or through other administrative processes. With 158,581 administrative arrests in FY2018, ICE ERO recorded the greatest number of administrative arrests[1] as compared to the two previous fiscal years (depicted below in Figure 1), and the highest number since FY2014. ICE ERO made 15,111 more administrative arrests in FY2018 than in FY2017, representing an 11 percent increase, and a continued upward trend after FY2017's 30 percent increase over FY2016.

Figure 1. FY2016 – FY2018 ERO Administrative Arrests



[1] ERO administrative arrests include all ERO programs. All statistics are attributed to the current program of the processing officer of an enforcement action.

Administrative Arrests of Immigration Violators by Criminality

ICE remains committed to directing its enforcement resources to those aliens posing the greatest risk to the safety and security of the United States. By far, the largest percentage of aliens arrested by ICE are convicted criminals[2] (66 percent), followed by immigration violators with pending criminal charges[3] at the time of their arrest (21 percent). In FY2018, ERO arrested 138,117 aliens with criminal histories (convicted criminal and pending criminal charges) for an increase of 10,125 aliens over FY2017. This continued the growth seen in FY2017 when ERO arrested 26,974 more aliens with criminal histories than in FY2016 for a 27 percent gain. While the arrests of convicted criminals remained relatively level from FY 2017 to FY2018 at 105,736 and 105,140 respectively, administrative arrests with pending criminal charges increased by 48 percent. This continues the upward trend seen in FY2017, where arrests with pending charges increased by 255 percent over FY2016. Figure 2 provides a breakdown of FY2016, FY2017, and FY2018 administrative arrests by criminality.

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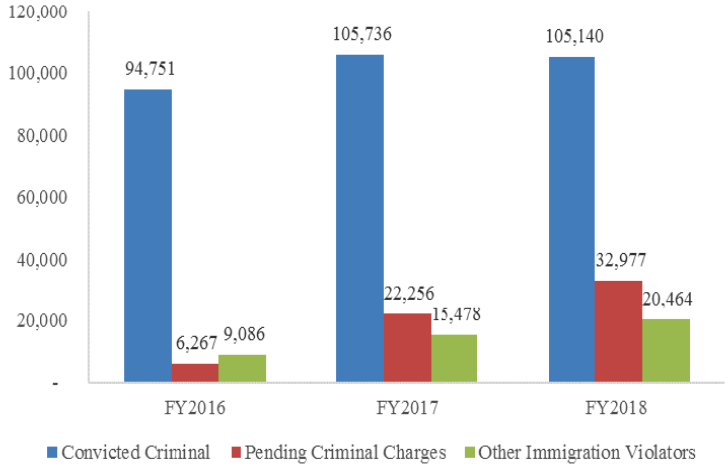
[2] Immigration violators with a criminal conviction entered into ICE systems of record at the time of the enforcement action.

[3] Immigration violators with pending criminal charges entered into ICE system of record at the time of the enforcement action.

Figure 2. FY2016 – FY2018 ERO Administrative Arrests by Criminality



Below, Table 1 tallies all pending criminal charges and convictions by category for those aliens administratively arrested in FY2018 and lists those categories with at least 1,000 combined charges and convictions present in this population. These figures are representative of the criminal history as it is entered in the ICE system of record for individuals administratively arrested. Each administrative arrest may represent multiple criminal charges and convictions, as many of the aliens arrested by ERO are recidivist criminals.

Table 1. FY2018 Criminal Charges and Convictions for ERO Administrative Arrests

Criminal Charge Category	Criminal Charges	Criminal Convictions	Total Offenses
Traffic Offenses - DUI	26,100	54,630	**80,730**
Dangerous Drugs	21,476	55,109	**76,585**
Traffic Offenses	30,594	45,610	**76,204**
Immigration	11,917	51,249	**63,166**
Assault	20,766	29,987	**50,753**
Obstructing Judiciary, Congress, Legislature, Etc.	11,189	11,863	**23,052**
Larceny	5,295	15,045	**20,340**
General Crimes	8,415	10,973	**19,388**
Obstructing the Police	5,754	10,155	**15,909**
Fraudulent Activities	4,201	8,661	**12,862**
Burglary	2,829	9,834	**12,663**
Weapon Offenses	3,672	8,094	**11,766**
Public Peace	4,029	7,236	**11,265**
Invasion of Privacy	2,255	5,090	**7,345**
Sex Offenses (Not Involving Assault or Commercialized Sex)	1,913	4,975	**6,888**
Stolen Vehicle	1,693	4,568	**6,261**
Family Offenses	2,465	3,526	**5,991**
Robbery	1,139	4,423	**5,562**
Sexual Assault	1,610	3,740	**5,350**
Forgery	1,632	3,526	**5,158**
Damage Property	1,872	2,597	**4,469**
Stolen Property	1,335	3,127	**4,462**
Liquor	1,995	2,290	**4,285**
Flight / Escape	1,090	2,264	**3,354**
Kidnapping	791	1,294	**2,085**
Homicide	387	1,641	**2,028**
Health / Safety	522	1,242	**1,764**
Commercialized Sexual Offenses	729	1,010	**1,739**
Threat	583	791	**1,374**

Notes: Immigration crimes include "illegal entry," "illegal reentry," "false claim to U.S. citizenship," and "alien smuggling." "Obstructing Judiciary& Congress& Legislature& Etc.," refers to several related offenses including, but not limited to: Perjury; Contempt; Ob-

structing Justice; Misconduct; Parole and Probation Violations; and Failure to Appear. "General Crimes" include the following National Crime Information Center (NCIC) charges: Conspiracy, Crimes Against Person, Licensing Violation, Money Laundering, Morals—Decency Crimes, Property Crimes, Public Order Crimes, Racketeer Influenced and Corrupt Organizations Act (RICO), and Structuring.

As a result of ERO's enhanced enforcement efforts directed at restoring the integrity of the immigration system, the percentage of administrative arrests of other immigration violators[4] increased from FY2017 (11 percent) to FY2018 (13 percent). Of this population of immigration violators arrested in FY2018, Table 2 shows that 57 percent were processed with a notice to appear[5] while 23 percent were ICE fugitives[6] or subjects who had been previously removed, illegally re-entered the country (a federal felony under 8 U.S.C § 1326) and served an order of reinstatement.[7] Both the number of fugitive and illegal reentry arrests continued a three-

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[4] "Other Immigration Violators" are immigration violators without any known criminal convictions or pending charges entered into ICE system of record at the time of the enforcement action.

[5] A Notice to Appear (Form I-862) is the charging document that initiates removal proceedings. Charging documents inform aliens of the charges and allegations being lodged against them by ICE.

[6] A fugitive is any alien who has failed to leave the United States following the issuance of a final order of removal, deportation, or exclusion.

[7] Section 241(a)(5) of the Immigration and Nationality Act (INA) provides that DHS may reinstate (without referral to an immigration court) a final order against an alien who illegally reenters the United States after being deported, excluded, or removed from the United States under a final order.

year trend by increasing 19 percent and 9 percent, respectively, in FY2018.

Table 2. FY2016 – FY2018 ERO Administrative Arrests of Other Immigration Violators by Arrest Type[8]

ERO Administrative Arrest Type	FY2016		FY2017		FY2018	
	Arrests	Percentage	Arrests	Percentage	Arrests	Percentage
Other Immigration Violators	**9,086**	**100%**	**15,478**	**100%**	**20,464**	**100%**
Notice to Appear	3,390	37%	7,642	49%	11,570	57%
Fugitives	1,605	18%	2,350	15%	2,791	14%
Reinstatement	758	8%	1,695	11%	1,846	9%
Other	3,333	37%	3,791	24%	4,257	21%

At-Large Arrests

An ERO at-large arrest is conducted in the community, as opposed to a custodial setting such as a prison or jail.[9] While at-large arrests remained consistent, with a 1 percent overall increase from 40,066 in FY2017 to 40,536 in FY2018 (Figure 3), at-large arrests levels remain significantly higher compared to the 30,348 from FY2016. At-large arrests of convicted criminal aliens decreased by 13 percent in FY2018 as shown in Figure 4. However, this group still constitutes the largest proportion of at-large apprehensions (57 percent). Increases year-over-year in at-large arrests of aliens with pending criminal charges (35 percent) and other immigration violators (25 percent) offset the decrease in arrests of convicted criminals. The increased enforcement of these

[8] "Other" types of arrests of Other Immigration Violators include, but are not limited to, arrests for Expedited Removal, Visa

Waiver Program Removal, Administrative Removal, and Voluntary Departure/Removal.

[9] ERO administrative arrests reported as "at-large" include records from all ERO Programs with Arrest Methods of Located, Non-Custodial Arrest, or Probation and Parole.

populations without criminal convictions add to the increases seen in FY2017 for pending criminal charges (213 percent) and other immigration violators (122 percent). Again, this demonstrates ERO's commitment to removing criminal aliens and public safety threats, while still faithfully enforcing the law against all immigration violators.

Figure 3. FY2016 – FY2018 At-Large Administrative Arrests

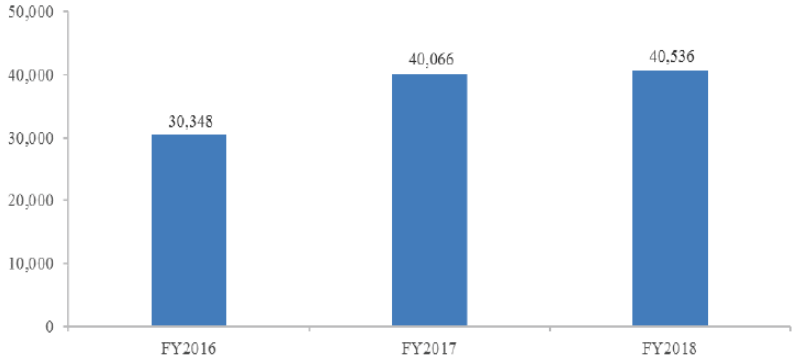
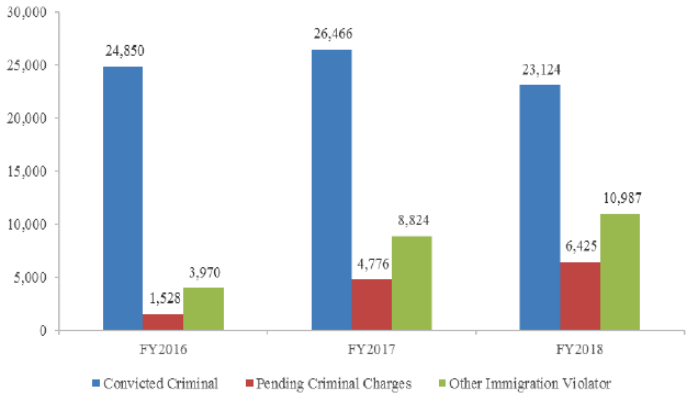


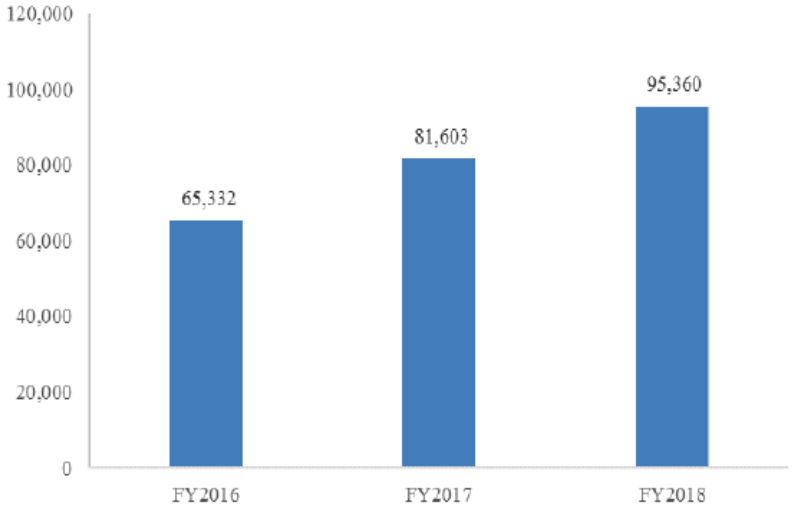
Figure 4. FY2016 – FY2018 At-Large Administrative Arrests by Criminality



Rise in ICE Removals through enhanced Interior Enforcement

The apprehension and removal of immigration violators is central to ICE's mission to enforce U.S. immigration laws. In addition to the 11 percent increase in ERO administrative arrests from FY2017 to FY2018, ERO also made significant strides in removing aliens arrested in the interior of the country (Figure 5). Such removals stem from an ICE arrest and is the ultimate goal of the agency's interior immigration enforcement efforts. Interior ICE removals continued to increase in FY2018, as ICE removed 13,757 more aliens in this category than it did in FY2017, a 17 percent increase (Figure 5). The increases in both ERO administrative arrests and removals based on these interior arrests demonstrate the significant successes ICE achieved during FY2018, as well as the increased efficacy with which the agency carried out its mission.

Figure 5. FY2016 – FY2018 Interior ICE Removals



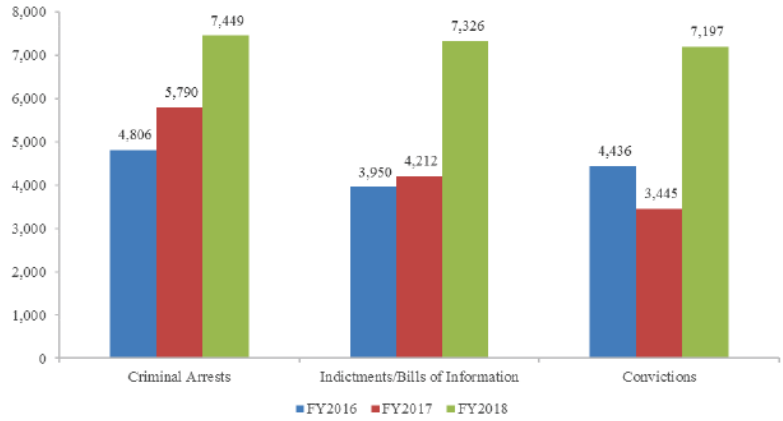
Criminal Arrests and Prosecutions

While ICE ERO showed significant gains in all meaningful enforcement metrics, perhaps none are more impressive nor have made more of an impact on public safety than its prosecutorial efforts. In conjunction with the United States Attorney's Office, ERO enforces violations of criminal immigration law through the effective prosecution of criminal offenders.

In FY2018, ERO's efforts resulted in the prosecutions of offenses which include, but are not limited to: 8 U.S.C § 1325, Illegal Entry into the United States; 8 U.S.C § 1326, Illegal Re-Entry of Removed Alien; 18 U.S.C § 1546, Fraud and Misuse of Visas, Permits and Other Documents; 18 U.S.C § 111, Assaulting and/or Resisting an Officer; and 18 U.S.C § 922(g)(5), Felon in Possession of a Firearm.

In FY2017, ERO made 5,790 criminal arrests resulting in 4,212 indictments or Bills of Information and 3,445 convictions. While these FY2017 numbers showed moderate increases over FY2016 in criminal arrests and indictments or Bills of Information, in FY2018 ERO made 7,449 criminal arrests resulting in 7,326 indictments or Bills of Information and 7,197 convictions. This surge in enforcement efforts directed at criminal aliens and repeat offenders reflects a 29 percent increase in criminal arrests, a 74 percent increase in indictments or Bills of Information, and a 109 percent increase in criminal convictions to reverse a downturn from FY2017 (Figure 6).

Figure 6. FY2016 – FY2018 Prosecution Statistics



Initial Book-ins to ICE Custody

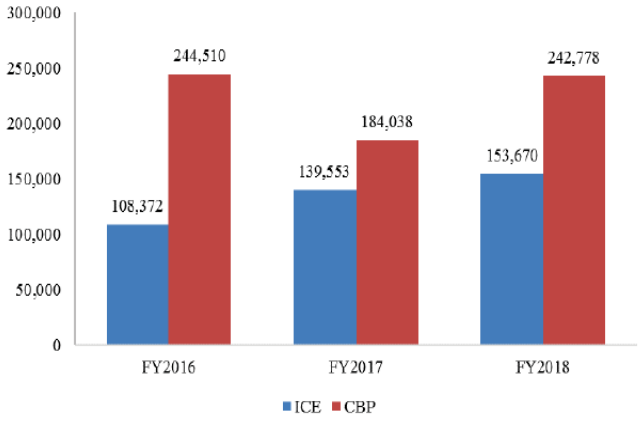
An initial book-in is the first book-in to an ICE detention facility to begin a new detention stay. This population includes aliens initially apprehended by CBP who are transferred to ICE for detention and removal. As seen in Figure 7, while overall ICE initial book-ins went down in FY2017 (323,591) compared to FY2016 (352,882), total book-ins increased in FY2018 to 396,448, illustrating the ongoing surge in illegal border crossings.

Figure 7 shows the number of book-ins resulting from ICE and CBP enforcement efforts for FY2016, FY2017, and FY2018.[10] Notably, book-ins from CBP increased 32 percent in FY2018 to 242,778, while book-ins from ICE arrests continued an upward trend from FY2017's

[10] CBP enforcement efforts represent records that were processed by Border Patrol, Inspections, Inspections-Air, Inspections-Land, and Inspections-Sea.

29 percent increase with an additional increase of 10 percent in FY2018.

Figure 7. FY2016 – FY2018 Initial Book-ins to ICE Detention by Arresting Agency



Detainers

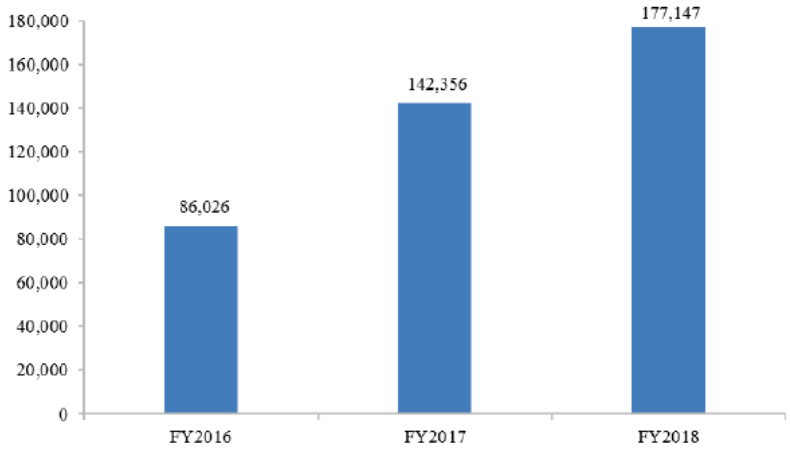
A detainer is a request to the receiving law enforcement agency to both notify DHS as early as practicable before a removable alien is released from criminal custody, and to maintain custody of the alien for a period not to exceed 48 hours beyond the time the alien would otherwise have been released to allow DHS to assume custody for removal purposes. ICE issues detainers to federal, state, and local law enforcement agencies only after establishing probable cause that the subject is an alien who is removable from the United States and to provide notice of ICE's intent to assume custody of a subject detained in that law enforcement agency's custody. The detainer facilitates the custodial transfer of an alien to ICE from another law enforcement agency. This process may reduce potential risks to ICE officers and to the general public by allowing arrests to be made in a controlled, custodial setting as opposed to at-large arrests in the community.

The cooperation ICE receives from other law enforcement agencies is critical to its ability to identify and arrest aliens who pose a risk to public safety or national security. Some jurisdictions do not cooperate with ICE as a matter of state or local law, executive order, judicial rulings, or policy. All detainers issued by ICE are accompanied by either: (1) a properly completed Form I-200 (Warrant for Arrest of Alien) signed by a legally authorized immigration officer; or (2) a properly completed Form I-205 (Warrant of Removal/Deportation) signed by a legally authorized immigration officer, both of which include a determination of probable cause of removability.

Issued Detainers

In FY2018, ERO issued 177,147 detainers—an increase of 24 percent from the 142,356 detainers issued in FY2017 (Figure 8). This number demonstrates the large volume of illegal aliens involved in criminal activity and the public safety risk posed by these aliens, as well as ERO's commitment to taking enforcement action against all illegal aliens it encounters. The rise in detainers issued continues the trend from FY2017's 65 percent growth over FY2016 and shows a consistent focus on interior enforcement, particularly for those aliens involved in criminal activity, despite continued opposition and lack of cooperation from uncooperative jurisdictions.

Figure 8. FY2016 – FY2018 ERO Detainers Issued



ICE Removals

Integral to the integrity of the nation's lawful immigration system is the removal of immigration violators who are illegally present in the country and have received a final order of removal.[11] A removal is defined as the compulsory and confirmed movement of an inadmissible or deportable alien out of the United States based on such an order.[12] ICE removals include both aliens arrested by ICE and aliens who were apprehended by CBP and turned over to ICE for repatriation efforts.

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[11] ICE removals include removals and returns where aliens were turned over to ICE for removal efforts. This includes aliens processed for Expedited Removal (ER) or Voluntary Return (VR) that are turned over to ICE for detention. Aliens processed for ER and not detained by ERO or VRs after June 1st, 2013 and not detained by ICE are primarily processed by the U.S. Border Patrol. CBP should be contacted for those statistics.

[12] Ibid.

In FY2018, ICE saw a significant increase in both overall removals as well as removals where ICE was the initial arresting agency.

Figure 9 displays total ICE removals for FY2016, FY2017, and FY2018 and highlights the 13 percent increase from 226,119 to 256,085 in FY2018. After a drop in FY2017 overall removals stemming from historic lows in border crossings, ICE removals rebounded in FY2018, with the previously identified 17 percent increase stemming from both strengthened ICE interior enforcement efforts as well as an 11 percent increase in removals of border apprehensions.

Figure 10 breaks down ICE removals by arresting agency, which demonstrates a 46 percent increase from FY2016 to FY2018 (from 65,332 to 95,360) in removals tied to ICE arrests.

Figure 9. FY2016 – FY2018 ICE Removals

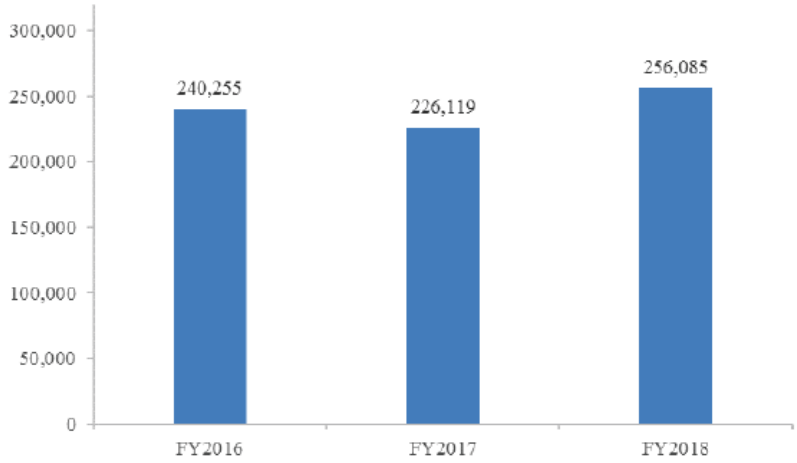


Figure 10. FY2016 – FY2018 ICE Removals by Arresting Agency

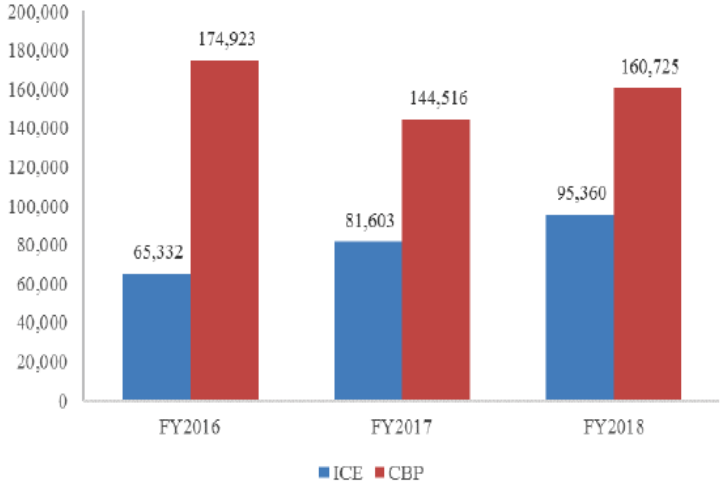
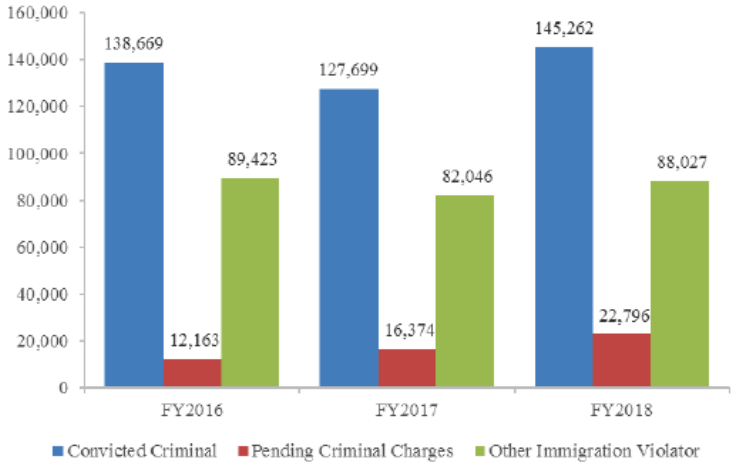


Figure 11 shows the breakdown of ICE removals based on criminal history. ICE removals of convicted criminals followed overall removal trends with a small decrease from 138,669 in FY2016 to 127,699 in FY2017, while rising to 145,262 in FY2018, a 14 percent increase. Over this same period, ICE removals of aliens with pending criminal charges has steadily increased from 12,163 in FY2016 to 16,374 in FY2017 for a 35 percent increase and to 22,796 in FY2018 for another 39 percent increase over the previous year.

Figure 11. FY2016 – FY2018 ICE Removals by Criminality



ICE Removals to Ensure National Security and Public Safety

ICE removals of known or suspected gang members and known or suspected terrorists (KST) are instrumental to ICE's national security and public safety missions, and the agency directs significant resources to identify, locate, arrest, and remove these aliens.

ICE identifies gang members and KSTs by checking an alien's background in federal law enforcement databases, interviews with the aliens, and information received from law enforcement partners. This information is flagged accordingly in ICE's enforcement systems. These populations are not mutually exclusive, as an alien may be flagged as both a known or suspected gang member, and a KST. As seen in Figure 12, ICE removals of known and suspected gang members increased by 162 percent in FY2017, more than doubling from the previous year. These critical removals increased again in FY2018, rising by 9 percent from FY2017. ICE's KST

removals also rose significantly between FY2016 and FY2017 (Figure 13), increasing by 67 percent, while removals of aliens in this group were relatively level in FY2018, with ICE conducting 42 removals compared to 45 in FY2017.

Figure 12. FY2016 – FY2018 ICE Removals of Known or Suspected Gang Members

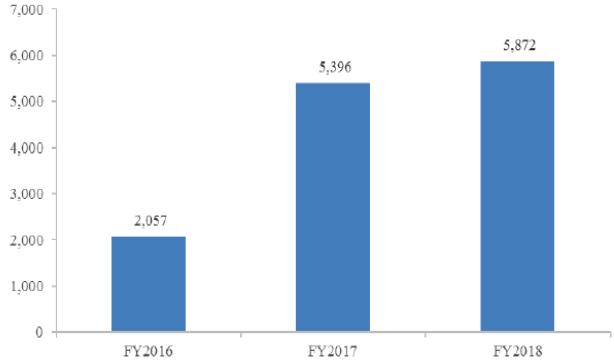
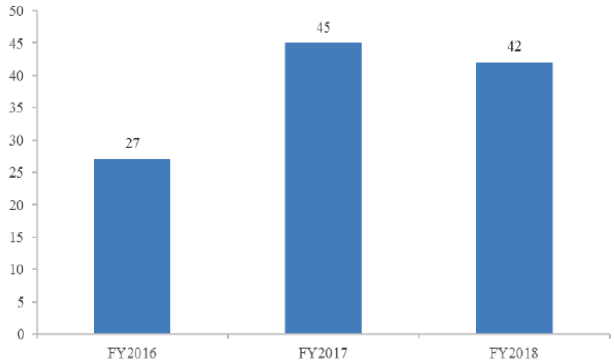


Figure 13. FY2016 – FY2018 ICE Removals of Known or Suspected Terrorists



Removals of USBP Family Unit and Unaccompanied Alien Children Apprehensions

Since the initial surge at the Southwest border SWB) in FY2014, there has been a significant increase in the arrival of both family units (FMUAs) and unaccompanied

alien children (UACs). In FY2018, approximately 50,000 UACs and 107,000 aliens processed as FMUAs were apprehended at the SWB by the U.S. Border Patrol (USBP). These numbers represent a marked increase from FY2017, when approximately 41,000 UACs and 75,000 FMUA were apprehended by USBP. While USBP routinely turns FMUA apprehensions over to ICE for removal proceedings, ICE is severely limited by various laws and judicial actions from detaining family units through the completion of removal proceedings. For UAC apprehensions, DHS is responsible for the transfer of custody to the Department of Health and Human Services (HHS) within 72 hours, absent exceptional circumstances. HHS is similarly limited in their ability to detain UACs through the pendency of their removal proceedings. When these UACs are released by * * *

* * * * *

Lesson Plan Overview

Course	Refugee, Asylum and International Operations Directorate Officer Training Asylum Division Officer Training Course
Lesson	***Reasonable Fear of Persecution and Torture Determinations***
Rev. Date	February 13, 2017; Effective as of Feb 27, 2017.
Lesson Description	The purpose of this lesson is to explain when reasonable fear screenings are conducted and how to determine whether the alien has a reasonable fear of persecution or torture using the appropriate standard.
Terminal Performance Objective	When a case is referred to an Asylum Officer to make a "reasonable fear" determination, the Asylum Officer will be able to correctly determine whether the applicant has established a reasonable fear of persecution or a reasonable fear of torture.
Enabling Performance Objectives	1. Indicate the elements of "torture" as defined in the Convention Against Torture and the regulations. (AIL5) (AIL6)

2. Identify the type of harm that constitutes "torture" as defined in the Convention Against Torture and the regulations. (AIL5)(AIL6)
3. Describe the circumstances in which a reasonable fear screening is conducted. (APT2)(OK4)(OK6)(OK7)
4. Identify the standard of proof required to establish a reasonable fear of torture. (ACRR8)(AA3)
5. Identify the standard of proof required to establish a reasonable fear of persecution. (ACRR8)(AA3)
6. Examine the applicability of bars to Asylum and withholding of removal in the reasonable fear context. (ACRR3)

Instructional Methods Lecture, practical exercises

Student Materials/ References United Nations. *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (see RAIO Training Module, *International Human Rights Law)*

	Ali v. Reno; Mansour v. INS; Matter of S-V-; Matter of G-A-; Sevoian v. Aschcroft; In re J-E-; Matter of Y-L-; Auguste v. Ridge; Ramirez Peyro v. Holder; Roye v. Att'y Gen. of U.S.
	Reasonable Fear forms and templates (are found on the ECN website) Written test
Method of Evaluation	Written test
Background Reading	1. Reasonable Fear Procedures Manual (Draft). 2. Martin, David A. Office of the General Counsel. *Compliance with Article 3 of the Convention against Torture in the cases of removable aliens,* Memorandum to Regional Counsel, District Counsel, All Headquarters Attorneys (Washington, DC: May 14, 1997), 5 p. 3. Lafferty, John, Asylum Division, *Updated Guidance on Reasonable Fear Note-Taking,* Memorandum to All Asylum Office Staff (Washington, DC: May 9, 2014), 2p. plus attachments.

4. Lafferty, John, Asylum Division, *Reasonable Fear Detennination Checklist and Written Analysis,* Memorandum to All Asylum Office Staff (Washington, DC: Aug. 3, 2015), 1p. plus attachments.

5. Langlois, Joseph E. INS Office of International Affairs. *Implementation of Amendments to Asylum and Withholding of Removal Regulations, Effective March 22, 1999,* Memorandum to Asylum Office Directors, SAOs, AOs (Washington, D.C.: March 18, 1999), 16 p. plus attachments.

6. Langlois, Joseph E. Asylum Division, Office of International Affairs. *Withdrawal of Request of Reasonable Fear Determination,* Memorandum to Asylum Office Directors, et al. (Washington, DC: May 25, 1999), 1p. plus attachment (including updated version of Withdrawal of Request of Reasonable Fear Determination form, 6/13/02 version).

7. Pearson, Michael *Implementation of Amendment to the Legal Immigration Family Equity Act (LIFE) Regarding Applicability of INA Section 241(a)(5) (Reinstatement) to NACARA 203 Beneficiaries* (Washington, DC: February 23, 2001), 7p. plus attachments.

8. Langlois, Joseph L. *Implementation of Amendment to the Legal Immigration Family Equity Act (LIFE) regarding applicability of INA section 241(a)(5) (reinstatement) to NACARA 203 beneficiaries* (Washington, DC: February 22, 2001), 3p. plus attachments.

9. Langlois, Joseph E. Asylum Division, Office of International Affairs. *International Religious Freedom Act Requirements Affecting Credible Fear and Reasonable Fear Interview Procedures,* Memorandum for Asylum Office Directors, et al. (Washington, DC: April 15, 2002), 3p.

10. Langlois, Joseph E. Asylum Division. *Reasonable Fear*

Procedures Manual, Memorandum for Asylum Office Directors, et al. (Washington, DC: January 3, 2003), 3p. plus attachments.

11. Langlois, Joseph E. Asylum Division. *Issuance of Updated Credible Fear and Reasonable Fear Procedures,* Memorandum for Asylum Office Directors, et al. (Washington, DC: May 14, 2010), 2p. plus attachments.

12. Ted Kim, Asylum Division. *Implementation of Reasonable Fear Processing Timelines and APSS Guidance,* Memorandum to All Asylum Office Staff, (Washington, DC: April 17, 2012), 2p. plus attachments.

13. Pearson, Michael *Implementation of Amendment to the Legal Immigration Family Equity Act (LIFE) Regarding Applicability of INA Section 241(a)(5) (Reinstatement) to NACARA 203 Beneficiaries* (Washington, DC: February 23, 2001), 7p. plus attachments.

14. Langlois, Joseph L. *Implementation of Amendment to the Legal Immigration Family Equity Act (LIFE) regarding applicability of INA section 241(a)(5) (reinstatement) to NACARA 203 beneficiaries* (Washington, DC: February 22, 2001), 3p. plus attachments.

15. Langlois, Joseph E. Asylum Division, Office of International Affairs. *International Religious Freedom Act Requirements Affecting Credible Fear and Reasonable Fear Interview Procedures,* Memorandum for Asylum Office Directors, et al. (Washington, DC: April 15, 2002), 3p.

16. Langlois, Joseph E. Asylum Division. *Reasonable Fear Procedures Manual,* Memorandum for Asylum Office Directors, et al. (Washington, DC: January 3, 2003), 3p. plus attachments.

17. Langlois, Joseph E. Asylum Division. *Issuance of Updated Credible Fear and Reasonable Fear Procedures,* Memorandum for

Asylum Office Directors, et al. (Washington, DC: May 14, 2010), 2p. plus attachments.

18. Ted Kim, Asylum Division. *Implementation of Reasonable Fear Processing Timelines and APSS Guidance,* Memorandum to All Asylum Office Staff, (Washington, DC: April 17, 2012), 2p. plus attachments.

CRITICAL TASKS

Knowledge of U.S. case law that impacts RAIO. (3)

Knowledge of the Asylum Division jurisdictional authority. (4)

Skill in identifying information required to establish eligibility. (4)

Skill in identifying issues of claim. (4)

Knowledge of relevant policies, procedures, and guidelines of establishing applicant eligibility for reasonable fear of persecution of torture. (4)

Knowledge of mandatory bars and inadmissibilities to asylum eligibility. (4)

Skill in organizing case and research materials (4)

Skill in applying legal, policy, and procedural guidance (e.g., statutes, precedent decisions, case law) to information and evidence. (5)

Skill in analyzing complex issues to identify appropriate responses or decisions. (5)

TABLE OF CONTENTS

Presentation	References
I. INTRODUCTION	
This lesson instructs asylum officers on the substantive elements required to establish a reasonable fear of persecution or torture. More detailed instruction on procedures for conducting interviews and processing cases referred for reasonable fear determinations are provided in the Reasonable Fear Procedures Manual and separate procedural memos. For guidance on interviewing techniques to elicit information in a non-adversarial manner, asylum officers should review the RAIO Training Modules: *Interviewing—Introduction to the Non-Adversarial Interview; Interviewing—Eliciting Testimony; and Interviewing—Survivors of Torture and Other Severe Trauma.*	
II. BACKGROUND	
Federal regulations require asylum officers to make reasonable fear determinations in two types of cases referred by other DHS officers, after a final administrative removal order has been issued under section 238(b) of the Immigration and Nationality Act (INA),	8 C.F.R. § 208.31; Immigration and Naturalization Service, *Regulations Concerning the Convention Against Torture,*

or after a prior order of removal, exclusion, or deportation has been reinstated under section 241(a)(5) of the INA. These are cases in which an individual ordinarily is removed without being placed in removal proceedings before an immigration judge.

Congress has provided for special removal processes for certain aliens who are not eligible for any form of relief from removal. At the same time, however, obligations under Article 33 of the *Refugee Convention relating to the Status of Refugees* and Article 3 of *the United Nations Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment* ("Convention Against Torture", "the Convention", or "CAT") still apply in these cases. Therefore, withholding of removal under either section 241(b)(3) of the INA or under the regulations implementing the Convention Against Torture may still be available in these cases. Withholding of removal is not considered to be a form of relief from removal, because it is specifically limited to the country where the individual is at risk and does not prohibit the individual's removal

64 Fed. Reg. 8478 (Feb. 19, 1999).

from the United States to a country other than the country where the individual is at risk.

The purpose of the reasonable fear determination is to ensure compliance with U.S. treaty obligations not to return a person to a country where the person's life or freedom would be threatened on account of a protected characteristic in the refugee definition, or where person would be tortured, and, at the same time, to adhere to Congressional directives to subject certain categories of aliens to streamlined removal proceedings.

These treaty obligations are based on Article 33 of the *1951 Convention relating to the Status of Refugees;* and Article 3 of the Convention the Against Torture.

Similar to credible fear determinations in expedited removal proceedings, reasonable fear determinations serve as a screening mechanism to identify potentially meritorious claims for further consideration by an immigration judge, and at the same time to prevent individuals subject to removal from delaying removal by filing clearly unmeritorious or frivolous claims.

III. JURISDICTION

See Reasonable Fear Procedures Manual (Draft).

A. Reinstatement under Section 241(a)(5) of the INA

1. Reinstatement of Prior Order — INA § 241(a)(5); 8 C.F.R. § 241.8.

   Section 241(a)(5) of the INA requires DHS to reinstate a prior order of exclusion, deportation, or removal, if a person enters the United States illegally after having been removed, or after having left the United States after the expiration of an allotted period of voluntary departure, giving effect to an order of exclusion, deportation, or removal.

   Once a prior order has been reinstated under this provision, the individual is not permitted to apply for Asylum or any other relief under the INA. However, that person may apply for withholding of removal under section 24l(b)(3) of the INA (based on a threat to life or freedom on account

of a protected characteristic in the refugee definition) and withholding of removal or deferral of removal under the Convention Against Torture.

There are certain restrictions on issuing a reinstatement order to people who may qualify to apply for NACARA 203 pursuant to the Legal Immigration Family Equity Act (LIFE). The LIFE amendment provides that individuals eligible to apply for relief under NACARA 203 and who are otherwise eligible for relief "shall not be barred from applying for such relief by operation of section 241(a)(5) of the Immigration and Nationality Act."

Langlois, Joseph E. *Implementation of Amendment to the Legal Immigration Family Equity Act (LIFE) Regarding Applicability of INA Section 241(a)(5) (Reinstatement) to NACARA 203 Beneficiaries* (Washington, DC: February 22, 2001).

Pearson, Michael. *Implementation of Amendment to the Legal Immigration Family Equity Act (LIFE) Regarding Applicability of INA Section 24I (a)(5) (Reinstatement) to NACARA 203*

Beneficiaries (Washington, DC: February 23, 2001).

In all cases, section 241(a)(5) applies retroactively to all prior removals, regardless of the date of the alien's illegal reentry. There are other issues that may affect the validity of a reinstated prior order, such as questions concerning whether the applicant's departure executed a final order of removal. An Asylum Prescreening Officer (APSO) who is unsure about the validity of a reinstated prior removal order should consult the Reasonable Fear Procedures Manual, a supervisor, or the Headquarters Quality Assurance Branch.

See Fernandez-Vargas v. Gonzales, 548 U.S. 30 (2006).

Note: In the Fifth Circuit, an individual's departure from the U.S. after issuance of an NTA, but prior to the order of removal, does not strip an immigration judge of jurisdiction to order that individual removed; thus, that individual can be subject to reinstatement if previously ordered removed in absentia. *See U.S. v Ramirez-Carcamo*, 559 F.3d 384 (5th Cir. 2009).

2. Referral to Asylum Officer

   If a person subject to reinstatement of a prior order of removal expresses a fear of return to the intended country of removal, the DHS officer must refer the case to an asylum officer for a reasonable fear determination, after the prior order has been reinstated.

   8 C.F.R. §§ 208.31(a)-(b), 241.8(e).

3. Country of Removal

   Form 1-871, *Notice of Intent/Decision to Reinstate Prior Order* does not designate the country where DHS intends to remove the alien. Depending on which removal order is being reinstated under INA § 241(a)(5), that order may or may not designate a country of removal. For example, Form 1-860, *Notice and Order of Expedited Removal,* does not indicate a country of removal, but an IJ order of removal resulting from section 240 proceedings does designate a country of removal. Regardless of which type of prior order is being reinstated, DHS must indicate

where it proposes to remove the alien in order for the APSO to determine if the alien has a reasonable fear of persecution or torture in that particular country.

The asylum officer need only explore the person's fear with respect to the countries designated or the countries proposed. For example, if the applicant was previously ordered removed to country X, but is now claiming to be a citizen of country Y, the asylum officer should explore the person's fear with respect to both countries. If the person expresses a fear of return to any other country, the officer should memorialize it in the file to ensure that the fear is explored should DHS ever contemplate removing the person to that other country.

B. Removal Orders under Section 238(b) of the INA (based on aggravated felony conviction)

1. DHS removal order Under certain circumstances, DHS may issue an order ofremoval if DHS determines that a person is deportable under section 237(a)(2)(A)(iii) of the INA (convicted by final judgment of an aggravated felony after having been admitted to the U.S.). This means that the person may be removed without removal proceedings before an immigration judge.	INA § 238(b).
2. Referral to an asylum officer If a person who has been ordered removed by DHS pursuant to section 238(b) of the INA expresses a fear of persecution or torture, that person must be referred to an asylum officer for a reasonable fear determination.	8 C.F.R. §§ 208.31(a)-(b), 238.1(f)(3). Note that regulations require the DHS to give notice of the right to request withholding of removal to a particular country, if the person ordered removed fears persecution or torture in that
3. Country of Removal The removal order under section 238(b) should designate a country of	

removal, and in some cases, will designate an alternative country.

country. 8 C.F.R. § 238.1(b)(2)(i).

IV. DEFINITION OF "REASONABLE FEAR"

Regulations define "reasonable fear of persecution or torture" as follows:

8 C.F.R. § 208.31(c).

> The alien shall be determined to have a reasonable fear of persecution or torture if the alien establishes a reasonable possibility that he or she would be persecuted on account of his or her race, religion, nationality, membership in a particular social group or political opinion, or a reasonable possibility that he or she would be tortured in the country of removal. For purposes of the screening determination, the bars to eligibility for withholding of removal under section 241(b)(3)(B) of the Act shall not be considered.

A few points to note, which are discussed in greater detail

later in the lesson, are the following:

1. The "reasonable possibility" standard is the same standard required to establish eligibility for asylum (the "well-founded fear" standard).

2. Like asylum, there is an "on account of" requirement necessary to establish reasonable fear of *persecution:* the persecution must be on account of a protected characteristic in the refugee definition.

3. There is no "on account of" requirement necessary to establish a reasonable fear of *torture.*

4. Mandatory and discretionary bars are not considered in a determination of reasonable fear of *persecution* or reasonable fear of *torture.*

8 C.F.R. § 208.31(c); Immigration and Naturalization Service, *Regulations Concerning the Convention Against Torture,* 64 Fed. Reg. 8478, 8485 (Feb. 19, 1999).

V. STANDARD OF PROOF

The standard of proof to establish "reasonable fear of persecution or torture" is the

See RAIO Training Modules, *Well-Founded*

"reasonable possibility" standard. This is the same standard required to establish a "well-founded fear" of persecution in the asylum context. The "reasonable possibility" standard is lower than the "more likely than not standard" required to establish eligibility for withholding of removal. It is higher than the standard of proof required to establish a "credible fear" of persecution. The standard of proof to establish a "credible fear" of persecution or torture is whether there is a significant possibility of establishing eligibility for asylum or protection under the Convention Against Torture before an immigration judge.

Where there is disagreement among the United States Circuit Courts of Appeal as to the proper interpretation of a legal issue, the precedent for the Circuit in which the applicant resides is used in determining whether the applicant has a reasonable fear of persecution or torture. Note that this differs from the credible

Fear and *Evidence*.

fear context in which the Circuit interpretation most favorable to the applicant is used.

VI. IDENTITY

The applicant must be able to credibly establish his or her identity by a preponderance of the evidence. In many cases an applicant will not have documentary proof of identity or nationality. However credible testimony alone can establish identity and nationality. Documents such as birth certificates and passports are accepted into evidence if available. The officer may also consider information provided by Immigration and Customs Enforcement (ICE) or Customs and Border Protection (CBP).

See RAIO Training Module, *Refugee Definition*.

VII. PRIOR DETERMINATIONS ON THE MERTIS

An adjudicator or immigration judge previously may have made a determination on the merits of the claim. This is most common .in the case of an applicant who is subject to reinstatement of a prior order. For example the appli-

cant may have requested asylum and withholding of removal in prior removal proceedings before an immigration judge and the immigration judge may have made a determination on the merits that the applicant was ineligible.

The APSO must explore the applicant s claim according deference to the prior determination unless there is clear error in the prior determination. The officer should also inquire as to whether there are any changed circumstances that would otherwise affect the applicant's eligibility.

VIII. CREDIBILITY

A. Credibility Standard

In making a reasonable fear determination the asylum officer must evaluate whether the applicant's testimony is credible.

The asylum officer should assess the credibility of the assertions underlying the applicant s claim, considering the totality of the

circumstances and all relevant factors.

The U.S. Supreme Court has held that to properly consider the totality of the circumstances, "the whole picture . . . must be taken into account." The Board of Immigration Appeals (BIA) has interpreted this to include taking into account the whole of the applicant's testimony as well as the individual circumstances of each applicant.

United States v. Cortez, 449 U.S. 411 417 (1981).

See RAIO Training Module, *Credibility; see also Matter of B-*, 21 I&N Dec. 66, 70 (BIA 1995) and *Matter of Kasinga*, 21 I&N Dec. 357, 364 (BIA 1996).

B. Evaluating Credibility in a Reasonable Fear Interview

1. General Considerations

See RAIO Training Module, *Credibility*

a. The asylum officer must gather sufficient information to determine whether the alien has a reasonable fear of persecution or torture. The applicant's credibility should be evaluated (1) only after all information is elicited and (2) in

light of "the totality of the circumstances, and all relevant factors."

b. The asylum officer must remain neutral and unbiased and must evaluate the record as a whole. The asylum officer's personal opinions or moral views regarding an applicant should not affect the officer's decision.

c. The applicant's ability or inability to provide detailed descriptions of the main points of the claim is critical to the credibility evaluation. The applicant's willingness and ability to provide those descriptions may be directly related to the asylum officer's skill at placing the applicant at ease and eliciting all the information necessary to make a

proper decision. An asylum officer should be cognizant of the fact that an applicant's ability to provide such descriptions may be impacted by the context and nature of the reasonable fear screening process.

2. Properly Identifying and Probing Credibility Concerns During the Reasonable Fear Interview

   a. *Identifying Credibility Concerns*

      In making this determination, the asylum officer should take into account the same factors considered in evaluating credibility in the affirmative asylum context, which are discussed in the RAIO Modules: *Credibility* and *Evidence.*

Section 208 of the Act provides a non-exhaustive list of factors that may be used in a credibility determination in the asylum context. These include: internal consistency, external consistency, plausibility, demeanor, candor, and responsiveness.

The amount of detail provided by an applicant is another factor that should be considered in making a credibility determination. In order to rely on "lack of detail" as a credibility factor, however, asylum officers must pose questions regarding the type of detail sought.

While demeanor, candor, responsiveness, and detail provided are to be taken into account in the reasonable fear context

when making a credibility determination, an adjudicator must take into account cross-cultural factors, effects of trauma, and the nature of the reasonable fear interview process—including detention, relatively brief and often telephonic interviews, etc.—when evaluating these factors in the reasonable fear context.

b. *Informing the Applicant of the Concern and Giving the Applicant an Opportunity to Explain*

When credibility concerns present themselves during the course of the reasonable fear interview, the applicant must be given an opportunity to address and explain them. The asylum officer must follow up on all

credibility concerns by making the applicant aware of each portion of the testimony, or his or her conduct, that raises credibility concerns, and the reasons the applicant's credibility is in question. The asylum officer must clearly record in the interview notes the questions used to inform the applicant of any relevant credibility issues, and the applicant's responses to those questions.

C. Assessing Credibility in Reasonable Fear when Making a Reasonable Fear Determination

1. In assessing credibility, the officer must consider the totality of the circumstances and all relevant factors.

2. When considering the totality of the circumstances in determining whether the assertions underlying the applicants claim are credible, the following factors must be considered as they

See also RAIO Training Module, *Interviewing-Survivors of Torture*; RAIO Training Module, *Interviewing-Working with an Interpreter*.

Asylum officers must ensure that

may impact an applicant's ability to present his or her claim:

(i) trauma the applicant has endured;

(ii) passage of a significant amount of time since the described events occurred;

(iii) certain cultural factors, and the challenges inherent in cross-cultural communication;

(iv) detention of the applicant;

(v) problems between the interpreter and the applicant, including problems resulting from differences in dialect or accent, ethnic or class differences, or other differences that may affect the objectivity of the interpreter or the applicant's comfort level; and unfamiliarity with speakerphone technology, the use of an interpreter who is not trained to work with persons with potential biases against applicants on the grounds of race, religion, nationality, membership in a particular social group, or political opinion are not used as interpreters. *See International Religious Freedom Act of 1998*, 22 U.S.C. § 6473(a); RAIO Training Module, *IRFA (International Religious Freedom Act)*.

terpreter the applicant cannot see, or the use of an interpreter that the applicant does not know personally.

3. The asylum officer must have followed up on all credibility concerns during the interview by making the applicant aware of each concern, and the reasons the applicant's testimony is in question. The applicant must have been given an opportunity to address and explain all such concerns during the reasonable interview.

4. Generally, trivial or minor credibility concerns in and of themselves will not be sufficient to find an applicant not credible.

   Nonetheless, on occasion such credibility concerns may be sufficient to support a negative reasonable fear determination considering the totality of the circumstances and all relevant factors. Such concerns should only be the basis of a

negative determination if the officer attempted to elicit sufficient testimony, and the concerns were not adequately resolved by the applicant during the reasonable fear interview.

5. The officer should compare the applicant's testimony with any prior testimony and consider any prior credibility findings. The individual previously may have provided testimony regarding his or her claim in the context of an asylum or withholding of removal application. For example, the applicant may have requested asylum and withholding of removal in prior removal proceedings before an immigration judge, and the immigration judge may have made a determination that the claim was or was not credible. It is important that the asylum officer ask the individual about any inconsistencies between prior testimony and the testimony provided

at the reasonable fear interview.

In any case in which the asylum officer's credibility determination differs from the credibility determination previously reached by another adjudicator on the same allegations, the asylum officer must provide a sound explanation and support for the different finding.

6. All reasonable explanations must be considered when assessing the applicant's credibility. The asylum officer need not credit an unreasonable explanation.

   If, after providing the applicant with an opportunity to explain or resolve any credibility concerns, the officer finds that the applicant has provided a reasonable explanation, a positive credibility determination may be appropriate when considering the totality of the circumstances and all relevant factors.

If, however, after providing the applicant with an opportunity to explain or resolve any credibility concerns, the applicant fails to provide an explanation, or the officer finds that the applicant did not provide a reasonable explanation, a negative credibility determination based upon the totality of the circumstances and all relevant factors will generally be appropriate.

D. Documenting a Credibility Determination

1. The asylum officer must clearly record in the interview notes the questions used to inform the applicant of any relevant credibility issues, and the applicant's responses to those questions.

2. The officer must specify in the written case analysis the basis for the negative credibility finding. In the negative credibility context, the officer must note any portions of the testimony found not credible, including the specific inconsistencies, lack of detail or

other factors, along with the applicant's explanation and the reason the explanation is deemed not to be reasonable.

3. If information that impugns the applicant's testimony becomes available after the interview but prior to serving the reasonable fear determination, a follow-up interview must be scheduled to confront the applicant with the derogatory information and to provide the applicant with an opportunity to address the adverse information. Unresolved credibility issues should not form the basis of a negative credibility determination.

IX. ESTABLISIDNG A REASONABLE FEAR OF PERSECUTION

To establish a reasonable fear of persecution, the applicant must show that there is a reasonable possibility he or she will suffer persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. As explained above,

this is the same standard asylum officers use in evaluating whether an applicant is eligible for asylum. However, the reasonable fear standard in this context is used not as part of an eligibility determination for asylum, but rather as a screening mechanism to determine whether an individual may be able to establish eligibility for withholding of removal in Immigration Court.

In contrast to an asylum adjudication, the APSO may not exercise discretion in making a positive or negative reasonable fear determination and may not consider the applicability of any mandatory bars that may apply if the applicant is permitted to apply for withholding of removal before the immigration judge.

A. Persecution

The harm the applicant fears must constitute persecution. The determination of whether the harm constitutes persecution for purposes of the reasonable fear determination is no different from the

See Discussion of "persecution" in RAIO Training Module, *Persecution*.

determination in the affirmative asylum context. This means that the harm must be serious enough to be considered persecution, as described in case law, the *UNHCR Handbook*, and USCIS policy guidance. Note that this is different from the evaluation of persecution in the credible fear context, where the applicant need only demonstrate a significant possibility that he or she could establish that the feared harm is serious enough to constitute persecution.

B. Nexus to a Protected Characteristic

8 C.F.R. § 208.31(c).

As in the asylum context, the applicant must establish that the feared harm is on account of a protected characteristic in the refugee definition (race, religion, nationality, membership in a particular social group, or political opinion). This means the applicant must provide some evidence, direct or circumstantial, that the persecutor is motivated to persecute the

applicant because the applicant possesses or is believed to possess one or more of the protected characteristics in the refugee definition.

The applicant does not bear the burden of establishing the persecutor's exact motivation. For cases where no nexus to a protected ground is immediately apparent, the asylum officer in reasonable fear interviews should ask questions related to all five grounds to ensure that no nexus issues are overlooked.

Although the applicant bears the burden of proof to establish a nexus between the harm and the protected ground, asylum officers have an affirmative duty to elicit all information relevant to the nexus determination. Evidence of motive can be either direct or circumstantial. Reasonable inferences regarding the motivations of persecutors should be made, taking into consideration the culture and patterns of persecution within the applicant's country of origin and

any relevant country of origin information, especially if the applicant is having difficulty answering questions regarding motivation.

There is no requirement that the persecutor be motivated only by the protected belief of characteristic of the applicant. As long as there is reasonable possibility that at least one central reason motivating the persecutor is the applicant's possession or perceived possession of a protected characteristic, the applicant may establish the harm is "on account of" a protected characteristic in the reasonable fear context.

C. Past Persecution

1. Presumption of future persecution

   If an applicant establishes past persecution on account of a protected characteristic, it is presumed that the applicant has a reasonable fear of persecution in the future on the basis of the original claim. This presumption may be

See 8 C.F.R. § 208.16(b)(1)(i).

overcome if a preponderance of the evidence establishes that,

a. there has been a fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution, or

b. the applicant could avoid future persecution by relocating to another part of the country of feared persecution and, under all circumstances, it would be reasonable to expect the applicant to do so.

2. Severe past persecution and other serious harm

A finding of reasonable fear of persecution cannot be based on past persecution alone, in the absence of a reasonable possibility of future persecution. A reasonable fear of persecution may be found only if there is a reasonable possibility the applicant

In contrast, a grant of asylum may be based on the finding that there are compelling reasons for the applicant's unwillingness to return arising from the severity

will be persecuted in the future, regardless of the severity of the past persecution or the likelihood that the applicant will face other serious harm upon return. This is because withholding of removal is accorded only to provide protection against future persecution and may not be granted without a likelihood of future persecution.

As noted above, a finding of past persecution raises the presumption that the applicant's fear of future persecution is reasonable.

of past persecution or where the applicant establishes that there is a reasonable possibility that he or she may suffer other serious harm upon removal to that country, even if there is no longer a reasonable possibility the applicant would be persecuted in the future. 8 C.F.R. § 208.13(b)(1)(iii).

D. Internal Relocation

As in the asylum context, the evidence must establish that the applicant could not avoid future persecution by relocating within the country of feared persecution or that, under all the circumstances, it would be unreasonable to expect him or her to do so. In cases in which the persecutor is a government or is government-sponsored, or the applicant has established

See Discussion of internal relocation in RAIO Training Module, *Well-Founded Fear*; *see also* 8 C.F.R. § 208.16(b)(3).

persecution in the past, it shall be presumed that internal relocation would not be reasonable, unless DHS establishes by a preponderance of the evidence that, under all the circumstances, it would be reasonable for the applicant to relocate.

E. Mandatory Bars

Asylum officers may *not* take into consideration mandatory bars to withholding of removal when making reasonable fear of persecution determinations.

8 C.F.R. § 208.31(c)

See Reasonable Fear Procedures Manual (Draft).

If the asylum officer finds that there is a reasonable possibility the applicant would suffer persecution on account of a protected characteristic, the asylum officer must refer the case to the immigration judge, regardless of whether the person has committed an aggravated felony, has persecuted others, or is subject to any other mandatory bars to withholding of removal.

However, during the interview the officer must develop the record fully by exploring whether the applicant may be subject to a mandatory bar.

If the officer identifies a potential bar issue, the officer should consult a supervisory officer and follow procedures outlined in the Reasonable Fear Procedures Manual on "flagging" such information for the hearing.

The immigration judge will consider mandatory bars in deciding whether the applicant is eligible for withholding of removal under section 241(b)(3) of the Act or CAT.

8 C.F.R. §§ 208.16(c)(4)(d). Please note there are no bars to deferral of removal under CAT.

The following mandatory bars apply to withholding of removal under section 241(b)(3)(A) for cases commenced April 1, 1997 or later:

(1) the alien ordered, incited, assisted, or otherwise participated in the persecution of an individual because of the

INA § 241(b)(3)(B); 8 C.F.R. §§ 208.16(d)(2), (d)(3) (for applications for withholding of deportation adjudicated in

individual's race, religion, nationality, membership in a particular social group, or political opinion;

(2) the alien, having been convicted by a final judgment of a particularly serious crime, is a danger to the community of the United States;

(3) there are serious reasons to believe that the alien committed a serious nonpolitical crime outside the United States before the alien arrived in the United States;

(4) there are reasonable grounds to believe that the alien is a danger to the security of the United States (including anyone described in subparagraph (B) or (F) of section 212(a)(3)); or

(5) the alien is deportable under Section 237(a)(4)(D) (participated in Nazi persecution, genocide, or the

proceedings commenced prior to April 1, 1997, mandatory denials are found within section 243 (h)(2) of the Act as it appeared prior to that date).

commission of any act of torture or extrajudicial killing. Any alien described in clause (i), (ii), or (iii) of section 212(a)(3)(E) is deportable.)

X. CONVENTION AGAINST TORTURE–BACKGROUND

This section contains a background discussion of the Convention Against Torture, to provide context to the reasonable fear of torture determinations. As a signatory to the Convention Against Torture the United States has an obligation to provide protection where there are substantial grounds to believe that an individual would be in danger of being subjected to torture. Notably, there are no bars to protection under the Convention Against Torture. Torture is an act universally condemned and so repugnant to basic notions of human rights that even individuals who are undeserving of refugee protection, will not be returned to a

country where they are likely to be tortured. An overview of the Convention Against Torture may be found in the RAIO Module: *International Human Rights Law*.

A. U.S. Ratification of the Convention and Implementing Legislation

The United States Senate ratified the Convention Against Torture on October 27, 1990. President Clinton then deposited the United States instrument of ratification with the United Nations Secretary General on October 21, 1994, and the Convention entered into force for the United States thirty days later, on November 20, 1994.

Recognizing that a treaty is considered "law of the land" under the United States Constitution, the Executive Branch took steps to ensure that the United States was in compliance with its treaty obli-

Similarly, the Department of State considered whether a person would be subject to torture when addressing requests for extradition.

gations, even though Congress had not yet enacted implementing legislation. The INS adopted an informal process to evaluate whether a person who feared torture and was subject to a final order of deportation, exclusion, or removal would be tortured in the country to which the person would be removed. The United States relied on this informal process to ensure compliance with Article 3 in immigration cases until the CAT rule was promulgated.

On October 21, 1998, President Clinton signed legislation that required the Department of Justice to promulgate regulations to implement in immigration cases the United States' obligations under Article 3 of the Convention Against Torture, subject to any reservations, understandings, and declarations contained in the United States Senate resolution to ratify the Convention.

Section 2242(b) of the Foreign Affairs Reform and Restructuring Act of 1998 (Pub. L. 105-277, Division G, Oct. 21, 1998).

Pursuant to the statutory directive, the Department of Justice regulations provide a mechanism for individuals fearing torture to seek protection under Article 3 of the Convention in immigration cases. One of the mechanisms for protection provided in the regulations, effective March 22, 1999, is the "reasonable fear" screening process. *See* 8 C.F.R. §§ 208.16-208.18.

B. Article 3

1. *Non-Refoulement*

Article 3 of the Convention provides:

> No State Party shall expel, return ("*refouler*") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

This provision does not prevent the removal of a person to a country where he or she would

not be in danger of being subjected to torture. Like withholding of removal under section 241(b)(3) of the INA, which is based on Article 33 of the Convention relating to the Status of Refugees, protection under Article 3 of the Convention Against Torture is country-specific.

In addition, this obligation does not prevent the United States from removing a person to a country at any time if conditions have changed such that it no longer is likely that the individual would be tortured there.

See 8 C.F.R. §§ 208.17(d)-(f), 208.24 for procedures for terminating withholding and deferral of removal.

2. U.S. Ratification Document

When ratifying the Convention Against Torture, the U.S. Senate adopted a series of reservations, understandings and declarations, which modify the U.S. obligations under

Article 3, as described in the section below on the Convention definition of torture. These reservations, understandings, and declarations are part of the substantive standards that are binding on the United States and are reflected in the implementing regulations.

XI. DEFINITION OF TORTURE

Torture has been defined in a variety of documents and in legislation unrelated to the Convention Against Torture. However, only an act that falls within the definition described in Article 1 of the Convention, as modified by the U.S. ratification document may be considered "torture" for purposes of making a reasonable fear of torture determination. These substantive standards are incorporated in the regulations at 8 C.F.R. § 208.18(a) (1999).

See RAIO Training Module, *Interviewing Survivors of Torture and Other Severe Trauma*, background reading associated with that lesson; Alien Tort Claims Act, codified at 28 U.S.C. § 1350.

Article 1 of the Convention defines torture as:

See also 8 C.F.R. §§ 208.18(a)(1), (3).

> any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

The Senate adopted several important "understandings" regarding the definition of torture, which are included in the implementing regulations and are discussed below. These "understandings" are binding on adjudicators interpreting the definition of torture.

136 Cong. Rec. S17429 at S17486-92 (daily ed. October 27, 1990); 8 C.F.R. § 208.18(a).

A. Identity of Torturer

The torture must be "inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."

Convention Against Torture, Article 1.

1. Public official

The torturer or the person who acquiesces in the torture must be a public official or other person acting in an official capacity in order to invoke Article 3 Convention Against Torture protection. A non-governmental actor could be found to have committed torture within the meaning of the Convention *only if* that person inflicts the torture (1) at the instigation of, (2) with the consent of, or (3) with the acquiescence of a public official or other person acting in an official capacity.

Convention against Torture, Article 1. *See also* Committee on Foreign Relations Report, Convention Against Torture, Exec. Report 101-30, August 30, 1990 (hereinafter "Committee Report"), p. 14; Immigration and Naturalization Service, *Regulations Concerning the Convention Against Torture,* 64 Fed. Reg. 8478, 8483 (Feb. 19, 1999); *Ali v. Reno,* 237 F.3d 591, 597 (6th Cir. 2001).

The phrase "acting in an official capacity" modifies both "public official" and "other person," such that a public official must be "acting in an official capacity" to satisfy the state action element of the torture definition.

Matter of Y-L-, A-G-, R-S-R, 23 I&N Dec. 270 (AG 2002); *Matter of S-V-*, 22 I&N Dec. 1306 (BIA 2000); *Matter of J-E-*, 23 I&N Dec. 291 (BIA 2002)

When a public official acts in a wholly private capacity, outside any context of governmental authority, the state action element of the torture definition is not satisfied. On this topic, the Second Circuit provided that, "[a]s two of the CAT's drafters have noted, when it is a public official who inflicts severe pain or suffering, it is only in exceptional cases that we can expect to be able to conclude that the acts do not constitute torture by reason of the official acting for purely private reasons."

Khouzam v. Ashcroft, 361 F.3d 161, 171 (2d Cir. 2004).

To determine whether a public official is acting in a private capacity or in an official capacity, APSOs must elicit testimony to determine whether the public official was acting within the scope of their authority and/or under color of law. A determination that the public official is acting under either of the scope of their authority or under color of law would result in a determination that the public official was acting "in an official capacity".

Although the regulation does not define "acting in an official capacity," the Attorney General equated the term to mean "under color of law" as interpreted by cases under the civil rights act.

See Ali v. Reno, 237 F.3d 591, 597 (6th Cir. 2001); *Ahmed v. Mukasey,* 300 Fed. Appx. 324 (5th Cir. 2008) (unpublished).

Thus, a public official is acting in an official ca-

Ramirez Peyro v. Holder, 574 F.3d

pacity when "he misuses power possessed by virtue of law and made possible only because he was clothed with the authority of law."

893 (8th Cir. 2009).

To establish whether a public official is acting in an official capacity (i.e. under the color of law), the applicant must establish a nexus between the public official's authority and the harmful conduct inflicted on the applicant by the public official. The Eighth Circuit addressed "acting in an official capacity" in its decision in *Ramirez Peyro v. Holder.* The court indicated such an inquiry is fact intensive and includes considerations like "whether the officers are on duty and in uniform, the motivation behind the officer's actions and whether the officers had access to the victim because of

See U.S. v. Colbert, 172 F.3d 594, 596-597 (8th Cir 1999); *West v. Atkins,* 487 U.S. 42, 49 (1988).

their positions, among others." *Id.*

Following the guidance provided in *Ramirez Peyro v. Holder*, the Fifth Circuit also addressed "acting in an official capacity" by positing "[w]e have recognized on numerous occasions that acts motivated by an officer's personal objectives are 'under color of law' when the officer uses his official capacity to further those objectives." Citing directly to *Ramirez Peyro v. Holder*, the Fifth Circuit determined that "proving action in an officer's official capacity 'does not require that the public official be executing official state policy or that the public official be the nation's president or some other official at the upper echelons of power. Rather . . . the use of official authority by low-level

Mamorato v. Holder, 376 Fed. Appx. 380, 385 (5th Cir. 2010) (unpublished).

officials, such a[s] police officers, can work to place actions under the color of law even where they are without state sanction.'"

In this context, the court points to two published cases as examples. First, *Bennett v. Pippin,* 74 F.3d 578, 589 (5th Cir. 1996), in which the court found "that an officer's action was 'under color of state law' where a sheriff raped a woman and used his position to ascertain when her husband would be home and threatened to have her thrown in jail if she refused." The Fifth Circuit compared this case to *Delcambre v. Delcambre,* 635 F.2d 407, 408 (5th Cir. 1981) (per curiam), in which the court found "no action under color of law where a police chief assaulted his sister-in-law over personal

See also Miah v. Mukasey, 519 F. 3rd 784 (8th Cir. 2008) (elected official was not acting in his official capacity in his rogue efforts to take control of others property).

arguments about family matters, but did not threaten her with his power to arrest."

As *Marmorato v. Holder* illustrates with its citation to *Bennett v. Pippin*, an official need not be acting in the scope of their authority to be acting under color of law.

It is unsettled whether an organization that exercises power on behalf of the people subjected to its jurisdiction, as in the case of a rebel force which controls a sizable portion of a country, would be viewed as a "government actor." It would be necessary to look at factors such as how much of the country is under the control of the rebel force and the level of that control.

2. Acquiescence

When the "torturer" is not a public official or

See Matter of S-V-, Int. Dec. 3430 (BIA 2000) (concurring opinion); *see also Habtemichael v. Ashcroft*, 370 F.3d 774 (8th Cir. 2004) (remanding for agency determination as to the extent of the Eritrean People's Liberation Front's (EPLF) control over parts of Ethiopia during the period when the applicant was conscripted by the EPLF);

other individual acting in an official capacity, a claim under the *Convention Against Torture* only arises if a public official or other person acting in an official capacity instigates, consents, or acquiesces to the torture.

D-Muhumed v. U.S. Atty. Gen., 388 F.3d 814 (11th Cir. 2004) (denying protection under CAT because "Somalia currently has no central government, and the clans who control various sections of the country do so through continued warfare and not through official power."); *but see* the Committee Against Torture decision in *Elmi v. Australia*, Comm. No. 120/1998 (1998) (finding that warring factions in Somalia fall within the phrase "public official(s) or other person(s) acting in an official capacity). Note that the United

	Nations Committee Against Torture a monitoring body for the implementation and observance of the Convention Against Torture. The U.S. recognizes the Committee, but does not recognize its competence to consider cases. The BIA considers the Committee's opinions to be advisory only. *See Matter of S-V-*, I&N Dec. 22 I&N Dec. 1306, 1313 n.1 (BIA 2000).
A public official cannot be said to have "acquiesced" in torture unless, prior to the activity constituting torture, the official was "aware" of such activity and thereafter breached a legal re-	8 C.F.R. § 208.18(a)(7).

sponsibility to intervene to prevent the activity.

The Senate ratification history explains that the term "awareness" was used to clarify that government acquiescence may be established by evidence of *either* actual knowledge *or* willful blindness. "Willful blindness" imputes knowledge to a government official who has a duty to prevent misconduct and "deliberately closes his eyes to what would otherwise have been obvious to him."

136 Cong. Rec. at S17, 491-2 (daily ed. October 27, 1990); Committee Report (Aug. 30, 1990), p. 9; *see also* S. Hrg 101-718 (July 30, 1990), *Statement of Mark Richard, Dep. Asst. Attorney General, DOJ Criminal Division*, at 14.

In addressing the meaning of acquiescence as it relates to fear of Colombian guerrillas, paramilitaries and narcotraffickers who were not attached to the government, the Board of Immigration Appeals (BIA) indicated that more than awareness or inability to control is

Matter of S-V-, Int. Dec. 3430 (BIA 2000).

required. The BIA held that for acquiescence to take place the government officials must be "willfully accepting" of the torturous activity of the non-governmental actor.

Several federal circuit courts of appeals have rejected the BIA's "willful acceptance" phrase in favor of the more precise "willful blindness" language that appears in the Senate's ratification history.

For purposes of threshold reasonable fear screenings, asylum officers must use the *willful blindness* standard.

Pieschacon-Villegas v. Att'y Gen. of U.S., 671 F.3d 303 (3d Cir. 2011); *Hakim v. Holder*, 628 F.3d 151 (5th Cir. 2010); *Aguilar-Ramos v. Holder*, 594 F.3d 701, 706 (9th Cir. 2010); *Diaz v. Holder*, 2012 WL 5359295 (10th Cir. 2012) (unpublished); *Silva-Rengifo v. Atty. Gen. of U.S.*, 473 F.3d 58, 70 (3d Cir. 2007); *Khouzam v. Ashcroft*, 361 F.3d 161 (2d Cir. 2004); *Lopez-Soto v. Ashcroft*, 383 F.3d 228, 240 (4th

Cir. 2004); *Azanor v. Aschcroft,* 364 F.3d 1013 (9th Cir. 2004); *Amir v. Gonzales,* 467 F.3d 921, 922 (6th Cir. 2006); *Zheng v. Ashcroft,* 332 F.3d 1186 (9th Cir. 2003); *Ontunez-Turcios v. Ashcroft,* 303 F.3d 341, 354-55 (5th Cir. 2002); *Ali v. Reno,* 237 F.3d 591, 597 (6th Cir. 2001).

The United States Circuit Court of Appeals for the Ninth Circuit ruled that the correct inquiry concerning the acquiescence of a state actor is "whether a respondent can show that public officials demonstrate willful blindness to the torture of their citizens." The court rejected the notion that acquiescence requires a public official's "actual knowledge" and

Zheng v. INS, 332 F.3d 1186 (9th Cir. 2003).
Azanor v. Ashcroft, 364 F.3d 1013, 1020 (9th Cir. 2004).

"willful acceptance." The Ninth Circuit subsequently reaffirmed that the state actor's acquiescence to the torture must be "knowing," whether through actual knowledge or imputed knowledge ("willful blindness"). Both forms of knowledge constitute "awareness."

The United States Circuit Court of Appeals for the Second Circuit agreed with the Ninth Circuit approach on the issue of acquiescence of government officials, stating "torture requires only that government officials know of or remain willfully blind to act and thereafter breach their legal responsibility to prevent it."

a. Relevance of a government's ability to control a non-governmental en-

Khouzam v. Ashcroft, 361 F.3d 161, 171 (2d Cir. 2004) (finding that even if the Egyptian police who would carry out the abuse were not acting in an official capacity, "the 'routine' nature of the torture and its connection to the criminal justice system supply ample evidence that higher-level officials either know of the torture or remain

tity from engaging in acts of torture

The requirement that the torture be inflicted by or at the instigation, or with the consent or acquiescence of a public official or other person acting in an official capacity is distinct from the "unable or unwilling to protect" standard used in the definition of "refugee".

Although a government's ability to control a particular group may be relevant to an inquiry into governmental acquiescence under CAT, that inquiry does not turn on a government's ability to control persons or groups engaged in torturous activity.

In *De La Rosa v. Holder* the Second Circuit stated "it is not clear to this Court why

willfully blind to the torture and breach their legal responsibility to prevent it").

Pieschacon v. Attorney General, 671 F.3d 303 (3d Cir. 2011) (quoting from *Silva-Rengifo v. Att'y Gen. of U.S.,* 473 F.3d 58, 65 (3d Cir. 2007)); *see also Gomez v. Gonzales,* 447 F.3d 343 (C.A.5, 2006); *Reyes-Sanchez v. U.S. Atty. Gen.,* 369 F.3d 1239 (C.A.11, 2004) ("That the police did not catch the culprits does not mean that they acquiesced in the harm.").

De La. Rosa v. Holder, 598 F.3d 103 (2d Cir. 2010).

the preventative efforts of some government actors should foreclose the possibility of government acquiescence, as a matter of law, under the CAT. Where a government contains officials that would be complicit in torture, and that government, on the whole, is admittedly incapable of actually preventing that torture, the fact that some officials take action to prevent the torture would seem neither inconsistent with a finding of government acquiescence nor necessarily responsive to the question of whether torture would be "inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."

In a similar case, the Third Circuit reman- *Pieschacon-Villegas v. Attorney General*, 671

ded to the BIA, indicating that the fact that the government of Colombia was engaged in war against the FARC, it did not in itself establish that it could not be consenting or acquiescing to torture by members of the FARC.	F.3d 303 (3d Cir. 2011); *Gomez-Zuluaga v. Attorney General*, 527 F.3d 330 (3d Cir. 2008).
Evidence that private actors have general support, without more, in some sectors of the government may be insufficient to establish that the officials would acquiesce to torture by the private actors. Thus, a Honduran peasant and land reform activist who testified to fearing severe harm by a group of landowners did not demonstrate that government officials would turn a blind eye if he were tortured simply because they had ties to the landowners.	*Ontunez-Tursios;* 303 F.3d 341 (5th Cir. 2002).

There is no acquiescence when law enforcement does not breach a legal responsibility to intervene to prevent torture. For example, in *Ali v. Reno,* the Danish police arrested and incarcerated the male relatives of a domestic violence victim while charges against them were pending. Only after the victim requested that the male relatives not be punished were they released.

Ali v. Reno, 237 F.3d 591, 598 (6th Cir. 2001).

In the context of government consent or acquiescence, the court in *Ramirez-Peyro v. Holder* reiterated its prior holding that "[u]se of official authority by low level officials, such a police officers, can work to place actions under the color of law even when they act without state sanction."

574 F.3d 893, 901 (8th Cir. 2009).

Therefore, even if country conditions show that a national government is fighting against corruption, that fact may not mean there is no acquiescence/consent by a local public official to torture. The Fifth Circuit visited this issue in *Marmorato v. Holder*, in which the court found that the immigration judge misinterpreted "in official capacity" when it found that the *consent or acquiescence* standard could never be satisfied in a country like Italy, but only in nations with "rogue governments" with "no regard for human rights or civil rights. The Fifth Circuit rejected "any notion that a petitioner's entitlement to relief depends upon whether his country of removal could be included on some hypothetical list of 'rogue' nations."

The Convention Against Torture is designed to protect against future instances of torture. Therefore, the asylum officer should consider whether there is a reasonable possibility that:

See Sevoian v. Ashcroft, 290 F.3d 166 (3d Cir. 2002) (finding that there is no "acquiescence" to torture unless officials know about the torture before it occurs).

1. A public official would have prior knowledge or would willfully turn a blind eye to avoid gaining knowledge of the potential activity constituting torture; and
2. The public official would breach a legal duty to intervene to prevent such activity.

Evidence of how an official or officials have acted in the past (toward the applicant or others similarly situated) may shed light on how the official or officials may act in the future. "Official as well as unofficial country reports are probative evidence and can, by themselves, provide

Zubeda v. Ashcroft, 333 F.3d 463 (3d Cir. 2003).

sufficient proof to sustain an alien's burden under the INA ."

B. Torturer's Custody or Control over Individual

The definition of torture applies only to acts directed against persons in the offender's custody or physical control.

8 C.F.R. § 208.18(a)(6); Committee Report, p. 9 (Aug. 30, 1990).

The United States Circuit Court of Appeals for the Ninth Circuit held that an applicant need not demonstrate that he or she would likely face torture while in a public official's custody or physical control. It is enough that the alien would likely face torture while under private individuals' exclusive custody or control if such torture were to take place with consent or acquiescence of a public official or other individual acting in an official capacity.

Reyes-Reyes v. Ashcroft, 384 F.3d 782 (9th Cir. 2004); *Azanor v. Ashcroft*, 364 F.3d 1013, 1019 (9th Cir. 2004).

For example, the Seventh Circuit has posited *in dictum* that "[p]robably more often than not the victim of a murder is within the murderer's physical control for at least a

Comollari v. Ashcroft, *378* F.3d 694, 697 (7th Cir. 2004).

short time before the actual killing . . . " However, the court provided "that would not be true if for example the murderer were a sniper or a car bomber".

Pre-custodial police operations or military combat operations are outside the scope of Convention protection.

Establishing whether the act of torture may occur while in the offender's custody or physical control is very fact specific and in practicality it is very difficult to establish. While the applicant bears the burden of establishing "custody or physical control", the burden must be a reasonable one and this element may be established solely by circumstantial evidence.

While the law is unsettled as to the meaning of "in the offender's custody or physical control", when considering this element, APSOs must give applicants the benefit of doubt.

C. Specific Intent

For an act to constitute torture, it must be specifically intended to inflict severe physical or mental pain or suffering. An intentional act that results in unanticipated and unintended severity of pain is not torture under the Convention definition.

8 C.F.R. §§ 208.18(a)(1), (5); *Auguste v. Ridge,* 395 F.3d 123, 146 (3d Cir. 2005); 136 Cong. Rec. at S17, 491-2 (daily ed. October 27, 1990). See Committee Report, pp 14, 16.

Where the evidence shows that an applicant may be specifically targeted for punishment that may rise to the level of torture, the harm the applicant faces is specifically intended.

Kang v. Att'y Gen. of the U.S., 611 F.3d 157 (3d Cir. 2010) (distinguishing the facts from those in *Auguste v. Ridge*).

However an act of legitimate self-defense or defense of others would not constitute torture.

Also, harm resulting from poor prison conditions generally will not constitute torture when such conditions were not intended to inflict severe physical or mental pain or suffering.

Matter of J-E-, 23 I&N Dec. 291, 300-01 (BIA 2002); *but see Matter of G-A-*, 23 I&N Dec. 366, 372 (BIA 2002) (finding that where deliberate acts of torture

For example, in *Matter of J-E-* the BIA considered a request

for protection under the *Convention Against Torture* by a Haitian national who claimed that upon his removal to Haiti, as a criminal deportee, he would be detained indefinitely in substandard prison conditions by Haitian authorities. The BIA found that such treatment does not amount to torture where there is no evidence that the authorities are "intentionally and deliberately maintaining such prison conditions in order to inflict torture." Like other elements of the reasonable fear of torture analysis, the evidence establishing specific intent can be circumstantial.

are pervasive and widespread and where authorities use torture as a matter of policy, the specific intent requirement can be satisfied); *see also Settenda v. Ashcroft*, 377 F.3d 89 (1st Cir. 2004); *Elien v. Ashcroft*, 364 F.3d 392 (1st Cir. 2004); *Cadet v. Bulger*, 377 F.3d 1173 (11th Cir. 2004).

It is important to analyze the specific facts of each case in order to accurately determine the *specific intent* element. For example, in a case that was very similar to the facts in *Matter of J-E-*, the Eleventh Circuit directed the BIA to consider whether a Haitian criminal deportee, who was mentally ill and infected with the AIDS virus satisfied the *specific intent* element where

Jean-Pierre v. U.S. Attorney General, 500 F.3d 1315 (11th Cir. 2007).

there was evidence that mentally ill detainees with HIV are singled out for forms of punishment that included earboxing (being slapped simultaneously on both ears), beatings with metal rods, and confinement to crawl spaces where detainees cannot stand up was eligible for withholding of removal under the CAT. In distinguishing the facts from *Matter of J-E-*, the court stated that in *J-E-*, the petitioner did not establish that he would be individually and intentionally singled out for harsh treatment and only produced evidence of generalized mistreatment and isolated instances of torture.

Note that, in contrast, when determining asylum eligibility, there is no requirement of specific intent to inflict harm to establish that an act constitutes persecution: "requiring an alien to establish the specific intent of his/her persecutors could impose insurmountable obstacles to affording the very protections the community of nations sought

See Matter of Kasinga, 21 I&N Dec. 357 (BIA 1996); *Pitcherskaia v. INS*, 118 F.3d 641 (9th Cir. 1997).

Zubeda v. Ashcroft, 333 F.3d 463 (3d Cir. 2003).

to guarantee under the Convention Against Torture."

1. Reasons torture is inflicted

   The Convention definition provides a **non**-exhaustive list of possible reasons torture may be inflicted. The definition states that torture is an act that inflicts severe pain or suffering on a person *for such purposes as:*

   a. obtaining from him or a third person information or a confession,

   b. punishing him for an act he or a third person has committed or is suspected of having committed,

   c. intimidating or coercing him or a third person, or

   d. for any reason based on discrimination of any kind

8 C.F.R. § 208.18(a)(1).

Note: All discrimination is not torture.

2. No nexus to protected characteristic required.

   Unlike the non-return (*non-refoulment*) obligation in

the *Convention relating to the Status of Refugees*, the *Convention Against Torture* does not require that the torture be connected to any of the five protected characteristics identified in the definition of a refugee, or any other characteristic the individual possesses or is perceived to possess.

D. Degree of Harm

"Torture" requires severe pain or suffering, whether physical or mental. Torture" is an extreme form of cruel and inhuman treatment and does not include lesser forms of cruel, inhuman or degrading treatment or punishment that do not amount to torture.

8 C.F.R. § 208.18(a)(1).

8 C.F.R. § 208.18(a)(2).

See Matter of J-E-, 23 I&N Dec. 291 (BIA 2002) (citing to *Ireland v. United Kingdom*, 2 Eur. Ct. H.R. 25 (1978) (discussing the severe nature of torture)).

The Report of the Committee on Foreign Relations, accompanying the transmission of the Convention to the Senate for ratification, explained:

Committee Report, p. 13.

> The requirement that torture be an extreme form of cruel and inhuman treatment is expressed in Article 16, which refers to "other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture. . . . " The negotiating history indicates that the underlined portion of this description was adopted in order to emphasize that torture is at the extreme end of cruel, inhuman and degrading treatment or punishment and that Article 1 should be construed with this in mind.

Therefore, certain forms of harm that may be considered persecution may not be considered severe enough to amount to torture.

See, RAIO Training Module, *Interviewing-Survivors of Torture and other Severe Trauma*, section *Forms of Torture.*

Types of harm that may be considered torture include, but are not limited to the following:

1. rape and other severe sexual violence;

Zubeda v. Ashcroft, 333 F.3d 463, 472 (3d Cir. 2003).

2. application of electric shocks to sensitive parts of the body;
3. sustained, systematic beating;
4. burning;
5. forcing the body into positions that cause extreme pain, such as contorted positions, hanging, or stretching the body beyond normal capacity;
6. forced non-therapeutic administration of drugs; and
7. severe mental pain and suffering.

Matter of G-A-, 23 I&N Dec. 366, 372 (BIA 2002).

Any harm must be evaluated on a case-by-case basis to determine whether it constitutes torture. In some cases, whether the harm above constitutes torture will depend upon its severity and cumulative effect.

The BIA in *Matter of G-A-* held that treatment that included "suspension for long periods in contorted positions, burning with cigarettes, sleep deprivation, and . . . severe and repeated beatings

Matter of G-A-, 23 I&N Dec. 366, 370 (BIA 2002).

with cables or other instruments on the back and on the soles of the feet . . . beatings about the ears, resulting in partial or complete deafness, and punching in the eyes, leading to partial or complete blindness" when intentionally and deliberately inflicted constitutes torture.

E. Mental Pain or Suffering

8 C.F.R. § 208.18(a)(4); 136 Cong. Rec. at S17, 491-2 (daily ed. Oct. 27, 1990).

For mental pain or suffering to constitute torture, the mental pain must be prolonged mental harm caused by or resulting from:

a. The intentional infliction or threatened infliction of severe physical pain or suffering;

b. The administration or application, or threatened administration or application, of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality;

c. The threat of imminent death; or

d. The threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind altering substances or other procedures calculated to disrupt profoundly the senses or personality.

F. Lawful Sanctions

Article 1 of the Convention provides that pain or suffering "arising only from, inherent in or incidental to lawful sanctions" does not constitute torture.

8 C.F.R. § 208.18(a)(3).

8. Definition of *lawful sanctions*

"Lawful sanctions include judicially imposed sanctions and other enforcement actions authorized by law, including the death penalty, but do not include sanctions that defeat the object and purpose of the *Convention Against Torture* to prohibit torture."

8 C.F.R. § 208.18(a)(3).

The supplementary information published with the implementing regulations explains that this provision "does not require that, in order to come within the exception, an action must be one that would be authorized by United States law. It must, however, be legitimate, in the sense that a State cannot defeat the purpose of the Convention to prohibit torture."	Immigration and Naturalization Service, *Regulations Concerning the Convention Against Torture,* 64 Fed. Reg. 8478 (Feb. 19, 1999).
Note that "lawful sanctions" do not include the intentional infliction of severe mental or physical pain during interrogation or incarceration after an arrest that is otherwise based upon legitimate law enforcement considerations.	*See* 8 CFR § 208.18; *Khouzam v. Ashcroft,* 361 F.3d 161 (2d Cir. 2004).
9. Sanctions cannot be used to circumvent the Convention	
A State Party cannot through its domestic sanctions defeat the object and purpose of the Convention to prohibit torture. In other words, the fact	8 C.F.R. § 208.18(a)(3); 136 Cong. Rec. at S17, 491-2 (daily ed. Oct. 27, 1990).

that a country's law allows a particular act does not preclude a finding that the act constitutes torture.

Example: A State Party's law permits use of electric shocks to elicit information during interrogation. The fact that such treatment is formally permitted by law does not exclude it from the definition of torture.

10. Failure to comply with legal procedures

    Failure to comply with applicable legal procedural rules in imposing sanctions does not *per se* amount to torture. — 8 C.F.R. § 208.18(a)(8).

11. Death penalty

    The Senate's ratification resolution expresses the "understanding" that the *Convention Against Torture* does not prohibit the United States from applying the death penalty consistent with the Fifth, Eighth and/or Fourteenth Amendments to the Constitution. — 136 Cong. Rec. at S17, 491-2 (daily ed. Oct. 27, 1990).

The supplementary information to the implementing regulations explains,

> "The understanding does not mean . . . that any imposition of the death penalty by a foreign state that fails to satisfy United States constitutional requirements constitutes torture. Any analysis of whether the death penalty is torture in a specific case would be subject to all requirements of the Convention's definition, the Senate's reservations, understandings, and declarations, and the regulatory definitions. Thus, even if imposition of the death penalty would be inconsistent with United States constitutional standards, it would not be torture if it were imposed in a legitimate manner to punish violations of law. Similarly, it would not be torture if it failed to meet any

Immigration and Naturalization Service, *Regulations Concerning the Convention Against Torture,* 64 Fed. Reg. 8478, 8482-83 (Feb. 19, 1999).

other element of the definition of torture."

XII. ESTABLISHING A REASONABLE FEAR OF TORTURE

To establish a reasonable fear of torture, the applicant must show that there is a reasonable possibility the applicant would be subject to torture, as defined in the *Convention Against Torture,* subject to the reasonable, understandings, declarations, and provisos contained in the United States Senate resolution of ratification of the Convention.

8 C.F.R. §§ 208.31(c), 208.18(a).

A. Torture

In evaluating whether an applicant has established a reasonable fear of torture, the asylum officer must address each of the elements in the torture definition and determine whether there is a *reasonable possibility* that each element is satisfied.

1. Severity of feared harm

Is there a reasonable possibility the applicant will suffer severe pain and suffering?

If the feared harm is mental suffering, does it meet each of the requirements listed in the Senate "understandings," as reflected in the regulations?

2. State action

Is there a reasonable possibility the pain or suffering would be inflicted by or at the instigation of a public official or other person acting in an official capacity?

If not, is there a reasonable possibility the pain or suffering would be inflicted with the consent or acquiescence of a public official or other person acting in an official capacity?

3. Custody or physical control

Is there a reasonable possibility the feared harm would be inflicted while the applicant is in the custody or physical control of the offender?

4. Specific intent

Is there a reasonable possibility the feared harm would be specifically intended by the offender to inflict severe physical or mental pain or suffering?

5. Lawful sanctions

Is there a reasonable possibility the feared harm would not arise only from, would not be inherent in, and would not be incidental to, lawful sanctions?

If the feared harm arises from, is inherent in, or is incidental to, lawful sanctions, is there a reasonable possibility the sanctions would defeat the

object and purpose of the Convention?

B. No Nexus Requirement

There is no requirement that the feared torture be on account of a protected characteristic in the refugee definition. While there is a "specific intent" requirement that the harm be intended to inflict severe pain or suffering, the reasons motivating the offender to inflict such pain or suffering need not be on account of a protected characteristic of the victim.

Rather, the Convention definition provides a non-exhaustive list of possible reasons the torture may be inflicted, as described in section IX.C. above. The use of the modifier "for such purposes" indicates that this is a non-exhaustive list, and that severe pain and suffering inflicted for other reasons may also constitute torture.

See Committee Report, p. 14.

Note that the reasons for which a government has inflicted torture on individuals in the past may be important

See Sevoian v. Ashcroft, 290 F.3d 166 (3d Cir. 2002) (finding that the BIA did

in determining whether the government is likely to torture the applicant.

not abuse its discretion in denying a motion to reopen to consider a Convention claim when country conditions indicate that the government in question usually uses torture to extract confessions or in politically-sensitive cases and there is no reason to believe that the applicant falls into either category).

C. Past Torture

Unlike a finding of past persecution, a finding that an applicant suffered torture in the past does not raise a *presumption* that it is *more likely than not* the applicant will be subject to torture in the future. However, regulations require that any past torture be *considered* in evaluating whether the applicant is likely

Immigration and Naturalization Service, *Regulations Concerning the Convention Against Torture,* 64 Fed. Reg. 8478, 8480 (Feb. 19, 1999); 8 C.F.R. § 208.16(c)(3).

to be tortured, because an applicant's experience of past torture may be *probative* of whether the applicant would be subject to torture in the future.

However, for purposes of the reasonable fear screening, which requires a lower standard of proof than is required for withholding of removal, that an applicant who demonstrates that he or she has been tortured in the past should generally be found to have met his or her burden of establishing a reasonable possibility of torture in the future, absent evidence to the contrary.

Conversely, past harm that does not rise to the level of torture does not mean that torture will not occur in the future, especially in countries were torture is widespread.

This approach governs only the reasonable fear screening and is not applicable to the actual eligibility determination for withholding under the *Convention Against Torture. See Abdel-Masieh v. INS*, 73 F.3d 579, 584 (5th Cir. 1996) (past actions do not create "an outer limit" on the government's future actions against an individual).

D. Internal Relocation

Regulations require the immigration judge to consider evidence that the applicant could relocate to another part of the country of removal where he or she is not likely to be tortured,

8 C.F.R. § 1208.16(c)(3)(ii).

in assessing whether the applicant can establish that it is more likely than not that he or she would be tortured. Therefore, asylum officers should consider whether or not the applicant could safely relocate to another part of his or her country in assessing whether there is a reasonable possibility that he or she would be tortured.

Under the Convention Against Torture, the burden is on the applicant to show that it is more likely than not that he or she will be tortured, and one of the relevant considerations is the possibility of relocation. In deciding whether the applicant has satisfied his or her burden, the adjudicator must consider all relevant evidence, including but not limited to the possibility of relocation within the country of removal.

8 C.F.R. §§ 208.16(c)(2), (3)(ii).

Maldonado v. Holder, 786 F.3d 1155, (9th Cir. 2015) (overruling *Hassan v. Ashcroft*, 380 F.3d 1114 (9th Cir. 2004) ("Section 1208.16(c)(2) does not place a burden on an applicant to demonstrate that relocation within the proposed country of removal is impossible because the IJ must consider all relevant evidence; no one

	factor is determinative. . . . Nor do the regulations shift the burden to the government because they state that the applicant carries the overall burden of proof.")
Credible evidence that the feared torturer is a public official will normally be sufficient evidence that there is no safe internal relocation option in the reasonable fear context.	*See, e.g., Comollari v. Ashcroft,* 378 F.3d 694, 697-98 (7th Cir. 2004).
Unlike the persecution context, the regulations implementing CAT do not explicitly reference the need to evaluate the reasonableness of internal relocation. Nonetheless, the regulations provide that "all evidence relevant to the possibility of future torture shall be considered . . . " Therefore, asylum officers should apply the same reasonableness inquiry articulated in the persecution context to the CAT context.	8 C.F.R. § 208.16(c)(3)(iv). 8 C.F.R. § 208.13(b)(3); *See* RAIO Training Module, *Well Founded Fear*.

E. Mandatory Bars

Although certain mandatory bars apply to a grant of withholding of removal under the Convention Against Torture, no mandatory bars may be considered in making a reasonable fear of torture determination.	8 C.F.R. §§ 208.16(d)(2); 208.31(c).
Because there are ***no*** bars to protection under Article 3, an immigration judge must grant deferral of removal to an applicant who is barred from a grant of withholding of removal, but who is likely to be tortured in the country to which the applicant has been ordered removed. Therefore, the reasonable fear screening process must identify and refer to the immigration judge aliens who have a reasonable fear of torture, even those who would be barred from withholding of removal, so that an immigration judge can determine whether the alien should be granted *deferral of removal.*	8 C.F.R. § 208.17(a).
APSOs must elicit information regarding any potential bars to withholding of removal during the interview.	

The officer must keep in mind that the applicability of these bars requires further evaluation that will take place in the full hearing before an immigration judge if the applicant otherwise has a reasonable fear of persecution or torture. In such cases, the officer should consult a supervisory officer and follow procedures on "flagging" such information for the hearing as outlined in the Reasonable Fear Procedures Manual.

XIII. EVIDENCE

A. Credible Testimony

To establish eligibility for withholding of removal under section 241(b)(3) of the Act or the Convention Against Torture, the testimony of the applicant, if credible, may be sufficient to sustain the burden of proof without corroboration.

8 C.F.R. §§ 208.16(b); 208.16(c)(2).

As in the asylum context, there may be cases where lack of corroboration, without reasonable explanation, casts doubt on the credibility of the claim or otherwise affects the applicant's ability to meet the requisite

burden of proof. Asylum officers should follow the guidance in the RAIO Modules, *Credibility,* and *Evidence,* and HQASY memos on this issue in evaluating whether lack of corroboration affects the applicant's ability to establish a reasonable fear of persecution or torture.

B. Country Conditions

Country conditions information is integral to most reasonable fear determinations, whether the asylum officer is evaluating reasonable fear of persecution or reasonable fear of torture.

See RAIO Training Module, *Country of Origin Information (COI) Researching and Using COI in RAIO Adjudications.*

The Convention Against Torture specifically requires State Parties to take country condition information into account, where applicable, in evaluating whether a person would be subject to torture in a particular country.

"[T]he competent authorities shall take into account all relevant considerations, including, where applicable

Convention Against Tortures Article 3, para. 2.

> the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights."

The implementing regulations reflect this treaty provision by providing that all evidence relevant to the possibility of future torture must be considered, including, but not limited to, evidence of gross flagrant or mass violations of human rights within the country of removal, where applicable, and other relevant information regarding conditions in the country of removal.

8 C.F.R. §§ 208.16(c)(3).

As discussed in the supplementary information to the regulations, "the words 'where applicable' indicate that, in each case, the adjudicator will determine whether and to what extent evidence of human rights violations in a given country is in fact a relevant factor in the case at hand. Evidence of the gross and flagrant denial of freedom of the press, for example, may not tend to show that an alien would be tortured if referred to that country."

Immigration and Naturalization Service, *Regulations Concerning the Convention Against Torture,* 64 Fed. Reg. 8478, 8480 (Feb. 19, 1999).

Analysis of country conditions requires an examination into the likelihood that the applicant will be persecuted or tortured upon return. Some evidence indicating that the feared harm or penalty would be enforced against the applicant should be cited in support of a positive reasonable fear determination.	*See Matter of M-B-A-*, 23 I&N Dec. 474, 478-79 (BIA 2002) (finding that a Nigerian woman convicted of a drug offense in the United States was ineligible for protection under the Convention where she provided no evidence that a Nigerian law criminalizing certain drug offenses committed outside Nigeria would be enforced against her).
In *Matter of G-A-*, the BIA found that an Iranian Christian of Armenian descent who lived in the U.S. for more than 25 years and who had been convicted of a drug-related crime is likely to be subjected to torture if returned to Iran. The BIA considered the combination of the harsh and discriminatory treatment of ethnic and	*Matter of G-A-*, 23 I&N Dec. 366, 368 (BIA 2002).

religious minorities in Iran, the severe punishment of those associated with narcotics trafficking, and the perception that those who have spent an extensive amount of time in the U.S. are opponents of the Iranian government or even U.S. spies to determine that, in light of country conditions information, the individual was entitled to relief under the Convention Against Torture.

In *Matter of J-F-F-*, the Attorney General held that the applicant failed to meet his evidentiary burden for deferral of removal to the Dominican Republic under the Conventions Against Torture. Here, the IJ improperly " . . . strung together [the following] series of suppositions: that respondent needs medication in order to behave within the bounds of the law; that such medication is not available in the Dominican Republic; that as a result respondent would fail to control himself and become 'rowdy'; that this behavior would lead the police to incarcerate him; and that the police would tor-

Matter of J-F-F-, 23 I&N Dec. 912, 917 n.4 (AG 2006) ("An alien will never be able to show that he faces a more likely than not chance of torture if one link in the chain cannot be shown to be more likely than not to occur." Rather, it "is the likelihood of all necessary events coming together that must more likely than not lead to torture,

ture him while he was incarcerated." The Attorney General determined that this hypothetical chain of events was insufficient to meet the applicant's burden of proof. In addition to considering the likelihood of each step in the hypothetical chain of events, the adjudicator must also consider whether the entire chain of events will come together to result in the probability of torture of the applicant.

and a chain of events cannot be more likely than its least likely link.") *(citing Matter of Y-L-*, 23 I&N Dec. 270, 282 (AG 2002)).

"Official as well as unofficial country reports are probative evidence and can, by themselves, provide sufficient proof to sustain an alien's burden under the INA".

Zubeda v. Ashcroft, 333 F.3d 463 (3d Cir. 2003).

The Ninth Circuit has also addressed the use of country conditions in withholding cases, holding in *Kamalthas v. INS* that the "BIA failed to consider probative evidence in the record of country conditions which confirm that Tamil males have been subjected to widespread torture in Sri Lanka."

Kamalthas v. INS, 251 F.3d 1279 (9th Cir. 2001).

XIV. INTERVIEWS

A. General Considerations

Interviews for reasonable fear determinations should generally be conducted in the same manner as asylum interviews. They should be conducted in a non-adversarial manner, separate from the public and consistent with the guidance in the RAIO Combined Training lessons regarding interviewing.

See Reasonable Fear Procedures Manual (Draft). 8 C.F.R. § 208.31(c).

The circumstances surrounding a reasonable fear interview may be significantly different from an affirmative asylum interview. A reasonable fear interview may be conducted in a jail or other detention facility and the applicant may be handcuffed or shackled. Such conditions may be particularly traumatic for individuals who have escaped persecution or survived torture and may impact their ability to testify. Additionally, the applicant may have an extensive criminal record. Given these circumstances, officers should take particular care to maintain a

8 C.F.R. § 208.31(c).

Officers should read to the applicant paragraph 1.19 on Form 1-899, which de-

non-adversarial tone and atmosphere during reasonable fear interviews.

scribes the purpose of the interview.

At the beginning of the interview, the asylum officer should determine whether the applicant has an understanding of the reasonable fear process and answer any questions the applicant may have about the process.

B. Confidentiality

The information regarding the applicant's fear of persecution and/or fear of torture is confidential and cannot be disclosed without the applicant's written consent, unless one of the exceptions in the regulations regarding the confidentiality of the asylum process apply. At the beginning of the interview, the asylum officer should explain to the applicant the confidential nature of the interview.

8 C.F.R. § 208.6.

C. Interpretation

If the applicant is unable to proceed effectively in English, the asylum officer must use a commercial interpreter with which USCIS has a contract to conduct the interview.

8 C.F.R. § 208.31(c).

If the applicant requests to use a relative, friend, NGO or other source as an interpreter, the asylum officer should proceed with the interview using the applicant's interpreter. However, asylum officers are required to use a contract interpreter to monitor the interview to verify that the applicant's interpreter is accurate and neutral while interpreting.

Asylum officers may conduct interviews in the applicant's preferred language provided that the officer has been certified by the State Department, and that local office policy permits asylum officers to conduct interviews in languages other than English.

The applicant's interpreter must be at least 18 years old. The interpreter must not be:

- the applicant's attorney or representative,
- a witness testifying on behalf of the applicant, or
- a representative or employee of the applicant's country of nationality, or if the applicant is stateless, the applicant's country of last habitual residence.

See Reasonable Fear Procedures Manual (Draft)

D. Note Taking

Interview notes must be taken in a Question & Answer (Q&A) format. It is preferable that the interview notes be typed. When the interview notes are taken longhand, the APSO must ensure that they are legible. Interview notes must accurately reflect what transpired during the reasonable fear interview so that a reviewer can reconstruct the interview by reading the interview notes. In addition, the interview notes should substantiate the asylum officer's decision.

8 C.F.R. § 208.31(c).

Lafferty, John, Asylum Division, *Updated Guidance on Reasonable Fear Note-Taking,* Memorandum to All Asylum Office Staff (Washington, DC), May 9, 2014.

See also Reasonable Fear Procedures Manual (Draft).

The Reasonable Fear Q&A interview notes are not required to be a *verbatim* transcript.

Although interview notes are not required to be a *verbatim* record of everything said at the interview, they must provide an accurate and complete record of the specific questions asked and the applicant's specific answers to demonstrate that the APSO gave the applicant every opportunity to establish a reasonable fear of persecution, or a reasonable

fear of torture. In doing so, the Q&A notes must reflect that the APSO asked the applicant to explain any inconsistencies as well as to provide more detail concerning material issues. This type of record will provide the SAPSO with a clear record of the issues that may require follow-up questions or analysis, as well as assist the asylum officer in the identification of issues related to credibility and analysis of the claim after the interview.

Before ending the interview, the APSO must provide a summary of the material facts related to the protection claim and read it to the applicant who, in turn, will have the opportunity to add, or correct facts. The interview record is not considered complete until the applicant agrees that the summary of the protection claim is complete and correct.

E. Representation

The applicant may be represented by counsel or by an accredited representative at the interview. The representative must submit a signed form G-28. The role of the representative in the reasonable fear interview is the same as the role of the representative in the asylum interview.

The representative may present a statement at the end of the interview and, where appropriate, should be allowed to make clarifying statements in the course of the interview, so long as the representative is not disruptive. The asylum officer, in his or her discretion, may place reasonable limits on the length of the statement.

See Reasonable Fear Procedures Manual (Draft).

8 C.F.R. § 208.31(c); *see* discussion on role of the representative in the RAIO Training Module, *Interviewing-Introduction to the Non Adversarial Interview.*

F. Eliciting Information

The APSO must elicit all information relating both to fear of persecution and fear of torture, even if the asylum officer determines early in the interview that the applicant has established a reasonable fear of either.

See RAIO Training Module, *Interviewing-Eliciting Testimony*, section 3.0: "Officer's Duty to Elicit Testimony".

Specifically, the asylum officer must explore each of the following areas of inquiry, where applicable:

1. What the applicant fears would happen to him/her if returned to a country (elicit details regarding the specific type of harm the applicant fears)

2. Whom the applicant fears
3. The relationship of the feared persecutor or torturer to the government or government officials
4. Was a public official or other individual acting in an official capacity? Often the public official is a police officer. The following is a brief list of questions that may be asked when addressing whether a police officer was acting in an official capacity:
    a. Was the officer on duty?
    b. Was the officer in uniform?
    c. Did the officer show a police badge or other

"Eliciting" testimony means fully exploring an issue by asking follow-up questions to expand upon and clarify the interviewee's responses before moving on to another topic.

The list of areas of inquiry is not exhaustive. There may be other areas of inquiry that arise in the course of the interview. Also, the asylum officer is not required to explore the areas of inquiry in the sequence listed below. As in an asylum interview, each interview has a flow of information unique to the applicant.

type of official credential?

d. Did the officer have access to the victim because of his/her authority as a police officer?

e. If a potential torturer is not a public official or someone acting in official capacity, is there evidence that a public official or other person acting in official capacity had ,or would have prior knowledge of the torture and breached, or would breach a legal duty to prevent the torture, including acting a manner that can be considered to be willfully blind to the torture? Is the torturer part of the government in that country (including local government)?

f. If not, would a government or public official know what they were doing?

g. Would a government or public official think it was okay?

h. If you believe that the government would think this was okay or that the government is corrupt, why do you think this?

i. What experiences have you or people you know of had with the authorities that make you think they would think it was okay if someone was tortured?

j. Would the (agents of harm?) person or persons inflicting torture be told by the government or public official to do that?

k. Did you report any past harm to a public official?

l. What did the public official say to you when you reported it?

m. Did the public official ask you questions about

the incident? Did public officials go to crime scene to investigate?

n. Did you ever speak with police after you reported incident?

o. Did you inquire about any investigation? If so, please provide details.

p. Do you know if anyone was ever investigated or charged with crime?

5. The reason(s) someone would want to harm the applicant. For cases where no nexus to a protected ground is immediately apparent, the asylum officer in reasonable fear interviews should ask questions related to all five grounds to ensure that no nexus issues are overlooked.

6. Whether the applicant has been and/or would be in the feared offender's custody or control

a. How do you think you will be harmed?

   b. How will the feared offender find you?

7. Whether the harm the applicant fears may be pursuant to legitimate sanctions

   a. Would anyone have a legal reason to punish you in your home country?

   b. Do you think you will be given a trial if you are arrested?

   c. What will happen to you if you are put in prison?

8. Information about any individuals similarly situated to the applicant, including family members or others closely associated with the applicant, who have been threatened, persecuted, tortured, or otherwise harmed

9. Any groups or organizations the applicant is associated with that would place him/her at risk of persecution or torture, in light of country conditions information

10. Any actions the applicant has taken in the past (either

in the country of feared persecution or another country, including the U.S.) that would place him/her at risk of persecution or torture, in light of country conditions information

11. Any harm the applicant has experienced in the past:
    a. a description of the type of harm
    b. identification of who harmed the applicant
    c. the reason the applicant was harmed
    d. the relationship between the person(s) who harmed the applicant and the government
    e. whether the applicant was in that person(s) custody or control
    f. whether the harm was in accordance with legitimate sanctions

When probing into a particular line of questioning, it is important to keep asking questions that elicit details so that information relating to the is-

sues above is thoroughly elicited. It is also important to ask the application questions such as, "Is there anyone else or anything else you are afraid of, other than what we've already discussed?" until the applicant has been given an opportunity to present his or her entire claim.

The asylum officer should also elicit information relating to exceptions to withholding of removal, if it appears that an exception may apply. This information may not be considered in evaluating whether the applicant has a reasonable fear, but should be included in the interview Q&A notes, where applicable.

XV. REQUESTS TO WITHDRAW THE CLAIM FOR PROTECTION

See Reasonable Fear Procedures Manual (Draft).

An applicant may withdraw his or her request for protection from removal at any time during the reasonable fear process. When an applicant expresses a desire to withdraw the request for protection, the asylum officer must conduct an interview to determine whether

the decision to withdraw is entered into knowingly and willingly. The asylum officer should ask sufficient questions to determine the following:

- The nature of the fear that the applicant originally expressed to the DHS officer,
- Why the applicant no longer wishes to seek protection and whether there are any particular facts that led the applicant to change his or her mind,
- Whether any coercion or pressure was brought to bear on the applicant in order to have him or her withdraw the request, and
- Whether the applicant clearly understands the consequences of withdrawal, including that he or she will be barred from any legal entry into the United States for a period that may run from 5 years to life.

An elicitation of the nature of the fear that the applicant originally expressed does not require a full elicitation of the facts of the applicant's case. Rather, information regarding whether the request to withdraw is knowing and voluntary is central to determining whether processing the withdrawal of the claim for protection is appropriate. The determination as to whether the request to withdraw is knowing and voluntary is unrelated to whether the applicant has a fear of future harm. Processing the withdrawal of the claim for protection is appropriate when the decision was made knowingly and voluntarily even when the applicant still fears harm.

XVI. SUMMARY

A. Applicability

Asylum officers conduct reasonable fear of persecution or torture screenings in two types of cases in which an applicant has expressed a fear of return: 1) A prior order has been

reinstated pursuant to section 241(a)(5) of the INA; or 2) DHS has ordered an individual removed pursuant to section 238(b) of the INA based on a prior aggravated felony conviction.

B. Definition of Reasonable Fear of Persecution

A reasonable fear of persecution must be found if the applicant establishes a reasonable possibility that he or she would be persecuted on account of his or her race, religion, nationality, membership in a particular social group, or political opinion.

C. Definition of Reasonable Fear of Torture

A reasonable fear of torture must be found if the applicant establishes there is a reasonable possibility he or she will be tortured.

D. Bars

No mandatory bars may be considered in determining whether an individual has established a reasonable

fear of persecution or torture.

E. Credibility

The same factors apply in evaluating whether an applicant's testimony is credible as apply in the asylum adjudication context. The asylum officer should assess the credibility of the assertions underlying the applicant's claim, considering the totality of the circumstances and all relevant factors.

F. Effect of Past Persecution or Torture

1. If an applicant establishes past persecution on account of a protected characteristic, it is presumed that the applicant has a reasonable fear of future persecution on the basis of the original claim. This presumption may be overcome if a preponderance of the evidence establishes that,

a. due to a fundamental change in circumstances, the fear is no longer well-founded, or

b. the applicant could avoid future persecution by relocating to another part of the country of feared persecution and, under all the circumstances, it would be reasonable to expect the applicant to do so.

2. If the applicant establishes past torture, it may be presumed that the applicant has a reasonable fear of future torture, unless a preponderance of the evidence establishes that there is no reasonable possibility the applicant would be tortured in the future.

G. Internal Relocation

To establish a reasonable fear of persecution, the applicant must establish that it would

be unreasonable for the applicant to relocate. If the government is the feared offender, it shall be presumed that internal relocation would not be reasonable, unless a preponderance of the evidence establishes that, under all the circumstances, internal relocation would be reasonable.

Asylum officers should consider whether or not the applicant could safely relocate to another part of his or her country in reasonable fear of torture determinations. Credible evidence that the feared torturer is a public official will normally be sufficient evidence that there is no safe internal relocation option in the reasonable fear context. Asylum officers should apply the same reasonableness inquiry articulated in the persecution context to the CAT context.

H. Elements of the Definition of Torture

1. The torturer must be a public official or other person acting in an official capacity, or someone acting with

the consent or acquiescence of a public official or someone acting in official capacity.

2. The applicant must be in the torturer's control or custody.
3. The torturer must specifically intend to inflict severe physical or mental pain or suffering.
4. The harm must constitute severe pain or suffering.
5. If the harm is mental suffering, it must meet the requirements listed in the regulations, based on the "understanding" in the ratification instrument.
6. Harm arising only from, inherent in, or incidental to lawful sanctions generally is not torture. However, sanctions that defeat the object and purpose of the Torture Convention are not lawful sanctions. Harm arising out of such sanctions may constitute torture.
7. There is no requirement that the harm be inflicted

"on account" of any ground.

I. Evidence

Credible testimony may be sufficient to sustain the burden of proof, without corroboration. However, there may be cases where a lack of corroboration affects the applicant's credibility and ability to establish the requisite burden of proof. Country conditions information, where applicable, must be considered.

J. Interviews

Reasonable fear screening interviews generally should be conducted in the same manner as interviews in the affirmative asylum process, except DHS is responsible for providing the interpreter. The asylum officer must elicit all relevant information.

CBP Enforcement Actions - OIS ANALYSIS
OVERALL
FY18 Q1 - Q3 data - Outcomes as of End of Q3
Source: DHS Office of Immigration Statistics (OIS)

	Overall			Overall		
	USBP	OFO	CBP	USBP	OFO	CBP
Total Initial Actions	286,277	96,627	382,904	74.76%	25.24%	N/A
Repatriations	149,983	25,324	175,307	52.39%	26.21%	45.78%
Removed	138,978	13,933	152,911	48.55%	14.42%	39.93%
ER	75,397	13,292	88,689	26.34%	13.76%	23.16%
Reinstatement	62,264	9	62,273	21.75%	0.01%	16.26%
Other	1,317	632	1,949	0.46%	0.65%	0.51%
Returned	11,005	11,391	22,396	3.84%	11.79%	5.85%
No Confirmed Departure	136,294	71,303	207,597	47.61%	73.79%	54.22%
VD and Final Order	4,482	2,222	6,704	1.57%	2.30%	1.75%
In Absentia Final Order Issued	1,449	676	2,125	0.51%	0.70%	0.55%
Not in Absentia Final Order Issued	2,720	1,497	4,217	0.95%	1.55%	1.10%
Voluntary Departure Granted	313	49	362	0.11%	0.05%	0.09%
In Proceedings	90,585	41,484	132,069	31.64%	42.93%	34.49%
Relief	289	14,210	14,499	0.10%	14.71%	3.79%
Non-Removable	138	100	238	0.05%	0.10%	0.06%
Data Pending	40,800	13,287	54,087	14.25%	13.75%	14.13%

U.S. Customs and Border Protection

CBP STAT: Statistical Tracking and Analysis Team

Department of Homeland Security
U.S. Citizenship and Immigration Services,
Asylum Division

BRIEFING PAPER ON EXPEDITED REMOVAL AND CREDIBLE FEAR PROCESS

I. OVERVIEW OF EXPEDITED REMOVAL PROCESS

The expedited removal provisions of the Immigration and Nationality Act (INA) became effective April 1, 1997. Under the expedited removal provisions, where an immigration officer (usually CBP) determines that an alien arriving at a port of entry is inadmissible because the alien engaged in fraud or misrepresentation (section 212(a)(6)(C) of the INA) or lacks proper documents (section 212(a)(7) of the INA), the individual is ordered removed from the U.S. without a hearing before an immigration judge. However, if an individual expresses a fear of persecution or torture or an intention to apply for asylum, the case is referred to a USCIS asylum officer for a credible fear protection screening. In 2004, pursuant to notice published in the Federal Register, expedited removal was expanded beyond ports of entry to include those individuals apprehended within 100 air miles of the border and within 14 days of illegal entry.

II. CREDIBLE FEAR PROCESS

Any individual who asserts a fear of persecution or torture or an intention to seek asylum during the course of the expedited removal process is referred to an asylum officer for an interview to determine if the individual has a credible fear of persecution or torture. A credible fear of persecution or torture is established when there

is a significant possibility, taking into account the credibility of the statements made by the individual in support of his or her claim and such other facts as are known to the officer, that the individual could establish eligibility for asylum under Section 208 of the INA or withholding of removal or deferral of removal under the Convention Against Torture. (8 C.F.R. § 208.30(e)(2) & (3)). The "significant possibility" standard used in credible fear cases is intended to be a low threshold screening process in order to capture all potential refugees. The purpose of the credible fear screenings is to identify all individuals who may have viable claims in order to prevent the removal of a refugee or someone who would be tortured without a full hearing on the claim; asylum officers do not adjudicate actual asylum applications during this preliminary screening process.

If the asylum officer finds that an individual has established a credible fear of persecution or torture, the individual is placed into removal proceedings (under Section 240 of the INA) where he or she is afforded the opportunity to apply for asylum before the Immigration Court. If the asylum officer finds that the individual has not established a credible fear of persecution or torture, the individual may ask an Immigration Judge to review the asylum officer's determination. If the individual does not ask for review, or if the Immigration Judge does not overturn the asylum officer's decision,[1] then the individual is removed from the U.S. under the expedited removal order.

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[1] If an individual neither requests nor declines review of the determination, the individual is still referred to the Immigration Judge for review of the credible fear determination.

The majority of individuals in the credible fear process are subject to mandatory detention while their cases are pending. (8 C.F.R. § 235.3(b)(4)(ii)). Individuals found to have a credible fear are subject to continued detention, but ICE may use its discretion to parole them from custody on a case-by-case basis.

For those individuals apprehended between ports of entry, the individual may ask an Immigration Judge to review their custody determination. On January 4, 2010, ICE changed its parole policy for arriving aliens found to have a credible fear by requiring each case to be considered for parole without requiring a specific request.[2] The Asylum Division coordinated and assisted ICE in the implementation of those changes, including the development of a notice to such aliens to gather and provide information helpful to a parole determination.

The Asylum Division's goals are to complete 85% of all credible fear screenings within 14 days of referral to an asylum officer. Since establishing these completion goals, the Asylum Division has routinely met the 85% goal and usually exceeds it by completing more than 90% of cases within 14 days.

In July 2013, USCIS accelerated the processing goal from 85 % of all credible fear screenings within 14 days, to an 8-day average target. At the end of the FYl3, the Asylum Division was processing credible fear cases at an overall 8-day average.

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[2] The revised parole policy does not apply to individuals placed into ER upon apprehension between ports of entry.

III. STATISTICS

Table A: Consistently, a small percentage of individuals subjected to expedited removal have been referred for a credible fear interview.

Fiscal Year	Subjected to Expedited Removal	Referred for a Credible Fear Interview	Percentage
2006	104,440	5,338	5%
2007	100,992	5,252	5%
2008	117,624	4,995	4%
2009	111,589	5,369	5%
2010	119,876	8,959	7%
2011	137,134	11,217	8%
2012	188,187	13,880	7%
2013	241,442	36,035	15%
2014	240,908	51,001	21%
2015	192,120	48,052	25%
2016	243,494	94,048	39%
2017	Unavailable	78,564	Unavailable

Note: The "Subject to Expedited Removal" data in 2006 and 2007 include apprehensions performed by Border Patrol and aliens determined inadmissible at Ports of Entry. The "Subject to Expedited Removal" data from 2008 to 2015 include apprehensions performed by Border Patrol, ICE Enforcement and Removal Operations, and aliens determined inadmissible at ports of entry.
Source: U.S. Department of Homeland Security.

Table B: A high percentage of those referred for a credible fear interview meet the credible fear standard.

Credible Fear Cases	FY-18	FY-17	FY-16	FY-15	FY-14	FY-13
Referrals from CBP or ICE	99,035	78,564	94,048	48,052	51,001	36,035
Completed	97,728	79,710	92,990	48,415	48,637	36,174
CF Found	74,677	60,566	73,081	33,988	35,456	30,393
CF Not Found	9,659	8,245	9,697	8,097	8,977	2,587
Closed	13,392	10,899	10,212	6,330	4,204	3,194
Of all referred cases completed by USCIS, % where CF was found	76%	76%	79%	70%	73%	84%

Source: USCIS Global Database

Table C: Top Five Nationalities Referred for a Credible Fear Interview

FY 2018		FY2017		FY2016		FY2015	
Nationality	Referrals	Nationality	Referrals	Nationality	Referrals	Nationality	Referrals
Honduras	26,404	El Salvador	20,127	El Salvador	32,831	El Salvador	14,376
Guatemala	25,612	Honduras	16,751	Honduras	19,881	Honduras	7,590
El Salvador	13,745	Guatemala	15,900	Guatemala	15,773	Guatemala	7,253
India	8,113	Mexico	4,977	Mexico	7,815	Mexico	7,088
Mexico	6,943	Haiti	4,211	India	3,237	India	1,881

FY2014		FY2013		FY2012	
Nationality	Referrals	Nationality	Referrals	Nationality	Referrals
El Salvador	19,262	El Salvador	10,935	El Salvador	4,087
Honduras	8,254	Honduras	6,871	Honduras	2,405
Guatemala	6,732	Guatemala	5,573	Guatemala	2,015
Mexico	4,878	India	2,974	Mexico	1,299
Ecuador	3,300	Mexico	2,612	Ecuador	863

Source: Global Database

TESTIMONY OF

Robert E. Perez
Acting Deputy Commissioner
U.S. Customs and Border Protection

BEFORE

U.S. Senate

Committee on Homeland Security
and Governmental Affairs

ON

"The Implications of the Reinterpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives"

Sept. 18, 2018
Washington, DC

Introduction

Chairman Johnson, Ranking Member McCaskill, and distinguished Members of the Committee, thank you for the opportunity to appear before you today on behalf of U.S. Customs and Border Protection (CBP).

As America's unified border agency, CBP protects the United States from terrorist threats and prevents the illegal entry of persons and contraband, while facilitating lawful travel and trade. CBP works tirelessly to detect illicit smuggling of people and trafficking of drugs, weapons, and money, while facilitating the flow of cross-border commerce and tourism.

CBP is responsible for securing approximately 7,000 miles of land border, 95,000 miles of shoreline, 328 ports of entry, and the associated air and maritime space from the illegal entry of people and contraband into the United States. The border environment in which CBP works is dynamic and requires continual adaptation to respond to emerging threats and changing conditions. Recently, we have seen an increase in the levels of migration at our southwest border.

There are many factors that influence an individual's decision to attempt to migrate to the United States. These individuals are often driven by so-called "push factors," such as violent conditions in the country of origin, or "pull factors," such as immigration loopholes that increase the probability of being released into the interior of the United States. The result has been an increase in southwest border migration, both at our ports of entry and between them. Comparing July 2018 to July 2017, the overall numbers of individuals encountered are up nearly 57 percent; the largest increase

has been in the number of family units, which increased more than 142 percent since last year. Although FY 2017 was an anomalously low year for southwest border migration, the sharp increase is a cause for concern.

From October 1, 2017, to July 31, 2018, the U.S. Border Patrol apprehended more than 317,000 individuals between ports of entry. In the same period of time, the Office of Field Operations determined that more than 105,000 individuals presenting themselves at ports of entry were inadmissible.

After CBP encounters an alien who has unlawfully entered or is inadmissible to the United States, the alien is processed and, in general, is temporarily held in CBP custody before being transferred to U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) or, in the case of unaccompanied alien children (UAC), to the U.S. Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR). Increased migration due to push and pull factors causes a strain on U.S. Citizenship and Immigration Services (USCIS), CBP, and ICE operations and stresses the system at various points in the processing, holding, detention, and placement continuum. Increasing numbers of aliens held in CBP facilities divert CBP resources from addressing a number of serious threats to our nation, including transnational criminal organizations, dangerous narcotics, and harmful agricultural products.

The rise in migration is, in part, a consequence of the gaps created by layers of laws, judicial rulings, and policies. Today, I would like to testify about the operational impact these laws, judicial decisions, and policies

—however well-intentioned—have on CBP's ability to fulfill its mission.

***Flores* Settlement Agreement**

The 1997 *Flores Settlement Agreement* requires the government to release alien minors from detention without unnecessary delay, or, under the current operational environment, to transfer them to non-secure, licensed programs "as expeditiously as possible." The settlement agreement also sets certain standards for the holding and detention of minors, and requires that minors be treated with dignity, respect, and receive special concern for their particular vulnerability.

The Department of Homeland Security (DHS) maintains that the settlement agreement was drafted to apply only to unaccompanied minors. In 2014, DHS increased the number of family detention facilities in response to the surge of alien families crossing the border. Soon after, the U.S. District Court for the Central District of California interpreted *Flores* as applying not only to UAC, but also to those children who arrived with their parents or legal guardians. This ruling limited DHS's ability to detain family units during their immigration proceedings. In general, pursuant to this and other court decisions interpreting the *Flores Settlement Agreement*, DHS rarely holds accompanied children and their parents or legal guardians for longer than 20 days.

However, an unintended consequence of the limitations on time-in-custody mandated by the *Flores Settlement Agreement* and court decisions interpreting it is that adults who arrive in this country alone are treated differently than adults who arrive with a child.

UAC Provision of Trafficking Victims Protection Reauthorization Act of 2008

There are similar unintended consequences associated with the UAC provision enacted in the *Trafficking Victims Protection Reauthorization Act of 2008* (TVPRA). The provision requires that, once a child is determined to be a UAC, the child be transferred to ORR within 72 hours, absent exceptional circumstances, unless the UAC is a national or habitual resident of a contiguous country and is determined to be eligible to withdraw his or her application for admission and be repatriated to that contiguous country immediately. CBP complies with the *Flores Settlement Agreement*, court orders, and the TVPRA and processes, and holds all UAC accordingly.

UAC who are nationals or habitual residents of Mexico or Canada require additional consideration. Under the UAC provision of the TVPRA, a UAC who is a national or habitual resident of Canada or Mexico may be permitted to withdraw his or her application for admission and be repatriated immediately, as long as CBP determines that he or she has not been a victim of severe forms of trafficking in persons, and there is no credible evidence that the UAC is at risk of being trafficked upon return to the country of nationality or of last habitual residence; has no fear of returning owing to a credible fear of persecution; and has the ability to make an independent decision to withdraw his or her application for admission. CBP uses CBP Form 93 to screen these contiguous country UAC to determine whether they meet the requirements of the TVPRA. Under current procedures, CBP also screens all UAC using CBP Form 93

to determine whether they have been, or are likely to be, victims of human trafficking or have a fear of return.

The CBP Form 93 includes examples of trafficking indicators and requires the processing Border Patrol Agent or CBP Officer to pursue age appropriate questions to help identify if a UAC may have been, or is likely to be, the victim of trafficking; has a fear of return; or, for contiguous country UAC, is able to make an independent decision to withdraw an application for admission. Based on the totality of the situation, including visual and verbal responses, the Border Patrol Agent or CBP Officer determines if the UAC is a victim or potential victim of trafficking or has a fear of return. CBP conducts these screenings at the processing location—generally at a port of entry or Border Patrol station.

For Mexican and Canadian UAC who cannot be returned immediately because they do not meet one or more of these requirements or who do not choose to withdraw their application for admission, and for all UAC from countries other than Mexico or Canada, the UAC provision of the TVPRA requires that they be served a Notice to Appear, placed in formal removal proceedings under Section 240 of the Immigration and Nationality Act, and transferred to the care and custody of ORR. If an immigration judge orders a UAC removed or grants voluntary departure, ICE arranges for the UAC's safe return to their country of nationality.

Upon determining that a UAC is unable to withdraw his or her application for admission, or chooses not to, CBP notifies both the local ICE Field Office Juvenile Coordinator (FOJC) and HHS/ORR. Once HHS/ORR notifies CBP and ICE that a bed is available for the UAC, either ICE, CBP, or DHS contractors transport the

UAC to an HHS/ORR shelter facility. CBP maintains custody of the UAC while awaiting notification from HHS/ORR that facilities are available—again, usually for no longer than 72 hours, absent exceptional circumstances.

CBP operates short-term detention facilities for, as defined in 6 U.S.C. § 211(m), detention for 72 hours or fewer before repatriation to a country of nationality or last habitual residence. In order to comply with the TVPRA and other statutory requirements, CBP prioritizes UAC for processing. However, HHS/ORR's ability to quickly place UAC in shelters or with adequate sponsors is severely limited by any increases in UAC apprehensions—such as those we have seen in recent months.

Because of the TVPRA, UAC are often released to adult sponsors in the community, and some subsequently fail to show up for court hearings or comply with removal orders.

Asylum Claims

CBP carries out its mission of border security while adhering to U.S. and legal international obligations for the protection of vulnerable and persecuted persons. The laws of the United States, as well as international treaties to which we are a party, allow people to seek asylum on the grounds that they fear being persecuted outside of the United States because of their race, religion, nationality, membership in a particular social group, or political opinion. CBP understands the importance of complying with these laws, and takes its legal obligations seriously.

Accordingly, CBP has designed policies and procedures based on these legal standards, in order to protect vulnerable and persecuted persons in accordance with these legal obligations.

If a CBP officer or agent encounters an alien who is subject to expedited removal at or between ports of entry, and the person expresses fear of being returned to his or her home country, CBP processes that individual for a credible or reasonable fear screening with an asylum officer from USCIS for adjudication of that claim. CBP officers and agents neither make credible fear determinations, nor weigh the validity of the claims.

Importance of Border Security

Ultimately, enforcement of immigration laws is the foundation of a secure border and a secure nation. Each action taken by lawmakers, the judiciary, policymakers, and operators—while made in good faith by people grappling with complex issues—can have unintended consequences on the functioning of the immigration system as a whole. DHS leaders have worked closely with other Administration officials and members of Congress to address existing loopholes that allow individuals and dangerous transnational criminal organizations to exploit our immigration laws. I look forward to continuing to work with the Committee toward this goal.

Thank you for the opportunity to appear before you today. I look forward to your questions.

U.S. Immigration and Customs Enforcement

STATEMENT

OF

MATTHEW T. ALBENCE

EXECUTIVE ASSOCIATE DIRECTOR
ENFORCEMENT AND REMOVAL OPERATIONS
U.S. IMMIGRATION AND
CUSTOMS ENFORCEMENT
DEPARTMENT OF HOMELAND SECURITY

REGARDING A HEARING ON

"Reinterpretation of Flores Settlement and Its Impact on Family Separation and Catch and Release"

BEFORE THE

UNITED STATES SENATE
HOMELAND SECURITY AND GOVERNMENTAL
AFFAIRS COMMITTEE

Tuesday, Sept. 18, 2018
342 Senate Dirksen Office Building

Introduction

Chairman Johnson, Ranking Member McCaskill, and distinguished members of the Committee:

My name is Matthew T. Albence, and I am the Executive Associate Director of U.S. Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations and the Senior Official Performing the Duties of the Deputy Director. Thank you for the opportunity to appear before you today to discuss the impact of the *Flores* Settlement Agreement (FSA) on ICE's critical mission of protecting the homeland, securing the border, enforcing criminal and civil immigration laws in the interior of the United States, and ensuring the integrity of our nation's immigration system.

Our nation's immigration laws are extremely complex, and in many cases, outdated and full of loopholes. Moreover, the immigration laws have been increasingly subject to litigation before the federal courts, which has resulted in numerous court decisions, orders, and injunctions that have made it increasingly difficult for ICE to carry out its mission. The current legal landscape often makes it difficult for people to understand all that the dedicated, courageous, professional officers, agents, attorneys, and support staff of ICE do to protect the people of this great nation. To ensure the national security and public safety of the United States, our officers faithfully execute the immigration laws enacted by Congress, which may include enforcement action against any alien encountered in the course of their duties who is present in the United States in violation of immigration law.

Executive Orders

During his first two weeks in office, President Trump signed a series of Executive Orders that laid the policy groundwork for the Department of Homeland Security (DHS) and ICE to carry out the critical work of securing our borders, enforcing our immigration laws, and ensuring that individuals who pose a threat to national security or public safety, or who otherwise are in violation of the immigration laws, are not permitted to enter or remain in the United States. These Executive Orders established the Administration's policy of effective border security and immigration enforcement through the faithful execution of the laws passed by Congress.

On June 20, 2018, President Trump signed an Executive Order entitled, *Affording Congress an Opportunity to Address Family Separation.* This Executive Order clarified that it is the policy of the Administration to rigorously enforce our immigration laws, including by pursuing criminal prosecutions for illegal entry under 8 U.S.C. § 1325(a), until and unless Congress directs otherwise. The goal of this Executive Order was to allow DHS to continue its judicious enforcement of U.S. immigration laws, while maintaining family unity for those illegally crossing the border. However, the FSA, as interpreted by court decisions, makes it operationally unfeasible for DHS and ICE to simultaneously enforce our immigration laws and maintain family unity, and DHS supports legislation that replaces this decades-old agreement with a contemporary solution that effectively addresses current immigration realities and border security requirements.

Challenges and Legislative Fixes

Since the initial surge at the Southwest border in Fiscal Year (FY) 2014, there has been a significant increase in the arrival of both family units and unaccompanied alien children (UACs) at the Southern border, a trend which continues despite the Administration's enhanced enforcement efforts. Thus far in FY 2018, as of the end of August, approximately 53,000 UACs and 135,000 members of alleged family units have been apprehended at the Southern border or deemed inadmissible at Ports of Entry. These numbers represent a marked increase from FY 2017, when approximately 49,000 UACs and 105,000 members of family units were apprehended or deemed inadmissible throughout the entire fiscal year.

Most of these family units and UACs are nationals of the Central American countries of El Salvador, Guatemala, and Honduras. While historically Mexico was the largest source of illegal immigration to the United States, the number of Mexican nationals attempting to cross the border illegally has dropped dramatically in recent years. This is significant, because removals of non-Mexican nationals take longer, and require ICE to use additional detention capacity, expend more time and effort to secure travel documents from the country of origin, and arrange costly air transportation. Additionally, pursuant to the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), UACs from countries other than Canada and Mexico may not be permitted to withdraw their applications for admission, further encumbering the already overburdened immigration courts. With an immigration court backlog of over 700,000 cases on the non-detained docket alone, it takes years for many of these cases to work their way through

the immigration court system, and few of those who receive final orders are ever actually returned to their country of origin. In fact, only approximately 3% of UACs from Honduras, El Salvador, or Guatemala encountered at the Southwest border in FY 2014 had been removed or returned by the end of FY 2017, despite the fact that by the end of FY 2017 approximately 26% of this cohort had been issued a final removal order.[1]

One of the most significant impediments to the fair and effective enforcement of our immigration laws for family units and UACs is the FSA. In 1997, the former Immigration and Naturalization Service (INS) entered into the FSA, which was intended to address the detention and release of unaccompanied minors. Since it was executed, the FSA has spawned over twenty years of litigation regarding its interpretation and scope and has generated multiple court decisions resulting in expansive judicial interpretations of the original agreement in ways that have severely limited the government's ability to detain and remove UACs as well as family units. Pursuant to court decisions interpreting the FSA, DHS can generally only detain alien minors accompanied by a family member in a family residential center for approximately 20 days before releasing them, and the TVPRA generally requires that DHS transfer any UAC to the Department of Health and Human Services (HHS) within 72 hours, absent exceptional circumstances. However, when these UACs are released by HHS, or family

[1] This figure includes aliens who accepted an order of voluntary departure but whose departure from the United States has not been confirmed. Approximately 44% of the cohort remained in removal proceedings as of the end of FY 2017.

units are released from DHS custody, many fail to appear for court hearings and actively ignore lawful removal orders issued against them. Notably, for family units encountered at the Southwest border in FY 2014, as of the end of FY 2017, 44% of those who remained in the United States were subject to a final removal order, of which 53% were issued *in absentia*. With respect to UACs, the Department of Justice's Executive Office for Immigration Review reports that from the beginning of FY 2016 through the end of June in FY 2018, nearly 19,000 UACs were ordered removed *in absentia*—an average of approximately 568 UACs per month.

This issue has not been effectively mitigated by the use of Alternatives to Detention (ATD), which has proved to be substantially less effective and cost-efficient in securing removals than detention. Specifically, while the ATD program averages 75,000 participants, in FY 2017, only 2,430 of those who were enrolled in the ATD program were removed from the country—this accounts for only one percent of the 226,119 removals conducted by ICE during that time. Aliens released on ATD have their cases heard on the non-detained immigration court dockets, where cases may linger for years before being resolved. Thus, while the cost of detention per day is higher than the cost of ATD per day, because those enrolled in the ATD program often stay enrolled for several years or more, while those subject to detention have an average length of stay of approximately 40 days, the costs of ATD outweighs the costs of detention in many cases. Nor are the costs of ATD any more justified by analyzing them on a per-removal basis. To illustrate, in FY 2014, ICE spent $91 million on ATD, which resulted in 2,157 removals; by FY 2017, ICE spending on

ATD had more than doubled to $183 million but only resulted in 2,430 removals of aliens on ATD—an increase of only 273 removals for the additional $92 million investment, and an average cost of $75,360 per removal. Had this funding been utilized for detention, based on FY 2017 averages, ICE could have removed almost ten times the number of aliens as it did via ATD.

Moreover, because family units released from custody and placed on ATD abscond at high rates—rates significantly higher than non-family unit participants—many family units must be apprehended by ICE while at large. Specifically, in FY 2018, through July 31, 2018, the absconder rate for family units on ATD was 27.7%, compared to 16.4% for non-family unit participants. Such at-large apprehensions present a danger to ICE officers, who are the victims of assaults in the line of duty at alarmingly increasing rates. In FY 2017 and FY 2018, through the end of August, ICE's Office of Professional Responsibility and/or the DHS Office of the Inspector General investigated 73 reported assaults on ICE officers, 17 of which have resulted in an arrest, indictment, and/or conviction to date. Additionally, because ICE lacks sufficient resources to locate, arrest, and remove the tens of thousands of UACs and family units who have been ordered removed but are not in ICE custody, most of these aliens remain in the country, contributing to the more than 564,000 fugitive aliens on ICE's docket as of September 8, 2018.

Unfortunately, by requiring the release of family units before the conclusion of immigration proceedings, seemingly well-intentioned court rulings, like those related to the FSA, and legislation like the TVPRA in its current form create legal loopholes that are exploited by

transnational criminal organizations and human smugglers. These same loopholes encourage parents to send their children on the dangerous journey north, and further incentivizes illegal immigration. As the record numbers indicate, these loopholes have created an enormous pull-factor. Amendments to the laws and immigration court processes are needed to help ensure the successful repatriation of aliens ordered removed by an immigration judge. Specifically, the following legislative changes are needed:

Enforcement and Removal Operations

U.S. Department of Homeland Security
500 12th Street, SW
Washington, D.C. 20536

U.S. Immigration and Customs Enforcement

MEMORANDUM FOR THE RECORD

FROM: David A. Marin /s/ DAVID MARIN
Acting Deputy Executive Associate Director

SUBJECT: U.S. Immigration and Customs Enforcement Data Regarding Detention, Alternatives to Detention Enrollment and Removals as of December 23, 2018, Related to Rulemaking Entitled, Procedures to Implement Section 235(b)(2)(C) of the Immigration and Nationality Act, RIN 1651-AB13

Purpose:

This memorandum includes detention, alternatives to detention enrollment, and removal data as of December 23, 2018. The data in the tables below were compiled by U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations as part of periodic internal U.S. Department of Homeland Security reporting a snapshot in time. This data is derived from various manual and systematic data sources to report ongoing operations. This memorandum is intended for inclusion in the administrative record for the above-referenced rulemaking.

ICE ERO	Adult Removals	Adults Transferred	UAC Transferred
Number of Individuals	824	438	300
Completion Date	12/20/2018	12/20/2018	12/23/2018
Flights	8	4	N/A

UAC Pending Transport	FMUA Pending Transport
210	6

ICE ERO	Daily Adult Population	FMUA Population (FRC)	ATD Enrollment
Number of Individuals	45,150	1,711	93,635
Capacity	43,324	~2,500	81,024
Percent Capacity	104%	68%	116%

Statistics Yearbook
Fiscal Year 2017

Prepared by the Planning, Analysis, & Statistics Division

Contact Information
Office of Policy
Communications and Legislative Affairs Division
5107 Leesburg Pike, Suite 1902
Falls Church , VA 22041
(703) 305-0289
(703) 605-0365 (fax)

Disclaimer
The Statistics Yearbook has been prepared as a public service by the Executive Office for Immigration Review and is strictly informational in nature. In no way should any information in the Statistics Yearbook, in whole or in part, be regarded as legal advice or authority, or be understood in any way to enlarge upon, or otherwise modify or interpret, any existing legal authority, including, but not limited to, the Immigration and Nationality Act and Title 8 of the Code of Federal Regulations.

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A NOTE ON FORMAT

Since publication of the Executive Office for Immigration Review (EOIR) fiscal year (FY) 2016 Statistics Yearbook EOIR has reassessed the format of its annual yearbook, leading to some delay in the release of the FY 2017 Statistics Yearbook. For the FY 2017 Yearbook, EOIR has improved the graphics and the layout to make the data easier to understand. It has also endeavored to improve the precision of reported statistics and their utility for operations and public interest. Further, EOIR's ongoing public release of data reports, many of which have already reported FY 2017 data contained in the Yearbook, and the periodic public release of EOIR's overall Case Data file, which contains almost all data from FY 2017 that is otherwise presented in the Yearbook, potentially render the release of an annual yearbook obsolete. Nevertheless, EOIR anticipates releasing the FY 2018 Statistics Yearbook on a much more expeditious timetable, though its primary commitment will continue to be updates to its online data.

Please refer any questions on these improvements to EOIR's Office of Policy, Communications and Legislative Affairs Division.

THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

EOIR is responsible for adjudicating immigration cases. On behalf of the Attorney General, EOIR interprets and administers federal immigration laws and regulations through immigration court cases, appellate reviews, and administrative hearings in certain types of immigration-related cases. EOIR consists of three adjudicatory bodies: The Office of the Chief Immigration Judge (OCIJ), the Board of Immigration Appeals (BIA), and the Office of the Chief Administrative Hearing Officer (OCAHO).

OCIJ provides overall program direction and establishes priorities for 338 immigration judges (IJ) located in 61 immigration courts throughout the nation. The BIA hears appeals from certain decisions rendered by IJs and by district directors of Department of Homeland Security (DHS) in a wide variety of cases. OCAHO conducts hearings in civil penalty cases arising from the unlawful employment of aliens, unfair immigration-related employment practices, and civil document fraud.

Although this Statistics Yearbook addresses each of EOIR's three adjudicatory bodies, most of the data presented comes from immigration court cases. Most immigration court cases involve removal proceedings. A removal proceeding has two parts. First, an immigration judge assesses whether an alien is removable as charged under the applicable law. If an immigration judge determines that the alien is not removable, then

the immigration judge will terminate proceedings.[1] If the immigration judge sustains the charge or charges of removability, proceedings continue. A finding of removability by itself never guarantees that an alien will be ordered removed or that the alien will actually be removed. Rather, if the alien is found removable, the judge must also make a second determination as to whether the alien is eligible for any relief or protection that would allow the alien to remain in the United States. Examples of such relief or protection include asylum, withholding of removal, protection under the Convention Against Torture, adjustment of status, cancellation of removal for lawful permanent residents, cancellation of removal for certain non-permanent residents, and certain waivers provided by the Immigration and Nationality Act.[2]

The removal proceeding begins when the DHS (either U.S. Immigration and Customs Enforcement (ICE), U.S. Citizenship and Immigration Services (USCIS), or U.S.

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[1] Although applicable regulation distinguish between the dismissal of proceedings and the termination of proceedings, EOIR classifies both of them as "terminations" for statistical purposes because the outcomes are substantively identical.

[2] Although relief (*e.g.* asylum) and protection (*e.g.* withholding of removal) are legally distinct outcomes, EOIR classifies both of them as "relief" for statistical purposes because the outcomes are similar in that for both, an alien is generally allowed to remain in the United States. Additionally, voluntary departure is a form of relief from removal, but it carries an alternate order of removal if the departure is not timely effectuated. Consequently, EOIR classifies it as a separate outcome for statistical purposes and does not count it as either relief or an order of removal.

Customs and Border Protection (CBP)) serves an individual with a charging document, called a Notice to Appear (NTA), and files it with an immigration court.

Aliens in removal proceedings, called respondents, have a right to legal representation at no expense to the government. EOIR also provides a list of *pro bono* legal service providers to any respondent who appears in removal proceedings without representation.

During the removal proceeding, the immigration court schedules an initial hearing, referred to as a master calendar hearing, before an immigration judge. At this hearing, the immigration judge informs the respondent of his or her rights and addresses representation. The judge may also take pleadings, determine removability, and ascertain apparent eligibility for any relief or protection provided for by law. If a judge finds an alien removable and the alien wishes to apply for relief or protection from removal, the judge will schedule an individual merits hearing on the alien's application where both parties (the respondent and DHS) may present arguments and evidence regarding that application. If the immigration judge finds the alien eligible for relief or protection from removal, the judge will then grant the application.

If an immigration judge finds an alien is removable and ineligible for any relief or protection from removal, the judge will order the alien removed. ICE is then responsible for any subsequent detention and removal activities. The issuance of a removal order does not guarantee the actual physical removal of an alien from the United States.

Within 30 days of the immigration judge's decision in a removal case, either party or both parties may appeal the decision to the BIA. If the BIA decision is adverse to the alien, the alien may file a petition for review of that decision with the appropriate federal circuit court of appeals within 30 days.

In certain circumstances, a party to a removal case may also file a motion with the immigration court to reconsider or reopen the case after an immigration judge or the BIA has rendered a decision.

In certain circumstances, for aliens detained by DHS or aliens recently released from custody by DHS, an immigration judge may consider requests to redetermine the conditions of custody or to ameliorate the conditions of release. Any alien may make such a request, and an immigration judge will preside over a hearing on the request, commonly called a "bond hearing." Whether an immigration judge grants the request ultimately depends on the facts and applicable law of each case. Either party or both parties may appeal the immigration judge's bond decision to the BIA.

STATISTICS YEARBOOK KEY DEFINITIONS

The following definitions are applicable to the FY 2017 Yearbook. Please note that prior Yearbooks may have utilized different definitions and that some terms may have different usages or definitions outside the Yearbook context.

Immigration court matters include cases, bond redeterminations , and motions to reopen, reconsider and recalendar.

Immigration court cases include twelve case types, di vided into four categories. I-862 case types include removal, deportation, and exclusion cases. I-863 case types include asylum-only, withholding-only, credible fear review, reasonable fear review, and claimed status review cases. Other case types include rescission nonremoval Nicaraguan Adjustment and Central American Relief Act (NACARA), departure control, and continued detention review cases.

Immigration court receipts is the total number of charging documents, bond redeterminations, and motions to reopen, reconsider, and recalendar received within the reporting period.

Immigration court matter completions is the total number of immigration judge decisions on cases and bond redeterminations, plus the total number of denied motions to reopen, reconsider, and recalendar.

Initial case completion (ICC) is the first dispositive decision rendered by an immigration judge. For instance, an I-862 removal case is completed by an order of removal, relief, voluntary departure, termination, or other.

An order granting a continuance, changing venue, or administratively closing a case is not a dispositive decision and, thus, does not constitute a case completion.

Subsequent case completion refers to any dispositive decision by an immigration judge after an ICC.

IMMIGRATION COURTS

PENDING CASELOAD

Figure 1. The number of pending immigration court cases has grown by 84 percent since the end of FY 2013, and by 26 percent since the end of FY 2016.

Figure 1. OCIJ Pending Caseload

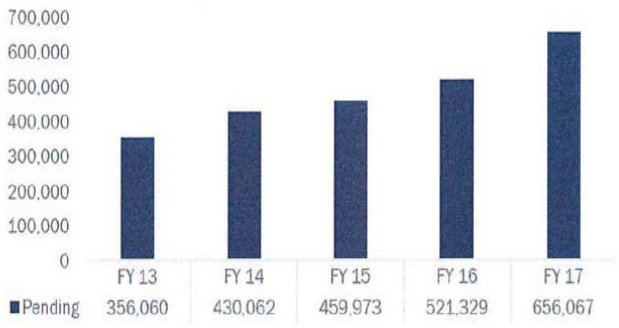


Figure 2. The BIA's pending caseload decreased 32 percent from FY 2013 to FY 2017.

Figure 2. BIA Pending Caseload

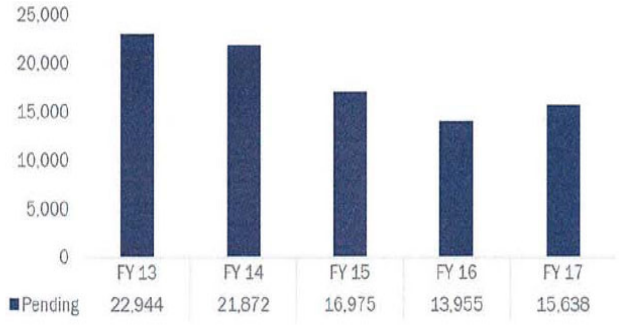


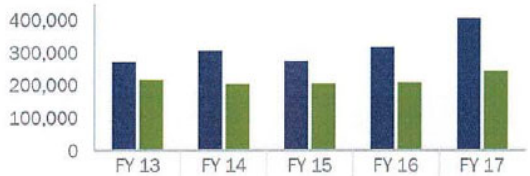
Table 1. Immigration Courts Pending Cases

Immigration Court	Pending Cases as of 9/30/2017
Adelanto	1,258
Arlington	38,966
Atlanta	19,159
Aurora	417
Baltimore	29,516
Batavia	317
Bloomington	6,210
Boston	22,505
Buffalo	1,466
Charlotte	12,981
Chicago	29,197
Cleveland	7,835
Dallas	16,940
Denver	10,660
Detroit	4,385
El Paso	4,879
El Paso SPC	440
Elizabeth	672
Eloy	1,096
Fishkill	119
Florence	589
Harlingen	2,498
Hartford	4,019
Honolulu	628
Houston	48,872
Houston SPC	1,219
Imperial	3,444
Kansas City	6,353
Krome	722
Las Vegas	3,652
LaSalle	318
Los Angeles (N)	61,885
Los Angeles (D)	526
Louisville	4,631
Memphis	10,858
Miami	32,486
New Orleans	8,483
New York City	84,090
Newark	33,532
Oakdale	268
Omaha	8,653
Orlando	10,410
Otay Mesa	808
Otero	196
Pearsall	765
Philadelphia	9,729
Phoenix	7,287
Port Isabel	527
Portland	4,215
Saipan	98
Salt Lake City	2,612
San Antonio	27,484
San Diego	4,530
San Francisco	47,878
San Juan	219
Seattle	8,789
Stewart	807
Tacoma	980
Tucson	723
Ulster	156
Varick	662
York	448
Total	**656,067**

TOTAL I-862 MATTERS RECEIVED AND COMPLETED

Figure 3. The number of I-862 matters the immigration courts received increased by 28 percent between FY 2016 and FY 2017. The number of I-862 matters the immigration courts completed increased by 17 percent from FY 2016 to FY 2017.

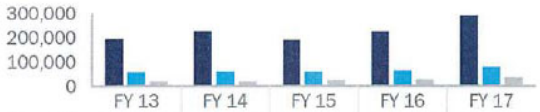
Figure 3. Total I-862 Immigration Court Matters



	FY 13	FY 14	FY 15	FY 16	FY 17
Receipts	271,726	307,017	274,920	316,343	405,947
Completions	217,123	203,325	204,909	207,230	243,128

Figure 4. New NTAs constitute the bulk of the courts' work.

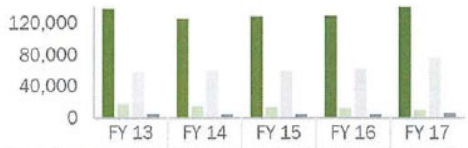
Figure 4. I-862 Immigration Court Matters Received by Type



	FY 13	FY 14	FY 15	FY 16	FY 17
New NTAs	193,690	226,670	189,676	224,963	291,258
Bonds	57,673	60,476	60,067	63,421	78,483
Motions	20,363	19,871	25,177	27,959	36,206
Total	271,726	307,017	274,920	316,343	405,947

Figure 5. The majority of matters completed are I-862 ICCs.

Figure 5. I-862 Immigration Court Matters Completed by Type



	FY 13	FY 14	FY 15	FY 16	FY 17
Initial Case Completions	137,329	124,649	127,452	128,201	149,581
Subsequent Case Completions	17,511	14,448	13,650	12,433	10,164
Bonds	57,531	59,852	59,543	62,197	77,278
Motions (Not Granted)	4,752	4,376	4,264	4,399	6,105
Total	217,123	203,325	204,909	207,230	243,128

Table 2. Total I-862 Immigration Court Matters Received by Court

Immigration Court	FY 2016 Total Matters	FY 2017				Rate of Change: Total Matters
		Total Matters	New NTAs	Bonds	Motions	
Adelanto	7,664	8,486	3,681	4,754	51	11%
Arlington	13,547	15,488	12,317	1,492	1,679	14%
Atlanta	8,524	11,714	8,625	2,064	1,025	37%
Aurora	3,044	3,848	2,016	1,776	56	26%
Baltimore	8,825	14,583	12,880	750	953	65%
Batavia	2,981	2,491	1,226	1,239	26	-16%
Bloomington	3,192	4,748	2,740	1,369	639	49%
Boston	7,791	11,042	8,396	1,499	1,147	42%
Buffalo	534	782	588	0	194	46%
Charlotte	5,880	9,449	8,416	479	554	61%
Chicago	9,787	11,509	7,718	2,700	1,091	18%
Cleveland	3,006	4,112	2,859	806	447	37%
Dallas	11,501	13,236	11,393	1,183	660	15%
Denver	1,824	2,714	2,053	241	420	49%
Detroit	2,697	3,753	2,210	1,197	346	39%
El Paso	1,091	1,741	1,422	38	281	60%
El Paso SPC	3,950	3,462	2,171	1,248	43	-12%
Elizabeth	5,442	4,931	2,336	2,551	44	-9%
Eloy	7,154	8,040	3,582	4,383	75	12%
Fishkill	170	169	157	0	12	-1%
Florence	5,300	3,991	2,486	1,448	57	-25%
Harlingen	3,554	3,429	2,448	0	981	-4%
Hartford	1,586	2,648	2,202	244	202	67%
Honolulu	413	591	422	122	47	43%
Houston	13,116	14,224	12,994	3	1,227	8%
Houston SPC	10,454	14,363	8,859	5,279	225	37%
Imperial	3,869	4,311	2,340	1,882	89	11%
Kansas City	3,337	5,254	3,538	1,329	387	57%
Krome	6,750	8,507	4,349	4,032	126	26%
Las Vegas	3,179	4,447	2,817	1,166	464	40%
LaSalle	4,979	5,998	3,071	2,902	25	20%
Los Angeles (N)	16,209	26,188	21,300	14	4,874	62%
Los Angeles (D)	4,786	4,697	1,939	2,721	37	-2%
Louisville	1,325	1,860	1,572	7	281	40%
Memphis	5,143	6,430	5,278	41	1,111	25%
Miami	11,921	16,575	13,918	53	2,604	39%
New Orleans	3,866	5,180	4,616	0	564	34%
New York City	18,445	27,131	23,895	5	3,231	47%
Newark	5,163	8,708	7,872	2	834	69%
Oakdale	4,206	4,782	2,405	2,329	48	14%
Omaha	2,993	4,504	3,283	745	476	50%
Orlando	5,271	8,241	6,012	1,100	1,129	56%
Otay Mesa	3,284	4,938	2,145	2,751	42	50%
Otero	350	1,904	1,179	715	10	444%
Pearsall	6,658	8,168	5,366	2,764	38	23%
Philadelphia	3,036	4,013	3,493	2	518	32%
Phoenix	2,721	3,335	2,378	3	954	23%
Port Isabel	3,895	4,062	2,605	1,394	63	4%
Portland	1,558	1,357	1,108	13	236	11%
Saipan	21	115	111	1	3	448%
Salt Lake City	2,004	1,258	887	110	261	-56%
San Antonio	6,146	7,999	5,062	1,613	1,324	30%
San Diego	2,752	2,842	2,125	9	708	3%
San Francisco	17,127	20,328	15,162	3,171	1,995	19%
San Juan	251	336	135	17	184	34%
Seattle	2,687	2,757	2,164	0	593	3%
Stewart	4,295	7,769	5,021	2,669	79	81%
Tacoma	6,556	6,648	3,185	3,418	45	1%
Tucson	680	608	489	0	119	-11%
Ulster	300	241	222	0	19	-20%
Varick	3,133	3,253	1,451	1,721	81	4%
York	4,420	5,659	2,568	2,919	172	28%
Total	**316,343**	**405,947**	**291,258**	**78,483**	**36,206**	**22%**

Key
25%+ growth in Total Matters Received
25%+ decrease in Total Matters Received

Table 3. Total I-862 Immigration Court Matters Completed by Court and Type

Immigration Court	FY 2016 Total Matters	FY 2017					Rate of Change: Total Matters
		Total Matters	Initial Case Completions	Subsequent Case Completions	Bonds	Motions Not Granted	
Adelanto	5,227	6,636	1,873	70	4,677	16	27%
Arlington	6,877	6,509	4,628	313	1,404	164	-5%
Atlanta	7,185	7,473	4,873	213	2,015	372	4%
Aurora	2,108	2,856	1,013	30	1,794	19	35%
Baltimore	4,645	4,264	3,066	292	757	149	-8%
Batavia	1,903	1,837	562	25	1,244	6	-3%
Bloomington	2,059	2,795	1,358	84	1,235	118	36%
Boston	4,579	4,851	2,882	384	1,520	65	6%
Buffalo	710	601	497	65	0	39	-15%
Charlotte	4,652	4,505	3,731	203	479	92	-3%
Chicago	5,705	7,879	4,688	378	2,699	114	38%
Cleveland	2,005	2,439	1,522	104	776	37	22%
Dallas	8,659	8,148	6,574	250	1,140	184	-6%
Denver	735	1,781	1,336	151	229	65	142%
Detroit	2,097	2,959	1,629	92	1,138	100	41%
El Paso	938	1,421	1,214	60	38	109	51%
El Paso SPC	2,793	2,677	1,421	30	1,203	23	-4%
Elizabeth	3,780	4,043	1,441	54	2,527	21	7%
Eloy	5,332	6,685	2,174	48	4,436	27	25%
Fishkill	125	163	150	6	0	7	30%
Florence	3,126	2,362	924	21	1,394	23	-24%
Harlingen	2,338	2,535	1,794	206	0	535	8%
Hartford	1,214	1,263	898	91	240	34	4%
Honolulu	521	634	485	33	113	3	22%
Houston	6,137	7,302	6,776	355	3	168	19%
Houston SPC	6,037	9,564	4,513	55	4,947	49	58%
Imperial	2,369	2,434	519	25	1,873	17	3%
Kansas City	2,156	3,238	1,796	109	1,282	51	50%
Krome	5,083	7,062	3,002	86	3,899	75	39%
Las Vegas	2,646	3,766	2,338	216	1,147	65	42%
LaSalle	3,935	5,016	2,111	30	2,860	15	27%
Los Angeles (N)	11,641	11,807	9,761	1,312	14	720	1%
Los Angeles (D)	3,866	4,265	1,372	63	2,815	15	10%
Louisville	816	845	751	33	6	55	4%
Memphis	2,990	3,636	3,267	153	42	174	22%
Miami	5,833	7,950	6,814	695	51	390	36%
New Orleans	2,124	2,698	2,496	121	0	81	27%
New York City	14,662	12,887	11,445	1,059	1	382	-12%
Newark	3,179	3,176	2,801	253	9	113	0%
Oakdale	2,907	3,850	1,460	21	2,334	35	32%
Omaha	1,611	2,625	1,697	122	765	41	63%
Orlando	3,105	5,333	3,780	359	1,056	138	72%
Otay Mesa	2,094	3,587	764	31	2,772	20	71%
Otero	238	1,804	1,116	5	679	4	658%
Pearsall	3,533	4,137	1,420	17	2,685	15	17%
Philadelphia	1,659	1,871	1,653	155	2	61	13%
Phoenix	1,797	2,320	2,093	159	3	65	29%
Port Isabel	2,450	2,599	1,160	36	1,367	36	6%
Portland	785	614	530	63	13	8	-22%
Saipan	21	25	18	4	1	2	19%
Salt Lake City	1,714	1,286	991	89	148	58	-25%
San Antonio	2,904	5,226	3,157	262	1,481	326	80%
San Diego	1,306	1,708	1,432	115	6	155	31%
San Francisco	10,357	10,115	6,267	392	3,268	188	-2%
San Juan	193	158	105	24	17	12	-18%
Seattle	2,115	1,806	1,540	167	0	99	-15%
Stewart	3,799	6,979	4,153	86	2,694	46	84%
Tacoma	5,053	5,866	2,278	39	3,530	19	16%
Tucson	679	729	672	43	0	14	7%
Ulster	204	218	199	9	0	10	7%
Varick	2,468	2,560	892	53	1,598	17	4%
York	3,451	4,750	1,709	145	2,852	44	38%
Total	**207,230**	**243,128**	**149,581**	**10,164**	**77,278**	**6,105**	**17%**

Key
25%+ growth in Total Matters Completed
25%+ decrease in Total Matters Completed

CASES RECEIVED AND COMPLETED BY TYPE

Table 4. Immigration Court Cases Received by Case Type

Type of Case	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Removal	193,689	226,669	189,674	224,962	291,258
Credible Fear	1,770	6,507	6,644	7,464	6,532
Withholding Only	2,328	3,145	3,061	3,261	3,388
Reasonable Fear	1,156	1,778	2,608	2,521	2,476
Asylum Only	393	294	255	227	399
Rescission	46	31	45	27	37
Claimed Status	31	22	21	11	6
Continued Detention Review	0	3	2	1	0
Deportation	1	1	2	1	0
NACARA	2	4	1	0	0
Total	**199,416**	**238,454**	**202,313**	**238,475**	**304,096**

Table 5. Immigration Court Initial and Subsequent Case Completions by Case Type

Type of Case	FY 2013		FY 2014		FY 2015		FY 2016		FY 2017	
	Initial	Subsequent	Initial	Subsequent	Initial	Subsequent	Initial	Subsequent	Initial	Subsequent
Deportation	601	1,592	472	1,157	452	1,100	477	1,082	381	818
Exclusion	48	154	35	103	19	103	35	83	22	62
Removal	136,680	15,765	124,142	13,188	126,981	12,447	127,689	11,268	149,178	9,284
Credible Fear	1,726	0	6,353	0	6,624	2	7,492	0	6,533	0
Reasonable Fear	1,135	0	1,707	0	2,559	0	2,536	2	2,437	0
Claimed Status	28	2	22	0	19	0	14	1	4	1
Asylum Only	307	72	296	75	230	49	200	51	261	64
Rescission	35	5	28	3	26	5	28	2	33	1
Continued Detention Review	2	0	2	0	3	0	2	0	0	0
NACARA	2	5	1	1	2	0	1	1	3	2
Withholding Only	1,300	64	2,553	107	2,209	127	2,501	132	2,865	163
Total	**141,864**	**17,659**	**135,611**	**14,634**	**139,124**	**13,833**	**140,975**	**12,622**	**161,717**	**10,395**

I-862 Case Completions by Decision

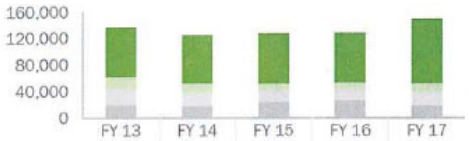
Figure 6. I-862 ICCs increased 17 percent from FY 2016 to FY 2017.

Figure 6. I-862 Case Completions

	FY 13	FY 14	FY 15	FY 16	FY 17
Subsequent Case Completion	17,511	14,448	13,650	12,433	10,164
Initial Case Completion	137,329	124,649	127,452	128,201	149,581
Total	154,840	139,097	141,102	140,634	159,745

Figure 7. All I-862 case outcomes except termination increased in FY 2017.

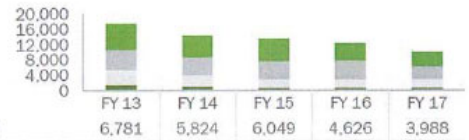
Figure 7. I-862 ICCs by Decision



	FY 13	FY 14	FY 15	FY 16	FY 17
Other	499	366	436	481	514
Removal	75,384	72,715	75,727	75,092	97,457
Voluntary Departure	17,902	13,666	9,911	9,055	13,603
Relief	24,456	20,297	17,614	17,248	19,456
Termination	19,088	17,605	23,764	26,325	18,551
Total	137,329	124,649	127,452	128,201	149,581

Figure 8. For I-862 cases, subsequent case completions have decreased by about seven percent between FY 2013 and FY 2017.

Figure 8. I-862 Subsequent Case Completions by Decision



	FY 13	FY 14	FY 15	FY 16	FY 17
Removal	6,781	5,824	6,049	4,626	3,988
Termination	5,381	4,625	4,699	5,006	3,286
Relief	3,905	2,897	2,204	2,129	2,166
Voluntary Departure	1,192	836	507	459	540
Other	252	266	191	213	184
Total	17,511	14,448	13,650	12,433	10,164

Figure 9. Administrative closures decreased by about 40 percent from FY 2016 to FY 2017.

Figure 9. Administrative Closures

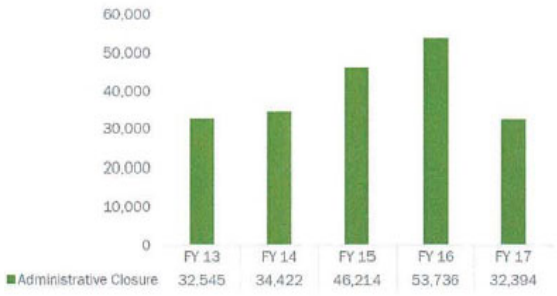


Figure 10. For I-862 cases, changes of venue have increased 35 percent since FY 2013 and transfers have increased 23 percent in the same period.

Figure 10. Total I-862 Changes of Venue and Transfers

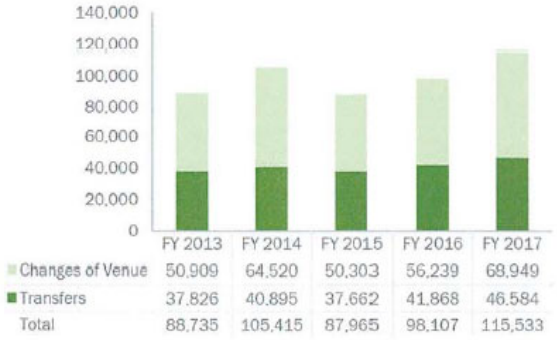


Table 6. Credible Fear (CF) and Reasonable Fear (RF) Review ICCs by Decision

Disposition	FY 13		FY 14		FY 15		FY 16		FY 17	
	CF	RF	CF	RF	CF	RF	CF	RF	CF	RF
Affirmed DHS Decision	1,503	977	5,232	1,439	5,219	2,053	5,333	1,915	4,851	1,811
Vacated DHS Decision	206	131	1,055	230	1,347	451	2,088	571	1,647	588
Other	18	30	67	43	65	64	74	57	38	45
Total	**1,727**	**1,138**	**6,354**	**1,712**	**6,631**	**2,568**	**7,495**	**2,543**	**6,536**	**2,444**

Table 7. FY 2017 I-862 Changes of Venue and Transfers

Immigration Court	Changes of Venue	Transfers	Total
Adelanto	2,327	30	2,357
Arlington	2,154	2,053	4,207
Atlanta	2,543	2,961	5,504
Aurora	1,080	18	1,098
Baltimore	915	31	946
Batavia	394	442	836
Bloomington	216	668	884
Boston	432	981	1,413
Buffalo	516	110	626
Charlotte	660	37	697
Chicago	1,845	2,042	3,887
Cleveland	324	507	831
Dallas	593	2,068	2,661
Denver	697	170	867
Detroit	303	627	930
El Paso	1,648	243	1,891
El Paso SPC	20	1,188	1,208
Elizabeth	24	1,406	1,430
Eloy	1,933	1	1,934
Fishkill	28	25	53
Florence	1,887	11	1,898
Harlingen	3,675	232	3,907
Hartford	227	208	435
Honolulu	24	50	74
Houston	7,335	2,706	10,041
Houston SPC	210	5,556	5,766
Imperial	1,949	2,146	4,095
Kansas City	602	797	1,399
Krome	1,765	509	2,274
Las Vegas	486	669	1,155
LaSalle	1,219	186	1,405
Los Angeles (N)	3,598	317	3,915
Los Angeles (D)	148	1,367	1,515
Louisville	197	210	407
Memphis	559	831	1,390
Miami	1,839	23	1,862
New Orleans	1,496	10	1,506
New York City	3,061	232	3,293
Newark	1,868	765	2,633
Oakdale	826	454	1,280
Omaha	250	657	907
Orlando	781	464	1,245
Otay Mesa	281	1,274	1,555
Otero	6	407	413
Pearsall	444	3,775	4,219
Philadelphia	626	294	920
Phoenix	1,443	21	1,464
Port Isabel	36	1,242	1,278
Portland	265	60	325
Saipan	0	0	0
Salt Lake City	331	211	542
San Antonio	5,723	1,757	7,480
San Diego	1,635	279	1,914
San Francisco	1,436	2,375	3,811
San Juan	57	9	66
Seattle	376	3	379
Stewart	926	0	926
Tacoma	1,249	1	1,250
Tucson	181	2	183
Ulster	64	32	96
Varick	123	505	628
York	1,093	329	1,422
Total	**68,949**	**46,584**	**115,533**

I-862 ICCs BY COUNTRY OF NATIONALITY

EOIR IJs hear cases from many different nationalities each year.

Figure 11. About 75 percent of I-862 ICCs in FY 2017 were cases of nationals from Mexico, Guatemala, Honduras, or El Salvador.

Table 8. In the last five years, Mexico, Guatemala, Honduras, El Salvador, China, Ecuador, Dominican Republic, Cuba, and India were nine of the top ten countries of nationality.

Figure 11. I-862 ICCs by Nationality

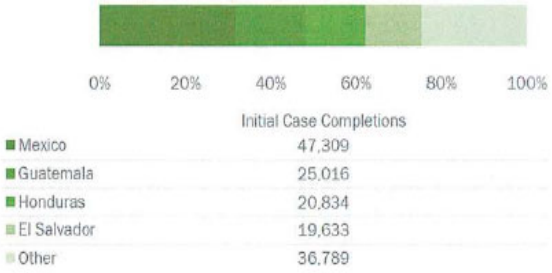


Table 8. I-862 ICCs by Top 25 Countries of Nationality

Rank	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
1	Mexico	Mexico	Mexico	Mexico	Mexico
2	Guatemala	Guatemala	Honduras	Guatemala	Guatemala
3	El Salvador	Honduras	Guatemala	Honduras	Honduras
4	Honduras	El Salvador	El Salvador	El Salvador	El Salvador
5	China	China	China	China	China
6	Cuba	Cuba	Ecuador	Ecuador	Haiti
7	Dominican Republic	Dominican Republic	Dominican Republic	Dominican Republic	Ecuador
8	Jamaica	Ecuador	India	Cuba	Dominican Republic
9	Ecuador	India	Cuba	India	Cuba
10	India	Jamaica	Jamaica	Jamaica	India
11	Colombia	Colombia	Haiti	Colombia	Brazil
12	Philippines	Haiti	Colombia	Haiti	Jamaica
13	Haiti	Philippines	Peru	Brazil	Colombia
14	Brazil	Peru	Philippines	Somalia	Nicaragua
15	Peru	Nicaragua	Nicaragua	Nicaragua	Romania
16	Nicaragua	Brazil	Brazil	Peru	Peru
17	Nigeria	Nepal	Somalia	Ghana	Philippines
18	Russia	Nigeria	Nigeria	Philippines	Nepal
19	Nepal	Ethiopia	Ethiopia	Nigeria	Pakistan
20	Pakistan	Russia	Nepal	Pakistan	Ghana
21	Ethiopia	Egypt	Bangladesh	Nepal	Nigeria
22	Kenya	Pakistan	Pakistan	Bangladesh	Eritrea
23	Canada	Vietnam	Ghana	Canada	Venezuela
24	Vietnam	Kenya	Vietnam	Romania	Canada
25	Egypt	Canada	Canada	Egypt	Cameroon

I-862 ICCs BY LANGUAGE

In parallel to the many nationalities that come before IJs, there are similarly hundreds of languages in which hearings are conducted. EOIR provides interpretation services for all aliens in proceedings as appropriate.

Figure 12. About 85 percent of I-862 ICCs in FY 2017 were cases of Spanish- or English-speaking aliens.

Table 9. In the last five years, seven of the top ten languages were Spanish, English, Mandarin, Creole, Punjabi, Arabic, or Russian.

Figure 12. I-862 ICCs by Language

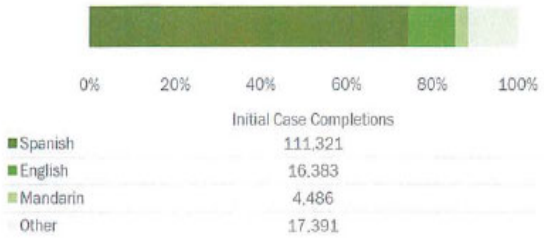


Table 9. I-862 ICCs by Top 25 Languages

Rank	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
1	Spanish	Spanish	Spanish	Spanish	Spanish
2	English	English	English	English	English
3	Mandarin	Mandarin	Mandarin	Mandarin	Mandarin
4	Unknown Language	Unknown Language	Unknown Language	Unknown Language	Creole
5	Russian	Russian	Arabic	Arabic	Unknown Language
6	Arabic	Arabic	Russian	Punjabi	Punjabi
7	Punjabi	Punjabi	Punjabi	Russian	Portuguese
8	Creole	Creole	Creole	Portuguese	Arabic
9	Portuguese	French	Somali	Mam	Russian
10	French	Portuguese	French	Creole	Mam
11	Korean	Korean	Portuguese	Somali	French
12	Foo Chow	Nepali	Quiche	Quiche	Quiche
13	Nepali	Somali	Nepali	French	Nepali
14	Amharic	Foo Chow	Bengali	Nepali	Tigrigna - Eritrean
15	Tagalog	Amharic	Mam	Foo Chow	Romanian-Moldovan
16	Romanian-Moldovan	Vietnamese	Foo chow	Bengali	Konjobal
17	Vietnamese	Gujarati	Korean	Amharic	Somali
18	Gujarati	Quiche	Amharic	Korean	Bengali
19	Tigrigna - Eritrean	Mam	Vietnamese	Tigrigna - Eritrean	Urdu
20	Urdu	Tagalog	Tigrigna - Eritrean	Konjobal	Foo Chow
21	Indonesian	Urdu	Gujarati	Romanian-Moldovan	Korean
22	Armenian	Albanian	Albanian	Urdu	Albanian
23	Somali	Armenian	Konjobal	Albanian	Amharic
24	Albanian	Indonesian	Tagalog	Vietnamese	Vietnamese
25	Tamil	Tigrigna - Eritrean	Urdu	Armenian	Gujarati

I-862 ICCs for Detained Cases

Detention locations include DHS Service Processing Centers (SPC), DHS contract detention facilities, state and local government jails, and Bureau of Prisons institutions. For the purpose of Figure 13, Institutional Hearing Program (IHP) cases are considered detained cases as are cases of unaccompanied alien children (UAC) in the custody of the Department of Health and Human Services.

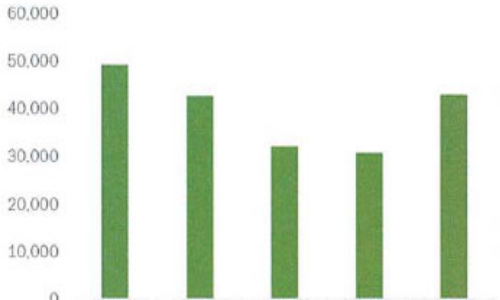
Figure 13. Detained I-862 ICCs increased 36 percent from FY 2016 to FY 2017.

Figure 13. I-862 ICCs by Detention Status

	FY 13	FY 14	FY 15	FY 16	FY 17
Initial Case Completions for Detained Aliens	58,813	51,145	40,358	39,912	54,098
Initial Case Completions for All Aliens	137,329	124,649	127,452	128,201	149,581
Percent Detained	43%	41%	32%	31%	36%

Figure 14. The number of standard detained completions – aliens at least 18 years of age that are not at an IHP location, are not UAC or in HHS custody, and are not considered to have competency concerns or to be subject to the *Franco* litigation – have increased 39 percent from FY 2016 to FY 2017.

Figure 14. I-862 Standard Detained ICCs



	FY 13	FY 14	FY 15	FY 16	FY 17
Completions	49,121	42,605	32,104	30,749	42,881

Table 10. FY 2017 I-862 Detained ICCs

Immigration Court	Completions
Adelanto	1,848
Arlington	1,132
Atlanta	2,072
Aurora	1,001
Baltimore	423
Batavia	539
Bloomington	735
Boston	804
Buffalo	0
Charlotte	8
Chicago	1,734
Cleveland	547
Dallas	3,095
Denver	91
Detroit	905
El Paso	113
El Paso SPC	1,421
Elizabeth	1,439
Eloy	2,152
Fishkill	150
Florence	921
Harlingen	62
Hartford	228
Honolulu	145
Houston	46
Houston SPC	4,513
Imperial	338
Kansas City	687
Krome	2,966
Las Vegas	1,036
LaSalle	2,106
Los Angeles (N)	58
Los Angeles (D)	1,368
Louisville	0
Memphis	26
Miami	198
New Orleans	5
New York City	6
Newark	2
Oakdale	1,459
Omaha	695
Orlando	729
Otay Mesa	750
Otero	1,115
Pearsall	1,419
Philadelphia	11
Phoenix	69
Port Isabel	1,158
Portland	5
Saipan	3
Salt Lake City	179
San Antonio	464
San Diego	29
San Francisco	1,491
San Juan	26
Seattle	0
Stewart	4,143
Tacoma	2,276
Tucson	379
Ulster	199
Varick	876
York	1,703
Total	**54,098**

I-862 Institutional Hearing Program Cases Received and Completed

IHP is a cooperative effort between EOIR, DHS, and various federal, state, and municipal corrections agencies. IJs and court staff either travel to IHP facilities to conduct IHP hearings, or the IJs conduct the hearings by video teleconferencing.

Figure 15. New IHP case receipts declined in FY 2017.

Figure 15. I-862 IHP Receipts and ICCs

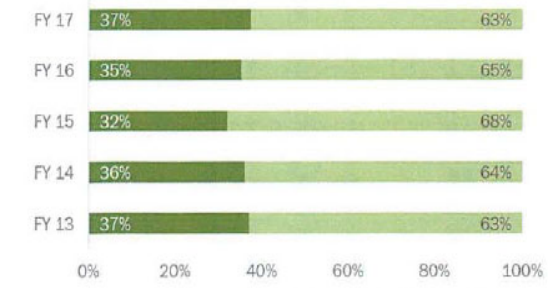
Table 11. I-862 IHP ICCs by Decision

Disposition	FY 13	FY 14	FY 15	FY 16	FY 17
Removal	3,277	3,075	2,573	2,726	2,333
Voluntary Departure	2	3	7	28	10
Termination	80	86	91	94	53
Relief	23	27	39	117	63
Other	3	0	4	8	4
Total Completions	**3,385**	**3,191**	**2,714**	**2,973**	**2,463**

I-862 ICCs WITH APPLICATIONS FOR RELIEF

Figure 16. The percent of completed I-862 cases with applications for relief has been roughly constant over the past five years.

Figure 16. I-862 ICCs by Application Filling Status



	FY 13	FY 14	FY 15	FY 16	FY 17
With Applications	50,834	44,974	40,789	45,094	56,035
Without Applications	86,495	79,675	86,663	83,107	93,546
Total	137,329	124,649	127,452	128,201	149,581

Table 12. FY 2017 I-862 ICCs with Applications for Relief

Immigration Court	Initial Case Completions	Number of Completions with Applications	Percent with Applications
Adelanto	1,873	837	45%
Arlington	4,628	1,644	36%
Atlanta	4,873	1,050	22%
Aurora	1,013	320	32%
Baltimore	3,066	981	32%
Batavia	562	178	32%
Bloomington	1,358	490	36%
Boston	2,882	1,496	52%
Buffalo	497	208	42%
Charlotte	3,731	675	18%
Chicago	4,688	1,530	33%
Cleveland	1,522	535	35%
Dallas	6,574	1,243	19%
Denver	1,336	491	37%
Detroit	1,629	664	41%
El Paso	1,214	287	24%
El Paso SPC	1,421	208	15%
Elizabeth	1,441	698	48%
Eloy	2,174	526	24%
Fishkill	150	32	21%
Florence	924	224	24%
Harlingen	1,794	540	30%
Hartford	898	394	44%
Honolulu	485	315	65%
Houston	6,776	2,735	40%
Houston SPC	4,513	991	22%
Imperial	519	190	37%
Kansas City	1,796	529	29%
Krome	3,002	1,283	43%
Las Vegas	2,338	1,054	45%
LaSalle	2,111	346	16%
Los Angeles (N)	9,761	4,663	48%
Los Angeles (D)	1,372	511	37%
Louisville	751	48	6%
Memphis	3,267	1,069	33%
Miami	6,814	2,531	37%
New Orleans	2,496	337	14%
New York City	11,445	7,622	67%
Newark	2,801	1,064	38%
Oakdale	1,460	265	18%
Omaha	1,697	640	38%
Orlando	3,780	1,815	48%
Otay Mesa	764	281	37%
Otero	1,116	298	27%
Pearsall	1,420	436	31%
Philadelphia	1,653	680	41%
Phoenix	2,093	1,040	50%
Port Isabel	1,160	602	52%
Portland	530	347	65%
Saipan	18	2	11%
Salt Lake City	991	477	48%
San Antonio	3,157	890	28%
San Diego	1,432	451	31%
San Francisco	6,267	3,199	51%
San Juan	105	42	40%
Seattle	1,540	970	63%
Stewart	4,153	710	17%
Tacoma	2,278	959	42%
Tucson	672	233	35%
Ulster	199	66	33%
Varick	892	457	51%
York	1,709	636	37%
Total	**149,581**	**56,035**	**37%**

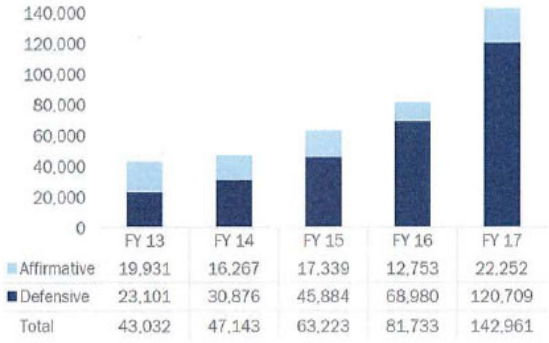
Key
>50% of completions had applications
<15% of completions had applications

ASYLUM CASES RECEIVED AND COMPLETED

There are two types of asylum processes – defensive and affirmative. The defensive asylum process applies to aliens who appear before EOIR and who request asylum before an IJ. The affirmative asylum process applies to aliens who initially file an asylum application with USCIS and, subsequently, have that application referred by USCIS to EOIR.

Figure 17. Defensive asylum receipts have increased significantly (423 percent) from FY 2013 to FY 2017. In the same period, affirmative asylum receipts have increased 12 percent.

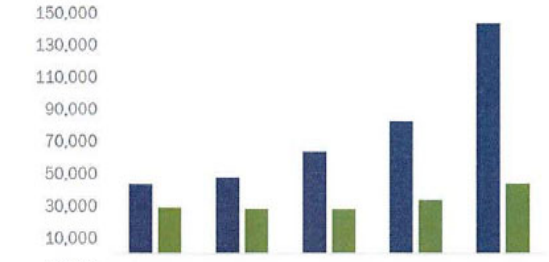
Figure 17. Asylum Receipts



	FY 13	FY 14	FY 15	FY 16	FY 17
Affirmative	19,931	16,267	17,339	12,753	22,252
Defensive	23,101	30,876	45,884	68,980	120,709
Total	43,032	47,143	63,223	81,733	142,961

Figure 18. Asylum receipts increased 232 percent from FY 2013 to FY 2017; completions increased by 51 percent over the same period.

Figure 18. Asylum Receipts and ICCs



	FY 13	FY 14	FY 15	FY 16	FY 17
Receipts	43,032	47,143	63,223	81,733	142,961
Completions	28,623	27,788	27,699	33,116	43,137

Table 13. Asylum ICCs by Court for FY 2017

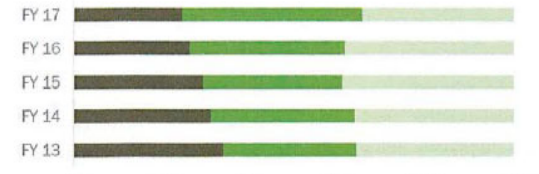
Immigration Court	Completions
Adelanto	738
Arlington	1,377
Atlanta	756
Aurora	225
Baltimore	831
Batavia	145
Bloomington	354
Boston	861
Buffalo	71
Charlotte	464
Chicago	955
Cleveland	409
Dallas	793
Denver	329
Detroit	365
El Paso	91
El Paso SPC	150
Elizabeth	531
Eloy	354
Fishkill	5
Florence	170
Harlingen	364
Hartford	316
Honolulu	289
Houston	2,493
Houston SPC	546
Imperial	143
Kansas City	352
Krome	1,011
Las Vegas	726
LaSalle	202
Los Angeles (N)	3,697
Los Angeles (D)	424
Louisville	31
Memphis	749
Miami	1,740
New Orleans	231
New York City	7,108
Newark	759
Oakdale	178
Omaha	434
Orlando	1,451
Otay Mesa	232
Otero	277
Pearsall	336
Philadelphia	500
Phoenix	603
Port Isabel	477
Portland	304
Saipan	0
Salt Lake City	286
San Antonio	808
San Diego	382
San Francisco	2,643
San Juan	10
Seattle	887
Stewart	541
Tacoma	776
Tucson	156
Ulster	13
Varick	235
York	453
Total	**43,137**

ASYLUM CASES COMPLETED BY DECISION

An asylum application also generally serves as an application for withholding of removal under section 241(b)(3) of the Immigration and Nationality Act (INA). As such, EOIR reports on these two forms of relief from removal contemporaneously. Grant rates are calculated as percentages of all completed cases of the given type.

Figure 19. In the past five years, asylum grants have increased by about nine percent.

Figure 19. Asylum ICCs by Decision



	FY 13	FY 14	FY 15	FY 16	FY 17
Grants	9,753	8,638	8,170	8,730	10,654
Denials	8,665	9,152	8,752	11,695	17,677
Other	10,193	9,996	10,775	12,690	14,805

Figure 20. The defensive grant rate is consistently lower than that of affirmative asylum applications. Similarly, the defensive denial rate is significantly higher than the affirmative asylum denial rate.

Figure 20. Affirmative and Defensive Asylum ICCs by Decision

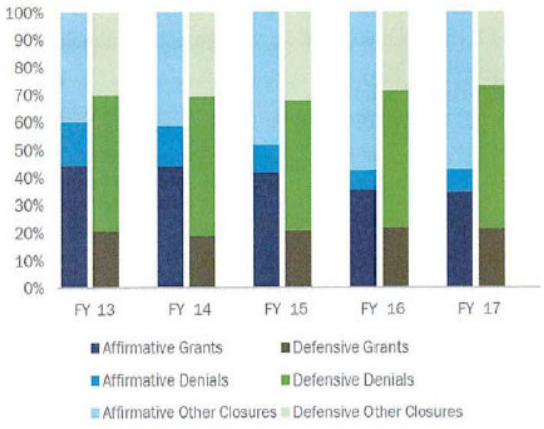


Figure 21. Administrative closures of asylum cases decreased by about 48 percent from FY 2016 to FY 2017.

Figure 21. Administrative Closures of Asylum Cases

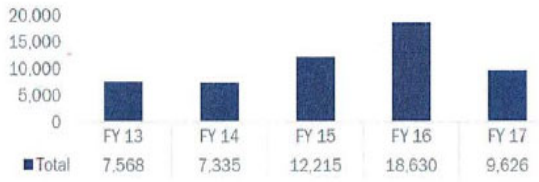


Figure 22. The grant rate for either asylum or withholding of removal has decreased about 30 percent in the last five years.

Figure 22. Asylum and Withholding of Removal ICCs by Decision

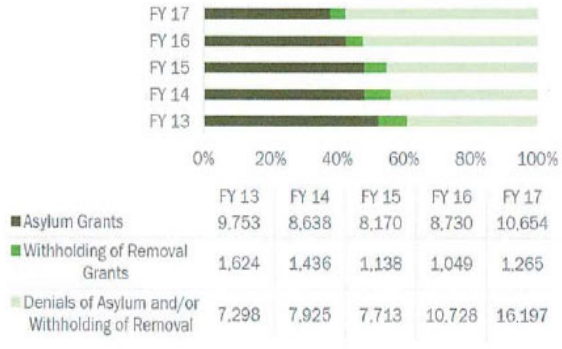


Figure 23. The withholding of removal grant rate has decreased about 48 percent from FY 2013 to FY 2017.

Figure 23. Withholding of Removal ICCs by Decision

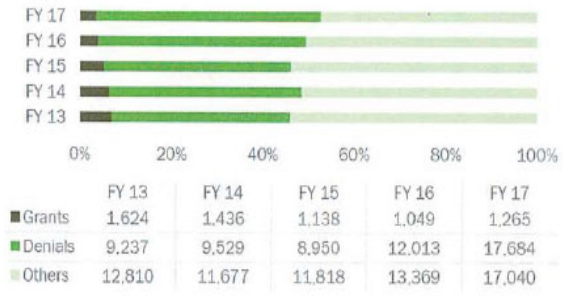


Table 14. Asylum Decision Rate by Immigration Court

Immigration Court	Grants		Denials		Other Closures		Administrative Closure		Total
	Number	Rate	Number	Rate	Number	Rate	Number	Rate	
Adelanto	98	13%	498	67%	142	19%	0	0%	738
Arlington	424	22%	411	21%	542	28%	557	29%	1,934
Atlanta	23	3%	481	59%	252	31%	55	7%	811
Aurora	29	13%	147	65%	49	22%	1	0%	226
Baltimore	355	36%	221	22%	255	26%	166	17%	997
Batavia	30	21%	83	57%	32	22%	1	1%	146
Bloomington	53	13%	184	46%	117	29%	50	12%	404
Boston	332	30%	194	18%	335	31%	235	21%	1,096
Buffalo	17	18%	30	31%	24	25%	25	26%	96
Charlotte	32	7%	289	59%	143	29%	22	5%	486
Chicago	336	29%	294	26%	325	28%	192	17%	1,147
Cleveland	39	7%	175	33%	195	37%	114	22%	523
Dallas	74	9%	511	62%	208	25%	34	4%	827
Denver	97	20%	95	20%	137	28%	157	32%	486
Detroit	46	11%	184	43%	135	32%	58	14%	423
El Paso	3	2%	43	25%	45	26%	80	47%	171
El Paso SPC	4	3%	88	59%	58	39%	0	0%	150
Elizabeth	199	37%	238	45%	94	18%	0	0%	531
Eloy	8	2%	186	53%	160	45%	0	0%	354
Fishkill	0	0%	4	80%	1	20%	0	0%	5
Florence	4	2%	77	45%	89	52%	0	0%	170
Harlingen	7	2%	52	14%	305	82%	6	2%	370
Hartford	96	24%	110	28%	110	28%	84	21%	400
Honolulu	214	73%	53	18%	22	8%	3	1%	292
Houston	205	8%	1,736	68%	552	22%	43	2%	2,536
Houston SPC	39	7%	350	64%	157	29%	1	0%	547
Imperial	24	16%	79	54%	40	27%	4	3%	147
Kansas City	59	13%	176	39%	117	26%	105	23%	457
Krome	55	5%	553	55%	403	40%	2	0%	1,013
Las Vegas	39	4%	462	48%	225	24%	228	24%	954
LaSalle	7	3%	147	72%	48	24%	1	0%	203
Los Angeles (N)	379	6%	1,082	18%	2,236	38%	2,244	38%	5,941
Los Angeles (D)	34	8%	303	71%	87	21%	0	0%	424
Louisville	0	0%	4	7%	27	47%	27	47%	58
Memphis	133	16%	465	54%	151	18%	109	13%	858
Miami	269	13%	923	45%	548	27%	311	15%	2,051
New Orleans	24	7%	112	30%	95	26%	137	37%	368
New York City	3,915	41%	1,000	10%	2,193	23%	2,541	26%	9,649
Newark	174	18%	98	10%	487	51%	191	20%	950
Oakdale	22	12%	117	66%	39	22%	0	0%	178
Omaha	34	6%	187	35%	213	40%	95	18%	529
Orlando	186	11%	846	52%	419	26%	190	12%	1,641
Otay Mesa	44	19%	143	61%	45	19%	2	1%	234
Otero	39	14%	193	70%	45	16%	0	0%	277
Pearsall	70	21%	211	63%	55	16%	0	0%	336
Philadelphia	178	29%	129	21%	193	32%	104	17%	604
Phoenix	71	7%	42	4%	490	50%	370	38%	973
Port Isabel	39	8%	371	78%	67	14%	0	0%	477
Portland	100	28%	113	31%	91	25%	57	16%	361
Saipan	0	0%	0	0%	0	0%	0	0%	0
Salt Lake City	39	12%	155	46%	91	27%	50	15%	335
San Antonio	126	14%	468	52%	214	24%	87	10%	895
San Diego	62	13%	183	40%	137	30%	78	17%	460
San Francisco	1,300	39%	437	13%	906	27%	670	20%	3,313
San Juan	5	45%	2	18%	3	27%	1	9%	11
Seattle	201	20%	496	49%	190	19%	121	12%	1,008
Stewart	13	2%	441	81%	87	16%	2	0%	543
Tacoma	130	17%	461	59%	185	24%	1	0%	777
Tucson	17	10%	120	71%	19	11%	12	7%	168
Ulster	0	0%	6	43%	7	50%	1	7%	14
Varick	33	14%	124	53%	78	33%	0	0%	235
York	69	15%	294	65%	90	20%	1	0%	454
Total	**10,654**	**20%**	**17,677**	**34%**	**14,805**	**28%**	**9,626**	**18%**	**52,762**

ASYLUM GRANTS BY COUNTRY OF NATIONALITY

Figure 24. In FY 2017, the top four nationalities accounted for 57 percent of asylum grants. China alone accounted for 26 percent of all asylum grants.

Table 15. For each of the five years, six of the top 10 countries from which aliens were granted asylum were China, El Salvador, Guatemala, India, Nepal, and Ethiopia.

Figure 24. Asylum Grants by Country of Nationality

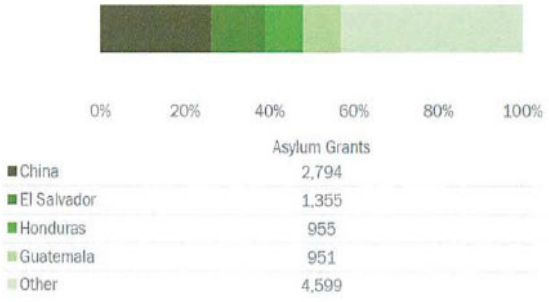


Table 15. Asylum Grants by Top 25 Countries of Nationality

Rank	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
1	China	China	China	China	China
2	Nepal	India	Guatemala	El Salvador	El Salvador
3	Ethiopia	Ethiopia	Honduras	Guatemala	Honduras
4	India	Nepal	India	Honduras	Guatemala
5	Egypt	Egypt	El Salvador	Mexico	Mexico
6	Soviet Union	El Salvador	Nepal	India	India
7	Eritrea	Guatemala	Ethiopia	Nepal	Nepal
8	Russia	Eritrea	Mexico	Ethiopia	Eritrea
9	El Salvador	Soviet Union	Somalia	Somalia	Cameroon
10	Guatemala	Honduras	Soviet Union	Eritrea	Ethiopia
11	Mexico	Somalia	Egypt	Egypt	Syria
12	Cameroon	Russia	Eritrea	Soviet Union	Egypt
13	Pakistan	Cameroon	Russia	Cameroon	Bangladesh
14	Sri Lanka	Mexico	Syria	Bangladesh	Soviet Union
15	Guinea	Pakistan	Bangladesh	Albania	Albania
16	Honduras	Venezuela	Cameroon	Russia	Pakistan
17	Somalia	Iraq	Nigeria	Syria	Haiti
18	Mali	Gambia	Albania	Burkina Faso	Somalia
19	Moldavia (Moldova)	Sri Lanka	Haiti	Pakistan	Guinea
20	Venezuela	Moldavia (Moldova)	Colombia	Nigeria	Ecuador
21	Indonesia	Colombia	Gambia	Ghana	Burkina Faso
22	Colombia	Syria	Pakistan	Iran	Ghana
23	Gambia	Albania	Iraq	Kirghizia (Kyrgyzstan)	Ukraine
24	Bangladesh	Burkina Faso	Burkina Faso	Guinea	Nigeria
25	Burkina Faso	Nigeria	Kirghizia (Kyrgyzstan)	Ukraine	Venezuela

CONVENTION AGAINST TORTURE

In 1999, the Department of Justice implemented regulations regarding the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention Against Torture or CAT). There are two forms of protection under the Convention Against Torture, withholding of removal and deferral of removal.

Table 16. Convention Against Torture Cases by Decision

Granted			Denied	Other	Withdrawn	Abandoned	Not Adjudicated	Total
Withholding	Deferral	Total						
760	175	935	17,061	25,249	6,455	2,044	14	51,758

Table 17. Convention Against Torture Completions by Court

Immigration Court	Completions
Adelanto	1,588
Arlington	2,269
Atlanta	883
Aurora	352
Baltimore	821
Batavia	203
Bloomington	405
Boston	733
Buffalo	163
Charlotte	579
Chicago	969
Cleveland	503
Dallas	825
Denver	460
Detroit	614
El Paso	200
El Paso SPC	198
Elizabeth	717
Eloy	806
Fishkill	33
Florence	517
Harlingen	311
Hartford	378
Honolulu	190
Houston	2,094
Houston SPC	856
Imperial	758
Kansas City	467
Krome	1,145
Las Vegas	973
LaSalle	247
Los Angeles (N)	3,699
Los Angeles (D)	665
Louisville	84
Memphis	786
Miami	2,219
New Orleans	354
New York City	5,915
Newark	791
Oakdale	215
Omaha	245
Orlando	1,863
Otay Mesa	846
Otero	321
Pearsall	539
Philadelphia	582
Phoenix	393
Port Isabel	603
Portland	426
Saipan	5
Salt Lake City	352
San Antonio	1,213
San Diego	645
San Francisco	3,541
San Juan	9
Seattle	1,002
Stewart	639
Tacoma	1,100
Tucson	116
Ulster	77
Varick	589
York	667
Total	**51,758**

I-862 Applications for Relief other than Asylum

In addition to asylum, there is a variety of types of relief from removal available to aliens in immigration proceedings. These include, but are not limited to, different forms of cancellation of removal, adjustment of status, and different types of waivers.

Table 18. I-862 Cases Grants of Relief

Fiscal Year	Relief Granted to Lawful Permanent Residents (LPR)		Relief Granted to Non-LPR				
	Relief Granted Under Section 212(c)	Cancellation of Removal	Not Subject to Annual Cap of 4,000 Grants			Subject to Annual Cap of 4,000 Grants	
			Adjustment of Status to LPR	Suspension of Deportation	Cancellation of Removal	Suspension of Deportation	Cancellation of Removal
FY 13	667	3,874	5,033	71	325	0	4,031
FY 14	551	3,220	3,281	69	275	2	3,847
FY 15	439	2,592	2,198	53	279	2	3,827
FY 16	385	2,239	1,854	31	247	1	3,735
FY 17	401	2,202	1,860	54	304	0	3,716

I-862 *In Absentia* Orders

When an alien fails to appear for a hearing, the IJ may conduct a hearing in the alien's absence (*in absentia*). The *in absentia* rate refers to the proportion of all IJ decisions at the ICC where the removal order is issued *in absentia*.

Figure 25. From FY 2016 to FY 2017, the overall I-862 *in absentia* rate increased by about eight percent. In the same period, the never detained *in absentia* rate increased 18 percent. The released rate increased 13 percent.

Figure 25. I-862 *In Absentia* Rates

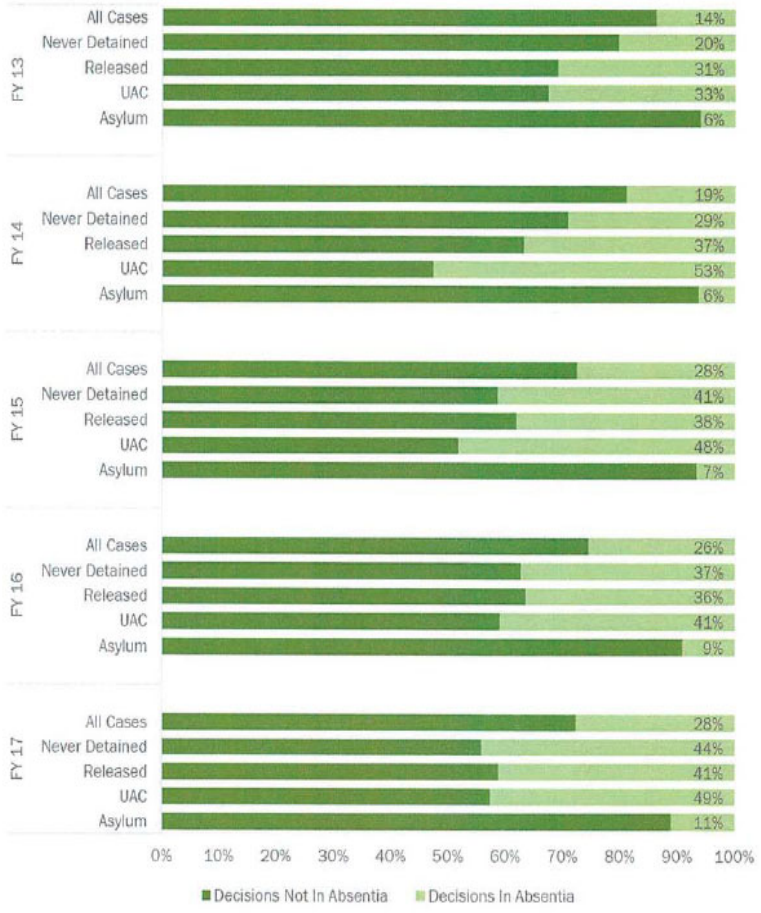


Table 19. I-862 *In Absentia* Orders and ICCs by Respondent Type

FY	Decision Subset	All Cases	Never Detained Cases	Released Cases	UAC Cases	Asylum Cases
FY 13	In Absentia Orders	18,747	10,394	8,278	836	1,742
	Initial Case Completion	136,761	51,152	26,798	2,565	28,459
FY 14	In Absentia Orders	23,440	13,676	9,662	1,882	1,748
	Initial Case Completion	124,238	46,874	26,223	3,576	27,584
FY 15	In Absentia Orders	35,166	24,646	10,464	6,481	1,847
	Initial Case Completion	127,350	59,550	27,442	13,435	27,644
FY 16	In Absentia Orders	32,755	23,437	9,254	6,191	3,017
	Initial Case Completion	128,145	62,852	25,380	15,095	33,082
FY 17	In Absentia Orders	41,384	30,010	11,292	6,759	4,776
	Initial Case Completion	149,436	67,966	27,376	13,872	43,013

IMMIGRATION JUDGE HIRING

To better manage its caseload, EOIR focused on increased hiring of immigration judges in FY 2017.

Figure 26. The number of IJs on board increased 17 percent in FY 2017.

Figure 26. Immigration Judge Hiring

	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Total IJs Hired	17	39	4	8	0	20	56	64
Total IJs on Board	245	273	267	262	249	254	289	338

TOTAL CASES RECEIVED AND COMPLETED

The majority of cases BIA reviews arise from decisions IJs make in removal, deportation, or exclusion cases. A full list of case types heard by BIA originating from OCIJ is below. For purposes of this Statistics Yearbook, these types of cases are collectively referred to as appeals from IJ decisions.

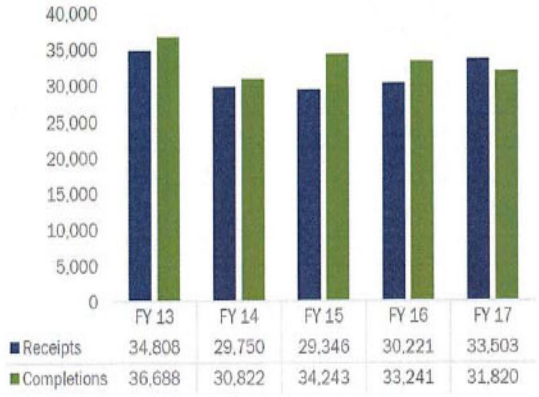
- Case appeals from the decisions of IJs in removal, deportation, and exclusion cases at the court level;
- Appeals filed from the decisions of IJs on motions to reopen;
- Motions to reopen and/or reconsider filed in cases already decided by the BIA;
- Appeals pertaining to bond, parole, or detention;
- Interlocutory appeals; and
- Cases (or appeals) remanded from the Federal Court.

The BIA also has jurisdiction to review appeals arising from certain decisions that DHS officials render. These types of appeals are listed below. For purposes of this Statistics Yearbook, appeals from these DHS decisions are referred to as DHS decision appeals.

- Family-based visa petitions adjudicated by DHS district directors or regional service center directors;
- Waivers of inadmissibility for non-immigrants under INA § 212(d)(3)(A)(ii); and
- Fines and penalties imposed upon carriers for violations of immigration laws.

Figure 27. In FY 2017 completions decreased slightly while receipts increased slightly.

Figure 27. Total BIA Cases Received and Completed



	FY 13	FY 14	FY 15	FY 16	FY 17
Receipts	34,808	29,750	29,346	30,221	33,503
Completions	36,688	30,822	34,243	33,241	31,820

CASES RECEIVED AND COMPLETED BY TYPE

BIA has jurisdiction over appeals from IJ decisions and certain DHS decisions. The majority of appeals from IJ decisions are from case appeals, and the majority of appeals from DHS decisions are from visa petitions.

Figure 31. Appeals from IJ decisions make up most of the BIA's work. Completions of appeals from IJ decisions increased about three percent in FY 2017. Completions from DHS decisions decreased by about 32 percent.

Figure 28. BIA Receipts and Completions by Case Type

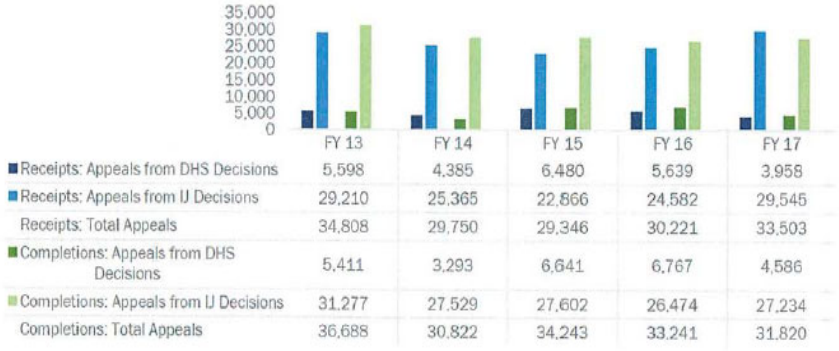


Table 20. BIA Receipts and Completions by Type

Appeal Type	FY 2013		FY 2014		FY 2015		FY 2016		FY 2017	
	Receipts	Comp.	Receipts	Comp.	Receipts	Comp.	Receipts	Comp.	Receipts	Comp.
Total Appeals from IJ Decisions	**29,210**	**31,277**	**25,365**	**27,529**	**22,866**	**27,602**	**24,582**	**26,474**	**29,545**	**27,234**
Case Appeal	16,495	17,933	13,557	15,775	11,475	15,474	12,737	14,563	17,106	15,966
Appeal of IJ Motion to Reopen	1,639	1,839	1,516	1,691	1,454	1,659	1,453	1,631	1,785	1,960
Motion to Reopen/Reconsider-BIA	7,692	8,603	6,691	6,394	5,908	6,427	5,639	5,586	5,898	5,000
Bond Appeal	1,816	1,700	2,091	1,990	2,253	2,220	3,002	2,805	3,621	3,124
Bond MTR	28	24	32	35	52	47	57	45	33	43
Interlocutory Appeal	209	194	163	169	240	216	352	287	433	404
Federal Court Remand	1,331	984	1,314	1,474	1,484	1,559	1,341	1,556	669	737
Continued Detention Review	0	0	0	0	0	0	1	1	0	0
Zero Bond Appeal	0	0	1	1	0	0	0	0	0	0
Total Appeals from DHS Decisions	**5,598**	**5,411**	**4,385**	**3,293**	**6,480**	**6,641**	**5,639**	**6,767**	**3,958**	**4,586**
Decisions on Visa Petitions	5,539	5,348	4,333	3,266	6,435	6,573	5,612	6,734	3,911	4,550
212(d)(3)(A) Waiver Decisions	55	60	49	25	45	65	26	33	45	33
Decisions on Fines and Penalties	4	3	3	2	0	3	1	0	2	3
Grand Total	**34,808**	**36,688**	**29,750**	**30,822**	**29,346**	**34,243**	**30,221**	**33,241**	**33,503**	**31,820**

APPEALS FROM IJ DECISIONS COMPLETED BY COUNTRY OF NATIONALITY

BIA hears appeals from IJ decisions involving hundreds of nationalities. Appeals from IJ decisions arise primarily in cases of aliens from Mexico and Central America.

Figure 29. Over half of completed appeals from IJ decisions involve an alien from one of three countries.

Table 21. For the past five years, nine countries ranked among the top ten: Mexico, El Salvador, Guatemala, Honduras, China, India, Haiti, Jamaica, and Dominican Republic.

Figure 29. Completed Appeals from IJ Decisions by Nationality

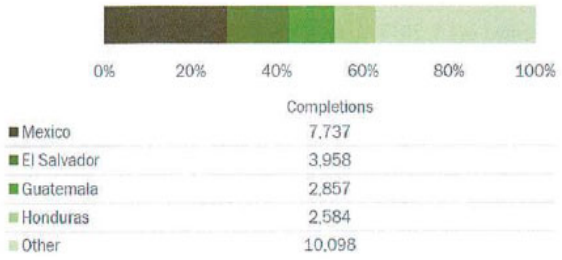


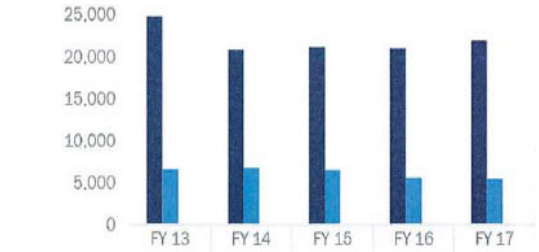
Table 21. BIA Appeals from ICCs by Top 25 Countries of Nationality

Rank	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
1	Mexico	Mexico	Mexico	Mexico	Mexico
2	China	China	El Salvador	El Salvador	El Salvador
3	El Salvador	El Salvador	China	China	Guatemala
4	Guatemala	Guatemala	Guatemala	Guatemala	Honduras
5	Honduras	Honduras	Honduras	Honduras	China
6	India	India	India	India	India
7	Colombia	Jamaica	Haiti	Haiti	Haiti
8	Jamaica	Colombia	Jamaica	Jamaica	Jamaica
9	Indonesia	Haiti	Colombia	Dominican Republic	Dominican Republic
10	Dominican Republic	Dominican Republic	Dominican Republic	Colombia	Ecuador
11	Haiti	Brazil	Brazil	Bangladesh	Colombia
12	Brazil	Indonesia	Nigeria	Ecuador	Bangladesh
13	Pakistan	Nigeria	Ecuador	Brazil	Brazil
14	Nigeria	Peru	Philippines	Nigeria	Nigeria
15	Venezuela	Pakistan	Peru	Philippines	Ghana
16	Philippines	Ecuador	Indonesia	Peru	Philippines
17	Ecuador	Philippines	Nicaragua	Indonesia	Pakistan
18	Peru	Kenya	Bangladesh	Armenia	Somalia
19	Kenya	Venezuela	Pakistan	Nicaragua	Peru
20	Nicaragua	Nicaragua	Nepal	Ghana	Nicaragua
21	Armenia	Ghana	Kenya	Nepal	Venezuela
22	Nepal	Russia	Armenia	Pakistan	Kenya
23	Albania	Nepal	Venezuela	Venezuela	Cameroon
24	Russia	Albania	Russia	Kenya	Cuba
25	Ghana	Armenia	Ghana	Albania	Nepal

APPEALS FROM IJ DECISIONS (I-862) COMPLETED BY REPRESENTATION STATUS

Figure 30. Representation rate for appeals has remained roughly constant across the past five years, reaching a high of 80 percent of completed appeals from IJ decisions represented in FY 2017.

Figure 30. Completed Appeals from IJ Decisions (I-862 Cases) by Representation Status



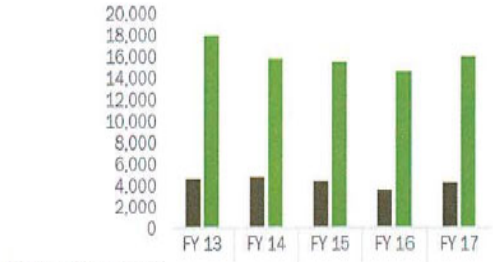
	FY 13	FY 14	FY 15	FY 16	FY 17
Represented	24,742	20,804	21,130	20,935	21,810
Unrepresented	6,535	6,725	6,472	5,539	5,424
Total	31,277	27,529	27,602	26,474	27,234
% Represented	79%	76%	77%	79%	80%

CASE APPEALS FROM IJ DECISION (I-862 ICCS) COMPLETED FOR DETAINED CASES

BIA handles detained cases (including aliens in IHP) as priority cases. For the purposes of Figure 31, figures for detained cases include IHP cases and cases of unaccompanied alien children in the custody of the Department of Health and Human Services.

Figure 31. The percent of completed case appeals from ICCs in I-862 detained cases has stayed approximately constant over the past five years, within a five-percentage point spread.

Figure 31. Complete Case Appeals from I-862 ICCs by Detention Status



	FY 13	FY 14	FY 15	FY 16	FY 17
Detained Case Appeal Decisions	4,589	4,796	4,398	3,577	4,243
Total Case Appeal Decisions	17,933	15,775	15,474	14,563	15,966
Percent Detained	26%	30%	28%	25%	27%

Table 22. The percent of total detained IHP completions has been consistently between six and seven percent for the past five years.

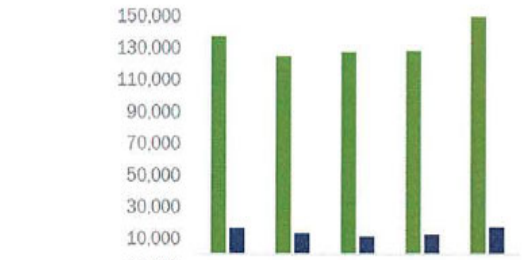
Table 22. BIA Detained Completions

Fiscal Year	Total Detained Completions	IHP Completions	Percent IHP Completions
FY 13	4,589	302	7%
FY 14	4,796	273	6%
FY 15	4,398	280	6%
FY 16	3,577	265	7%
FY 17	4,243	293	7%

IJ DECISIONS (I-862 ICCS) APPEALED

Figure 32. The percentage of ICCs being appealed has fluctuated between nine and 12 percent across the past five fiscal years.

Figure 32. I-862 ICCs Appealed to BIA



	FY 13	FY 14	FY 15	FY 16	FY 17
IJ Decisions	137,329	124,649	127,452	128,201	149,581
Case Appeals Received	16,495	13,557	11,475	12,737	17,106
Percent Appealed	12%	11%	9%	10%	11%

OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

TOTAL CASES RECEIVED AND COMPLETED

OCAHO is headed by the Chief Administrative Hearing Officer, who is responsible for the general supervision of administrative law judges (ALJs), management of OCAHO and review of ALJ decisions relating to illegal hiring, employment eligibility verification violations and document fraud. OCAHO's ALJs hear cases and adjudicate issues arising under provisions of the INA relating to:

- Knowingly hiring, recruiting or referring for a fee unauthorized aliens, or the continued employment of unauthorized aliens, failure to comply with employment eligibility verification requirements, and/or requiring indemnity bonds from employees in violation of section 274A of the INA (employer sanctions provisions);
- Unfair immigration-related employment practices in violation of section 274B of the INA (anti-discrimination provisions); and
- Immigration-related document fraud in violation of section 274C of the INA (document fraud provisions).

Employer sanctions and document fraud complaints are brought by the U.S. Department of Homeland Security. Anti-discrimination complaints may be brought by the U.S. Department of Justice's Immigrant and Employee Rights Section or private litigants. All final agency decisions may be appealed to the appropriate federal circuit court of appeals.

Figure 33. Completions continued to outpace receipts in FY 2017. Note that completions may have been for cases received in a prior fiscal year.

Figure 33. OCAHO Receipts and Completions

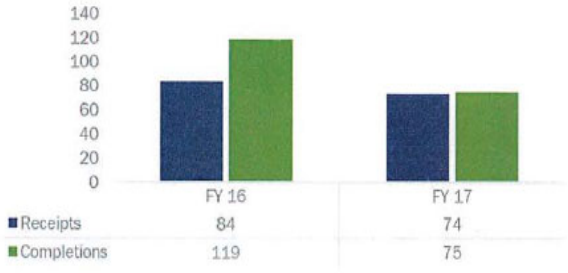
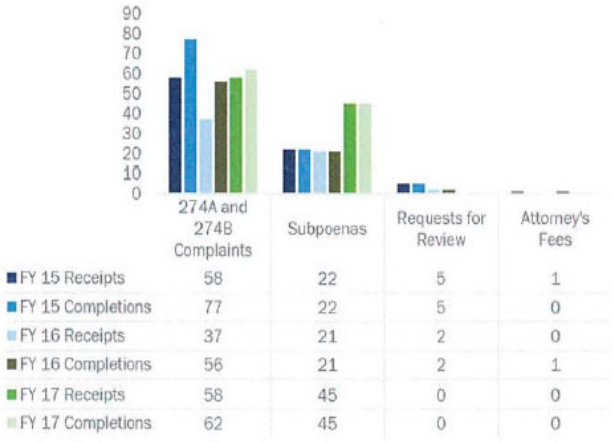


Figure 34. The bulk of OCAHO's workload is 274A and 274B complaints.

Figure 34. OCAHO Receipts and Completions by Type

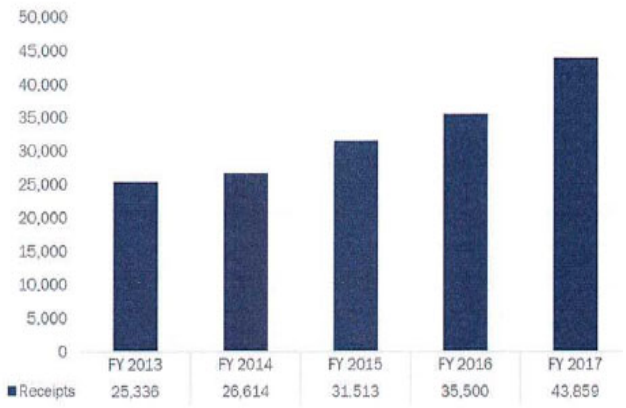


FREEDOM OF INFORMATION ACT (FOIA)

FOIA RECEIPTS

Figure 35. Since FY 2013, the number of FOIA requests received by EOIR has increased by about 73 percent.

Figure 35. FOIA Receipts



Dramatic Surge in the Arrival of Unaccompanied Children Has Deep Roots and No Simple Solutions, Migration Policy Institute

(June 13, 2014)

* * * * *

Additionally, according to Kids In Need of Defense (KIND), an estimated 30 percent of unaccompanied minors are ordered removed in absentia because they fail to appear at their initial or later hearings. The Vera Institute of Justice estimates 40 percent of unaccompanied children are potentially eligible for relief.

Why Is This Happening?

There are deep root causes for this child migration, and for the recent surge in arrivals. While there is consensus that there are significant push and pull factors at work, there is not agreement as to which are more important. And inevitably, the issue of unaccompanied child migration has become ensnared in the broader political fight over immigration reform.

For the White House, push factors in the countries of origin account for the surge. Many children are "fleeing violence, persecution, abuse, or trafficking," Attorney General Eric Holder said recently, referring to sustained violence in Central America. For congressional Republicans, who lay their unwillingness to take up immigration legislation at the feet of an administration they view as insufficiently focused on enforcement, the surge owes to President Obama's policies. House Judiciary Committee Chairman Robert Goodlatte (R-VA) termed the surge in arrivals an "administration-made disaster" created because "word has gotten out around

the world about President Obama's lax immigration enforcement policies, and it has encouraged more individuals to come to the United States illegally, many of whom are children from Central America."

In reality, there is no single cause. Instead , a confluence of different pull and push factors has contributed to the upsurge. Recent U.S. policies toward unaccompanied children, faltering economies and rising crime and gang activity in Central American countries, the desire for family reunification, and changing operations of smuggling networks have all converged.

There is some evidence of a growing perception among Central Americans that the U.S. government's treatment of minors, as well as minors traveling in family units, has softened in recent years. These child-friendly policies in many ways directly flow from TVPRA. In addition to the screening and ORR transfer requirements described above, the law also requires the United States to ensure safe repatriation of minors and established standards for custody, created more child-friendly asylum procedures, and relaxed eligibility for SIJ visa status. Some also contend that minors are spurred to migrate by the false idea that they could benefit under the Obama administration's Deferred Action for Childhood Arrivals (DACA) program, which offers a reprieve from deportation for certain young unauthorized immigrants who have lived in the United States since 2007.

Furthermore, while these minors are all placed in removal proceedings, it is not clear that they are ultimately repatriated to their home countries. According to U.S. Immigration and Customs Enforcement (ICE) data, the agency carried out 496 repatriations (removals

and returns) of juveniles from Guatemala, Honduras, and El Salvador in 2013, down from 2,311 in 2008.

On the other hand, strong evidence also points to increasingly grave conditions in Central America as principal drivers of the new influx. A number of investigations by journalists and studies by nongovernmental organizations have found that children are fleeing their home countries to escape violence, abuse, persecution, trafficking, and economic deprivation. To be sure, murder, poverty, and youth unemployment rates paint a bleak picture of conditions that children may face in Honduras, Guatemala, and El Salvador in particular. Rising gang violence in some of these countries has become an undeniable factor in many children's decision to migrate.

A recent UN High Commissioner for Refugees (UNHCR) study based on interviews with more than 400 unaccompanied minors found that 48 percent had experienced violence or threats by organized-crime groups, including gangs, or drug cartels, or by state actors in their home countries, and 22 percent reported experiencing abuse at home and violence at the hands of their caretakers. Thirty-nine percent of Mexican children reported being recruited into or exploited by human smuggling organizations.

Additionally, family separation has long been a strong motivation for unaccompanied minors to migrate. Immigration to the United States from Central America and Mexico in high numbers over the last decade has led adults, now settled in the United States, to send for the children they left behind. UNHCR researchers found that 81 percent of the children they interviewed cited

joining a family member or pursuing better opportunities as a reason for migrating to the United States. While the family separation dynamic is not a new one, home-county conditions have added urgency to it. Lastly, stronger, more sophisticated smuggling infrastructure and networks are surely playing a role in facilitating the rise in children's attempts to cross the border by themselves.

Whatever mix of factors has triggered the surge, there is universal concern about the harrowing journey that children endure as they travel north. These children are frequently * * *

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Symposium: The U.S.-Mexico Relationship in International Law and Politics, Contiguous Territories: The Expanded Use of "Expedited Removal" in the Trump Era, 33 Md. J. Int'l Law 268 (2018)

* * * * *

* * * scenarios present themselves where individuals could be immediately "returned" to the contiguous territories without clear instructions, or under a misimpression they have been actually deported and then barred from re-entry. Under these situations, the removal proceedings to which they are actually entitled would be rendered a mere nullity. They would be allegedly "awaiting" a proceeding outside the U.S. which could be completed without them were they not to show up for their hearing. If they for whatever reason do not appear on the appointed day for their hearing, an in absentia order of removal can be issued against them.[8]

The text of the President's executive order expanding expedited removal to the entire country and for those arriving aliens caught within two years from entry was operationalized in an implementing memorandum, by then-Department of Homeland Security ("DHS") Secretary John Kelly.[9] In that memorandum former Secretary Kelly noted that INA § 235(b)(2)(C) permits the return of "aliens to contiguous countries."[10] In so doing, the Secretary opined that the rationale for the return pending "the outcome of removal proceedings saves the Department's detention and adjudication resources for other priority aliens."[11] Importantly, the provision appears to be intended to be limited to those "aliens so apprehended who do not pose a risk of a subsequent illegal entry or attempted illegal entry. . . ."[12] The

memorandum also specifically addresses operationalization of the contiguous territories provision with respect to unaccompanied alien children ("UACs"), noting that as to those children the requirements ***271** of 8 U.S.C. § 1232 must be followed."[13] Clearly, the provision is still to be applied to such children with the express proviso found in the memorandum that "the law and U.S. international treaty obligations" be followed and so long as the children pose "no risk of recidivism."[14]

A close reading of the memorandum of February 20, 2017 reveals a lot about how the contiguous territories provision is expected to be implemented. First, the provision is envisioned by the federal agency at issue, DHS, to be used on certain classes of undocumented immigrants and not others.[15] The imposition of the phrase "who do not pose a risk of a subsequent illegal entry or attempted illegal entry" tells us that the agency (at least from the point of view of the publicly available policy) does not apparently want to utilize the provision for individuals with a high risk of illegal re-entry. It begs the question how the agency is going to determine this issue. It also is problematic in that people may not be given any choice in the matter. When an individual is not given a preference, they may be forcibly returned to a contiguous territory where they could be subjected to persecution, crime, homelessness or, worse for some, expulsion back to their point of origin to face persecution there.

It is troubling that the implementing memorandum contains absolutely no discussion of safeguards in the neighboring country for those who are returned pending removal.[16] The lack of safeguards, such as adequate

housing, protection, access to counsel, food or other procedural protections are missing. With respect to the nature of the removal proceedings which will be available to the returned person, there is mention of the Executive Office for Immigration Review consulting with U.S. Customs and Border Protection and Immigration and Customs Enforcement "to establish a functional, interoperable video teleconference system to ensure maximum capability to conduct video teleconference removal hearings for those aliens so returned to the contiguous country."[17] The inclusion of video equipment means that the future removal hearings do not have to be held in any established immigration court location, but could be held anywhere that video equipment is available. Such mobility implies that the hearings in such cases may be held at the border itself where presumably the returned immigrant's fate would be decided without ***272** their ever having to be officially "re-entered" into the United States.

As noted by at least one commentator, the return of a person to the contiguous territory, e.g., Mexico, pending further proceedings leads to three logical possibilities: (1) the person is a citizen of Mexico, (2) the person is a citizen of some third country but has valid immigration status in Mexico; or (3) the person is a citizen of some third country but lacks valid immigration status in Mexico.[18] In the first and third cases, according to the blog, the returning of the person to Mexico under these circumstances would be "deeply problematic."[19] As will be discussed in a further section of this article, the provision if utilized in this deleterious way could violate U.S. treaty obligations, such as the 1987 U.N. Convention Against Torture (the U.S. is a state party), 1967 Protocols relating to the Status of Refugees (the U.S. is

a state party), among other international instruments and norms, as well as portions of U.S. domestic law, most notably INA § 241(b)(3), relating to mandatory withholding of removal for those whose life or freedom would be threatened (enshrining the principle of non-refoulement).

A similar point also was made by the Harvard Immigration and Refugee Clinical Program, in a monograph discussing the impact of President Trump's executive orders on asylum seekers.[20] As explained in that paper, the principle of non-refoulement states that "No Contracting Stale shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers or territories where his life or freedom would be threatened on account of his race, religion, nationality, or membership of a particular social group or political opinion."[21] The Harvard Clinic noted that the implementation of the President's executive order, in section 7, is unclear and implementation would require cooperation from Mexico and Canada.[22] Furthermore, they note that in the event the U.S. sends "asylum seekers back to Mexico pending a formal removal proceeding, there is significant likelihood that Mexico would send those asylum seekers ***273** back to their countries of origin."[23] The monograph then goes on to cite statistics showing an increase in deportations from Mexico, and especially to countries in the Central American northern triangle countries of El Salvador, Guatemala, and Honduras.[24] "Lawyers have noted multiple violations of due process for asylum seekers in Mexico; crime against migrants (including human trafficking, kidnapping, and rape) is widespread and largely goes unprosecuted.[25]

A final point to notice by way of introduction is that the contiguous territories provision contains no express time or geographical limitation found in the INA. Even the related expedited removal provisions for those found to have entered without inspection without valid entry documents or through fraud or misrepresentation are limited to those found within the U.S. within two years.[26] Since no limit exists on the contiguous territories provision, it is possible that DHS could return those found within the U.S. who are deemed to be "arriving aliens" even where a person has actually been in the country far longer than the two-year period. It is problematic furthermore because those who are caught within the U.S. and who entered from a contiguous territory (no matter when they entered, may now presumably be "returned" immediately to Mexico without seeing an immigration judge and without the possibility of any protection in the neighboring country, a place they may fear persecution, or where they have little or no connection and no way to support themselves while awaiting a future hearing which may be wholly inaccessible to them.

II. POSSIBLE LEGAL CHALLENGES IN UNITED STATES FEDERAL COURTS

A. Habeas Corpus and the Real ID Act of 2005—limits imposed on habeas by the INA

Petitioning for a writ of habeas corpus presents one way to seek to remedy the use or abuse of the contiguous territories provision. Necessarily, any immigrant's options for relief in this regard are going to be severely limited by several factors. First, the person may be no ***274** longer present in the U.S. Second, she may lack access to counsel, and especially counsel who are able to navigate federal court procedures required to seek to

enjoin the Department of Home land Security from "returning" an arriving alien to a contiguous territory under the INA. Furthermore, there are various sections of the INA which limit jurisdiction in federal district court, following the Real ID Act of 2005.[27] INA § 242 [8 U.S.C. § 1252] has provisions which restrict courts from even hearing actions to challenge expedited removal proceedings, more generally. In the words of the statute, "no court shall have jurisdiction to review . . . any individual determination or to entertain any other cause or claim arising from or relating to the implementation or operation of an order of removal pursuant to [8 U.S.C. § 1225(b)(1)]. . . . "[28] Because the contiguous territories provision is in 8 U.S.C. § 1225(b)(2)(C) and ***not*** 1225(b)(1), then the restriction on judicial review (at least with respect to this limiting statutory provision) should not be used as a valid reason to restrict judicial review over a contiguous territories claim.[29]

As the Real ID Act of 2005 made clear, federal district courts no longer have jurisdiction over challenges to final orders of removal.[30] Instead, pursuant to 8 U.S.C. § 1225(a), petitioners must exhaust their administrative remedies before the immigration judge ("IJ") and Board of Immigration Appeals ("BIA") and then bring a challenge in the form of a petition for review to a final order exclusively in the circuit court of appeals. Unfortunately, this jurisdiction-stripping provision often means that petitioners will have to await a remedy to their constitutional challenges until the appropriate circuit court of appeals reviews their case. Many times, however, a "victory" at the circuit court level may be an illusory one where the petitioner has already been deported and cannot be found or is unable to return to the U.S.[31]

The jurisdiction-stripping provision, in 8 U.S.C. § 1252, does not *275 foreclose all habeas cases since they still can be brought to challenge the conditions of, and the reasons for, a person's confinement if in violation of law. If a person is being held "in custody" by the federal government in violation of a federal statute or the United States Constitution, then habeas may permit a federal district court to remedy the violation.[32] The argument will turn on whether a federal court will exercise jurisdiction over a person who has been "returned" (or about to be returned) to a contiguous territory. One issue will be whether that person is still "in custody" for purposes of habeas jurisdiction. Given how expansively the definition of "in custody" has been interpreted, there should be no question that such an immigrant is 'in custody" for purposes of a valid habeas claim.[33] Another issue may be the appropriate venue in cases where an immigrant is returned and no longer in the * * *

* * * * *

The border is tougher to cross than ever. But there is still one way into America. — The Washington Post

11/29/18

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* * * telling them to come back later. Harbury and others have criticized the practice as unlawful, but DHS officials say that port officers have multiple responsibilities and that busy border crossings have capacity limits.

It was Harbury who provided ProPublica with the surreptitious audio recording of a child screaming for her mother that dealt a severe blow to the family-separation policy. She has absorbed the stories of thousands of asylum seekers over the decades and increasingly views her job with the urgency of an emergency responder. She intends to help as many asylum seekers enter the United States as possible, because she believes she is saving their lives.

"These people have the most horrifying stories I have ever heard," she said. "I don't think people have better claims than those running from the cartels."

The shelter in Reynosa was crowded with newly deported Mexicans, many still carrying their belongings in plastic bags provided by the U.S. government. Immigration and Customs Enforcement had dropped off 85 deportees the previous night, and several complained harshly of bad food and bysmal conditions in U.S. detention.

The nuns had asked Harbury to help a young mother stranded for more than a week, Maria Magdalena Gon-

zalez, 21, and her son, Emiliano, 3. A gangster in Gonzalez's home state of Guerrero was threatening to kill her for rejecting his advances, she said. But when she and her son tried to approach the U.S. border crossing a few days earlier to seek asylum, they had been turned away.

With more and more Central Americans showing up at the port of entry, U.S. officers had set up an impromptu checkpoint over the middle of the Rio Grande, blocking them from setting foot on the U.S. side to start the asylum process.

Those who fail to cross are put at risk, because cartel lookouts ply the Mexican side of the bridge, watching for Central Americans who have been turned away. The migrants are prime targets for kidnapping because criminal groups assume they have relatives living in the United States with enough money to pay a ransom.

Harbury was there to make sure Gonzalez and her son weren't rejected again.

* * * * *

MIGRANT CARAVAN · Published December 7

San Diego non-profits running out of space for migrant caravan asylum seekers

By Barnini Chakraborty | Fox News

San Diego's chief Border Patrol agent describes what happened when migrants stormed the border on New Year's Day

Rodney Scott says violence has increased about 300 percent since the caravan arrived.

SAN DIEGO, Calif. - A group of San Diego-based nonprofits claim they are running out of money and space to house, clothe and feed hundreds of asylum-seeking families ICE agents have been quietly transporting in and dumping onto the streets.

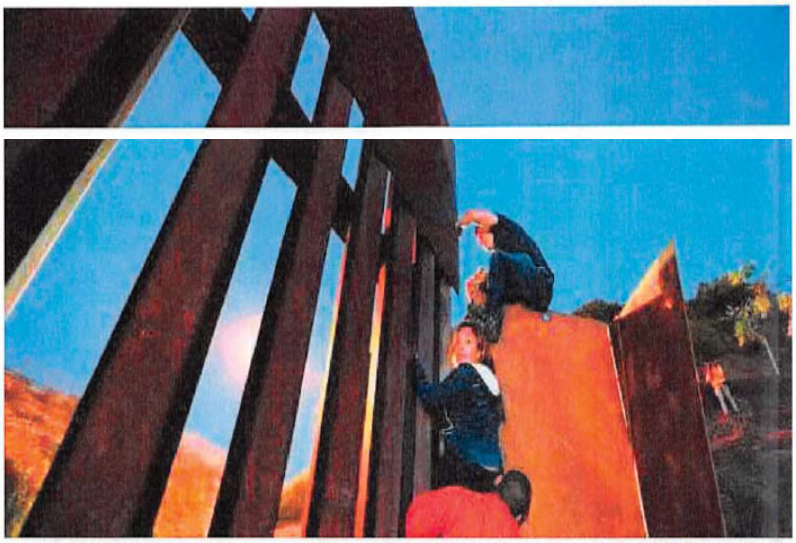
The San Diego Rapid Response Network (SDRRN), a coalition of human rights, service and faith-based organizations, is urging government officials to develop and implement "a sustainable plan to keep vulnerable asylum-seeking families off the streets and help them reach their final destination."

The organization claims that U.S. Immigration and Customs Enforcement has released hundreds of migrants into San Diego—the largest land border crossing in the world.

The problem, SDRRN says, is that the recent influx is too much to handle.

"The shelter can accommodate only about 150 people, with average stays of 24 to 48 hours," Edward Sifuentes, a spokesman for the ACLU of San Diego & Imperial Counties, said. "It stays filled to capacity because as quickly as one group of families moves on, others are released by immigration authorities."

MIGRANT CARAVAN HURTS TOURISM IN TIJUANA: 'THEY'RE KIND OF SCARED'



Central American migrants planning to surrender to U.S. border guards climb over the U.S. border wall from Playas de Tijuana, Mexico, late Monday, Dec. 3. (AP Photo/Rebecca Blackwell)

Sifuentes warns that "the need for migrant shelter and related services is expected to escalate in coming weeks as hundreds gather in Tijuana hoping to claim asylum in the U.S."

Once asylum seekers are processed, federal agents drop off them off at various shelters and Greyhound bus stations around the city at the person's request.

Norma Chavez-Peterson, the executive director of the ACLU of San Diego and Imperial Counties, said the network's resources have been stretched to their thinnest point yet. The network is on their fifth shelter location in six weeks, and for the first time has had to turn families away due to capacity.

"We're at a moment of a lack of capacity, we cannot sustain this any longer," Chavez-Peterson said. "We need a higher level of leadership."

During a press conference at Our Lady of Mount Carmel in San Ysidro, Chavez-Peterson outlined what the network needs to continue to fill the gaps of care for asylum seekers. In a series of meetings with state and local government leaders, she has advocated for an infusion of cash and physical resources, along with a concrete plan of sustainability.

Specifically, she said the network needs a high-capacity facility that can house up to 200 people, along with the resources to hire staff, security, provide food, travel money, and cover some transportation costs for the asylum seekers. Most urgent among these is a secure, stable shelter.

Often, though, the migrants themselves have nowhere to go, Vino Panjanor, executive director of Catholic Charities at the Diocese of San Diego, told Fox News. If they by chance have a place to go, they typically have no way of getting there.

"These migrant families consist of small children as young as a 3-day old baby," he said. "We don't have resources. We are working on shoe-string budgets. This started on Oct. 26. It's week 5. It's not sustainable."

Several other humanitarian groups echoed Panjanor's sentiments and say they are running out of options.

HONDURAN WOMAN, 19, IN MIGRANT CARAVAN SCALES BORDER WALL TO GIVE BIRTH IN US AFTER 2,000-MILE TRIP

The San Diego Rapid Response Network claims that U.S. Immigration and Customs Enforcement has released hundreds of migrants into San Diego – the largest land border crossing in the world. The problem, SDRRN says, is that the recent influx is too much to handle. (San Diego Rapid Response Network)

"SDRRN's efforts were intended as a stopgap measure, but the growing number of asylum-seeking families in need is surpassing the network's collective ability to provide basic resources, including food, shelter, emergency healthcare and travel assistance," the organization told Fox News in a written statement.

Since setting up an emergency shelter in November, SDRRN has helped more than 1,700 migrants released by federal immigration authorities. Those released have been initially processed by Homeland Security and are waiting for their scheduled ICE hearing which can be months away. Without a safe place to go, many wander the streets homeless and hungry.

"We have to take some to the ER for medical help," Panjanor said. "This isn't a political issue. We aren't taking a political stand. It's a humanitarian one."

ICE told Fox News: "Family units that are released will be enrolled in a form of ICE's Alternatives to Detention or released on another form of supervision."

It added: "ICE continues to work with local and state officials and NGO partners in the area so they are prepared to provide assistance with transportation or other services."

Not satisfied, SDRRN has reached out to local and state leaders pleading for help.

California's Gov.-elect Gavin Newsom, a Democrat who frequently takes on the Trump administration over immigration issues, recently said the state government needs to step up and make a greater effort in supporting asylum seekers.

Since setting up an emergency shelter in November, SDRRN has helped more than 1,700 migrants released by federal immigration authorities. (San Diego Rapid Response Network)

"We're all in this together," he said. "I feel a deep sense of responsibility to address the issues that we as a border community face and I think we need to humanize this issue, not politicize the issue."

For now, it seems that migrants are stuck in San Diego.

Many, though not all, have fled countries like Honduras after receiving death threats from brutal street thugs such as MS-13 and the 18th Street gang. Some are also running from corrupt government officials in their home countries that have made living there sheer hell.

The migrants are also having a tough time returning to Mexico. Residents there are fed up by thousands of Central American asylum seekers pushing their way onto Mexican soil. Some have circled encampments and shouted at migrants.

In one case, things got so bad that an 8-month pregnant woman, her husband and toddler son, scaled a portion of the border wall after feeling unsafe at a caravan stopping point near the Tijuana-San Diego border.

Late last month, Mexicans in Tijuana marched down the street with one clear message to the migrants: Get out!

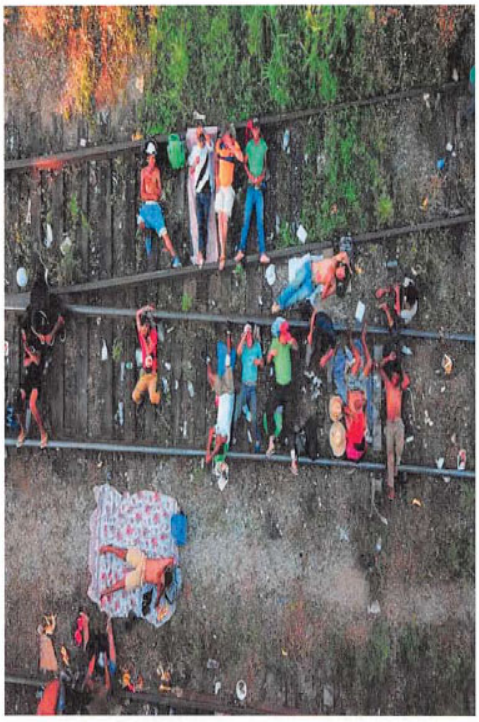
"We want the caravan to go; they are invading us," Patricia Reyes, a 62-year-old protester, hiding from the sun under an umbrella, told NPR. "They should have come into Mexico correctly, legally, but they came in like animals."

Fox News' Andrew Keiper contributed to this report.

*You can find Barnini Chakraborty on Twitter @**Barnini***

'We're heading north!' Migrants nix offer to stay in Mexico

By CHRISTOPHER SHERMAN yesterday



ARRIAGA, Mexico (AP)—Hundreds of Mexican federal officers carrying plastic shields blocked a Central American caravan from advancing toward the United States on Saturday, after a group of several thousand migrants turned down the chance to apply for refugee status and obtain a Mexican offer of benefits.

Mexican President Enrique Pena Nieto has announced what he called the "You are at home" plan, offering shelter, medical attention, schooling and jobs to Central Americans in Chiapas and Oaxaca states if migrants apply, calling it a first step toward permanent refugee status. Authorities said more than 1,700 had already applied for refugee status.

But a standoff unfolded as federal police officers blocked the highway, saying there was an operation underway to stop the caravan. Thousands of migrants waited to advance, vowing to continue their long trek toward the U.S. border.

At a meeting brokered by Mexico's National Human Rights Commission, police said they would reopen the highway and only wanted an opportunity for federal authorities to explain the proposal to migrants who had rejected it the previous evening. Migrants countered that the middle of a highway was no place to negotiate and said they wanted to at least arrive safely to Mexico City to discuss the topic with authorities and Mexican lawmakers.

The caravan of Central American migrants is now traveling through southern Mexico - estimated at around 7,000 people, nearly all Hondurans - has attracted headlines in the United States less than two weeks before the midterm elections. (Oct 24)

They agreed to relay information back to their respective sides and said they would reconvene,

Orbelina Orellana, a migrant from San Pedro Sula, Honduras, said she and her husband left three children behind and had decided to continue north one way or another.

"Our destiny is to get to the border," Orellana said.

She was suspicious of the government's proposal and said that some Hondurans who had applied for legal status had already been sent back. Her claims could not be verified, but migrants' representatives in the talks asked the Mexican government to provide a list of anyone who had been forced to return.

The standoff comes after one of the caravan's longest days of walking and hanging from passing trucks on a 60-mile (100 kilometer) journey to the city of Arriaga.

The bulk of the migrants were boisterous Friday evening in their refusal to accept anything less than safe passage to the U.S. border.

"Thank you!" they yelled as they voted to reject the offer in a show of hands. They then added: "No, we're heading north!"

Sitting at the edge of the edge of the town square, 58-year-old Oscar Sosa of San Pedro Sula, Honduras concurred.

"Our goal is not to remain in Mexico," Sosa said. "Our goal is to make it to the (U.S). We want passage, that's all."

Still 1,000 miles (1,600 kilometers) from the nearest U.S. border crossing at McAllen, Texas, the journey could be

twice as long if the group of some 4,000 migrants heads for the Tijuana-San Diego frontier, as another caravan did earlier this year. Only about 200 in that group made it to the border.

While such migrant caravans have taken place regularly over the years, passing largely unnoticed, they have received widespread attention this year after fierce opposition from U.S. President Donald Trump.

On Friday, the Pentagon approved a request for additional troops at the southern border, likely to total several hundred, to help the U.S. Border Patrol as Trump seeks to transform concerns about immigration and the caravan into electoral gains in the Nov. 6 midterms.

Defense Secretary Jim Mattis signed off on the request for help from the Department of Homeland Security and authorized the military staff to work out details such as the size, composition and estimated cost of the deployments, according to a U.S. official who spoke on condition of anonymity to discuss planning that has not yet been publicly announced.

Stoking fears about the caravan and illegal immigration to rally his Republican base, the president insinuated that gang members and "Middle Easterners" are mixed in with the group, though he later acknowledged there was no proof of that.

At a church in Arriaga that opened its grounds to women and children Friday, Ana Griselda Hernandez, 44, of Mapala, Honduras, said she and two friends traveling with children had decided to pay for a bus ride from Pijijiapan, because the 4-year-old and 5-year-old would have never covered the 60-mile distance.

"It's difficult because they walk very slowly," she said. She pointed out scabbed-over blisters on her feet, a testament to the fact they had walked or hitched rides since leaving their country.

The caravan is now trying to strike out for Tapanatepec, about 29 miles (46 kilometers) away.

Up until now, Mexico's government has allowed the migrants to make their way on foot, but has not provided them with food, shelter or bathrooms, reserving any aid for those who turn themselves in.

Police have also been ejecting paid migrant passengers off buses, enforcing an obscure road insurance regulation to make it tougher for them to travel that way.

On Friday, authorities were cracking down on smaller groups trying to catch up with the main caravan, detaining about 300 Hondurans and Guatemalans who crossed the Mexico border illegally, said an official with the national immigration authority.

Migrants, who enter Mexico illegally every day, usually ride in smugglers' trucks or buses, or walk at night to avoid detection. The fact that the group of about 300 stragglers was walking in broad daylight suggests they were adopting the tactics of the main caravan, which is large enough to be out in the open without fear of mass detention.

However, it now appears such smaller groups will be picked off by immigration authorities, keeping them from swelling the caravan's ranks.

On Friday evening, Irineo Mujica, whose organization People without Borders is supporting the caravan, accused Mexican immigration agents of harassment and urged migrants to travel closely together.

"They are terrorizing us," he said.

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Associated Press writers Mark Stevenson and Peter Orsi in Mexico City contributed to this report.

Migrants travel through Mexico on a cargo train, known locally as "The Beast."

1

EXECUTIVE SUMMARY

An estimated 500,000 people cross into Mexico every year.[1] The majority making up this massive forced migration flow originate from El Salvador, Honduras, and Guatemala, known as the Northern Triangle of Central

[1] Source: UNHCR MEXICO FACTSHEET. February 2017. Last visited 18 April 2017. Data compiled by UNHCR based on SEGOB and INM official sources.

America (NTCA), one of the most violent regions in the world today.

Since 2012, the international medical humanitarian organization Doctors Without Borders/Médecins Sans Frontiéres (MSF) has been providing medical and mental health care to tens of thousands of migrants and refugees fleeing the NTCA's extreme violence and traveling along the world's largest migration corridor in Mexico. Through violence assessment surveys and medical and psychosocial consultations, MSF teams have witnessed and documented a pattern of violent displacement, persecution, sexual violence, and forced repatriation akin to the conditions found in the deadliest armed conflicts in the world today[2].

For millions of people from the NTCA region, trauma, fear and horrific violence are dominant facets of daily life. Yet it is a reality that does not end with their forced flight to Mexico. Along the migration route from the NTCA, migrants and refugees are preyed upon by criminal organizations, sometimes with the tacit approval or complicity of national authorities, and subjected to violence and other abuses—abduction, theft, extortion, torture, and rape—that can leave them injured and traumatized.

Despite existing legal protections under Mexican law, they are systematically detained and deported—with devastating consequences on their physical and mental health. In 2016, 152,231 people from the NTCA were

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[2] The Geneva Declaration on Armed Violence and Development, Global Burden of Armed Violence 2015: Every Body Counts, October 2015, Chapter Two, http://www.genevadeclaration.org/fileadmin/docs/GBAV3/GBAV3_Ch2_pp49-86.pdf

detained/presented to migration authorities in Mexico, and 141,990 were deported.

The findings of this report, based on surveys and medical programmatic data from the past two years, come against the backdrop of heightened immigration enforcement by Mexico and the United States, including the use of detention and deportation. Such practices threaten to drive more refugees and migrants into the brutal hands of smugglers or criminal organizations.

From January 2013 to December 2016, MSF teams have provided 33,593 consultations to migrants and refugees from the NTCA through direct medical care in several mobile health clinics, migrant centers and hostels—known locally as albergues—across Mexico. Through these activities, MSF has documented the extensive levels of violence against patients treated in these clinics, as well as the mental health impact of trauma experienced prior to fleeing countries of origin and while on the move.

Since the program's inception, MSF teams have expressed concern about the lack of institutional and government support to the people it is treating and supporting along the migration route. In 2015 and 2016, MSF began surveying patients and collecting medical data and testimonies. This was part of an effort by MSF to better understand the factors driving migration from the NTCA, and to assess the medical needs and vulnerabilities specific to the migrant and refugee population MSF is treating in Mexico.

The surveys and medical data were limited to MSF patients and people receiving treatment in MSF-supported

clinics. Nevertheless, this is some of the most comprehensive medical data available on migrants and refugees from Central America. This report provides stark evidence of the extreme levels of violence experienced by people fleeing from El Salvador, Honduras, and Guatemala, and underscores the need for adequate health care, support, and protection along the migration route through Mexico.

In 2015, MSF carried out a survey of 467 randomly sampled migrants and refugees in facilities the organization supports in Mexico. We gathered additional data from MSF clinics from 2015 through December 2016. Key findings of the survey include:

Reasons for leaving:

- Of those interviewed, almost 40 percent (39.2%) mentioned direct attacks or threats to themselves or their families, extortion or gang-forced recruitment as the main reason for fleeing their countries.
- Of all NTCA refugees and migrants surveyed, 43.5 percent had a relative who died due to violence in the last two years. More than half of Salvadorans surveyed (56.2 percent) had a relative who died due to violence in this same time span.
- Additionally, 54.8% of Salvadorans had been the victim of blackmail or extortion, significantly higher than respondents from Honduras or Guatemala.

Violence on the Journey:

- 68.3 percent of the migrant and refugee populations entering Mexico reported being victims of violence during their transit toward the United States.
- Nearly one-third of the women surveyed had been sexually abused during their journey.
- MSF patients reported that the perpetrators of violence included members of gangs and other criminal organizations, as well as members of the Mexican security forces responsible for their protection.

According to medical data from MSF clinics from 2015 through December 2016:

- One-fourth of MSF medical consultations in the migrants/refugee program were related to physical injuries and intentional trauma that occurred en route to the United States.
- 60 percent of the 166 people treated for sexual violence were raped, and 40 percent were exposed to sexual assault and other types of humiliation, including forced nudity.
- Of the 1,817 refugees and migrants treated by MSF for mental health issues in 2015 and 2016, close to half (47.3 percent) were victims of direct physical violence en route, while 47.2 percent of this group reported being forced to flee their homes.

The MSF survey and project data from 2015-2016 show a clear pattern of victimization—both as the impetus for many people to flee the NTCA and as part of their expe-

rience along the migration route. The pattern of violence documented by MSF plays out in a context where there is an inadequate response from governments, and where immigration and asylum policies disregard the humanitarian needs of migrants and refugees.

Despite the existence of a humanitarian crisis affecting people fleeing violence in the NTCA, the number of related asylum grants in the US and Mexico remains low. Given the tremendous levels of violence against migrants and refugees in their countries of origin and along the migration route in Mexico, the existing legal framework should provide effective protection mechanisms to victimized populations. Yet people forced to flee the NTCA are mostly treated as economic migrants by countries of refuge such as Mexico or the United States. Less than 4,000 people fleeing El Salvador, Honduras, and Guatemala were granted asylum status in 2016[3]. In addition, the government of Mexico deported 141,990 people from the NTCA. Regarding the situation in US, by the end of 2015, 98,923 individuals from the NTCA had submitted requests for refugee or asylum status according to UNHCR[4]. Nevertheless, the number of asylums status granted to individuals from the NTCA has been comparatively low, with just 9,401 granted status since FY 2015[5].

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[3] Source: UNHCR MEXICO FACTSHEET. February 2017.

[4] Regional Response to the Northern Triangle of Central America Situation. UNHCR. Accessed on 01/02/2017 at http://reporting.unhcr.org/sites/default/files/UNHCR%20-%20NTCA%20Situation%20Supplementary%20Appeal%20-%20June%20202016.pdf

[5] Source: MSF calculations based on information from US Homeland Security. Yearbook of Immigration Statistics 2015.

As a medical humanitarian organization that works in more than 60 countries, MSF delivers emergency aid to people affected by armed conflict, epidemics, disasters, and exclusion from health care. The violence suffered by people in the NTCA is comparable to the experience in war zones where MSF has been present for decades, Murder, kidnappings, threats, recruitment by non-state armed actors, extortion, sexual violence and forced disappearance are brutal realities in many of the conflict areas where MSF provides support.

The evidence gathered by MSF points to the need to understand that the story of migration from the NTCA is not only about economic migration, but about a broader humanitarian crisis.

While there are certainly people leaving the NTCA for better economic opportunities in the United States, the data presented in this report also paints a dire picture of a story of migration from the NTCA as one of people running for their lives. It is a picture of repeated violence, beginning in NTCA countries and causing people to flee, and extending through Mexico, with a breakdown in people's access to medical care and ability to seek protection in Mexico and the United States.

It is a humanitarian crisis that demands that the governments of Mexico and United States, with the support of countries in the region and international organizations, rapidly scale up the application of legal protection measures—asylum, humanitarian visas, and temporary protected status—for people fleeing violence in the NTCA region; immediately cease the systematic deportation of NTCA citizens; and expand access to medical, mental health, and sexual violence care services for migrants and refugees.

2

INTRODUCTION:
CARING FOR REFUGEES AND MIGRANTS

MSF has worked with migrants and refugees in Mexico since 2012, offering medical and psychological care to thousands of people fleeing the Northern Triangle of Central America (NTCA). Since the MSF program started, the organization has worked in several locations along the migration route: Ixtepec (Oaxaca State); Arriaga (Chiapas); Tenosique (Tabasco); Bojay (Hidalgo); Tierra Blanca (Veracruz State); Lechería-Tultitlán, Apaxco, Huehuetoca (State of Mexico); San Luis Potosi (San Luis Potosi State); Celaya (Guanajuato State); and Mexico City. Locations have changed based on changes in routes used by migrants and refugees or the presence of other organizations. MSF's services have mainly been provided inside hostels, or albergues, along the route. In some locations, MSF set up mobile clinics close to the rail roads and train stations.

In addition, MSF teams have trained 888 volunteers and staff at 71 shelters and hostels in "psychological first aid"—in which patients are counseled for a short period of time before they continue their journey. Health staff and volunteers in key points along the transit route, at 41 shelters and 166 medical facilities, received training on counseling related to sexual and gender-based violence (SGBV).

From January 2013 to December 2016, MSF teams carried out 28,020 medical consultations and 5,573 mental health consultations. More than 46,000 individuals attended psychosocial activities organized by our teams to

address the following topics: stress on the road, violence on the road, mental health promotion and prevention, myths and truths about the migration route, and developing tools to deal with anxiety.

Some of the people treated by MSF report extreme pain and suffering due to physical and emotional violence inflicted on them on the migration route. In 2016, MSF, in collaboration with the Scalabrinian Mission for Migrants and Refugees (SMR), opened a rehabilitation center for victims of extreme violence and other cruel, inhuman or degrading treatment. Since then MSF has treated 93 patients who required longer-term mental health and rehabilitation services.

Torture is inflicted by governmental security actors, while criminal organizations inflict extreme degrees of violence on these already vulnerable populations. Migrants and refugees are often easy prey, and they face severe difficulties in making any formal legal complaint. Some patients reported having been kidnapped, repeatedly beaten for days or even weeks for the purposes of extortion and ransom, or sometimes to frighten or intimidate other migrants and refugees. Attacks often include sexual assault and rape.

Migrant and refugee patients attended by MSF from 2013-2016

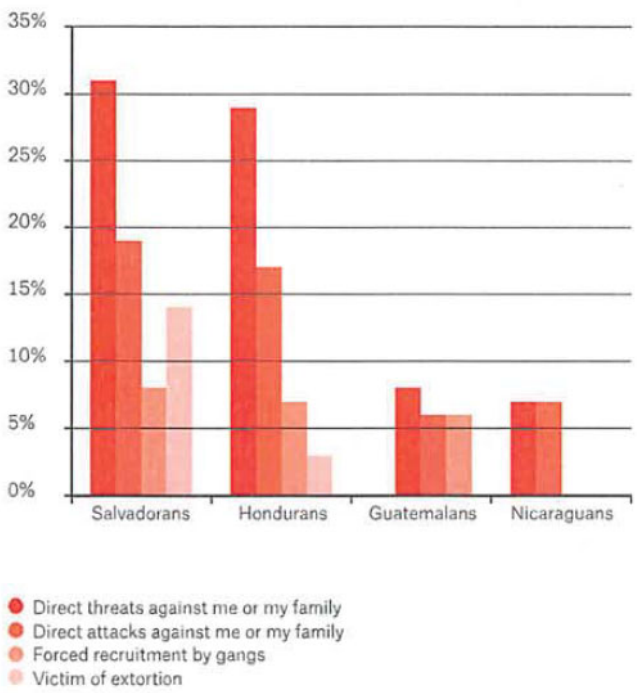
- Center Route: From Tierra Blanca to Querétaro
- Northeast Route: From Querétaro to Ciudad Acuña
- Northwest Route: From Querétaro to Tijuana
- North Route: From Querétaro to Puerto Palomas
- Southeast Route: From Tenosique to Tierra Blanca
- Southwest Route: From Tapachula to Tierra Blanca

- Capital City
- Transmigrant project, town of interest
- Health facities
- International boundary
- Coastline

* * * * *

Direct attacks, threats, extortion or a forced recruitment attempt by criminal organizations were given as main reasons for survey respondents to flee their countries, with numbers significantly higher in El Salvador and Honduras. Of the surveyed population, 40 percent left the country after an assault, threat, extortion or a forced recruitment attempt.

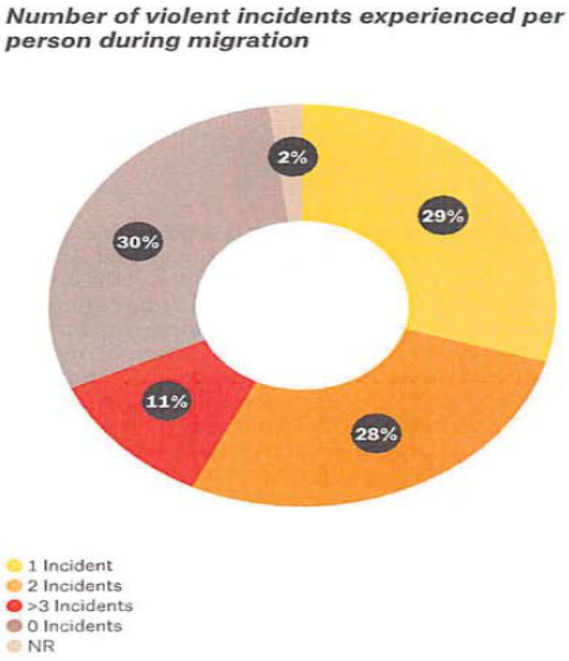
Migration related to direct violence



Regarding exposure to violence along the migration route through Mexico

The findings related to violence in the survey are appalling: more than half the sample population had experienced recent violence at the time they were interviewed: 44 percent had been hit, 40 percent had been pushed, grabbed or asphyxiated, and 7 percent had been shot.

Of the migrants and refugees surveyed in Mexico, 68.3 percent of people from the NTCA reported that they were victims of violence during their transit. Repeated exposure to violence is another reality for the population from NTCA crossing Mexico. Of the total surveyed population, 38.7 percent reported more than one violent incident, and 11.3 percent reported more than three incidents.



In a migration context marked by high vulnerability like the one in Mexico, sexual violence, unwanted sex, and transactional sex in exchange for shelter, protection or for money was mentioned by a significant number of male and female migrants in the surveys. Considering a comprehensive definition of those categories, out of the 429 migrants and refugees that answered SGBV questions, **31.4 percent of women and 17.2 percent of men had been sexually abused during their transit through Mexico.** Considering only rape and other forms of direct sexual violence, 10.7 percent of women and 4.4 percent of men were affected during their transit through Mexico.

The consequences of violence on the psychological well-being and the capacity to reach out for assistance are striking: 47.1 percent of the interviewed population expressed that the violence they suffered had affected them emotionally.

Hondurarn—Male—30 years old—"I am from San Pedro Sula, I had a mechanical workshop there. Gangs wanted me to pay them for "protection", but I refused, and then they wanted to kill me. First they threatened me; they told me that if I stayed without paying, they would take my blood and one of my children. In my country, killing is ordinary; it is as easy as to kill an animal with your shoe. Do you think they would have pitied me? They warn you, and then they do it, they don't play, and so they came for me. Last year in September, they shot me three times in the head, you can see the scars. Since then my face is paralyzed, I cannot speak well, I cannot eat. I was in a coma for 2 months. Now I cannot move fingers on this hand. But what hurts most is that I cannot live in my own country, is to be afraid every day that

they would kill me or do something to my wife or my children. It hurts to have to live like a criminal, fleeing all the time."

* * * * *

Of the 1,817 refugees and migrants seen by MSF in 2015-2016, 47.3 percent of patients survived "physical violence" as a precipitating event for the mental health consultation. Injuries included gunshot wounds, blunt force trauma from kicks and punches, mutilation of body parts during kidnappings, wounds from machete attacks, breaking of bones by blows from baseball bats, and wounds from being thrown out of a running train. In most cases, incidents registered under "physical violence" by MSF occurred along the migration route in Mexico.

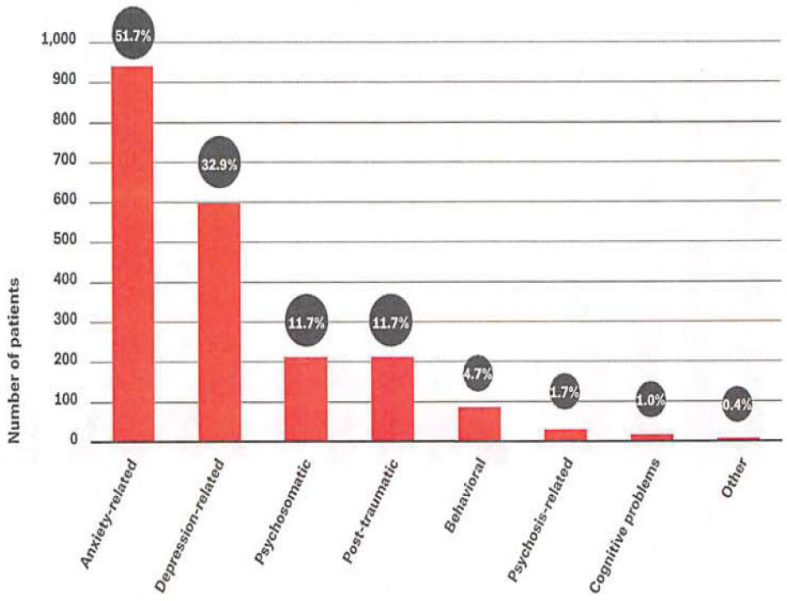
The "precipitating event" most frequently mentioned during consultations was "Forced to flee/internally displaced/refugee/migrant"—registered by 47.2 percent of patients. This covers the period before people made the decision to flee.

Being a "victim of threats" (44.0 percent) and having "witnessed violence or crime against others" (16.5 percent) are the third and fourth most common risk factors. Witnesses to violence included patients forced to watch while others were tortured, mutilated, and/or killed—often in scenarios where they were deprived of their liberty, such as during a kidnapping for extortion.

The anguish and stress that migrants and refugees face both in their home countries and along the migration route make this population particularly vulnerable to anxiety, depression and post-traumatic stress disorder. The following graphic shows the main categories of

symptoms presented by the 1,817 MSF patients seen in mental health consultations during 2015 and 2016.

Symptoms identified in mental health consultations during 2015 and 2016



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A group of transgender women pose for a picture in the Tenosique migrant shelter in 2017. LGBTQ people are often at the highest risk of harassment and abuse both in their countries of origin and on their routes as migrants. Some shelters provide separate living spaces for greater security and support.

6

LIMITED ACCESS TO PROTECTION IN MEXICO

Legal framework applicable to the protection of refugees in Mexico

The Americas region already has relatively robust normative legal frameworks to protect refugees: the countries of Central and North America either signed the 1951 convention on refugees or its 1967 protocol and all have asylum systems in place. Furthermore, Mexico has been at the forefront of international efforts to pro-

tect refugees: its diplomats promoted the 1984 Cartagena Declaration on Refugees, which expands the definition to those fleeing "generalized violence".

In 2010, UNHCR established a guideline[15] for the consideration of asylum and refugee status for victims of gang violence, inviting concerned countries to apply broader criteria to the refugee definition of the 1951 Convention. In relation to these specific patterns of violence, the UNHCR concluded that direct or indirect threats (harm done to family members) and consequences (forced displacement, forced recruitment, forced "marriage" for women and girls, etc.) constituted "well-founded grounds for fear of persecution" and bases for the recognition of the refugee status or the application of the non-refoulement principle, the practice of not forcing refugees or asylum seekers to be returned to a country where their life is at risk or subject to persecution. Mexico integrated those recommendations and the right to protection stated in Article 11 of Mexico's constitution in its 2011 Refugee Law[16]. This law considers broad inclusion criteria for refugees—stating, alongside the internationally recognized definition from the 1951 Convention, the eligibility of persons fleeing situations of generalized violence, internal conflict, massive violations of human rights or other circumstances severely impacting public order.

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[15] UNHCR Guidance Note on Refugee Claims Related to Victims of Organized Gangs - March 2010. Available at: http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=4bb21fa02&skin=0&query=organized%20gangs

[16] Available in Spanish at http://www.diputados.gob.mx/LeyesBiblio/pdf/LRPCAP_301014.pdf

After Brazil Declaration of December 2014 and in line with its 2010 recommendations, the UNHCR established specific guidelines for the access to international protection mechanisms for asylum seekers from El Salvador and Honduras.

Nevertheless, despite the relatively adequate legal framework and the goodwill expressed in regional and international forums, the reality at the field level is extremely worrying: seeking asylum, getting refugee status, or even securing other forms of international protection, such as complementary measures in Mexico and the United States, remains almost impossible for people fleeing violence in the NTCA.

Detentions and deportations from Mexico

The number of undocumented migrants from the NTCA detained[17] in Mexico has been growing exponentially for the last five years, rising from 61,334 in 2011 to 152,231 in 2016. Migrants from NTCA account for 80.7 percent of the total population apprehended in Mexico during 2016. The number of minors apprehended is extremely worrying as it nearly multiplied by 10 in the last five years, from 4,129 in 2011 to 40,542 in 2016[18]. Of children under 11 years old, 12.7 percent were registered as travelling through Mexico as unaccompanied minors (without an adult relative or care taker).

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[17] SEGOB. Mexico. Boletín Estadistico Mensual 2016. Eventos de extranjeros presentados ante la autoridad migratoria, según continente y país de nacionalidad, 2016. Accessed on 06/09/2017. http://www. politicamigratoria.gob.mx/work/models/SEGOB/CEM/PDF/Estadisticas/Boletines_Estadisticos/2016/Boletin_2016.pdf

[18] Ibid.

Despite the exposure to violence and the deadly risks these populations face in their countries of origin, the non-refoulement principle is systematically violated in Mexico. In 2016, 152,231 migrants and refugees from the NTCA were detained/presented to migration authorities in Mexico and 141,990 were deported[19]. The sometimes swift repatriations (less than 36 hours) do not seem to allow sufficient time for the adequate assessment of individual needs for protection or the determination of a person's best interest, as required by law.

Refugee and asylum recognition in Mexico

In 2016, Mexican authorities processed 8,781 requests for asylum from the NTCA population[20]. Out of the total asylum requests, less than 50 percent were granted. Despite the fact that Mexico appears to be consolidating its position as a destination country for asylum seekers from the NTCA, and that the recognition rate improved from last year's figures, people fleeing violence in the region still have limited access to protection mechanisms. Many asylum seekers have to abandon the process due to the conditions they face during the lengthy waiting period in detention centers.

Protection for refugee and migrant victims of violence while crossing Mexican territory

Foreign undocumented victims or witnesses of crime in Mexico are entitled by law to regularization on humani-

[19] Ibid.

[20] Source: UNHCR MEXICO FACTSHEET. February 2017.

tarian grounds and to get assistance and access to justice[21]. In 2015, a total of 1,243 humanitarian visas were granted by Mexico for victims or witnesses of crime from the NTCA[22]. These numbers might seem implausible, however the vast majority of patients (68.3 percent) in MSF's small cohort of migrants and refugees report having been victims of violence and crime.

Lack of access to the asylum and humanitarian visa processes, lack of coordination between different governmental agencies, fear of retaliation in case of official denunciation to a prosecutor, expedited deportation procedures that do not consider individual exposure to violence: These are just some of the reasons for the gap between rights and reality.

Failure to provide adequate protection mechanisms has direct consequences on the level of violence to which refugees and migrants are exposed. The lack of safe and legal pathways effectively keeps refugees and migrants trapped in areas controlled by criminal organizations.

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[21] Ley General de Migración - Article 52 Section V-a. See also Article 4 for a definition of the "victims" covered by the law.

[22] Source: Boletín Mensual de Estadisticas Migratorias 2015. Secretaría de Gobernación. Gobierno de México. Accessed on 01/02/2017.

A Central American migrant in Tenosique shows the identification card issued by Mexico's National Institute of Migration, which enables him to stay in Mexico with legal protections.

8

CONCLUSION: ADDRESSING THE GAPS

As a medical humanitarian organization providing care in Mexico, in particular to migrants and refugees, since 2012, MSF staff has directly witnessed the medical and humanitarian consequences of the government's failure to implement existing policies meant to protect people fleeing violence and persecution in El Salvador. Guatemala and Honduras, as described in the report.

As of 2016, MSF teams have provided 33,593 consultations through direct assistance to patients from NTCA with physical and mental traumas. People tell our staff

that they are fleeing violence, conflict and extreme hardship. Instead of finding assistance and protection, they are confronted with death, different forms of violence, arbitrary detention and deportation. The dangers are exacerbated by the denial of or insufficient medical assistance, and the lack of adequate shelter and protection.

Furthermore, the findings of this report—the extreme levels of violence experienced by refugees and migrants in their countries of origin and in transit through Mexico —comes against a backdrop of increasing efforts in Mexico and the United States to detain and deport refugees and migrants with little regard for their need for protect ion.

Medical data, patient surveys, and terrifying testimonies illustrate that NTCA countries are still plagued by extreme levels of crime and violence not dissimilar from the conditions found in the war zones. Many parts of the region are extremely dangerous, especially for vulnerable women, children, young adults, and members of the LGBTQ community. As stated by MSF patients in the report, violence was mentioned as a key factor for 50.3 percent of Central Americans leaving their countries. Those being denied refugee or asylum status or regularization under humanitarian circumstances are left in limbo. Furthermore, being deported can be a death sentence as migrants and refugees are sent back to the very same violence they are fleeing from. The principle of non-refoulement must be respected always, and in particular for people fleeing violence in the NTCA.

A stunning 68.3 percent of migrants and refugees surveyed by MSF reported having been victims of violence on the transit route to the United States.

Mexican authorities should respect and guarantee—in practice and not only in rhetoric—the effective protection and assistance to this population according to existing legal standards and policies.

There is a longstanding need to strengthen the Refugee Status Determination System (RSD). It must ensure that individuals in need of international protection and assistance are recognized as such and are given the support—including comprehensive health care, to which they are all entitled. Access to fair and effective RSD procedures must be granted to all asylum-seekers either in Mexico, the US, Canada and the region.

Governments across the region—mainly El Salvador, Guatemala, Honduras, Mexico, Canada and the United States—should cooperate to ensure that there are better alternatives to detention, and should adhere to the principle of non-refoulement. They should increase their formal resettlement and family reunification quotas, so that people from NTCA in need of protection and asylum can stop risking their lives and health.

Attempts to stem migration by fortifying national borders and increasing detention and deportation, as we have seen in Mexico and the United States, do not curb smuggling and trafficking operations. Instead, these efforts increase levels of violence, extortion and price of trafficking. As described in the report, these strategies have devastating consequences on the lives and health of people on the move.

The impact of forced migration on the physical and mental well-being of people on the move—in particular refugees and migrants, and, among them, the most vulnerable categories represented by women, minors, and LGBTQ individuals—requires immediate action. The response should ensure strict respect of the law and the adequate allocation of resources to provide access to health care and humanitarian assistance, regardless of the administrative status of the patient (as enshrined by Mexican law).

Addressing gaps in mental health care, emergency care for wounded, and strengthening medical and psychological care for victims of sexual violence by ensuring the implementation of adequate protocols, including provision of and access to the PEP kit, is fundamental to treating refugee patients with dignity and humanity.

As witnessed by MSF teams in the field, the plight of an estimated 500,000 people on the move from the NTCA described in this report represents a failure of the governments in charge of providing assistance and protection. Current migration and refugee policies are not meeting the needs and upholding the rights of assistance and international protection of those seeking safety outside their countries of origin in the NTCA. This unrecognized humanitarian crisis is a regional issue that needs immediate attention and coordinated action, involving countries of origin, transit, and destination.

© CHRISTINA SIMONS

An MSF psychologist meets with a young patient in Mexico in 2016.

Migration Transit Zone Conditions and Mexico's Migration Policies

Conditions of migration facing unaccompanied children likely play a considerable role in determining whether they emigrate to the United States. While the persistence of economic stagnation, poverty, and criminal violence may explain why flows of unaccompanied minors have increased, the journey through Central America and Mexico to the United States has become more costly and dangerous. Unauthorized migrants from Central America, often lacking legal protection in Mexico because of their immigration status, have reportedly become increasingly vulnerable to human trafficking, kidnapping, and other abuses.[45] Corrupt Mexican officials have been found to be complicit in activities such as robbery and abuse of authority.[46] While Mexico has stepped up immigration enforcement in some areas (see below), enforcement along train routes frequently used by Central American child migrants continues to be lacking.[47]

As U.S. border security has tightened, more unauthorized Central American migrants have reportedly turned

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[45] Steven Dudley, *Transnational Crime in Mexico and Central America: Its Evolution and Role in International Migration*, Woodrow Wilson International Center for Scholars & Migration Policy Institute, November 2012, http://www.wilsoncenter.org/sites/default/files/transnational_crime_mexico_centralamerica.pdf.

[46] Adam Isacson, Maureen Meyer, and Gabriela Morales, *Mexico's Other Border: Security, Migration, and the Humanitarian Crisis as the Line with Central America*, Washington Office on Latin America (WOLA), June 2014, available at http://www.wola.org/news/new_wola_report_mexicos_other_border (hereinafter referred to as WOLA, *Mexico's Other Border Security*.)

[47] Ibid.

to smugglers (*coyotes*),[48] who in turn must pay money to transnational criminal organizations (TCOs) such as Los Zetas, to lead them through Mexico and across the U.S.-Mexico border.[49] The Administration has estimated that 75-80% of unaccompanied child migrants are now traveling with smugglers.[50] Some smugglers have reportedly sold migrants into situations of forced labor or prostitution (forms of human trafficking) in order to recover their costs; other smugglers' failure to pay Los Zetas has reportedly resulted in massacres of groups of migrants.[51] Mass grave sites, where migrants have been executed by TCOs have been recovered in recent years.

The Mexican government appears to be attempting to balance enforcement and humanitarian concerns in its migration policies. Implementation of its new laws and policies has been criticized both by those who favor more enforcement and those who favor more migrants' rights.[52] In addition to stepping up efforts against human trafficking and passing new laws to stiffen penalties for alien smuggling (2010) and human trafficking (2012),

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[48] Human Smuggling typically involves the provision of a service, generally procurement or transport, to people who knowingly consent to that service in order to gain illegal entry into a foreign country. For more information, see CRS Report RL34317, *Trafficking in Persons: U.S. Policy and Issues for Congress*, by Alison Siskin and Liana Rosen.

[49] See Caitlin Dickson, "How Mexico's Cartels are Behind the Border Kid Crisis," *The Daily Beast*, June 23, 2014.

[50] White House, Office of the Vice President, "Remarks to the Press with Q&A by Vice President Joe Biden in Guatemala," press release, June 20, 2014.

[51] Oscar Martinez, "How the Zetas Tamed Central America's 'Coyotes,'" *Insight Crime*, May 1, 2014.

[52] WOLA, *Mexico's Other Border Security.*

Mexico enacted a comprehensive migration reform law in 2011 and secondary legislation to implement that law in 2012. Previously, Mexico's immigration law, the General Population Act (GPA) of 1974, limited legal immigration and restricted the rights of foreigners in Mexico, with unauthorized migrants subject to criminal penalties. In 2008, the Mexican Congress reformed the GPA to decriminalize simple migration offenses, making unauthorized migrants subject to fines and deportation, but no longer subject to imprisonment. In May 2011, it passed a broader reform of the GPA.[53]

Contrary to some media reports, Mexico's 2011 law did not create a transit visa for migrants crossing through Mexico, as civil society groups had been advocating. As a result of the law Mexico now requires visas for Central Americans entering its territory (aside from those on temporary work permits or those possessing a valid U.S. visa).

According to many migration experts, implementation of Mexico's 2011 migration law has been uneven. While some purges of corrupt staff within the National Migration Institute (INM) in the Interior Ministry have

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[53] Mexico's 2011 migration reform was aimed at (1) guaranteeing the rights and protection of all migrants in Mexico; (2) simplifying Mexican immigration law in order to facilitate legal immigration; (3) establishing the principles of family reunification and humanitarian protection as key elements of the country's immigration policy; and (4) concentrating immigration enforcement authority within the National Migration Institute (INM) in the Interior Ministry in order to improve migration management and reduce abuses of migrants by police and other officials. For a general description of the law in English, see Gobierno Federal de México. "Mexico's New Law on Migration," September 2011, available at http://usmex.ucsd.edu/assets/028/12460.pdf.

occurred in the past year, implementation of the migration law has been hindered by the government's failure to more fully overhaul INM.[54] Some experts maintain that Mexico lacks the funding and institutions to address traditional migration flows, much less the increasing numbers of U.S.-bound unaccompanied children that its agents are detaining. Mexico has only two shelters for migrant children and no foster care system in which to place those who might be granted asylum.

Despite provisions to improve migrants' rights included in the 2011 migration law, the Mexican government also continues to remove large numbers of Central American adult migrants, arrest smugglers of those migrants, and return unaccompanied child migrants to Central America.[55] According to INM, Mexico detained 86,929 foreigners in 2013, 80,079 of whom were removed (79,416 people were removed in 2012). Of those who were removed, some 97.4% originated in the northern triangle countries of Central America. In the first four months of 2014, Mexico removed some 24,000 people from the northern triangle countries, 9% more than during that

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[54] Reforms that migration experts have recommended include raising hiring standards for immigration agents, regulating how migrants should be treated, and strengthening internal and external controls over migration agents. Sonja Wolf et. al., *Assessment of the National Migration Institute: Towards an Accountability System for Migrant Rights in Mexico*, INSYDE, 2014.

[55] From January through May 2014, the Mexican government arrested 431 people for breaking provisions in the migration law; most of those individuals were accused of smuggling-related crimes. Gobierno de Mexico, Sistema Institucional de Información Estadística (SIIE), "Incidencia Delictiva del Fuero Federal, 2014."

period in 2013.[56] Child protection officers from INM accompanied 8,577 children to their countries of origin in 2013 and 6,330 from January through May 2014; 99% of those children originated in northern triangle countries.[57]

With U.S. support, the Mexican government in 2013 started implementing a southern border security plan that has involved the establishment of 12 naval bases on the country's rivers and three security cordons that stretch more than 100 miles north of the Mexico-Guatemala and Mexico-Belize borders.[58]

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[56] Gobierno de Mexico, Secretaría de Gobernación, Instituto Nacional de Migración, *Boletín de Estadistica* Migratorias, 2013, 2014 statistics are available at http://www.politicamigratoria. gob.mx/.

[57] Gobierno de Mexico, Secretaría de Gobernación, Instituto Nacional de Migración, "*Reintegra INM a Más de 14 Mil Niños Migrantes con sus Familias*," Boletín 31/14, June 11, 2014.

[58] The State Department has provided $6.6 million of mobile Non-Intrusive Inspection Equipment (NIIE) and approximately $3.5 million in mobile kiosks, operated by Mexico's National Migration Institute, that capture the (continued . . .)

Congress of the United States
Washington, DC 20515

Nov. 30, 2018

Donald J. Trump
President of the United States
The White House
1600 Pennsylvania Avenue
Washington, DC 20500

Dear President Trump:

As Members of Congress who sit on the House Foreign Affairs Committee and the House Appropriations Committee, we write to express our grave concerns about reports of a so-called "Remain in Mexico" policy for asylum seekers being negotiated between your administration and the incoming Mexican government. This policy would reportedly force individuals seeking asylum to stay in Mexico as their asylum cases move through the U.S. court system.

Current law is clear. 8 U.S.C. 1158(a)(1) states: "Any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien's status, may apply for asylum in accordance with this section . . . " Furthermore, 8 U.S.C. 1231(b)(3)(A) states: "[T]he Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race,

religion, nationality, membership in a particular social group, or political opinion."

Restated, federal law expressly provides asylum seekers permission to seek asylum no matter the manner in which they have entered the United States. Furthermore, the Attorney General may not remove asylum seekers from the United States when doing so threatens their lives or freedom—the very qualifications of an asylum seeker in the first place. Finally, forcing asylum seekers to wait in Mexico for indefinite periods of time in dangerous conditions would make it all but impossible for families, children and other vulnerable individuals to access asylum and receive meaningful review of their claims under U.S. law. Consequently, the proposed "Remain in Mexico" policy would violate these laws.

We strongly encourage you to refrain from adopting new policies that are inconsistent with existing federal law, and to refrain from encouraging other governments —such as Mexico's incoming government—to enter into agreements with the United States that violate our nation's laws and undermine American values. The United States has been and should continue to be a beacon of light for other countries, and it is in the best interest of Americans and Mexicans alike to enforce existing asylum laws with dignity, respect, and efficiency. We must work together to ensure the safety and well-being of those seeking asylum.

You have repeatedly said that the law must be followed with respect to persons crossing America's borders. We hope you will stay true to this conviction with respect to individuals seeking asylum in America.

Sincerely,

/s/ GRACE MENG
GRACE MENG
Member of Congress

/s/ JOAQUIN CASTRO
JOAQUIN CASTRO
Member of Congress

/s/ DAVID PRICE
DAVID PRICE
Member of Congress

Cc:

Secretary of State Mike Pompeo

Secretary of Homeland Security Kirstjen Nielsen

Acting Attorney General Matthew Whitaker

John S. Creamer, Chargé d'Affaires, U.S. Embassy in Mexico

President-elect of Mexico, Andrés Manuel López Obrador

No. 19-1212

In the Supreme Court of the United States

CHAD WOLF, ACTING SECRETARY OF HOMELAND SECURITY, ET AL., PETITIONERS

v.

INNOVATION LAW LAB, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOINT APPENDIX
(VOLUME 2)

JEFFREY B. WALL
Acting Solicitor General
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

Counsel of Record
for Petitioners

JUDY RABINOVITZ
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, N.Y. 10004
jrabinovitz@aclu.org
(212) 549-2618

Counsel of Record
for Respondents

PETITION FOR A WRIT OF CERTIORARI FILED: APR. 10, 2020
CERTIORARI GRANTED: OCT. 19, 2020

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[†] The administrative record included a public notice describing this document, rather than the document itself. See Pet. App. 164a-165a. All parties agree that this document is part of the administrative record.

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Case No.:

INNOVATION LAW LAB; CENTRAL AMERICAN RESOURCE CENTER OF NORTHERN CALIFORNIA; CENTRO LEGAL DE LA RAZA; IMMIGRATION AND DEPORTATION DEFENSE CLINIC AT THE UNIVERSITY OF SAN FRANCISCO SCHOOL OF LAW; AL OTRO LADO; TAHIRIH JUSTICE CENTER; JOHN DOE; GREGORY DOE; BIANCA DOE; DENNIS DOE; ALEX DOE; CHRISTOPHER DOE; EVAN DOE; FRANK DOE; KEVIN DOE; HOWARD DOE; IAN DOE, PLAINTIFFS

v.

KIRSTJEN NIELSEN, SECRETARY OF HOMELAND SECURITY, IN HER OFFICIAL CAPACITY; U.S. DEPARTMENT OF HOMELAND SECURITY; LEE FRANCIS CISSNA, DIRECTOR, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, IN HIS OFFICIAL CAPACITY; JOHN L. LAFFERTY, CHIEF OF ASYLUM DIVISION, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, IN HIS OFFICIAL CAPACITY; U.S. CITIZENSHIP AND IMMIGRATION SERVICES; KEVIN K. MCALEENAN, COMMISSIONER, U.S. CUSTOMS AND BORDER PROTECTION, IN HIS OFFICIAL CAPACITY; TODD C. OWEN, EXECUTIVE ASSISTANT COMMISSIONER, OFFICE OF FIELD OPERATIONS, U.S. CUSTOMS AND BORDER PROTECTION, IN HIS OFFICIAL CAPACITY; U.S. CUSTOMS AND BORDER PROTECTION; RONALD D. VITIELLO, ACTING DIRECTOR, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, IN HIS OFFICIAL CAPACITY; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, DEFENDANTS

Filed: Feb. 14, 2019

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

IMMIGRATION ACTION

INTRODUCTION

1. This case challenges the federal government's new policy of forcing asylum seekers to return to danger in Mexico while they await their removal proceedings, in violation of the humanitarian protections to which they are entitled under United States and international law.

2. Plaintiffs are individual asylum seekers from Central America who are now living in fear in Mexico because they were returned there under the new policy, as well as legal organizations whose missions to provide representation to such asylum seekers are being thwarted by the physical removal of those asylum seekers from the United States.

3. Since the enactment of the 1980 Refugee Act nearly forty years ago, U.S. law has prohibited the return of individuals to countries where they are likely to face persecution, while providing an asylum procedure by which individuals fleeing persecution can seek and obtain permanent safety. But at the end of January, the government began to implement a new policy that eviscerates both of these fundamental protections.

4. Under the new policy, immigration authorities are forcing asylum seekers at the southern border of the United States to return to Mexico—to regions experiencing record levels of violence—where they must remain for the duration of their asylum proceedings. By placing them in such danger, and under conditions that make if difficult if not impossible for them to prepare

their cases, Defendants are depriving them of a meaningful opportunity to seek asylum.

5. Moreover, the procedure Defendants have implemented for determining who can be returned under the policy is wholly inadequate for ensuring that those who face persecution, torture, or death in Mexico will not be erroneously returned. Indeed, the procedure is unlike any that Defendants have previously used to adjudicate such claims for protection. Yet Defendants' policy memoranda contain no explanation for such a departure.

6. Defendants call their new forced return policy the "Migrant Protection Protocols" ("MPP"). It was first announced by Secretary of Homeland Security Kirstjen M. Nielsen on December 20, 2018, and implemented at the San Ysidro Port of Entry in California on January 28, 2019. Defendants recently announced imminent expansion of the policy to the Eagle Pass Port of Entry, with other Texas locations soon to follow.

7. The new policy violates the Immigration and Nationality Act ("INA") and the Administrative Procedure Act ("APA"). It violates the INA because the authority Defendants cite for the policy, INA § 235(b)(2)(C), 8 U.S.C. § 1225(b)(2)(C)—a provision that allows the return pending removal proceedings of certain noncitizens who arrive by land from a contiguous foreign territory—cannot be used against the asylum seekers to whom Defendants are applying it. It also violates INA § 208, 8 U.S.C. §1158 (establishing a right to apply for asylum), and INA § 241(b)(3), 8 U.S.C. § 1231(b)(3) (prohibiting removal to a country where one would face persecution). The policy violates the APA, because Defendants failed

to comply with the APA's notice and comment requirements and because the policy is arbitrary, capricious, and contrary to law.

8. Plaintiffs seek a declaration that the policy is illegal and an injunction enjoining its operation.

JURISDICTION & VENUE

9. This case arises under the United States Constitution; the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 *et seq.*; the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq.* and its implementing regulations; and the Convention Against Torture ("CAT"), *see* Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA"), Pub. L. No. 105-277, div. G, Title XXII, § 2242, 112 Stat. 2681, 2681-822 (1998) (codified as Note to 8 U.S.C. § 1231).

10. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question), the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, and the Alien Tort Statute, 28 U.S.C. § 1350.

11. Venue is proper under 28 U.S.C. § 1391(e)(1) because Defendants are agencies of the United States and officers of the United States acting in their official capacity; three of the Plaintiff organizations have their principal residence in this District; and another two Plaintiff organizations have offices in this District.

PARTIES

12. Plaintiff John Doe fled Guatemala to seek asylum in the United States. On January 30, 2019, he was returned to Mexico pursuant to Defendants' new forced return policy. He is currently in Tijuana, where he fears for his life.

13. Plaintiff Gregory Doe fled Honduras to seek asylum in the United States. On January 30, 2019, he was returned to Mexico pursuant to Defendants' new forced return policy. He is currently in Tijuana where he fears for his life.

14. Plaintiff Bianca Doe fled Honduras to seek asylum in the United States. On January 30, 2019, she was returned to Mexico pursuant to Defendants' new forced return policy. She is currently in Tijuana where she fears for her life.

15. Plaintiff Dennis Doe fled Honduras to seek asylum in the United States. On January 30, 2019, he was returned to Mexico pursuant to Defendants' new forced return policy. He is currently in Tijuana where he fears for his life.

16. Plaintiff Alex Doe fled Honduras to seek asylum in the United States. On January 30, 2019, he was returned to Mexico pursuant to Defendants' new forced return policy. He is currently in Tijuana where he fears for his life.

17. Plaintiff Christopher Doe fled Honduras to seek asylum in the United States. On January 30, 2019, he was returned to Mexico pursuant to Defendants' new forced return policy. He is currently in Tijuana where he fears for his life.

18. Plaintiff Evan Doe fled El Salvador to seek asylum in the United States. On January 30, 2019, he was returned to Mexico pursuant to Defendants' new forced return policy. He is currently in Tijuana where he fears for his life.

19. Plaintiff Frank Doe fled Honduras to seek asylum in the United States. On February 4, 2019, he was returned to Mexico pursuant to Defendants' new forced return policy. He is currently in Tijuana where he fears for his life.

20. Plaintiff Kevin Doe fled Honduras to seek asylum in the United States. On January 30, 2019, he was returned to Mexico pursuant to Defendants' new forced return policy. He is currently in Tijuana where he fears for his life.

21. Plaintiff Howard Doe fled Honduras to seek asylum in the United States. On February 5, 2019, he was returned to Mexico pursuant to Defendants' new forced return policy. He is currently in Tijuana where he fears for his life.

22. Plaintiff Ian Doe fled Honduras to seek asylum in the United States. On February 5, 2019, he was returned to Mexico pursuant to Defendants' new forced return policy. He is currently in Tijuana where he fears for his life.

23. Plaintiff Innovation Law Lab (the "Law Lab") is a nonprofit organization that has projects in multiple states throughout the country, including California, New Mexico, Texas, Oregon, and North Carolina. The Law Lab seeks to advance the legal rights of immigrants and refugees in the United States, with a focus on providing and facilitating representation to asylum seekers through innovative, technology-driven models. The Law Lab has an office in Oakland, California.

24. Plaintiff Central American Resource Center of Northern California ("CARECEN") is a nonprofit or-

ganization founded in 1986 by Central American refugees, which provides pro bono and low cost immigration services to primarily low-income, immigrant, Latino, and monolingual Spanish speakers. A central part of CARECEN's mission is to provide legal counseling and representation to asylum seekers, the vast majority of whom enter the United States through the southern border. The organization is incorporated in California and headquartered in San Francisco, California.

25. Plaintiff Centro Legal de la Raza ("Centro Legal") is nonprofit organization incorporated in California. Centro Legal is a comprehensive immigration services agency focused on protecting and expanding the rights of low-income people, particularly Latino immigrants and asylum seekers. Centro Legal's comprehensive immigration practice specializes in providing removal defense for asylum seekers and others throughout California, including asylum seekers arriving through the U.S.-Mexico border. Centro Legal is the largest provider of removal defense services in California, and has offices in Oakland, Hayward, and San Francisco, California.

26. Plaintiff Immigration and Deportation Defense Clinic at the University of San Francisco School of Law (the "USF Clinic") is a nonprofit organization that provides removal defense and engages in advocacy in California. The USF Clinic's twofold mission is to provide free legal services to noncitizens in removal proceedings, with an emphasis on asylum, and to train law students to be effective and ethical immigration lawyers in the area of defensive asylum cases. The USF Clinic is headquartered in San Francisco, California.

27. Plaintiff Al Otro Lado ("AOL") is a nonprofit legal services organization based in Los Angeles, California

that serves indigent deportees, migrants, refugees, and their families in Southern California and Tijuana, Mexico. Al Otro Lado's mission is to provide screening, advocacy, and legal representation for individuals in asylum and other immigration proceedings; to seek redress for civil rights violations; and to provide assistance with other legal and social service needs.

28. Plaintiff Tahirih Justice Center ("Tahirih") is a nonprofit and non-partisan organization providing free legal immigration services to survivors of gender-based violence. Tahirih's mission is to provide free holistic services to immigrant women and girls fleeing violence such as rape, domestic violence, female genital mutilation/cutting, forced marriage, and human trafficking, and who seek legal immigration status under U.S. law. Tahirih offers legal representation and social services for individuals who seek protection, including asylum, in their immigration proceedings. Tahirih operates from five offices across the country and has an office in San Francisco, California.

29. Defendant Kirstjen M. Nielsen is the Secretary of Homeland Security. She is sued in her official capacity. In that capacity, she issued the Migrant Protection Protocols ("MPP") and related policy guidance. She directs each of the component agencies within the Department of Homeland Security. In her official capacity, Defendant Nielsen is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103, and is empowered to grant asylum or other relief.

30. Defendant U.S. Department of Homeland Security ("DHS") is a cabinet-level department of the U.S. government. Its components include U.S. Citizenship and

Immigration Services ("USCIS"), U.S. Customs and Border Protection ("CBP"), and U.S. Immigration and Customs Enforcement ("ICE").

31. Defendant Lee Francis Cissna is the Director of USCIS. He is sued in his official capacity.

32. Defendant John L. Lafferty is the Chief of the Asylum Division of USCIS. He is sued in his official capacity.

33. Defendant USCIS is the sub-agency of DHS that, through its asylum officers, conducts interviews of individuals who apply for asylum and other forms of protection. Under Defendants' new policy and their implementing guidance, USCIS asylum officers are directed to interview noncitizens who are potentially subject to return to Mexico, and who affirmatively express a fear of such return, in order to determine whether it is more likely than not that they would be persecuted or tortured in Mexico.

34. Defendant Kevin K. McAleenan is the Commissioner of CBP. He is sued in his official capacity.

35. Defendant Todd C. Owen is the Executive Assistant Commissioner of CBP's Office of Field Operations ("OFO"). OFO is the largest component of CBP and is responsible for border security, including immigration and travel through U.S. ports of entry.

36. Defendant CBP is the sub-agency of DHS that is responsible for the initial processing and detention of noncitizens who are apprehended at or between U.S. ports of entry.

37. Defendant Ronald D. Vitiello is the Acting Director of ICE. He is sued in his official capacity.

38. Defendant ICE is the sub-agency of DHS that is responsible for carrying out removal orders and overseeing immigration detention.

BACKGROUND

A. Asylum Seekers at the U.S.-Mexico Border, Including the Named Plaintiffs, Are Fleeing Horrendous Violence

39. Asylum seekers who arrive at the southern border seeking protection in the United States are fleeing some of the most dangerous countries in the world.

40. Although these asylum seekers come from all over the world, most come from El Salvador, Guatemala, and Honduras. According to the United Nations High Commissioner for Refugees ("UNHCR"), these countries are experiencing epidemic levels of violence. Human rights groups have compared the levels of violence in this region to those typically seen in war zones.

41. Those who flee are often escaping life-threatening situations. In particular, violence by criminal armed groups has escalated dramatically in Central America, and those governments have been unable or unwilling to provide effective protection.

42. The vast majority of the migrants coming to the southern border have legitimate claims to asylum.

43. Between fiscal years 2014 and 2016, 12,350 people from El Salvador, Guatemala, and Honduras were granted asylum. Between fiscal years 2010 and 2016, the percentage of asylum seekers from these countries granted protection increased by 96 percent.

44. The Individual Plaintiffs sought asylum in the United States because they have experienced persecution

—including brutal beatings, death threats, and rape—in their countries of origin.

45. For example, Plaintiff Bianca Doe, a lesbian woman from Honduras, fears returning to her home country where LGBTQ individuals like her face discrimination, violence, and death, and receive no protection from the authorities. In Honduras, Bianca became pregnant by a man who raped her because of her sexual orientation, and who was then granted custody of their son by a Honduran judge who cited the fact Bianca was a lesbian as evidence of her unfitness as a parent. Bianca was forced to flee Honduras after her partner's abusive father discovered their relationship, and threatened to kill them both if Bianca did not leave the country immediately.

46. Plaintiff John Doe is an indigenous man from Guatemala who suffered brutal beatings and death threats at the hands of a "death squad" that controls his town. The death squad targeted him for his indigenous identity, frequently taunting him with indigenous slurs when they attacked him. Some of the attacks left him bloodied and unconscious. John reported the first beating to the police, but they did nothing to protect him.

47. Plaintiff Ian Doe is a former police officer from Honduras who worked undercover to interdict drug trafficking activity. He fled the country to seek asylum in the U.S. after his identity was revealed to the drug traffickers and they came after him. Ian narrowly escaped with his life. After he left the country, the drug traffickers killed his brother, believing that he was Ian.

48. Plaintiff Alex Doe is a youth pastor and organizer from Honduras who works with young people who are

former or current gang members, or at risk of being forcibly recruited by gangs, After he helped organize a strike to protest the killing of a young member of his church by a powerful gang, he was featured on the national news denouncing the gang and demanding the Honduran government provide more security. He was forced to flee after the gang threatened his life.

B. Asylum Seekers, Including the Named Plaintiffs, Face Extreme Danger in Mexico

49. Like the Individual Plaintiffs, many asylum seekers from Central American have no choice but to travel by land to the United States due to documentation requirements that would be necessary to board a plane, as well as financial constraints. Although this means they must cross through Mexico before reaching the United States, for most, remaining in Mexico is not an option.

50. According to the U.S. Department of State, "violence against migrants by government officers and organized criminal groups" is one of "[t]he most significant human rights issues" in the Mexico. The State Department also reports that the dangers that forced many Central American migrants to flee their homes are likewise present in Mexico, as the presence of Central American gangs has "spread farther into the country and threatened migrants who had fled the same gangs in their home countries."

51. Asylum seekers in Mexico face a heightened risk of kidnapping, disappearance, trafficking, sexual assault, and murder, among other harms. Lesbian, gay, bisexual, and transgender persons, as well as people of indigenous heritage, are particularly at risk.

52. Even before they were subjected to Defendants new forced return policy, many of the Individual Plaintiffs had already been the victims of discrimination, robbery, extortion, kidnapping, and assault in Mexico.

53. For example, Mexican police detained Plaintiff Ian Doe several times and demanded his immigration documents. About a month ago, officers required him to pay a bribe of 1,500 pesos to avoid being arrested and taken to jail.

54. Similarly, Plaintiff Christopher Doe was stopped by the Mexican police who threatened that they would take him to jail if they saw him on the street again.

55. Plaintiff Howard Doe was robbed at gunpoint by two Mexican men in Tijuana just days before he presented himself at the port of entry. The robbers said they knew that he was Honduran, and that if they saw him again, they would kill him.

56. Plaintiff Gregory Doe was staying at a shelter in Tijuana when a mob of young men wielding sticks surrounded the shelter and threatened the residents.

57. Plaintiff Alex Doe was staying in the Playas neighborhood of Tijuana when he and other asylum seekers were forced to flee in the middle of the night after a group of Mexicans threw stones at them and additional attackers began to gather with sticks and other weapons.

58. While traveling through Mexico on his way to the U.S.-Mexico border, Plaintiff Howard Doe was kidnapped and held for more than two weeks by members of a Mexican drug cartel until he and several others were able to escape. He fears that the well-connected

cartel will find him in the border region and torture and murder him for escaping.

59. President Trump has himself acknowledged that Mexico is not a safe place for migrants, tweeting on January 31, 2019: "Very sadly, Murder cases in Mexico in 2018 rose 33% from 2017, to 33,341." He further stated that the situation in Mexico is "[w]orse even than Afghanistan."

60. Moreover, the border regions where asylum seekers subjected to Defendants' new policy will be returned are especially dangerous. Tijuana, the city where Individual Plaintiffs and other migrants returned from the San Ysidro port of entry are being dumped, is one of the deadliest cities in the world. Tijuana had its highest number of reported murders ever last year, and Baja California, the state in which Tijuana is located, was the state in Mexico with the highest number of reported murders last year. Asylum seekers in Tijuana have been the direct targets of violence. Among the incidents of violence documented by human rights groups in recent months, two teenagers from Honduras were kidnapped and murdered in Tijuana last December.

61. Similar dangers face asylum seekers who will soon be forced to return from the Eagle Pass Port of Entry and will be dumped in Coahuila state. The U.S. Department of State advises that Americans reconsider travel to Coahuila because violent crime and gang activity are common, and U.S. employees traveling in Piedras Negras, the town across from Eagle Pass, must observe a nighttime curfew.

62. In addition to fearing discrimination and violence in Mexico, several of the Individual Plaintiffs fear that

Mexico will unlawfully deport them to their home countries where they face persecution.

63. There is no functioning asylum system in Mexico, and Central American asylum seekers face a substantial risk of being involuntarily repatriated to the countries they have fled. Intergovernmental and human rights organizations have documented widespread instances of Mexican officials returning Central American migrants to their home countries despite their fears of persecution or torture, without any meaningful process.

64. The U.S. Department of State's 2017 Human Rights Report on Mexico notes "incidents in which immigration agents had been known to threaten and abuse migrants to force them to accept voluntary deportation and discourage them from seeking asylum."

65. For example, when Plaintiff Dennis Doe first entered Mexico en route to the United States, he was apprehended by Mexican officials who deported him without asking him if he wished to apply for asylum or if he feared returning to his home country.

66. Similarly, Plaintiff Alex Doe witnessed Mexican authorities deport several immigrants simply for being in an area where someone had started a fight.

67. Plaintiff Kevin Doe and his wife were arrested by Mexican immigration authorities after they entered the country. The authorities separated Kevin from wife and deported her to Honduras, even though she told them that she was pregnant and scared to return to Honduras

68. President Trump recently advocated for Mexico to deport individuals who arrived on "caravans," regardless of their claims for asylum and other protection:

"Mexico should move the flag waving Migrants, many of whom are stone cold criminals, back to their countries. Do it by plane, do it by bus, do it anyway (sic) you want, but they are NOT coming into the U.S.A. We will close the Border permanently if need be."

69. The conditions in Mexico will make it difficult if not impossible for asylum seekers to meaningfully exercise their right to apply for asylum. Asylum seekers who are attacked, kidnapped, or killed in Mexico will be wholly unable to pursue their asylum applications.

70. For those who escape violence but nonetheless live in fear of harm, the psychological strains of navigating danger, necessary limitations on their movement to avoid violence, lack of a secure place to live, and other challenges will prevent them from being able to devote the time needed to meaningfully prepare for their asylum proceedings—a process that, under normal conditions, can require hundreds of hours.

71. Instead of being able to focus on preparing their cases, asylum seekers forced to return to Mexico will have to focus on trying to survive. These pressures may deter even those with the strongest asylum claims to give up, rather than endure the wait under such conditions.

C. Asylum Procedures at the U.S.-Mexico Border

72. Until recently, individuals applying for asylum at the southern border were either placed in expedited removal proceedings under INA § 235(b)(1), 8 U.S.C. § 1225(b)(1) or placed in full removal proceedings under INA § 240, 8 U.S.C. § 1229a. Expedited removal allows for the immediate removal of noncitizens who lack valid entry documents or attempt to enter the U.S. through

fraud—unless they express a fear removal. *See* 8 U.S.C. § 1225(b)(1)(A)(i).

73. Although most asylum seekers at the southern border lack valid entry documents and are therefore eligible to be placed in expedited removal, it is well established that the government has discretion to decline to initiate removal proceedings against any individual; to determine which charges to bring in removal proceedings; and to place individuals amenable to expedited removal in full removal proceedings instead.

74. Regardless of whether they were placed in expedited removal or regular removal proceedings, prior to Defendants' new policy asylum seekers went through these removal proceedings *inside* the United States. Those who were placed in expedited removal needed to pass a credible fear interview with an asylum officer first. But once they passed this interview—by showing a "significant possibility" that they could establish eligibility for asylum, 8 U.S.C. § 1225(b)(1)(B)(v), a low threshold—they were placed in regular removal proceedings.

75. Those who were not placed in expedited removal were simply placed in regular removal proceedings without going through the credible fear process.

76. Both categories of asylum seekers—those who were placed in regular removal proceedings after first passing a credible fear interview, and those who were placed in removal proceedings without such an interview—could either be held in detention or released pursuant to parole or bond pending completion of their asylum proceedings.

77. Whether detained or released, however, no asylum seeker could be physically removed from the United States without an order of removal duly issued by either an immigration judge in full removal proceedings or, for those asylum seekers who failed to pass a credible fear screening, by an immigration adjudicator in expedited removal proceedings.

D. Defendants' New Forced Return Policy

78. On December 20, 2018, DHS Secretary Nielsen announced an "unprecedented" change to the existing policy. In what DHS described as an "historic action to confront illegal immigration," Defendant Nielsen announced a new policy, dubbed the "Migrant Protection Protocols" ("MPP"), under which DHS would begin requiring noncitizens who seek admission from Mexico "illegally or without proper documentation" to be "returned to Mexico for the duration of their immigration proceedings."

79. According to DHS, the new policy would address the problem of noncitizens who allegedly "game the system" and "disappear into the United States," and deter migrants from making "false" asylum claims at the border, "while ensuring that vulnerable populations receive the protections they need."

80. Subsequently, in a press release justifying the new policy, DHS cited "[m]isguided court decisions and outdated laws [that] have made it easier for illegal aliens to enter and remain in the U.S.," especially "adults who arrive with children, unaccompanied alien children, or individuals who fraudulently claim asylum." DHS stated that the new policy "will discourage individuals from attempting illegal entry and making false claims to stay in

the U.S. and allow more resources to be dedicated to individuals who legitimately qualify for asylum."

81. More than a month later, in late January 2019, DHS issued a handful of memoranda and guidance documents implementing its new forced return policy.

82. On January 25, 2019, a memo issued by Defendant Nielsen stated that implementation of the forced return policy would be "on a large scale basis."

83. A few days later, a memorandum issued by CBP Commissioner McAleenan announced that Defendants would begin implementing the new policy at the San Ysidro Port of Entry on January 28, 2019, and that expansion was anticipated "in the near future."

84. During the first two weeks the policy was in place at San Ysidro, the asylum seekers forced to return to Mexico were all single adults. On February 13, 2019, several asylum-seeking families were returned to Mexico, one of which included a one-year old child.

85. On February 11, 2019, a DHS official informed the media that the forced return policy would imminently be expanded to the Eagle Pass Port of Entry in Texas, and thereafter throughout Texas.

E. Purported Legal Authority for Defendants' Forced Return Policy

86. Defendants claim that authority for their new forced return policy comes from INA § 235(b)(2)(C), 8 U.S.C. § 1225(b)(2)(C).

87. Section 1225(b)(2)(C) authorizes DHS to "return" certain individuals who are "arriving on land (whether or not at a designated port of arrival) from a foreign ter-

ritory contiguous to the United States" to that contiguous territory during the pendency of their removal proceedings.

88. The provision was enacted in 1996 at the same time Congress enacted expedited removal. It specifically exempts from its coverage those individuals to whom the expedited removal statute "applies." 8 U.S.C. § 1225(b)(2)(B)(ii).

89. Defendants state that their forced return policy does not apply to anyone who was "processed for expedited removal." CBP, MPP Guiding Principles, at *1 (dated Jan. 28, 2019). However, the population that is expressly targeted by the policy—asylum seekers who cross the border illegally or who present themselves for admission at a port of entry without proper documents—is precisely the population to whom the expedited removal statute applies.

90. Defendants' broad application of Section 1225(b)(2)(C) to this population constitutes a major departure from the agency's prior practice.

91. Between 1997 and 2005, the Immigration and Naturalization Service ("INS"), the precursor agency to DHS, issued a number of memoranda purporting to authorize the use of Section 1225(b)(2)(C) in expedited removal proceedings. However, this authority appears never to have been exercised, at least not on the "large scale" that is currently anticipated for the forced return policy.

92. The INS memoranda specify the limited circumstances in which Section 1225(b)(2)(C) was to be used: only in the event of "insufficient detention space" and "as a last resort," 2001.03, INS Insp. Field Manual

17.15, and only for individuals who did not "express[]a fear of persecution related to Canada or Mexico." Memorandum for Regional Directors from Michael A. Pearson, INS Executive Associate Commissioner of Field Operations on Detention Guidelines ("Pearson Memo") at *3 (Oct. 7, 1998) ("If an alien expresses a fear of persecution related to Canada or Mexico, the alien . . . may not be required to wait in that country for a determination of the claim.").

93. Other guidance issued in 2005 to authorize use of the return authority against certain Cubans specifies that it was limited to 1) individuals who had permission to legally reside in the contiguous territory to which they were being returned, and 2) who were ineligible for release from detention on discretionary parole. 2006.03.27, ICE Detention & Deportation Officers' Field Manual, Appx. 16-6.

94. The "MPP Guiding Principles" for Defendants' forced return policy do not include such constraints. CBP officers have discretion whether to subject migrants to forced return under the policy, or instead to process them under regular removal proceedings or expedited removal proceedings. In making this decision, however, officers are not required to consider the availability of detention space or whether the individual could be released on parole in lieu of being returned to Mexico.

95. Nor are officers required to consider whether the individual has a legal status in Mexico for the duration of removal proceedings or has a place to reside, nor whether the individual could be gravely harmed in ways that may not amount to persecution or torture.

F. Plaintiffs Have Been Harmed by Defendants' Inadequate Procedures for Determining Whether They Will Face Persecution or Torture in Mexico.

96. The Guiding Principles do require that Defendants consider whether an individual is "more likely than not" to face persecution or torture if returned to Mexico—the standard required to obtain "withholding of removal" and one of the few exceptions to the forced return policy.

97. On January 28, 2019, USCIS issued guidance setting forth the procedure for making this determination. *See* USCIS Policy Guidance, PM-602-0169, Guidance for Implementing Section 235(b)(2)(C) of the Immigration and Nationality Act and the Migrant Protection Protocols, dated Jan. 28, 2019 ("USCIS Guidance"). The procedure established for making this determination is extremely truncated and lacking in basic safeguards.

98. First, to receive a determination under the procedure, an asylum seeker must, without notice, affirmatively state a fear of persecution. Then the individual must establish before an asylum officer that they are entitled to withholding or CAT protection on the merits—i.e., that it is more likely than not they will be persecuted or tortured.

99. The asylum seeker is not permitted to consult with counsel either before or after the interview. In addition, there is no guarantee of an interpreter to assist at the interview.

100. The asylum officer's determination is reviewed by a supervisory asylum officer. No other appeal or review is available. Moreover, if while in Mexico the individual suffers actual persecution or torture, or other

changed circumstances arise that might affect the determination, there is no opportunity to revisit a negative determination, until the individual returns to the port of entry for their scheduled removal hearing

101. These procedures are a stark departure from procedures the Executive Branch has adopted to implement its duty of *nonrefoulement*. In regular removal proceedings, for example, the decision whether an individual faces persecution or torture is made in a hearing before an immigration judge, with a right to counsel, present evidence, and cross-examine witnesses, and then with a right to seek administrative and judicial review.

102. Although this new procedure effects a sea change in the treatment of asylum seekers, Defendants adopted it without undertaking notice-and-comment rulemaking. A proposed regulation, "Return to Territory," appeared on a list of anticipated rulemaking in the fall of 2017, spring of 2017, and fall of 2018, but was withdrawn on December 21, 2018.

103. Moreover, the Individual Plaintiffs' experiences demonstrate that asylum seekers are not even being referred to asylum officers despite their real fears of return to Mexico. Instead, Defendants are simply processesing asylum seekers for forced return.

104. Prior to their interviews, the Individual Plaintiffs were kept overnight in a "hielera" or "ice box," a small locked holding cell packed with dozens of other migrants. The Individual Plaintiffs and other migrants were given only a thin mat to sleep on and an aluminum emergency blanket. But they got little to no rest before their interviews. The overly crowded cells were freezing, the bright lights were never turned out, and

there was constant activity. Many of the Plaintiffs were not given sufficient food.

105. In contrast to other screenings conducted by Defendants, Individual Plaintiffs received no "rest period" to ensure they were prepared to testify to their fear of persecution. Indeed, several of the Individual Plaintiffs were even called out and interviewed in the middle of the night.

106. Moreover, the Individual Plaintiffs' interviews were cursory. For example, Kevin Doe's interview with CBP lasted all of five minutes, and he was never asked about his fear of being returned to Mexico.

107. Christopher Doe—who has a first-grade education and childhood head injury that impairs his learning and memory—tried to explain that he had been attacked while in Mexico at his interview, but was abruptly cut off by the CBP officer and never referred to an asylum officer. Christopher's interview lasted all of 10 to 15 minutes. The officer was impatient and angry, and frequently interrupted him, repeatedly saying "No!" in response to his answers. At the conclusion of the interview, the officer instructed Christopher to sign forms he did not understand, including forms that were only provided to him in English.

108. Similarly, Ian Doe was never asked about fear of return to Mexico, and the CBP officer frequently cut him off and did not allow him to fully answer his questions. When Ian explained he did not feel safe in Mexico, the officer replied "that it was too bad. He said that [] Honduras wasn't safe, Mexico wasn't safe, and the U.S. isn't safe either . . . He told me I'd have to

figure out how to survive in Tijuana." Ian was also directed to sign documents that were written in English, and he was not offered any interpretation before signing. He later found out the officer had written that Ian had stated that "Mexico" had offered him asylum, even though he never said that. Despite expressing a fear of return, Ian was never referred to an asylum officer.

109. Indeed, almost none of the Individual Plaintiffs were asked by CBP about their fears of being returned to Mexico.

110. Although two Plaintiffs, Howard Doe and Frank Doe, were referred to an asylum officer after expressing their fear of return, they were summarily returned to Mexico with no explanation.

111. The CBP officers did not explain the purpose of the interview to the Individual Plaintiffs. Several Plaintiffs only realized they were being returned to Mexico at the conclusion of their interviews.

112. In several cases, as with Christopher Doe and Ian Doe, CBP officers frequently interrupted Plaintiffs and did not permit them to fully answer questions or provide additional information.

113. Several CBP officers spoke only limited Spanish and could not communicate effectively with Plaintiffs during their interviews. Nor did those officers provide Plaintiffs with an interpreter. For example, Bianca Doe was interviewed by an agent who struggled to speak Spanish.

114. In several cases, as with Christopher Doe and Ian Doe, Plaintiffs were directed to sign forms in English that they did not understand and that were not explained to them.

G. Plaintiffs Are Unable to Meaningfully Access the Asylum Process From Mexico

115. Many of the Individual Plaintiffs fear they will be unable to properly prepare their cases from Mexico, access or meaningfully communicate with attorneys, and access expert or other professional services necessary to make out their asylum claims. The grave danger and insecurity the Individual Plaintiffs face in Mexico will further undermine their ability to prepare for their cases and meaningfully access the asylum system.

116. The Individual Plaintiffs were not provided enough information about how to attend their immigration court hearings in the United States when they were forced to return to Mexico.

117. Several Individual Plaintiffs have friends or family members in the United States who had offered to help support them and find them an attorney. In Mexico, however, the Individual Plaintiffs do not have any family to help them through the legal process and they lack the financial resources to support themselves in Mexico for months or years.

118. For example, Plaintiff Gregory Doe has a sister in the United States who had offered to help support him and obtain the resources he would need to apply for asylum. Gregory worries that, without assistance, he will not be able to gather the evidence necessary to prove his case, such as statements from those who witnessed his persecution. Plaintiff Evan Doe similarly lacks support in Mexico to help him prepare his case.

119. Plaintiff Frank Doe does not know where he will stay while he prepares his asylum claim. After being forced to return to Mexico, he attempted to return to the

shelter where he resided previously, but officials turned him away because it was full. He was able to find a different shelter to stay for a couple of nights, but he does not have a more permanent residence. Plaintiff Ian Doe was also unable to return to the shelter where he stayed previously.

H. The Organizational Plaintiffs Are Injured by Defendants' Forced Return Policy

120. The Organizational Plaintiffs are nonprofit organizations that provide legal assistance to asylum seekers from Central America and other parts of the world, the majority of whom arrive through the southern border. Defendants' policy of returning asylum seekers to Mexico frustrates each Organizational Plaintiff's goals and requires them to expend resources they otherwise would spend in other ways.

121. Plaintiff Innovation Law Lab is a nonprofit organization dedicated to advancing the legal rights of immigrants and refugees in the United States, with a focus on providing legal representation to asylum seekers. Among other programs and services, the Law Lab has established various "Centers of Excellence" around the country, which provide support to asylum seekers and their pro bono attorneys, including legal, technical, and strategic assistance in preparing and presenting asylum claims in removal proceedings. These projects are established in Georgia, Kansas, Missouri, North Carolina, and Oregon, and the Law Lab is in the process of expanding to sites in Texas, New Mexico, and California. An important component of the Law Lab's mission is the investment in technology resources to support its work. The Law Lab employs software engineers to maintain its technology and create software deployments that

support its representation models across the United States.

122. Defendants' new forced return policy frustrates Law Lab's efforts to obtain asylum and other relief for asylum seekers, and has required and will continue to require the Law Lab to divert significantly its limited resources to counteract this frustration. For example, because the policy makes it more difficult for asylum seekers to obtain legal representation and to successfully pursue their claims, it threatens to hinder Law Lab's ability to provide its core services. The attorneys and staff who manage those projects, have had to shift their organizational focus, time, resources to Mexico and away, from critical, ongoing matters and clients served by their existing projects. This significant diversion of the Law Lab's resources, which has been necessary to counter the frustration of their mission and meet the needs of individuals returned to Mexico, vastly diminishes the organization's operational capacity. Moreover, the process of deploying the Law Lab's immigration case technology in a new, remote location has been particularly complicated and will require additional investment of resources.

123. The new policy has also required Law Lab to rework the orientation, training, and resources that it provides to asylum-seeking clients to address the needs of individuals returned to Mexico. Overhauling these materials is especially challenging in light of the unprecedented circumstances surrounding the new policy. For example, it is unclear how individuals who have been returned to Mexico will present their cases and at what time; how they will attend their court hearings; or how,

if they are able to obtain counsel, they will exchange documents or information with their attorneys in the United States. This uncertainty also significantly undermines the effectiveness of the Law Lab's goal to provide effective representation and help asylum seekers successfully pursue relief.

124. The new policy also frustrates the Law Lab's mission and organizational model because, by returning asylum-seekers to Mexico, fewer pro bono attorneys will be able to provide representation. Most of the pro bono attorneys within the Law Lab's existing network do not have the time, skill, or capacity to engage in representation for individuals stranded in Mexico, particularly because the organization's model requires that attorneys provide a substantial portion of representation through in-person, face-to-face interactions. In this way, the policy undermines the Law Lab's ability to provide a core service: engaging and supporting pro bono attorneys to provide direct representation to asylum seekers.

125. Plaintiff CARECEN of Northern California provides immigration legal and social services to clients throughout the San Francisco Bay Area and elsewhere in California. A central part of the organization's mission is to provide high-quality legal counseling, representation, and wrap-around social services, such as case management, mental health therapy, and peer education, to asylum seekers.

126. CARECEN appears on the list of legal services providers that the federal government has distributed to migrants returned to Mexico. The organization has been retained to represent an asylum seeker returned to Mexico under the policy. Because CARECEN pro-

vides a consultation to every person who seeks its assistance, it anticipates serving additional returned individuals in the future.

127. Due to the numerous significant obstacles to providing high-quality legal and social services to asylum seekers returned to Mexico, the new policy frustrates CARECEN's mission of providing such services and accordingly requires the organization to divert significant organizational resources in response, as CARECEN's legal program is neither structured nor envisioned to represent asylum clients residing in Mexico. The policy also makes it more difficult for CARECEN's potential clients, who will be stuck in Mexico pursuant to the policy, to gain access to and participate in the organization's core services, thereby impairing CARECEN's ability to function.

128. For example, CARECEN will not be able to effectively present the claims for protection of returned asylum seekers because the organization will be unable to provide to clients in Mexico the same critical legal and social service support needed to assist survivors of trauma that it provides to clients in the United States. Because serving individuals in Mexico will be much more resource intensive, CARECEN will be forced to divert significant resources away from its core services for asylum seekers in the United States to attempt to serve clients while they are in Mexico, or substantially cut or curtail its current asylum practice, which undermines its organizational goals.

129. CARECEN also will be forced to expend significant resources to change its intake, consultation, and representation model, all of which are currently predicated on in-person services, and bear the significant

costs of frequent travel to Mexico and San Diego. Representing asylum seekers returned to Mexico will require CARECEN to restructure attorney caseloads and responsibilities, and divert staff time and other resources from other cases. If the policy remains in effect, CARECEN will be able to handle far fewer cases every year, and its ability to provide mental health and other supportive services will be severely compromised. In addition, CARECEN's asylum representation program is funded by grants from the State of California and various local governments that require the clients served to live or have previously resided in the jurisdiction. Accordingly, taking on asylum cases under the policy will require the organization to divert funding from its general operating budget and so will undermine its ability to maintain its various legal and social service programs. Also, because of the policy, the number of potential clients who can satisfy the residency requirements of CARECEN's funders will decline, thus jeopardizing CARECEN's ability to secure these grants moving forward.

130. Plaintiff Centro Legal de la Raza ("Centro Legal") is a comprehensive immigration legal services agency that provides legal consultations, limited-scope services, full representation, and legal referrals to over 10,000 clients annually. As part of its services, Centro Legal provides direct legal representation to asylum seekers throughout California, including those in removal proceedings.

131. Centro Legal is included on the list of free legal services providers provided by the U.S. government to asylum seekers who are returned to Mexico. It is in the

process of being retained by three individuals who were forced to return to Mexico.

132. Defendants' policy will frustrate Centro Legal's core mission of providing comprehensive and effective legal representation to asylum seekers. For example, the resource-intensive nature of assisting asylum seekers located in Mexico will cause Centro Legal to have fewer resources available to continue its existing program and case work. The new policy will also frustrate Centro Legal's mission of providing a high volume of comprehensive removal defense services to asylum seekers because it will be nearly impossible for the organization to provide comprehensive services to individuals in Mexico. Centro Legal's ability to provide effective representation to asylum seekers subjected to the forced return policy will also be hampered due to the numerous obstacles to counsel access and case preparation in Mexico. The effective and ethical representation of clients in Mexico will require Centro Legal to either hire substantial additional staff or significantly lower the number of cases of asylum seekers in the United States that it accepts. Moreover, Centro Legal will have to use significant resources to research or hire counsel to advise on the requirements under both U.S. and Mexican law for its attorneys to practice in Mexico.

133. Further, the policy makes it more difficult for Centro Legal's potential clients, who will be stuck in Mexico pursuant to the policy, to gain access to and participate in the organization's core services, thereby impairing Centro Legal's ability to function.

134. Plaintiff the Immigration and Deportation Defense Clinic of the University of San Francisco School of Law ("USF Clinic") provides removal defense and engages in

advocacy on behalf of asylum seekers in California. The USF Clinic was established in 2015 in direct response to the increase in individuals fleeing violence in Central America and Mexico and seeking asylum and other relief in the United States. Since that time, 87% of the USF Clinic's clients have come from the Northern Triangle countries and entered the United States through the southern border. A central aim of the USF Clinic is to train USF law students to be effective and ethical immigration practitioners in the area of asylum law, and specifically in removal defense.

135. Defendants' policy of returning certain asylum seekers to Mexico threatens and frustrates the USF Clinic's mission and will require it to divert resources away from its core services. For example, as greater numbers of asylum seekers are forced to return to Mexico, the policy will make it more difficult for the USF Clinic to connect with potential clients, who are typically referred to the clinic through other legal service organizations in Northern California. Indeed, in response to the new policy, the USF Clinic has already had to make arrangements to send a team of eleven students and supervisors to the southern border to assist individuals subject to Defendants' policy. As the forced return policy is expanded, in order to serve sufficient clients to train its students, the USF Clinic will have to shift its model to focus on representing asylum seekers who are stranded in Mexico, forcing it to seek out new sources of funding, rearrange the way that it provides legal services, and divert significant funds to travel and communications costs.

136. The USF Clinic's asylum representation work is currently entirely funded by grants from the State of

California and local governments that require the clients to be physically present in California. As Defendants' policy expands, the Clinic thus risks losing its existing funding, which could lead to a reduction or termination of their program. Representing asylum seekers in Mexico would also pose significant obstacles and be more resource intensive, requiring extensive travel and other changes to current practice to provide adequate representation.

137. Defendants' policy will also significantly harm the USF Clinic's core mission of training law students to be effective advocates. The USF Clinic requires in-person access to its clients in order to effectively train law students consistent with its mission. However, law students lack the necessary flexibility in their schedules to travel repeatedly to San Diego for court hearings and Mexico for the multiple, lengthy client meetings typically required to prepare for an asylum hearing. Shifting the organization's representation model to provide services to clients at a distance would be extremely difficult and compromise the Clinic's ability to effectively represent clients and train law students.

138. Plaintiff Al Otro Lado is a nonprofit organization based in Los Angeles that provides legal representation or other assistance to individuals in asylum and other immigration proceedings in Southern California. The organization also provides know-your-rights workshops and other services to asylum seekers in Tijuana, Mexico.

139. With its policy of returning asylum seekers, Defendants have frustrated Al Otro Lado's mission and have forced the organization to divert significant resources away from its other programs. For example, the organization's small staff has had to pull its attention

from integral projects to identify and respond to the urgent needs of asylum seekers stranded in Mexico. Since Defendants' implementation of the new policy, Al Otro Lado has experienced a significant increase in requests for assistance from individuals who have been returned to Mexico, many of whom do not understand what has happened to them or why they have been returned. Staff or volunteers must take time away from other critical tasks to review individuals' documents, answer questions, and attempt to place them with pro bono attorneys. The new policy has also required Al Otro Lado to re-work its volunteer training and know-your-rights presentations and overhaul its training materials to incorporate new and critical information.

140. Al Otro Lado has also been forced to divert significant staff resources to help returned migrants find safe housing in Mexico and provide emotional support. Because many returned asylum seekers will be unable to retain legal counsel from Mexico, Al Otro Lado has had to begin developing workshops to provide pro se support to those who need assistance completing the English-only asylum application form, which will require significant staff efforts. Providing pro se trainings will also pull volunteer resources away from outreach efforts and general know-your-rights workshops.

141. Plaintiff the Tahirih Justice Center ("Tahirih") is a nonprofit and non-partisan organization providing free legal immigration services to survivors of gender-based violence such as domestic abuse, sexual violence, and human trafficking. Tahirih's mission is to provide free holistic services to immigrant women and girls fleeing violence such as rape, domestic violence, female genital

mutilation/cutting, forced marriage, and human trafficking, and who seek legal immigration status under U.S. law. Tahirih offers legal representation and social services for individuals who seek protection, including asylum, in their immigration proceedings. An average of 78% of Tahirih clients in the past few years were Latin American survivors of violence, virtually all of whom would have crossed at Tijuana or other ports of entry along the southern border.

142. Defendants' policy will frustrate Tahirih's mission and require it to divert significant organizational resources to address the consequences of the policy. Tahirih will not be able to effectively provide holistic legal services to the asylum seekers fleeing gender-based violence who are returned to Mexico and will be forced to divert significant resources from its existing services to attempt to serve those clients. Asylum seekers returned to Mexico will have little to no practical way to learn that Tahirih exists or that it offers holistic assistance. Tahirih will have to send staff to Mexico to conduct intakes and to effectively represent to these asylum seekers. This will significantly increate the time and cost Tahirih spends to develop cases, as working with survivors of gender-based violence, who are typically traumatized, requires repeated face-to-face meetings and consultations. Furthermore, Tahirih will be required to spend additional time and money to represent individuals returned to Mexico whose cases have been assigned to the San Diego Immigration Court.

143. Tahirih will have to divert substantial resources to researching and understanding Mexican law regarding the practice of law by foreign lawyers, including complicated questions of licensing, reciprocity, the effect of

NAFTA, any criminal penalties and visa requirements, and how all of those issues interact with lawyers' professional obligations in each state in which a Tahirih attorney or one of its hundreds of pro bono attorneys is barred. The risk of potential legal sanctions may deter attorneys from taking on asylum seekers returned to Mexico, thereby frustrating Tahirih's mission.

144. Tahirih will also be unable to obtain the expert services, including psychological evaluations, that are necessary to represent many survivors of gender-based violence. Tahirih anticipates needing to transport experts to Mexico for psychological evaluations, again requiring a substantial diversion of time and funds for that travel. In addition, Tahirih will be required to divert resources to understanding Mexican laws relating to licensing and the practice of psychology by a foreigner in Mexico.

145. Finally, Defendants' new policy will jeopardize Tahirih's funding streams. Tahirih's San Francisco office receives grant funding from Santa Clara County, California to provide immigration-related legal services to vulnerable individuals who reside in or are employed in Santa Clara County. Under Defendants' policy, fewer individuals will be permitted to enter the United States pending their removal proceedings, meaning there will be fewer potential clients for Tahirih to serve in Santa Clara County.

146. The Organizational Plaintiffs have also been harmed because they were denied the opportunity to comment on Defendants' policy through a notice-and-comment rulemaking. If Defendants had provided an opportunity for notice and comment before Defendant began implementing the policy, Plaintiffs could have informed

Defendants of their serious objections to the policy, and they may have convinced Defendants to adopt a different approach.

CAUSES OF ACTION

FIRST CLAIM FOR RELIEF

(VIOLATION OF INA § 235(b)(2)(C), 8 U.S.C. § 1225(b)(2)(C), TREATMENT OF ALIENS ARRIVING FROM FOREIGN CONTIGUOUS TERRITORY, AND ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 706(2)(A))

147. The foregoing allegations are repeated and realleged as if fully set forth herein.

148. INA § 235(b)(2)(C), 8 U.S.C. § 1225(b)(2)(C) permits the return to a contiguous territory only of an "alien described in subparagraph (A) who is arriving on land (whether or not at a designated port of arrival) from a foreign territory contiguous to the United States." *Id.* Section 1225(b)(2)(B) further provides that the return authorized in Section 1225(b)(2)(C) shall not be applied to any noncitizen "to whom paragraph (1) [Section 1225(b)(1) expedited removal] applies." 8 U.S.C. § 1225(b)(2)(B)(ii).

149. In addition, Section 1225(b)(2)(C) authorizes return only of those individuals who are "from" the foreign contiguous territory, and only where return would not violate the United States' protection obligations under domestic and international law, including the prohibition on returning individuals to face persecution, torture, or cruel, inhumane, and degrading treatment the right to a meaningful opportunity to apply for asylum; and other restrictions on countries to which a noncitizen may be removed or returned.

150. Defendants are applying their policy of returning asylum seekers to Mexico (the "forced return policy") to individuals, including the individual Plaintiffs, who cannot lawfully be returned under Section 1225(b)(2)(C).

151. As a result, the forced return policy is contrary to law. *See* 5 U.S.C. § 706(2)(A).

SECOND CLAIM FOR RELIEF

(VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 553(b), (c), (d))

152. The Administrative Procedure Act ("APA") requires notice and opportunity for comment prior to the promulgation of a rule. 5 U.S.C. § 553(b), (c).

153. Defendants' nondiscretionary procedure for determining whether an individual who is more likely than not to face persecution or torture in Mexico, and thus precluded from being returned to Mexico during the pendency of removal proceedings, constitutes a legislative rule that requires notice-and-comment rulemaking.

154. Defendants did not promulgate a rule or engage in notice-and-comment rulemaking before implementing their procedure for making fear determinations as part of the forced return policy.

155. The APA requires that a substantive rule be published "no less than 30 days before its effective date." 5 U.S.C. § 553(d).

156. Defendants failed to appropriately publish the forced return policy, its screening procedures, and related guidance 30 days before its effective date.

THIRD CLAIM FOR RELIEF

(VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 706(2)(A))

157. The foregoing allegations are repeated and realleged as though fully set forth herein.

158. The APA provides that courts "shall . . . hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

159. Defendants' forced return policy is arbitrary, capricious, and contrary to law. Defendants have not articulated a reasoned explanation for their decision to adopt this policy; failed to consider relevant factors; relied on factors Congress did not intend to be considered; and offered explanations for their decision that are counter to the evidence before the agency.

160. The policy deprives asylum seekers of a meaningful right to apply for asylum.

161. The policy also permits an individual's forced return to Mexico unless the individual affirmatively states a fear of return and establishes before an asylum officer that it is more likely than not that he or she will face persecution or torture there, without providing basic procedural protections, including: any notice that he or she must affirmatively express such a fear; any opportunity to consult with counsel either prior to or during the fear interview; the guarantee of an interpreter; a written summary of the interview and written explanation of the determination; or immigration judge review.

162. The policy is arbitrary, capricious, and contrary to law because it departs from the agency's existing policies for determining whether individuals face a likelihood of persecution or torture, as well as prior policies

prohibiting the return of individuals to contiguous territories pending their removal proceedings based on a fear of persecution or torture, without providing a reasoned explanation for departing from these policies.

FOURTH CLAIM FOR RELIEF

(VIOLATION OF INA § 241(b)(3), 8 U.S.C. § 1231(b)(3) WITHHOLDING OF REMOVAL, AND ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 706(2)(A))

163. The foregoing allegations are repeated and realleged as though fully set forth herein.

164. The 1951 Refugee Convention and the 1967 Protocol relating to the Status of Refugees, to which the United States is party, requires that the United States not "expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion." United Nations Convention Relating to the Status of Refugees, art. 33, July 28, 1951, 189 U.N.T.S. 150; *see also* Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267.

165. The Refugee Convention prohibits the return of individuals to countries where they would directly face persecution on a protected ground as well as to countries that would deport them to conditions of persecution.

166. Congress has codified these prohibitions in the "withholding of removal" provision at INA § 241(b)(3), 8 U.S.C. § 1231(b)(3), which bars the removal of an individual to a country where it is more likely than not that he or she would face persecution.

167. Pursuant to regulation, only an immigration judge can determine whether an individual faces such a risk of persecution and is entitled to withholding of removal after full removal proceedings in immigration court. 8 C.F.R. § 1208.16(a).

168. The forced return policy provides none of these safeguards to ensure the critical protection against *non-refoulement* and therefore violates Section 1231(b)(3). It permits an asylum officer to determine whether it is more likely than not that an individual faces persecution in Mexico through a truncated procedure, without any right to review or a hearing before an immigration judge. Moreover, the procedure does not assess whether an individual is at risk of *refoulement* to his or her country of origin by Mexico, and does not account for whether an individual will be able to exercise his or her right to apply for asylum from Mexico.

169. This procedure violates Section 1231(b)(3) and its implementing regulations.

170. As a result, the forced return policy is contrary to law. *See* 5 U.S.C. § 706(2)(A).

FIFTH CLAIM FOR RELIEF

(VIOLATION OF CUSTOMARY INTERNATIONAL LAW: PROHIBITION ON *REFOULEMENT*)

171. All of the foregoing allegations are repeated and realleged as if fully set forth herein.

172. The prohibition on *refoulement* is a specific, universal, and obligatory norm of customary international law. That norm prohibits returning an individual to a country where there exists a threat of subsequent forcible return to a country where the individual would be

subject to torture or where the individual's life or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group, or political opinion.

173. Defendants have not undertaken a proper evaluation of the risk of *refoulement* by Mexico. The procedures for carrying out the forced return policy are inadequate to guard against such indirect *refoulement* in violation of the law of nations.

174. Defendants were aware or reasonably should have known that indirect *refoulement* by Mexico was a foreseeable consequence of its forced return policy.

175. Defendants knowingly and purposefully designed and, directly or through their agents, applied their forced return policy to the individual Plaintiffs.

176. Defendants' actions have placed the individual Plaintiffs at risk of return to their countries of origin, where their lives or freedom would be threatened on account of their race, religion, nationality, membership in a particular social group, or political opinion, or where they face a substantial risk of torture or other cruel, inhumane, and degrading treatment.

177. Defendants' actions have caused and will continue to cause a grave and foreseeable injury to Plaintiffs, including a continued risk of *refoulement* in violation of the protections afforded to them under international law.

178. Plaintiffs do not have an adequate damages remedy at law to address the violations alleged herein.

SIXTH CLAIM FOR RELIEF

(VIOLATION OF INA § 208(a), 8 U.S.C. § 1108(a), ASYLUM, AND ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 706(2)(A))

179. The foregoing allegations are repeated and realleged as though fully set forth herein.

180. The INA provides, with certain exceptions, that "[a]ny alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien's status, may apply for asylum in accordance with this section or, where applicable, section 1225(b) of this title." 8 U.S.C. § 1158(a)(1).

181. The forced return policy is contrary to law, *see* 5 U.S.C. § 706(2)(A), under 8 U.S.C. § 1158(a)(1), because individuals are returned to conditions that meaningfully deprive them of their right to apply for asylum.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray this Court to:

a. Declare unlawful the new forced return policy (or "Migrant Protection Protocols"), including the Secretary's January 25, 2019 Memorandum, the USCIS Policy Guidance, and the CBP MPP Guiding Principles, Commissioner's Memorandum Implementing the MPP, and Field Operations Memorandum Implementing the MPP;

b. Enter an order vacating the forced return policy;

c. Enter an order enjoining Defendants from continuing to apply the forced return policy to third-party nationals seeking humanitarian protection at a port of entry or between ports of entry;

d. Enter an order providing relief for the Individual Plaintiffs by ordering that Defendants return them to the San Ysidro Port of Entry for reprocessing of their applications for admission without subjecting them to the unlawful forced return policy;

e. Award Plaintiffs' counsel reasonable attorneys' fees under the Equal Access to Justice Act, and any other applicable statute or regulation; and,

f. Grant such further relief as the Court deems just, equitable, and appropriate.

Dated: Feb. 14, 2019

Respectfully submitted,

Judy Rabinovitz*
Michael Tan*
Omar Jadwat*
Lee Gelernt*
Anand Balakrishnan*
Daniel Galindo** (SBN 292854)
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
IMMIGRANTS' RIGHTS PROJECT
125 Broad St., 18th Floor
New York, NY 10004
T: (212) 549-2660
F: (212) 549-2654
jrabinovitz@aclu.org
mtan@aclu.org
ojadwat@aclu.org
lgelernt@aclu.org
abalakrishnan@aclu.org
dgalindo@aclu.org

Melissa Crow*
SOUTHERN POVERTY LAW CENTER
1101 17th Street NW, Suite 705
Washington, D.C. 20036
T: (202) 355-4471
F: (404) 221-5857
melissa.crow@splcenter.org

Mary Bauer*
SOUTHERN POVERTY LAW CENTER
1000 Preston Avenue
Charlottesville, VA 22903
T: (470) 606-9307
F: (404) 221-5857
mary.bauer@splcenter.org

Saira Draper*
Gracie Willis*
SOUTHERN POVERTY LAW CENTER
150 E Ponce de Leon Avenue, Suite 340
Decatur, GA 30030
T: (404) 221-6700
F: (404) 221-5857
saira.draper@splcenter.org
gracie.willis@splcenter.org

Attorneys for Plaintiffs

** Pro hac vice application forthcoming*
*** Application for admission forthcoming*
/s/ JENNIFER CHANG NEWELL
JENNIFER CHANG NEWELL (SBN 233033)
Katrina Eiland (SBN 275701)
Julie Veroff (SBN 310161)_

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
IMMIGRANTS' RIGHTS PROJECT
39 Drumm Street
San Francisco, CA 94111
T: (415) 343-1198
F: (415) 395-0950
jnewell@aclu.org
keiland@aclu.org
jveroff@aclu.org

Sean Riordan (SBN 255752)
Christine P. Sun (SBN 218701)
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN CALIFORNIA, INC.
39 Drumm Street
San Francisco, CA 94111
T: (415) 621-2493
F: (415) 255-8437
sriordan@aclunc.org
csun@aclunc.org

Blaine Bookey
Karen Musalo
Eunice Lee
Kathryn Jastram
Sayoni Maitra*
CENTER FOR GENDER & REFUGEE STUDIES
200 McAllister St.
San Francisco, CA 94102
T: (415) 565-4877
F: (415) 581-8824
bookeybl@uchastings.edu
musalok@uchastings.edu

leeeunice@uchastings.edu
jastramkate@uchastings.edu
maitras@uchastings.edu

CERTIFICATION OF INTERESTED ENTITIES OR PARTIES

Under Civil Local Rule 3-15, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

Dated: Feb. 14, 2019

Respectfully submitted,

Judy Rabinovitz*
Michael Tan*
Omar Jadwat*
Lee Gelernt*
Anand Balakrishnan*
Daniel Galindo** (SBN 292854)
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
IMMIGRANTS' RIGHTS PROJECT
125 Broad St., 18th Floor
New York, NY 10004
T: (212) 549-2660
F: (212) 549-2654
jrabinovitz@aclu.org
mtan@aclu.org
ojadwat@aclu.org
lgelernt@aclu.org
abalakrishnan@aclu.org
dgalindo@aclu.org

Melissa Crow*
SOUTHERN POVERTY LAW CENTER
1101 17th Street NW, Suite 705
Washington, D.C. 20036

T: (202) 355-4471
F: (404) 221-5857
melissa.crow@splcenter.org

Mary Bauer*
SOUTHERN POVERTY LAW CENTER
1000 Preston Avenue
Charlottesville, VA 22903
T: (470) 606-9307
F: (404) 221-5857
mary.bauer@splcenter.org

Saira Draper*
Gracie Willis*
SOUTHERN POVERTY LAW CENTER
150 E Ponce de Leon Avenue, Suite 340
Decatur, GA 30030
T: (404) 221-6700
F: (404) 221-5857
saira.draper@splcenter.org
gracie.willis@splcenter.org

Steven Watt*
ACLU FOUNDATION
HUMAN RIGHTS PROGRAM
125 Broad Street, 18th Floor
New York, NY 10004
T: (212) 519-7870
F: (212) 549-2654
swatt@aclu.org

Attorneys for Plaintiffs

** Pro hac vice application forthcoming*
*** Application for admission forthcoming*

/s/ JENNIFER CHANG NEWELL
JENNIFER CHANG NEWELL (SBN 233033)
Katrina Eiland (SBN 275701)
Julie Veroff (SBN 310161)_
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
IMMIGRANTS' RIGHTS PROJECT
39 Drumm Street
San Francisco, CA 94111
T: (415) 343-1198
F: (415) 395-0950
jnewell@aclu.org
keiland@aclu.org
jveroff@aclu.org

Sean Riordan (SBN 255752)
Christine P. Sun (SBN 218701)
AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF NORTHERN CALIFORNIA, INC.
39 Drumm Street
San Francisco, CA 94111
T: (415) 621-2493
F: (415) 255-8437
sriordan@aclunc.org
csun@aclunc.org

Blaine Bookey
Karen Musalo
Eunice Lee
Kathryn Jastram
Sayoni Maitra*
CENTER FOR GENDER & REFUGEE STUDIES
200 McAllister St.
San Francisco, CA 94102

T: (415) 565-4877
F: (415) 581-8824
bookeybl@uchastings.edu
musalok@uchastings.edu
leeeunice@uchastings.edu
jastramkate@uchastings.edu
maitras@uchastings.edu

DECLARATION OF JOHN DOE

I, John Doe, hereby declare under the penalty of perjury pursuant to 28 U.S.C. § 1746:

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

2. I was born in San Juan, Sacatepequez, Guatemala. I am 31 years old and a citizen of Guatemala. I am an indigenous person and speak the native language Kaqchikel as well as Spanish. I was raised by my grandparents in Guatemala, where I started working at the age of approximately eleven years old. I graduated from evening high school in San Juan while working during the day. I most recently worked as a dog groomer. My immediate family, including my U.S. citizen siblings, lives in California.

3. I went to the San Ysidro port of entry to seek asylum on Tuesday, January 29, 2019 after waiting in Tijuana to seek asylum since approximately mid-December 2018.

4. I fled my home country because I was beaten severely and threatened with death by a group that calls itself Ronderos de San Juan. Ronderos de San Juan is a death squad that controls my hometown of San Juan. Members of the death squad beat me severely on multiple occasions. I would often wake up unconscious and bloody after they attacked me, and I have several scars from their attacks. I believe that the death squad targeted me because of my indigenous background, as death squad members would often taunt me with indigenous slurs when they threatened and beat me.

5. The death squad also believed that I had filed a report against them for animal cruelty. An animal rights group filed a report against them because they often kill and harm stray dogs. Because I am a dog groomer, I would often leave out water and food for these animals. This led the death squad to believe that I complained to the government about them. In October 2018, they killed stray dogs and left them outside my house to threaten me. They told me that if I continued to defy them, they would kill me ju.st like they had killed the dogs. Because of this threat, I fled Guatemala in fear of losing my life.

6. If I am sent back to my country I fear that the death squad will kill me, as they threatened to do, or continue to beat me to the point of severe injury or death.

7. I do not believe my government could protect me if I were to return to Guatemala. I filed a police report against them the first time they beat me, but nothing ever came of it, and the death squad continued to harm me. The death squad controls our entire community.

8. I have no criminal record.

9. I fled Guatemala and crossed into Mexico around October 30, 2018. When I crossed into Mexico, Mexican immigration officials gave me a green card that they told me was for permission to pass into Mexico.

10. When I traveled through Mexico, I took a train from Nayarit to Mexicali. The trip lasted almost three days. Around the second day, very early in the morning, the train stopped in the middle of nowhere. I peeked out of the car I was riding in to see what was happening. About three cars away from me, I saw a bunch of lights

and a group of men wearing black face masks and carrying huge guns. They were unloading many big packets off of the train onto the ground, to a few waiting cars. I had been warned by other travelers that the trains were used for narcotrafficking, and suspected that the packets contained drugs.

11. When I saw what was happening, I quickly went to hide. I must have made some noise while doing so, however, because the men heard me and started to look for me with their lights. I had to hide for about five to six hours. The entire time, I was terrified that they would find me and kill me. I fear that the narcotraffickers saw me, will find me, and will kill me for having been a witness to their crime.

12. I arrived in Tijuana around mid-December 2018. I wanted to seek asylum in the United States but did not know what the process was.

13. A man in Tijuana to]d me that I had to put my name on a list in order to seek asylum in the United States. I wanted to do things correctly, so I went to El Chaparral to put my name on the list, and I was assigned number 1,856.

14. I waited about six weeks in Tijuana before I was told that I could return to the port of entry. During this time, I stayed in a room where a stranger allowed me to sleep. I had to eat at shelters and in other places that offer free food to migrants. I was very afraid in Tijuana because I thought the narcotraffickers would find me and kill me for having witnessed their crime. Out of fear, I kept to myself and was very careful while waiting for my turn to present myself to seek asylum.

Every morning I went to El Chaparral to see what number was being called and if it was my tum.

15. On Tuesday, January 29, 2019, the organizers of the list finally said that it my number had finally come up. I was told to present myself at 1 PM. At 1 PM, the Mexican officers from Grupos Beta put us all in a line. There were about 45 of us who were called. While we were waiting in line, a Beta officer came down and spoke to each of us individually. The Beta officer asked me to turn over the green card that I had received from Mexican immigration when I first entered Mexico. The Beta officer told me that I would no longer need the card because I was going to cross over to the other side of the border. Wanting to follow all of the rules, I turned in my card.

16. At the port of entry, U.S. immigration officials in blue uniforms told us to place our documents in a plastic bag, tum off our cell phones, take out our wallets, and take the shoelaces out of our shoes. Then they asked us to separate into two lines—one line for people who had traveled with the migrant caravan, and one line for people who were not with the caravan. Because I had traveled alone, I put myself in the line of people who did not come with the caravan. In that line, an immigration officer in a blue uniform asked me where I was from. When I said I was from Guatemala, the officer told me to go to the back of the line. Another man in line, who was from Nicaragua, was also told to go to the back of the line.

17. I waited my turn to talk to an immigration officer, who asked where I intended to travel and scanned my passport. I was then moved to a different line,

where I was asked to provide the name and phone number of the person who would receive me in the United States, and undergo a clothing check (to make sure I wasn't wearing multiple shirts or jackets).

18. Next, I was moved to a different hallway, where a group of us were asked to stand against the wall with our hands behind our back. A U.S. immigration officer patted me down and then directed me follow him to a waiting room where there were other men, women, and children. There, I was called up to speak with an agent at a computer. This agent asked me some basic questions like my name, who would receive me in the United States, and my parents' names. I answered all of the agent's questions, and he told me to sit back down. Later, I was called up again to speak with a female immigration official. She asked me similar questions, but also took my fingerprints and my picture. After that, she told me to wait again, and later took my fingerprints again.

19. While I was waiting, an officer came by with some food, and then another officer came over with some papers that had my name on them. The second officer then called me, along with a group of other people. We followed him through the hallways to the "hielera" (ice box). I went into the hielera around 7 PM. I remember that I was held in Hielera #16.

20. Other people in the hielera told me that we were waiting for our credible fear interviews. I was held in the hielera overnight. I did not sleep at all because of the cold and because the lights remained on all night.

21. In the morning, we were fed a small breakfast, which we ate standing up. An immigration officer in a

blue uniform then came and called me by name out of the hielera to ask for the name of my sponsor in the United States. I explained to him that I had provided the names of my mother and her partner, who is a U.S . citizen.

22. Ten or twenty minutes later, I was again called out of the hielera. The agent told me to return to the wall and place my hands behind my back. Several of us were called out from different hielera cells. We followed the agent to an area where there were offices with short walls. I was called up to speak with a female immigration officer.

23. The officer had me raise my right hand and swear to tell the truth. She then asked me some questions in Spanish. I remember that she asked me my name, if I was married, if I had any problems with the law, if I had children, and if I had any documents. She asked me why I was there, and I told her that I had come to have my credible fear interview. She asked me if I was afraid of returning to Guatemala, if I was being persecuted in Guatemala, and by whom. She also asked me how I traveled through Mexico. She did not ask me if I was afraid to be in Mexico, however.

24. At the end of the interview, the officer asked me to sign and initial several pieces of paper. I could not see what the papers said because she covered up each of the pages with the others. I could only see the space at the bottom where she told me to sign or initial. I signed the papers because I trusted the officer and I believed that this was part of the process of seeking asylum.

25. After I signed and initialed, the officer told me that I would have a court date on March 19, 2019 at

12:30. She then told me that I was being returned to Mexico. I was very surprised by this news and did not understand why this was happening to me. Then I was returned to the hielera

26. About thirty minutes later, I was taken from the hielera and put in a group of about ten people. All of us were men except for one woman. U.S. immigration officers in blue uniforms placed us in steel handcuffs with our hands behind our back. This was the first time I had been handcuffed in my entire life. We had to carry our backpacks—with our hands handcuffed—to board a blue and white bus. The bus left and took us back to El Chaparral, which was about five minutes away. After we got off the bus, an officer took off my handcuffs, gave me some papers, and told me to wait. From there, the U.S. officers turned us over to a group of Mexican officers.

27. The Mexican officers took us into an office. There were at least two Mexican officers from Grupos Beta. I recognized them because of their orange uniforms. There was one other Mexican officer in a white shirt, and there may have been more. I wasn't quite sure who everyone was. A Mexican officer called me up, took my picture, and photocopied the documents I had received from U.S. immigration officers. Then a different officer gave me a piece of paper that the officer said gave me permission to wait for my court date in Mexico, but did not allow me to work. They told us that if we wanted to work, we would have to go through a different process with Mexican immigration. One officer told me that if I didn't' have somewhere to go, I could go to a shelter on a piece of paper. But he said the shelter would only be able to offer me somewhere to stay for a

night or so. Then the Mexican officers said that we were free to go.

28. I am afraid to stay in Mexico. Not only do I feel unsafe here as an asylum seeker, I am afraid that narcotraffickers will fine me and kill me because I saw them transporting drugs. I also feel that my life is in danger because Mexico may deport me to Guatemala. I do not feel confident that the paper Mexican immigration officers gave me would prevent me from being deported. The officers told me that the paper is valid for only for a limited number of days. No one explained to me what the immigration paper means, and I am afraid of being deported to Mexico while waiting for my immigration case to move forward.

29. During my entire time on the U.S. side of the border, no one ever asked me if I was afraid of being returned to Mexico. I also did not have the opportunity to tell anyone I was afraid because I was not allowed to provide any information other than the answers to the questions I was asked. Had I been asked if I was afraid to go back to Mexico, I would have told the officer about the crime that I witnessed and my fear of narcotraffickers.

30. Apart from my fear of being in Mexico, I also am worried about how I will fight my asylum case. U.S. immigration officers gave me a list of attorneys, but they all work in California. No one ever explained how I could find an attorney or how an attorney in California would be able to represent me if I am in Mexico. I had heard that there are lots of organizations in the United States that help asylum seekers and hoped to find an attorney to represent me. Here in Tijuana, I do not know how I will find a lawyer to help me with my case. I also

think it will be a lot harder to prove my asylum case without the support of my family. Here, I have no one to help me understand the process and what I need to do.

31. No one explained how I will get to my hearing in the United States. The U.S. officers told me to come to El Chaparral with my paperwork, and I should walk until I found an immigration officer. They told me to show my paperwork to an immigration officer, and that officer would help me get to the judge. Without more information, I am afraid that I will miss my immigration court hearing.

32. Given the problems I have had in my country, I fear that if my identity and my status as an asylum applicant are released to the public, my life and possibly that of my family will be in danger. I wish that my identity not be publicly disclosed, and I wish to proceed with the use of a pseudonym or initials in any federal action.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and recollection. This declaration was read back to me in Spanish, a language in which I am fluent.

Executed on Feb. 2, 2019 at Tijuana, Mexico.

/s/ JOHN DOE
JOHN DOE

CERTIFICATION

I, Marie Vincent, declare that I am fluent in the English and Spanish languages.

On February 2, 2019, I read the foregoing declaration and orally translated it faithfully and accurately into Spanish in the presence of the declarant. After I completed translating the declaration, the declarant verified that the contents of the foregoing declaration are true and accurate.

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

Executed on Feb. 2, 2019 at Tijuana, Mexico.

/s/ MARIE VINCENT [02/01/2019]
MARIE VINCENT Date

DECLARATION OF GREGORY DOE

I, Gregory Doe, hereby declare under the penalty of perjury pursuant to 28 U.S.C. § 1746:

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

2. I am a citizen of Honduras. I am 53 years old.

3. I went to the San Ysidro port of entry to seek asylum on January 29, 2019. I had waited in Tijuana for my turn to present at the port of entry since approximately November 18, 2018.

4. I fled Honduras after receiving threats based on my support for the LIBRE party. After the presidential election in 2017, I began to participate in the widespread protests against the government. This brought me to the attention of the Honduran military, which began to follow me and even came to my house. In fear for my life, I fled Honduras in October 2018.

5. If I am sent back to my country, I fear that the Honduran military will find me and kill me. I do not believe my government would protect me if I were to return to my country because the Honduran military is part of the government.

6. I do not have a criminal record.

7. I traveled through Mexico with the migrant caravan. I arrived in Tijuana on or around November 18, 2018. First I stayed at the Benito Juarez shelter, but heavy rains made the shelter so muddy that it was unusable, and we were moved to tents in El Barretal.

8. I did not feel safe at Benito Juarez because the neighbors kept trying to attack the migrant community. The people who lived near the shelter tried to hurt us because they did not want us in their country. On one occasion, a group of young men gathered around Benito Juarez with sticks, threatened us and yelled things like "get out of here, Hondurans, we don't want you here." They said that it was unfair that we were receiving benefits from the government.

9. At El Barretal, I felt a little more secure because we had a high wall surrounding us. Even so, one night someone threw a tear gas bomb into the shelter. When I tried to leave the shelter, people in passing cars would often yell insults at me like "get out of here, you *pinches* Hondurans," and other bad words that I do not want to repeat.

10. In El Barretal, members of Grupos Beta instructed us to go to El Chaparral to put our names on a list in order to be able to seek asylum. I went and put my name on the list in November 2018 and received number 1828.

11. At the end of my time in El Barretal, the Mexican officers there started to get rough with us. I saw them take some of my friends out of El Barretal by force. I saw officers from Grupos Beta, Mexican immigration, and the federal police tell people in the camp that they had to leave to look for work. The people who did not want to leave were kicked out of the camp by force; the Mexican officials simply picked up their tents and carried them out.

12. I am a dedicated Evangelical Christian and had been attending a church in Tijuana. Because people

were being removed from the camp, I had to move into the church in December 2018. About fifty of us stayed at this church together. It was very crowded. We slept on mats on the floor, there was one bathroom for all of us and there were two rooms for us to sleep in.

13. While waiting for my number to be called, I tried to look for work in Tijuana. However, I was told in several places that I needed a Mexican passport in order to get paid.

14. On January 29, 2019, I arrived at El Chaparral around 8:00 am. My number was finally called. Several hours later, around 1:00 PM, officers from Grupos Beta put all of us in a line. They asked us to turn in our immigration paperwork from Mexico, but I had left my humanitarian visa behind for safekeeping.

15. Grupos Beta then turned us over to a group of U.S. immigration officers. The U.S. officers told us that we should be quiet, and that we would be detained for maybe months, or years, until our process was complete.

16. The officers had us put all of our possessions, except for the clothes we were wearing, into our luggage and lined us up against the wall. They told us not to look around, and then searched each one of us. I had kept my glasses hooked onto my shirt because I need them to read. An officer grabbed my glasses from me. He looked like he might break them. I told him that I needed my glasses to read and he told me that they had to go in my bag. This worried me because I wanted to be able to read any paperwork that was given to me during the asylum process, especially any papers that I had to sign.

17. A U.S. officer then asked the group which of us had come with the caravan. This question made us all a little nervous because we were not sure why they were asking us. The officer said something like "don't worry, nothing is going to happen to you, just tell us which of you came with the caravan." So people who had come with the caravan identified ourselves. The officers then separated us from the rest of the group.

18. After this, I went to a short interview with an immigration officer who asked me some basic questions like my nationality, my family status, my name, and my contacts in the United States. Then I waited for a while in a waiting room before a different officer took my picture and my fingerprints.

19. Soon afterward, I was taken to a small cell. There were several people already waiting in the cell. Many of the people had been there for many days, so I spent some time praying with them in an attempt to give them hope in this difficult time.

20. I spent all night in the "hielera," or ice box as the migrants call it. The officers gave us aluminum blankets and thin mats for sleeping, but it was impossible to sleep because the lights were on. In the morning, I was not given anything to eat. Instead, an officer took me to a room with a lot of cubicles for another interview.

21. A male officer interviewed me in Spanish. He asked me to raise my hand and promise to tell the truth. He first asked me some biographical questions.

22. Then he asked what had happened to me in Honduras. I told him that I was fleeing the governing regime. He asked me how long I had had problems with the regime. I told him that my problems had started

when Juan Orlando Hernandez, the current president, came to power. The interviewer asked if I had been persecuted. I told him I had been gathering people to work in politics, that several of my friends involved in the same work had been disappeared, and that the military was following me.

23. The interviewing officer spent quite a bit of time asking questions about the caravan. He wanted to know the leader of the caravan was, where I learned about the caravan, why I joined the caravan, where the idea to have a caravan came from, and if there are plans to have more caravans. I responded that I had joined the caravan in an attempt to save my life.

24. When I explained that I was fleeing danger in Honduras, the officer asked me why I came here, since the same thing could happen to me in the United States. I said I was seeking asylum. The officer asked if I knew what asylum was, and I responded that it means protection.

25. The officer also asked about my fear of returning to Honduras. I said I was fleeing the current government, which is run by a dictator who has imposed his will on the entire country. I explained that members of the Honduran military were looking for me and wanted to kill me.

26. At one point, the officer repeatedly accused me of lying. I had told him that I hid at my cousin's house for about two months and that I found out about the caravan when it passed in front of his house. This is all true, but the officer did not believe me.

27. I am not sure what I said after that. I was very hungry, nervous, and tired. I think the interview lasted around 45 minutes.

28. The officer asked me if I had sought asylum in Mexico, and I told him that I had, but had not yet received a response. I had gone to a job fair in Tijuana where I was told that I would only be allowed to work if I applied for asylum in Mexico. I am afraid to be in Mexico, but I am even more afraid of being deported to Honduras.

29. The officer never asked me if I was afraid of being in Mexico or if anything bad had happened to me here. He said that because I had been living in Tijuana while waiting to seek asylum, I would continue waiting in Tijuana for my court date.

30. After the interview, the officer told me I had to sign some paperwork. I could not read the papers because I did not have my reading glasses, and because most of them were in English. After I signed, the officer asked me if I knew that my asylum claim could be rejected. I told him yes.

31. Then I was taken back to the hielera. I stayed there for about thirty minutes until an officer came back for me. I was taken to a hallway where the officers made us line up against the wall, and handcuffed us behind our backs. They hung our backpacks on hour fingers behind our backs and we had to carry our backpacks to a caged van, which took us back to El Chaparral.

32. At El Chaparral, the U.S. officers took off our handcuffs and turned us over to Mexican officials. I saw officers from Grupos Beta and a man who told us that he was the head of Mexican immigration.

33. The Mexican officials welcomed us and gave us instructions. They told us to behave ourselves while we were in Mexico. They asked if we had somewhere to stay or somewhere to go, and offered to give us rides.

34. The man who had said he was in charge of Mexican immigration directed us to turn in our humanitarian visas. Most of us did not have our visas with us. He said that our humanitarian visas had been automatically invalidated when we crossed the U.S.-Mexico border. He gave us temporary permits that he said were valid until March 19, when we had our appointments with the judge in the United States. He told us not to lose the permits and to always keep them with us.

35. I feel unsafe in Mexico. Because of the experiences I had while waiting for my number to be called, I almost never go outside. I have moved back into the same church I was in before; the conditions are the same. I stay in the church almost all day in order to avoid problems and possible violence. I am most afraid of the Mexicans who don't want asylum seekers in their country—like those who threatened violence against us in the migrant shelters. For that reason, I do not tell anyone that I am Honduran.

36. I am also afraid that the Honduran government will find me in Mexico and harm me. Even outside the country, the Honduran government often works with gangs and criminal networks to punish those who oppose their policies. I am afraid that they might track me down.

37. I am afraid that the Mexican government will deport me to Honduras. My immigration status here is

temporary, and I am not confident that it protects me from deportation.

38. I am very concerned about how I will fight my immigration case from here. I do not know very much about the process, but I have a U.S. citizen friend in Miami, Florida who had offered to help me. My sister is also a U.S. citizen, and she was going to support me and help me find the resources that I need. But I do not know how they will help from the United States while I am in Tijuana. I also do not know how I will make arrangements to get evidence that I need to prove my case, like declarations from people who witnessed what I went through.

39. Given that I have been targeted in my country, I fear that if my identity and my status as an asylum applicant are released to the public, my life and possibly that of my family will be in danger. I wish that my identity not be publicly disclosed, and I wish to proceed with the use of a pseudonym in any federal action.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and recollection. This declaration was read back to me in Spanish, a language in which I am fluent.

Executed on Feb. 5, 2019 at Tijuana, Mexico.

/s/ GREGORY DOE
GREGORY DOE

CERTIFICATION

I, Juan Camilo Mendez Guzman, declare that I am fluent in the English and Spanish languages.

On February 5, 2019, I read the foregoing declaration and orally translated it faithfully and accurately into Spanish in the presence of the declarant. After I completed translating the declaration, the declarant verified that the contents of the foregoing declaration are true and accurate.

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

Executed on Feb. 5, 2019 at Tijuana, Mexico.

/s/ JUAN CAMILO MENDEZ GUZMAN
JUAN CAMILO MENDEZ GUZMAN

[2/5/2019]
Date

DECLARATION OF BIANCA DOE

I, Bianca Doe, hereby declare under the penalty of perjury pursuant to 28 U.S.C. § 1746:

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

2. I was born in Santa Rosa de Copan, Honduras in 1996. I am 22 years old. I have three brothers that I have lived with. They are 18, 19, and 8 years old. They are in Honduras, living with my mother and stepfather. My stepfather is a farmer. My mother cares for the children. My biological father left my mother when she was pregnant with me—he has many other children who are my half siblings but I don't have a relationship with most of them, nor with my biological dad.

3. I went to school through elementary school. I stopped going to school at the age of 11 because my stepfather didn't want to pay for my education and my mother lacked the funds to keep me in school. I can read and write in Spanish.

4. In Honduras I worked as a cook in a restaurant for about three years.

5. I identify as a woman and a lesbian.

6. I left Honduras on September 10, 2018 because my life was in danger. Because of my sexual identity as a lesbian, I was targeted by men in Honduras, and threatened that I would be killed if I did not leave. There is no protection in Honduras for people like me. In Honduras, LGBTQ people like me are harmed and disappeared all the time because the government and

police do not protect us. In fact, the police often target sexual minorities because of their minority status.

7. I fled from Honduras alone to save my life. I travelled north through Guatemala; the passage took me a couple of days.

8. I wanted to reach the United States so that I could be safe from discrimination and violence on account of my sexuality. Also I know that I have a better chance of getting my son back because the laws in the United States are stronger than here in Mexico.

9. I arrived in Mexico in September and stayed in Tabasco for three months. I had no intention of staying in Tabasco—I just wanted to save up enough money to come to get to the U.S/Mexico border.

10. I found it really hard to find a job in Tabasco because of discrimination against people from Honduras. People would say that we are dirty, unreliable, other ugly things that are just not true. I would try to explain that not all Hondurans are the same, that I like to work, and that I work hard. I am an experienced cook and server. But people would say that they were not hiring Hondurans. That happened to me many times.

11. Luckily, I finally found work in a bar. I knew some women who worked there, and they helped me get the position. But I was afraid to mention that I am a lesbian and I did not reveal my identity the whole time I was in Tabasco. I heard lots of people in Mexico say hateful and frightening things about LGBTQ people, calling them names like fag and dyke and saying that we are trash. I heard people say that gay people like me

are less than human, and that it is okay to hurt us because we don't matter. Because of my sexual identity, I do not feel safe in Mexico.

12. While in Tabasco I was robbed. A man of about thirty years of age grabbed by bag when I was eating at a café. They stole my identity card from Honduras, my phone, and my documents. As a result, I had to go back to the Mexican border to obtain a replacement visa.

13. I left Tabasco around the 15th of December; I arrived in Tijuana on or around the 20th of December, 2018.

14. When I arrived in Tijuana, I stayed at a shelter. I am now staying at an LGBTQ safe house here in Tijuana.

15. The day I got here, I put my name on "La Lista" or The List, and got my number.

16. I waited over five weeks on The List.

17. It was Tuesday, January 29, 2019 when my number finally came up.

18. I got to the port of entry around 9:00 am. When we arrived at El Chaparral, U.S. officers put us in cars and took us to another place. They directed us to get into lines and leave all of our suitcases. They gave us a bag to carry our documents and nothing more. We were allowed to keep the clothes we were wearing, but that was all.

19. I had with me a letter from my attorney requesting exemption from the "Migrant Protection Protocol" because I am a lesbian facing discrimination and persecution in Mexico, and a G-28 form indicating that my attorney is Cristian Sanchez. My attorney also gave me

an index of documents regarding country conditions in Honduras to hand to the officers. Two U.S. immigration officers looked at the documents and told me that I could not take them with me. I had to leave them in my suitcase, which they took then took away from me. The immigration officials only allowed me to bring copies of my visa that I had obtained in Tabasco, and a copy of my birth certificate. I put all of the information my attorney gave me in my suitcase and did not see it again until I was processed to leave the port of entry.

20. After taking our things away, the immigration officers took me to a room, where I stayed for the rest of the day. They took down my information and took my fingerprints. I was there until about 4:00pm, I think. There were many officers.

21. They then separated me from others in the processing room and separated people into different "hieleras" or ice boxes.

22. The ice boxes are small rooms where many, many people are held. Nearly everyone is sitting or lying on the floor because there are not enough seats. I was given a tiny, very thin mat to sleep on, along with an aluminum emergency "blanket." The room was very, very cold. It was impossible for me to rest.

23. I was held in the ice box from the time I left the first processing room until about 1:00 am. I ate very little—a dry burrito in the morning, a sandwich, and a cold hamburger later—and was given only water. My stomach hurt, and still does, from the food they gave us and the stress.

24. During my time in the ice box, there was constant activity so I never slept. I was woken up at all

hours for showering, people mopping the floor, meals and announcements for people's other business, like interviews.

25. An immigration officer came and got me at 1:00 am. He took me to a large room where many other people were being interviewed. I could not understand him because he could barely speak Spanish. He really struggled to understand me, which is why, I think, in the record of my interview includes so many errors. Upon information and belief, the officer's name was Alonzo Brooks; that is the name on my documents, and I saw him sign a document that had his name on it.

26. No one explained to me what the interview was about or why it was happening. Officer Brooks just called my name in the ice box and said, "come with me."

27. When I got to the interview room, he asked me to raise my hand and swear that I would tell the truth.

28. Officer Brooks then said he was an immigration official. He was wearing a badge, but I don't remember what it said.

29. I could hear the tone of voice of the other immigration officers; many of them were nearly yelling at people. Thankfully, the immigration officer who did most of my interview was respectful.

30. The interview lasted over an hour, less than two hours.

31. Officer Brooks explained to me that he would not decide my asylum claim. He said that a judge would decide my asylum claim.

32. The interview transcript attached to my Notice to Appear contains many errors and does not accurately reflect what I said during my interview.

33. The U.S. immigration officers did not give me the transcript to review. They only gave me the "Protocolos" document only after the interview, attached as **Exhibit A**. I had to sign something that I later learned stated that I understood what I was signing, but the only document they gave me to read at the time was the "Protocolos" document in Spanish. I only saw the interview transcript and the Notice to Appear after the fact. The officers did not offer translations of any documents other than the "Protocolos," that was written in Spanish.

34. The officers gave me a list of attorneys who are not in California; they are in other parts of the country. I don't have the resources to work with attorneys that far away. The officers never offered me the chance to show the letter from my attorney or his G-28 form.

35. The immigration officers did not tell me I was going to be sent back to Mexico. They also did not explain how I was supposed to re-enter the United States or get to the court on the day of my hearing. They did not give me contact information for my consulate or offer me a chance to talk to them. All they said was that a judge would decide my asylum claim.

36. When I read the Protocolos document, I understood that I was going to be sent back to Mexico. I was terrified because I don't feel safe here.

37. After the interview, the officers took me back to the ice box. I remained there until around noon on the following day, when they took us to a room with only two tables. There were so many people there, including

children, such that hardly anyone could sit while eating, including me.

38. Then they took me to another room and they asked me what color my suitcase was they gave me my suitcase back.

39. The U.S. immigration officials then put me in a car with about eight other people. They took us back out of the port of entry and delivered us to Grupos Beta in Mexico. Grupos Beta gave us a 51-day visa to stay in Mexico and then took us out of the port of entry and back out to where The List is. I ended up just where I had started.

40. By that point, I was exhausted and hungry. As I left the port of entry, there were many reporters. I felt terrible and wasn't ready to talk to them, so I just kept walking. I went to the LGBTQ safe house where I had stayed before.

41. I am not sure how my attorney will be able to help me if I am staying at temporary safe house in another country. I am alone and I also fear for my safety when I leave the safe house because the border zone is very dangerous, particularly for women and members of the LGBTQ community like me.

42. I fear that the Mexican authorities will send me back to Honduras. When I finally crossed the U.S.-Mexico border, Mexican immigration officials told me that I had entered the country in an illegal manner and that my stay would be temporary. Right now, I only have 50 days or so left on my temporary visa. I know I am not welcome here. The Mexican officials make this very clear in the way they have interacted with me.

43. I suffered a lot in Honduras. The father of my child raped me, and I became pregnant. He told me that he did this because I am a lesbian and love women. I was a virgin at the time.

44. I love my son, and I did everything I could to provide for him. I worked hard and made enough money at the restaurant to support us. But the father of my child sued for custody and won. He said that my son would grow up to be a "fag" and that a lesbian would only raise a gay son, and he couldn't have that.

45. When we went to the Court, the judge said that, because of my sexual orientation, I am not a fit mother and would not raise my son correctly. I was only allowed visitation every fifteen days. When my family found out that I was a lesbian, they supported my son's father in the custody battle. I haven't been able to speak with my four-year-old son in many months.

46. My mother, my stepfather, and my brothers all rejected me when they found out that I was a lesbian and in love with a woman. The only person I have is my son, and the judge took him away from me because of who I am, because of my sexual orientation. My family even helped the man who raped me take custody of my only child.

47. I was in a relationship with a woman in Honduras. The father of my girlfriend in Honduras was very abusive and is homophobic. When he discovered our love, he beat her. On my last day in Honduras, her father took us to a location close to the Honduras/Guatemala border. He parked the car and threatened me that unless I left Honduras, he would kill me and that he would also kill my partner, his daughter. I had no

choice but to leave. I got out of the car and walked across the border right then and there.

48. In Honduras, if you are a lesbian, you may as well be dead. Because of the threats I received from the father of my girlfriend and the father of my son—the man who raped me—I was terrified that I would, in fact, lose my life. The Honduran government does nothing to stop violence against women and the LGBTQ community. I was completely alone, and fled to protect myself.

49. Given the harm I have suffered in my country, I fear that if my identity and my status as an asylum applicant are released to the public, my life and possibly that of my son will be in danger. I also fear future discrimination against me for my sexual identity and personal history. I wish that my identity not be publicly disclosed, and I wish to proceed with the use of a pseudonym or initials in any federal action.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and recollection. This declaration was read back to me in Spanish, a language in which I am fluent.

Executed on Feb. 3, 2019 at Tijuana, Mexico.

/s/ BIANCA DOE
BIANCA DOE

CERTIFICATION

I, Mayra Lopez, declare that I am fluent in the English and Spanish languages. My first language is Spanish and for the past three and a half years I have worked in a legal services office in the United States, preparing court documents, doing oral and written translations, and serving multi-lingual clientele.

On February 3, 2019, I read the foregoing declaration and orally translated it faithfully and accurately into Spanish in the presence of the declarant. After I completed translating the declaration, the declarant verified that the contents of the foregoing declaration are true and accurate.

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

Executed on Feb. 3, 2019 at Tijuana, Baja, Mexico.

/s/ MAYRA LOPEZ
MAYRA LOPEZ

EXHIBIT A

Protocolos de Protección del Migrante
Información de Procesamiento Inicial

- Usted ha sido identificado para procesamiento bajo los Protocolos de Protección del Migrante y se le ha expedido un Formulario I-862, Citatorio (NTA, por sus siglas en inglés), para procedimientos ante una corte de inmigración, donde podrá solicitar todas las formas de alivio de inmigración disponibles bajo la Ley de Inmigración y Nacionalidad. Cumpliendo con las leyes de los Estados Unidos, incluso la sección 240 de la Ley de Inmigración y Nacionalidad y la implementación de regulaciones, un juez de inmigración determinará si usted es sujeto a remoción de los Estados Unidos, y en caso de serlo, si es elegible o no a alivio o protección de remoción. Aunque usted podrá buscar ese alivio o protección bajo los mismos términos y condiciones de cualquier extranjero, en los procedimientos de la sección 240, de acuerdo a las leyes de los Estados Unidos, usted será devuelto a México y no podrá intentar entrar a los Estados Unidos hasta que regrese al puerto de entrada apropiado en la fecha de su audiencia ante un juez de inmigración.
- La NTA, proporciona la fecha y hora de su primera audiencia ante un juez de inmigración en los Estados Unidos en la corte identificada en su NTA. En la fecha de su audiencia, usted debe presentarse al puerto de entrada SyS PED West, localizado en El Chaparral, en la fecha y hora listada más abajo. Si su caso no puede completarse en una sola audiencia, la corte de inmigración le proveerá una Notificación de Audiencia en Procedimientos de Remoción, que indica la fecha y hora de cualquier audiencia subsecuente.
    - Usted puede llamar a la corte de inmigración al teléfono 1-800-898-7180 para obtener información de su caso las 24 horas al día, los 7 días de la semana. Si está llamando desde fuera de Estados Unidos, usted debe marcar 001-880-898-7180.
- Usted debe llegar al puerto de entrada listado arriba a las [redacted] el [redacted] para asegurarse de tener tiempo para ser procesado, transportado a su audiencia y para que pueda reunirse con su abogado o representante acreditado (si usted hace arreglos para ser representado durante sus procedimientos de remoción). El Gobierno de los Estados Unidos le proporcionará transportación desde el puerto de entrada designado hasta la corte el día de su audiencia. Si usted falla en llegar en la fecha y hora apropiadas, podría ordenarse su remoción en ausencia.
    - Al llegar al puerto de entrada designado para su audiencia, debe traer consigo la NTA o Notificación de Audiencia en Procesos de Remoción, así como cualquier identificación emitida por el gobierno y/o documentos de viaje.
    - Al llegar al puerto de entrada designado para su audiencia, debe traer cualquier menor o otro familiar que haya entrado a los Estados Unidos con usted y que recibieron una NTA para la misma fecha y hora.
- Usted tiene el privilegio legal de ser representado por un abogado o representante acreditado de su elección, que esté acreditado para ejercer la práctica de inmigración ante una corte de inmigración de los Estados Unidos, sin cargo al gobierno estadounidense.
    - A usted se le proporcionó anteriormente un Listado de Proveedores de Servicios Legales, la cual contiene información acerca de servicios de bajo costo o gratuitos de parte de los proveedores legales que practican cerca de la corte de inmigración donde su audiencia(s) tendrá lugar.
    - Un listado de los proveedores de servicios legales también está disponible en el sitio web de la Oficina Ejecutiva para la Revisión de Inmigración en https://www.justice.gov/eoir/list-pro-bono-legal-service-providers
- Si usted elige ser representado, puede consultar con un consejero sin cargo al Gobierno de los Estados Unidos por medio de cualquier mecanismo que incluyen los siguientes, si aplica:
    - Usted puede consultar con su consejero por teléfono, correo electrónico, videoconferencia o cualquier otro método de comunicación remota de su elección.
    - Usted puede hacer arreglos para consultar con su consejero en persona en una localidad de su elección en México.
    - El día de su audiencia de inmigración, usted puede hacer los arreglos para una reunión en persona con su consejero en los Estados Unidos en la localidad de su corte asignada, previo a su audiencia.

25 de Enero del 2019

DECLARATION OF DENNIS DOE

I, Dennis Doe, hereby declare under the penalty of perjury pursuant to 28 U.S.C. § 1746:

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

2. I was born in Honduras. I am 20 years old.

3. I have no criminal record.

4. I went to the San Ysidro port of entry to seek asylum on January 29, 2019, after waiting in Tijuana since late November 2018.

5. In Honduras, I received death threats because I refused to join MS-13. I tried to escape MS-13 by moving to another part of Honduras but MS-13 found me and sent me a letter that said they knew where I was and that my life was in danger. I was afraid that, if MS-13 finds me, they won't just hurt me, they'll hurt my family as well.

6. After I fled Honduras, MS-13 killed my friend because he refused to join them. Before they killed him, he reached out to me. He told me he was afraid that he was going to be killed and he asked me for help. I wanted to help him but wasn't sure how. MS-13 killed him, his cousin who was in a wheel chair, two other men and a woman I don’t know.

7. If I am sent back to Honduras I fear that I will be killed by MS-13 gang members.

8. I do not believe the Honduran government could protect me if I were to return to my country because the

police are corrupt. Sometimes when people file police reports in Honduras, the police will inform MS-13 of the report, which puts the people who filed the report in even more danger. I did not file a report, because I feared that if I did my life would be in even more danger.

9. When I first arrived in Tijuana around late November 2018, I was told I needed to get a number at El Chaparral to be able to seek asylum in the United States. I put my name on the wait list and received the number 1834. I waited for approximately two months in Tijuana before I was told that I could return to the port of entry.

10. While I was waiting, I stayed at the Benito Juarez and El Barretal refugee camps, as well as in rooms that I had rented. The conditions were very poor. There was a flood in Benito Juarez, and my belongings were soaked, leaving me to live and sleep on the street for about two nights. In El Barretal, I tried to defend a friend who was being attacked, and I received threats from the attackers. Both places were very unclean. The bathrooms were very dirty because too many people were using them. I slept on the floor, often felt really cold, and sometimes went entire clays without having food to eat. The rooms that I rented were usually shared by approximately four to seven other people. Some people in Tijuana have been hostile towards us because we are from Honduras. While I was at El Barretal I saw people and police running and shouting. They said that a bomb had been dropped. It was tear gas. I saw people crying and a woman had to go to the hospital. I am afraid that something similar could happen again. I don't know who threw the tear gas.

11. In Tijuana, I have seen people who I believe are MS-13 gang members on the street and on the beach. They have tattoos that look like MS-13 tattoos—for instance, I have seen people tattooed with the MS-13 hand, the number 13 tattooed on their forearms, and even one man with MS tattooed on his forehead—and they dress like MS-13 members, with short sleeved button up shirts. I know that the MS-13 were searching for people who tried to escape them with at least one of the caravans. This makes me afraid that the people who were trying to kill me in Honduras will find me here.

12. When my number was called on January 29, 2019, at the San Ysidro port of entry, I was taken to a place where the other asylum seekers and I were instructed to remove our shoelaces and belts and keep only our pants, one shirt, and one sweater. U.S. immigration officers asked who had come with the caravan. One U.S. immigration officer asked me for my identity documents. Then we walked down some stairs and were told to line up against a wall in a hallway, with our hands behind our backs and our heads against the wall. An officer patted me down and asked me if I consumed cocaine. I told him that I did not. He was aggressive and made me feel inferior and intimidated.

13. We were then told to sit down in a room with computers, and the officers called us one by one. When my name was called, another officer directed me to stand, asked me questions, and typed on a computer. He asked me for information like my name, height, weight, eye color, and skin color. Then he told me to sit down. I was called back up two more times so that a female officer could take my fingerprints twice.

14. Then I was placed in a cell until the next day. The cell had cameras in the comers and a little window on the door. There was a metal bench and ~~a~~ [2] metal toilet. An officer gave me a silver paper to use as a blanket and a very thin mat to use to sleep on the floor. There were approximately 12 other men in the cell with me. I felt lonely and desperate. I had never been in prison before.

15. The next morning, the other migrants and I were taken to another room to eat. Then the officers put us back in the cell.

16. Some time later, a female officer called my name and brought me to a room with many desks. The officer spoke very little Spanish. I don't know if she understood everything I told her. On our way to one of the desks, she asked me questions like my name, my age, and why I had come to the United States. Then she told me to sit down. There were several other officers and people like me at the other desks in the room. I could hear what they were saying. The other officers were asking similar questions. Some officers were laughing at the answers the other migrants gave. The officers talked in English to each other, and they seemed to be discussing the answers they received with their colleagues. Because of the lack of privacy, I didn't feel safe answering the questions. I tried to answer as quietly as I could so that other people wouldn't hear.

17. The officer asked me several questions, including how, where, and when I left Honduras; when I entered Mexico; whether I was sick; my parents' names and where they are from; where I was born; whether I had entered the United States before; whether I had used another name; where I was going in the United

States; and why I fled Honduras. I was not allowed to provide any information other than the answers to the questions I was asked. I expected to be asked more questions and to have the opportunity to provide more details. But the interview was fairly short and lasted only about 30 minutes.

18. No one asked me if I was afraid to return to Mexico, if I had received threats in Mexico, or if I had felt safe in Mexico.

19. The officer gave me a paper in Spanish. I tried to read it but I didn't understand a lot of what it said. I understood that I had to go back to Mexico and come back to the United States on March 19, 2019, but I did not want her to be annoyed with me because I did not know what she might do with my case. When she asked me if I understood, I just said yes. I asked the officer if I had to go back to Mexico because of a new law that the President made, to wait in Mexico while I fought my case, and she said "yes." She didn't explain why I was being sent to Mexico and why others were not, how to get to my March 19 court hearing, or what rights I have. She did not ask if it was possible or safe for me to wait in Mexico.

20. The officer gave me a list of lawyers. She said they were lawyers in Los Angeles that I could call but she didn't explain how an attorney in California would be able to represent me if I am in Mexico. I don't understand how I can find an attorney if I cannot go to Los Angeles. Here in Tijuana, I do not know how I will find a lawyer to help me with my case.

21. The officer told me to sign several papers. They were in English and I did not understand them.

She did not tell me what they were or translate any of them into Spanish. I didn't know what I was signing. I didn't ask questions for fear that I would be humiliated or aggressively told to sign.

22. Around the end of the interview, I asked how long I would be there. The officer told me about three hours and then I would go back to Tijuana. Then she put me back in the cell.

23. Some time later, another officer came and took me to another cell. After a while, I was instructed to find my luggage in another room and to put it in the hallway. Then I waited in the cell with other people who were also going back to Tijuana. An officer called us one by one in the hallway, and handcuffed us with our hands behind our backs. We had to carry our luggage with our hands like that. We were told to get into a vehicle with metal seats. It had seat belts, but we couldn't put them on. The vehicle took us back to the entrance to Mexico. An officer called us one by one to remove the handcuffs and hand us our documents.

24. At the entrance to Mexico, there were officials from Grupos Beta, Derechos Humanos (Human Rights), immigration officials, and others. Mexican officials told us that the Mexican humanitarian visas that we had were no longer valid and that those who had applied for papers in Mexico before going to the United States had abandoned their applications by going to the United States. I was given a little paper called a Forma Migratoria and told to keep it until my court hearing in the United States. The Forma Migratoria that was given to me on January 30, 2019, is valid for 76 days.

25. Soon after I was sent back to Tijuana, someone who speaks English and Spanish translated the questions and answers on the statement I had received from the U.S. immigration officer. I realized that I was not asked some of questions on the paper. For example, the paper says that the officer asked me "Were you in contact with any of the organizers of the caravan during your travel," but the officer never asked me that question.

26. I do not know if the form I received from Mexican immigration on January 30, 2019, gives me permission to work. I asked the officials if I could work and they told me that I could probably figure it out. I don't know if I can work legally and I have been unable to find regular work in Mexico. I don't feel safe in public. There is a lot of discrimination against Honduran migrants, and I am afraid that members of MS-13 might attack me.

27. During the brief period I was in the United States, no one asked me if I was afraid to be in Mexico. I also did not have the opportunity to tell anyone I felt unsafe in Mexico because I was not allowed to provide any information other than the answers to the questions I was asked. Had I been asked if I was afraid to be in Mexico, I would have said yes.

28. I am also afraid that Mexican officials will deport me to Honduras while I am waiting here. When I first entered Mexico after fleeing Honduras, Mexican officers caught and deported me without asking me any questions at all. The officers did not ask if I wanted asylum or if I was afraid to go back to my country. If Mexico decided that they wanted to deport me again, I don't think anything would prevent them from doing so.

29. Apart from my fear of being in Mexico, I also am worried about how I will fight my asylum case. I don't know how I can find a U.S. immigration lawyer while I'm in Tijuana.

30. I tried calling the immigration court number that is on the paper, but it is an automated system, so I couldn't talk to anyone or ask questions about my case. I also tried to check the status of my case, but the automated system said that my case is not in the system.

31. I was told to present myself in El Chaparral on March 19, but I am not sure exactly where. Without more information, I am afraid that I will miss my immigration court hearing.

32. Given the harm I have experienced in my country, I fear that if my identity and my status as an asylum applicant are released to the public, my life and possibly that of my family will be in danger. I wish that my identity not be publicly disclosed, and I wish to proceed with the use of a pseudonym in any federal action.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and recollection. This declaration was read back to me in Spanish, a language in which I am fluent.

Executed on Feb. 4, 2019 in Tijuana, Mexico.

/s/ DENNIS DOE
DENNIS DOE

CERTIFICATION

I, Maria Alejandra Martinez Corral, declare that I am professionally competent in the English and Spanish languages.

On February 4, 2019, I read the foregoing declaration and orally translated it faithfully and accurately into Spanish in the presence of the declarant. After I completed translating the declaration, the declarant verified that the contents of the foregoing declaration are true and accurate.

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

Executed on Feb. 4, 2019 in Tijuana, Mexico.

/s/ MARIA ALEJANDRA MARTINEZ CORRAL
MARIA ALEJANDRA MARTINEZ CORRAL

Feb. 4, 2019

DECLARATION OF EVAN DOE

I, Evan Doe, hereby declare under the penalty of perjury pursuant to 28 U.S.C. § 1746:

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

2. I am from San Salvador, El Salvador. I am thirty years old.

3. I went to the San Ysidro port of entry to seek asylum on January 29, 2019, after waiting in Tijuana for my number to be called since Christmas Eve of 2018.

4. I fled El Salvador after receiving threats from different groups of armed men for speaking out against the government. Since early 2018, I have spoken out against the corruption of both major political parties. In October 2018, I was threatened by armed men in military uniforms. Soon after, armed masked men wearing dark clothing put a gun to my head and threatened to kill me if I didn't stop speaking out against the government. I fled the country that week in fear for my life.

5. If I am sent back to El Salvador, I fear that the government will try to silence me by killing me and will threaten and hurt my family to intimidate me.

6. I do not believe the government would protect me if I were forced to return to my country because government officials were following and threatening me before I left.

7. I have no criminal record.

8. I wanted to seek asylum immediately when I arrived at the U.S.- Mexico border, but I heard from other people in Mexico that I had to put my name on a list and wait for my number to be called. I put my name on the waiting list and waited about one month in Tijuana before my number was called.

9. I spent my first week in Tijuana in a small room near the Plaza Amariano. There, I tried to work with a man selling tacos, but each day I needed to come to El Chaparral to see what numbers were called. The Plaza Amariano was far from El Chaparral so I could not work and also keep track of the numbers. Later, I spent a few days in the shelter called Ejército Salvación. This place was very dirty and I would wake up with bites on my skin. I did not feel safe because of the disorder and lack of control and security.

10. In Tijuana, I have been stopped many times by the Mexican authorities and asked for my identification. It makes me feel like I am here illegally or doing something wrong just because I am from a different place. I think they stop me because my skin is darker, and because my accent makes it obvious that I am not from Mexico.

11. My number was finally called in January 2019. On the morning of January 29, 2019, I reported to El Chaparral, along with around 20 other migrants. The Mexican authorities with Grupos Beta asked us to give them our humanitarian visas from Mexico. Then Grupos Beta took our group by van to the port of entry in San Ysidro, United States.

12. U.S. immigration officers at San Ysidro asked us to get into two lines, with men on one side and families

and women on the other side. They asked if any of us traveled to the border with the caravan and separated those who had into a separate group. I myself had not traveled with the caravan, so I was in the non-caravan group. The officers ordered us to put our personal belongings in a bag, and also took our shoelaces, or belts, and any clothes apart from pants, a shirt, and a light sweatshirt. They asked us for our names, birthdates, nationalities, and where we were going. I believe that I was the only Salvadoran there. They brought us some food. Then they brought us to a white hall with a bright white light. They lined us up with our hands behind our backs and searched us.

13. After the search, they had us sit in metal chairs and they called us up for questioning one by one. A female officer first asked me basic questions like whether I had ever come to the U.S. and where I wanted to stay in the U.S. Then I was asked to wait again, until a male officer took my fingerprints and photo.

14. I waited more, and then was called back to speak with the female officer who initially questioned me. She asked if I understood English. I said I spoke a little bit, ands he said something in English that I didn't understand. I didn't really understand what was happening in the moment because I was so nervous. They brought us hamburgers and let us use the bathroom. Then they brought us to a cell with several other people in it. They gave us plastic blankets to sleep on. It was very difficult to sleep because the floor was so cold, the lights were on all night, and the floor was packed with people trying to sleep.

15. The next morning, officers took us out of the cell and gave us some food. Then they started calling people out to be interviewed one by one. When my name was called, I was brought to a room with cubicles where several officers were working. I was told to take a seat in one of the cubicles.

16. The officer in my cubicle was female. I don't remember her name but she appeared very serious. She asked me if I knew why I was there and that she was going to take my declaration. She told me to raise my right hand and swear to tell the truth. Then she asked me several questions like where I was from, if I had ever tried to enter the U.S., if I had come by myself or with children, and if I had ever used false documents. She asked me about my asylum claim and I told her about the death threats I had received in El Salvador. When I tried to provide detail in my answers, she would cut me off and move onto the next question. At certain points she would say things like "no, we are not going to talk about that right now" and move onto the next topic. This made me feel like I could not provide all of the relevant information or any information apart from what she asked me.

17. The officer did not ask me if I was afraid to return to Mexico. Had she asked me whether I was afraid to be in Mexico, I would have told her yes, I am afraid because I feel that I am in danger here. Mexico is a very dangerous place for asylum seekers like myself. I have seen many posts on social media where Mexicans asked that we be deported. A friend of mine who is also from El Salvador was assaulted and robbed and left without his documents; now, whenever the police stop him, they threaten to deport him unless he agrees to pay a bribe.

This makes me feel that I am in danger because I could be deported before my asylum hearing is completed.

18. There were many times that the officer had trouble communicating with me in Spanish. I believe because of all the errors she made, Spanish was not her first language. I did not understand many of her questions. When I later had a chance to review the transcript of the questions she asked me with someone who spoke English, I found several errors. She did not ask me any questions about my time in Mexico or whether I felt safe here.

19. Near the end of the interview, the officer asked me to sign some paperwork. She read a document written in Spanish regarding my rights as a Salvadoran citizen and she told me I had a right to return to my country.

20. The officer told me there was a new policy and that I had to sign a paper saying that I would wait for my asylum hearing in Mexico. She told me that I needed to go to the San Ysidro port of entry at 9:00 a.m. on March 19, 2019 for my court date and that they would bring me to court for my 12:30 p.m. appearance. She did not tell me what documents I would need to bring that day. She said that I could bring an attorney with me to court if I had one.

21. After the interview, I was brought back to the cell. About an hour and a half later, officers took me and several migrants out of the cell, returned our belongings, put us in handcuffs together, and brought us to a bus. There were maybe 13 of us total. We were told we had to present ourselves at a court on March 19,

2019. Then we were transported back to El Chaparral in Tijuana and taken to the office of Grupos Beta.

22. Grupos Beta officials told me that because I had left Mexico to ask for asylum in the United States, my humanitarian visa was no longer valid in Mexico. They gave me a paper that says I have permission to be in Mexico for 79 days.

23. I am scared to be in Tijuana because it is not a safe place. I saw someone get robbed in the center of town and have read in the news about the many homicides and kidnappings here. Because the Mexican authorities have stopped me many times for no reason, I am also afraid that I might be deported from Mexico to El Salvador while I am waiting for my court date. Because of my darker skin and accent, and because I spend time in spaces where there are other migrants, I feel very visible.

24. I have been looking on the internet for lawyers and have emailed several, but I have not gotten responses. Here, I have no family support or friends to help me gather evidence for my case. In the United States, I have a friend and an uncle who have offered to help, and I planned to look for an attorney in the United States.

25. Given that I have had problems in my country, I fear that if my identity and my status as an asylum applicant are released to the public, my life and possibly that of my parents and siblings will be in danger. I wish that my identity not be publicly disclosed, and I wish to proceed with the use of a pseudonym in any federal action.

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

and correct to the best of my knowledge and recollection. This declaration was read back to me in Spanish, a language in which I am fluent.

Executed on Feb. 4, 2019 at Tijuana, Mexico.

/s/ EVAN DOE
EVAN DOE

CERTIFICATION

I, Juan Camilo Mendez Guzman, declare that I am fluent in the English and Spanish languages.

On February 4, 2019, I read the foregoing declaration and orally translated it faithfully and accurately into Spanish in the presence of the declarant. After I completed translating the declaration, the declarant verified that the contents of the foregoing declaration are true and accurate.

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

/s/ JUAN CAMILO MENDEZ GUZMAN
JUAN CAMILO MENDEZ GUZMAN

[2/4/2019]
Date

DECLARATION OF FRANK DOE

I, FRANK DOE, hereby declare under the penalty of perjury pursuant to 28 U.S.C. § 1746:

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

2. I was born in Honduras. I am 28 years old.

3. I went to the San Ysidro port of entry to seek asylum on Saturday, February 2, 2019.

4. The MS-13 killed several close family members and threatened to kill me. I fled my home country because I received death threats from MS-13 and Mara 18. I and other close family members received threats from both major gangs. After MS-13 killed one family member right by our house their threats continued I was worried that I would be next. I worked as a driver and I also received threats from my former boss after I discovered that he was using his business to support both major gangs. My former boss paid off the police so that they would not arrest him. A coworker of mine was killed after he discovered the operation and refused to join. After my former boss found out that my coworker knew about the operation, he told MS-13 who picked up and killed my coworker. I was afraid that I would be next, so I fled.

5. If I am sent back to Honduras I fear that MS-13, Mara 18, or my former employer might kill me. The gangs have threatened my life on multiple occasions, and my old employer knows that I know about his drug business.

6. I do not believe my government could protect me because they were unable to protect my family member and coworker—who were both murdered. I feel that I would be in danger from the police because my former employer collaborates with the MS-13, Mara 18 and the police. I have also seen the police directly cooperating with my boss and various gang members.

7. I have no criminal record.

8. I first tried to present myself at the port of entry on December 26, 2018. However, I was told by Mexican officers from Grupos Beta that they would not allow me to access the port of entry until I put my name on a list and my number was called. I asked them how long I would have to wait and they told me that they had no idea and were not in charge of the list. I found the person in charge of the list and got a number. I did not realize how long it was going to take for my number to be called.

9. I waited five and a half weeks in Tijuana before my number was called. During this time, I stayed at a shelter called Caritas. Caritas is very far from the port of entry, and it was expensive to travel back and forth to check on what numbers were being called. At first I pooled money with some other friends and took a taxi. The taxi ride was about 20 minutes long. Once we ran out of money, we had to ask the shelter manager or others for rides.

10. From the shelter, I could not afford to get to the port of entry every day. I was afraid that my number would be called when I wasn't there. Unfortunately, this happened. While I was at the shelter, a friend who had been able to make it to the port of entry called to

say that my number was called. Anxious, I tried rushing to the port of entry but did not make it on time. The Grupos Beta said they were done letting people through on that day. I went the next day and explained to Grupos Beta that my number had been called but they refused to let me pass. They said that if I didn't like their process, I should find another place to seek asylum. I went back again the next day, and again the refused to let me pass. Finally, four days after they had called my number, the Grupos Beta allowed me to pass.

11. On February 2, the day they let me through, Grupo Beta lined up all of us who were allowed to cross against the wall at El Chaparral. Then they left me there for several hours. It was about 10:30 am, and they told me they would be back later. At about 12:00 pm they came back, but then quickly left. A little while later they came back locked me into a metal cage inside a van with others. They drove me to an entrance near where the train crosses the border and then told me to get out. Then I waited with others outside in the rain for about one hour.

12. Eventually, U.S. immigration officials came. Grupos Beta told us to follow the U.S. officials and then left. The U.S. officials lined us up against a wall and asked us who had come with the caravan and separated those out who raised their hands. They told us that the caravan members were "VIPs." I didn't travel with the caravan, so I did not raise my hand. The U.S. officials gave us a bag to put our documents and other belongings, and gave us paper to write the phone number of a person in the United States who could receive us. Then they asked us who was traveling alone. I raised my

hand and they moved me to the line with the caravan members.

13. They brought the group of caravan members and people travelling alone in first and asked me basic questions like my name, where I was from and whether I had travelled with the caravan. In my group, there were people from many different countries so the officers separated the Central Americans, like me, from the rest of the countries.

14. The U.S. officers ordered me to put my hands behind us as if I were handcuffed. Eventually, they told us to put our bags down, lined us up against the wall and searched us. When an officer asked me, I told him that I was not a part of the caravan, but he did not believe me. The officer told me that he wanted to help me, but that I had to tell him that I came with the caravan. I explained that I couldn't tell him something that wasn't true. The officer got upset and said that he had tried to help me but I had not allowed him. He then took the bag with my documents and belonging.

15. Then the officers escorted me along with others into a room with chairs lined up and numbers printed on papers on the wall. They told me to sit, and I spent several hours waiting there. During this time, I was not allowed to speak to any of the other migrants. I was instructed that if I needed to stand up, I had to keep our hands behind our back. At one point, an officer called me up and asked me for information like my name, gender, and city where I was born. He sent me back to my chair, where I sat for another half hour or so. Then another officer called me and took my fingerprints and a photo. After that, I sat down again for what felt like hours more.

16. After waiting in that room for a total of many hours they moved me to a small crowded cell. Then they gave me a thin mat to sleep on and thin aluminum blankets. It was very late by the time they took us to the cell.

17. In the cell, I began to feel lost. The cell was very full of people so the only place I could lie down was in front of the toilet. They kept putting more people in the cell, to the point where everyone basically had to sleep on top of each other. I felt like I was sleeping on top of other people. It was also hard to sleep because there was a bright light that they never turned off. At about midnight, they took us out, cleaned the cell, and put us back inside. About two to three hours later, they began opening the door and calling people from a list.

18. I lost track of time, but all night the officials opened the door and yelled out people's names for them to get up and go to an interview. In my interview, the officer asked for my name, date of birth, and basic personal information. He asked me the names of my mother and my father, where I'd lived in Honduras, where I'd worked, and why I had fled. I explained that I was afraid for my life because of the threats I had received. I explained that I was just trying to save my own life. The officer asked me how long it had taken me to get to Mexico from Honduras and didn't believe me when I said three days. He then focused on why I had come to Tijuana and not elsewhere on the border. I said that I followed the advice of people that I met on the way, but then he wanted to know exactly who told me to go to Tijuana. Again I told him the truth—it was just other migrants I met on the way. He asked me the

same questions over and over again. He frequently cut me off and did not let me fully explain. After a few more questions, the officer told me that I was going to complete the application process from Tijuana. I asked him why, and he said it was the law.

19. He never asked me if I was afraid of returning to Mexico. At one point, I had to interrupt him to explain that I didn't feel safe in Mexico. He told me that it was too bad. He said that that Honduras wasn't safe, Mexico wasn't safe, and the U.S. isn't safe either. I then tried to explain that I don't have anyone to support me in Mexico but that a family member was waiting for me in Houston. He asked me where I had lived while I was in Tijuana. I explained that I had lived in a shelter but no longer had anywhere to stay. He told me I'd have to figure out how to survive in Tijuana. The officer said my court date would be on March 20, 2019. He took my phone number and said he would call me if my hearing date changed.

20. When the interview was over , he told me to sign documents. He only showed me the signature lines. I asked him to explain the documents and he said that they explained that I had to wait in Mexico while my case went forward. He told me that I would have to come back to the port of entry on the date of my hearing and that if a judge denied my case, I'd be sent back to Honduras. I told him I couldn't go back, and he responded that if I were deported to Honduras, I should just flee again. He ended the interview and another officer took me back to the cell.

21. I spent about an hour and a half in the cell before the officer called my name again. I walked out of the cell and he gave me another paper to sign. He said that

it was an agreement that if my asylum application was denied, I would be deported. Again, I told him that I did not feel safe in Tijuana, but he just said that if Mexico was not safe I should not have left Honduras to go there. Nervous, I explained that I was just trying to get out as quickly as possible. But the officer brushed me off and said I needed to sign because he had other things to do. I signed the paper.

22. They sent me back to the cell, where I slept amongst dozens of other asylum seekers for another night. We knew that at some point they would come back to clean the cell, so we did not sleep well. In the morning, they brought us to eat breakfast. They returned us to our cell but never explained what was going to happen next. Several hours later, they opened the door and told us come out in groups of five. They put us against the wall and then put us in line and brought us to our bags. I asked for my ID and they told me it was in my bag but that I couldn't check inside my bag yet. The officers led us to vans with cages inside. We didn't know where they were taking us. I thought they were bringing me to San Diego until one of the others in the van told me that we were going to Tijuana. The U.S. officials took us back to port of entry and told us to get in line. Then they turned us over to Grupos Beta. It was now February 4, 2019.

23. The Grupos Beta gave us a visa to stay in Mexico for 76 days, until our next court date. After I asked, a Mexican official told me that this form did not come with permission to work. After I was released back into Tijuana, I tried to stay at the same shelter I had been staying at before. Unfortunately, they said they no longer

had space for me. I found a different shelter for a couple of nights but I don't know where I will sleep long term.

24. I don't feel safe in Tijuana. I don't know the laws here and don t trust the police. I have been treated badly by many people, and I don't feel safe going to the police. I am afraid of the police here because I know that they arrest migrants without reason and take their money. A friend of mine was arrested and robbed by police on the day his number was called, so he missed his day and had to put his name on the list again. I have heard that MS-13 and Mara 18 have ties with gang members in Tijuana, so I am also afraid that they might find me here. While I was in the shelter, I was so afraid that I rarely went outside, other than to go to the port of entry. I have heard on the news that some asylum seekers have been killed while waiting to present themselves at the point of entry. Many others have been hurt or kidnapped during the trip.

25. I am afraid that I will be deported back to my country before I have a chance to have my asylum claim heard. My status here is only temporary and I don't trust the Mexican authorities to keep me safe. I have heard of cases where Mexican immigration officials arrest people, rip up their papers, and deport them anyway.

26. I don't know how I will work on my case from Tijuana. I don't know how I will find a lawyer, gather evidence, or contact witnesses. I do not even have a permanent place to stay, because the Caritas shelter no longer has space for me. Even if I did find a lawyer, I could not afford to pay them. I am frustrated because

if I was able to work on my case from the United States, I would have family to help me with all of these things.

27. Given that I have been persecuted in my country, I fear that if my identity and my status as an asylum applicant are released to the public, my life and possibly that of my family will be in danger. I wish that my identity not be publicly disclosed, and I wish to proceed with the use of a pseudonym or initials in any federal action.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and recollection. This declaration was read back to me in Spanish, a language in which I am fluent.

Executed on Feb. 10, 2019 at Tijuana, Mexico.

/s/ FRANK DOE
FRANK DOE

CERTIFICATION

I, Jenny Villegas-Garcia, declare that I am fluent in the English and Spanish languages.

On February 10, 2019, I read the foregoing declaration and orally translated it faithfully and accurately into Spanish in the presence of the declarant. After I completed translating the declaration, the declarant verified that the contents of the foregoing declaration are true and accurate.

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

Executed on Feb. 10, 2019 at Tijuana, Mexico

/s/ JENNY VILLEGAS-GARCIA
JENNY VILLEGAS-GARCIA

[02/12/2019]
Feb. 10, 2019

DECLARATION OF KEVIN DOE

I, Kevin Doe, hereby declare under the penalty of perjury pursuant to 28 U.S.C. § 1746:

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

2. I was born in Honduras in 1989. I am 29 years old. In 2018, my wife and I fled Honduras to escape violence and threats. We entered Mexico together and were both arrested by Mexican immigration authorities. The immigration authorities then separated me from my wife and my wife was deported to Honduras. My wife is pregnant and told the Mexican immigration officials that she was pregnant and scared to return to Honduras, but she was deported any way. She is scared to be in Honduras. I also have children from a previous marriage who live with my ex-wife.

3. I went to the San Ysidro port of entry to seek asylum on January 29, 2019.

4. I fled my home country because I received many threats, including death threats, because of my religious beliefs and my outspoken role as an Evangelical Christian minister preaching against the MS-13's violence. Members of the gang killed other pastors who preached like I did, and killed my brother-in-law.

5. During sermons and the prayer groups that I led at the church, I prayed for God to control the gangs and preached that the gang life was full of vice and led to hell. The MS-13 gang hated this and sent their members to my services to intimidate me. Several times after my services, they approached me and told me that

they would kill me. In or around 2018, the threats against me and my family intensified after I refused to tell my parishioners to support the ruling party in Honduras. The MS-13 gang made the threats because the gang wanted the ruling party to win. I refused to do this because I believe the government of Honduras is corrupt and I do not support the ruling party in Honduras.

6. If I am sent back to my country I fear that I will be killed. The gang has already carried out their threats against others in my community. They killed other pastors and my brother-in-law. MS-13 does not let these things go. They know what I preached, and for them that is enough to kill over.

7. I do not believe my government could protect me if I were to return to my country because I reported the threats to the police and the threats continued and, in fact, got worse. The police were unable to prevent the gang from killing the other pastors and could not protect my brother in law. Police in Honduras are ineffectual and often corrupted by gangs. I don't think they could ever protect me.

8. I have no criminal record.

9. When I arrived in Tijuana, I learned about "the list." I waited about eight days in Tijuana before I was able to get transportation to the port of entry to put my name on the list. During this time, I stayed at a local church, the Iglesia Bautista Camino de Salvación. Members of the church told me that we had to be very careful and not travel alone. They explained that I could be kidnapped, because migrants were seen as potential hostages. We had price tags on our heads, I had

heard that many migrants who came along on the caravan had been disappeared, and I don't know if they were ever found. Out of fear, I never left the church at night. At the pastor's instructions, I walked carefully during the day and tried not to go too far from the church.

10. On January 29, 2019, my number was called to turn myself in and request asylum in the US. At the port of entry, United States officials put me in a line, counted the people in the line, and separated the men from the women and children. The officers also asked all of the people in line, including me, whether anyone of us had been part of the caravan. I told them that I had joined the caravan in Tapachula. They separated members of the caravan from the rest of the group. And I was placed in the line with the people from the caravan.

11. Then they brought me and the others from the caravan to a room where they searched me. It was in the morning. They had me remove my jacket and sweater, so that I was only wearing my shirt and pants. Then they had me remove my shoe laces, and they ordered the women to remove their earrings and jewelry. The officers took my belongings, along with the others, and moved me to a very bright room with metal benches that looked like a waiting room. The room was empty when I arrived. There were only three of us at first who entered, but over several hours more people were brought in. At one point there were more than 40 people in that small room. I waited in that room for hours. It was uncomfortable and disorienting.

12. Eventually, an officer called my name and brought me to a cell that already had about 26 other people in it. I asked the others in the cell about food, and they told us I had missed dinner. I believe it was close

to 7:00 pm, but it was hard to know what time it was because the lights never went out. In total, I spent two days in that cell. There were two toilets for 27 people and they were not private. I tried to rest sitting on the benches, but it was hard to sleep because the lights were very bright. The officers didn't tell me how long I would be there and I was afraid I would never leave. At one point, I gave a sermon in the cell and spoke about God's will. The other men came close and one of them was crying. I asked why he was crying and he told me he had spent 8 days there and had felt like he was losing touch with God. The officials were watching us through the cameras and an official cam and interrupted the sermon and told us it was time for food. I was taken to a cafeteria where I was given a burrito and water.

13. At three in the morning at the beginning of the second day the US immigration officials woke me up and took me to do an interview. They asked me to put my hand up and swear to tell the truth. Then they asked me why I'd left my country. I tried to explain that I was a pastor and fleeing threats, but it was very hard to communicate. The officer who was doing the talking couldn't understand me, and I couldn't understand him very well because he was rushing me through the interview and I didn't fully understand his Spanish. The interview lasted about 4 or 5 minutes. At the end, he took out a packet of documents and started telling me where to sign. I tried to read the documents but he would flip the page before I had a chance to review the papers. He never explained what I was signing. I saw on one page that it said "Tijuana" but another page said "San Diego." I asked him if this meant we were going to Tijuana. The officer said yes and told me that there was a new law that meant we would have to return

Tijuana and fight my case from there. He never asked me if I was afraid of returning to Mexico. The officer said that I would have an appointment with a judge on March 19, 2019. He showed me the list of pro bono attorneys in Massachusetts and said they would take my case. He told me that I had to be present for my court date on March 19, 2019 but did not tell me where I had to go. I still don't' know where I am supposed to go for my court date. I don't know who to ask and the officer did not tell me. The only resource I was given was the pro bono list for California and Massachusetts.

14. I felt depressed and afraid when I realized I was being returned to Tijuana.

15. After signing the papers, I was sent back to my cell. After several more hours, I and 10 others were brought to a room with a table where they had laid out my belongings and asked me to identify my belongings. Then, they brought me back to another cell. The officers came back and put handcuffs on us and told us to hang our backpacks from our fingers.

16. On January 30, late in the morning, they put me and others in a van with two benches facing each other and we rode for about 25 minutes. They dropped me off on the Mexican side of El Chaparral. I was met by a large group of reporters with cameras. I was afraid that my face might show up in the news. Publicizing my story is dangerous—many people don't want us here in Mexico and there has been violence against the migrants. I was afraid that the MS-13 might see my face in the news. They are a powerful, ruthless gang and have members Tijuana too.

17. I was given a card that I understood was like a tourist permit saying I could be in Mexico for 76 days, but without permission to work.

18. I am afraid because migrants are not safe in Tijuana and I have been told that I could be kidnapped for a ransom. I am afraid of the Zetas who are connected to the MS-13. I have a friend who is staying in the church with me who barely survived a kidnapping by the Zetas.

19. I hope that on March 19, 2019 I will be allowed to enter the US and stay there to fight my case. I can't spend more time than that here in Tijuana. I have no money and it is very expensive for me to travel around Tijuana. I am relying on donated food, donates clothes, and there's no way I can rely on these things for much longer. I have no money to take the bus. It takes me two hours to get to the only legal office I know of in Tijuana on two buses. I have to walk about half an hour from the bus stop to the church where I am staying and it is very dangerous. I feel like bait for a wolf. I am worried that the reporters who interviewed me when the US sent me back used my story in the news. On social media, I have seen that many people in Tijuana want asylum seekers like me to die. I am scared because my face might be in the news, or on social media, and I am being asked to wait here with no money and no work. I am vulnerable I don't understand how I can ask an attorney in Massachusetts to represent me while I am in Tijuana.

20. Given that I have been harmed in my country, I fear that if my identity and my status as an asylum applicant are released to the public, my life and possibly that of my family will be in danger. I wish that my

identity not be publicly disclosed, and I wish to proceed with the use of a pseudonym or initials in any federal action.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is t rue and correct to the best of my knowledge and recollection. This declaration was read back to me in Spanish, a language in which I am fluent.

Executed on Feb. 6, 2019 in Tijuana, Mexico.

/s/ KEVIN DOE
KEVIN DOE

CERTIFICATION

I, Juan Camilo Mendez Guzman, declare that I am fluent in the English and Spanish languages.

On February 6, 2019, I read the foregoing declaration and orally translated it faithfully and accurately into Spanish in the presence of the declarant. After I completed translating the declaration, the declarant verified that the contents of the foregoing declaration are true and accurate.

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

Executed on Feb. 6, 2019 at Tijuana, Mexico

/s/ JUAN CAMILO MENDEZ GUZMAN
JUAN CAMILO MENDEZ GUZMAN

[2/6/2019]
Date

EXHIBIT Q

MEXICO 2017 HUMAN RIGHTS REPORT

EXECUTIVE SUMMARY

Mexico, which has 32 states, is a multiparty federal republic with an elected president and bicameral legislature. In 2012 President Enrique Pena Nieto of the Institutional Revolutionary Party won election to a single six-year term in elections observers considered free and fair. Citizens elected members of the Senate in 2012 and members of the Chamber of Deputies in 2015. Observers considered the June 2016 gubernatorial elections free and fair.

Civilian authorities generally maintained effective control over the security forces.

The most significant human rights issues included involvement by police, military, and other state officials, sometimes in coordination with criminal organizations, in unlawful killings, disappearances, and torture; harsh and life-threatening prison conditions in some prisons; arbitrary arrests and detentions; intimidation and corruption of judges; violence against journalists by government and organized criminal groups; violence against migrants by government officers and organized criminal groups; corruption; lethal violence and sexual assault against institutionalized persons with disabilities; lethal violence against members of the indigenous population and against lesbian, gay, bisexual, transgender, and intersex persons; and lethal violence against priests by criminal organizations.

Impunity for human rights abuses remained a problem, with extremely low rates of prosecution for all forms of crimes.

Section 1. Respect for the Integrity of the Person, Including Freedom from:

a. Arbitrary Deprivation of Life and Other Unlawful or Politically Motivated Killings

There were reports the government or its agents committed arbitrary or unlawful killings, often with impunity. Organized criminal groups also were implicated in numerous killings, acting with impunity and at times in league with corrupt federal, state, local, and security officials. The National Human Rights Commission (CNDH) reported 24 complaints of "deprivation of life" between January and December 15.

In May the Ministry of National Defense (SEDENA) arrested and immediately transferred to civilian authorities a military police officer accused of the May 3 unlawful killing of a man during a confrontation in Puebla between soldiers and a gang of fuel thieves. No trial date had been set at year's end.

The civilian trial that started in 2016 continued for the commander of the 97th Army Infantry Battalion and three other military officers who were charged in 2016 for the illegal detention and extrajudicial killing in 2015 of seven suspected members of an organized criminal group in Calera, Zacatecas.

A federal investigation continued at year's end in the 2015 Tanhuato, Michoacan, shooting in which federal police were accused of executing 22 persons after a gunfight and of tampering with evidence. An August 2016 CNDH recommendation stated excessive use of force resulted in the execution of at least 22 individuals. The CNDH also reported that two persons had been tortured, police gave false reports regarding the event, and

the crime scene had been altered. Security Commissioner Renato Sales claimed the use of force by police at Tanhuato was justified and proportional to the threat they faced and denied the killings were arbitrary executions. The CNDH called for an investigation by the Attorney General's Office, expanded human rights training for police, and monetary compensation for the families of the 22 victims. No federal police agents were charged.

Authorities made no additional arrests in connection with the 2015 killing of 10 individuals and illegal detentions and injury to a number of citizens in Apatzingan, Michoacan.

On August 1, a judge ordered federal authorities to investigate whether army commanders played a role in the 2014 killings of 22 suspected criminals in Tlatlaya, Mexico State. In his ruling the judge noted that the federal Attorney General's Office had failed to investigate a purported military order issued before the incident in which soldiers were urged to "take down criminals under cover of darkness." In January a civilian court convicted four Mexico State attorney general's office investigators on charges of torture, also pertaining to the Tlatlaya case. In 2016 a civilian federal court acquitted seven military members of murder charges, citing insufficient evidence. In 2015 the Sixth Military Court convicted one soldier and acquitted six others on charges of military disobedience pertaining to the same incident. Nongovernmental organizations (NGOs) expressed concerns regarding the lack of convictions in the case and the perceived failure to investigate the chain of command.

On October 17, the Federal Police developed a use of force protocol. The protocol instructs federal police to use force in a "rational, proportional manner, with full respect for human rights."

Criminal organizations carried out human rights abuses and widespread killings throughout the country, sometimes in coordination with state agents.

As of November 20, according to media reports, families of disappeared persons and authorities had discovered more than 1,588 clandestine mass graves in 23 states. For example, in March, 252 human skulls were found in a mass grave in Colinas de Santa Fe, Veracruz. From January 2006 through September 2016, the CNDH reported that more than 850 mass graves were identified throughout the country. Civil society groups noted that there were few forensic anthropology efforts underway to identify remains.

b. Disappearance

There were reports of forced disappearances—the secret abduction or imprisonment of a person—by security forces and of many forced disappearances related to organized criminal groups, sometimes with allegations of state collusion. In its data collection, the government often merged statistics on forcibly disappeared persons with missing persons not suspected of being victims of forced disappearance, making it difficult to compile accurate statistics on the extent of the problem.

Federal law prohibits forced disappearances, but laws relating to forced disappearances vary widely across the 32 states, and not all classify "forced disappearance" as distinct from kidnapping.

Investigation, prosecution, and sentencing for the crime of forced disappearance were rare. The CNDH registered 19 cases of alleged forced disappearances through December 15.

There were credible reports of police involvement in kidnappings for ransom, and federal officials or members of the national defense forces were sometimes accused of perpetrating this crime. The government's statistics agency (INEGI) estimated that 94 percent of crimes were either unreported or not investigated and that underreporting of kidnapping may have been even higher.

In January, five sailors were charged by civilian prosecutors for illegal detention of a man in Mexico State. No trial date had been set at year's end. In July the Ministry of the Navy (SEMAR) arrested and transferred to civilian authorities seven sailors for their alleged involvement in a series of kidnappings.

On November 16, the president signed into law the General Law on Forced Disappearances after three years of congressional debate. The law establishes criminal penalties for persons convicted, stipulating 40 to 90 years' imprisonment for those found guilty of the crime of forced disappearance, and provides for the creation of a National System for the Search of Missing Persons, a National Forensic Data Bank, an Amber Alert System, and a National Search Commission.

The CNDH registered 19 cases of alleged forced disappearances through December 15. In an April report on disappearances, the CNDH reported 32,236 registered cases of disappeared persons through September 2016.

According to the CNDH, 83 percent of cases were concentrated in the following states: Tamaulipas, Mexico State, Sinaloa, Nuevo Leon, Chihuahua, Coahuila, Sonora, Guerrero, Puebla, and Michoacan.

As of April 30, according to the National Registry of Missing Persons, 31,053 individuals were recorded as missing or disappeared. Tamaulipas was the state with the most missing or disappeared persons at 5,657, followed by Mexico State at 3,754 and Jalisco with 2,754. Men represented 74 percent of those disappeared, according to the database.

As of August the deputy attorney general for human rights was investigating 943 cases of disappeared persons. The federal Specialized Prosecutor's Office for the Search of Missing Persons had opened cases for 747 victims; the Unit for the Investigation of Crimes against Migrants had opened cases for 143 victims; the Iguala Case Investigation Office had opened cases for 43 victims; and the special prosecutor for violence against women and trafficking in persons had opened cases for 10 victims.

At the state level, in March, Jalisco state authorities announced the creation of the specialized attorney general's office for disappeared persons. As of May 31, the Jalisco Amber Alert system for missing minors had been used 964 times (since its inception in 2013). As of May 31, a separate Jalisco Alba Alert system to report the disappearance of a woman or girl had been employed more than 1,200 times since its inception in April 2016.

In June the state government of Chihuahua announced the creation of a specialized attorney general's office for

grave human rights violations, including enforced disappearances. According to a local NGO, the Center for Women's Human Rights (CEDEHM), Chihuahua was one of the states with the highest numbers of enforced disappearances, with more than 1,870 victims as of May 2016. During the year the state also signed a memorandum of understanding with a group of independent forensics experts from Argentina to analyze human remains found in the municipalities of Cuauhtemoc, Carichi, and Cusihuiriachi and to gather DNA.

The Coahuila governor's office and state attorney general's office formed a joint working group early in the year to improve the state's unit for disappearances, collaborating with the local NGO Fray Juan de Larios to build the first registry of disappeared persons in Coahuila. The governor met monthly with families of the disappeared. Coahuila state prosecutors continued to investigate forced disappearances between 2009 and 2012 by the Zetas transnational criminal organization. These disappearances, carried out in collusion with some state officials and municipal police, occurred in the border towns of Piedras Negras, Allende, and Nava. State prosecutors executed 18 arrest warrants in the Allende massacre, including 10 for former police officials. Separately, they issued 19 arrest warrants for officials from the Piedras Negras state prison accused of allowing a transnational criminal organization to use the prison as a base to kill and incinerate victims.

Local human rights NGOs criticized the state's response, saying most of those arrested were set free by courts after the state erred by filing kidnapping charges against the accused rather than charges of forced disappearance. A coalition of Coahuila-based human rights

NGOs, many of them backed by the Roman Catholic diocese of Saltillo, filed a communique with the International Criminal Court in the Hague stating that state-level government collusion with transnational criminal organizations had resulted in massive loss of civilian life between 2009 and 2012, during the administration of then governor Humberto Moreira. They further stated that between 2012 and 2016, during the administration of then governor Ruben Moreira (brother of Humberto), state security authorities committed crimes against humanity in their fight against the Zetas, including unjust detention and torture. In July the state government disputed these findings and produced evidence of its investigations into these matters.

In a study of forced disappearances in Nuevo Leon released in June, researchers from the Latin American Faculty of Social Science's Observatory on Disappearance and Impunity, the University of Minnesota, and Oxford University found that the 548 documented forced disappearances in the state between 2005 and 2015 were almost equally divided between those ordered by state agents (47 percent) and those ordered by criminal organizations (46 percent). Of the state agents alleged to be behind these disappearances, 35 were federal or military officials, 30 were state-level officials, and 65 were municipal officials. The study relied primarily on interviews with incarcerated gang members and family members of disappeared persons.

In May the Veracruz state government established an online database of disappearances, documenting 2,500 victims, and began a campaign to gather samples for a DNA database to assist in identification.

In 2016 the Inter-American Commission on Human Rights (IACHR) launched the follow-up mechanism agreed to by the government, the IACHR, and the families of the 43 students who disappeared in Iguala, Guerrero, in 2014. The government provided funding for the mechanism to continue the work of the group of independent experts (GIEI) that supported the investigation of the disappearances and assisted the families of the victims during their 2015-16 term. At the end of the GIEI mandate in April 2016, the experts released a final report critical of the government's handling of the case. The federal government reported it had complied with 923 of the experts' 973 recommendations. In December the government extended the GIEI mandate for an additional year.

According to information provided by the Attorney General's Office in August, authorities had indicted 168 individuals and arrested 128, including 73 police officers from the towns of Cocula and Iguala, and 55 alleged members of the Guerrero-based drug trafficking organization Guerreros Unidos connected to the Iguala case. Authorities held many of those arrested on charges related to organized crime rather than on charges related to the disappearance of the students, according to the GIEI. In 2016 authorities arrested the former police chief of Iguala, Felipe Flores, who had been in hiding since the 2014 disappearances. A 2016 CNDH report implicated federal and local police officers from nearby Huitzuco in the killings. Representatives from the Attorney General's Office, Foreign Ministry, and Interior Ministry met regularly with the families of the victims to update them on progress being made in the case.

Both federal and state authorities reported they continued to investigate the case, including the whereabouts of the missing students or their remains.

In April the Follow-Up Mechanism expressed its "concern about the slow pace in the search activities and in the effective clarification of the various lines of investigation indicated by the GIEI." The commission also noted, "Not a single person has been prosecuted in this case for the crime of forced disappearance, and no new charges have been filed since December 2015." The commission noted progress in "the administrative steps taken to contract the Light Detection and Ranging (LIDAR) surveying technology to be used in the search for the students, the progress made in the investigation of telephone communications, and the establishment of a timeline for taking statements from those arrested and other individuals. It also values the progress made in the investigations into possible involvement of police officers from Huitzuco." In July the IACHR Office of the Special Rapporteur for Freedom of Expression expressed concern regarding alleged spying that targeted "at least one member of the GIEI" along with human rights defenders and journalists.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The law prohibits torture and other cruel, inhuman, or degrading treatment or punishment, and confessions obtained through illicit means are not admissible as evidence in court. Despite these prohibitions, there were reports of torture and other illegal punishments.

As of November 30, the CNDH registered 85 complaints of torture. NGOs stated that in some cases the CNDH

misclassified torture as inhuman or degrading treatment.

Fewer than 1 percent of federal torture investigations resulted in prosecution and conviction, according to government data. The Attorney General's Office conducted 13,850 torture investigations between 2006 and 2016, and authorities reported 31 federal convictions for torture during that period. Congress approved and the president signed the General Law to Prevent, Investigate, and Punish Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment that entered into force on June 26. Human rights groups and the OHCHR commended the law, which establishes an "absolute prohibition" on the use of torture "in any circumstance," assigns command responsibility, sets a sentence of up to 20 years' imprisonment for convicted government officials and of up to 12 years' imprisonment for convicted nonofficials, stipulates measures to prevent obstruction of internal investigations, and envisions a national mechanism to prevent torture and a national registry maintained by the Office of the Attorney General.

The law also eliminates the requirement that formal criminal charges be filed before a complaint of torture may be entered in the national registry, adds higher penalties for conviction of torturing "vulnerable" classes of victims (women and persons with disabilities), permits federal investigation of state cases of torture when an international body has ruled on the case or if the victim so requests, and eliminates requirements that previously prevented judges from ordering investigations into torture.

In 2015 the Attorney General's Office created the *Detainee Consultation System* website to allow the public

to track the status of detainees in the federal penitentiary system, including their physical location, in real time. The office collaborated with all 32 states on implementation of the system at the state and federal level, and the site was visited on average 476 times a day. The states that were farthest along in implementing the system were Campeche, Mexico City, Coahuila, Mexico State, Jalisco, Nuevo Leon, Michoacan, Puebla, Queretaro, and Tlaxcala.

On March 30, the Quintana Roo attorney general's office apologized to Hector Casique, who was tortured and wrongly convicted of multiple counts of homicide in 2013 during a previous state administration. In September 2016 Casique was released from prison. On June 9, he was killed by unknown assailants.

On August 22, a state judge acquitted and ordered the release of Maria del Sol Vazquez Reyes after nearly five years of imprisonment for conviction of crimes that the court found she was forced to confess under torture by the former investigation agency of the Veracruz state police. The officers who tortured her had not been charged by year's end.

In May in Chihuahua, prosecutor Miguel Angel Luna Lopez was suspended after a video from 2012 became public that showed him interrogating two suspects with bandaged faces. Luna was reinstated as a police agent while the investigation continued. Also in Chihuahua, in January a former municipal police officer, Erick Hernandez Mendoza, was formally charged with torturing a housekeeper who was suspected of stealing from her employer. Two other police officers who allegedly took part in her torture were not charged.

Prison and Detention Center Conditions

Conditions in prisons and detention centers could be harsh and life threatening due to corruption; overcrowding; abuse; inmate violence; alcohol and drug addiction; inadequate health care, sanitation, and food; comingling of pretrial and convicted persons; and lack of security and control.

Physical Conditions: According to a CNDH report, state detention centers suffered from "uncontrolled self-government in aspects such as security and access to basic services, violence among inmates, lack of medical attention, a lack of opportunities for social reintegration, a lack of differentiated attention for groups of special concern, abuse by prison staff, and a lack of effective grievance mechanisms." Some of the most overcrowded prisons were plagued by riots, revenge killings, and jailbreaks. Criminal gangs often held de facto control inside prisons.

Health and sanitary conditions were often poor, and most prisons did not offer psychiatric care. Some prisons were staffed with poorly trained, underpaid, and corrupt correctional officers, and authorities occasionally placed prisoners in solitary confinement indefinitely. Authorities held pretrial detainees together with convicted criminals. The CNDH noted the lack of access to adequate health care was a significant problem. Food quality and quantity, heating, ventilation, and lighting varied by facility, with internationally accredited prisons generally having the highest standards.

A CNDH report in June noted many of the prisons, particularly state-run correctional facilities, were unsafe, overcrowded, and understaffed. It surveyed conditions

at more than 190 state, local, and federal facilities and found inmates often controlled some areas of prisons or had contraband inside. The report cited insufficient staff, unsafe procedures, and poor medical care at many facilities. Inmates staged mass escapes, battled each other, and engaged in shootouts using guns that police and guards smuggled into prison. A report released in March by the National Security Commission stated that 150 federal and state prisons were overcrowded and exceeded capacity by 17,575 prisoners.

On July 31, INEGI released its first National Survey on Population Deprived of Freedom 2016, based on a survey of 211,000 inmates in the country's 338 state and federal penitentiaries. The survey revealed that 87 percent of prison inmates reported bribing guards for items such as food, making telephone calls, or obtaining a blanket or mattress. Another survey of 64,000 prisoners revealed that 36 percent reported paying bribes to other inmates, who often controlled parts of penitentiaries. Fifty percent of prisoners said they paid bribes to be allowed to have appliances in their cells, and 26 percent said they paid bribes to be allowed to have electronic communications devices, including cell phones, which were banned in many prisons.

The CNDH reported conditions for female prisoners were inferior to those for men, due to a lack of appropriate living facilities and specialized medical care. The CNDH found several reports of sexual abuse of inmates in the State of Mexico's Nezahualcoyotl Bordo de Xochiaca Detention Center. Cases of sexual exploitation of inmates were also reported in Mexico City and the states of Chihuahua, Coahuila, Guerrero, Nayarit, Nuevo

Leon, Oaxaca, Puebla, Quintana Roo, Sinaloa, Sonora, Tamaulipas, and Veracruz.

The CNDH reported 86 homicides and 26 suicides in state and district prisons in 2016. Fourteen states did not report information regarding homicides and suicides to the CNDH. The CNDH noted in its 2016 report on prisons that in general prisons were not prepared to prevent or address violent situations such as suicides, homicides, fights, injuries, riots, and jailbreaks.

The state government in Tamaulipas struggled to regain control of its prisons after decades of ceding authority to prison gangs, according to media and NGO reports. Criminal organizations constantly battled for control of prisons, and numerous riots claimed more than a dozen prisoners' lives, including three foreign prisoners in the past year (two in Nuevo Laredo, one in Ciudad Victoria). On April 18, an inspection at the prison in Ciudad Victoria uncovered four handguns, two AK-47s, one hand grenade, and 108 knives. On June 6, a riot at the same facility claimed the lives of three state police officers and four inmates. On July 31, the official in charge of the prisons in Tamaulipas, Felipe Javier Tellez Ramirez, was killed in Ciudad Victoria reportedly in retaliation for challenging the criminal gangs in the state's prison system.

Prisoner outbreaks or escape attempts also plagued Tamaulipas' prisons. On March 22, 29 prisoners escaped through a tunnel from a prison in Ciudad Victoria, Tamaulipas. On June 19, eight inmates escaped from the youth detention center in Guemez. On August 10, nine inmates were killed and 11 injured in an inmate fight at a prison in Reynosa where a tunnel had previously been discovered. Guards fired live ammunition to control

the situation, which occurred during family visiting hours.

In June, 28 inmates were killed by their rivals at a prison in Acapulco. Three prison guards were arrested for having allowed the attackers to exit their cells to kill their rivals.

On October 9, a riot at Nuevo Leon's Cadereyta state prison was initially contained but flared up again the next day as inmates set fires. Press reports indicated one prisoner died in the fires. After three prison guards were taken hostage, state police were sent into the prison to control the situation. Official sources reported that at least 16 inmates died during the riot, some because of police action to reclaim control of the prison. This was the fifth lethal riot at a Nuevo Leon prison since 2016.

Civil society groups reported abuses of migrants in some migrant detention centers. Human rights groups reported many times asylum seekers from the Northern Triangle of Central America held in detention and migrant transitory centers were subject to abuse when comingled with other migrants such as MS-13 gang members from the region. In addition migration officials reportedly discouraged persons potentially needing international assistance from applying for asylum, claiming their applications were unlikely to be approved. These conditions resulted in many potential asylum seekers and persons in need of international protection abandoning their claims (see also section 2.d.).

Administration: While prisoners and detainees could file complaints regarding human rights violations, ac-

cess to justice was inconsistent, and authorities generally did not release the results of investigations to the public.

Independent Monitoring: The government permitted independent monitoring of prison conditions by the International Committee of the Red Cross, the CNDH, and state human rights commissions. Independent monitors were generally limited to making recommendations to authorities to improve conditions of confinement.

Improvements: State facilities continued to seek international accreditation from the American Correctional Association, which requires demonstrated compliance with a variety of international standards. As of August 20, an additional 12 correctional facilities achieved accreditation, raising the total number of state and federal accredited facilities to 70.

d. Arbitrary Arrest or Detention

The law prohibits arbitrary arrest and detention and provides for the right of any person to challenge the lawfulness of his/her arrest or detention in court, but the government sometimes failed to observe these requirements.

Role of the Police and Security Apparatus

The federal police, as well as state and municipal police, have primary responsibility for law enforcement and the maintenance of order. The federal police are under the authority of the interior secretary and the National Security Commission, state police are under the authority of the state governors, and municipal police are under the authority of local mayors. SEDENA and SEMAR

also play a role in domestic security, particularly in combatting organized criminal groups. Article 89 of the constitution grants the president the authority to use the armed forces for the protection of internal and national security, and the courts have upheld the legality of the armed forces' role in undertaking these activities in support of civilian authorities. The National Migration Institute (INM), under the authority of the Interior Ministry, is responsible for enforcing migration laws and protecting migrants.

On December 21, the president signed the Law on Internal Security, which provides a more explicit legal framework for the role the military had been playing for many years in public security. The law authorizes the president to deploy the military to the states at the request of civilian authorities to assist in policing. The law subordinates civilian law enforcement operations to military authority in some instances and allows the president to extend deployments indefinitely in cases of "grave danger." Upon signing the law, President Pena Nieto publicly affirmed he would not seek to implement it until the Supreme Court had the opportunity the review any constitutional challenges to the new law. At years end, no challenges had been submitted to the Supreme Court. The law passed despite the objections of the CNDH, the Catholic archdiocese, some civil society organizations, the IACHR, and various UN bodies and officials, including the UN High Commissioner for Human Rights, who argued that it could further militarize citizen security and exacerbate human rights abuses. The government argued the law would in fact serve to limit the military's role in law enforcement by establishing command structures and criteria for deployments. Military officials had long sought to strengthen the legal

framework for the domestic operations they have been ordered by civilian authorities to undertake. Proponents of the law also argued that since many civilian police organizations were unable to cope with public security challenges unaided, the law merely clarified and strengthened the legal framework for what was a practical necessity. Many commentators on both sides of the argument regarding the law contended that the country still had not built civilian law enforcement institutions capable of ensuring citizen security.

The law requires military institutions to transfer all cases involving civilian victims, including human rights cases, to civilian prosecutors to pursue in civilian courts. There are exceptions, as when both the victim and perpetrator are members of the military, in which case the matter is dealt with by the military justice system. SEDENA, SEMAR, the federal police, and the Attorney General's Office have security protocols for the transfer of detainees, chain of custody, and use of force. The protocols, designed to reduce the time arrestees remain in military custody, outline specific procedures for handling detainees.

As of August the Attorney General's Office was investigating 138 cases involving SEDENA or SEMAR officials suspected of abuse of authority, torture, homicide, and arbitrary detention. Military tribunals have no jurisdiction over cases with civilian victims, which are the exclusive jurisdiction of civilian courts.

Although civilian authorities maintained effective control over security forces and police, impunity, especially for human rights abuses, remained a serious problem. The frequency of prosecution for human rights abuse was extremely low.

Military officials withheld evidence from civilian authorities in some cases. Parallel investigations by military and civilian officials of human rights violations complicated prosecutions due to loopholes in a 2014 law that granted civilian authorities jurisdiction to investigate violations committed by security forces. Of 505 criminal proceedings conducted between 2012 and 2016, the Attorney General's Office won only 16 convictions, according to a November report by the Washington Office on Latin America citing official figures, which also indicated that human rights violations had increased in tandem with the militarization of internal security. The Ministry of Foreign Relations acknowledged the report, stated that the problems stemmed from the conflict with drug-trafficking organizations, as well as the proliferation of illegal weapons, and emphasized that the military's role in internal security was only a temporary measure.

On November 16, women of the Atenco case testified before the Inter-American Court of Human Rights and called for the court to conduct an investigation into the case. The 2006 San Salvador Atenco confrontation between local vendors and state and federal police agents in Mexico State resulted in two individuals being killed and more than 47 women taken into custody, with many allegedly sexually tortured by police officials. In 2009 an appeals court reversed the sole conviction of a defendant in the case.

SEDENA's General Directorate for Human Rights investigates military personnel for violations of human rights identified by the CNDH and is responsible for promoting a culture of respect for human rights within the institution. The directorate, however, has no power

to prosecute allegations of rights violations or to take independent judicial action.

Arrest Procedures and Treatment of Detainees

The constitution allows any person to arrest another if the crime is committed in his or her presence. A warrant for arrest is not required if an official has direct evidence regarding a person's involvement in a crime, such as having witnessed the commission of a crime. This arrest authority, however, is only applicable in cases involving serious crimes in which there is risk of flight. Bail is available for most crimes, except for those involving organized crime and a limited number of other offenses. In most cases the law provides for detainees to appear before a judge for a custody hearing within 48 hours of arrest during which authorities must produce sufficient evidence to justify continued detention, but this requirement was not followed in all cases, particularly in remote areas of the country. In cases involving organized crime, the law allows authorities to hold suspects for up to 96 hours before they must seek judicial review.

The procedure known in Spanish as "arraigo" (a constitutionally permitted form of detention, employed during the investigative phase of a criminal case before probable cause is fully established) allows, with a judge's approval, for certain suspects to be detained for up to 80 days prior to the filing of formal charges. Under the new accusatory system, arraigo has largely been abandoned.

Some detainees complained of a lack of access to family members and to counsel after police held persons incommunicado for several days and made arrests arbitrarily

without a warrant. Police occasionally failed to provide impoverished detainees access to counsel during arrest and investigation as provided for by law, although the right to public defense during trial was generally respected. Authorities held some detainees under house arrest.

Arbitrary Arrest: Allegations of arbitrary detentions persisted throughout the year. The IACHR, the UN Working Group on Arbitrary Detention, and NGOs expressed concerns regarding arbitrary detention and the potential for arbitrary detention to lead to other human rights abuses.

A July report by Amnesty International reported widespread use of arbitrary detention by security forces.

Pretrial Detention: Lengthy pretrial detention was a problem, although NGOs such as the Institute for Economics and Peace credited the transition to the accusatory justice system (completed in 2016) with reducing its prevalence. A 2015 IACHR report showed that 42 percent of individuals detained were in pretrial detention. The law provides time limits on pretrial detention, but authorities sometimes failed to comply with them, since caseloads far exceeded the capacity of the federal judicial system. Violations of time limits on pretrial detention were also endemic in state judicial systems.

Detainee's Ability to Challenge Lawfulness of Detention before a Court: Persons who are arrested or detained, whether on criminal or other grounds, may challenge their detention through a writ of habeas corpus. The defense may argue, among other things, that the ac-

cused did not receive proper due process, suffered a human rights abuse, or had his or her basic constitutional rights violated. By law individuals should be promptly released and compensated if their detention is found to be unlawful, but authorities did not always promptly release those unlawfully detained. In addition, under the criminal justice system, defendants apprehended during the commission of the crime may challenge the lawfulness of their detention during their court hearing.

e. Denial of Fair Public Trial

Although the constitution and law provide for an independent judiciary, court decisions were susceptible to improper influence by both private and public entities, particularly at the state and local level, as well as by transnational criminal organizations. Authorities sometimes failed to respect court orders, and arrest warrants were sometimes ignored. Across the criminal justice system, many actors lacked the necessary training and resources to carry out their duties fairly and consistently in line with the principle of equal justice.

Trial Procedures

In 2016 all civilian and military courts officially transitioned from an inquisitorial legal system based primarily upon judicial review of written documents to an accusatory trial system reliant upon oral testimony presented in open court. In some states alternative justice centers employed mechanisms such as mediation, negotiation, and restorative justice to resolve minor offenses outside the court system.

Under the accusatory system, all hearings and trials are conducted by a judge and follow the principles of public access and cross-examination. Defendants have the

right to a presumption of innocence and to a fair and public trial without undue delay. Defendants have the right to attend the hearings and to challenge the evidence or testimony presented. Defendants may not be compelled to testify or confess guilt. The law also provides for the rights of appeal and of bail in many categories of crimes. The law provides defendants with the right to an attorney of their choice at all stages of criminal proceedings. By law attorneys are required to meet professional qualifications to represent a defendant. Not all public defenders were qualified, however, and often the state public defender system was understaffed and underfunded. Administration of public defender services was the responsibility of either the judicial or executive branch, depending on the jurisdiction. According to the Center for Economic Research and Economic Teaching, most criminal suspects did not receive representation until after their first custody hearing, thus making individuals vulnerable to coercion to sign false statements prior to appearing before a judge.

Defendants have the right to free assistance of an interpreter if needed, although interpretation and translation services into indigenous languages at all stages of the criminal process were not always available. Indigenous defendants who did not speak Spanish sometimes were unaware of the status of their cases and were convicted without fully understanding the documents they were instructed to sign.

The lack of federal rules of evidence caused confusion and led to disparate judicial rulings.

Political Prisoners and Detainees

There were no reports of political prisoners or detainees.

Civil Judicial Procedures and Remedies

Citizens have access to an independent judiciary in civil matters to seek civil remedies for human rights violations. For a plaintiff to secure damages against a defendant, authorities first must find the defendant guilty in a criminal case, a significant barrier in view of the relatively low number of convictions for civil rights offenses.

f. Arbitrary or Unlawful Interference with Privacy, Family, Home, or Correspondence

The law prohibits such practices and requires search warrants. There were some complaints of illegal searches or illegal destruction of private property.

Section 2. Respect for Civil Liberties, Including:

a. Freedom of Expression, Including for the Press

The law provides for freedom of expression, including for the press, and the government generally respected this right. Most newspapers, television, and radio stations had private ownership. The government had minimal presence in the ownership of news media but remained the main source of advertising revenue, which at times influenced coverage. Media monopolies, especially in small markets, could constrain freedom of expression.

Violence and Harassment: Journalists were subject to physical attacks, harassment, and intimidation (espe-

cially by state agents and transnational criminal organizations) due to their reporting. This created a chilling effect that limited media's ability to investigate and report, since many of the reporters who were killed covered crime, corruption, and local politics. During the year more journalists were killed because of their reporting than in any previous year. The OHCHR recorded 15 killings of reporters, and Reporters Without Borders identified evidence that the killing of at least 11 reporters was directly tied to their work.

Perpetrators of violence against journalists acted with impunity, which fueled further attacks. According to Article 19, a press freedom NGO, the impunity rate for crimes against journalists was 99.7 percent. The 276 attacks against journalists in the first six months of the year represented a 23 percent increase from the same period in 2016. Since its creation in 2010, the Office of the Special Prosecutor for Crimes Against Journalists (FEADLE), a unit of the Attorney General's Office, won only two convictions in more than 800 cases it pursued. During the year there was only one conviction for the murder of a journalist at the local level. In February a court in Oaxaca convicted and sentenced a former police officer to 30 years' imprisonment for the 2016 murder of journalist Marcos Hernandez Bautista. The OHCHR office in Mexico publicly condemned the failure to prosecute crimes against journalists.

Government officials believed organized crime to be behind most of these attacks, but NGOs asserted there were instances when local government authorities participated in or condoned the acts. An April report by Article 19 noted 53 percent of cases of aggression against journalists in 2016 originated with public officials.

Although 75 percent of those came from state or local officials, federal officials and members of the armed forces were also suspected of being behind attacks.

In April the government of Quintana Roo offered a public apology to journalist Pedro Canche, who was falsely accused by state authorities of sabotage and detained for nine months in prison.

According to Article 19, 11 journalists were killed between January 1 and October 15. For example, on March 23, Miroslava Breach, correspondent for the daily newspapers *La Jornada* and *El Norte de Chihuahua*, was shot eight times and killed as she was preparing to take her son to school in Chihuahua City. Many of her publications focused on political corruption, human rights abuses, attacks against indigenous communities, and organized crime. According to the Committee to Protect Journalists (CPJ), she was the only national correspondent to cover the troubled Sierra Tarahumara indigenous region. On December 25, federal police made an arrest in the case of an individual linked to a branch of the Sinaloa cartel who they stated was the mastermind of the crime. Breach's family told *La Jornada* newspaper they did not believe the suspect in custody was behind the killing, which they attributed to local politicians who had previously threatened the reporter.

On May 15, Javier Valdez, founder of *Riodoce* newspaper in Sinaloa, winner of a 2011 CPJ prize for heroic journalism and outspoken defender of press freedom, was shot and killed near his office in Culiacan, Sinaloa.

During the first six months of the year, the National Mechanism to Protect Human Rights Defenders and

Journalists received 214 requests for protection, an increase of 143 percent from 2016. Since its creation in 2012 through July, the mechanism accepted 589 requests for protection. On August 22, a journalist under the protection of the mechanism, Candido Rios, was shot and killed in the state of Veracruz. Following the wave of killings in early May, the president replaced the special prosecutor for crimes against freedom of expression at the Attorney General's Office and held a televised meeting with state governors and attorneys general to call for action in cases of violence against journalists. NGOs welcomed the move but expressed concern regarding shortcomings, including the lack of an official protocol to handle journalist killings despite the appointment of the special prosecutor. NGOs maintained that the special prosecutor had not used his office's authorities to take charge of cases in which state prosecutors had not produced results.

Censorship or Content Restrictions: Human rights groups reported state and local governments in some parts of the country worked to censor the media and threaten journalists. In June the *New York Times* newspaper reported 10 Mexican journalists and human rights defenders were targets of an attempt to infiltrate their smartphones through an Israeli spyware program called Pegasus that was sold only to governments, citing a forensic investigation by Citizen Lab at the University of Toronto. Officials at the Attorney General's Office acknowledged purchasing Pegasus but claimed to have used it only to monitor criminals.

Journalists reported altering their coverage in response to a lack of protection from the government, attacks against members of the media and newsrooms, false

charges of "publishing undesirable news," and threats or retributions against their families, among other reasons. There were reports of journalists practicing self-censorship because of threats from criminal groups and of government officials seeking to influence or pressure the press, especially in the states of Tamaulipas and Sinaloa.

Libel/Slander Laws: There are no federal laws against defamation, libel, or slander, but local laws remain in eight states. Five states have laws that restrict the use of political caricatures or "memes." These laws were seldom applied.

Nongovernmental Impact: Organized criminal groups exercised a grave and increasing influence over media outlets and reporters, threatening individuals who published critical views of crime groups. Concerns persisted regarding the use of physical violence by organized criminal groups in retaliation for information posted online, which exposed journalists, bloggers, and social media users to the same level of violence faced by traditional journalists.

Internet Freedom

The government did not restrict or disrupt access to the internet or block or filter online content. Freedom House's 2016 *Freedom on the Net* report categorized the country's internet as partly free, noting an increase in government requests to social media companies to remove content.

Some civil society organizations alleged that various state and federal agencies sought to monitor private online communications. NGOs alleged that provisions

in secondary laws threatened the privacy of internet users by forcing telecommunication companies to retain data for two years, providing real-time geolocation data to police, and allowing authorities to obtain metadata from private communications companies without a court order. Furthermore, the law does not fully define the "appropriate authority" to carry out such actions. Despite civil society pressure to nullify the government's data retention requirements and real-time geolocation provisions passed in 2014, the Supreme Court upheld those mechanisms. The court, however, noted the need for authorities to obtain a judicial warrant to access users' metadata.

In June the government stated it was opening a criminal investigation to determine whether prominent journalists, human rights defenders, and anticorruption activists were subjected to illegal surveillance via sophisticated surveillance malware.

INEGI estimated 59 percent of citizens over age five had access to the internet.

Academic Freedom and Cultural Events

There were no government restrictions on academic freedom or cultural events.

b. Freedoms of Peaceful Assembly and Association

The law provides for the freedoms of peaceful assembly and association, and the government generally respected these rights. There were some reports of security forces using excessive force against demonstrators. Twelve states have laws that restrict public demonstrations.

c. Freedom of Religion

See the Department of State's *International Religious Freedom Report* at www.state.gov/religiousfreedomreport/.

d. Freedom of Movement

The law provides for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights.

The government cooperated with the Office of the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations in providing protection and assistance to refugees, returning refugees, asylum seekers, stateless persons, or other persons of concern.

The government and press reports noted a marked increase in refugee and asylum applications during the previous year. UNHCR projected the National Refugee Commission (COMAR) would receive 20,000 asylum claims by the end of the year, compared with 8,788 in 2016. COMAR projected lower numbers, noting that as of June 30, it had received 6,816 petitions.

At the Iztapalapa detention center near Mexico City, the Twenty-First Century detention center in Chiapas, and other detention facilities, men were kept separate from women and children, and there were special living quarters for lesbian, gay, bisexual, transgender, and intersex (LGBTI) individuals. Migrants had access to medical, psychological, and dental services, and the Iztapalapa center had agreements with local hospitals to care for any urgent cases free of charge. Individuals from countries with consular representation also had access to consular services. COMAR and CNDH representatives visited daily, and other established civil society groups

were able to visit the detention facilities on specific days and hours. Victims of trafficking and other crimes were housed in specially designated shelters. Human rights pamphlets were available in many different languages. In addition approximately 35 centers cooperated with UNHCR and allowed it to put up posters and provide other information on how to access asylum for those in need of international protection.

Abuse of Migrants, Refugees, and Stateless Persons: The press and NGOs reported victimization of migrants by criminal groups and in some cases by police and immigration officers and customs officials. Government and civil society sources reported Central American gang presence spread farther into the country and threatened migrants who had fled the same gangs in their home countries. An August report by the independent INM Citizens' Council found incidents in which immigration agents had been known to threaten and abuse migrants to force them to accept voluntary deportation and discourage them from seeking asylum. The council team visited 17 detention centers across the country and reported threats, violence, and excessive force against undocumented migrants. The INM responded to these allegations by asserting it treated all migrants with "absolute respect."

There were media reports that criminal groups kidnapped undocumented migrants to extort money from migrants' relatives or force them into committing criminal acts on their behalf.

In March the federal government began operating the Crimes Investigation Unit for Migrants and the Foreign Support Mechanism of Search and Investigation. The International Organization for Migration collaborated

with municipal governments to establish offices along the border with Guatemala to track and assist migrants.

In-country Movement: There were numerous instances of armed groups limiting the movements of migrants, including by kidnappings and homicides.

Internally Displaced Persons (IDPs)

The Internal Displacement Monitoring Center estimated that as of 2016, there were at least 311,000 IDPs who had fled their homes and communities in response to criminal, political, and religiously motivated violence as well as natural disasters. In 2016 the CNDH released a report stating 35,433 IDPs were displaced due to drug trafficking violence, interreligious conflicts, and land disputes. At approximately 20,000, Tamaulipas reportedly had the highest number of IDPs followed by 2,165 in Guerrero and 2,008 in Chihuahua. NGOs estimated hundreds of thousands of citizens, many fleeing areas of armed conflict among organized criminal groups, or between the government and organized criminal groups, became internally displaced. The government, in conjunction with international organizations, made efforts to promote the safe, voluntary return, resettlement, or local integration of IDPs.

Protection of Refugees

Access to Asylum: The law provides for the granting of asylum or refugee status and complementary protection, and the government has an established procedure for determining refugee status and providing protection to refugees. As of August COMAR had received 8,703 petitions, of which 1,007 had been accepted for review, 1,433 were marked as abandoned, 1,084 were not accepted as meeting the criteria, and 385 were accepted

for protection. According to NGOs, only one—third of applicants was approved and the remaining two-thirds classified as economic migrants not meeting the legal requirements for asylum; applicants abandoned some petitions. NGOs reported bribes sometimes influenced the adjudication of asylum petitions and requests for transit visas.

The government worked with UNHCR to improve access to asylum and the asylum procedure, reception conditions for vulnerable migrants and asylum seekers, and integration (access to school and work) for those approved for refugee and complementary protection status. UNHCR also doubled the capacity of COMAR by funding an additional 36 staff positions.

Section 3. Freedom to Participate in the Political Process

The law provides citizens the ability to choose their government through free and fair periodic elections held by secret ballot and based on universal and equal suffrage.

Elections and Political Participation

Recent Elections: Observers considered the June gubernatorial races in three states; local races in six states; and the 2016 gubernatorial, 2015 legislative, and 2012 presidential elections to be free and fair.

Participation of Women and Minorities: No laws limit participation of women or members of minorities in the political process, and they did participate. The law provides for the right of indigenous persons to elect representatives to local office according to "uses and customs" law rather than federal and state electoral law.

Section 4. Corruption and Lack of Transparency in Government

The law provides criminal penalties for conviction of official corruption, but the government did not enforce the law effectively. There were numerous reports of government corruption during the year. Corruption at the most basic level involved paying bribes for routine services or in lieu of fines to administrative officials or security forces. More sophisticated and less apparent forms of corruption included funneling funds to elected officials and political parties by overpaying for goods and services.

Although by law elected officials enjoy immunity from prosecution while holding public office, state and federal legislatures have the authority to waive an official's immunity. As of August more than one-half of the 32 states followed this legal procedure to strip immunity, and almost all other states were taking similar steps.

By law all applicants for federal law enforcement jobs (and other sensitive positions) must pass an initial vetting process and be recleared every two years. According to the Interior Ministry and the National Center of Certification and Accreditation, most active police officers at the national, state, and municipal levels underwent at least initial vetting. The press and NGOs reported that some police officers who failed vetting remained on duty. The CNDH reported that some police officers, particularly at the state and local level, were involved in kidnapping, extortion, and providing protection for, or acting directly on behalf of, organized crime and drug traffickers.

On July 19, the National Anticorruption System, signed into law by the president in 2016, entered into force. The law gives autonomy to federal administrative courts to investigate and sanction administrative acts of corruption, establishes harsher penalties for government officials convicted of corruption, provides the Superior Audit Office (ASF) with real-time auditing authority, and establishes an oversight commission with civil society participation. Observers hailed the legislation as a major achievement in the fight against corruption but criticized a provision that allows public servants an option not to declare their assets. A key feature of the system is the creation of an independent anticorruption prosecutor and court. The Senate had yet to appoint the special prosecutor at year's end.

Corruption: In July the Attorney General's Office took custody of former governor of Veracruz Javier Duarte, who had gone into hiding in Guatemala and was facing corruption charges. The government was also seeking the extradition from Panama of former governor of Quintana Roo Roberto Borge and issued an arrest warrant for former governor of Chihuahua Cesar Duarte. The ASF filed criminal charges with the Attorney General's Office against 14 state governments for misappropriating billions of dollars in federal funds. The ASF was also investigating several state governors, including former governors of Sonora (Guillermo Padres) and Nuevo Leon (Rodrigo Medina), both of whom faced criminal charges for corruption. The Attorney General's Office also opened an investigation against Nayarit Governor Sandoval for illicit enrichment as a result of charges brought against him by a citizens group, which also included some opposing political parties.

The NGO Mexicans Against Corruption and Impunity and media outlet Animal Politico published a report accusing Attorney General Raul Cervantes of involvement in fraud, revealing that he had registered a Ferrari vehicle valued at more than $200,000 to an unoccupied house in an apparent effort to avoid taxes. Cervantes' attorney attributed improper registration to administrative error. On October 16, Cervantes resigned, stating the reason for his resignation was to preserve the political independence of the new prosecutor's office that was to replace the current Attorney General's Office as part of a constitutional reform.

Financial Disclosure: In 2016 the Congress passed a law requiring all federal and state-level appointed or elected officials to provide income and asset disclosure, statements of any potential conflicts of interests, and tax returns, but the law includes a provision that allows officials an option to withhold the information from the public. The Ministry of Public Administration monitors disclosures with support from each agency. Regulations require disclosures at the beginning and end of employment, as well as annual updates. The law requires declarations be made publicly available unless an official petitions for a waiver to keep his or her file private. Criminal or administrative sanctions apply for abuses. In June the Supreme Court declined a petition by opposition political parties to overturn the provision for a privacy waiver.

Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Abuses of Human Rights

A variety of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials were mostly cooperative and responsive to their views, and the president or cabinet officials met with human rights organizations such as the OHCHR, the IACHR, and the CNDH. Some NGOs alleged that individuals who organized campaigns to discredit human rights defenders sometimes acted with tacit support from officials in government.

Government Human Rights Bodies: The CNDH is a semiautonomous federal agency created by the government and funded by the legislature to monitor and act on human rights violations and abuses. It may call on government authorities to impose administrative sanctions or pursue criminal charges against officials, but it is not authorized to impose penalties or legal sanctions. If the relevant authority accepts a CNDH recommendation, the CNDH is required to follow up with the authority to verify that it is carrying out the recommendation. The CNDH sends a request to the authority asking for evidence of its compliance and includes this follow-up information in its annual report. When authorities fail to accept a recommendation, the CNDH makes that failure known publicly and may exercise its power to call before the Senate government authorities who refuse to accept or enforce its recommendations.

All states have their own human rights commission. The state commissions are funded by the state legislatures and are semiautonomous. The state commissions did not have uniform reporting requirements, making it difficult to compare state data and therefore to compile nationwide statistics. The CNDH may take cases from state-level commissions if it receives a complaint that the commission has not adequately investigated.

Section 6. Discrimination, Societal Abuses, and Trafficking in Persons

Women

Rape and Domestic Violence: Federal law criminalizes rape of men or women, including spousal rape, and conviction carries penalties of up to 20 years' imprisonment. Twenty-four states have laws criminalizing spousal rape.

The federal penal code prohibits domestic violence and stipulates penalties for conviction of between six months' and four years' imprisonment. Twenty-nine states stipulate similar penalties, although in practice sentences were often more lenient. Federal law does not criminalize spousal abuse. State and municipal laws addressing domestic violence largely failed to meet the required federal standards and often were unenforced.

According to the law, the crime of femicide is the murder of a woman committed because of the victim's gender and is a federal offense punishable if convicted by 40 to 60 years in prison. It is also a criminal offense in all states. The Special Prosecutor's Office for Violence against Women and Trafficking in Persons of the Attorney General's Office is responsible for leading govern-

ment programs to combat domestic violence and prosecuting federal human trafficking cases involving three or fewer suspects. The office had 12 federal prosecutors dedicated to federal cases of violence against women.

In addition to shelters, there were women's justice centers that provided more services than traditional shelters, including legal services and protection; however, the number of cases far surpassed institutional capacity.

Sexual Harassment: Federal labor law prohibits sexual harassment and provides for fines from 250 to 5,000 times the minimum daily wage. Sixteen states criminalize sexual harassment, and all states have provisions for punishment when the perpetrator is in a position of power. According to the National Women's Institute (INMUJERES), the federal institution charged with directing national policy on equal opportunity for men and women, sexual harassment in the workplace was a significant problem.

Coercion in Population Control: There were few reports of coerced abortion, involuntary sterilization, or other coercive population control methods; however, forced, coerced, and involuntary sterilizations were reported, targeting mothers with HIV. Estimates on maternal mortality and contraceptive prevalence are available at: www.who.int/reproductivehealth/publications/monitoring/maternalmortality-2015/en/.

Discrimination: The law provides women the same legal status and rights as men and "equal pay for equal work performed in equal jobs, hours of work, and conditions of efficiency." Women tended to earn substantially less than men did. Women were more likely to

experience discrimination in wages, working hours, and benefits.

Children

Birth Registration: Children derived citizenship both by birth within the country's territory and from one's parents. Citizens generally registered the births of newborns with local authorities. Failure to register births could result in the denial of public services such as education or health care.

Child Abuse: There were numerous reports of child abuse. The National Program for the Integral Protection of Children and Adolescents, mandated by law, is responsible for coordinating the protection of children's rights at all levels of government.

Early and Forced Marriage: The legal minimum marriage age is 18. Enforcement, however, was inconsistent across the states, where some civil codes permit girls to marry at 14 and boys at 16 with parental consent. With a judge's consent, children may marry at younger ages.

Sexual Exploitation of Children: The law prohibits the commercial sexual exploitation of children, and authorities generally enforced the law. Nonetheless, NGOs reported sexual exploitation of minors, as well as child sex tourism in resort towns and northern border areas.

Statutory rape constitutes a crime in the federal criminal code. If an adult is convicted of having sexual relations with a minor ages 15 to 18, the penalty is between three months and four years in prison. Conviction of the crime of sexual relations with a minor under age 15 carries a sentence of eight to 30 years' imprisonment.

Laws against corruption of a minor and child pornography apply to victims under age 18. For conviction of the crimes of selling, distributing, or promoting pornography to a minor, the law stipulates a prison term of six months to five years and a fine of 300 to 500 times the daily minimum wage. For conviction of crimes involving minors in acts of sexual exhibitionism or the production, facilitation, reproduction, distribution, sale, and purchase of child pornography, the law mandates seven to 12 years' imprisonment and a fine of 800 to 2,500 times the daily minimum wage.

Perpetrators convicted of promoting, publicizing, or facilitating sexual tourism involving minors face seven to 12 years' imprisonment and a fine of 800 to 2,000 times the daily minimum wage. For those convicted of involvement in sexual tourism who commit sexual acts with minors, the law requires a 12- to 16-year prison sentence and a fine of 2,000 to 3,000 times the daily minimum wage. Conviction of sexual exploitation of a minor carries an eight- to 15-year prison sentence and a fine of 1,000 to 2,500 times the daily minimum wage.

Institutionalized Children: Civil society groups expressed concerns regarding abuses of children with mental and physical disabilities in orphanages, migrant centers, and care facilities.

International Child Abductions: The country is party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. See the Department of State's *Annual Report on International Parental Child Abduction* at travel.state.gov/content/childabduction/en/legal/compliance.html.

Anti-Semitism

The 67,000-person Jewish community experienced low levels of anti-Semitism. While an Anti-Defamation League report described an increase in anti-Semitic attitudes in the country from 24 percent of the population in 2014 to 35 percent of the population in 2017, Jewish community representatives reported low levels of anti-Semitic acts and good interreligious cooperation both from the government and civil society organizations in addressing rare instances of anti-Semitic acts.

Trafficking in Persons

See the Department of State's *Trafficking in Persons Report* at www.state.gov/j/tip/rls/tiprpt/.

Persons with Disabilities

The law prohibits discrimination against persons with physical, sensory, intellectual, and mental disabilities. The government did not effectively enforce the law. The law requires the Ministry of Health to promote the creation of long-term institutions for persons with disabilities in distress, and the Ministry of Social Development must establish specialized institutions to care for, protect, and house persons with disabilities in poverty, neglect, or marginalization. NGOs reported authorities had not implemented programs for community integration. NGOs reported no changes in the mental health system to create community services nor any efforts by authorities to have independent experts monitor human rights violations in psychiatric institutions.

Public buildings and facilities did not comply with the law requiring access for persons with disabilities. The education system provided special education for stu-

dents with disabilities nationwide. Children with disabilities attended school at a lower rate than those without disabilities. NGOs reported employment discrimination.

Abuses in mental health institutions and care facilities, including those for children, were a problem. Abuses of persons with disabilities included lack of access to justice, the use of physical and chemical restraints, physical and sexual abuse, trafficking, forced labor, disappearances, and illegal adoption of institutionalized children. Institutionalized persons with disabilities often lacked adequate medical care and rehabilitation, privacy, and clothing and often ate, slept, and bathed in unhygienic conditions. They were vulnerable to abuse from staff members, other patients, or guests at facilities where there was inadequate supervision. Documentation supporting the person's identity and origin was lacking, and there were instances of disappearances.

As of August 25, the NGO Disability Rights International (DRI) reported that most residents had been moved to other institutions from the privately run institution Casa Esperanza, where they were allegedly victims of pervasive sexual abuse by staff and, in some cases, human trafficking. Two of the victims died within the first six months after transfer to other facilities, and the third was sexually abused. DRI stated the victim was raped repeatedly during a period of seven months at the Fundacion PARLAS I.A.P. and that another woman was physically abused at an institution in another state to which she was transferred.

Voting centers for federal elections were generally accessible for persons with disabilities, and ballots were available with a braille overlay for federal elections.

In Mexico City, voting centers for local elections were also reportedly accessible, including braille overlays, but these services were inconsistently available for local elections elsewhere in the country.

Indigenous People

The constitution provides all indigenous peoples the right to self-determination, autonomy, and education. Conflicts arose from interpretation of the self-governing "uses and customs" laws used by indigenous communities. Uses and customs laws apply traditional practices to resolve disputes, choose local officials, and collect taxes, with limited federal or state government involvement. Communities and NGOs representing indigenous groups reported the government often failed to consult indigenous communities adequately when making decisions regarding the development of projects intended to exploit the energy, minerals, timber, and other natural resources on indigenous lands. The CNDH maintained a formal human rights program to inform and assist members of indigenous communities.

The CNDH reported indigenous women were among the most vulnerable groups in society. They often experienced racism and discrimination and were often victims of violence. Indigenous persons generally had limited access to health-care and education services.

Thousands of persons from the four indigenous groups in the Sierra Tarahumara (the Raramuri, Pima, Guarojio, and Tepehuan) were displaced, and several indigenous leaders were killed or threatened, according to local journalists, NGOs, and state officials.

For example, on January 15, Isidro Baldenegro Lopez was killed in Chihuahua. Lopez was a community leader

of the Raramuri indigenous people and an environmental activist who had won the Goldman Environmental Prize in 2005.

On June 26, Mario Luna, an indigenous leader of the Yaqui tribe in the state of Sonora, was attacked with his family by unknown assailants in an incident believed to be harassment in retaliation for his activism in opposition to an aqueduct threatening the tribe's access to water. Luna began receiving formal protection from federal and state authorities after he was attacked.

Acts of Violence, Discrimination, and Other Abuses Based on Sexual Orientation and Gender Identity

The law prohibits discrimination based on sexual orientation and against LGBTI individuals.

In Mexico City the law criminalizes hate crimes based on sexual orientation and gender identity. Civil society groups claimed police routinely subjected LGBTI persons to mistreatment while in custody.

Discrimination based on sexual orientation and gender identity was prevalent, despite a gradual increase in public tolerance of LGBTI individuals, according to public opinion surveys. There were reports that the government did not always investigate and punish those complicit in abuses, especially outside Mexico City.

On April 18, media reported LGBTI activist Juan Jose Roldan Avila was beaten to death on April 16 in Calpulalpan, Tlaxcala. His body showed signs of torture.

Other Societal Violence or Discrimination

The Catholic Multimedia Center reported criminal groups targeted priests and other religious leaders in

some parts of the country and subjected them to extortion, death threats, and intimidation. As of August the center reported four priests killed, two foiled kidnappings, and two attacks against the Metropolitan Cathedral and the Mexican Bishops Office in Mexico City.

Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

The law provides for the right of workers to form and join unions, to bargain collectively, and to strike in both the public and private sectors; however, conflicting law, regulations, and practice restricted these rights.

The law requires a minimum of 20 workers to form a union. To receive official recognition from the government, unions must file for registration with the appropriate conciliation and arbitration board (CAB) or the Ministry of Labor and Social Welfare. For the union to be able to perform its legally determined functions, its leadership must also register with the appropriate CAB or the ministry. CABs operated under a tripartite system with government, worker, and employer representatives. Outside observers raised concerns that the boards did not adequately provide for inclusive worker representation and often perpetuated a bias against independent unions, in part due to intrinsic conflicts of interest within the structure of the boards exacerbated by the prevalence of representatives from "protection" (unrepresentative, corporatist) unions.

By law a union may call for a strike or bargain collectively in accordance with its own bylaws. Before a strike may be considered legal, however, a union must file a "notice to strike" with the appropriate CAB, which

may find that the strike is "nonexistent" or, in other words, it may not proceed legally. The law prohibits employers from intervening in union affairs or interfering with union activities, including through implicit or explicit reprisals against workers. The law allows for reinstatement of workers if the CAB finds the employer fired the worker unfairly and the worker requests reinstatement; however, the law also provides for broad exemptions for employers from such reinstatement, including employees of confidence or workers who have been in the job for less than a year.

Although the law authorizes the coexistence of several unions in one worksite, it limits collective bargaining to the union that has "ownership" of a collective bargaining agreement. When there is only one union present, it automatically has the exclusive right to bargain with the employer. Once a collective bargaining agreement is in place at a company, another union seeking to bargain with the employer must compete for bargaining rights through a *recuento* (bargaining-rights election) administered by the CAB. The union with the largest number of votes goes on to "win" the collective bargaining rights. It is not mandatory for a union to consult with workers or have worker support to sign a collective bargaining agreement with an employer. The law establishes that internal union leadership votes may be held via secret ballot, either directly or indirectly.

The government, including the CABs, did not consistently protect worker rights. The government's common failure to enforce labor and other laws left workers with little recourse regarding violations of freedom of association, poor working conditions, and other labor problems. The CABs' frequent failure to impartially

and transparently administer and oversee procedures related to union activity, such as union elections and strikes, undermined worker efforts to exercise freely their rights to freedom of association and collective bargaining.

On February 24, labor justice revisions to the constitution were enacted into law. The constitutional reforms replace the CABs with independent judicial bodies, which are intended to streamline the labor justice process. Observers contended that additional changes to the labor law were necessary to provide for the following: workers are able to freely and independently elect union representatives, there is an expedited recount process, unions demonstrate union representativeness prior to filing a collective bargaining agreement, and workers to be covered by the agreement receive a copy prior to registration—thus eliminating unrepresentative unions and "protection" contracts.

By law penalties for violations of freedom of association and collective bargaining laws range from 16,160 pesos ($960) to 161,600 pesos ($9,640). Such penalties were rarely applied and were insufficient to deter violations. Administrative and/or judicial procedures were subject to lengthy delays and appeals.

Workers exercised their rights to freedom of association and collective bargaining with difficulty. The process for registration of unions was politicized, and according to union organizers, the government, including the CABs, frequently used the process to reward political allies or punish political opponents. For example, it rejected registration applications for locals of independent unions, and for unions, based on technicalities.

The country's independent unions and their legal counsel, as well as global and North American trade unions, continued to encourage the government to ratify the International Labor Organization (ILO) Convention 98 on collective bargaining, which it delayed doing despite removal of the main obstacle to compliance in the 2012 labor law reform, the exclusion clause for dismissal. By ratifying the convention, the government would subject itself to the convention's oversight and reporting procedures. Ratification would also contribute, according to the independent unions, to ensuring that the institutions that are established as a result of the labor justice reform are, in law and practice, independent, transparent, objective, and impartial, with workers having recourse to the ILO's oversight bodies to complain of any failure.

Companies and protection unions (unrepresentative, corporatist bodies) took advantage of complex divisions and a lack of coordination between federal and state jurisdictions to manipulate the labor conciliation and arbitration processes. For example, a company might register a collective bargaining agreement at both the federal and the local level and later alternate the jurisdictions when individuals filed and appealed complaints to gain favorable outcomes. Additionally, union organizers from several sectors raised concerns regarding the overt and usually hostile involvement of the CABs when organizers attempted to create independent unions.

Protection unions and "protection contracts"—collective bargaining agreements signed by employers and these unions to circumvent meaningful negotiations and preclude labor disputes—was a problem in all sectors. The prevalence of protection contracts was due, in part, to the lack of a requirement for workers to demonstrate

support for collective bargaining agreements before they took effect. Protection contracts often were developed before the company hired any workers and without direct input from or knowledge of the covered workers.

Independent unions, a few multinational corporations, and some labor lawyers and academics pressed for complementary legislation, including revisions to the labor code that would prohibit registration of collective bargaining agreements where the union could not demonstrate support by a majority of workers or where workers had not ratified the content of the agreements. Many observers noted working conditions of a majority of workers were under the control of these contracts and the unrepresentative unions that negotiated them, and that the protection unions and contracts often prevented workers from fully exercising their labor rights as defined by law. These same groups advocated for workers to receive hard copies of existing collective bargaining agreements when they are hired.

According to several NGOs and unions, many workers faced procedural obstacles, violence, and intimidation around bargaining-rights elections perpetrated by protection union leaders and employers supporting them, as well as other workers, union leaders, and vigilantes hired by a company to enforce a preference for a particular union. Some employers attempted to influence bargaining-rights elections through the illegal hiring of pseudo employees immediately prior to the election to vote for the company-controlled union.

Other intimidating and manipulative practices were common, including dismissal of workers for labor activism. For example, there were reports that a garment

factory in Morelos failed to halt workplace sexual harassment and sexual violence and instead fired the whistleblowers that reported the problem to management.

Independent labor activists reported the requirement that the CABs approve strikes in advance gave boards power to show favoritism by determining which companies to protect from strikes. Few formal strikes occurred, but protests and informal work stoppages were common.

b. Prohibition of Forced or Compulsory Labor

The law prohibits all forms of forced or compulsory labor, but the government did not effectively enforce the law. Penalties for conviction of forced labor violations range from five to 30 years' imprisonment and observers generally considered them sufficient to deter violations.

Forced labor persisted in the agricultural and industrial sectors, as well as in the informal sector. Women and children were subject to domestic servitude. Women, children, indigenous persons, and migrants (including men, women, and children) were the most vulnerable to forced labor. In November authorities freed 81 workers from a situation of forced labor on a commercial farm in Coahuila. In June federal authorities filed charges against the owner of an onion and chili pepper farm in Chihuahua for forced labor and labor exploitation of 80 indigenous workers. The victims, who disappeared following the initial complaint to state authorities, lived in unhealthy conditions and allegedly earned one-quarter of the minimum wage.

Also see the Department of State's *Trafficking in Persons Report* at www.state.gov/j/tip/rls/tiprpt/.

c. Prohibition of Child Labor and Minimum Age for Employment

The constitution prohibits children under age 15 from working and allows those ages 15 to 17 to work no more than six daytime hours in nonhazardous conditions daily, and only with parental permission. The law requires that children under age 18 must have a medical certificate in order to work. The minimum age for hazardous work is 18. The law prohibits minors from working in a broad list of hazardous and unhealthy occupations.

The government was reasonably effective in enforcing child labor laws in large and medium-sized companies, especially in the maquila sector and other industries under federal jurisdiction. Enforcement was inadequate in many small companies and in agriculture and construction and nearly absent in the informal sector, in which most child laborers worked.

At the federal level, the Ministry of Social Development, Attorney General's Office, and National System for Integral Family Development share responsibility for inspections to enforce child labor laws and to intervene in cases in which employers violated such laws. The Ministry of Labor is responsible for carrying out child-labor inspections. Penalties for violations range from 16,780 pesos ($1,000) to 335,850 pesos ($20,000) but were not sufficiently enforced to deter violations.

In December 2016 the CNDH alerted national authorities to 240 agricultural workers, including dozens of child laborers, working in inhuman conditions on a cucumber and chili pepper farm in San Luis Potosi after state authorities failed to respond to their complaints.

According to the 2015 INEGI survey, the most recent data available on child labor, the number of employed children ages five to 17 remained at 2.5 million, or approximately 8.4 percent of the 29 million children in the country. Of these children, 90 percent were engaged in work at ages or under conditions that violated federal labor laws. Of employed children 30 percent worked in the agricultural sector in the harvest of melons, onions, cucumbers, eggplants, chili peppers, green beans, sugarcane, tobacco, coffee, and tomatoes. Other sectors with significant child labor included services (25 percent), retail sales (23 percent), manufacturing (14 percent), and construction (7 percent).

d. Discrimination with Respect to Employment and Occupation

The law prohibits discrimination with respect to employment or occupation regarding "race, nationality age, religion, sex, political opinion, social status, handicap (or challenged capacity), economic status, health, pregnancy, language, sexual preference, or marital status."

The government did not effectively enforce these laws and regulations. Penalties for violations of the law included administrative remedies, such as reinstatement, payment of back wages, and fines (often calculated based on the employee's wages), and were not generally considered sufficient to deter violations. Discrimination in employment or occupation occurred against women, indigenous groups, persons with disabilities, LGBTI individuals, and migrant workers.

e. Acceptable Conditions of Work

On November 21, the single general minimum wage rose from 80.04 pesos per day ($4.76) to 88.36 pesos per day

($5.26), short of the official poverty line of 95.24 pesos per day ($5.67). Most formal-sector workers received between one and three times the minimum wage. The tripartite National Minimum Wage Commission, whose labor representatives largely represented protection unions and their interests, is responsible for establishing minimum salaries but continued to block increases that kept pace with inflation.

The law sets six eight-hour days and 48 hours per week as the legal workweek. Any work over eight hours in a day is considered overtime, for which a worker is to receive double pay. After accumulating nine hours of overtime in a week, a worker earns triple the hourly wage. The law prohibits compulsory overtime. The law provides for eight paid public holidays and one week of paid annual leave after completing one year of work. The law requires employers to observe occupational safety and health regulations, issued jointly by the Ministry of Labor and Social Welfare and the Institute for Social Security. Legally mandated joint management and labor committees set standards and are responsible for overseeing workplace standards in plants and offices. Individual employees or unions may complain directly to inspectors or safety and health officials. By law workers may remove themselves from situations that endanger health or safety without jeopardy to their employment.

The Ministry of Labor is responsible for enforcing labor laws and conducting inspections at workplaces. In 2015, the most recent year for which data were available, there were 946 inspectors nationwide. This was sufficient to enforce compliance, and the ministry carried out inspections of workplaces throughout the year, using a

questionnaire and other means to identify victims of labor exploitation. Penalties for violations of wage, hours of work, or occupational safety and health laws range from 17,330 pesos ($1,030) to 335,940 pesos ($20,020) but generally were not sufficient to deter violations. Through its DECLARALAB self-evaluation tool, the ministry provided technical assistance to almost 4,000 registered workplaces to help them meet occupational safety and health regulations.

According to labor rights NGOs, employers in all sectors sometimes used the illegal "hours bank" approach—requiring long hours when the workload is heavy and cutting hours when it is light—to avoid compensating workers for overtime. This was a common practice in the maquila sector, in which employers forced workers to take leave at low moments in the production cycle and obliged them to work in peak seasons, including the Christmas holiday period, without the corresponding triple pay mandated by law for voluntary overtime on national holidays. Additionally, many companies evaded taxes and social security payments by employing workers informally or by submitting falsified payroll records to the Mexican Social Security Institute. In 2013, the latest year for which such data are available, INEGI estimated 59 percent of the workforce was engaged in the informal economy.

Observers from grassroots labor rights groups, international NGOs, and multinational apparel brands reported that employers throughout export-oriented supply chains were increasingly using methods of hiring that deepened the precariousness of work for employees. The most common practice reported was that of manu-

facturers hiring workers on one- to three-month contracts, and then waiting for a period of days before rehiring them on another short-term contract, to avoid paying severance and prevent workers from accruing seniority, while maintaining the exact number of workers needed for fluctuating levels of production. This practice violates Federal Labor Law and significantly impacted workers' social and economic rights, including elimination of social benefits and protections, restrictions on worker's rights to freedom of association and collective bargaining, and minimal ability for workers, especially women, to manage their family responsibilities. Observers noted it also increased the likelihood of work-related illness and injury. Combined with outsourcing practices that made it difficult for workers to identify their legally registered employer, workers were also more likely to be denied access to justice.

Private recruitment agencies and individual recruiters violated the rights of temporary migrant workers recruited in the country to work abroad, primarily in the United States. Although the law requires these agencies to be registered, they often were unregistered. The Labor Ministry's registry was outdated and limited in scope. Although a few large recruitment firms were registered, the registry included many defunct and nonexistent midsized firms, and few if any of the many small, independent recruiters. Although the government did not actively monitor or control the recruitment process, it reportedly was responsive in addressing complaints. There were also reports that registered agencies defrauded workers with impunity. Some temporary migrant workers were regularly charged illegal recruitment fees. According to a 2013 study conducted by the Migrant Worker Rights Center, 58 percent of 220

applicants interviewed had paid recruitment fees; one-half did not receive a job contract and took out loans to cover recruitment costs; and 10 percent paid fees for nonexistent jobs. The recruitment agents placed those who demanded their rights on blacklists and barred them from future employment opportunities.

News reports indicated there were poor working conditions in some maquiladoras. These included low wages, contentious labor management, long work hours, unjustified dismissals, the lack of social security benefits, unsafe workplaces, and the lack of freedom of association. Many women working in the industry reported suffering some form of abuse. Most maquilas hired employees through outsourcing with few social benefits.

EXHIBIT U

OVERLOOKED, UNDER-PROTECTED

MEXICO'S DEADLY *REFOULEMENT* OF CENTRAL AMERICANS SEEKING ASYLUM

I WELCOME

AMNESTY INTERNATIONAL

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

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

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

First published in 2018 by Amnesty International Ltd
Peter Benenson House, 1 Easton Street, London WC1X 0DW, UK

Index: AMR 41/7602/2018
Original language: English
amnesty.org

Cover photo:
Illustration by Joaquín Castro Cáceres for Amnistía Internacional
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CONTENTS

GLOSSARY

Term	Description
REFUGEE	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.
ASYLUM-SEEKER	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.
MIGRANT	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**."
UN REFUGEE CONVENTION AND PROTOCOL	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 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.
REFOULEMENT	*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 at risk of onwards *refoulement*; this is also prohibited under international law.

MARAS	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.

1. EXECUTIVE SUMMARY

Mexico is witnessing a hidden refugee crisis on its doorstep. For a number of years, citizens from nearby countries who formerly passed through Mexico in search of economic opportunities have been leaving their countries due to fear for their lives and personal liberty. This briefing analyses the results of a survey carried out by Amnesty International with 500 responses from migrants and people seeking asylum travelling through Mexico. The information presented demonstrates that the Mexican government is routinely failing in its obligations under international law to protect those who are in need of international protection, as well as repeatedly violating the *non-refoulement* principle[1], a binding pillar of international law that prohibits the return of people to a real risk of persecution or other serious human rights violations. These failures by the Mexican government in many cases can cost the lives of those returned to the country from which they fled.

The so-called "Northern Triangle" countries of Guatemala, El Salvador and Honduras continue to experience generalized violence, with homicide rates four to eight times higher than what the World Health Organization considers "epidemic" homicide levels.[2] Nearly all of

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[1] Article 33 of the 1951 UN Convention Relating to the Status of Refugees provides that states must not return persons to territories where their "life or freedom" would be threatened. The *non-refoulement* principle is also considered a binding principle of international customary law.

[2] The World Health Organization (WHO) considers a murder rate of more than 10 per 100,000 inhabitants to be an epidemic level. However, in 2016, the murder rate in El Salvador was recorded as 81.2 per 100,000 inhabitants (National Civil Police), in Honduras 58.9

the respondents to Amnesty International's survey came from these three Central American countries.[3] Of those detained by Mexican authorities, 84% (263 out of 310 that answered the question) did not desire to be returned to their country. Of these, 54% (167 out of 310) identified violence and fear as a principal reason for not wanting to go back to their country, and 35% (108 out of 310) identified direct personal threats to their life back home as the reason for not wanting to return.

Violations by Mexican authorities of the *non-refoulement* principle directly affect human lives and deny protection to those most at need. One man who came to Mexico seeking asylum after fleeing death threats in Honduras told Amnesty International he wept in desperation to try to stop his deportation, yet officials did not listen to him or inform him of his right to lodge an asylum claim, and simply deported him back to his country. This testimony echoes dozens collected by Amnesty International and contrasts with the official responses received from Mexican authorities, who informed Amnesty International that *refoulement* cases were rare.

Amnesty International analysed the 500 responses received and found 120 testimonies that gave solid indications that a *refoulement* had occurred, which is 24% of

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per 100,000 (SEPOL) and in Guatemala 27.3 per 100,000 (National Civil Police). 2017 figures from these same sources noted 60 per 100,000 for El Salvador, 42.8 per 100,000 for Honduras, and 26.1 per 100,000 for Guatemala.

[3] Of the 385 people interviewed, 208 people were from Honduras, 97 from El Salvador, 59 from Guatemala, and a series of other countries represented less than five cases each

the total set of responses, and equates to 40% of the responses provided by those individuals who had been detained by the National Institute of Migration (INM). These testimonies involved people explicitly seeking asylum or expressing fear for their lives in their country of origin, yet nevertheless being ignored by the INM and deported to their country.

In addition, Amnesty International found that 75% of those people detained by the INM were not informed of their right to seek asylum in Mexico, despite the fact that Mexican law expressly requires this and public officials assured Amnesty International that the requirement is complied with. Amnesty International also found evidence of a number of procedural violations of the rights that people seeking asylum should be afforded in line with international human rights law. These violations effectively deny them the possibility to challenge their deportation and to obtain protection in Mexico.

1.1 METHODOLOGY

Between May and September 2017 Amnesty International carried out a survey of irregular migrants and asylum seekers with the aim of understanding how Mexican authorities are implementing their obligations to ensure the effective enjoyment of the right to seek asylum in Mexico. Surveys were carried out in queues for government offices, lawyers and UN offices, as well as in migrant shelters, in the southern states of Chiapas, Tabasco and the northern state of Coahuila. Surveys were also carried out in a reception centre for deportees in Guatemala. Three hundred and eighty-five people were surveyed in individual interviews responding to a

standardized questionnaire that was read out to them.[4] Many of these people detailed multiple experiences of entering Mexico, giving a total of 500 responses to the questionnaire based on 500 discrete episodes of leaving one's country. Many migrants and people seeking asylum cross by land into Mexico more than once, which means that the data set for this survey was based on each separate experience of crossing into Mexico. At times, one interviewee filled out a number of survey responses, based on separate journeys they had made over the years.

Eighty-two per cent of the interviewees were men, 17% were women, 1% did not wish to specify their gender and 2 cases identified as transgender. The over-representation of males is reflected in the migratory flow as noted by officials statistics, with females accounting for approximately a quarter of the apprehensions of irregular migrants carried out in 2017.[5] Nevertheless, this official data does not take into account other routes that may be more precarious or clandestine that women may be forced to make and precise assessments of women-led migration routes are not readily available.

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[4] Of the 385 people surveyed, 208 people were from Honduras, 97 from El Salvador, 59 from Guatemala, and a series of other countries represented less than five cases each.

[5] From January to November 2017, females accounted for 29% of irregular migrants aprehended by the INM: See: Unit for Migratory Policy, Ministry of the Interior, Unidad de Política Migratoria, Secretaría de Gobernación, Extranjeros Presentados y Devueltos, 2017 Cuadro 3.1.3: Eventos de extranjeros presentados ante la autoridad migratoria, según grupos de edad, condición de viaje y sexo, available at: http://www.politicamigratoria.gob.mx/es_mx/SEGOB/Extranjeros_presentados_y_devueltos. Last accessed XX January 2018

Of the 500 survey responses collected by Amnesty International, 297 pertained to migrants or people seeking asylum that had been at one point apprehended by the INM. The rest had either never been apprehended by Mexican officials, or had been apprehended by police (116 responses) the Army (11 responses) or the Navy (4 responses). Further detail on the role of the police in apprehending migrants (mostly illegally), will be outlined briefly below, however the focus of this briefing is the role of migration authorities. Survey responses were anonymous and participants were offered no benefit in their individual cases in return. The data set gathered is not a randomized sample of the estimated 500,000 irregular migrants that cross Mexico's southern border annually.[6] As such, the percentages presented here in graphs, while an indication of wider trends, are not a statistical sample of the hundreds of thousands of people that pass through Mexico each year. Nevertheless, the data obtained from the survey provides important information on the common practices of Mexican authorities in order to inform Amnesty International's recommendations.

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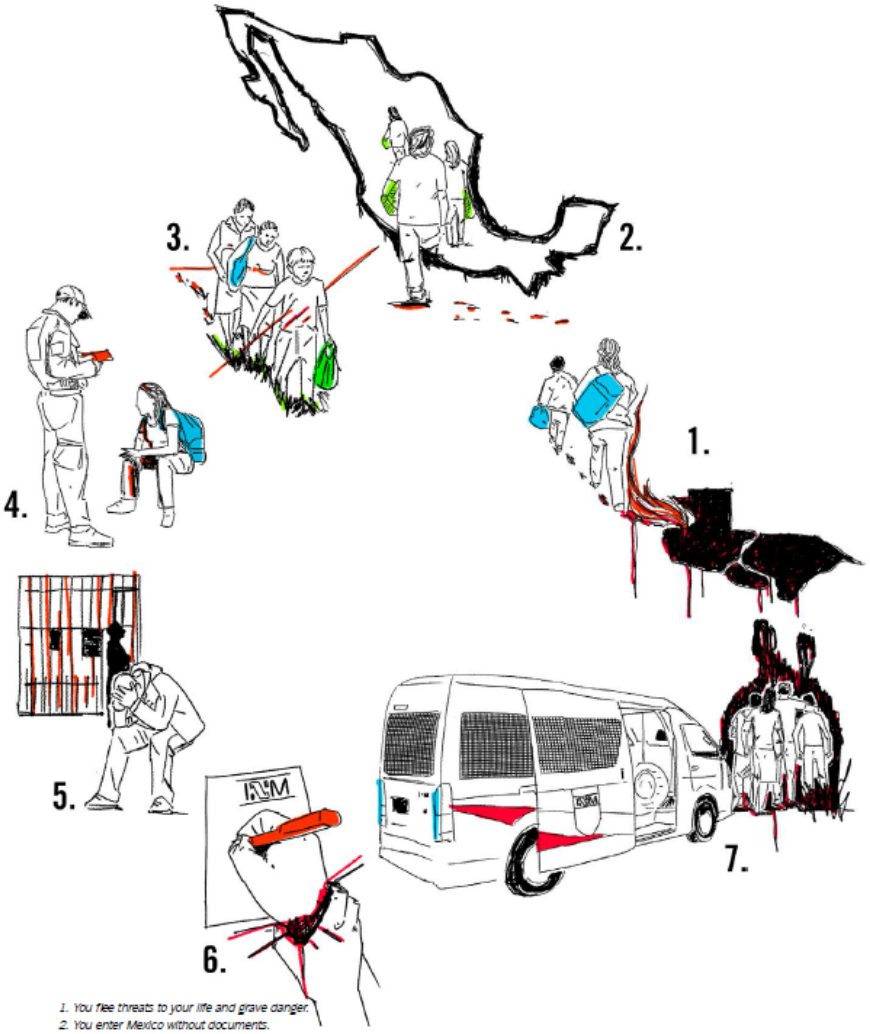
[6] United Nations High Commissioner for Refugees, "Factsheet—Mexico" February 2017—Available at: http://reporting.unhcr.org/sites/default/files/Mexico%20Fact%20Sheet%20-%20Februrary%202017.pdf

THE HUMAN EXPERIENCE OF REFOULEMENT



1. You flee threats to your life and grave danger.
2. You enter Mexico without documents.
3. Tired and hungry, you travel by foot or bus.
4. Migration agents (INM) detain you without explaining anything to you.
5. They lock you up without explaining your right to seek protection in Mexico.
6. They pressure you to sign a deportation paper.
7. They deport you by bus to your possible death back in your country.

2. FALLING THROUGH THE CRACKS: FAILURES IN SCREENING PROCESSES

> ***"Here we are not interested in your lives. Our job is to deport you."***
>
> Mexican INM agent in response to a 27 year old Honduran man who expressed fear of returning to his country.[7]

The National Institute of Migration (INM) is the federal government body responsible for regulating borders, travel and residence documents and the flow of regular and irregular migration throughout the country. The INM is also responsible for apprehending and deporting irregular migrants. It pertains to the Interior Ministry and has a staff of close to 6,000.[8] The officials of the INM that have direct contact with people seeking asylum generally fall into two categories: INM field agents who carry out a first stage of interception and apprehensions in field activities such as highways or checkpoints; and INM officials assigned to migration detention centres, of which the INM has 54 throughout the country.

Amnesty International analysed the 500 survey responses received and found 120 testimonies that gave solid indications that a *refoulement* had occurred, which is 24% of the total set of responses, and equates to 40% of the responses provided by those individuals that had

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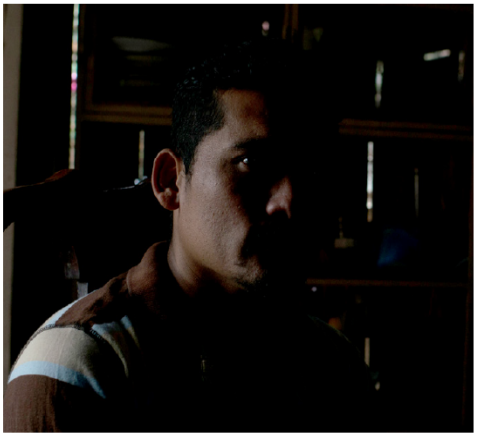
[7] Anonymous survey response from a 27 year old Honduran man interviewed by Amnesty International in the city of Saltillo on 18 September 2017

[8] According to the Federal Budget of 2017 (*Presupuesto de Egresos de la Federación*, 2017), the INM had a staff of 5,809 employees.

specifically been detained by the INM. These testimonies involved people seeking asylum more specifically expressing fear for their lives in their country of origin, yet despite this being ignored by the INM and deported to their country of origin.

These failures are more than simply negligent practices, and each case of *refoulement* is a human rights violation that risks costing the lives of people seeking asylum. The practical experience of an illegal deportation or *refoulement* involves the return of a person seeking asylum by land to Guatemala, Honduras and El Salvador. In the case of El Salvador and Honduras, these countries comprise limited amounts of territory where *mara* networks stretch across nearly all regions. Deportation centres and highway drop-off points for deportees are easily trackable places for these powerful and violent networks to operate and persecute deportees from different parts of the country.



Amnesty International interviewed Saúl just days before he was murdered. [An asterisk next to his name indicates Amnesty International has changed the name in order to protect his identity.]*
©Amnesty International/Encarni Pindado

SAÚL*: MURDERED THREE WEEKS AFTER BEING ILLEGALY DEPORTED BACK TO HONDURAS BY THE INM

Saúl worked in the transport industry as a bus driver in Honduras. The transport industry has been specifically outlined by the UNHCR as one of five specific categories of at-risk profiles within the context of widespread violence in Honduras, given the grip that *maras* have through demanding bus drivers extortions or "war taxes." In November 2015 Saúl suffered an armed attack in which two of his sons were seriously wounded. Fearing for his life, Saúl fled to Mexico and applied for asylum. The COMAR denied him asylum arguing that he had options for security in his country, and the INM subsequently violated the *non-refoulement* principle by deporting him within the 15 day legal window in which he had the right to appeal his claim. Amnesty International researchers interviewed Saúl in Honduras in July 2016, three weeks after he had been deported. He expressed an acute fear for his life and had already suffered an attack in his house on arriving home. A few days later, Saul was murdered.

Officials of the INM are required by domestic law to "detect foreigners that, based on their expressions to the authority, or indeed based on their personal condition, can be presumed to be possible asylum seekers, informing them of their right to request asylum."[9] They are also required to channel those people that express their intention to seek asylum to Mexico's refugee agency, the *Comisión Mexicana de Ayuda a Refugiados*

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[9] Article 16 of the Reglamento de la Ley sobre Refugiados y Protección Complementaria, available at: http://www.diputados.gob.mx/LeyesBiblio/regley/Reg_LRPC.pdf

(COMAR).[10] The law and regulations do not distinguish between different categories of INM officials in relation to this obligation, as all are required to comply with these requirements, whether they are field agents or officials in detention centres. A representative of the INM informed Amnesty International that regardless of whether INM officials carry out activities related to interception and apprehensions in field operations, or whether they are in migration detention centres, they are all given uniform training on human rights and international refugee law.[11] Indeed, authorities should be capable of screening for protection needs in a variety of settings.[12]

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[10] Article 21 of Mexico's Refugee Law (*Ley de Refugiados y Protección Complementaria*) outlines that: "Any authority that becomes aware of the intention of a foreigner to seek refugee status, must immediately advise in writing to the Ministry of the Interior [to which the COMAR pertains.] The failure to comply with the requirement will be sanctioned in line with the legal stipulations on responsibility of public servants. [Own translation].

[11] Amnesty International interview with INM delegation in Chiapas, southern Mexico, 16 August 2017

[12] The United Nations High Commissioner for Refugees (UNHCR) outlines that "Screening and referral can be conducted at border or coastal entry points, in group reception facilities or in places where detention takes place (including detention centres). See: United Nations High Commissioner for Refugees, "The 10-point action plan: Mechanisms for Screening and Referral", available at: http://www.refworld.org/pdfid/5804e0f44.pdf, page 119.

2.1. FIRST STAGE OF SCREENING BY INM FIELD AGENTS

> ***"The INM agent said to me: now that you've been detained, you're screwed and you're gonna get deported to your country."***
>
> Comments from a Honduran man[13] who had fled death threats, describing the response he received from an INM field agent when he expressed his fear of returning.

The field agents of the INM are often the very first point of contact with Mexican authorities for a number of migrants and people seeking asylum. Yet, they do not have their names on their official uniforms, and in many cases function as a faceless force dedicated to apprehending migrants and asylum seekers and turning them over to migration detention centres without an individualized assessment of each detainee's personal circumstances and protection needs.

Amnesty International analysed the conduct of INM field agents and found that this first stage of screening during interception and apprehension of migrants displays overt failures to detect people seeking asylum and act accordingly. Amnesty International noted just 10 cases out of 297 people apprehended by the INM where field agents responded according to the law, by explaining asylum seekers their right to seek protection in Mexico and informing them of the procedure they could undergo in the COMAR. While these are promising

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[13] Interview response to survey carried out with Honduran man in Tapachula, Chiapas state, 14 August 2017

practices from public officials, the fact that this was the minority of cases is extremely concerning and points to grave and systemic failures by the INM to comply with law and international human rights obligations. The vast majority of cases involved INM field agents ignoring or at times humiliating people seeking asylum in response to their expressions of fear of return to their country.

Amnesty International found that 69% of those that had been apprehended by INM noted that the field agent never asked them their reasons for having left their country. This is despite the fact that in the Latin American Regional Guidelines for the preliminary identification and referral mechanisms for Migrant Populations,[14] one of the preliminary questions that should be asked to irregular migrants is why the person left their country. While this is one of a series of questions that can be asked during the first stages of identification of asylum-seekers and refugees, and Amnesty International recommends more precise questions,[15] the fact that field agents did not pose even such entry-level questions reveals a lack of adequate attention to their legal obligations to screen for people seeking asylum. Many responses to Amnesty International's questionnaire noted that INM field agents did not allow migrants and

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[14] These guidelines were agreed upon in an IOM and UNHCR sanctioned process that produced this document in 2013: http://rosanjose.iom.int/site/sites/default/files/LINEAMIENTOS%20ingles.pdf Page 19.

[15] See Amnesty International discussion of screening procedures in Italy: *Hotspot Italy: How EU's flagship approach leads to violations of refugee and migrant rights*, 3 November 2016, Index number: EUR 30/5004/2016, p34ff.

people seeking asylum to speak and simply shouted orders at them and loaded them into vans.

A number of survey responses pointed to the indifference of INM field agents to the comments from people seeking asylum as to their fear of returning to their country; comments that by law should detonate a response from the agent that informs asylum authorities of the intention of the person to seek asylum.[16] A number of responses to Amnesty International's survey outlined a rude or teasing attitude from INM agents. INM field agents routinely ignored asylum seekers' concerns, and told asylum seekers they could not do anything and that they should talk to their colleagues once they arrived at the migration detention centre. This response, as will be seen below, is inadequate, given the fact that the processes in the migration detention centres also routinely fail to detect people seeking asylum.

One person seeking asylum told Amnesty International "I asked [the INM field agents] for asylum, and they told me that it didn't exist, and that in Mexico they didn't like Hondurans because we commit mischief." Another migrant told Amnesty International "the field agents know that you don't know your rights. They say whatever they want."

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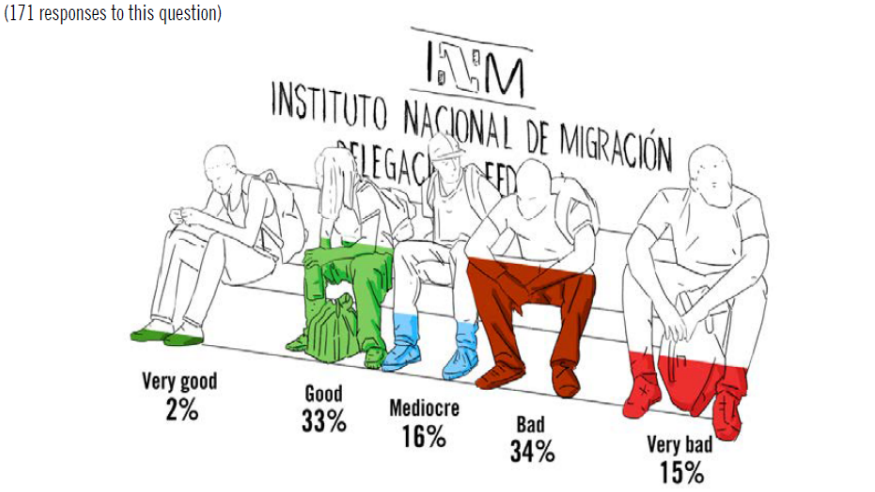
[16] Op Cit. See footnote 9.



2.2 FALLING THROUGH THE CRACKS: SECOND STAGE OF SCREENING IN DETENTION CENTRES

Mexico has 54 migration detention centres, many of which are highly securitized and controlled facilities resembling prison-style conditions.[17] These detention centres are the second stage of processing for irregular migrants and asylum seekers and are run by a different category of INM officials that interview detainees, prepare a casefile for each, and determine whether they are to be deported, which in the case of Central Americans, involves loading them onto buses that leave from the migration detention centres on Mexico's southern border. In the case of people seeking asylum, the law requires

[17] 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

that these persons are channelled to COMAR without delay and are shielded from deportation.[18]

The INM informed Amnesty International that each migrant or asylum seeker that enters a detention centre is given at least an hour individually where they are interviewed and explained their rights.[19] Nevertheless, only 203 of 297 (68%) of responses from people that passed through detention centres indicated to Amnesty International they were given an interview when they entered. Of those that said they were given an interview, 57% said that it lasted less than ten minutes. Thirty-five percent said their interview lasted less than 30 minutes, and only 8% noted that it lasted more than half an hour. The UNHCR notes that the recommended time for screening interviews is between 30 minutes and a few hours per person.[20]

The data collected by Amnesty International demonstrates a systematic failure to properly inform detained migrants and people seeking asylum of their rights. This is a violation of the law by the INM, which aims to ensure proper protection for asylum seekers and guard against illegal *refoulement* of people whose lives are at risk. It is extremely concerning that 75% of responses from people who passed through detention centres

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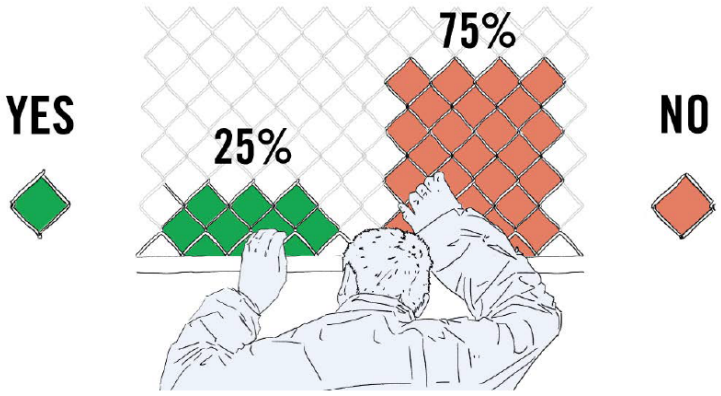
[18] Op. cit. see footnote 9.

[19] Representative of the General Directorate for Control and Verification of the INM in an Interview with Amnesty International, Mexico City, 2 May 2017.

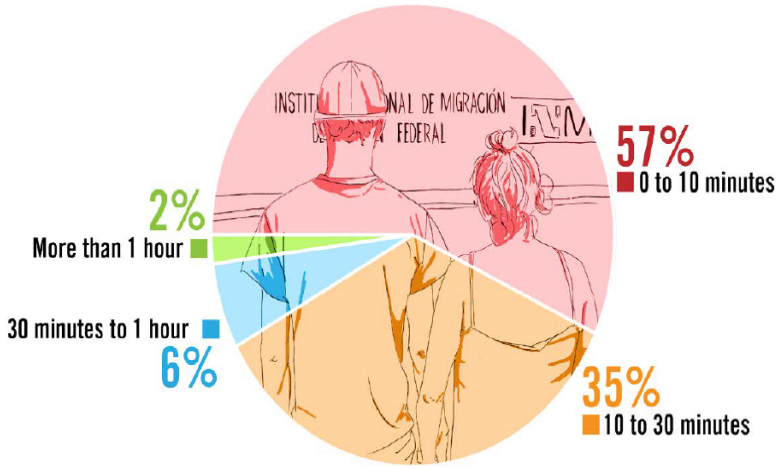
[20] United Nations High Commissioner for Refugees, December 2016: "The 10-point action plan: Mechanisms for Screening and Referral", available at: http://www.refworld.org/pdfid/5804e0f44.pdf, page 119

noted that they were not informed of their right to seek asylum in Mexico.

WERE YOU INFORMED OF YOUR RIGHT TO SEEK ASYLUM?
(297 responses of people that passed through migration detention centres)



DURATION OF THE INTERVIEW IN THE MIGRATION DETENTION CENTRE
(297 responses of people that passed through a migration center)



"The INM has not improved in informing people about asylum. People get the information by word of mouth."

Lawyer working on asylum and migration cases in Chiapas in the south of Mexico

Also of concern is the fact that in numerous cases, INM officers told people seeking asylum that their consul was the person in charge of explaining to them their rights to asylum in Mexico, thereby indirectly pushing them to contact their consular authorities. International practice tends to shield asylum-seekers from contact with their consular authorities, as a form of protection against the risk of identification, retaliation and human rights violations at the hands of state agents.[21]

GIVEN THE RUN-AROUND IN THREE MIGRATION DETENTION CENTERS:

"The people in the migration detention centre did not advise or direct me well. They told me that it would be better to return to my country, . . . They gave me lots of pretexts, "buts". They said there was no COMAR office in the state I was in, so it was going to take months for my claim, so it was better to go back to my country. At first I was in the migration detention centre [in a northern state of the country]. From that place, and from the very first moment, I said I wanted asylum. They told me they couldn't do anything. On arrival at the next migration detention centre in Mexico City, the official said to me: "I

[21] Article 21 of Mexico's Refugee Law (*Ley de Refugiados y Protección Complementaria*) outlines that consuls must not be informed of their citizens' asylum claim, only unless the person gives express consent.

> can't do anything, you are already on the list to be returned to your country." It was not until Tapachula, after speaking to my consul, that I was able to speak to the COMAR!"
>
> Comments from an El Salvadorian woman interviewed by Amnesty International who passed through three different detention centres: One in a state of northern Mexico [location has been omitted to protect the identity of the interviewee], then Mexico City and then Tapachula, Chiapas, on the southern border. In none of these did the INM properly inform her and it was only by chance that her consul informed her of the asylum procedure.

3. LEGAL LIMBO AND HASTY RETURNS

"I can't do anything for you—you are already on the list for the deportation bus."

Comments by an INM official to a 25-year-old man from El Salvador who expressed fear for his life if he was returned to his country. He told Amnesty International that INM officials did not let him read his return papers, and simply loaded him onto the bus to be deported.[22]

The detention and return of an irregular migrant or asylum seeker to their country of origin is the default response that the INM takes in relation to Central Americans arriving in Mexico. The INM opens a casefile for each person detained, taking the form of an administrative legal procedure, in which the person detained has

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[22] Anonymous survey responses from an interview carried out with an El Salvadoran man seeking asylum in Mexico, interviewed in Tapachula, Chiapas state, 8 August 2017

15 days to present arguments in their favour and seek legal counsel.[23] Once all of these stages are completed, or once the person signs papers withdrawing their intention to present arguments within the 15 day window, the INM prepares a resolution concluding the casefile and places the irregular migrant on a list to board a bus headed for their country of origin. The names on this list are checked off by the consul of the country of origin who verifies the nationality of each person.

3.1 VOLUNTARY RETURN PAPERS

An alarming aspect of the way the administrative migratory procedure is implemented in practice is that one of the very first steps in putting together a casefile involves detainees signing a number of papers, accepting their "voluntary return"[24] to their country and waiving their rights to present legal arguments in their favour within the stipulated 15-day procedural window. This is the default process that is carried out in the first interview or "declaration" (*comparacencia*) of the migrant or asylum-seeker before an INM official in the detention centre. This *comparecencia* takes place within the first 24 hours of a migrant or asylum-seeker entering the detention centre, and it is at this time that the

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[23] Article 56 of the Federal Law on Administrative Procedures (*Ley Federal de Procedimiento Administrativo*) outlines that each party in an administrative legal process must be formerly notified with the lodging of a deed as to the opening of the period for arguments and responses. Nevertheless, this does not occur in relation to the Migratory Administrative Process [Procedimiento Administrativo Migratorio].

[24] "Voluntary return" refers to deportations which do not imply administrative sanctions on re-entry in Mexico, as opposed to official deportations, which have punitive implications upon re-entry.

INM official is by law required to comprehensively explain to them their right to asylum, among other rights. In practice, this process often involves the INM official asking the detainee to sign a number of papers, often without explaining their contents. It is extremely concerning that the signing of return papers and the waiving of very important procedural rights are the default steps in this process. Rather than being informed in detail of the different avenues available to them, including seeking asylum, thereby allowing an informed decision by each person, migrants are routinely asked to sign "voluntary return" papers, which effectively allow for their deportation. Since the signing of the "voluntary return" paper is a default step on arriving at a migration detention centre, in order not to be returned to their country detainees must actively desist from this return, and only then will it be reversed. Reasons for desisting on "voluntary return" papers may include the decision to request asylum, or the decision to open a judicial proceeding to stop one's deportation. However, many irregular migrants and asylum seekers are also asked to sign a paper waiving their rights to present legal arguments in their favour within the stipulated 15 day procedural window.

> *"The INM official in the detention centre said 'if you don't sign here [my voluntary return paper], we won't give you food, you won't be able to have a shower. We will treat you like you don't exist.'"*

> Comments from a 23 year old Honduran man[25] to Amnesty International regarding his experience in the detention centre in Acayucan, Veracruz, in 2017.

According to the testimonies collected by Amnesty International, people seeking asylum whose lives are at risk in Central America are very frequently pressured into signing "voluntary return" deportation papers. Amnesty International received numerous testimonies of people in detention centres being hastily asked to sign voluntary return papers without being explained what they were, as well as a number of cases where people desired to seek asylum yet were ignored and told to sign their return papers. In some cases, INM officials in immigration detention centres were verbally forceful with asylum seekers or even pressured them into signing papers through coercive tactics. These overt displays of illegality on the part of INM officials are demonstrative of an institutional culture that enables systematic failures in complying with the *non-refoulement* principle.

> *"The lady from INM told me 'I'm not even going to talk with you.' She got angry with me because I didn't sign my deportation."*
>
> Comments from a Guatemalan woman who had asked for asylum but was refused access to the procedure while in immigration detention

[25] Anonymous survey interview carried out in Saltillo, Coahuila state, 19 September 2017

3.2 THE FAILURE TO FULLY INFORM INDIVIDUALS ABOUT THEIR CASEFILE

People seeking asylum and migrants are made even more vulnerable by the fact that they are never given a copy of their "voluntary return" paper or the casefile that pertains to them. This undermines their ability to understand the process they are being subjected to or to oppose any of the decisions made about their case. In the case of "voluntary return" papers, a public official co-signs each of these papers alongside the detainee. Denying rights-holders a copy of these papers strips them of any possibility for redress in light of arbitrary or illegal actions by authorities.

A lawyer working on dozens of cases of detained migrants and asylum seekers in the state of Chiapas told Amnesty International it is even very difficult for her to access casefiles. The fact that legal representatives also battle to access such information gravely undermines asylum seekers' rights to effective legal counsel.[26]

3.3 FAILURES OF INM INFORMATION SYSTEMS

In addition, internal systems within the INM enable repeated breaches of the *non-refoulement* principle. In an interview with Amnesty International, an INM chief

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[26] In line with article 8(1) and (2) of the American Convention of Human Rights, those people before an administrative legal process, as is the case with detained migrants and asylum seekers subject to deportation, have the right to be heard before competent authority; to have access to a legal representative and interpreter at no charge; and the right to appeal the decision that affects them (including deportation or "voluntary return").

in the southern state of Chiapas[27] admitted that the internal INM computer registries do not have a field on each person's individual file as to whether they are an asylum seeker or not. This is a grave oversight from the INM, the very same body that is able to control a sophisticated system of biodata, travel permissions and entry permits for each passport holder on its computer database. The fact that no unified system exists within INM databases that indicates whether a person is an asylum seeker or not is extremely concerning and leaves open the possibility that these at risk populations fall through the cracks. Amnesty International has received a number of reports of people seeking asylum being deported despite being in a current process of an asylum claim before the COMAR. Amnesty International has also received a number of reports of INM field agents apprehending asylum seekers and then ripping up their official paper from COMAR. This paper specifically calls on the INM to refrain from deporting them and asylum seekers carry it on them with their name and photo.

[27] Amnesty International interview with INM delegation in Chiapas, southern Mexico, 16 August 2017

Emilia and one of her younger sons
©Amnesty International/Benjamín Alfaro Velázquez

EMILIA* AND FAMILY: FINDING SAFETY AND A NEW LIFE IN MEXICO AFTER FORMERLY BEING DEPORTED

Emilia fled El Salvador and arrived in Mexico in late 2016 with her seven children,[28] after two of her other children and her brother had been killed by the *mara* in El Salvador. Her teenage daughter had also been attacked by the *mara* and the family couldn't take it anymore and fled the country. On arrival to Mexico, Emilia's eldest daughter went in to labor and had to be rushed to a hospital on entry into Mexico in order to give birth to Emilia's first grandchild, a baby girl. The family rented a small hotel room in southern Mexico in the

[28] For the full story of threats and persecution against Emilia and her family, see: Amnesty International Facing Walls: USA and Mexico's Violation of the Rights of Asylum Seekers. June 15, 2017. AMR 01/6426/2017. Available at: https://www.amnesty.org/es/documents/amr01/6426/2017/en/

days following, and soon afterwards Emilia had to take a bus back to the hospital to carry out paperwork for the vaccinations of the newborn baby. On her way to the regional hospital in Tapachula, Chiapas state, Emilia was stopped at an INM checkpoint alongside her teenage son who was accompanying her. Emilia pleaded with the INM agents not to return her to El Salvador where her life was at risk, and through tears, told them that she was on her way to the hospital for the paperwork for her newborn granddaughter. INM agents ignored her pleas, and detained her and her son in the nearby detention centre where they were separated and deported a few days later. By sheer luck, on arriving in El Salvador, Emilia was able to find her son and a willing citizen lent her some money to quickly return to Mexico. She found the rest of her family on return to Mexico, and remained living in a cramped room on the border, all together, for months on end while they awaited their asylum claim outcome. Emilia and her family were granted international protection in Mexico in April 2017. After a few months, the family organized themselves to move to northern Mexico where they currently live. Emilia's children are now attending school and her baby granddaughter is now walking. Her eldest daughter is working in a local shop and the elder sons have obtained agricultural work. The family told Amnesty International they feel safe and out of harm's way.

4. ILL-TREATMENT OF MIGRANTS AS PART OF THE DEPORTATION MACHINE

The almost automatic response by federal authorities to irregular migrants is to apprehend them and turn them over to migration detention centres. As outlined above,

the INM is the authority responsible for this function, nevertheless Mexico's Migration Law specifically allows for the Federal Police to act in an auxiliary function alongside the INM in migratory verification exercises.[29] Notwithstanding this stipulation, the involvement of the Federal Police must respond to an express request by the INM, and police cannot simply pick up migrants in different parts of the country as part of their daily functions.[30] Unfortunately, irregular migrants and people seeking asylum are often subjected to arbitrary detentions by federal, state and municipal police.

POLICE VIOLENCE AND ILL-TREATMENT

A total of 68% of those 116 responses that detailed a detention by the police described their treatment as "bad" or "very bad".

Federal and municipal police were most commonly mentioned as being involved in apprehensions that very frequently involved robbery or extortion of migrants by police. On a limited number of occasions police handed migrants over to migration detention centres.

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[29] Mexico's Migration Law (*Ley de Migración*) outlines in its Article 81: The revision of documents of people entering and leaving the country, as well as the inspection of transport lines entering and leaving the country, are considered actions of migratory control. In these actions, the Federal Police will act in an auxiliary function, in coordination with the National Institute of Migration.

[30] Mexico's Migration Law (*Ley de Migración*) outlines in its Article 96: Authorities will collaborate with the National Institute of Migration in the exercise of its functions, when the Institute requests it, without this implying that authorities can independently carry out functions of migratory control, verification and revision.

Some testimonies noted torture or ill-treatment by police: One migrant told Amnesty International:

"They beat me and applied electric shocks to me and they took my money. I told them I had rights, but they tortured me with a pistol that they had on their waist. They gave me electric shocks for 10 minutes"[31]

The treatment by INM agents in apprehensions did not rate as poorly as the police in the response to Amnesty International's survey. While this is promising to note, the fact that the INM did not present such overwhelmingly poor ratings as police does not mean there is no cause for concern.

Amnesty International received a number of reports of grave human rights violations committed by INM officials during the moments of apprehension as well as in detention centres. One Honduran man[32] told Amnesty International that on entering Mexico in the southern state of Tabasco, he was apprehended by INM agents who tied him up and beat him with a tennis ball wrapped inside a wet sock in order to avoid leaving marks on his body. A number of other migrants and asylum seekers mentioned beatings and forceful treatment during their

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[31] Amnesty International has received a number of reports about the use of Tasers against migrants and asylum seekers throughout Mexico. The reports focus on the use of these instruments by federal agents, yet it is not clear in testimonies whether the INM also carries these instruments.

[32] Honduran man interviewed in an anonymous survey response in the city of Saltillo, Coahuila state, on 18 September 2017

apprehension by INM agents, as well as racist and humiliating remarks. One young Honduran man told Amnesty International that an INM agent offered to let him go free in return for sexual favours.[33] This chain of ill treatment against people seeking asylum and migrants is replicated during the time in immigration detention. While a number of migrants and asylum seekers told Amnesty International that the treatment in immigration detention centers was "fine", a number of responses pointed to ill-treatment. In addition, Amnesty International has documented a number of instances of prolonged detentions for months or even up to a year, including the detention of small children and babies in detention centers. A citizen advisory body of the INM recently released a comprehensive report based on site visits and inspections of migration detention centres, which signalled the commonplace use of practices that undermine the physical and mental health of detainees and go against international standards that call for the non-detention of people seeking asylum.[34]

In addition, Amnesty International has received a number or reports from lawyers and civil society organizations of solitary confinement in "punishment cells" in migration detention centres, where detainees can be kept for weeks on end. In at least three testimonies,

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[33] Survey interview—anonymous response from a 20 year old man from Honduras interviewed in Tenosique, Tabasco State, 29 May 2017

[34] Citizen Council of the National Institute of Migration, (Consejo Ciudadano del Instituto Nacional de Migración). Personas en detención migratoria en México: Misión de Monitoreo de Estaciones Migratorias y Estancias Provisionales del Instituto Nacional de Migración, July 2017

Amnesty International was informed by detainees that they had been separated and placed in a small cell with very little light, where they remained all day and were not able to join other detainees during meal times. The reasons for placing detainees in these cells were in two cases in response to a fight or scuffle that guards claimed the detainee had been part of, and in the third case the confinement was a response to a woman who had experienced a psychotic episode while inside the detention centre.

Amnesty International questioned the INM on the existence of these solitary confinement cells. After an initial denial of their existence, officials admitted that their installations did in fact allow for this sort of imposed segregation of certain individuals.[35] While there are no doubt security concerns inside migration detention centres that may warrant limited disciplinary measures, the conditions reported in these "punishment cells" appear disproportionate in relation to international standards on the deprivation of liberty and rights of detainees.[36] In addition, it is important to emphasize that irregular migrants and asylum seekers have not committed a crime and are not being detained on criminal charges, as would be the case in prisons.

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[35] Amnesty International interview with INM delegation in Chiapas, southern Mexico, 16 August 2017.

[36] The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) prohibits solitary confinement under a variety of circumstances. For more information, see: https://www.unodc.org/documents/justice-and-prison-reform/GARESOLUTION/E_ebook.pdf

4.1 ARBITRARY DETENTION OF ASYLUM SEEKERS AND ITS IMPACT ON *REFOULEMENT*

The entry point for men at a migration detention centre in the southern state of Chiapas
©Amnesty International

Migrants, asylum seekers and refugees should not suffer any restriction on their liberty or other rights (either detention or so-called alternatives to detention) unless such a restriction is (a) prescribed by law; (b) necessary in the specific circumstances; and (c) proportionate to the legitimate aim pursued. In particular, any measure (either custodial or noncustodial) restricting the right to liberty of migrants, asylum-seekers and refugees must be exceptional and based on a case-by-case assessment of the personal situation of the individual concerned, including their age, history, need for identification and risk of absconding, if any. The individual concerned should be provided with a reasoned decision in a lan-

guage they understand. Children, both those unaccompanied and those who migrate with their family, should never be detained, as detention is never in their best interests.[37]

In the case of Mexico, the decision to detain an irregular migrant or asylum seeker is almost completely devoid of any individualized assessment. Detention is the automatic response, and all irregular migrants apprehended by INM are detained, even if they express a wish to seek asylum. This flies in the face of international law under Article 9 of the International Covenant on Civil and Political Rights (ICCPR) which prohibits arbitrary detention.[38] In addition, due to the failures in the screening system discussed above, asylum-seekers end up being unlawfully detained together with the migrants.

Under the UN Refugee Convention and its 1967 Protocol, states are not allowed to apply punitive measures to those seeking asylum.[39] The detention of people seek-

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[37] See also: "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

[38] 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, Paragraph33

[39] 1951 UN Convention on Refugees, Article 31. Full text of the Convention available at: http://www.unhcr.org/3b66c2aa10

ing asylum can be seen as a punitive measure that undermines their intention to seek protection. In Mexico, the prospect of being unlawfully detained often pushes asylum-seekers to return to their country of origin, despite the risks they face upon return.

There may be a correlation between periods in migration detention and *refoulement* of asylum seekers from Mexico. Of 49 responses that noted that they wished to return to their country, eight that had been apprehended by INM said that the reason they wanted to return to their country was because they did not want to remain in migration detention. In the case of Emilia* (see Section 3), despite the fact that her life was at grave risk in El Salvador, she told Amnesty International that she could not bear to be locked up and separated from her son in detention, so she decided to risk her life and sign her voluntary return paper that would allow her to get out of detention, yet at the same time risk her life in the hope of being released and reunited with her son and family.

Such examples demonstrate that the failures in screening processes for asylum seekers, coupled with the failures of the migration detention system, end up enabling further violations by Mexico of the *nonrefoulement* principle.

> A recent promising development from the INM has been the implementation of the Programme of Alternatives to Detention (*Programa de Alternativas a la Detención*) since August 2016, as a result of an agreement between COMAR, INM and the UNCHR. Amnesty has observed that a number of asylum seekers are being released as a result of this programme, yet many failures remain. Before August 2016, asylum seekers making claims from inside a migration detention centre remained in detention for up to 3

months or more. Since late 2016, the majority of asylum seekers in detention centres are now being released within a matter of weeks due to the Programme of Alternatives to Detention that places them in migrant shelters run by civil society organizations.

Nevertheless, it is concerning that this programme is not institutionalized or published officially and thus risks being simply an act of good faith that could disappear at any moment.

In 2016, 24% of asylum claims commenced with COMAR were abandoned by the asylum seeker before the procedure was concluded. The 2017 rate of abandonment of asylum claims had dropped to 16% by August, according to figures published by the COMAR. These figures demonstrate that the fact that asylum seekers are no longer being detained for such prolonged periods could be having an impact on their adherence to the asylum procedure in Mexico and possibilities for obtaining protection rather than being returned to their country.

5. RECOMMENDATIONS

TO THE PRESIDENT:

- Urgently order a review of screening processes implemented by the National Institute of Migration (INM). This review must have the aim of:
  - Ensuring irregular migrants who are apprehended and detained are properly informed of their right to seek asylum in Mexico;
  - Guaranteeing that their access to asylum procedures faces no obstacles; and
  - Curbing illegal practices of *refoulement* and ensuring they are met with administrative sanction.

TO THE NATIONAL INSTITUTE OF MIGRATION (INM):

- Urgently implement a review of screening processes implemented by the National Institute of Migration (INM). This review must have the aim of:
  - Implementing a pro-active screening system that improves identification of potential asylum seekers within the first moments of contact with the INM;
  - Ensuring irregular migrants who are apprehended and detained are properly informed of their right to seek asylum in Mexico;
  - Guaranteeing their access to asylum procedures faces no obstacles;
  - Curbing illegal practices of *refoulement* and ensure they are met with administrative sanction.

- Improve internal coordination databases and processes to ensure that asylum seekers are clearly identified in official registries to avoid oversights that enable unlawful deportations.
- Publish and institutionalize the Programa de Alternativas a la Detención in the Official Gazette (Diario Official de la Federacion).
- Provide all detained migrants and asylum seekers, as well as their legal representatives, with a full photocopy of their casefile papers on entry to a detention centre as well as a copy of their voluntary return paper and resolution in their administrative migratory procedure.

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CONTACT US

info@amnesty.org

+44 (0)20 7413 5500

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MEXICO'S DEADLY *REFOULEMENT* OF CENTRAL AMERICANS SEEKING ASYLUM

Mexico is witnessing a hidden refugee crisis on its doorstep. Citizens from nearby countries who formerly left Guatemala, Honduras and El Salvador and passed through Mexico in search of economic opportunities have for a number of years been leaving their countries due to fear for their lives and personal liberty. This briefing outlines the results of a questionnaire carried out by Amnesty International with 500 responses from migrants and people seeking asylum travelling through Mexico. The information presented demonstrates that the Mexican government is routinely failing in its treaty obligations under international law to protect those who are in need of international protection, as well as repeatedly violating the *non-refoulement* principle, a binding pillar of international law that prohibits the return of people to life-threatening situations.

Index: AMR 41/7602/2018
January 2018
amnesty.org

EXHIBIT V

REPORT: FEBRUARY 2019

A Sordid Scheme: The Trump Administration's Illegal Return of Asylum Seekers to Mexico

On January 29, 2019, the Trump Administration began implementing its perversely dubbed "Migration Protection Protocols." In reality, this policy is about denying —not providing—protection to refugees, and is not a "protocol," but an attempt to circumvent the Protocol Relating to the Status of Refugees and the laws passed by Congress. The latest in a series of efforts to ban, block, and deter refugees from seeking asylum in the United States, this "Remain in Mexico" scheme violates U.S. and international law, returns asylum seekers to danger in Mexico, creates disorder at the border, and makes a mockery of American due process and legal counsel laws.

This report is based on Human Rights First's field observations, legal analysis, meetings with U.S. and Mexican government officials and NGOs, interviews and communications with attorneys, legal organizations, and asylum seekers, as well as review of documents provided by the U.S. and Mexican governments to asylum seekers stranded in Mexico. Human Rights First's legal teams conducted research at the U.S.-Mexico border in November and December 2018, and again in January and early February 2019. Our teams were in Tijuana both before and as the Trump Administration began returning asylum seekers to Mexico.

Human Rights First's principal findings include:

- ☑ The Remain in Mexico plan violates asylum provisions in the Immigration and Nationality Act (INA) as well as U.S. treaty obligations to protect refugees.
- ☑ At least 36 asylum seekers had been returned to Mexico as of February 7, 2019. The people returned so far had sought asylum from El Salvador, Guatemala, and Honduras, and include an LGBTQ asylum seeker and an individual with a serious medical condition.
- ☑ Implementing Remain in Mexico at the San Ysidro port of entry has not increased "efficiency" but created disorder and will likely encourage attempts to cross the border between ports of entry as have other disruptive and illegal efforts to block or reduce asylum requests at ports of entry.
- ☑ Remain in Mexico makes a mockery of legal representation and due process rights of asylum seekers, undermines their ability to prepare or even file an application for asylum, and ignores the protection screening safeguards created by Congress, instead inventing a farcical "procedure" to screen asylum seekers for fear of return to Mexico.
- ☑ The United States has returned asylum seekers to acute dangers in Mexico and to potential deportation to the countries where they fear persecution. According to the administration, Remain in Mexico will expand to return more asylum seekers, including families, to Mexico—

including to some of the most dangerous Mexican states on the U.S.-Mexico border, where murders and kidnappings of asylum seekers have occurred.

- ☑ Mexico has participated in the implementation of this policy. While Mexico insists it has no "agreement" with the United States, Mexican immigration officers are helping American officers block ports of entry and return asylum seekers to Mexico.

Human Rights First continues to urge the Trump Administration to:

- ☑ **Cease all efforts that violate U.S. asylum and immigration law and U.S. Refugee Protocol obligations** including the return of asylum seekers and the orchestrated restrictions on asylum processing at ports of entry.
- ☑ **Direct U.S. Customs and Border Protection (CBP) to deploy more officers to U.S. ports of entry** to restore timely and orderly asylum processing.

Illegal Returns to Tijuana Begin

On January 29, 2019, CPB began implementing the Remain in Mexico scheme in coordination with officials from the Mexican *Instituto Nacional de Migración* (National Migration Institute—INM). As Mexican immigration officers continued to control access of asylum seekers to the San Ysidro port of entry, they also began to oversee their return to Tijuana.

Asylum seekers returned to Tijuana under Remain in Mexico (as of the date of this report) had all sought to

request protection at the San Ysidro port of entry. Their names had been inscribed and called from a waiting "list" that developed as a result of CBP's illegal practice of restricting the number of asylum seekers accepted each day at ports across the southern border. While asylum seekers take turns taking down names and information from fellow asylum seekers and calling "numbers" from this highly flawed "list," INM officers essentially manage the "list" at the behest of CBP, which tells them how many asylum seekers CBP will process each day. Mexican migration officials have enforced and facilitated the U.S. policy of "metering" by preventing asylum seekers from approaching the port of entry unless they have been called from the "list."

During the period Human Rights First observed the port, Mexican officials allowed an average of 41 asylum seekers each day from the "list" to approach the U.S. port of entry—a decline from late November and early December 2018 when researchers saw around 60 asylum seekers processed per day. This is far below CBP's acknowledged capacity to process 90 to 100 people per day. On average, these people had waited 5-6 weeks in Tijuana to seek asylum. After their names were called and they lined up to approach the port of entry, officers of *Grupo Beta*, the INM body responsible for migrant care, verified the identity documents of asylum seekers before transporting them to the U.S. port of entry for CBP processing.

Between January 29 and February 7, CBP returned 36 asylum seekers to Mexico. All were single adults from El Salvador, Guatemala, and Honduras. CBP escorted the first, a man from Honduras, out of the west pedes-

trian entrance of the San Ysidro port of entry to the border line, where INM officers brought him back to the Chaparral plaza on the Mexican side of the port of entry. After reporters swarmed him, INM officials hurtled him into a waiting vehicle and apparently deposited him at a Tijuana migrant shelter. INM has continued to escort returnees to Chaparral and transport some of them to shelters.

The accounts of asylum seekers returned to Tijuana, U.S. government documents provided to asylum seekers, and the Department of Homeland Security's (DHS) own written descriptions of its policies reveal that the entire process is a farce. CBP officers have conducted interviews in the middle of the night and asylum seekers reported that they were not asked if they fear return to Mexico. This scheme interferes with basic due process and legal counsel protections both in immigration court proceedings and because it prevents asylum seekers from being represented by counsel during fear screening interviews—interviews that have life and death consequences.

Indeed, despite DHS's "Migrant Protection Protocol Guiding Principles" and assurances from the INM Commissioner that vulnerable individuals, including those with medical problems, would not be returned, Human Rights First found that, among others:

- An LGBTQ Central American asylum seeker was returned to Tijuana despite widely reported dangers for LGBTQ asylum seekers in Mexico.
- A Honduran man suffering from epilepsy was returned to Mexico without his medication, which

> CBP had confiscated—making clear that the agency was aware of his condition.

As discussed in detail in the legal appendix, returning asylum seekers to Mexico violates the specific requirements Congress created under the INA to protect individuals seeking refugee protection at U.S. borders. Further, this scheme contravenes U.S. obligations under the Refugee Convention, the Protocol Relating to the Status of Refugees, and the Convention against Torture. These treaties prohibit the return of individuals to persecution or torture, including return to a county that would subsequently expel the person to such harm. In Mexico, asylum seekers face both potentially deadly harm and the risk of deportation to the countries they fled in search of refuge in the United States. A leaked draft memorandum prepared by DHS and commented on by a Department of Justice (DOJ) official prior to the program's rollout concedes that the plan "would implicate refugee treaties and international law."

Despite Remain in Mexico's evident and potentially fatal flaws, the Trump Administration plans to implement the scheme in additional areas of the border reportedly next expanding to Texas, reportedly beginning with Eagle Pass and El Paso.

Who Will DHS Attempt to Return?

The DHS memoranda and policy documents give CBP officers wide latitude to return arriving noncitizens (at ports of entry or after crossing the border) who lack "proper documentation," including asylum seeking adults and family units, unless certain limited exceptions apply. The exceptions are outlined in an unsigned document, rather than an official memorandum, entitled "MPP Guiding Principles." Under these vague "principles," the categories of asylum seekers not "amendable" to Remain in Mexico, include Mexican nationals, unaccompanied children, those with "known physical/mental health issues," "criminals/ history of violence," previously deported individuals, and others as identified at the discretion of the U.S. or Mexican government and CBP port of entry directors. While the head of INM reportedly stated that Mexico will not accept children under 18 or adults over 60, the "principles" document does not exempt these categories. DHS has made clear that it will expand returns to families with children in the near future.

Return of Asylum Seekers to Dangers and Risk of Deportation

The Trump Administration knows there is no safe way to return asylum seekers to Mexico. The leaked DHS/ DOJ memorandum reveals that the Trump Administration recognizes that it cannot legally enter into a "safe third country" agreement with Mexico. Under the INA such agreements allow the United States to return asylum seekers to a country they crossed on the way to the United States if that country guarantees protection from persecution and provides a "full and fair" asylum

procedure. The memo states that a safe third country agreement is "years" away, as Mexico must still "improve its capacity to accept and adjudicate asylum claims and improve its human rights situation." Yet, the Trump Administration has pushed ahead with its plan to return asylum seekers to Mexico, knowing full well that it places refugees in mortal danger and at serious risk of deportation by Mexican migration authorities.

The asylum seekers returned to Tijuana face grave dangers. Although Tijuana was previously regarded as a somewhat safer area on the U.S.-Mexico border, the city is now one of the deadliest in the world—with over 2,500 murders in 2018. The state of Baja California, where Tijuana lies, had the largest number of reported murders in Mexico in 2018. This follows "a record increase in homicides in 2017" as well as an increase in reported rapes in all five of the state's municipalities—Tijuana, Mexicali, Ensenada, Rosarito, and Tecate. The U.S. State Department acknowledges that "[c]riminal activity and violence, including homicide, remain a primary concern throughout the state." 2019 has seen no abatement in violence, with 196 murders in the first 29 days of the year.

Asylum seekers have been the direct targets of violence in Tijuana. In late December 2018 two teenagers from Honduras were kidnapped and murdered in Tijuana. The case underscores the particular vulnerability of unaccompanied children forced to wait in Mexico to seek asylum—a friend who escaped the attack was scheduled to be escorted by Members of Congress to a port of entry to request asylum with other refugee youth, but was subsequently placed in protective custody after their

murders. Earlier in May 2018, a shelter for transgender asylum seekers in Tijuana was attacked and set on fire.

Human Rights First researchers interviewed asylum seekers in Tijuana in November and December 2018 who faced violence in the city, including:

- A transgender Mexican woman was robbed of her documents and possessions and nearly sexually assaulted in Tijuana while waiting to seek asylum.
- A Cameroonian asylum seeker was stabbed in the hand and robbed in Tijuana. He did not report the incident to the police because he feared he could be arrested and deported.

In late January and early February 2019, asylum seekers in Tijuana reported additional dangers there:

- A Mexican asylum seeker fled with her husband from the state of Michoacán to Tijuana after being threatened by an armed criminal group. Since late December when her husband disappeared, she had not left the shelter where she has been staying, fearing that she and her two children—one and three years old—could also be kidnapped or killed.
- An indigenous Guatemalan asylum seeker with two black eyes and a broken arm told a Human Rights First researcher that he had been threatened and attacked by groups of Guatemalan and Mexican criminals while he waited to request asylum at the San Ysidro port of entry.

- A man from Honduras waiting to seek asylum in the United States after the murder of his brother reported that he had been repeatedly stopped and harassed by the police in Tijuana and that a Salvadoran asylum seeker with him had been robbed by the police there.
- A staff member from a shelter in Tijuana reported that in the week prior, three migrants had been robbed outside the shelter—two at gunpoint and one at knifepoint.

Asylum seekers returned have not been guaranteed housing or other support by the Mexican government:

- In a January 2019 meeting before the implementation of Remain in Mexico, the INM Commissioner told Human Rights First that his agency had no system in place to house, care for, or otherwise ensure the safety non-Mexican asylum seekers returned from the United States and had no plans to study how to implement such support.
- A joint letter by a network of 31 migrant shelters along the U.S.-Mexico border makes clear that their facilities lack capacity to safely house the potentially large numbers of returned asylum seekers for the months they are likely to remain in Mexico.
- A *Grupo Beta* official overseeing the closure of the local government-run Barretal shelter, which resulted in the eviction of nearly 100 asylum seekers, told a Human Rights First researcher that he was not aware of any additional plans to provide housing to large numbers of migrants,

whether they be caravan arrivals or those who are returned to Mexico.

Asylum seekers forced to remain in Mexico are also at risk of *refoulement*, or illegal return to countries that threaten their lives or freedom, because Mexican migration authorities routinely fail to provide humanitarian protection to asylum seekers as required under domestic and international law. The U.S. State Department's 2017 human rights report on Mexico noted that an independent Mexican advisory body found "incidents in which immigration agents had been known to threaten and abuse migrants to force them to accept voluntary deportation and discourage them from seeking asylum." A 2018 report by Amnesty International found that, of a survey of 500 asylum seekers traveling through Mexico, 24 percent had indicated fear of persecution to Mexican officials but were ignored and arbitrarily deported back to their countries of persecution.

Human Rights First researchers recently documented the arbitrary detention and deportation of asylum seekers in Mexico, including:

- **Three gay men from El Salvador, Honduras, and Guatemala who were detained in Tijuana in late November 2018.** Police officers illegally transferred them to the custody of Mexican migration authorities, despite their lawyer's efforts to bail them out. During a visit, the attorney confirmed that at least two of the men wished to request asylum in Mexico to prevent their deportation to persecution. However, the Mexican National Human Rights Commission informed the lawyer that the men were sent to Mexico City and deported.

- **A Honduran asylum seeker staying at Casa del Migrante, one of the largest migrant shelters in Tijuana, who was arrested on a minor infraction in early October**. After his arrest, police transferred him to Mexican migration authorities for deportation. Despite the attorney's request to the local representative of the Mexican migration agency to halt the asylum seeker's deportation, the man was swiftly deported before the attorney for Casa del Migrante could visit him in the detention facility.

False Justifications

The administration has also premised the Remain in Mexico scheme on inaccurate assertions that asylum seekers do not meet their court hearing obligations and lack meritorious claims for protection. DHS has erroneously stated that many of those who have filed asylum claims in the past few years "have disappeared into the country before a judge denies their claim." This rationale is false. Statistics from the DOJ demonstrate that, between 2013 and 2017, 92 percent of asylum seekers appeared in court to receive a final decision on their claims. Additionally, while the DHS Press Release on the so-called Migrant Protection Protocols contends that "approximately 9 out of 10 asylum claims from Northern Triangle countries" are denied by immigration judges, statistical analysis shows that asylum seekers from these countries won their cases 26 percent of the time in fiscal years 2016 and 2017.

Confusion and Encouraging Crossings Between Ports of Entry

DHS claims that Remain in Mexico "will provide a safer and more orderly process that will discourage individuals from attempting illegal entry," but the rollout of the scheme demonstrates precisely the opposite.

In reality, it puts returned asylum seekers at risk and disrupts the processing of asylum seekers:

- On January 29, Secretary Nielsen visited the San Ysidro port of entry in an evident effort to generate maximum media attention to the return of asylum seekers as processing began. That afternoon Human Rights First researchers observed a swarm of reporters surround the first individual returned, attempting to interview him. Although he quickly left the area after providing his nationality and first name, Mexican government officials released his full name. Media outlets later published photographs that included his face and as well as his name, raising concerns that his persecutors would be easily able to identify and locate him in Mexico.
- After Secretary Nielsen's visit Human Rights First observed a steep decline in processing of asylum seekers, with 20 or fewer asylum seekers processed each day for the next three days. The day of her visit, with international media present and perhaps in an attempt to generate a pool of potential returnees, CBP processed 80 asylum seekers—more than the agency had processed in a day in nearly a year, according to legal observers.

- Because of these wide swings in processing and commotion at the plaza, several asylum seekers missed their names being called from the asylum seeker wait "list." One was a pregnant asylum seeker from Mexico. She reported to Human Rights First that she was uncertain if the shelter where she was staying would continue to house her and her children while they wait to be called again.

Further, processing of asylum claims at San Ysidro remains well below U.S. capacity. During the first week of Remain in Mexico, CBP allowed approximately 41 asylum seekers per day to approach the port of entry at San Ysidro—well below CBP's acknowledged capacity to process 90 to 100 asylum seekers per day there. Indeed, administration assertions that Remain in Mexico is a response to capacity constraints in processing asylum seekers at ports of entry are simply not credible. As Human Rights First previously documented, the number of asylum seekers accepted at ports of entry has fallen sharply, often to levels well-below capacity, and administration officials have failed to deploy staff and resources to process asylum claims. For instance, Customs and Border Protection (CBP) in the San Diego region processed more asylum seekers in fiscal year (FY) 2014 under President Obama than in FY 2018 under the Trump Administration and handled twice as many cases in FY 2015 than in the last fiscal year.[1] Based on these

[1] See, Exhibit 2, Docket No. 192-4, Al Otro Lado v. Nielsen, 3:17-cv-02366-BAS-KSC (S.D. Cal Nov. 29, 2018) (showing that the San Diego CBP Field Office processed approximately 15,000 fear claims in FY 2014 and 24,923 in FY 2015); Customs and Border Protection, "Office of Field Operations Claims of Credible Fear Inadmissibles

figures, CBP processed 68 asylum seekers on average per day, every day in FY 2015. Yet Human Rights First researchers observed CBP process an average of 41 asylum seekers per day at San Ysidro—40% fewer than in 2015. Analyses of CBP's data by Human Rights First, the Cato Institute, WOLA and others make clear that processing slowdowns at ports of entry reflect a deliberate choice by the administration to reduce the number of asylum seekers who can request protection at the southern border.

Restrictions on seeking asylum at ports of entry encourage asylum seekers to cross the border between ports of entry. In 2018, a CBP official confirmed to the Office of Inspector General for DHS that the "backlogs" created by these policies "likely resulted in additional illegal border crossings." Indeed, some asylum seekers planning to seek protection at the port of entry reported to Human Rights First in early February that they were considering crossing the border because they feared danger in Tijuana if they were returned to Mexico by the United States and they did not have the resources to survive the potentially months-long wait in Mexico.

- On February 2, Human Right First spoke with a Honduran asylum-seeking couple and their two young children in Tijuana. Concerned by insecurity in the migrant shelter where they had been staying, they found lodging far from the port of entry. They worried they could not safely wait in Tijuana if returned to Mexico and

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By Field Office," available at https://www.cbp.gov/newsroom/stats/sw-border-migration/claims-fear/inadmissibles-field-office (stating that the San Diego CBP Field Office processed 12,432 fear claims in FY 2018).

wondered whether they "should just cross outside of the gate."

Due Process Mockery

Asylum seekers involuntarily returned to Mexico face significant barriers in exercising their right to be represented by a lawyer as well as in preparing and presenting their asylum claims. These obstructions to asylum seekers' due process rights are likely to diminish their chances of being granted asylum. Indeed, asylum seekers with lawyers are four times more likely to be granted asylum than those without legal counsel.

Section 292 of INA guarantees individuals in immigration removal proceedings "the privilege of being represented (at no expense to the Government) by such counsel, authorized to practice in such proceedings, as [t]he[y] shall choose." Yet, Remain in Mexico imposes numerous barriers for returned asylum seekers to find or effectively work with legal counsel. Returned asylum seekers cannot enter the United States to search for or meet with an attorney, yet CBP has provided asylum seekers returned at San Ysidro with lists of legal service providers (in English) located in California and the state of their intended destination. An "Initial Processing Information" sheet provided by CBP to returned asylum seekers advises that they exercise the privilege of being represented by an attorney:

- "by telephone, email, video conference, or any other remote communication method"
- "in person at a location in Mexico" or
- "[o]n the day of your immigration hearing, you may arrange to meet with your counsel in-person,

in the United States, at your assigned court facility, prior to that hearing."

These cynical suggestions do not provide asylum seekers who are allowed back into the United States only on the day of their immigration court hearings meaningful access to attorneys authorized to practice law in U.S. immigration court:

- ☑ **Remote communication is costly, insecure, difficult and insufficient**: Indigent asylum seekers marooned in Mexico will have great difficulty even contacting attorneys in the United States. Remote communication presents multiple concerns including confidentiality, costs, and barriers in forming the kind of trusting attorney-client relationship necessary to uncover crucial information that traumatized individuals may be reluctant to share over the phone or by email. Nor will a remote attorney be able to review original documents and other evidence with the client, have the client's affidavit signed before a U.S.-authorized notary, or prepare the client in person to give testimony in court.

- ☑ **Barriers to U.S. attorneys operating in Mexico**: Meeting in person with counsel in Mexico raises questions surrounding the legal authorization of U.S. lawyers to practice in Mexico. Very few non-profit legal services organizations with U.S.-qualified lawyers operate along the Mexican side of the U.S.-Mexico border. For instance, the San Diego based organizations on the list of legal service providers given to returned asylum seekers do not have locations in or and do not currently practice in Mexico.

- ☑ **Absurd to expect asylum seekers to prepare their cases at immigration court**: Conferring with an attorney for a few minutes or even hours prior to a hearing is not sufficient to receive adequate legal representation. An attorney cannot reasonably interview a client, examine and identify errors in immigration documents, or complete and review the 12-page asylum application, let alone draft and finalize a client's affidavit or prepare a client to offer testify and be cross-examined. Asylum cases in immigration court often take hundreds of hours to prepare. Further, many immigration courts, including the San Diego immigration court, do not provide space for individuals to meet with their attorneys in a private and confidential manner. Because returnees will be transported to the immigration court from the port of entry under the custody of DHS, they may be shackled. Suggesting that shackled asylum seekers meet with an attorney in the corridor outside the courtroom in the moments before an immigration hearing to prepare their cases makes a mockery of the INA's guarantee of access to counsel.

U.S. citizen attorneys who have crossed into Tijuana to provide assistance to asylum seekers face the risk of high levels of violence. In addition, attorneys from *Al Otro Lado*, a migrants-rights organization with a location in Tijuana, were refused entry to Mexico in late January 2019 as Remain in Mexico was implemented and deported to the United States raising serious concerns they were targeted for assisting and advocating on behalf of asylum seekers. Recent reports recount targeting, including extensive search and questioning by CBP,

of U.S. citizens volunteering with humanitarian groups as well as journalists interviewing migrants and asylum seekers.

Screening Farce

The screening process created by DHS to determine whether an asylum seeker is returned to Mexico is a farce designed to evade the credible fear process created by Congress to protect arriving asylum seekers. Remain in Mexico's procedures elevate "efficiency" in returning asylum seekers to Mexico over ensuring that they receive an even minimally adequate assessment of whether they face persecution or torture there—a higher and different standard than the credible fear screening Congress established.

CBP officers are required to refer asylum seekers potentially subject to Remain in Mexico for a screening by a United States Citizenship and Immigration Services (USCIS) asylum officer of their fear of return to Mexico, but procedures under the new plan provide this interview only if the person *affirmatively* express a fear. This practice diverges from the requirement that CBP officers read arriving asylum seekers a summary of their rights and specifically question them about their fear of return before deporting them through the expedited removal procedures. The DHS memoranda do not require CBP officers to ask asylum seekers if they fear return to Mexico and, in practice, they have often not informed asylum seekers of the need to affirmatively express a fear of return to Mexico to trigger the full assessment nor screened asylum seekers for such fear.

- Human Rights First asylum legal experts reviewed the sworn statements (Form I-877, Record of Sworn Statement in Administrative Proceedings) recorded by CBP officers that include questions asked to and responses of several asylum seekers requesting protection at the San Ysidro port of entry in January 2019. They reported that **CBP failed to ask about danger they could face if returned to Mexico**. In these documents the CBP officers did not record having explained the Mexico fear screening or having asked any questions about feared harm in Mexico. Rather, CBP officers' questions focused on whether the asylum seekers had hired smugglers or knew the names and contact information of the individuals who organize migrant caravans.
- An attorney with *Al Otro Lado* who has consulted with several returned asylum seekers reported that CBP officials are "not routinely asking people" whether they have a fear of returning to Mexico.
- Multiple returned asylum seekers reported to Human Rights First and other observers that they were awoken while in CBP custody and **interviewed in the middle of the night**. One asylum seekers reported having been questioned at around 1am and another was interviewed at 3am. Documents reviewed by Human Rights First confirm that a third individual received an information sheet regarding Remain in Mexico at 1 o'clock in the morning.

The USCIS screening imposes an extraordinarily high standard to establish a likelihood of harm in Mexico and eliminates due process protections for fear screenings. The January 25 Nielsen memorandum states that asylum seekers can be returned to Mexico unless they would "more likely than not be persecuted on account of race, religion, nationality, membership in a particular social group, or political opinion . . . or would more likely than not be tortured"—the "same standard used for withholding of removal and CAT [Convention against Torture] protection determinations" normally applied after a full hearing in immigration court to make a final decision.

- ☑ **Extraordinarily High Legal Requirement**: Under the INA, asylum seekers placed in expedited removal must be referred for a fear screening. Asylum seekers must show a credible fear of persecution in the country they fled—meaning a *significant possibility* that they can establish ultimate eligibility for asylum after a full immigration court hearing. They are not required to actually prove their asylum cases at this stage—as Congress created a screening standard purposefully lower than the asylum standard. But under Remain in Mexico, asylum seekers must establish *full legal eligibility* for withholding of removal or CAT protection during this initial screening interview to avoid being returned to Mexico. Not only is the standard to qualify higher than for asylum itself, but asylum seekers must establish they qualify without an attorney or a chance to present in an evidentiary hearing in immigration court. **Under Remain in Mexico, asylum seekers must prove that they have an even**

greater fear in Mexico than in their home country in order to come into the United States to pursue their asylum claims.

☑ **Lack of immigration judge review**: U.S. immigration law allows asylum seekers to request review by an immigration judge of a negative credible fear determination. Yet under Remain in Mexico, asylum seekers are not entitled to immigration judge review of the asylum officer determination regarding their fear of harm in Mexico. The lack of a review mechanism contravenes Congress's intent for immigration judges to conduct an "independent review that will serve as an important though expedited check on the initial decisions of asylum officers."

☑ **Denial of representation**: U.S. immigration law guarantees asylum seekers the right to consult with an individual, including a lawyer, of their choosing prior to a credible fear interview and to have that person attend the interview. Yet the USCIS policy memo states that "DHS is currently unable to provide access to counsel during the assessments given the limited capacity and resources at ports-of-entry and Border Patrol stations as well as the need for the orderly and efficient processing of individuals." Restricting access to counsel for asylum seekers detained in DHS custody undermines the ability of asylum seekers to prepare for interviews and present evidence that demonstrates the danger(s) they face in Mexico. Further, these restrictions may violate the *Orantes* injunction,

which guarantees certain rights, including access to counsel, for Salvadoran asylum seekers in DHS custody.

- ☑ **Denial of Rest**: Asylum officers have also reportedly been instructed to deny "rest periods" —the 48-hour respite asylum seekers are offered before a fear interview. These rest periods are crucial to ensuring due process because they allow asylum seekers who may be hungry and sleep-deprived after arduous and difficult journeys to recuperate before undergoing a screening interview about the persecution they fear.

Mexico Complicit in Asylum Return Scheme

While the Mexican government has repeatedly characterized the Remain in Mexico plan as a "unilateral" action by the United States, Mexico is facilitating and assisting in the effort to block asylum seekers from approaching U.S. ports of entry. Mexico has already accepted the return of dozens of Central American asylum seekers in Tijuana. The January 25 Nielsen memo describing the exchange of messages between the two governments claims that Mexico will "allow" asylum seekers returned a "stay for humanitarian reasons," permit them to enter and exit Mexico for court hearings in the United States, and give returned asylum seekers an "opportunity to apply for a work permit."

Although Mexican regulations provide that so-called "humanitarian visas" are good for one year, renewable periods, the INM Commissioner, one of the officials with

discretion to issue and renew such visas, reportedly indicated that humanitarian visas for returned asylum seekers would be valid for only four months and expressed his understanding the immigration proceedings in the United States would conclude within 90 days. However, visas issued by INM to several individuals and reviewed by Human Rights First were general visitor visas—the box for the humanitarian visa was not checked—with a 76-day validity period and did not provide authorization to take paid work. Recent changes in policy reflect the uncertainty and discretionary nature of the humanitarian visa program. In January 2019, Mexican President Andres Manuel Lopez Obrador implemented changes to the humanitarian visa process to facilitate access to the visa for Central Americans in need of humanitarian protection, but the program was cancelled less than two weeks later.

As discussed above, Mexico has repeatedly deported Central American asylum seekers to potential persecution without accepting or considering their requests for protection. Deportation by Mexico of individuals in need of protection has resulted in grave consequences. For instance, in December 2018, a young Honduran man was murdered in Tegucigalpa, Honduras after being deported from Tijuana the previous week by INM. Even if Mexico were to follow through on its supposed offer of humanitarian visas to asylum seekers, asylum seekers in Mexico remain at risk of deportation to persecution, as Amnesty International found in its 2018 report documenting Mexico's *refoulement* of asylum seekers.

An Address to Nowhere

The DHS memoranda and guiding principles do not explain how asylum seekers will receive hearing notifications from the immigration court. These notices are crucial to inform individuals in removal proceedings of changes in hearing dates, which occur frequently including tens of thousands of hearings that must be rescheduled due to the partial government shutdown in December 2018 and January 2019. Immigration judges may order asylum seekers who fail to appear at a hearing removed in their absence.

In order to receive hearing notices, individuals in immigration court must provide their address, but asylum seekers returned are unlikely to have a place to live in Mexico, let alone a readily available mailing address to supply. For example, one of the returned asylum seekers Human Rights First spoke with had been staying in the temporary shelter established in December 2018 at the former Barretal nightclub that closed suddenly on January 30, 2019. Further, notices to appear served on returned asylum seekers failed to record addresses in Mexico where mail can be received. On three notices to appear reviewed by Human Rights First, CBP officers recorded asylum seekers' addresses as merely "*domicilio conocido*" (literally "known address") in Tijuana.

Asylum seekers who attempt to update their addresses, as required by the immigration regulations, will not be able to deliver that form in person at the immigration court because they are not able to enter

the United States. Instead, to send mail internationally they must rely on *Correos de Mexico,* the unreliable government postal system in decay due to a lack of federal resources and suffering from sluggish international delivery times of up to a month. While theoretically an alternative, the use of a private international courier services such as DHL or FedEx is likely prohibitively expensive for most indigent asylum seekers.

Plans to Expand Remain in Mexico Despite Dangers

Although returns to date have occurred only at the San Ysidro port of entry, a CBP memo implementing Remain in Mexico makes clear that DHS believes it has authority to return asylum seekers along the entire border both from ports of entry and those who cross between the ports of entry. Despite the violence and other grave harms asylum seekers could face if returned to other parts of the U.S.-Mexico border, DHS officials plan to expand the scheme "in the near future" and are reportedly considering El Paso and Eagle Pass as two possible implementation sites. As Human Rights First has documented in reports and analyses, asylum seekers south of the U.S.-Mexican border face acute risks of kidnapping, disappearance, sexual assault, trafficking, and violent crimes.

The U.S. State Department 2017 human rights report on Mexico lists "violence against migrants by government officers and organized criminal groups" as one of the "most significant human rights issues." It notes that the dangers for Central American refugees in the country has grown as "Central American gang presence

spread farther into the country and threatened migrants who had fled the same gangs in their home countries." Migrants are also targets for kidnappers, making up a disproportionately large percentage of reported disappearances—approximately 1 in 6—despite representing a tiny fraction of Mexico's total population.

Refugees in Mexico are targeted due to their inherent vulnerabilities as refugees but also on account of their race, nationality, gender, sexual orientation, gender identity, and other reasons. Certain groups—"including the LGBTQ community, people with indigenous heritage, and foreigners in general"—face consistent persecution in Mexico and are often forced to seek protection outside of the country. Gay men and transgender women, for example, flee discrimination, beatings, attacks, and a lack of protection by police in Mexico. A January 2019 survey conducted by the American Immigration Council, AILA, and the Catholic Legal Immigration Network, Inc. among 500 detained asylum seeking women and children in Texas found that 46% of respondents reported that they or their child experienced at least one type of harm while crossing through Mexico, and 38.1% of respondents stated that Mexican police mistreated them. Amnesty International reports that criminal investigations of massacres and crimes against migrants remain "shrouded by impunity."

Violence across Mexico has been climbing: 2018 was the deadliest year in the country's recorded history, averaging 91 homicides per day and surpassing the previous record in 2017 by 15 percent. The northern border states, where refugees forced to return to Mexico are likely to stay, all experienced jumps in homicide rates in 2018 making them among the most dangerous in the

country. President Trump tweeted in January 2019 that the murder rate in Mexico had risen substantially making the country "[w]orse even than Afghanistan."

Research by Human Rights First, reports by the U.S. and Mexican governments as well as media accounts demonstrate the dangers migrants face in the Mexican states bordering the United States where CBP appears to be planning to return asylum seekers through ports of entry:

TAMAULIPAS

U.S. ports of entry: Laredo, McAllen & Brownsville, TX

Tamaulipas, the Mexican state that shares a long border with Texas, is "notoriously violent" and "one of the most lawless states in the country," riven by cartel violence. Tamaulipas was the state with the largest registered number of missing or disappeared people in Mexico according to the U.S. State Department 2017 human rights report. The U.S. State Department ranks Tamaulipas as a category four level—"Do Not Travel"—the same threat assessment that applies to travel to Afghanistan, Iraq, and Syria. In Tamaulipas:

Violent crime, such as murder, armed robbery, carjacking, kidnapping, extortion, and sexual assault, is common. Gang activity, including gun battles and blockades, is widespread. Armed criminal groups target public and private passenger buses as well as private automobiles traveling through Tamaulipas, often taking passengers hostage and demanding ransom payments. Federal and state security forces have limited capability to respond to violence in many parts of the state.

U.S. government employees are restricted from intrastate highways in Tamaulipas and under evening curfew in the cities of Matamoros (across from the Brownsville port of entry) and Nuevo Laredo (across from the Laredo port). The U.S. State Department's bureau of diplomatic security ranks "corruption of police and rule of law officials" as "the most serious concern" in its report on security in Nuevo Laredo. According to the bureau, "the municipal police force in Nuevo Laredo was disbanded among allegations of large-scale corruption" in July 2011 and as of January 2019 still had not been reconstituted. Mexican marines deployed to Nuevo Laredo to address cartel violence in the city have themselves been accused of disappearances and murder.

In the city of Reynosa (across from the McAllen port of entry), disappearances, kidnapping, ransom, and murder of migrants by criminal groups have become so frequent that at least one migrant shelter forbids any migrants from leaving the premises. In December 2018, a Mexican television network reported that three Yemeni asylum seekers were kidnapped by men in vehicles marked "police" in Reynosa while en route to seek asylum in the United States. Taken to a house and stripped to their underwear, the men were held with other kidnapping victims from El Salvador, Guatemala, and Honduras. The kidnappers beat them, threatened to cut off their fingers and toes and extorted thousands of dollars from family members in Yemen. The group escaped only when another criminal gang attacked the house and released the three in exchange for additional extortion payments. The recent rescue of 22 Central American migrants held in a house in Reynosa suggests that the number of kidnappings remains high.

SONORA

U.S. ports of entry: San Luis & Nogales, AZ

For the state of Sonora, the U.S. State Department recommends that U.S. citizens "reconsider travel due to crime"—the same level of caution urged for travel to El Salvador and Honduras. According to the warning, "Sonora is a key location used by the international drug trade and human trafficking networks." On the Mexican side of the border in the city of Nogales (across from the U.S. port of the same name), U.S. government employees are not permitted to use taxi services. Further, long-distance intrastate travel is limited to the daytime, and U.S. government employees may not venture outside of the city limits in the border-region towns of San Luis Colorado (across from the San Luis port), Cananea and Agua Prieta. In its 2018 report on security in Nogales, the U.S. State Department's diplomatic security bureau notes that "[a]nyone who projects the perception of wealth and is unfamiliar with the area can easily become a target of opportunity by being in the "'wrong place at the wrong time.'" The bureau recommends against the use of public transportation including taxis, given the "depth of narco-trafficking influence over the taxis."

CHIHUAHUA

U.S. ports of entry: El Paso, TX

The U.S. State Department warns travelers to "reconsider travel due to" "widespread" "[v]iolent crime and gang activity" in the Chihuahua. In fact, U.S. govern-

ment employees are limited to travel to a handful of cities and largely prohibited from traveling at night or away from major highway routes. On January 17, 2019, the State Department's diplomatic security bureau warned of a series of attacks on police officers in Ciudad Juarez (across from the U.S. ports in El Paso) and Chihuahua City carried out by organized criminal groups, "which [we]re expected to continue" and warned its personnel "to avoid police stations and other law enforcement facilities in both cities to the extent possible until further notice. Earlier in October 2018, the diplomatic security bureau had warned that criminal groups in Ciudad Juarez were "actively trying to obtain armored vehicles" and had "made a brazen attempt to carjack a police armored vehicle." In August 2018, the security bureau extended restrictions on travel to downtown Ciudad Juarez "[b]ecause the higher rates of homicides during daylight hours that prompted [a July 2018] restriction [had] not decreased." As of February 2019, those restrictions had not been lifted.

Asylum seekers in Ciudad Juarez fear for their lives while waiting to be processed in the United States particularly with the arrival of the Jalisco New Generation cartel there. By mid-January 2019, the city had already had 46 homicides since the beginning of the year. Residents fear the potential for another vicious cartel fight: inter-cartel violence reportedly resulted in some 10,000 deaths between 2008 and 2012.

COAHUILA

U.S. ports of entry: Del Rio & Eagle Pass, TX

The U.S. State Department warns travelers to "reconsider travel due to" "[v]iolent crime and gang activity [which] are common in parts of Coahuila state." Employees of the U.S. government travelling in the border towns of Piedras Negras (across from the Eagle Pass port) and Ciudad Acuña (across from the Del Rio port) are subject to a nighttime curfew. In June 2018, the mayor of Piedras Negras who had taken a hardline stance against crime was assassinated while campaigning for a seat in the Chamber of Deputies. Drug cartels in Coahuila have reportedly long sought to influence Mexican officials through bribes to policemen and politicians. In November 2018, a wave of kidnappings hit Piedras Negras with four women disappeared in a week. Overall, homicides rose in the state by 20 percent between 2017 and 2018. LGBTQ rights activists in the state have complained that murders of LGBTQ persons have gone uninvestigated and registered dozens of complaints of physical violence by police officers in the towns of Monclova, Frontera, Castaños, Piedras Negras, Acuña, San Pedro, Viesca, Torreón and Saltillo.

Migrants are targets of violence and discrimination in Coahuila. Migrant women and children are reportedly at high risk of forced labor on farms in Coahuila. In 2018, a hotel in Piedras Negras kicked out a family of Honduran asylum seekers in the middle of the night because the owner refused to accommodate "foreigners." Asylum seekers in migrant shelters in Piedras Negras have been threatened by smugglers who threaten to kidnap and kill the migrants and their family members, if they do not pay them. In February 2019, a Honduran

migrant managed to escape from a house where he was being held by kidnappers.

Legal Appendix: Remain in Mexico Violates U.S. Laws and Treaty Obligations

U.S. law makes clear—in both Sections 208 and 235 of the INA—that people can seek asylum at a U.S. port of entry or after crossing in to the United States. The Trump Administration has already taken steps to block or turn away asylum seekers at ports of entry and to ban those who seek protection after crossing between ports of entry. Remain in Mexico is an attempt to circumvent the asylum laws passed by Congress in order to return some asylum seekers to Mexico.

Launched through a January 25, 2019 DHS action memorandum, Secretary Kirstjen Nielsen purported to invoke authority under Section 235(b)(2)(C) of the INA to return non-Mexican nationals, including asylum seekers, requesting admission at a U.S.-Mexico land port of entry or who have crossed that border "without proper documentation" to Mexico.[2] Asylum seekers subject to the scheme are issued a Notice to Appear (NTA) and returned to Mexico. While they are permitted to physically reenter the United States to attend immigration court proceedings, they are not allowed to enter in advance to attempt to secure, meet with and work with

[2] In a January 31, 2019 email, an official from the Office of Management and Budget (OMB) informed Human Rights First that on January 29, 2019, DHS officially withdrew an interim final review to implement the Migrant Protection Protocol submitted for review to OMB's Office of Information and Regulatory Affairs, the authority established by statute to review executive branch regulations.

U.S. attorneys who can represent them in immigration court.

The use of this provision to return asylum seekers to Mexico directly contradicts the statutory scheme Congress laid out in the INA. First, Section 208 of the INA makes clear that asylum seekers who arrive at official border posts can apply for asylum. Second, Section 235(b)(1) establishes specific "expedited removal" procedures for individuals who lack visas or other entry documents (at ports of entry or stopped after crossing the border), which includes most asylum seekers on the southern border. The provision further provides that asylum seekers be given a credible fear interview and that those who pass the screening be held in U.S. detention or released on parole—under INA 212(b)(5)—during consideration of their applications. **Returning refugees to Mexico directly contradicts Congress' clear and specific instruction that asylum seekers remain in the United States while their asylum claims are pending**. Indeed, Section 235(b)(2)(C)—the very provision DHS relies on for Remain in Mexico—incorporates an explicit exception at 235(b)(2)(B) for individuals covered by Section 235(b)(1), i.e. the asylum seekers the agency now attempts to return to Mexico.

The safe third country provision of the INA does allow the United States to return some asylum seekers to a contiguous country they passed through, Mexico does not meet the legal criteria. Specifically, to be a safe third country, Mexico would have to (1) guarantee asylum seekers protection from persecution; (2) provide access to "full and fair" procedures to assess asylum requests; and (3) enter into an agreement to be designated

a safe third country. None of these conditions has been met.

Congress passed the 1980 Refugee Act to bring domestic law in line with U.S. obligations under the Refugee Convention. Article 33 of the Refugee Convention, which the United States is bound to respect, prohibits states from returning refugees "**in any manner whatsoever**" to territories where they face a threat to their life or freedom. Returning Central American and other refugees to a country—such as Mexico—violates Article 33 as it puts refugees at risk of return to their country of persecution as well as the prohibition on returning individuals to any country where they may face persecution. The United States has also adopted the U.N. Convention against Torture (CAT), which prohibits returning a person to any country where that person would face torture. This obligation has been interpreted to prohibit a country from deporting someone who faces torture to a third country that would subsequently expel the person to a place where he or she faces torture. Returning individuals to Mexico also violates U.S. obligations under CAT as it puts returned asylum seekers at risk of expulsion by Mexico to their countries where they face torture. As outlined below, Mexican officers often return asylum seekers to their countries of persecution despite prohibitions in Mexican law, the Refugee Convention and CAT.

DECLARATION OF RENA CUTLIP-MASON CHIEF OF PROGRAMS FOR THE TAHIRIH JUSTICE CENTER

1. I, Rená Cutlip-Mason, make the following declaration based on my personal knowledge and declare under the penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct.

2. Since December 2017, I have served as the Chief of Programs of the Tahirih Justice Center (Tahirih), a nonprofit and non-partisan organization providing free legal immigration services to survivors of gender-based violence such as domestic abuse, sexual violence, and human trafficking. In my role I oversee the functioning of Tahirih's five offices across the country and the legal and social service work conducted by our staff. I am also responsible for the organization's national quality control, coordination, process management, and strategic programmatic initiatives.

3. I previously worked at Tahirih from 2004 to 2010 as Staff Attorney, Managing Attorney, and Director of Legal Services.

4. From 2010 to 2015, I served as Chief of Casework and Senior Advisor at the Office of the U.S. Citizenship and Immigration Services Ombudsman at the Department of Homeland Security. From January 2015 through May 2017, I was Counsel to the Director at the Department of Justice, Executive Office for Immigration Review (EOIR). From June 2017 to December 2017, I served as Associate General Counsel in the Office of General Counsel at EOIR.

Tahirih's Mission and Scope

5. Tahirih's mission is to provide free holistic services to immigrant women and girls fleeing violence such as rape, domestic violence, female genital mutilation/cutting, forced marriage, and human trafficking, and who seek legal immigration status under U.S. law. We thoroughly screen each service seeker and offer legal representation and social services for individuals who seek protection, including asylum, in their immigration proceedings.

6. In addition to free legal direct services and social services case management, Tahirih also advocates for its clients more broadly. Through administrative advocacy, legislative campaigns, and outreach, Tahirih aims to increase the efficiency and fairness of the asylum system.

7. Tahirih also provides training and education services to professionals in a position to assist immigrant victims of violence. We provided training to 18,479 professionals and community members, including attorneys, judges, police officers, healthcare staff, and social service providers, in 2018 alone. In addition, Tahirih provides information to immigrants through Know-Your-Rights presentations as well as asylum and other immigration clinics.

8. We execute our mission and serve clients out of our five offices across the country: San Francisco, California; the greater Washington DC area; Baltimore, Maryland; Houston, Texas; and Atlanta, Georgia.

9. Since Tahirih's founding in 1997, we have provided immigration legal services to more than 25,000 people. In 2018, we provided legal representation and

other services to 1,974 clients, and to more than 1,500 of their family members. In our San Francisco office specifically, we served 271 clients and 129 additional children and other family members.

10. More of our clients seek asylum than any other form of immigration relief, and currently, nearly 4 in 10 of our cases include asylum claims: 38% in 2017 and 38.6% in 2018. Among these, the vast majority are in a defensive posture, meaning our clients typically are seeking asylum in a removal proceeding in immigration court.

How Tahirih Works

11. Because we assist immigrant victims of violence, most of our clients have experienced significant trauma. To competently represent such clients, our attorneys provide trauma-informed professional legal services. We also work closely with social workers, psychologists, doctors, and other professionals to ensure that our clients receive the medical and psycho-social services necessary to cope with the ongoing and recurring manifestations of their trauma while they work with attorneys on their asylum claims.

12. To that end, in every office we directly employ social services professionals with expertise in working with victims of trauma. These staff work as needed with Tahirih clients to help them stabilize their day-to-day lives, promote their safety and well-being, and recover from trauma as they pursue justice in the legal system. These staff also make referrals to trusted, trained professionals in the community who can help

support our clients as they continue through the legal process of seeking asylum.

13. In addition to our legal and social services staff, Tahirih leverages its expertise by working directly in a co-counsel relationship with pro bono attorneys on some of its cases.

14. Particularly in our San Francisco office, funding for our asylum work is based, in part, on grants that require asylum-seekers to be physically present in the United States.

15. Although we have clients from all over the globe, Tahirih's clients in recent years have come primarily from Latin America and especially from Central America. In the past two years, an average of 69.1 % of our nearly 4,000 full-representation clients were from Latin America: 77% in 2017 and 61.2% in 2018. Most were from the Northern Triangle countries: in 2018, 21.4% were from Honduras, 18.6% were from El Salvador, and 8.4% from Guatemala. Based on our experience, the vast majority of these clients entered the United States across the southern border with Mexico.

16. Recently, in response to the administration's proposed asylum ban—which would have rendered migrants who cross the border between ports of entry ineligible for asylum—and concerns about vulnerable survivors at the border, Tahirih sent several staff members to Mexico. Average travel costs for two-day trips were approximately $815 per trip, giving us a basis for forecasting expenses for future trips to Mexico necessitated by the Migrant Protection Protocols (MPP), as explained below. During these trips, Tahirih staff met

with survivors of violence, provided immigration-related information, and interviewed potential clients.

Harms Inflicted by the MPP Policy

17. The policy requiring asylum seekers, and specifically our potential clients, to return to Mexico while awaiting their immigration court hearings will significantly frustrate Tahirih's mission and require us to divert significant organizational resources to address the consequences of the policy. For the reasons discussed below, Tahirih will not be able to effectively provide holistic legal services to asylum seekers fleeing gender-based violence who are subject to the new policies. We will not be able to provide the critical legal and social service support needed to assist survivors of trauma in effectively presenting their claims for protection. We will also be forced to divert significant resources to attempt to serve clients while they are in Mexico, or substantially cut or curtail our current asylum practice.

18. First, as noted, an average of 78% of our clients in the past few years were Latin American survivors, virtually all of whom would have crossed at Tijuana or other ports of entry along our southern border. And of the 349 full representation asylum cases Tahirih had open last year, 187 of them were on behalf of Latin American clients. If those Latin American clients we have historically served are now forced to remain in Mexico while their cases are pending, Tahirih's ability to provide representation will be frustrated for the following reasons:

a. *Our clients will not be able to find us.* Though the numbers of people who are eligible to seek

asylum will not change as a result of this policy, we will be severely hampered in locating those clients who need our help. Our clients in the United States are often referred to us by first responders, social services organizations, and other front line personnel who serve in the geographic areas in which we are located and with whom we have spent years building trust and collaborative relationships. Clients forced to return to Mexico will have little to no practical way to learn that Tahirih exists or that it offers holistic assistance.

b. *We will have to send staff to Mexico to even begin to provide services to survivors.* By forcing vulnerable women asylum seekers to return to Mexico pending their immigration court proceedings, MPP is frustrating Tahirih's mission of providing comprehensive services to those women. In response, Tahirih staff must now travel to Mexico to connect with women before and after they are returned, and must educate vulnerable women and girls about the policy. Tahirih has already set aside (and diverted) resources to cover trips for six people in the next few weeks to conduct interviews, provide information to potential Tahirih clients, and investigate conditions so that we can evaluate how best to reach the women we serve. Based on our average cost of $815 per staff member per trip taken in November and December, we expect to incur, at a minimum, direct costs of approximately $4,900 to cover these immediate costs, in addition to the value of employee services. All of these resources will be diverted from our

usual work, as a result of the MPP policy, and will directly affect and harm our ability to take on new cases, as we would otherwise expect to do.

c. *Significant time/costs for intakes.* Because we serve the vulnerable population of survivors of gender-based violence who are typically traumatized, our intake processes take more time and require repeated face-to-face meetings to establish trust and safety. Once that has been established, Tahirih attorneys must confirm credibility and eligibility for asylum before agreeing to representation. Just to complete the intake process would require us to send attorneys and social service providers to Mexico to meet with prospective clients for hours or days per prospective client. The time and additional travel funds would substantially increase Tahirih's costs of providing asylum representation and may make it impossible for us to continue to represent asylum seekers who are returned to Mexico under the MPP.

d. *Significantly higher travel costs and staff time to develop cases.* Once a case is accepted, trying to litigate a complex asylum case with a client located in Mexico would raise even more formidable difficulties. Again, to competently and ethically represent the vulnerable clients we serve would require multiple face-to-face meetings and consultations in order to prepare oral and written testimony, locate evidence, secure witnesses, and prepare legal arguments. The cost and time commitments for that travel and

for obtaining the resources needed in Mexico to facilitate meetings, to gather evidence, and to establish facts, would be far greater than what Tahirih currently expends and likely far beyond our capacity. Assuming a minimum of just three trips per client at a modest $815 per trip (a low estimate for complex cases), the travel costs alone to cover the number of asylum cases for Latin American survivors we currently serve would total $457 ,215 per year. And those costs do not even include the other costs necessitated by the policy, including but not limited to space to meet and confer, transportation and possibly lodging for the clients, funds for international communication, and the like. For an organization whose operating budget was approximately $9 million in 2018, those travel costs would require Tahirih to divert 5% of its operating budget to cover just the added costs of sending counsel to clients in Mexico. Likewise, at Tahirih, the average time spent in-house on a defensive asylum case has historically been approximately 73.25 hours. If travel time of getting to and from Mexico is added to each case, assuming the bare minimum of 10 hours of travel time (5 hours each way) multiplied by 3 trips per case, the average time per case would jump by 30 hours—a 40% increase. Even assuming some level of work on cases while travelling, Tahirih would still be diverting significant staff time to these cases from other Tahirih cases, as a result of the MPP.

e. *Risk Related to Practicing Law in Mexico.* Even assuming that Tahirih can cover the costs

of transporting its attorneys to Mexico to consult with clients, there are serious concerns as to whether those professionals can legally and ethically advise clients there. Many states, including California, forbid their barred attorneys from practicing law in jurisdictions "where to do so would be in violation of the regulations of that jurisdiction." *E.g.*, Ca. Rules of Professional Conduct 1-300(b). As a result of the MPP, Tahirih will have to divert substantial resources into researching and understanding Mexican law and regulation regarding the practice of law by foreign lawyers, including complicated questions of licensing, reciprocity, the effect of NAFTA (and of any replacement now being negotiated), and how all of those issues interact with lawyers' professional obligations in every state in which any Tahirih attorney or one of its many hundreds of pro bono attorneys is barred. Moreover, there appear to be criminal penalties in Mexico, including imprisonment, for foreigners who exercise a regulated profession without proper authorization.[1] And there may be visa requirements. The risk of professional sanctions at best, and a Mexican prison at worst, may deter the hardiest of attorneys in a grey legal area. If Tahirih cannot send enough qualified, trauma-informed attorneys to work with clients forced to return to Mexico as a result of the MPP, we cannot fulfill our mission.

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[1] Federal Criminal Code of Mexico, Article 250. There are similar provisions at various state levels. *See e.g.* Criminal Code for the State of Nuevo Leon, Article 255.

f. *Diversion of resources necessary to attend multiple immigration court hearings in San Diego.* Excluding bond hearings, the typical defensive asylum case involves at least two, and often four or more, court hearings. Those hearings require at least an attorney, often a psychological expert, and sometimes a country conditions expert to travel and prepare for the court appearance. When clients live in a community where Tahirih attorneys are located and are able to have their cases heard nearby—instead of being forced to stay in Mexico and litigate their cases near the border—those travel costs and time are unnecessary. Under MPP as currently implemented, individuals subjected to MPP are assigned to the San Diego immigration court, so counsel and witnesses will have to travel to San Diego for every hearing.

g. *Inability to obtain necessary expert services.* Competent representation of a survivor of gender-based violence often requires obtaining a psychological evaluation. These evaluations are especially important in asylum cases as they are relevant to credibility, to corroboration, to giving context for affect and testimony, and to establishing fear of future violence. Tahirih has a network of professionals who can provide these services in its various locations. But the MPP policy would create practically insurmountable obstacles to obtaining such evaluations for a client forced to remain in Mexico. As trauma-informed attorneys, we recognize the critical importance of in-person evaluation for trauma survivors. Therefore, we would need to transport

experts to Mexico for those evaluations, again requiring a substantial diversion of time and funds for that travel. (Few, if any, of the experts Tahirih uses would agree to evaluate a trauma survivor remotely, given their professional and ethical obligations, nor would Tahirih seek out such an evaluation.) In addition, similar foreign professional practice concerns apply to psychologists as apply to lawyers, requiring Tahirih to again divert resources to understanding Mexican laws relating to licensing and the practice of psychology by a foreigner in Mexico. In short, Tahirih's mission would be substantially frustrated by the unavailability of professional evidence necessary to establish eligibility for asylum.

19. Tahirih has also been harmed by the government's failure to promulgate a new rule or provide an opportunity for notice and comment before implementing the MPP. To meet its mission of advocating for survivors of violence, Tahirih routinely submits comments relating to rulemakings on issues that affect our clients. For example, Tahirih recently submitted comments responding to the administration's proposed asylum ban, as well as the proposed rulemaking on inadmissibility on public charge grounds. If the government had engaged in rulemaking, Tahirih would have submitted comments explaining why the MPP is unlawful and unnecessary.

20. The new policy would also jeopardize some of Tahirih's funding streams. Our San Francisco office receives grant funding from Santa Clara County to provide immigration-related legal services to vulnerable

populations. In 2018, that grant totaled more than $120,000 of available funds; Tahirih receives funds based on the case services Tahirih provides, and asylum work is done under that grant. However, the grant funds can only be used on behalf of individuals who reside in or are employed in Santa Clara County. Under MPP, fewer individuals will be permitted to enter the United States pending their removal proceedings, meaning there will be fewer potential clients for Tahirih to serve in Santa Clara County.

21. As a result of these new policies, we would have to significantly alter the way in which we provide services, and we would have to divert significant resources to do that. To protect the legal rights of the survivors we serve, we would have to essentially operate on a regular basis in a foreign country, diverting enormous resources from our current structure to develop a legal and ethical framework to do so with the professionals we employ and the pro bono lawyers with whom we work. Likewise, we would be forced to divert funds from our usual cases to cover the significantly increased expenses necessary to represent clients in Mexico. Indeed, to ethically represent our existing client load and meet the need for services in the communities where we operate, we would have to hire additional staff or contract attorneys with expertise in providing trauma-informed immigration services to survivors of violence—all of which would require resources that Tahirih does not have. We would also have to re-tool our efficient and effective pro-bono network to search out law firm lawyers willing to incur the additional time, inconvenience, and professional risk of travel to Mexico for client consultations and representations, another diversion of resources from our mission.

22. If MPP remains in effect, Tahirih would be able to handle far fewer asylum cases going forward. In addition to the added costs of serving clients in Mexico, the additional time required to assist clients subject to MPP will significantly limit the ability of Tahirih attorneys to serve additional clients in the United States. By burdening Tahirih's access to the clients we were established to serve, MPP frustrates Tahirih's core mission of providing legal services to survivors of violence and leaves them stranded in dangerous conditions in Mexico.

/s/ RENA CUTLIP-MASON
RENA CUTLIP-MASON
Executed this 12th day of Feb., 2019

DECLARATION OF ELENI WOLFE-ROUBATIS, ESQ.

1. I make this declaration based on my personal knowledge and declare under the penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct.

2. I am a U.S. licensed attorney practicing in the areas of immigration law and human rights. I am barred by the State of Illinois.

3. I am the Immigrant Rights Directing Attorney at Centro Legal de la Raza ("Centro Legal"), a position I have held since October 2013. Prior to joining Centro Legal, I was the Supervising Attorney for the Detention Project at the National Immigrant Justice Center ("NIJC") in Chicago, Illinois, and a Staff Attorney at NIJC for a combination of eight years.

4. In my current role as Immigrant Rights Directing Attorney, I oversee Centro Legal's immigration legal services, advocacy, and litigation efforts, and I supervise a team of 18 attorneys who represent detained and non-detained immigrants in removal proceedings. I have over 11 years of experience representing individuals in removal proceedings and in immigration nonprofit legal services program management.

Centro Legal's Immigration Program

5. Centro Legal is a comprehensive immigration legal services agency focused on protecting and expanding the rights of low-income people, particularly Latino immigrants and asylum seekers. Centro Legal provides legal consultations, limited-scope services, full representation, and legal referrals to over 10,000 clients an-

nually in the areas of immigration, housing, and employment. Centro Legal has offices located in Oakland, Hayward, and San Francisco, California.

6. Centro Legal's immigration practice includes comprehensive, full-service direct representation before U.S. Citizenship and Immigration Services, the immigration courts (Executive Office for Immigration Review), and federal district courts and courts of appeals; litigation; legal rights education; local and national advocacy. We specialize in detained and non-detained removal defense, with a particular focus on asylum seekers and the intersection of immigration and criminal law. Centro Legal provides legal representation for the duration of an individual's removal case before the Immigration Judge, Board of Immigration Appeals, and the Courts of Appeal. Additionally, Centro Legal has dedicated partnerships for our clients to access mental health support and expert reports, clinics, and other social service needs.

7. Centro Legal's expertise in removal defense and in working with trauma survivors has allowed us to immediately respond to the need to provide legal representation to asylum seekers in California with a focus on the East Bay and the Central Valley. Many of our asylum clients are survivors of domestic violence, family abuse, child labor, and gang violence.

8. In order to be able to quickly respond to the need for removal defense for those in immigration proceedings, Centro Legal worked with community groups to launch the Alameda County Immigration Legal and Education Partnership ("ACILEP"). Through ACILEP, we represent hundreds of recently arrived asylum seek-

ers throughout Northern California and are able to connect them to additional social services. ACILEP is in line with a core program goal of increasing access to counsel for asylum seekers in California.

9. Although most of our clients reside in the East Bay and Central Valley, Centro Legal represents asylum seekers throughout California, including asylum seekers whose cases are venued in the San Diego Immigration Court and other parts of the state. We also occasionally provide representation to asylum seekers who live in states outside of California.

10. In 2018, with 38 immigration staff (including 18 immigration attorneys and over 300 pro bono attorneys), Centro Legal conducted over 8,000 consultations and provided full scope representation in 3,238 cases. Of those cases, Centro provided full scope representation to 1,234 asylum seekers with 1,149 of them being in removal proceedings. Therefore, asylum seekers in removal proceedings accounted for 35% of our cases in the past year.

11. While Centro Legal represents clients from all parts of the world, the majority of asylum seekers we serve are from Central America. In 2018, of the 1,234 asylum seekers Centro Legal represented, 822 are from El Salvador, Honduras and Guatemala, meaning 67% of all our 2018 asylum-seeking clients are from the Northern Triangle. The vast majority entered the U.S. on land through the southern border with Mexico.

12. Centro Legal has a detailed intake process for case acceptance of defensive asylum cases (i.e., asylum cases that are being heard in immigration court). After an

initial client meeting, at a minimum we hold a second client meeting to verify information with the client. We also work on securing additional corroborating evidence and work closely with local service providers to do so.

13. Our Program further conducts bi-monthly legal orientation programs for those detained at the Mesa Verde Detention Facility in Bakersfield, California, and provides individualized consultations on available relief to over 1,000 individuals in detention per year. Similar to our non-detained case acceptance, Centro attorneys speak with clients at least twice prior to case acceptance and spend significant time gathering supporting documentation.

14. In Centro Legal's experience, for both detained and non-detained clients, our attorneys having access to clients inside the United States is critical for ethical and effective representation in asylum cases.

15. To further Centro Legal's mission of providing comprehensive and effective legal representation to asylum seekers, Centro Legal regularly assesses the needs of our target population (i.e., asylum seekers and other immigrants) and develops strategies to ensure those needs are being met.

16. For example, since 2014, in response to the dramatic increase Central American asylum seekers traveling to the U.S., Centro Legal has provided representation, consults, and legal advice to recently-arrived asylum seekers in high volume.

17. Moreover, being responsive to community needs may entail our staff traveling to our target population to provide services when they are unable to come to Centro

Legal themselves. This is a primary reason why Centro Legal prioritizes the representation of detained asylum seekers and has served as the main legal service provider at the Mesa Verde Detention Facility in Bakersfield.

18. Similarly, after recent changes in the processing of asylum seekers resulted in large numbers of asylum seekers having to wait for months in Tijuana, Mexico for their credible fear interviews, Centro Legal sent a group of attorneys and legal assistants to Tijuana to assist with providing asylum seekers with know your rights presentations and case consultations.

19. On average, per staff member the cost per day of this time in Tijuana was about an average of $630 a day.

Impact of the MPP

20. Centro Legal is included on the list of free legal services providers available to asylum seekers who are returned to Mexico pursuant to MPP.

21. Centro Legal has been retained by three individuals who are subject to the Migrant Protection Protocols ("MPP").

22. The MPP requires that we significantly restructure our program to meet the needs of asylum seekers returned to Mexico. As noted above, in 2018, 67% of our asylum in proceedings clients came from El Salvador, Honduras and Guatemala, and the vast majority entered through ports of entry on the U.S. southern border. Serving this population already takes significant resources when clients are within the U.S., and we have structured our program accordingly to be able to do so. If Central American asylum seekers are now returned

to Mexico pending their immigration proceedings, Centro Legal will not be able to continue our historically comprehensive representation of this population due to the strain this policy puts on our resources. As MPP is expanded to the entire southern border, the MPP will frustrate our core mission of providing high volume, comprehensive removal defense representation to asylum seekers because it is practically impossible for us to do so for clients who are returned to Mexico.

23. At the same time, the MPP will also undermine our mission by forcing Centro Legal to divert resources away from our representation of asylum seekers who are in the United States. As MPP expands, it will cause Centro Legal to substantially limit our representation of asylum seekers in the United States because of the additional resources required to effectively represent the increasing numbers of clients who are returned to Mexico.

24. First, forcing asylum seekers to remain in Mexico frustrates Centro Legal's ability to know of asylum seekers in need. Although asylum seekers subject to the MPP have been provided Centro Legal's contact information, even if asylum seekers have the funds to call Centro Legal long distance, they will not be able to participate in Centro's current intake process. We hold a monthly intake clinic at which new clients must come in person for an initial intake to be considered for representation. For detained clients, we conduct intake at detention facilities in person. Asylum seekers subject to the MPP cannot participate in our current intake processes. But because asylum seekers subject to the MPP have been provided with Centro Legal's contact information, in order to serve these clients, we would

have to divert resources to create a new phone intake process for those who call us from Mexico.

25. Second, the MPP requires a prohibitively expensive diversion of resources to meet and work with asylum seekers returned to in Mexico. Since 2014, Centro Legal primarily has conducted intake through Know-Your-Rights presentations and intake clinics, where we meet with asylum seekers and other immigrants in person. This work already requires the time of 15 staff members every month. Attempting to meet the needs of asylum seekers returned pursuant to the MPP will require that Centro Legal expend significant resources to travel to Mexico to conduct intakes and initial consultations.

26. Representing asylum seekers returned to Mexico also will require significant additional resources. A defensive asylum case, including intake and case preparation, requires at a minimum 5 in-person client meetings and likely more. In our experience, in person meetings with asylum seekers are required to elicit the extremely personal and often upsetting detailed information needed for asylum cases. This is challenging for all clients but even more so for traumatized asylum seekers who have to inform their attorneys of the often painful details of past harm and future fear in the course of their case preparation.

27. As noted above, the average cost of sending an attorney to Tijuana is on average $630 per day. In addition to the cost of those meetings, we will have to cover our attorneys' trips to San Diego to appear at the immigration court for master calendar and merits hearings. On average we anticipate this will cost about $300 per

day. For one client with an average of 5 client meetings and 3 court hearings, that is about $3,150 in direct additional costs.

28. In addition to these direct costs, Centro will have to absorb the loss of staff time. Having to divert so many resources from Centro Legal's already under-resourced team will likely make it impossible for us to represent a high volume of asylum seekers who are awaiting proceedings while physically in Mexico. Given the client and other commitments by existing Centro attorneys and staff, effective and ethical representation of clients in Mexico will require Centro to either hire substantial additional staff or significantly lower the number of cases of asylum seekers in the United States that we accept.

29. Third, for Centro staff to engage in ongoing work in Mexico, Centro Legal will have to use significant resources to research or hire counsel to advise us on the requirements under both U.S. and Mexican law for our attorneys to practice in Mexico.

30. Fourth, the MPP frustrates Centro Legal's ability to obtain critical psychological experts for the proper presentation of asylum claims. Such evaluations are often critical in asylum cases to assist with corroboration requirements, can be relevant to credibility determinations, often assist the judge in understanding the impact of trauma on an applicant's presentation and testimony, and speak to the required element of subjective fear. Once we have accepted an asylum case for representation, we connect our clients to our existing network of pro bono service providers for social and psychological needs. These connections are critical for clients to be able to fully participate in their case preparation and

to assist our attorneys in obtaining corroborating evidence for submission in support of our clients' asylum claims. We have established a network of pro bono providers of such services throughout Northern California and the Central Valley. Even if some of our pro bono psychologists would be willing to travel to Mexico to meet with clients, it is a significant diversion of resources for Centro Legal to cover costs for an expert's travel, lodging, meeting space and related needs for each case. Furthermore, Centro Legal would need to dedicate additional resources to work with psychologists on researching what additional licensing or visa requirements they would need to be able to conduct work in Mexico.

31. Fourth, the MPP will undermine Centro Legal's pro bono program. Centro Legal has a robust pro bono program with about 500 pro bono attorneys at about 32 national law firms. We place asylum cases for representation with pro bono teams and provide ongoing training and mentorship throughout the case. If clients are not able to be in the United States while their court hearings are pending, we will not be able to place their cases with pro bono counsel. This would frustrate our entire pro bono program which is one of the core manners in which we are able to provide a high volume of representation to asylum seekers in proceedings.

32. Finally, in addition, the resources Centro will have to divert to serving clients returned to Mexico will detract from our work with clients living in the U.S. If staff have to travel to Mexico to represent asylum seekers, that is time taken away from work that includes legal work on our current client cases, client meetings, in-

take with new potential clients in the U.S., and the education or advocacy work that our staff is also responsible for. Having to divert resources and staff time to clients in Mexico who are subject to the MPP will result in Centro Legal having to accept many fewer defensive asylum cases for representation for clients who reside within the U.S.. This is a direct frustration of Centro Legal's Immigration Program's mission to increase the number of individuals who have access to removal defense services.

Lack of Notice and Opportunity to Comment

33. Because of MPP's profound impact on Centro Legal's mission, ability to function as an organization, and resources, we would have submitted detailed comments to explain why the rule would threaten our work and harm our clients had we be given notice and an opportunity to respond. Centro Legal has previously submitted comments on the proposed rule public charge rule.

34. However, because MPP was announced through policy guidance documents, and not as a rule, there was no public comment period, and we were not able to participate in this way.

Dated: 2/16/19 /s/ ELENI WOLFE-ROUBATIS
ELENI WOLFE-ROUBATIS, ESQ.

FIRST DECLARATION OF STEPHEN W. MANNING, ESQ.

I, Stephen W. Manning, declare as follows:

1. I am an attorney licensed to practice in the State of Oregon and am a member in good standing of the bars of the U.S. District Court for the District of Oregon, the U.S. Court of Appeals for the Ninth Circuit, and the Supreme Court of the United States. I am a member of the American Immigration Lawyers Association (AILA), a former member of the Board of Governors of AILA, and a former Chair of the Oregon Chapter of AILA. I am over 18 and have personal knowledge of the facts described herein.

2. I am the Executive Director of the Innovation Law Lab ("the Law Lab"), a nonprofit that I founded to improve the legal rights and well-being of immigrants and refugees by combining technology, data analysis, and legal representation. The Law Lab seeks to advance the legal rights of immigrants and refugees in the United States, with a focus on providing and facilitating representation to asylum seekers through innovative, technology-drive models. The Law Lab operates sites in Portland, Oregon; Oakland, California; San Diego, California; San Antonio, Texas; Kansas City, Missouri; Charlotte, North Carolina; and Atlanta, Georgia.

3. In my role at the Law Lab, I led the organizing of the Artesia Pro Bono Project in 2014 and the Dilley Pro Bono Project in 2015, both of which are detention-based projects that provided universal representation to detained families in rapid removal proceedings. I designed the model for the Southeast Immigrant Freedom Initiative, a project run by the Southern Poverty Law

Center in collaboration with the Law Lab, to provide representation to adult noncitizens detained at immigration facilities in the Southeastern United States in 2017.

4. In 2015, I was awarded the AILA Founder Award as a person who had the most substantial impact on the field of immigration law or policy in relation to my work. In 2017, I was named the most innovative lawyer in North America by *Financial Times* for my work in creating these immigrant and refugee representation detention-based projects. In 2018, I was awarded the international *Child 10* prize for contributions related to my work representing the legal rights and interests of migrant children and families seeking asylum.

5. In support of our mission, the Law Lab has focused on building representation projects around the United States using its innovative model. I designed and direct the pro bono representation project called the Centers of Excellence, which provide support to noncitizens and their pro bono attorneys including legal, technical, and strategic assistance in the preparation and presentation of asylum claims in immigration proceedings. Through the Centers of Excellence, I direct representation projects in Georgia, Kansas, Missouri, North Carolina, and Oregon. For example, in Oregon, under my direction, approximately 125 *pro bono* lawyers have been trained on asylum and removal defense. I am currently expanding the pro bono Centers of Excellence to sites in Texas, New Mexico, and California.

6. Much of our work has involved designing and implementing collaborative legal representation programs for noncitizens in detained and non-detained settings across the United States. To do so, the Law Lab uses

its technology for data-modeling to estimate when and how long attorneys and other legal workers must interview, confer with, and consult with clients in order to provide critical, successful representation. These estimates provide a foundation for the design of the Law Lab's representation models, which have proven successful when measured by client outcomes: most individuals served by our programs ultimately are able to obtain the relief that they seek.

7. The Law Lab's work in Oregon, South Carolina, Kansas, and Georgia is illustrative of how our organization directs the use of its resources in order to achieve its mission. In Oregon, for example, the Law Lab recently created a representation project around the civil detention of asylum-seeking immigrant men at the Federal Detention Center in Sheridan, Oregon. I directed the use of Law Lab resources to create, implement and sustain the project. This included investment in technology resources, providing adequate staffing for representation and technical assistance, and staffing to create training systems and to provide training and support to almost 200 legal advocates and community members. Through the Oregon Center of Excellence, the Law Lab deploys its resources to train, engage and support pro bono attorneys to provide direct representation, uses its staffing resources to train and supervise community navigators to provide community-based access to legal resources for asylum-seekers and others, and uses its staffing resources to engage in supported pro se assistance for individuals queued for an attorney placement.

8. In Georgia, under my direction, the Atlanta Center of Excellence has trained more than 55 pro bono law-

yers on asylum and removal defense and dozens of individual cases have been placed for representation at the Atlanta Immigration Court and before the Department of Homeland Security (DHS) immigration component offices within the jurisdiction. We have invested time, dedicated staff, and money to managing the pro bono lawyers and the client cohort. Using dedicated staff, Law Lab has developed an innovative model for pro se assistance that provides basic legal information to asylum seekers so they can comply with the requirements of immigration court while they are queued for legal representation. In 2019, under my direction, the Law Lab organized pro se asylum workshops in Georgia, and manages regularly occurring workshops for asylum seekers in Atlanta's immigration court. In addition to organizing and managing the workshops, the Law Lab has developed comprehensive syllabi for training attorneys to provide pro se services.

9. In Kansas and Missouri, the Kansas City Center of Excellence has deployed a technology tool called the "Navigator Portal" to advocates, service providers, community organizers, local attorneys, and others in order to create a streamlined intake mechanism to associate pro bono counsel and asylum-seekers in immigration proceedings needing representation. We have invested in the technology, dedicated staff—both legal and operations staff as well as software engineers—to our programming in the jurisdiction. Like Atlanta and Oregon, we have dedicated time, money, and staff to developing training materials, presenting trainings, managing attorney on-boarding and client on-boarding in order to provide representation. The Law Lab has deployed, with staff, time, and resources, its pro se legal

services model to asylum-seekers while they seek representation for potential placement within our network. We have also designed and worked closely with local partner nonprofit organizations to launch a large-scale pro bono bond representation clearinghouse which locates detained individuals through the use of Law Lab trained hotline dispatchers or community referrals via our technology. The Law Lab then provides a basic legal orientation to detained individuals and their loved ones and works closely with volunteers to screen cases for potential pro bono placement for that individual's bond hearing. In addition to this work, in 2019, under my direction, the Law Lab is committed to launching monthly pro se asylum workshops for asylum-seekers in Kansas and Missouri as well as continuing to design and implement a decentralized Legal Orientation Program at U.S. Immigration and Customs Enforcement-contracted Missouri and Kansas county jails.

10. In North and South Carolina, the Law Lab operates the Charlotte Center of Excellence to provide pro bono placements, trainings, and support to several attorneys and clients appearing before the Charlotte Immigration Court. In South Carolina, the Law Lab has invested time and resources and dedicated substantial staff time to a pro bono representation project for individuals in the credible fear process at a detention site in Charleston.

11. From the Law Lab's Oakland, California site, the Law Lab collaborates with advocates throughout northern California to provide support for detained representation at the San Francisco Immigration Court.

12. An important component of our work that drives our mission and requires an investment is our technology resources. The Law Lab employs software engineers to maintain its technology and create software deployments that support our models across the United States.

13. The "Migrant Protection Protocols" (MPP), originally termed the "Remain in Mexico" policy, under which asylum seekers are sent back to Mexico during the pendency of their immigration proceedings, have frustrated our mission to obtain asylum and other relief for asylum seekers, and have forced us to respond by diverting the Law Lab's resources away from our core services.

14. At the time the MPP was put into place, the Law Lab's staff were already engaged in the work described above in Oregon, California, New Mexico, South Carolina, and other parts of the United States—developing service models at existing detentions centers, building relationships, attending to client needs, meeting deadlines, developing facts and case theories, and making timely contacts with witnesses and community partners. Each of these time- and resource-intensive services is required in order to meet the needs of potential and actual clients seeking asylum and in immigration proceedings in the United States.

15. Since the Department of Homeland Security began implementation of the MPP on January 25, 2019, the Law Lab's projects, and the attorneys and staff who manage those projects, have shifted their organizational focus, time, resources—*and themselves*, *physically*—to Tijuana, Mexico, far from critical, ongoing matters and clients in detention spaces across the United States.

In the time that the MPP has been in effect, the Law Lab has had a significant portion of its attorneys and staff members in Tijuana, attending to the needs of individuals who have been returned to Mexico and are in need of legal representation. The Law Lab has had to do so because the MPP makes it more difficult for asylum seekers to obtain legal representation and to successfully pursue their claims, and therefore threatens to hinder the Law Lab's ability to provide its core services.

16. This significant diversion of the Law Lab's resources, which has been necessary to counter the frustration of our mission and meet the needs of individuals returned to Mexico, vastly diminishes our operational capacity on both sides of the border.

17. Asylum seekers who have been returned to Mexico would be served in a more effective, less costly, and timelier fashion had they instead been processed and allowed into the United States for the pendency of their immigration proceedings. They would also avoid danger and the risk of harm at shelters and refugee camps in Mexico. And, had they been allowed to remain in the United States, they could leverage local contacts and resources to gather evidence, contact witnesses, and translate essential documents from a safe location and in close proximity to the Law Lab and similar programs that can provide them with the orientation and technical assistance they need. But because these asylum seekers are instead detained in Mexico, the Law Lab staff must spend precious resources coordinating those essential tasks while abroad. By shifting organizational focus to Tijuana, the Law Lab and other programs will spend more money, time, and staff resources, at greater personal risk, to assist individuals who would otherwise

have qualified for and received assistance in the United States with greater ease.

18. No duplicative or equivalent services are available to asylum seekers in Tijuana. There are relatively few U.S. attorneys who are practicing law in Tijuana and are accessible to the individuals who have been subject to the MPP, and even fewer who are capable of taking on individual asylum cases. The Law Lab and our collaborating partners in the United States provide virtually the only chance for the increasing number of asylum seekers in Tijuana to obtain legal assistance for their immigration proceedings.

19. To provide effective client intake, a majority of the Law Lab legal program staff has been required to travel abroad to Tijuana and/or provide remote legal, technical, or operational support to ensure access to legal services for the asylum seekers who have been returned. This travel, combined with the investment that has been necessary to build and operate a representation project abroad, has been extraordinarily expensive, particularly on our nonprofit organization's already limited budget. The process of deploying the Law Lab's immigration case technology in a new, remote location has been especially complicated.

20. On the ground, the Law Lab must make time- and resource-intensive arrangements to ensure staff and client safety in Tijuana, where people—including foreign and humanitarian aid workers—routinely face significant danger and violence in the streets. This includes traveling only in groups, making special travel arrangements, traveling only at certain times of the day, and spending additional resources to ensure data privacy and security in the event of theft or kidnapping.

Taking additional precautions costs money and attention, focus, and time away from the critical legal services that our clients need.

21. The necessary diversion of resources to Tijuana to respond to the MPP has had a broad, negative impact on our ability to deliver critical legal services to our existing clients, through our existing programs, which in turn impacts our effectiveness as an organization. Since Law Lab's resources have been almost entirely diverted to Mexico, legal service providers and asylum-seeking clients in California, New Mexico, Texas, Oregon, and South Carolina have seen a significant reduction in our service abilities as a direct result of the MPP.

22. The Law Lab's attorneys and legal staff are also unfamiliar with the laws of Mexico, including those laws relating to the legal status of migrants, and in particular asylum seekers who have been returned to Mexico under MPP. This makes it virtually impossible for the Law Lab to fully represent its clients without significant investment into outside legal resources, as the Law Lab's attorneys and staff are unable to advise them of any changes to their legal status in Mexico, conduct or circumstances that might give rise to a change in legal status in Mexico, or how that status impacts their pending proceedings in U.S. immigration court.

23. The challenges have only increased since February 13, 2019, when DHS began to return families seeking asylum at the San Ysidro port of entry to Mexico pursuant to the MPP—including a family with a one-year-old child. Prior to that date, DHS had only applied its new return policy to adults traveling individually. On February 14, 2019, the very next day, we be-

gan to receive referrals for families who had been returned to Mexico under the MPP. In collaboration with partners, we are reaching out to at least two families who we believe were returned to Mexico under MPP in the past week. Addressing the complex legal issues and unique vulnerabilities of asylum-seeking parents and children returned to Mexico will take significant resources and staff time.

24. In sum, every single one of Law Lab's existing programs has been and will be significantly affected by the extraordinary diversion of resources that has been necessary to respond to the MPP. The MPP has caused, and will continue to cause, significant barriers to our ability to fully and effectively serve our clients, frustrating our mission and putting at risk the likelihood that our clients will be able to obtain the relief that they seek. The Law Lab's resources have been strained, and will continue to be strained, because of the procedural and logistical barriers that the MPP has imposed on our ability to conduct our legal representation programs. The MPP operates only to put asylum seekers even further away from the critical legal services they need and the due process protections that our Constitution demands.

25. The MPP has frustrated our mission and will harm our organizational model. A primary component of our work is training pro bono attorneys to maximize the number of individuals represented in immigration proceedings. Statistics plainly indicate that a represented individual has a significantly better chance at a positive outcome in removal proceedings than an unrepresented individual. The MPP frustrates our model because by returning asylum seekers to Mexico, fewer pro bono attorneys will be able to engage in the process

of representation. The pro bono attorneys within our trained network do not have the time, skill, or capacity to represent an individual returned to Mexico who is in removal proceedings. Even though we make limited use of video or telephone communications, our model requires that attorneys provide a substantial portion of their representation through in-person face-to-face interactions. The Law Lab experience indicates that face-to-face interactions between a client and lawyer significantly improve the client outcomes and create improved efficiencies in the representation process. However, because the MPP return asylum-seekers to Mexico, our ability to recruit and retain pro bono lawyers will be compromised and the Law Lab mission and model will be frustrated.

26. Had the government engaged in notice-and-comment rulemaking implementing the MPP, the Law Lab would have submitted comments explaining why the MPP is unlawful and harmful. The Law Lab is committed to providing well-researched, data-driven public comment and legal analysis of regulations affecting our organization and our clients. For example, the Law Lab co-leads an initiative called Protect Oregon's Immigrant Families to respond to the proposed "public charge" regulation change. The Law Lab collected data, drafted sample materials, provided targeted research, and engaged in outreach to diverse organizations and individuals in promoting public knowledge and discussion about the public charge proposed rule. The Law Lab provided its own comments, and also supported individuals and organizations in submitting their own. Similarly, the Law Lab provided legal analysis and support to over 35 local organizations commenting on the proposed *Flores* rule. Law Lab staff filed their

own comments and public opposition to the proposed *Flores* regulation changes with the Federal Register. Finally, last month the Law Lab filed a comment, along with other organizations, on the asylum ban rule, *Aliens Subject to a Bar on Entry Under Certain Presidential Proclamations*.

I hereby declare under the penalty of perjury pursuant to the laws of the United States that the above is true and correct to the best of my knowledge.

EXECUTED this 18th day of Feb. 2019.

/s/ STEPHEN W. MANNING
STEPHEN W. MANNING, OSB # 013373

DECLARATION OF NICOLE RAMOS

I, Nicole Ramos, declare under the penalty of perjury pursuant to 28 U.S.C. § 1746:

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

2. I am a U.S. licensed attorney practicing in the areas of immigration law and human rights. I am barred by the State of New York, and I am a former Assistant Federal Public Defender. I am over the age of 18.

3. I am the Project Director for the Border Rights Project of Al Otro Lado, a nonprofit legal services organization based in Los Angeles. Al Otro Lado's mission is to provide screening, advocacy, and legal representation for individuals in asylum and other immigration proceedings, to seek redress for civil rights violations, and to assist deportees, refugees, and other indigent immigrants with legal and social service needs.

4. Through its Border Rights Project, Al Otro Lado hosts legal orientation workshops in migrant shelters in Tijuana, Mexico, and provides legal representation to detained asylum seekers in Southern California. As part of this representation, our staff accompany some asylum seekers who wish to present themselves to Customs and Border Protection (CBP) officers at the San Ysidro Port of Entry and represent them at their credible or reasonable fear inter-

views before asylum officers with U.S. Citizenship and Immigration Services (USCIS). To expand our capacity, Al Otro Lado frequently recruits and trains pro bono attorneys to assist with legal orientation workshops in Tijuana migrant shelters, border accompaniment, and credible/reasonable fear representation. We also work with asylum seekers and other community advocates to document human rights violations by both U.S. and Mexican immigration authorities against asylum seekers.

5. Al Otro Lado routinely provides representation to individuals, including asylum seekers, who are in Tijuana. On average, Al Otro Lado and our volunteer attorneys provide representation to dozens of individuals per year in their credible or reasonable fear interviews. Through our shelter clinics, we help an additional 1,000 people per year prepare for their credible fear interviews. If an individual becomes eligible for bond or parole after passing a credible or reasonable fear interview, Al Otro Lado often provides representation in bond proceedings or through a written request for parole. Al Otro Lado has an impressive success rate on bond, with the vast majority of clients represented securing release from detention. If an individual remains in the Los Angeles area following release, our Los Angeles office continues to represent him or her in removal proceedings before the Los Angeles immigration court. If the client moves to another jurisdiction, Al Otro Lado makes diligent efforts to connect the client with local pro bono counsel.

6. Al Otro Lado's Los Angeles office also provides legal representation and other advocacy for chronically and terminally ill immigrants. This includes filing affirmative asylum applications with USCIS, assisting them in seeking other types of immigration relief, and helping them replace lawful permanent resident cards that have been lost.

7. The implementation of the Remain in Mexico policy has stretched Al Otro Lado's capacity beyond the breaking point. Our already-strained staff has been forced to pull their attention from integral projects to identify and respond to the urgent needs of asylum seekers indefinitely stranded in Mexico.

Processing of Asylum Seekers at the Southern Border

8. In December 2017, the Assistant Port Director for the San Ysidro Port of Entry, Sally Carrillo, informed me that CBP had capacity to process up to 319 people per day. Since that time, the port of entry underwent construction for an expansion. However, since November 2018, CBP has been processing only an average of 30-50 people per day. Individuals who want to seek asylum must add their names to a waiting list ("The List") that is managed by another asylum seeker, the "list supervisor," under the direction of Grupo Beta, a division of the Mexican Instituto Nacional de Migración (INM). Only asylum seekers whose names are on the list are able to present themselves at the Port of Entry, but not all migrants have access to The List. Asylum seekers are assigned a number and told to

come back when their number is called to present themselves. There is no easily-accessible source of information for estimating when certain numbers will be called.

9. Our office has had significant contact with certain individuals who have been involved in managing The List. Based on conversations with INM officials and statement in the Mexican press, we understand that CBP officials inform Grupos Beta on a daily basis of the number of individuals they can process that day. Grupos Beta then gives that number to the list supervisor. Every morning in Plaza Chaparral, which is outside the Pedestrian West bridge at the San Ysidro Port of Entry, the list supervisor announces the number of people who can be processed that day and then begins to read numbers, along with the ten names attached to each of those numbers. For instance, if CBP has indicated that they can process 20 people, the list supervisor will read names until 20 people come forward.

10. The list manager does not progress through the numbers in a manner that makes it possible to predict when a number will be called because daily capacity changes. In addition, Al Otro Lado is aware of bribery to get names moved up on The List. In order to determine what number is up, individuals must travel to the San Ysidro Port of Entry to hear the names and numbers read.

11. If individuals are not at the Port of Entry when their numbers are called, they miss their opportunity and they must receive a new number at the bottom of the list. At this time, Al Otro Lado estimates that over 21,000[1] names have been on The List since its inception and that the waitlist currently contains approximately 2,400 names.

12. At present, the estimated time that individuals are waiting for their numbers to be called is between four and six weeks.

13. On January 28, 2019, the government began implementing the Remain in Mexico plan, or "Migration Protection Protocols" ("MPP"). As before, individuals whose numbers are called are able to approach the port of entry to seek asylum. However, under MPP, some of the individuals processed by CBP receive a Notice to Appear ("NTA") for immigration proceedings in San Diego, and are returned to Mexico to await their hearing dates.

Harm to Al Otro Lado

14. The implementation of Remain in Mexico has expanded Al Otro Lado's workload exponentially. Over the past two years, Al Otro Lado staff and volunteers have spent countless hours attending to the emotional and mental health needs of individuals who have been waiting in Mexico for their numbers to be called. These needs will only multiply as individuals are forced to return

[1] This includes individuals who have added their names multiple times because they missed the day when their numbers were called.

to Tijuana for the duration of their immigration court proceedings because the affected population will expand.

15. Al Otro Lado is well-known among asylum seekers in Tijuana as a source of information and support. As individuals are returned to Mexico through MPP, they have begun coming directly to our office to seek assistance, with the result that the number of requests for our assistance has increased. Individuals who have been subject to MPP generally do not know what has happened to them and often report to volunteers that they have been deported. As a result, AOL staff or volunteers must take time away from other critical tasks to review their documents, answer their questions, interview them regarding their interactions with U.S. immigration officers and the conditions of detention they endured, and assess their underlying asylum claims for placement with pro bono attorneys.

16. The implementation of MPP has required us to overhaul our workshop programming. We routinely conduct workshops in our office to explain the credible fear process, the possibility of family separation by DHS, harsh conditions of detention in CBP and ICE custody, and the likelihood of long-term detention in the United States. The workshop information is reinforced through videos, a mobile-friendly PowerPoint, and printed materials. Since MPP started, we have had to update the workshop curriculum to incorporate information regarding this new process, including the requirement that asylum seekers must

affirmatively state a fear of persecution Mexico in order to obtain a screening interview that might preclude their return to Mexico. This has required us to update our volunteer training and know-your-rights presentations, and overhaul our training materials, a process which is still underway.

17. MPP has been a source of confusion for both our volunteers and the migrants in our workshops. The questions are often complicated and require significant staff time to ensure that volunteers have a sufficient grasp of the issues to provide an informed response.

18. As the only immigration legal service providers in Tijuana, it is AOL's responsibility to ensure that individuals returned under MPP have access to at least basic orientation information about asylum, immigration court proceedings, and MPP itself. For this reason, we are endeavoring to conduct intakes with all the individuals who have been returned under the MPP. Every day, we send between six and ten volunteers to the port of entry to assist individuals being returned. Due to the sensitivity of those interactions, AOL staff spend precious time carefully selecting volunteers for this task and providing those volunteers with training on trauma-informed interviewing. This takes take away from other important work.

19. Since the Remain in Mexico policy was implemented, Al Otro Lado has been forced to divert significant staff resources to helping returned migrants in Tijuana to find safe housing and

providing emotional support. At times, staff are unable to respond to requests for legal advice and other information because they are focusing on meeting the urgent security and psychological needs of many vulnerable asylum seekers who are in great danger in Mexico.

20. Al Otro Lado also sends volunteers to Plaza Chaparral in the mornings when the list manager reads the names and numbers. Because many individuals waiting to seek asylum are unfamiliar with MPP, we attempt to speak with them before they are taken to the port of entry to ensure that they know their rights. This requires our staff time to train the volunteers to have rapid conversations about MPP with individuals whose numbers are called.

21. Most returned asylum seekers will not be able to retain legal counsel from Mexico because they do not have funds to make international calls or regular internet access, which would also make ongoing attorney-client communication very difficult, if not impossible. Receiving confidential attorney-client correspondence at a public internet cafe also presents security risks. For example, if members of transnational criminal organizations intercept such documents, the asylum seeker could be at even greater risk. Moreover, U.S.-based private attorneys generally do not have the time or resources to travel to Tijuana to meet with their clients and prepare them for their hearings in immigration court.

22. For these reasons, we are beginning to develop workshops to provide *pro se* support to those

who do not understand how to complete the asylum application, which is written entirely in English. This will require our staff efforts to create a new curriculum and volunteer training materials. It will also pull volunteer resources away from outreach efforts and general know-your-rights workshops. In order to accommodate the large groups we anticipate, we may have to stop providing any other services on certain days of the week.

23. As a result of our ongoing emergency response to MPP, AOL staff have been unable to complete work for existing clients in removal proceedings. Because of volunteers' frequent need to consult with staff regarding difficult questions raised during workshops or other interactions with asylum seekers, staff are constantly interrupted while attempting to do case work. I have personally struggled enormously to finish briefs for clients with upcoming hearings.

24. AOL is currently unable to take on any new clients due not only to lack of staff resources but also to the lack of space for confidential client meetings. Meetings with returned asylum seekers, and those who may be returned, have taken what was left of our available office space. To the extent that nonprofit legal service providers are willing to provide representation to returned asylum seekers in Tijuana, our office will become even more overcrowded.

25. Al Otro Lado has historically attempted to play asylum cases with pro bono attorneys for clients we are unable to represent. However, most

private attorneys providing pro bono support do not have the time or resources to come to Tijuana or other parts of Mexico to meet with returned asylum seekers.

26. If MPP continues and the population of asylum seekers in Tijuana continues to grow, our five staff members in our Los Angeles office will have to start making regular trips to Tijuana to provide support for workshops, assist in monitoring the port of entry, and undertake individual case work as it arises. This will divert resources from the services Al Otro Lado provides to chronically and terminally ill immigrants in Los Angeles and prevent us from fulfilling a critical part of our mission.

Dangers in Mexico for Asylum Seekers

27. Individuals who arrive at the southern border to seek asylum in the United States are fleeing some of the most dangerous countries in the world.

28. Although asylum seekers come to the southern border from all over the world, the vast majority come from El Salvador, Guatemala, and Honduras, an area often referred to as Central America's "Northern Triangle." A 2015 UNHCR report described those countries as having "epidemic levels of violence."[2] Their murder rates

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[2] UNHCR, *Women on the Run: First-Hand Accounts of Refugees Fleeing El Salvador, Guatemala, Honduras, and Mexico*, (October 26, 2015), https://www.unher.org/en-us/publications/operations/5630f24c6women-run.html ("*Women of the Run*").

register as among the highest in the world.[3] The degree of violence suffered by people in the Northern Triangle has been compared to that experienced in war zones.[4]

29. Those who leave the Northern Triangle often are running from life-or-death situations, leaving everything behind to make a dangerous journey. In particular, violence against women by criminal armed groups has escalated dramatically, and home governments have been unable or unwilling to provide effective protection.[5]

30. Asylum seekers fleeing their home countries in Central America face an arduous journey to the United States, involving a high risk of violence, including sexual assault, along the way.[6] In 2015 and 2016, 68% of migrants from the North-

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[3] The Wall Street Journal, "Why are People Fleeing Central America? A New Breed of Gangs is Taking Over," (Nov. 2, 2018) ("With the highest homicide rate of all countries in the world, El Salvador is a nation held hostage.": NBC News, "Amid political unrest, violence in Honduras, TPS holders in U.S. worry about their fate," (Feb. 22, 2018). https://www.nbcnews.com/news/latino/amid-political-unrest-violence-honduras-tps-holders-u-s-worry-n850241 ("Honduras is among the countries with the world's highest rates for murder, violence and corruption").

[4] Médicins San Frontiéres (Doctors Without Borders), *Forced to Flee Central America's Northern Triangle: A Neglected Humanitarian Crisis*, (May 2017, https://www.msf.org/sites/msf.org/files/msf_forced-to-flee-central-americas-northern-triangel_e.pdf ("*Forced to Flee*").

[5] *See, e.g., Women on the Run* at 16, 23.

[6] *Forced to Flee* at 11, *Women on the Run* at 43-45.

ern Triangle region experienced violence, including sexual assault, on their journeys through Central America and Mexico.[7]

31. Although those traveling by land cross through Mexico before reaching the United States, for many, remaining in Mexico is not an option. Rates of violence in Mexico have been increasing as of late; 2018 was the deadliest year on record, surpassing the previous record number of homicides in 2017 by 15%.[8]

32. Migrants and refugees in Mexico are at risk of kidnapping, disappearance, trafficking, and sexual assault, among other harms.[9] Lesbian, gay, bisexual, and transgender persons, as well as people with indigenous heritage, regularly have been subject to persecution in Mexico.[10] Perpetrators of violence against migrants "include[]

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[7] *Forced to Flee* at 11.

[8] *See* CNN, "Mexico sets record with more than 33,000 homicides in 2018" (Jan. 22, 2019) https://www.cnn.com/2019/01/22/americas/mexico-murder-rate-2018/index.html (citing to a report released by Mexico's Secretariat of Security and Citizen Protection).

[9] *Human Rights First, Mexico: Still Not Safe for Migrants and Refugees* (Mar. 2018), https://www.humanrightsfirst.org/sites/ default/files/Mexico_Not_Safe.pdf ("Mexico: Still Not Safe") at 1.

[10] The San Diego Union Tribune, "Should asylum seekers heading to the U.S. stay in Mexico?" (May 21, 2018), http://www.sandiegounion tribune.com/news/immigration/sd-me-safe-country-20180518-story.html.

members of gangs and other criminal organizations, as well as members of the Mexican security forces."[11]

33. Mexico's northern border region is particularly plagued with crime and violence, presenting renewed dangers for asylum seekers just as they approach their destinations.[12]

34. In my experience, a significant proportion of migrants coming to the southern border have credible claims to asylum.

35. According to the United Nations High Commissioner for Refugees, in fiscal year 2015, 82 percent of women from El Salvador, Guatemala,

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[11] *Forced to Flee* at 5; *see also* Refugees Int'l, *Closing Off Asylum at the U.S.-Mexico Border* 9 (2018), https://static1.squrespace.com/static/506c8eale4b01d9450dd53f5/t/5b86d0a18825lbbfd495ca3b/1535561890743/U.S.-Mexico+Border+Report+August+2018+FINAL.pdf (explaining that when crossing Mexico, migrants suffer "abuses at the hands of organized crime, exploitative smugglers, and predatory state security and police").

[12] *See Mexico Travel Advisory,* (reporting violent crime and an increase in homicide in the state of Baja California (encompassing border towns Tijuana and Mexicali) compared to 2016; widespread violent crime and gang activity in the state of Chihuahua (encompassing border town Ciudad Juarez); widespread violent crime and limited law enforcement capacity to prevent and respond to crime in the state of Coahuila (particularly in the northern part of the state); that the state of Sonora (encompassing border town Nogales) is a key region in the international and human trafficking trades; and common violent crime, including homicide, armed robbery, carjacking, kidnapping, extortion, and sexual assault in the state of Tamaulipas (encompassing border towns Matamoros, Nuevo Laredo, and Reynosa), where law enforcement capacity to respond to violence is limited throughout the state).

Honduras, and Mexico who were subject to a credible fear screening by an asylum officer were found to have a significant possibility of establishing eligibility for asylum or protection under the Convention Against Torture.[13]

36. Between fiscal years 2014 and 2016, 8,848 people from El Salvador, Guatemala, and Honduras were granted asylum affirmatively, and 3,502 people from those countries were granted asylum defensively.[14]

37. Mexico is not a safe place for asylum seekers to wait for their hearings. The region of Mexico near the border with the United States is in a particularly violent area with limited law enforcement capacity.[15] Tijuana, in particular, is experiencing record levels of violence; 2017 saw the highest annual number of homicides ever recorded,[16] with a murder rate higher than many

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[13] *Women on the Run* at 2, n.2.

[14] U.S. Dep't of Homeland Security, Table 17. Individuals Granted Asylum Affirmative By Region and Country of Nationality: Fiscal Years 2014 to 2016, https://www.dhs.gov/immigration-statistics/yearbook/2016/table17; U.S. Dep't of Homeland Secutiy, Table 19. Individuals Granted Asylum Defensively By Region and Country of Nationality: Fiscal Years 2014 to 2016, https://www.dhs.gov/immigration-statistics /yearbook/2016/table19.

[15] U.S. Dep't of State, *Mexico Travel Advisory* (Aug. 22, 2018), https://travel.state.gov/content/travel/en/traveladvisories/mexico-travel-advisory.html.

[16] San Diego Union Tribune, *Control for street drug trade pushes Tijuana to grisly new records: 1,744 homicides* (Jan. 14, 2018), https://www.sandiegouniontribune.com/news/border-baja-california/sd-me-homicides-tijuana-20180102-story.html.

Central American cities from which asylum seekers are fleeing.[17] The numbers were even higher in 2018: there were more than 2,500 killings in Tijuana last year.[18] The marked increase in homicides in recent years has been stark, jumping from 493 in 2014 to 670 in 2015, 910 in 2016, 1,744 in 2017, and the new record, 2,506 in 2018.[19]

38. Asylum seekers turned back from a port of entry have been kidnapped and held ransom by cartel members waiting outside.[20] Even shelters outside ports of entry are not always safe, as cartels often infiltrate them.[21] Asylum seekers waiting in Tijuana shelters are subject to threats and intimidation by transnational criminal groups who seek to coerce them into paying fees to cross between ports of entry. Over the past few months, Al Otro Lado has spoken with several families who were subject to such coercion.

39. Particularly vulnerable are LGBT asylum seekers, children and families with young children,

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[17] In 2017, Tijuana was the 5th most dangerous city in the world. Business Insider, *These were the 50 most violent cities in the world in 2017* (March 6, 2018), https://www.businessinsider.com/most-violent-cities-in-the-world-2018-3.

[18] Sandra Dribble, San Diego Tribune, *Drug trade rivalries pushed Tijuana homicides to new record in 2018* (Jan 2, 2019), https://www.sandiegouniontribune.com/news/border-baja-california/sd-me-homicides-tijuana-record-20181226-story.html.

[19] *Id.*

[20] Human Rights First, *Crossing the Line: U.S. Border Agents Illegally Reject Asylum Seekers*, (May 2017), https://www.humanrightsfirst.org/sites/default/files/hrf-crossing-the-line-report pdf.

[21] *Id.* at 17.

young women, those seeking asylum based on political activism in their home countries, and witnesses to crimes committed by transnational criminal organizations.[22] Delays in processing asylum seekers can be life-threatening, as individuals are often vulnerable to violence and exploitation while they wait to be processed.[23] Al Otro Lado estimates that 75% of the individuals we have interviewed have expressed fear of immediate harm in Mexico.

40. LGBT asylum seekers are regularly threatened and attacked. In May 2018, an unknown person attempted to burn down a shelter where a group of LGBT asylum seekers, including several unaccompanied LGBT youth, were known to be staying and blocked the door to prevent those inside from escaping. On another occasion, armed community members pointed a gun at the LGBT shelter residents while shouting "we do not want any faggots here." In addition, a dual U.S.-Mexican national who was helping LGBT

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[22] *See* Human Rights First, *Is Mexico Safe for Refugees and Asylum Seekers?* 11 (2018), https://www.humanrightsfirst.org/sites/default/files/MEXICO_ FACT_SHEET_PDF.pdf ("Gay men and transgender women, for example, flee discrimination, beatings, attacks, and a lack of protection by police in Mexico.").

[23] *See See Blockading Asylum Seekers at POE.* ("When asylum-seekers are turned away by US authorities, they return to areas around the Mexican-side POEs. These are characteristically busy zones of businesses, restaurants, bars, discos, drug sellers, hustlers, and commercial sex work, although each border port has its own characteristics. They are areas that increase the vulnerability and exploitability of non-Mexican migrants with little knowledge and few resources.").

asylum seekers access the wait list near the San Ysidro port of entry was beaten unconscious by unknown male assailants and had to be transported to San Diego to receive urgent medical care.

41. Young women in Tijuana are at high risk of being trafficked into the sex work industry. Many cannot find jobs, even if they have work authorization from the Mexican government. Numerous teenagers have been lured by older men or transnational criminal groups in Tijuana into clubs where they waitress, dance, and eventually are forced to sell sex.

42. Many cannot find jobs despite being theoretically eligible for employment. Even when individuals waiting in Mexico are able to work to earn money, they are doing so at their own risk. Recently, twenty migrants were kidnapped outside Benito Juarez Sports Complex. Despite promises of paid work, those individuals were transported to another state where they were held against their will for several days. During this period, they were forced to clean blood and other biological waste from a warehouse. They finally escaped through a window and made their way to a shelter, where many members of the group were recaptured. The kidnappers then sought to extort money from the victims' families.

43. Asylum seekers frequently inform us that their persecutors have found them in Tijuana, and we do whatever we can to help them find safe places

to stay. Victims of domestic violence often report that their abusive partners have traveled to Tijuana from both Central America and other parts of Mexico, and are looking for them in the limited number of shelters. Those who have fled targeted gang threats or other harm similarly report that their persecutors have located them in Tijuana.

44. Other migrants are held for ransom by transnational criminal groups near the border some are kidnapped when they attempt to cross without paying bribes. I have personally spoken with asylum seekers who were kidnapped, raped, or beaten by transnational criminal groups operating on or near the border. In at least two cases, asylum seekers were forced to watch as members of these groups raped and killed other migrants.

45. If individuals are forced to remain in Mexico for longer periods of time, their needs will increase as their security decreases. Al Otro Lado's goal is to provide legal services and support that accompanies asylum seekers from the time they arrive in Tijuana, through presentation at the port of entry, detention and resettlement with family after release, to the culmination of their legal proceedings in the United States. Remain in Mexico forces our resources from that progressive model to a state of emergency in Tijuana.

46. Al Otro Lado has also been harmed by the government's failure to promulgate a new rule or provide an opportunity for notice and comment

before implementing the MPP. If the government had engaged in rulemaking, Al Otro Lado would have submitted comments explaining why the MPP is unlawful and unnecessary.

/s/ NICOLE RAMOS
NICOLE RAMOS

Executed on this [13] day of Feb., 2019.

DECLARATION OF LAURA SANCHEZ, ESQ.

1. I, Laura Victoria Sanchez, make the following declaration based on my personal knowledge and declare under the penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct.

2. Since 2010 I have served as the legal director of the Immigration Legal Program at the Central American Resource Center of Northern California (CARECEN of Northern CA), a nonprofit organization that provides pro bono and low bono immigration services to primarily low-income, immigrant, Latino, and monolingual Spanish speakers.

3. CARECEN of Northern CA is incorporated in and has its principal office in San Francisco, California.

4. In my role I oversee the functioning of the Immigration Legal Program. I am responsible for the program's coordination, process management, and strategic programmatic initiatives. Lastly, I also have my own caseload that consists of affirmative and defensive immigration cases.

5. I previously worked at CARECEN from 2008 to 2010 as a staff attorney.

CARECEN of Northern CA's Mission and Scope

6. CARECEN empowers and responds to the needs, rights, and aspirations of Latino, immigrant, and underresourced families in the San Francisco Bay Area—building leadership to pursue self-determination and justice.

7. Rooted in its cultural strengths and inspired by the Central American justice struggles, CARECEN envisions our diverse immigrant community as thriving:

where families prosper, build effective community institutions, and participate confidently in civic life.

8. CARECEN was founded in 1986 by Central American refugees seeking asylum and other immigration legal services. Since then, we have provided legal counseling and *pro se* asylum application assistance to thousands of individuals, while providing direct representation to hundreds. A central part of CARECEN's mission is to provide high-quality legal counseling, representation, and wrap-around social services, such as case management, mental health therapy, and peer education, to asylum seekers.

9. The vast majority of the individuals we serve entered the United States through the Southern border by foot. A significant portion of our client population therefore will be affected by the Migrant Protection Protocols (MPP).

10. Over the past thirty years, CARECEN has grown to become a pillar multi-service and advocacy organization, with a transnational vision that aims to impact the root causes of migration. Our Immigration Legal Program provides full-scope legal representation, legal counseling, deportation defense, and form processing assistance. Through our Family Wellness & Health Promotion, families participate in intensive case management (crisis intervention) and are connected to other needed services such as housing and employment training. Our community health promotion program offers health education workshops, parent-child activities, and other health content that we develop in partnership with the University of California, San Francisco to provide families health science knowledge in a culturally in-

formed manner and improve health outcomes for Latinos in Northern California. Our Second Chance Youth Program & Tattoo Removal Clinic, in partnership with San Francisco's Department of Public Health, targets in-risk/system touched youth for wrap-around and intensive case management, stigma/violence-related tattoo removal services, summer programming, and leadership development.

11. In addition to providing a comprehensive set of social services, CARECEN advocates at the local, state, national, and international level for immigrant rights, Latino health, and juvenile justice. All of CARECEN's programs are bilingual and informed by cultural, scientific, and community needs. We foster leadership, civic engagement and community building to support the healthy integration of immigrants into the socioeconomic fabric of their new communities.

12. We believe that our communities and migrants from around the globe are often forced to migrate due to structural and systemic challenges that need to be addressed in a comprehensive and sustained manner so families and individuals can live and thrive in their own countries first, and so migration can become a choice rather than a necessity.

CARECEN'S Immigration Legal Program

13. In 2018 our Immigration Legal Program served 2,196 individuals, with close to half of these program participants receiving legal document processing support and 146 participants receiving legal representation before U.S. Citizenship and Immigration Services and/or the Executive Office for Immigration Review. This

is a volume of work we are equipped to carry successfully with our team of five immigration attorneys, five paralegals, one legal assistant, interns, and referrals to our collaborative partners, pro-bono attorneys, and low-bono attorneys. Each attorney doing deportation defense cases can carry an average of 30-40 active cases at any one time, while attorneys focusing primarily on affirmative representation can carry far larger caseloads.

14. Moreover, our attorneys participate on a regular basis in the Attorney of the Day Program (AOD) at the San Francisco Immigration Court for the non-detained and detained docket. As part of AOD, CARECEN attorneys offer pro bono friend of the court services to unrepresented clients, who include children, families, and adults.

15. As part of our 30 years of experience we have developed a proven track record and a collaborative approach to capacity building.

16. CARECEN is the fiscal and grant compliance lead for the San Francisco Immigration Legal Defense Collaborative (SFILDC), a partnership with the San Francisco Mayor's Office born in 2014 that has connected over 1,050 cases to community-based attorneys. This collaboration includes ten community-based organizations, the University of San Francisco, the Immigrant Legal Referral Center (ILRC), the Center for Gender and Refugee Studies, the Bar Association of San Francisco (BASF).

17. At CARECEN, our best practices include referring clients in need of services beyond legal support to the other social service programs within CARECEN described above. These programs are staffed with case

managers, mental health specialists, peer educators, and health promoters. These programs combine leadership development and community building to reduce isolation, stabilize families, and assist them in navigating systems with the goal of eliminating barriers to self-sufficiency.

Harms Inflicted by the Migrant Protection Protocols (MPP)

18. CARECEN of Northern CA is on the list of legal services providers that the federal government is distributing to migrants who are returned to Mexico pending their immigration court proceedings pursuant to MPP.

19. CARECEN has recently been retained as counsel by an asylum seeker returned to Mexico pursuant to the MPP, and anticipates representing additional asylum seekers subject to the MPP going forward.

20. The MPP will significantly frustrate CARECEN's mission of providing high-quality legal counseling, representation, and wrap-around services to asylum seekers and will require us to divert significant organizational resources to address the consequences of the policy. For the reasons discussed below, CARECEN will not be able to effectively provide high quality legal and social services to asylum seekers who are subject to the MPP. We will not be able to effectively present their claims for protection because we will be unable to provide the same critical legal and social service support needed to assist survivors of trauma that we provide our clients in the United States. CARECEN will also be forced to divert significant resources away from our core services for asylum seekers in the United States to

attempt to serve clients while they are in Mexico, or substantially cut or curtail our current asylum practice. Practically speaking, our legal program is neither structured nor envisioned to represent asylum clients residing in Mexico, and will require significant changes and the additional expenditures to do so. These changes will impinge on the core immigration legal and social services that we currently provide our clients. The policy will also make it more difficult for our potential clients, who will be stuck in Mexico pursuant to the policy, to gain access to and participate in the organization's core services, thereby impairing CARECEN's ability to function.

A. Risks Related to Practicing Law in Mexico.

21. As an initial matter, CARECEN will have to research whether our attorneys can legally and ethically advise clients residing Mexico. Many states, including California, forbid their barred attorneys from practicing law in jurisdictions "where to do so would be in violation of the regulations of that jurisdiction." *E.g.,* Ca. Rules of Professional Conduct 1-300(b). As a result of the MPP, CARECEN will have to divert resources into researching and understanding Mexican law and regulations regarding the practice of law by foreign lawyers, and how all of those issues interact with lawyers' professional obligations in every state in which any CARECEN attorney is barred. Moreover, there may be visa requirements that CARECEN will need to research and navigate to serve its clients subject to the MPP.

B. None of CARECEN's Existing Grants Will Cover Legal Services to Asylum Seekers Subject to the MPP.

22. None of the existing grants that fund CARECEN's Immigration Legal Program will pay for the services we provide asylum seekers subject to the MPP. The program is funded by various grants through the City of San Francisco and State of California, both of which require that the client reside or have previously resided in a California county. Because MPP forces asylum seekers to remain in Mexico pending their removal proceedings, CARECEN cannot use its grant money to provide legal services for this population.

23. Therefore, taking on asylum cases under MPP will require CARECEN to provide services that we do not have funding for. As a result, the costs of providing services to MPP clients—which, as explained below, are significant—will come out of CARECEN's general operating budget. But because we received no advance notice of the rollout of the MPP, we have not budgeted to provide these services. Thus, these additional costs will undermine CARECEN's ability to maintain its various legal and social service programs.

24. In addition, the policy jeopardizes CARECEN's ability to secure these grants moving forward, for two reasons. First, the number of potential clients who can satisfy the residency requirements of CARECEN's funders will decline under the policy, as more asylum seekers will be forced to wait in Mexico and so will not reside in California. Second, CARECEN strives to and has a proven track record of meeting our grant deliverables. However, if we are forced to redirect legal services to represent individuals in Mexico because of MPP, thus

representing fewer clients overall, this will put in jeopardy our ability to meet our grant deliverables for clients who reside in California.

C. CARECEN will be required to create a new consultation system for asylum seekers returned to Mexico.

25. The MPP will require that CARECEN expend significant resources to change its intake and consultation system to accommodate asylum seekers who have been returned to Mexico.

26. As part of carrying out its mission, CARECEN guarantees a consultation to every person who contacts our office in search of assistance that falls within our areas of expertise. CARECEN conducts its initial consultations in person because we have determined that in-person consultations are the most effective. The vast majority of our asylum clients come through our consultation walk-in hours. We have set hours every day for in-person consultations, Monday through Friday, from 9:00am to 11:00am. During these sessions we screen for eligibility and issue spot for any potential immigration options, including asylum and other forms of immigration relief, through speaking directly with clients and their families, and reviewing their documentation. Depending on capacity, CARECEN may consider their case for representation or at minimum will give a referral to other community-based organizations or the private bar.

27. Because it is not our practice to provide consultations over the phone, when we receive a request for assistance from an individual in a state other than California, we look up the legal services providers in their state

and refer them. However, because we are unaware of comparable legal service providers in Mexico to whom we can refer asylum seekers subject to MPP, we will have to provide them with consultations ourselves.

28. CARECEN will need to restructure how we conduct consultations when asylum seekers who are returned to Mexico call our office for legal assistance. These calls will likely not happen during our consult hours, which are not listed on the list of legal services providers being given distributed to individuals returned pursuant to the MPP, and therefore will require additional staff time outside those time periods. The logistics and additional staff time required to have a person available by phone to respond to consultations with individuals subject to the MPP will be burdensome for staff and impinge on their time to work on their cases and provide other legal services.

29. Additionally, we will incur additional financial costs by responding to these consults. We will have to financially cover the long distance charges or fees from collect calls. The additional costs will also include sending faxes or postal mail to individuals in Mexico. During our in-person consultation process, it is common for our staff to give out informational material like handouts on different immigration programs, lists of other non-profit providers, and know your rights flyers to individuals seeking our services. In order to adequately serve these individuals, we would do the same for those residing in Mexico.

30. Moreover, we will be limited in our ability to provide the same quality of work in our consultations. Conducting phone consultations severely limits the intake process, the review of documentation, translating and

interpreting documentation, and building trust with the individual.

D. The MPP will impose significant burdens and financial costs on CARECEN and frustrate its mission of providing high-quality, wrap-around services to asylum seekers.

31. The majority of CARECEN's clients in removal proceedings entered the United States at the southern border. Because of the MPP, a large portion of our removal-defense client population will no longer reside in California pending their immigration court proceedings. The MPP thus will frustrate our ability to connect with new clients via our normal walk-in consultation process described above, and will force us to reorient to serving clients in Mexico.

32. Representing asylum seekers in Mexico will impose a significant financial, administrative, and other burdens on our organization, and force us to divert resources from our existing legal services program.

33. Many of the asylum seekers subject to the MPP lack the funds to call our offices or send us their documentation from abroad. We therefore likely will need to set up a new system where individuals returned to Mexico can call us collect and email or fax us their documentation free of charge, which will impose new financial costs on our organization that we are not covered by our existing budget.

34. In order to represent asylum seekers effectively, our staff also will be required to travel to Mexico to meet with our clients. However, CARECEN does not have budgetary means to send staff on a regular basis to Mexico. For example, in the last 12 months CARECEN

has sent a delegation of staff twice to Tijuana, Mexico in response to recent changes in policies for processing asylum applicants at the Mexico/United States border. During these trips, CARECEN staff met with survivors of violence, provided immigration-related information, conducted legal observation, and dropped off donations. The average travel costs for the four-day trips were approximately $1,100 per trip. The last two delegations were financially supported by crowd-funding efforts because we did not have funds or grants identified to provide financial support for this type of work.

35. The MPP will also require that CARECEN represent asylum seekers outside the jurisdiction of the San Francisco Immigration Court, as their immigration cases are currently venued in the San Diego Immigration Court. CARECEN historically has only taken cases venued in the San Francisco Immigration Court and is best equipped to represent and meet the needs of clients connected to the Bay Area. Thus, our program will have to develop an entirely new plan to address the logistics, new court procedures and practices, and other challenges of preparing cases and representing Clients effectively in a new and unfamiliar venue.

36. Because of the additional time that will be required to represent clients in Mexico, we will be forced to divert resources from work being performed in the United States or substantially reduce our overall caseload. For example, an attorney representing a client in Mexico will have to travel to Mexico to meet and prepare with the client. The attorney will have to travel to appear at the Immigration Court in San Diego, which also requires air travel. Lastly, because asylum applicants have suffered and dealt with traumatic experiences,

they are best served when we work with them in-person. But the MPP will necessarily require that a significant portion of the legal work be done over the phone, which will mean additional time for case-preparation.

37. The MPP will also frustrate CARECEN's mission of providing comprehensive, wraparound services to asylum seekers as part of the representation. It is effectively impossible for CARACEN to offer asylum seekers returned to Mexico the services that we provide in-house, including case management, mental health therapy, and peer education. Moreover, when possible, CARECEN connects the client to external mental health support during case preparation because we find this additional support helps the client during the process and makes the representation as effective as possible. But finding adequate and affordable mental health support for our clients in Mexico will be extremely difficult, if not practically impossible. This is particularly concerning for clients who reside in Mexico but are fearful of remaining throughout their case. These clients will have even more of a need to connect to safe and stable housing and receive mental health support than our clients who reside in the United States. Yet to attempt to provide these essential services to clients residing in Mexico would require a huge expenditure of resources and an enormous amount of time to research and investigate services along the Mexican border.

Lack of Notice and Opportunity to Comment

38. Because of MPP's profound impact on CARECEN's mission, ability to function as an organization, and resources, we would have submitted detailed comments to explain why the rule would threaten our work and harm

our clients had we be given notice and an opportunity to respond.

39. However, because MPP was announced through policy guidance documents, and not as a rule, there was no public comment period, and we were not able to participate in this way.

40. We have an active practice of commenting on similar agency rules. For example, we recently submitted comments on the proposed rule on the public charge ground of inadmissibility. *See* Dep't of Homeland Security, Notice of Proposed Rulemaking, Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51114 (Oct. 10, 2018). We also commented on the proposed *Flores* regulation. This regulation would dismantle the *Flores* Settlement Agreement, the rules set in place in 1997 to protect children in immigration detention, and would lead to the indefinite detention of children and families. *See* Dep't of Homeland Security, Notice of Proposed Rulemaking, Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children, 83 Fed. Reg. 174 (Sept. 7, 2018).

Date: [02/19/2019] /s/ LAURA SANCHEZ
LAURA SANCHEZ, ESQ.

DECLARATION OF JACQUELINE BROWN SCOTT, ESQ.

1. I, Jacqueline Brown Scott, make the following declaration based on my personal knowledge and declare under the penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct.

2. Since January 2015, I have served as an Assistant Professor and as the Supervising Attorney of the Immigration and Deportation Defense Clinic at the University of San Francisco School of Law (Deportation Defense Clinic or the Clinic). We are a nonprofit organization providing free legal immigration services to immigrants in deportation and removal proceedings mainly under the jurisdiction of the San Francisco Immigration Court. In my role as Supervising Attorney, I have the responsibilities of representing a majority of our current clients, managing our caseload, supervising our staff, and training our law students through our Immigration Clinic class.

3. From 2008 to 2016, I ran my own law firm, The Law Offices of Jacqueline Brown Scott, which was focused on removal defense and asylum law.

4. From 2009 to 2010, I worked as an attorney with the Catholic Legal Immigration Network's National Pro Bono Project for Children.

5. From 2005 to 2007, I served as an Attorney Advisor at the Executive Office for Immigration Review (EOIR), San Francisco Immigration Court.

The Deportation Defense Clinic's Mission and Scope

6. The Deportation Defense Clinic was founded in 2015 in direct response to the increase in children and families fleeing violence in Central America and Mexico at that time and entering the United States through the Southern Border. The Clinic was formed and received funding to represent recent arrivals, especially asylum seekers, who have been fast tracked by the U.S. government and largely placed on expedited and emergency dockets. We continue to receive funding to respond to changing immigrant enforcement priorities for clients residing in various counties in California.

7. The Deportation Defense Clinic's mission is twofold: First, we provide free legal services to adults, children, and families in removal proceedings, with an emphasis on asylum. Second, it is also part of our mission to train law students and newer attorneys to be effective and ethical immigration lawyers in the area of asylum law.

8. In addition to free legal direct services and social services case management, the Deportation Defense Clinic also advocates for asylum seekers more widely. Both individually and through other collaboratives we belong to, we participate in legislative campaigns and outreach to protect the rights of asylum seekers. In addition, we provide information to immigrants through Know-Your-Rights presentations as well as through asylum clinics in California's underserved communities.

9. We execute our mission and serve clients out of our offices in San Francisco, California and Sonoma County, California. We are headquartered in San Francisco, California.

10. Since our founding just a few years ago, we have provided immigration legal services to more than 400 people.

11. The vast majority of our clients seek asylum.

How the Deportation Defense Clinic Works

12. The Deportation Defense Clinic currently has a staff of six full time attorneys and paralegals. We typically have approximately ten law students per year working with us as well. Our law students work as student lawyers on asylum cases and are required to meet with clients and prepare their cases so that they will be able to represent their clients in their individual hearings in Immigration Court.

13. Because our clients are asylum seekers who have escaped violence in their home countries, the great majority of them have also experienced significant trauma. We have an in-house Social Services Coordinator and we also work closely with others social workers, psychologists, and medical doctors to ensure that our clients receive the care and services needed to cope with ongoing trauma related to their asylum claims and to the transition to living in the United States.

14. Except for two individuals, our clients come exclusively from Mexico and the Northern Triangle in Central America. Of our current open cases, 40% are from El Salvador, 32% are from Guatemala, 15% are from Honduras, and 12% are from Mexico.

15. All of our clients entered the United States across the southern border with Mexico.

16. In support of its mission to provide legal services to asylum seekers, the Clinic routinely organizes trips for

staff and law students to serve asylum seekers located outside the Bay Area as critical needs arise. Examples include trips the Clinic has made to detention centers in Artesia, New Mexico and Dilley, Texas to respond to the increasing number of families seeking asylum in the U.S., as well as pro se asylum clinics we have conducted in the Central Valley to respond to the lack of low cost or pro bono legal services for immigrants living there, especially for those who are in removal proceedings.

17. In response to concerns about asylum seekers stuck at the border due to the Migrant Protection Protocols (MPP), the Clinic has planned a trip for a group of 11 staff and law students to Tijuana. The three-day trip is costing approximately $5,000. We will be assisting other on-the-ground attorneys in credible fear interview preparation as well as monitoring conditions and identifying potential clients. We also hope to assist in preparing individuals on the list for their inspections where they will be screened under the MPP. For the reasons explained below, we anticipate having to make future trips to represent clients who are subject to the MPP.

Harms Inflicted by the MPP Policy

18. The policy requiring asylum seekers, and specifically our potential clients, to return to Mexico while awaiting their immigration court hearings will hinder our ability to provide legal representation to asylum seekers and train law students to do so, and therefore significantly frustrate the Deportation Defense Clinic's mission and require us to divert resources away from our core services in response.

19. As noted, above the Clinic's core mission is to represents asylum seekers, in particular in removal proceedings, and train law students to become effective advocates in asylum law. As the MPP expands across the southern border, and increasing numbers of asylum seekers are returned pursuant to the program, the Clinic will need to shift its resources to attempt to respond to their needs and serve individuals in Mexico.

20. However, as a practical matter, it will be impossible for the Clinic to do so effectively. As noted above, 87% of our clients have been from the Northern Triangle and all entered the United States through the southern border. If the clients we have served in the past are now forced to remain in Mexico while their cases are pending, our two-fold mission will be frustrated for the following reasons:

a. *Our clients will be much less likely to find us.* Our clients are typically referred to us from other legal service organizations or social service providers in Northern California. If they are forced to remain in Mexico, they will be much less likely to find out about our organization and even less likely to be able to contact us from shelters and unstable residences in Tijuana.

b. *We will have to send staff to Mexico to even begin to provide services to and legal representation of asylum seekers, which will involve significate staff time and cost.* Effective legal representation begins at the initial consultation and intake stage. Because MPP will hinder our ability to connect with clients through our typical channels described above, our staff will be forced to travel regularly to Mexico to interview and evaluate clients just to determine eligibility for relief in removal proceedings.

In addition, staff would be required to continuously travel to Mexico in order to develop our clients' cases and additionally to attend their preliminary and individual hearings in the San Diego Immigration Court. Our practice is to work closely with our clients throughout their immigration case both because it is necessary in order to be effective, but also due to the trauma that our clients face and the time it consequently takes to develop their claims due to this trauma. A typical case involves:

i. an initial consultation to determine eligibility;

ii. a meeting to prepare, review and sign an asylum application;

iii. two to three meetings to draft and finalize a client's declaration;

iv. at least two meetings to prepare a client for their individual hearing.

Therefore, ideally an attorney would be able to meet with a client approximately seven times during their representation. Even if we could reduce meetings to approximately half our typical number, we would be forced to spend approximately $900 in travel expenses alone per client. Since we formed in 2015, we have opened approximately 100 cases per year. We thus would we have to spend almost $100,000 per year to provide representation at the most basic level.

Shifting our representation model to provide services at a distance would be very difficult, and would compromise our mission. The tasks involved in the intake stage are not well-suited to be conducted remotely. The intake process typically includes a long consultation and a review of immigration, identity, and other documents.

This is often the first occasion that an asylum seeker, often traumatized, has to fully tell her story. It can be free flowing, lengthy, and necessitates a certain amount of trust that can really only be obtained in a face-to-face encounter. Similarly, the preparation stage also involves tasks that are ill-suited for a remote relationship. As noted, the follow up meetings are to ensure that a client's lengthy personal history has been obtained and described accurately in a declaration. These meetings are also used to prepare clients for direct and cross-examination. To create the full courtroom experience, attorneys typically utilize an interpreter for these sessions as well. Doing all of this on the phone—hours of preparation with up to four individuals participating—should rarely if ever be done.

c. *Inability to provide law students effective training.* Training law students to be effective and ethical immigration advocates is core to our mission. Our law students need access to their clients in order to be properly trained consistent with our mission. They do not have the flexibility to travel to Mexico due to their school commitments, nor could we expect that they would be permitted by the school to regularly travel to Mexico. If our practice shifts to having to defend asylum seekers in Tijuana and San Diego, we will not be able to effectively and meaningfully train our law students. They would not be provided the opportunity to practice locally in the San Francisco Immigration Court and because of the difficulties involved in traveling to Tijuana, there would be much fewer removal defense cases to assign to them. It is likely that within a few years, the Clinic would not be able to provide law students with enough of the hands-on training that is required for a clinical

program. This would at the very least result in a drastic reduction in the number of students we could accept into the program, and the School of Law could consequentially end our program.

d. *Barriers to finding psychologists.* Due to the trauma that most of our clients face, a psychological evaluation is often required. This necessitates face-to-face meetings with clients that have historically been conducted in our office by local practitioners. It is unlikely that these practitioners would be willing able to travel to Tijuana or even San Diego to provide these much-needed evaluations. While there may be psychologists and other medical professionals in San Diego and Tijuana that the Clinic would eventually connect with, the process of finding and building relationships with them would be resource-intensive. In addition, other immigration attorneys and agencies would also be searching for the same small pool of psychologists and doctors, which would make it harder for the Clinic to retain these professionals.

e. *Risk Related to Practicing Law in Mexico.* The Deportation Defense Clinic is unfamiliar with Mexican law, including immigration law. If we need to serve asylum seekers in Mexico, then we would have to ascertain whether we, as U.S. attorneys and law students, would be legally and ethically permitted to provide legal advice to individuals who are not in the United States. The Clinic would have to devote resources to figuring out whether and to what extent our attorneys and law students are able to practice in Mexico. If we determine that we are not able to do in-person work in Mex-

ico, and the number of asylum seekers residing in California is consequently reduced, there will be serious implications for the Clinic.

21. Significantly, the new policy would jeopardize almost all of the Deportation Defense Clinic's funding sources. Funding for our asylum work is completely based on grant funding that requires our clients to be physically present in the United States. We have grants from the counties of San Francisco, San Mateo, and Sonoma, all of which require asylum seekers to live or work in those counties. We have additional grants that require our clients to live or work in the five Bay Area counties, as well as state funding which can only be used to assist California residents.

22. As increasing numbers of our clients are forced to remain in Mexico pursuant to the MPP, and prevented from residing in California pending their cases, we would have to find other funding sources to support that work. We also would likely not have future access to any of our current funding, as those grants require that we open new grant-eligible cases every year.

23. If MPP remains in effect, the Deportation Defense Clinic could cease to exist in a few years due to our inability to receive funding. We would have to secure different grants that are not conditioned on our clients residing in various counties in California.

24. As a result of the negative impact on our funding streams, our staff would likely be reduced.

25. We would also likely face challenges in retaining staff and attracting new staff in light of the substantial

regular travel that would be necessary in order to provide effective legal representation to asylum seekers residing in Tijuana and attending court in San Diego.

26. As a result of these new policies, the Deportation Defense Clinic would have to completely rearrange the way in which it provides legal services, and it would have to both divert and find new resources to do that.

Lack of Notice and Opportunity to Comment

27. Because of MPP's profound impact on the Clinic's mission, ability to function as an organization, and resources, we would have submitted detailed comments to explain why the rule would threaten our work and harm our clients had we be given notice and an opportunity to respond. In the past the Clinic submitted comments on the proposed regulations related to the public charge ground of inadmissibility, fee waivers, and the proposed *Flores* regulation related to migrant children in detention.

28. However, because MPP was announced through policy guidance documents, and not as a rule, there was no public comment period, and we were not able to participate in this way.

Dated: [2-18-2019]

/s/ JACQUELINE BROWN SCOTT
JACQUELINE BROWN SCOTT, ESQ.

DECLARATION OF ADAM ISACSON

I, Adam Isacson, declare as follows:

1. I am over 18 and have personal knowledge of the facts described herein.

2. I am the Director for Defense Oversight at the Washington Office on Latin America ("WOLA"), a non-profit research and advocacy organization based in Washington, D.C., that is committed to advancing human rights in the Americas. Since 2011, a significant part of my work has been focused on border security in the United States. I have visited the U.S.-Mexico border approximately 20 times. Together with the Border Security and Migration program at WOLA, I have published dozens of reports, memos, and multimedia projects about the security efforts of U.S. agencies at the border and the resulting human impact. I earned a B.A. in Social Science from Hampshire College and an M.A. in International Relations from Yale University.

3. The number of migrants coming to the U.S.-Mexico border is far lower today than in recent years. In almost every fiscal year between 1983 and 2006, the number of migrants apprehended by U.S. Border Patrol agents along the southern border exceeded one million.[1] Since fiscal year 2010, the number of apprehensions along the southern border each fiscal year has been less than 500,000.[2]

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[1] U.S. Border Patrol, Southwest Border Sectors, https://www.cbp.gov/sites/default/files/assets/documents/2017-Dec/BP%20Southwest%20Border%20Sector%20Apps%20FY1960%20-%20FY2017.pdf (last accessed Feb. 9, 2019).

[2] *Id.*

4. The number of migrants apprehended by U.S. Border Patrol officials at the U.S.-Mexico border in fiscal year 2017 is the lowest annual number since fiscal year 1972.[3]

5. In fiscal year 2017, the average U.S. Border Patrol agent apprehended 18 migrants along the U.S.-Mexico border all year, or one migrant every 20 days.[4]

6. In fiscal year 2018, the number of apprehensions was lower than in fiscal years 2016, 2014, and 2013.[5] It was the fifth-lowest total since 1973.

7. In fiscal year 2018, Border Patrol apprehended 1.25 million fewer people at the U.S.-Mexico border than it did in fiscal year 2000.[6] Whereas federal agents apprehended between 71,000 and 220,000 migrants each month in fiscal year 2000, the figures are far lower, ranging from 25,500 to 41,500 people per month, in fiscal year 2018.[7]

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[3] *Id.*

[4] U.S. Border Patrol, Southwest Border Sectors, *supra* note 1; U.S. Border Patrol, Border Patrol Agent Nationwide Staffing by Fiscal Year, https://www.cbp.gov/sites/default/files/assets/documents/2017-Dec/BP%20Staffing%20FY1992-FY2017.pdf (last accessed Nov. 8, 2018).

[5] *Id.*; U.S. Customs and Border Protection, Southwest Border Migration FY2018, https://www.cbp.gov/newsroom/stats/sw-border-migration/fy-2018 (last accessed Feb. 9, 2019) (396,579 apprehensions in FY 2018).

[6] U.S. Border Patrol, Southwest Border Sectors, *supra* note 1; U.S. Customs and Border Protection, Southwest Border Migration FY2018, *supra* note 5.

[7] U.S. Border Patrol Monthly Apprehensions (FY2000-FY2017), https://www.cbp.gov/sites/default/files/assets/documents/2017-Dec/BP%20Total%20Monthly%20Apps%20by%20Sector%20and%20Area

8. According to CBP's own estimates, the number of migrants who evade apprehension at the U.S.-Mexico border has also been shrinking significantly, with the 2016 figure just one-sixth of the 2006 figure.[8]

9. Even though fewer people overall are arriving at the U.S.-Mexico border than in the past, CBP's budget is now twice what it was in 2000. Whereas the Border Patrol's budget in 2000 was $1.055 billion, its budget in 2016 was $3.801 billion.[9] Even adjusted for inflation, this 2016 budget is more than twice the 2000 budget.[10]

10. CBP's staffing has also increased. The number of Border Patrol agents at the U.S.-Mexico border is almost double the number in 2000.[11] There were 16,605 Border Patrol agents at the southwest border in fiscal year 2017, compared to 8,580 agents in fiscal year 2000, when the number of apprehensions was four times higher.[12] Nationwide, there were 19,437 Border Patrol

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%2C%20FY2000-FY2017.pdf (last accessed Feb. 9, 2019); U.S. Customs and Border Protection, Southwest Border Migration FY2018, *supra* note 5.

[8] U.S. Department of Homeland Security, Office of Immigration Statistics, Efforts by DHS to Estimate Southwest Border Security between Ports of Entry 16 (Sept. 2017), https://www.dhs.gov/sites/default/files/publications/17_0914_estimates-of-border-security.pdf.

[9] American Immigration Council, *The Cost of Immigration Enforcement and Border Security*, https://www.americanimmigrationcouncil.org/sites/default/files/research/the_cost_of_immigration_enforcement_and_border_security.pdf (last accessed Feb. 9, 2018).

[10] *See* CPI Inflation Calculator, https://data.bls.gov/cgi-bin/cpicalc.pl? (last accessed Feb. 9, 2018).

[11] U.S. Border Patrol, Border Patrol Agent Nationwide Staffing by Fiscal Year, *supra* note 4.

[12] *Id.*; *see also* U.S. Border Patrol, Southwest Border Sectors, *supra* note 1.

agents in fiscal year 2017, compared with 9,212 in fiscal year 2000.[13]

11. The United States currently hosts the lowest number of undocumented immigrants since 2004, which is the result of a significant drop in the number of new undocumented immigrants.[14]

12. There is a rising backlog of individuals waiting to present themselves for asylum at ports of entry. In Tijuana, as of December 2018, 5,000 people were on a waiting list, and CBP was accepting 20 to 80 people per day for processing, yielding an estimated 12 week wait time.[15] In Nogales, service providers told me in September 2018 that families are waiting 14 days for a chance to approach CBP. Hundreds of people have slept on the Paso del Norte bridge between Ciudad Juárez and El Paso, where there are far fewer shelters. Similar waits are the norm on the bridges connecting Reynosa and Hidalgo/McAllen, and Matamoros and Brownsville.

13. This backlog creates dangerous conditions for asylum seekers, who are forced to wait days to weeks, often without adequate shelter, and sometimes in dangerous border towns where organized crime preys on

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[13] U.S. Border Patrol, Border Patrol Agent Nationwide Staffing by Fiscal Year, *supra* note 4.

[14] Jeffrey S. Passel & D'Vera Cohn, *U.S. Unauthorized Immigrant Total Dips to Lowest Level in a Decade*, Pew Research Ctr. (Nov. 27, 2018), http://www.pewhispanic.org/2018/11/27/u-s-unauthorized-immigrant-total-dips-to-lowest-level-in-a-decade.

[15] *Asylum Processing and Waitlists at the U.S.-Mexico Border* 5, 7, Robert Strauss Center et al. (Dec. 2018), https://www.strausscenter.org/images/MSI/AsylumReport_MSI.pdf.

vulnerable people, for a chance to seek protection in the United States.

14. The security conditions in many border towns are precarious. Asylum seekers who must wait in a backlogged line are vulnerable to kidnapping and other violence. Although shelters provide a place to sleep, they are increasingly unsafe, having been infiltrated by gangs and cartels. In some instances, shelters have been vandalized, and the residents have been kidnapped and extorted.

15. Tijuana broke its own record for homicides in 2018. Across the whole of Mexico, prosecutors opened nearly 29,000 murder cases in 2018, 15% more than the previous year. Tijuana was the Mexican city with the most killings: more than 2,500, or 126 per 100,000 inhabitants.[16]

16. The risk of harm is also extreme in the border towns across from south Texas, the area of heaviest flow of Central American child and family migrants. There—the border zone of the state of Tamaulipas, Mexico—factions of the Gulf and Zetas cartels are fighting each other on a constant basis. CBP and Border Patrol agents have told me of witnessing running gun battles from the U.S. side of the border. Migrants in that zone have told me that they risk murder if they attempt to cross the Rio Grande in this area without an approved smuggler. Kidnapping for ransom is also common: in

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[16] Ed Vulliamy, *Migrants flee violence only to find more in Tijuana —Mexico's murder capital*, The Guardian, Jan. 26, 2019, https://www.theguardian.com/world/2019/jan/26/migrants-violence-tijuana-murder-capital.

2010, in San Fernando, Tamaulipas, the Zetas massacred 72 mostly Central American migrants whom they had kidnapped.

17. In my opinion, given the serious risk of harm, no migrant can be safely returned to Tamaulipas pursuant to the Migrant Protection Protocols.

18. Based on my research and experience, there are strong reasons why Mexico cannot be designated a "safe third country." Migrants in transit through Mexico are frequently subject to crimes and abuse, including kidnapping, extortion, robbery, trafficking and sexual assault. These crimes almost never result in a conviction of the person responsible. Corruption in Mexico's security and migration authorities makes the situation worse; only 1% of reported crimes against migrants result in a conviction of the responsible party.[17] Additionally, one reason migrant smugglers thrive is the relationships they maintain with corrupt officials, including localities where organized crime has infiltrated government positions.

19. According to news reports citing the UN refugee agency, almost 4,000 migrants have died or gone missing

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[17] *See* Ximena Suárez et al., Wash. Office on Latin Am., *Access to Justice for Migrants in Mexico: A Right That Exists Only on the Books*, 24-27, 30-31 (2017), https://www.wola.org/wpcontent/uploads/2017/07/Access-to-Justice-for-Migrants_July-2017.pdf (documenting Mexican authorities' unwillingness to investigate crimes against migrants); Adam Isacson, Maureen Meyer and Adeline Hite, *WOLA Report: Come Back Later: Challenges from Asylum Seekers Waiting At Ports of Entry*, 10 (2018). Washington Office on Latin America. https://www.wola.org/wp-content/uploads/2018/08/Ports-of-Entry-Report_PDFvers-3.pdf.

while traveling from Central America through Mexico to the U.S.[18]

I hereby declare under the penalty of perjury pursuant to the laws of the United States that the above is true and correct to the best of my knowledge.

/s/ ADAM ISACSON
ADAM ISACSON
Executed on this 10th day of Feb., 2019

[18] Associated Press, *At least 4,000 migrants on way to U.S. have died or gone missing in last four years*, Dec. 5, 2018, https://www.nbcnews.eom/news/latino/least-4-000-migrants-way-u-s-have-died-or-n944046.

DECLARATION OF KATHRYN SHEPHERD

I, Kathryn Shepherd, declare as follows:

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

1. I am the National Advocacy Counsel for the Immigration Justice Campaign at the American Immigration Council ("Council"). The Immigration Justice Campaign is a joint initiative between the Council, the American Immigration Lawyers Association ("AILA") and the American Immigrant Representative Project ("AIRP") which seeks to protect due process and justice for detained immigrants. I focus on legal advocacy and policy related to individuals held in ICE custody and asylum-seeking women and children detained in family detention centers around the country. Prior to joining the Council, I was the Managing Attorney of the CARA Pro Bono Project (now the "Dilley Pro Bono Project," or "DPBP"[1]) in Dilley, Texas. I previously ran a private practice in Houston, Texas, focused exclusively on asylum cases. I hold a J.D. from St. John's University School of Law and am licensed to practice law in Texas and New York.

2. I was involved in a survey created for the purpose of collecting information on the extent to which asylum-seeking migrants had experienced or witnessed harm in Mexico before crossing our southern border. I oversaw the creation of the survey and provided guidance to

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[1] The Dilley Pro Bono Project is a joint initiative of the Council, AILA, Catholic Legal Immigration Network, Inc. (CLINIC), and other partners.

the DPBP staff who disseminated the survey to detained families in the South Texas Family Residential Center (STFRC). Five hundred female asylum seekers detained with their minor children responded in writing in Spanish to the survey. All detained families doing a legal services intake with the DPBP between January 16 and January 29, 2019, were presented with the opportunity to complete the survey, but were advised that survey participation was optional. Participants were instructed to limit their answers to what they had experienced and witnessed while traveling through Mexico on their way to the United States. Of the respondents, 54.6% were Honduran, 27.4% Guatemalan, 15.5% Salvadoran, and 2.5% from other Latin American countries.

3. Additionally, ten mothers detained at the STFRC who took part in the survey also provided detailed sworn statements to DPBP staff regarding the harm they experienced in Mexico. They provided first-hand accounts of the grave violence encountered by themselves, their children, and other vulnerable asylum seekers, which could befall thousands of migrants if the government's policy of forcibly returning migrants to Mexico continues and is expanded. These statements are representative of the hundreds of examples reported in the above survey.

4. The Council, AILA, and the Catholic Legal Immigration Network submitted the results of the survey, including the sworn statements, to Homeland Security Secretary Nielsen in a letter dated February 6, 2019. I was the primary author of the letter and coordinated the collection of sworn statements and analysis of the data for its incorporation into the letter.

5. The key findings of the survey, as well as the key points communicated to Secretary Nielsen, are as follows:

Increasing Levels of Violence and Instability in the Mexico Border Region

6. Mexican border towns are not safe places for asylum seekers—and especially migrant vulnerable families —to wait for an immigration court hearing in the United States. U.S. law has adopted the international legal principle of *non-refoulement*, which requires that governments do not return individuals to a country where their life or freedom would be threatened.[2] Importantly, this mandate refers to *any* country where an individual's life or freedom may be at risk, not just a person's country of origin. For this reason, current conditions in Mexico are extremely relevant to any analysis of the appropriateness and legality of implementing the Migrant Protection Protocols ("MPP").

7. The violence and instability that migrants face on the Mexican side of the U.S.-Mexico border are well-documented. Some regions of the U.S.-Mexico border are considered by the State Department to be among the most dangerous locations in the world. For example, the border state of Tamaulipas, through which tens of thousands of asylum seekers travel each year on their way to the United States, has been designated a Level 4

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[2] UNHCR, States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol, https://www.unhcr.org/protection/basic/3b73b0d63/states-parties-1951-convention-its-1967-protocol.html.

"Do Not Travel" risk by the State Department.[3] As of January 2019, only 12 countries in the world are designated at Level 4, including Afghanistan, North Korea, Syria, and Yemen.[4]

8. The State Department has also documented numerous risks to Central American migrants in Mexico. In the 2017 Country Report on Human Rights Practices for Mexico, the State Department listed "violence against migrants by government officers and organized criminal groups" as one of the "most significant human rights issues" in Mexico.[5] The report also lists major threats to migrants from kidnappings and homicides. These threats come not just from Mexican criminal organizations and corrupt government officials, but also from the very organizations that many Central American migrants are fleeing. As the State Department observed, "Central American gang presence spread farther into the country [in 2017] and threatened migrants who had fled the same gangs in their home countries."[6]

9. Tijuana—the Mexican city where the MPP has first been implemented—was the site of 2,518 murders last year, a record high and nearly seven times the total in

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[3] U.S. Dep't of State, Bureau of Consular Affairs, *Mexico Travel Advisory*, TRAVEL.STATE.GOV, November 15, 2018, https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/mexico-traveladvisory.html.

[4] U.S. Dep't of State, *Travel Advisories*, TRAVEL.STATE.GOV (last accessed Feb. 5, 2019), https://travel.state.gov/content/travel/en/travel-advisories/traveladvisories.html/.

[5] U.S. Dep't of State, *Country Reports on Human Rights Practices for 2017: Mexico* (2018), http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2017&dlid=277345.

[6] *Id.*

2012.[7] Last year, the State Department's Overseas Security Advisory Council observed that "Tijuana is an important and lucrative location for Transnational Criminal Organizations, narco-traffickers, and human smuggling organizations," and that in 2017, the state of Baja California saw an overall 84% increase in murders.[8] Not surprisingly, many asylum seekers have already suffered significant violence while being forced to wait in Tijuana; in December 2018, two Honduran children were murdered while forced to wait their turn to request asylum at the San Ysidro Port of Entry.[9]

Evidence of Harm to Asylum Seekers in Mexico

10. According to the results of the survey, the asylum seekers reported overwhelmingly that Mexico was a dangerous place for them and their children: 90.3% of respondents said that they did not feel safe in Mexico, and 46% reported that they or their child experienced at least one type of harm while in Mexico, with some reporting multiple types of harm.

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[7] Kate Linthicum, *Meth and murder: a new kind of drug war has made Tijuana one of the deadliest cities on Earth*, L.A. Times (January 30, 2019), https://www.latimes.com/world/mexico-americas/la-fg-mexico-tijuana-drug-violence-20190130-htmlstory.html.

[8] U.S. Dep't of State, Bureau of Diplomatic Security, *Mexico 2018 Crime and Safety Report: Tijuana, United States*, OSAC.GOV, https://www.osac.gov/pages/ContentReportDetails.aspx?cid=23376 (last accessed Feb. 4, 2019).

[9] Wendy Fry, *Two migrant caravan teens killed in Tijuana*, The San Diego Union-Tribune (Dec. 18, 2018), https://www.sandiegouniontribune.com/news/border-baja-california/sd-me-migrant-children-killed-1218 2018-story.html.

- Robbery or attempted robbery (32.8%)
- Threats (17.2%)
- Physical Harm (12.6%)
- Kidnapping or attempted kidnapping (5.1%)
- Sexual assault (2%)

11. Many respondents also reported fearing for their safety in Mexico because they had witnessed incidents of harm that happened to others: 48% of respondents reported that they witnessed at least one type of harm to another person while in Mexico.

- Robbery or attempted robbery (29.4%)
- Threats (20.4%)
- Physical Harm (17.2%)
- Kidnapping or attempted kidnapping (7.2%)
- Sexual assault (6.3%)

12. Furthermore, asylum seekers reported that not only did the Mexican government fail to protect them from these dangers, but government officials were often the perpetrators of crimes against migrants: 38.1% of respondents stated that a Mexican official mistreated them in at least one way.

- Demanded bribes (28.2%)
- Verbal intimidation (18%)
- Made them feel uncomfortable (15.5%)
- Threatened them (9.5%)
- Harmed them physically or sexually (1.5%)

First-Hand Accounts of Violence Faced by Asylum Seekers in Mexico

13. The following are case summaries from the ten sworn statements described above. Pseudonyms are used for the safety of the participants.

14. **Rape and Threats to Her Child**—*Concepción* fled through Mexico from Honduras with her 5-year old son. While traveling through Mexico, they stayed with a group of other women and children in a house to avoid sleeping on the street. One night, a cartel member grabbed her while she lay in bed with her 5-year-old son and raped her. She recounts: "He threatened me, saying he would kidnap me to sell me in prostitution and would take my child to sell his organs if I did not have sex with him. He said that he had connections in the Gulf Cartel [and] that white women like me sold the best, and that children's organs also sold very well." She does not trust that Mexican police would protect her from this type of harm because they required bribes of her and other migrants when they were stopped at a road checkpoint, and strip searched those who did not pay.

15. **Kidnapped and Sold by Police and Held for Ransom**—*Aracely* and *Fatima* fled Mexico separately with their 4-year-old daughter and 6-year-old son, respectively. They were both kidnapped by Mexican police a few days apart and sold to a cartel who held them for ransom. Mexican police regularly operate in concert with criminal gangs and cartels by targeting migrants and selling them to the gangs and cartels for money. Aracely reported: "A man told us that they were from a cartel and that everything would be fine if our families paid the ransom. They took everything we had and they made

us call our families and have them send $7,000 dollars [for each of us]. I heard the men saying that . . . the police who guard the river, had sold us to them." Fatima stated: "We saw some people there who had been beat up. I saw a man whose whole face and arm were bruised and swollen, and he was vomiting blood. . . . My son has been shaking and can't sleep because of what happened to us. He frequently tells me that he is still afraid."

16. **Sexual Assault and Police Extortion**—While fleeing from Honduras through Mexico, *Viviana* stayed for four nights in a room with three other women. The man who was supposed to be guarding them sexually assaulted her on three occasions while her 10-year-old son slept next to her. She stated: "I didn't have anywhere else to go to be safe, and I didn't feel that I could ask for help from the Mexican police because every time we took a bus, Mexican police would demand money from migrants on the bus. If a woman didn't have money, they would tell her that they were going to deport her and take her child."

17. **Sexual Assault**—*Maybelin* and her 2-year-old daughter were persecuted in her native Guatemala due to her membership in an indigenous group. On her way to safety in the United States, she was repeatedly sexually assaulted at a house in Mexico where she was staying. She recalls: "I felt that I could not leave that unsafe situation, because I had nowhere to go in Mexico, and I had heard that the Mexican police did not protect migrants and might even deport me back to danger in Guatemala." She therefore had to continue staying there until she could enter the United States.

18. **Extortion and Death Threats by Mexican Police—***Luisa* escaped gang threats in El Salvador with her 15-year-old daughter. While traveling through Mexico, they were forced to pay the Mexican police three times. The final time, they didn't have the amount of money the police demanded. She states: "They grabbed my daughter, who was crying, and took her off the bus. Then they order[ed] me to get off the bus in the middle of nowhere. The uniformed men said to give them 7,000 pesos for each of us or we would both die there. The men said that if we didn't pay, he would tell the driver to leave and we would be kidnapped and killed."

19. **Extortion and Threats to Children by Mexican Police/Witnessed Sexual Assault—***Carolina* fled Guatemala with her 9-year-old son, her sister, and her nephew. She was extorted and threatened twice by armed Mexican federal police. During one of these incidents, the police entered a house in which she was staying. She reports: "The officers were wearing black uniforms, bullet-proof vests, with their faces covered except for their eyes. . . . They said that if we did not pay, they would take our children from us and tie and lock them up." Carolina and her son then witnessed the sexual assault of another woman who did not have enough money to pay.

20. **Witnessed Extortion/Threats/Apprehension by Mexican Police—***Belkis* fled domestic violence in Guatemala with her 11-year-old son. She was terrified her husband was following them and could find them in Mexico, and felt she would only be safe from him once she arrived to the U.S. One day, the Mexican state police approached them in a group of about 40 migrants, and randomly selected 26 people to go with them on a bus. They said

that they would extort those migrants' families and beat them, including the children, if the families did not cooperate. Belkis says: "The people were crying, and begging God for help. The officials ordered them onto the bus. I do not know what happened to those people."

21. **Attempted Kidnapping**—*Valery* escaped domestic violence in Honduras to seek asylum in the United States with her 10-year-old son. On her way through Mexico, they narrowly escaped attempted kidnapping by two unknown men, who tried to force a group of migrants they were a part of into a car. She states: "I felt unsafe the entire time I was traveling [in Mexico]. I knew that the threat of kidnapping was real because I had seen it happen before. Once, . . . a car pulled up next to a young woman . . . [a man] forced a woman into a car while she screamed. . . . I do not know what happened to her."

Conclusion

22. As the survey results described above demonstrate, the MPP will put asylum seekers at grave risk of harm by forcing them to remain in Mexico pending their immigration court proceedings. It threatens to jeopardize meaningful access to asylum and other humanitarian protections under our immigration laws.

23. The MPP also will exacerbate a humanitarian crisis on our southern border. For example, thirty-one migrant shelters along the border recently signed a joint letter signaling their lack of capacity to safely house the potentially large number of individuals to be returned under the MPP for the lengths of time they will need to

wait in Mexico.[10] These shelters warn that asylum seekers will be forced to live in limbo, exposed to fear and uncertainty, without the means to address basic needs.

Dated: Feb. 18, 2019 /s/ KATHRYN SHEPHARD
KATHRYN SHEPHARD

[10] *See* Red Zona Norte de Casas y Centros de Derechos Humanos para Migrantes, *Postura de la Red Zona Norte sobre los Protocolos de Protección a Migrantes*, Feb. 8, 2019, https://www.kinoborderinitiative.org/wp-content/uploads/2019/02/Red-Zona-Norte-Statementon-MPP.pdf (last accessed Feb. 16, 2019).

DECLARATION OF DANIELLA BURGI-PALOMINO

I, Daniella Burgi-Palomino, declare pursuant to 28 U.S.C. § 1746 and subject to the penalty of perjury, that the following is true and correct:

1. I am the Senior Associate on Mexico, Migrant Rights and Border Issues at the Latin America Working Group (LAWG). I am over 18 and have personal knowledge of the facts described herein.

2. Prior to joining LAWG, I worked for six years on the protection of migrant rights in the U.S.-Mexico-Central America corridor with a variety of civil society organizations and foundations. I was the first coordinator of the Central America and Mexico Migration Alliance (CAMMINA) from 2011-2013, a Fulbright Garcia Robles Fellow in Mexico from 2010-2011, and a Program Associate at Oxfam America from 2007-2010. I earned a Bachelor of Arts from Tufts University in International Relations and History with a focus in Latin American studies and a Master of Arts in Law and Diplomacy from the Fletcher School of Law and Diplomacy, where I focused on human security and migration.

3. In my capacity as the Senior Associate on Mexico, Migrant Rights and Border Issues at LAWG, I lead our advocacy on the protection of migrant and refugee rights, and U.S. immigration and foreign policy affecting the region. I conduct advocacy with both U.S. policymakers and foreign governments, and lead transnational civil society campaigns, documentation, and research on various human rights issues.

4. Since the Trump administration announced its intention to adopt a new policy that has misleadingly been called the "Migrant Protection Protocols" (MPP),

I have been working closely with numerous other civil society organizations to monitor its implementation.

Risks for Asylum-seekers in Mexico

5. The MPP assumes that conditions in Mexico, and particularly along Mexico's northern border, are safe for asylum seekers while they wait for their immigration proceedings. However, there is substantial evidence documented by civil society organizations, the U.S. State Department, and the Mexican government to refute this assumption and to point to a situation of extreme violence and insecurity along Mexico's northern border.[1]

6. Tijuana, the city where asylum seekers are being sent to wait for their proceedings in the first phase of the MPP, has seen a dramatic increase in homicides for the last five years, reaching record levels in 2018 and making it one of the deadliest cities in the world currently.[2] Mexico's northern border states, such as Tamaulipas, Coahuila, Nuevo Leon, and Chihuahua, also continue to rank among the states with the highest number of registered disappearances in the country.[3] The

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[1] Secretariado Ejecutivo del Sistema Nacional de Seguridad Pública, Acciones y Programas: Incidencia delictiva, January 24, 2019, https://www.google.com/url?g=https://www.gob.mx/sesnsp/acciones-y-programas/incidencia-delictiva-87005?idiom%3Des&sa=D&ust=1549570783790000&usg=AFOjCNEwXZkafcsOtFIoh-oZNuK_1GU_gO.

[2] Kate Linthicum, "Meth and murder: A new kind of drug has made Tijuana one of the deadliest cities on Earth", January 30, 2019 https://www.latimes.com/world/mexico-americas/la-fg-mexico-tijuana-drug-violence-20190130-htmlstory.html.

[3] Lily Folkerts, Annie Gallivan, Latin America Working Group, Trouble for Turn Backs: Risks for Migrants in Mexico's Northern

U.S. State Department currently has travel warnings on all six of Mexico's northern border states, urging citizens not to travel to Tamaulipas; to reconsider travel to Coahuila, Chihuahua, Nuevo Leon, and Sonora; and to exercise increased caution in travel to Baja California, all due to high levels of violent crime.[4] The violence perpetuated in these cities comes not only from organized crime but also from systemic corruption and abuses within Mexican law and migration enforcement agencies who at times work in collusion with criminal groups. Over thirty disappearances were attributed to the Mexican Navy, for example, in Nuevo Laredo, Tamaulipas in 2018.[5] In addition, the 2017 U.S. State Department human rights country report on Mexico highlighted collusion between the state government of Coahuila and organized crime in carrying out disappearances.[6]

7. While the information above demonstrates a broader situation of violence, corruption, and impunity along some of Mexico's northern border states and cities, asylum seekers and migrants in particular have long

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Border States, 2018, https://www.lawg.org/trouble-for-turn-backs-risks-for-migrants-in-mexicos-northern-border-states/.

[4] U.S. Department of State, Mexico International Travel Information, November 15, 2018, https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-Information-Pages/Mexico.html.

[5] Office of the UN High Commissioner for Human Rights, Zeid urges Mexico to act to end wave of disappearance in Nuevo Laredo, May 30, 2018, https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23157&LangID=E.

[6] U.S. Department of State, Country Reports on Human Rights Practices for 2017, 2017, https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper.

faced human rights violations and crimes in their transit through Mexico. Civil society organizations and migrant shelters have documented multiple cases of torture, murder, disappearances, kidnappings, robbery, extortion, and sexual and gender-based violence that migrants and asylum seekers suffer at the hands of criminal groups in Mexico. The perpetrators of this persecution often act in collusion with Mexican migration and law enforcement. Multiple reports, issued by U.S. and Mexican organizations and migrant shelters in Mexico, illustrate that, while many crimes against migrants occur in the southern part of Mexico, migrants are victims of abuse throughout the country, including in northern border states.[7] The Inter-American Commission on Human Rights (IACHR) has previously noted crimes against migrants in its reports, and NGOs have noted the specific risks migrants face in each of Mexico's border states in documents submitted to the IACHR.[8] As the MPP will force asylum seekers to wait in Mexico for

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[7] Red Migrante Sonora (RMS), Y la impunidad continúa. Segundo informe de la Red Migrante Sonora, June 2017, https://www.kinoborderinitiative.org/wp-content/uploads/2017/12/Informe-RMS.pdf, and José Knippen, Clay Boggs, and Maureen Meyer, An Uncertain Path, November 2015, https://www.wola.org/sites/default/files/An%20Uncertain%20Path Nov2015.pdf.

[8] Daniella Burgi-Palomino, Latin America Working Group (LAWG), Maureen Meyer, Washington Office on Latin America (WOLA), Joanna Williams, Kino Border Initiative, Situation of Impunity and Violence in Mexico's Northern Border Region, March 2017, https://www.wola.org/wp-content/uploads/2017/04/Situation-of-Impunity-and-Violence-in-Mexicos-northern-border-LAWG-WOLA-KBI.pdf and Inter-American Commission on Human Rights (IACHR), Organization of American States (OAS), The Human Rights Situation in Mexico, December 31, 2015, http://www.oas.org/en/iachr/reports/pdfs/Mexico2016-en.pdf.

prolonged periods of time, it is likely that more migrants would be exposed to such risks and violence, or would turn to smugglers to cross the border between ports of entry and under more precarious conditions.

8. The murders of two unaccompanied Honduran children in Tijuana in December 2018 demonstrate the vulnerability of asylum seekers trapped in border cities and towns.[9] Many asylum seekers are fleeing extreme sexual and gender-based violence or threats from gangs in their home countries. By the time they arrive in northern Mexico, they are severely traumatized. The vulnerability of asylum seekers forced to wait in Mexico is compounded by the Mexican government's consistent failure to investigate and prosecute crimes against asylum seekers and migrants. According to one NGO report, the perpetrators of 99 percent of the crimes migrants face in Mexico are never held accountable.[10] Civil society shelters operating along Mexico's northern border have limited capacity to assist migrants who have been victims of crime or offer them shelter for extended periods of time, and often are also directly threatened for their work protecting migrants.[11]

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[9] Wendy Fry, "Two migrant caravan teens slain in Tijuana", December 18, 2018, https://www.latimes.com/local/lanow/la-me-ln-migrant-caravan-teens-killed-tijuana-20181218-story.html.

[10] Ximena Suarez, Andrés Díaz, José Knippen, and Maureen Meyer, Access to Justice For Migrants in Mexico, July 2017, https://www.wola.org/wp-content/uploads/2017/07/Access-to-Justice-for-Migrants July-2017.pdf.

[11] Red Zona Norte, Postura de la Red Zona Norte sobre los Protocolos de Protección a Migrantes, January 24, 2019, https://www.kinoborderinitiative.org/wp-content/uploads/2019/02/Red-Zona-Norte-Statement-on-MPP.pdf.

9. Asylum seekers fleeing to the U.S. who are forced to remain in Mexico will be unable to access their support networks, thereby intensifying their trauma. One of the most valuable resources survivors of violence have to help in their recovery is the support of friends, family, and fellow countrymen. Many of the individuals who choose to flee to the United States do so because they have connections through friends or family. These contacts can prove invaluable for asylum seekers and survivors of torture or other trauma, as their contacts help them navigate within a new culture and language.

10. Asylum seekers returned under the MPP would also face challenges in accessing broader services while waiting in Mexico. This has been made evident by civil society reports documenting the lack of access to services and shelter faced by migrants in the city of Tijuana since November 2018.[12] These risks are compounded for women, unaccompanied children, and the LGBTI community. Even with the issuing of humanitarian visas, migrants face difficulty in accessing employment and housing.

11. Initial reports from the media[13] and civil society representatives who interviewed asylum seekers returned under the MPP indicate that the information

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[12] American Friends Service Committee, Latinoamérica Y el Caribe, Universidad lberoamericana de México—Tijuana, Misión de Observación, November 2018, http://tijuana.ibero.mx/?doc=/guienessomos/observacion.html.

[13] Sarah Kinosian, "'They're playing with our lives' say the first migrants returned under new Mexico policy", February 5, 2019, https://www.pri.org/stories/2019-02-05/they-re-playing-our-lives-say-first-migrants-returned- under-new-mexico-policy.

provided to them by U.S. immigration officials on how to seek legal counsel for their immigration cases was wholly insufficient and that they were not questioned regarding their potential fear to return to Mexico, leading to potential violations of the principle of non-refoulement. This is compounded by the obstacles in seeking legal counsel for U.S. immigration proceedings from Mexico to begin with, asylum seekers' limited resources, and their ability to navigate removal proceedings in a foreign language.

12. The MPP will not address the "security and humanitarian crisis" on the U.S.-Mexico border as the Department of Homeland Security asserts. Rather, the program will cause great harm and unnecessarily expose asylum seekers to human rights violations and violence.

Executed on this 13 day of Feb. 2019.

/s/ DANIELLA BURGI-PALOMINO
DANIELLA BURGI-PALOMINO
Latin American Working Group

SECOND DECLARATION OF STEPHEN W. MANNING, ESQ.

I, Stephen W. Manning, declare as follows:

1. I am an attorney licensed to practice in the State of Oregon and am a member in good standing of the bars of the U.S. District Court for the District of Oregon, the U.S. Court of Appeals for the Ninth Circuit, and the Supreme Court of the United States. I am a member of the American Immigration Lawyers Association (AILA), a former member of the Board of Governors of AILA, and a former Chair of the Oregon Chapter of AILA. I am over 18 and have personal knowledge of the facts described herein.

2. I am the Executive Director of the Innovation Law Lab ("the Law Lab"), a nonprofit that I founded to improve the legal rights and well-being of immigrants and refugees by combining technology, data analysis, and legal representation. The Law Lab operates sites in Portland, Oregon; Oakland, California; San Diego, California; San Antonio, Texas; Kansas City, Missouri; Charlotte, North Carolina; and Atlanta, Georgia.

3. Between January 28, 2019 and February 12, 2019, under my direction, Law Lab staff and volunteers were in Tijuana, Mexico interviewing persons who had applied for asylum at the San Ysidro port of entry and were returned to Mexico under the Migrant Protection Protocols ("MPP"), including the Individual Plaintiffs in this case.

4. During the interviews, the Individual Plaintiffs presented documents to our staff and volunteers given to them by DHS officials about the MPP and their particular cases. Our staff and volunteers collected the

documents, copied the documents, and stored the copies for later retrieval. I have retrieved these copies and have attached the documents described below to this declaration.

5. I have attached as Exhibit A true and correct copies of the MPP Assessment Notices provided to the Law Lab staff and volunteers by the Individual Plaintiffs Ian Doe and Howard Doe. Upon information and belief, the MPP Assessment Notice is given only to those individuals who are interviewed by an asylum officer to determine whether they are more likely than not to be persecuted on a protected ground or tortured in Mexico. Because Individual Plaintiffs Ian Doe and Howard Doe were the only Individual Plaintiffs to be interviewed by an asylum officer, no other Individual Plaintiff received an MPP Assessment Notice.

6. The documents contain personally identifiable information as well as information that if publicly released could easily led to the discovery of personally identifiable information. I have redacted the following information from each document, where applicable: first, middle and last names; and alien numbers.

I hereby declare under the penalty of perjury pursuant to the laws of the United States that the above is true and correct to the best of my knowledge.

EXECUTED this 18th day of Feb. 2019.

/s/ STEPHEN W. MANNING
STEPHEN W. MANNING, OSB # 013373

EXHIBIT A

Migrant Protection Protocols (MPP)
Assessment Notice

A [redacted]	[redacted]	[redacted]
A-Number	Last Name	First Name
SYS 02/04/2019	02/04/2019	
Interview Location and Date	Determination Date	

You were interviewed by a DHS asylum officer to determine whether there is a clear probability that you would be persecuted on account of a protected ground or tortured in Mexico. The assessment made by the DHS asylum officer, indicated below, will be considered by DHS in determining whether you are amenable to Migrant Protection Protocols (MPP). DHS will provide you with additional information regarding how you will be processed.

☐ You established a clear probability of persecution on account of a protected ground in Mexico.

☐ You established a clear probability of torture in Mexico.

☒ You did not establish a clear probability of persecution or torture in Mexico.

☐ You established a clear probability of persecution in Mexico but are subject to a bar to withholding of removal and did not establish a clear probability of torture in Mexico.

Migrant Protection Protocols (MPP)
Assessment Notice

[redacted]	[redacted]	[redacted]
A-Number	Last Name	First Name
SYS, 02/03/19	02/04/19	
Interview Location and Date	Determination Date	

You were interviewed by a DHS asylum officer to determine whether there is a clear probability that you would be persecuted on account of a protected ground or tortured in Mexico. The assessment made by the DHS asylum officer, indicated below, will be considered by DHS in determining whether you are amenable to Migrant Protection Protocols (MPP). DHS will provide you with additional information regarding how you will be processed.

☐ You established a clear probability of persecution on account of a protected ground in Mexico.

☐ You established a clear probability of torture in Mexico.

☒ You did not establish a clear probability of persecution or torture in Mexico.

☐ You established a clear probability of persecution in Mexico but are subject to a bar to withholding of removal and did not establish a clear probability of torture in Mexico.

DECLARATION OF JEREMY SLACK, Ph.D.

I, Jeremy Slack, pursuant to 28 USC § 1746, declare that the following is true and correct:

1. I submit this declaration, based on my personal knowledge and extensive empirical research, to describe the grave dangers migrants from Central America face from Mexican and Central American gangs—frequently aided or ignored by Mexican authorities—while waiting to pursue asylum in the United States, a danger that is exacerbated the longer those migrants remain on the Mexican side of border. My CV is attached as Exhibit A.

My Research and Expertise

2. I am an Assistant Professor of Human Geography at the University of Texas at El Paso with more than fifteen years of research experience in Mexico and along the U.S.-Mexico border. Human geography explores the interaction between human beings and their environments. My areas of expertise and publication focus on drug violence, drug trafficking, undocumented migration, corruption, and U.S. Mexico border enforcement. In particular, I am interested in the questions about how drug violence moves and how and where violence affects people as they change their location. My research investigates different patterns of violence associated with who is living where, which reveals a great deal about drug cartels, violence in Mexico, and the potential danger for people in border cities.

3. I received my B.A. from the University of Arizona in 2005 in Spanish and International Studies. I received an M.A in Latin American Studies in 2008 at the University of Arizona. I received my Ph.D. from the

School of Geography and Development, also at the University of Arizona in 2015.

4. I have testified in court over fifty times as an expert regarding drug smuggling, drug violence, and corruption along the border and throughout Mexico in both criminal cases and in immigration court. I was the lead client on an amicus brief that was presented at the Supreme Court (*Hernandez v. Mesa*).

5. I have published approximately fifteen peer-reviewed journal articles and numerous essays, book chapters, and scholarly reports. I have written two books about the impacts of drug violence on migrants. The first book, *The Shadow of the Wall,* was released in April 2018 by the University of Arizona Press.[1] The second book, *Deported to Death: How Drug Violence in Changing Migration in Mexico,* which will be released in early 2019 by the University of California Press, explores the ways organized crime has targeted migrants through kidnapping, extortion, and coerced recruitment.[2] It contains years of research about the dangers facing people stuck on the Mexican side of the border and I can definitively say that there is little hope that Central Americans could safely wait for their trials to conclude without facing serious violence.

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[1] Slack, J., D.E. Martinez, and S. Whiteford, eds. *The Shadow of the Wall: Violence and Migration on the US-Mexico Border.* 2018, University of Arizona Press: Tucson, Arizona.

[2] Slack, J. *Deported to Death: How drug violence is changing migration in Mexico.* 2019, University of California Press: Berkeley, California. Vol 45. California Series on Public Anthropology. https://www.ucpress.edu/ebook/9780520969711/deported-to-death

6. I have received over $1,000,000 in research grants from foundations, universities and federal agencies to support my research activities. This includes funding from the Department of Homeland Security, the National Science Foundation, Ford Foundation, the Open Society Foundation, and the Social Science Research Council among others. I have conducted research along the U.S.-Mexico border since 2003 and have travelled and worked extensively throughout Mexico, living and working in migrant shelters in some of the areas of the country hardest hit by drug cartel violence.

7. I have published about drug cartels in Mexico with particular emphasis on processes of kidnapping and extortion,[3] as well as political corruption, and how cartels use their power to influence and control territory.[4] These publications explore the question about why cartels would target relatively poor individuals for kidnapping and torture. The answer lies in the extreme vulnerability of people in transit who are neglected by local authorities with little to no hope that friends and family would be able to locate them anytime soon. Moreover, members of organized crime also know that migrants have contacts in the United States who can come up with several thousand dollars to pay ransom.

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[3] Slack, J., Captive bodies: migrant kidnapping and deportation in Mexico. Area, 2015. 48(3).

[4] Slack, J. and H. Campbell, On Narco-coyotaje: Illicit Regimes and Their Impacts on the US-Mexico Border. Antipode, 2016. Boyce, G.A., J.M. Banister, and J. Slack, *You and What Army? Violence, The State, and Mexico's War on Drugs.* Territory, Politics, Governance, 2015. 3(4): p. 446-468.

The Security Situation in Mexico

8. The major Mexican cartels—the Juárez Cartel (aka La Linea), Gulf Cartel, Zetas (Los Zetas), Sinaloa Cartel, Tijuana Cartel, La Familia Michoacana/Los Caballeros Templarios, and the Cartel Jalisco Nueva Generación (CJNG)—are currently locked in violent inter-cartel (and intra-cartel) disputes and a struggle with the Mexican military and police that has cost over 200,000 lives since 2001. The Mexican government is no longer able to protect its people and in many cases law enforcement officers or military officials—affiliated with drug cartels-actually commit acts of murder or torture on behalf of the cartels.[5] In certain localities, the cartels wield such significant authority, and have become so closely intertwined with the government, as to be considered a part of the state. In 2016, violence in Mexico skyrocketed, placing the Mexican drug war as the second most violent conflict in the world (behind Syria).[6] It has remained one of the most vicious and bloody conflicts in the world. Some analysts thought that, as a result of this violence, Mexico has become or is on the verge of becoming a "failed state."[7]

9. However, in the years since the conflict began the character has changed. Rather than concentrated hotspots—such as Ciudad Juarez, Chihuahua, where

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[5] Gibler, J., *To die in Mexico : dispatches from inside the drug war.* 2011, San Francisco, CA: City Lights Books.

[6] IISS, *Armed Conflict Survey 2017,* I.I.f.S. Studies, Editor. 2017: Washington, D.C.

[7] Longmire, S., *Cartel : the coming invasion of Mexico's drug wars.* 2011, New York: Palgrave Macmillan. Grayson, G.W., *Mexico : narco-violence and a failed state?* 2010, New Brunswick, N.J.: Transaction Publishers.

10,000 people were murdered between 2007 and 2010-the violence has spread out across the country. This is because the major cartels have fractured, leading to conflict between cartels, but also within these organizations themselves. This has been described by scholars as a "balkanization" effect in Mexico[8]—a reference to the fragmentation of the former Yugoslavian Republic. The internal strife and complex allegiances between and within the cartels makes the security situation in Mexico complex, dynamic, and chaotic as violence has spread to areas that were previously considered safe such as Mexico City and Cancun.

10. In addition to the dangers posed by Mexican cartels, Central American gangs have established relationships with Mexican gangs that heighten the vulnerability of Central American migrants traveling through Mexico. In our research we found members of Central American gangs, MS-13 and Barrio 18 working for the Mexican Zetas and other organizations, as they would often be involved with kidnapping, extorting, and charging a toll for migrants to pass through certain areas. Central American gangs would patrol the train routes used by migrants traveling North, collecting tolls, killing people who refused or could not pay, and giving a cut of the profits to local criminal actors and the police. They would also investigate who people were and why they were migrating. The vast majority of Central American asylum seekers are fleeing gang violence,[9] yet the very same groups they are fleeing have a presence

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[8] Beittel, J., Mexico : *Organized crime and drug trafficking organizations*. Washington: Congressional Research Service, 2015.

[9] Wolf, S., Mano Dura: The Politics of Gang Control in El Salvador. 2017: University of Texas Press.

in Mexico and particularly along the border. Given the immense power of the major cartels as governmental actors in the Mexican state, migrants have nowhere to turn in Mexico when the same harm from which they are fleeing finds them on their journeys. It thus makes most border towns on the Mexican side, an extremely perilous place to wait.

11. The Mexican side of the U.S.-Mexican border as a region has experienced high levels of turmoil and violence in recent years. From 2007-2012 the most dangerous place was the border town of Ciudad Juarez, on the other side of El Paso, Texas, with over 10,000 murders. Northeastern Mexico has more recently experienced lower levels of murders, but higher levels of disappearances and kidnappings, making it one of the most feared regions of the border. Mass graves containing over 200 bodies were recovered in the area the following years.[10] Multiple mass graves throughout the region have been discovered, often with clear ties to Central American migrants.[11] The largest documented kidnapping of migrants occurred in the far Northeast city of Matamoros-across from Brownsville, TX, with 480 people being kidnapped simultaneously in 2018.[12] Other regions have experienced high levels of violence as well.

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[10] Ureste, M., A 5 anos de massacre de 72 migrantes en San Fernando, caso sigue impune: Armistia Internacional, in Animal Politico. 2015: Mexico City.

[11] Slack, J., Captive bodies: migrant kidnapping and deportation in Mexico. Area, 2015. 48(3).

[12] Jimenez, M., Suman 480 migrantes rescatados en Matamoros, in El Manana de Matamoros. 2018: Matamoros.

Recently, the number of murders in Tijuana nearly doubled from 909 in 2016[13] to 1,897 in 2017. Then it skyrocketed to approximately 2,506 in 2018.[14] In the nearby northwestern state of Sonora, a region that has avoided much of the cartel bloodshed, large groups of migrants were abducted and disappeared or forced to cross the border due to large amounts of marijuana smuggling through the desert by drug cartels.[15] In Ciudad Juárez deported migrants were found decapitated over the summer of 2017.[16] While there have been ebbs and flows in the level of violence along the border, the chaotic situation, lawlessness and the violent outbursts against Central American migrants have created a dangerous precedent which will likely continue to escalate in the months and years to come.

12. In the following sections I will expand on the types of violence people are likely to experience if forced to wait in Mexican border cities, why they are targeted and the potential torture, persecution, and death.

Dangers Present for Central Americans in Mexico

13. Kidnapping has become a pandemic in Mexico, and no population is under more threat than Central American migrants. These kidnappings often involve

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[13] Staff, Horror; 762 homicidios dolosos en seis meses Tijuana, in El Debate. 2017: Tijuana.

[14] Staff, Baja California vivió su ano mas violento: 2,500 muertos solo en Tijuana, in Vanguardia. 2019: Tijuana.

[15] Slack, J. and H. Campbell, On Narco-coyotaje: Illicit Regimes and Their Impacts on the US-Mexico Border. Antipode, 2016. **48**(5). Slack , J. and S. Whiteford, *Violence and migration on the Arizona-Sonora border.* Human organization, 2011. **70**(1): p. 11-21.

[16] Staff, Decapitados en Juarez eran deportados de EU, in El Tiempo. 2017: Ciudad Juarez.

ransom, but are frequently more complex as members of organized crime are looking for information from migrants who might be fleeing from rival or affiliated gangs. Furthermore, criminal organizations use torture as a way to recruit individuals, giving them the option to join the gang, or torture or kill fellow captives and escape this fate. This has become common as a way to forcibly recruit kidnapped migrants who are unwilling to torture or kill their way out of gang membership.[17]

14. In 2016 alone, a rough estimate of over 69,000 kidnappings occurred in Mexico.[18] Other sources have documented over ten thousand cases of kidnapping of migrants in a six-month period in 2011.[19] However, these statistics should be taken as highly conservative since this only relies on reported kidnappings and not the overwhelming majority of kidnappings that go unreported. This is known as the "cifra negra" or the black statistic, because Mexico's census bureau (INEGI) has estimated that 98% of kidnappings go unreported because people do not think the police will help or are afraid to do so.[20]

15. Unfortunately, there are no exact figures for the kidnapping and torture of Central American migrants in

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[17] Slack, J., Captive bodies: migrant kidnapping and deportation in Mexico. Area, 2015. 48(3).

[18] INEGI, Encuesta Nacional de Victimización y Percepción sobre Seguridad Publica (ENVIPE), in ENVIPE, I.N.d.E.y. Geografia, Editor. 2017, INEGI: Mexico, D.F..

[19] CNDH, *Informe Especial Sobre el Secuestro de Migrantes en Mexico,* C.N.d.l.D. Humanos, Editor. 2011, CNDH: Mexico, DF.

[20] INEGI, Encuesta Nacional de Victimización y Percepci6n sobre Seguridad Publica (ENVIPE), in ENVIPE, I.N.d.E.y. Geografia, Editor. 2017, INEGI: Mexico, D.F..

Mexico since many are "disappeared" and killed, or flee Mexico as fast as possible. Moreover, the lethality of kidnapping has grown since Mexico enacted tougher laws on kidnapping that sentence people to 80 years in prison in 2014. It has become easier to simply kill people than to let them go.[21]

16. These kidnappings usually involve the explicit aid of the police or, at the very least, the knowledge that the police will do nothing to prevent the kidnappers from carrying out their gory reprisals.[22] Police in Mexico are highly corrupt and frequently work hand in hand with the drug cartels.[23] Officers that do not work with the cartels are hindered by this corruption and are unable to speak out or investigate crimes against Central American migrants.[24] Local police are underpaid and have to share guns, purchase their own ammunition, and sometimes are not even certified to carry weapons.

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[21] Slack, J., Captive bodies: migrant kidnapping and deportation in Mexico. Area, 2015. 48(3).

[22] Ibid. Slack, J. and H. Campbell, On Narco-coyotaje: Illicit Regimes and Their Impacts on the US-Mexico Border. Antipode, 2016. 48(5).

[23] Sicario, M. Molloy, and C. Bowden, *El Sicario : the autobiography of a Mexican assassin*. 2011, New York: Nation Books. Hernandez, A., *Los senores del narco.* 2010, Mexico, D.F.: Grijalbo. Hernandez, A., Narcoland: The Mexican drug lords and their godfathers. 2013: Verso Books.

[24] Grillo, I., *El Narco: inside Mexico's criminal insurgency.* 2011, New York: Bloomsbury Press. Vulliamy, E., *Amexica: war along the borderline.* 2010, New York: Farrar, Straus and Giroux. Bowden, C., Down by the river: drugs, money, murder, and family. 2002, New York: Simon & Schuster. Bowden, C. and J.n. Cardona, Murder city: Ciudad Juárez and the global economy's new killing fields. 2010, New York: Nation Books.

Federal police are better equipped but are generally focused on high profile busts and arresting famous drug kingpins.

17. On the Mexican border specifically, there are lookouts, known as halcones, who are concentrated there and are tasked with investigating who is coming and going into new areas. This is partly because they are worried about incursions from rival cartels, but also because they are interested in determining which migrants would be able to pay a high ransom, or which might be targeted by affiliated gangs from Central America. The need to understand who has arrived in any given area of the border has become an obsession for organized crime. Because there are so many fractures within these criminal organizations, they are no longer enjoying absolute supremacy and must remain vigilant against incursions from rival groups (or even other members of the same drug cartel). Because of this, lookouts or even people posing as migrants or coyotes, often living or working in migrant shelters, are constantly collecting information about who is arriving. In addition, agents from the Instituto Nacional de Migración have also engaged in high levels of corruption and pass information about migrants along to organized crime.[25] Should Mexican immigration authorities be increasingly involved in the process of making people apply for asylum from Mexico, it is likely that they will

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[25] Slack, J., Captive bodies: migrant kidnapping and deportation in Mexico. Area, 2015. 48(3). Paris, M.D., et al., Un análisis de los actores políticos y sociales en el diseño y la implementación de la política y la gestión migratoria en México. 2015, El Colegio de la Frontera Norte Tijuana, México.

pass information about who is waiting over to organized crime.

18. In addition to corrupt authorities passing information to organized crime or participating in kidnapping, the lack of protection for Central American migrants has been a huge problem.[26] Mexico has conflicting laws about how to control and police immigration from Central America. This is the root of the fluctuations in treatment by Mexican authorities, at times allowing Central Americans free passage or cracking down, apprehending and deporting migrants. One thing is clear though; the greater the restrictions, the higher the incidences of violence, extortion, torture and murder.

19. Based on my research into migration and violence in Mexico, I am certain that few migrants will find either short- or long-term secure shelter in Mexico while they await their hearings.

20. Migrants are targeted along the border because of their distance from both destination and home. In my forthcoming book I explore in-depth why targeting migrants is so common and lucrative. They can be extorted, tortured, killed, forced to work for drug smugglers, and no one will speak up for them. If people are forced to wait weeks or months along the border they will face numerous threats, from police demanding extortion to kidnappings and forced recruitment by gangs and drug cartels. Few people will be able to live in this limbo. One family I worked with began to get intensi-

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[26] Vogt, Wendy A. *Lives in Transit: Violence and Intimacy on the Migrant Journey.* (2018) University of California Press. Vol. 42. California Series in Public Anthropology.

fied threats, especially to the father, who was being accused of belonging to a rival gang and the only way for them to be assured that he was not working against them, would be to join the cartel. Despite already having fled El Salvador, they were forced to flee to border region yet again because of these dangerous threats, itself a dangerous and difficult proposition.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and understanding.

/s/ JEREMY SLACK
JEREMY SLACK

Dated: Feb. 15, 2019
El Paso, Texas

EXHIBIT A

Jeremy Slack
Phone: (915) 747-6530
• www.jeremyslack.net
• E-Mail: jmslack@utep.edu

Education

Ph.D. **Geography**, The University of Arizona, May 2015

M.A. **Latin American Studies**, The University of Arizona, May 2007

B.A. **International Studies/Spanish and Portuguese**, The University of Arizona, December 2005

Research Interests

Violence, Trauma, Migration, Health, Borders, State Theory, Urbanization, Human Rights, Drugs and Drug Trafficking, Kidnapping, Political Geography, Urban Geography, Latin America with a special focus on Mexico and Brazil, Research Methodology, Activist and Participatory Scholarship

Work Experience

• **Assistant Professor**, *Department of Sociology and Anthropology.* The University of Texas, El Paso	Aug, 2015 –
Visiting Assistant Professor, *Department of Sociology and Anthropology.* The University of Texas, El Paso.	Aug, 2014 – May, 2015

- **Drugs, Security and Democracy Dissertation Fellow**, the Social Science Research Council and the Open Society Foundation — Aug, 2013 – Aug, 2014
- **Research Specialist**, *Center for Latin American Studies*, The University of Arizona — Aug, 2007 – Aug 2014
- **Research Assistant**, *The Udall Center*, The University of Arizona — Aug, 2009 – Aug, 2010
- **Research Assistant**, *The Bureau of Applied Research in Anthropology*, The University of Arizona — May, 2004 – Aug, 2007

Awards, Fellowships and Grants

- *Human Trafficking Hubs.* **Department of Homeland Security**. Co-PI with Louise Shelley, Desmond Arias, José Miguel Cruz. — $150,000
    - *Research Experience for Undergraduates (REU) Site: Collaborative Research: Immigration Policy* — $468,176

and US-Mexico Border Communities. **The National Science Foundation**. Co-PI with Neil Harvey.	
• *Deported to Death: How drug violence is reshaping migration.* **California Center for Public Anthropology International Competition**. Winner. University of California Press	
• **National Institute of Health: BUILDing Scholars Summer Sabbatical Fellow** at the University of Texas, Austin	$14,000
• *The Intersection of Criminal and Immigration Law.* **Summer Grant Writing Fellowship**. University of Texas at El Paso.	$5,000
• *"Deporting Youth: The Emotional and*	$40,000

Physical Effects of Violence and Trauma in Contemporary Undocumented Migration." **Research Program on Migration and Health–PIMSA**. University of California, Berkeley. (PIs) Scott Whiteford, Sonia Bass, **Jeremy Slack**, Oscar Misael Hernández.

- **Drugs, Security and Democracy Dissertation Fellowship** (2013-2014) by the Social Science Research Council and the Open Society Foundation — $23,800
- *"Immigration and Violence on the Border: Increasing Impact through Public Scholarship"* FY2013. **The Ford Foundation, Mexico and Central American** — $142,500

Office. (PIs) **Jeremy Slack**, Scott Whiteford, Daniel Martinez.

- "*Border Militarization and Health: Violence, Death and Security on the U.S. Mexico Border.*" (2013) **The Puentes Consortium**. (PIs) **Jeremy Slack**, Alison Elizabeth Lee, Daniel Martinez and Scott Whiteford. $6,000
- **Richard Morrill Public Outreach Award**. (2013) From the Political Geography Specialty Group of the Association of American Geographers.
- *"Border Field Trips and Experiential Learning."* (2012-2013) **Magellan Foundations, Faculty Student Interaction Grant**. $1000

• "*Forging Research Collaboration Under Fire of Border Security Debates and Violence." (2012)* **The Puentes Consortium** (PIs) **Jeremy Slack**, Alison Elizabeth Lee, Scott Whiteford, Sonia Bass Zavala.	$12,500
• *"Collaborative Steps in Sharing Research: Data Driven Policy from the Mexico United States Border."* FY2011. **The Ford Foundation, Mexico and Central American Office.** (PIs) **Jeremy Slack,** Scott Whiteford, Daniel Martinez.	$60,000
• *"Migration, Violence and Security on the U.S./Mexico Border: Critical Policy Issues."* FY2010. **The Ford Foundation, Mexico and Central American Office.** (PIs)	$115,000

Scott Whiteford, **Jeremy Slack**, Daniel Martinez.

- *"Corruption at the Border: Violence and Security Concerns."* (2009) **The Puentes Consortium**. (PIs) Jorge Manuel Aguirre Hernández, **Jeremy Slack**, Scott Whiteford. — $7,000
- *"Migration and Violence: A New Research and Policy Challenge on the Mexico/United States Border."* FY2009. **The Ford Foundation, Mexico and Central American Office**. (PI) Scott Whiteford. (Co-PI) **Jeremy Slack**. — $25,000
- *"Community, Identity and Notoriety in the City of God."* (2007) Summer Travel Award, **The Tinker Foundation**. — $700

Publications/Presentations

Books:

1. (Forthcoming - July 2019) **Slack, Jeremy. Deported to Death: How Drug Violence has Reshaped Migration on the U.S. Mexico Border**. *The University of California Press.* Volume 45. California Series on Public Anthropology. *http://www.publicanthropology.org/books-book-series/california-book-series/international-competition/2016-competition-winners-b/*
2. (2018) **Slack, Jeremy**; Martínez, Daniel E.; Whiteford, Scott. (eds) **The Shadow of the Wall: Violence and Migration on the U.S. Mexico Border**. *University of Arizona Press*. Tucson, Arizona.

Scholarly Articles:

1. (Forthcoming) Heyman, Josiah; **Slack, Jeremy**; Guerra, Emily. **Bordering a "Crisis": Central American Asylum Seekers and the Reproduction of Dominant Border Enforcement Practices**. *Journal of the Southwest.*
2. (2018) Martínez, Daniel; **Slack, Jeremy**; Martinez-Schultz, Ricardo. **Repeat Migration in the Age of Unauthorized Permanent Residents: A Quantitative Assessment of Migration Intentions Post-Deportation**. *International Migration Review.* No. 54. Vol 4. 1186 – 1217.

3. (2018) **Slack, Jeremy**; Martínez, Daniel. **What makes a good human smuggler? The differences between satisfaction and recommendation of coyotes on the U.S. Mexico Border**. *The Annals of the American Academy of Political and Social Science.* No 676 Vol 1. 152 – 173.

4. (2017) Abrego, Leisy; Coleman, Mathew; Martínez, Daniel; Menjivar, Cecilia; **Slack, Jeremy**. **Making Immigrants Criminals: Legal Processed of Criminalization in the Post-IIRIRA Era**. *The Journal of Migration and Human Security.* Vol. 5 No. 3

5. (2017) Campbell, Howard; **Slack, Jeremy**; Diedrich, Brian. **Mexican Immigrants, Anthropology and U.S. Law: The Pragmatics and Ethics of Expert Witness Testimony**. *Human Organization.* Vol. 76 No. 4

6. (2017) Martinez, Daniel; **Slack, Jeremy**; Beyerlein, Kraig. **The Migrant Border Crossing Study: A Methodological Overview**. *Population Studies.* DOI: 10.1080/00324728.2017.1306093

7. (2016) **Slack, Jeremy**; Campbell, Howard. **On *Narcocoyotaje*: Illicit Regimes and their Impacts on the U.S. Mexico Border**. *Antipode.* 48 (5) 1380-1399

8. (2016) **Slack, Jeremy**; Martínez, Daniel; Lee, Alison; Whiteford, Scott. **The Ge-**

ography of Border Militarization: Violence, and Death in Mexico and the United States. *The Journal of Latin American Geography.* Vol. 15 (1): 7-32.

9. (2016) **Slack, Jeremy. Captive Bodies: Migrant Kidnapping on the U.S. Mexico Border.** *Area.* 48 (3), 271 - 277

10. (2015) Banister, Jeffery; Boyce, Geoff; **Slack, Jeremy. Illicit Economies and State (less) Geographies: The Politics of Illegality.** *Territory, Politics, Governance.* Vol 3 (4): 446-468: 1-4

11. (2015) Boyce, Geoff; Banister, Jeffrey; **Slack, Jeremy. You and What Army? Wikileaks and the Mexican Drug War.** *Territory, Politics, Governance.* Vol 3 (4): 446-468

12. (2015) **Slack, Jeremy**; Martinez, Daniel; Whiteford, Scott; Peiffer, Emily. **In Harm's Way: Family Separation, Deportation, and Immigration Enforcement.** *The Journal of Migration and Human Security.* Vol. 3 No. 2

13. (2013) Martinez, Daniel; **Slack, Jeremy. What part of illegal DO you understand? The Criminalization of Migrants and Border Violence.** *Social and Legal Studies.*. Vol 22. No.

14. (2011) **Slack, Jeremy**; Whiteford, Scott. **Violence and Migration on the Arizona Sonora Border.** *Human Organization.* Vol. 70, no. 1.

15. (2011) **Slack, Jeremy**; Martinez, Daniel; Vandervoet, Prescott. **Methods of Violence: Researcher Safety and Adaptability in Times of Conflict**. *Practicing Anthropology*. Vol. 22. No. 1.
16. (2010) **Slack, Jeremy**; Whiteford, Scott. **Viajes Violentos: la transformación de la migración clandestine hacia Sonora y Arizona**. *Norteamérica: la revista de UNAM*. Vol 2. No. 2.
17. (2007) **Slack, Jeremy**; Gaines, Justin; Brocious, Ariana. **From Students to Researchers and Pupils to Partners**. *Practicing Anthropology*. Vol 29. No. 3.
18. (2007) Sheehan, Megan; Burke, Brian; **Slack, Jeremy. Graduate Education Grounded in Community Based Participatory Research**. *Practicing Anthropology.* Vol 29. No. 3.

- **<u>Book Chapters</u>:**

1. (In Press) Slack, Jeremy; Martínez, Daniel. *The Geography of Migrant Death.* In. Mitchell K; Jones, R; Fluri, J. (eds) **Handbook on Critical Geographies of Migration**. Routledge.
2. (Under Review) Heyman, Josiah; **Slack, Jeremy**; Guerra, Emily. Bordering Processes: Contestation and Outcomes around Central American Migration in South Texas, 2013 – Present. *CIESAS*

3. (2018) Martínez, Daniel; Slack, Jeremy; Martínez-Schultz, Ricardo. *Deportation.* Ramiro Martinez; Jacob Stowell; Megan Hollis. (eds) **The Handbook of Race, Ethnicity, Crime and Justice**. Wiley Blackwell.

4. (2016) Slack, Jeremy; Whiteford, Scott; Bass, Sonia; Lee, Alison. *The Use of Social Media as a Tool for Collaborative Research on the U.S. Mexico Border.* In Hans Buechler and June Nash (eds) **Collaborative Exchanges in Global Places: An Anthology**. Palgrave Press.

5. (2016) Martinez, Daniel; Slack, Jeremy. *Walking Toward, and Deporting the "American Dream."* In Hanson, Sandy (eds). **Latino, American Dream**. Texas A & M Press.

6. (2013). **Slack, Jeremy**; Whiteford, Scott. Caught in the Middle: Undocumented **Migrant's Experiences with Drug Violence. In**: Payan, T., Staudt, K., & Kruszewski, Z. A. (Eds.). **A War that Can't Be Won: Binational Perspectives on the War on Drugs**. University of Arizona Press. Tucson, AZ.

7. (2013) Martinez, Daniel; **Slack, Jeremy**; Vandervoet, Prescott. **Methodological Challenges and Ethical Concerns of Researching Marginalized and Vulnerable Populations: Evidence from Firsthand Experience Working with Undocumented**

Migrants. In: O'leary, A; Deeds, C; Whiteford, S. **Uncharted Terrains: New Directions in Border Research Methodology, Ethics and Practice**. University of Arizona Press. Tucson, AZ.

8. (2013) **Slack, Jeremy**; Wilder, Margaret. **Aceso al agua urbana durante una epoca de cambio climático**. In: Córdova, G; Dutram, J; Lara, B; Rodriguez, J. **Desarrollo humano transfronterizo: Retos y oportunidades en la region Sonora-Arizona**. El Colegio de Sonora. Hermosillo, Sonora.

- **Reports, White Papers and Miscellaneous Publications**:

1. (2018) **Slack, Jeremy**; Martínez, Daniel; Heyman, Josiah. **Immigration Authorities Systematically Deny Medical Care to Migrants who Speak Indigenous Languages**. Center for Migration Studies. New York, New York. http://cmsny.org/publications/slackmartinezheyman-medical-care-denial/

2. (2018) Heyman, Josiah; **Slack, Jeremy**. **Blockading Asylum Seekers at Ports of Entry at the U.S. – Mexico Border Puts Them at Increased Risk of Exploitation, Violence and Death**. Center for Migration Studies. New York, New York. **http://cmsny.org/publications/heyman-slack-asylum-poe/**

3. (2016) **Slack, Jeremy**; Martínez, Daniel. **What makes a good coyote? Mexican migrants' satisfaction with human smugglers**. Allegra Law Lab. http://allegralaboratory.net/what-makes-a-good-coyote-mexican-migrants-satisfaction-with-human-smugglers/

4. (2014) **Slack, Jeremy**; Martínez, Daniel; Whiteford, Scott; Peiffer, Emily; Velasco, Paola. **La Sombra del Muro: Separación Familiar, Inmigración y Seguridad**. Report Prepared fo*r the Ford Foundation*. Available at http://las.arizona.edu/mbcs

5. (2013) Martinez, Daniel; **Slack, Jeremy**; Heyman, Josiah. **Part II: Possessions Taken and Not Returned. in "Bordering on Criminal: The Routine Abuse of Migrants in the Removal System."** Report released by the Immigration Policy Center, Washington, D.C.

6. (2013) Martinez, Daniel; **Slack, Jeremy**; Heyman, Josiah. **Part I: Migrant Mistreatment While in U.S. Custody. in "Bordering on Criminal: The Routine Abuse of Migrants in the Removal System."** Report released by the Immigration Policy Center, Washington, D.C.

7. (2013) **Slack, Jeremy**; Martinez, Daniel; Lee, Alison; Whiteford, Scott. **Border Militarization and Migrant Health**.

Working Paper for *The Puentes Consortium.* Rice University, Houston.

8. (2013) **Slack, Jeremy**; Martinez, D. **Families or Workers? Criminals or Migrants?** *North American Congress on Latin America.*

9. (2013) **Slack, Jeremy**; Martinez, D; Whiteford, S; Peiffer, E. **In the Shadow of the Wall: Family Separation, Immigration Enforcement and Security**. Report Prepared fo*r the Ford Foundation*. Available at http://las.arizona.edu/mbcs

10. (2012) **Slack, Jeremy**; Whiteford, Scott; Bass, Sonia; Lee, Alison. **The Use of Social Media as a Tool for Collaborative Research on the U.S. Mexico Border**. Working Paper for *The Puentes Consortium*. Rice University.

11. (2011) Wilder, Margaret, **Jeremy Slack**, and Gregg M. Garfin. **"Urban water vulnerability and institutional challenges in Ambos Nogales. 50."** Udall Center for the Environment. University of Arizona

12. (2011) **Slack, Jeremy**; Martinez, Daniel. **Migration and the Production of (In) Security on the U.S. Mexico Border**. *Sonarida.* Vol 29. (English and Spanish)

13. (2008) Austin, Diane; Owen, Bonnie Jean; Mosher, Sara Curtin; Sheehan, Megan; **Slack, Jeremy**; Cuellar, Olga; Abela, Maya; Molina, Paola; Burke, Brian; McMahan, Ben. **"Evaluation of Small**

Scale Burning of Waste and Wood in Nogales Sonora." Final Report prepared at the Bureau of Applied Research in Anthropology, University of Arizona for the Arizona Department of Environmental Quality.

14. (2008) **Slack, Jeremy**; Helmus, Andrea; Conrad, Claire. "**Argentina and Uruguay's Pulp Friction.**" Arizona Daily Star. June 21. Pg. A4.

15. (2006) Austin, Diane E., Brian Burke, Krisna Ruette, **Jeremy Slack**, Ronald H. Villanueva. **"Thermal Construction and Alternative Heating and Cooking Technologies: Final Report."** Report prepared at the Bureau of Applied Research in Anthropology, University of Arizona for the Arizona Department of Environmental Quality.

16. (2006) Diamente, Daniela and Diane Austin. Contributing Authors: **Jeremy Slack** et al. **"Ambos Nogales Soil Stabilization Through Revegetation: Final Report."** Report prepared at the Bureau of Applied Research in Anthropology, University of Arizona on behalf of the Asociación de Reforestación en Ambos Nogales for the U.S. Environmental Protection Agency.

Conference Papers (selected):

1. **2018**. Scales of Conflict: Post-deportation mobilities along the U.S. Mexico Border. **Social Science and History Association**. Phoenix, AZ. November, 2018.
2. **2017**. Border and Immigration Enforcement in the Age of Trump. **Association of American Geography Annual Meeting**. Boston, MA.
3. **2016**. From Advocate Researchers to Researchers for Advocates. **Latin American Studies Association**. New York.
4. **2016**. Fear, Mobility and the Violence of Forced Movement: Developing a Post-Deportation Studies. **Latin American Studies Association**. New York.
5. **2016**. What makes a good coyote? Customer Satisfaction Among Migrants. **Changing the Narrative on Human Smuggling Workshop**. Florence, Italy. European University Institute. (With Daniel Martinez).
6. **2016**. Deportation Diasporas: Undocumented Permanent Residents and the New Migration Home. **Association of American Geography Annual Meeting**. San Francisco.
7. **2016**. On Narco-Coyotaje: Illicit Regimes and their impacts on the U.S. Mexico Border. **Political Geography Specialty Group Preconference of the Association of American Geography**. San Francisco
8 **2015**. *Te van a levanter—They are going to kidnap you: Post-Deportation Mobilities and the Con-*

flicting Geographies of Deporation and Drug Violence. **Latin American Studies Association.** Puerto Rico.

9. **2015.** Insecurity, Trauma and Aftercare: Researcher Reflections Off the Field. **Latin American Studies Association**. Puerto Rico (Round Table Discussion)

10. **2014.** *Migrando al Hogar: la migración de retorno de las nuevas politicas de control migratoria.* Presented at **the Colegio de la Frontera Norte, Cultural Studies Seminar**. Tijuana, Baja California, Mexico. (June, 2014)

11. **2014.** *Dangerous Deportation: State Sponsored Vulnerability.* **Annual Meeting for the Society for Applied Anthropology**. Albuquerque, NM. (CHAIR) (March, 2014)

12. **2014.** *U.S. Authority Verbal and Physical Mistreatment of Unauthorized Migrants: New Evidence from Wave II of the Migrant Border Crossing Study.* **Annual Meeting for the Society for Applied Anthropology**. Albuquerque, NM. **With Daniel Martínez and Scott Whiteford.** (March, 2014)

13. **2013.** *El sistema de entrega de consecuencias de la patrulla fronteriza: Tamaulipas dentro esta nueva dinamica.* Tamaulipas Studies Series. **Colegio de la Frontera Norte, Matamoros, Tamaulipas.** (December 2013).

14. **2013.** *Immigration and Deportation: Challenging the Myths*" **Latin American Studies Association, Washington D.C.** (May 2013) **with Scott Whiteford**

15. **2013**. *Dirty War or Drug War? Is this State Violence?* **Association of American Geography: Annual Meeting**, Los Angeles, CA. (April 2013)

16. **2013**. *The Consequences Delivery System: Data from the Migrant Border Crossing Study*. **Political Geography Specialty Group**, Los Angeles, CA. (April 2013

17. **2012**. *Captive Bodies: A Topology of Kidnapping on the U.S. Mexico Border.* **Political Geography Specialty Group: Pre-Conference**, Poughkeepsie, New York (Feb, 2012)

18. **2012**. *The Migrant Border Crossing Study: Preliminary Data and Trends.* **Inter-University Program for Latino Research**, New York, New York (Feb 2012) **with Daniel Martinez**

19. **2012**. *Captive Bodies: Migration and Kidnapping on the U.S. Mexico Border.* **Association of American Geography: Annual Meeting**, New York, New York (Feb 2012)

20. **2011**. *Datos preliminares de migracion, violencia y inseguridad en la frontera.* **Desarrollo Humano en la Frontera**. Nogales, Sonora, Mexico. (December 2011)

21. **2011**. *Datos preliminares de migracion, violencia y inseguridad en la frontera.* **Ciudades Fronterizos**, Ciudad Juárez, Chihuahua, Mexico. November 2011.

22. **2011**. *Amanecen Muertos: They wake up dead on the border.* **Annual Meeting for the Association of American Geographers**. Seattle, Washington. (April 2011)

23. **2011**. *Violence and Migration*. **Annual Meeting for the Society for Applied Anthropology**. Seattle, Washington. (March 2011) With **Scott Whiteford**.

24. **2011**. *Violence and Migration.* **Annual Meeting for the Association for Borderlands Studies**. Salt Lake City, Utah. (April 2011) With **Scott Whiteford**

25. **2010**. *Datos y características de los migrantes repatriados a Nogales, Sonora.* **Presented at the Binational Colloquium on Transborder Human Development in the Arizona-Sonora Region**. Nogales, Sonora, Mexico. (May 2010) with Prescott Vandervoet

26. **2010**. *Niveles de acceso al agua en Nogales, Sonora durante la época del Cambio Climático*. **Presented at the Binational Colloquium on Transborder Human Development in the Arizona-Sonora Region**. Nogales, Sonora, Mexico. May 2010.

27. **Slack, Jeremy. 2010**. *Power and Post-Structural Violence: The Ethics of Labeling and Defining Populations.* **Border Research Ethics and Methodology in Migration**. Tucson, Arizona. May 2010.

28. **2010**. *Bajador, Burrero o Migrante? Mexico-U.S. Migration and Post-Structural Violence.* **Presented at the Annual Meeting for the Society for Applied Anthropology**. Mérida, Yucatán, México. March, 2010.

29. **2010**. *Acceso al agua durante la época del cambio climático: Nogales, Sonora.* **Presented at Primer Congreso de la Red de Investigadores Sociales Sobre el Agua Sede centro de capacitación del Instituto**

Mexicano de Tecnología del Agua. Jiutepec, Morelos, Mexico. March 2010.

30. **2009**. "*El maltrato de migrantes indocumentados en tránsito por la frontera Arizona—Sonora.*" **Encuentro internacional migración y niñez migrante**. Colegio de Sonora, Hermosillo. May 2010. with **Dan Martinez and Prescott Vandervoet**

31. **2009**. "*Migrant Border Crossing Survey.*" **Social Justice in Health Symposium. Tucson, Az.** March 2010. with **Dan Martinez**

32. **2009**. "*Fueling the Drug War: Repatriation Procedures and Violence on the Border.*" **Annual Meeting of the Society for Applied Anthropology**. Santa Fe, New Mexico. March 2009. with **Scott Whiteford**

33. **2008** "*Urbanization on the U.S. Mexico Border: A Case Study of Invasion, Eviction and Resettlement*" **Association for Borderlands Studies Conference**. Denver, CO. April 2008.

34. **2008** "*Preliminary Results from Migrant Border Crossing Experience Survey*" **Social Justice in Health**. Tucson, AZ. April 2008. with **Dan Martinez, Kraig Beyerlein, Prescott Vandervoet, Paola Molina, Kylie Walzak**

35. **2008** "*Land Rights in Mexico: A Case Study of Land Invasion and Eviction on the U.S. Mexico Border*" **Rocky Mountain Consortium on Latin American Studies**. Santa Fe, New Mexico. Session Chair. April 2008.

36. **2007** "*Living in the City of God: Senior Citizens' Perspectives of Community, Identity and Notoriety in Contemporary Rio de Janeiro"* **Tinker Symposium on Latin American Studies**. Tucson, AZ. (November 2007)

Invited Presentations (Selected):

37. *Deported to Death: How drug violence has reshaped migration.* **Neil A. Weiner Distinguished Speaker Series. Vera Institute for Justice**. New York, New York. January 2019.

38. *Deported to Death: How drug violence has reshaped migration.* **California State University: Long Beach. Understanding Border Colloquim Series**. Long Beach, CA. April, 2018

39. *Author meets critics. Reece Jones: Violent Borders*. **Association of American Geography Annual Meeting**. Boston, MA. April 2017.

40. *Las Pertenencias de los migrantes: una problema sistemática.* **The American Civil Liberties Union: Migrant Belongings Workshop**. Mexico City, Mx. January 2015.

41. *Fire and Ice: Human Trafficking on the U.S. Mexico Border.* **The University of Texas, El Paso**. El Paso, Texas. October 2014.

42. *Seminario sobre los derechos del ninez migrante*. **Colegio de la Frontera Norte**, Tijuana, Baja California, Mexico. June 2014.

43. *Migración y Derechos Humanos.* **Centro de Estudios Legales y Sociales**. Buenos Aires, Argentina. June, 2014

44. *"Preliminary Data from the Migrant Border Crossing Study: Families, Deportation and Violence."* **Woodrow Wilson Center, Mexico Institute, (May, 2013) Washington, D.C.**

45. *Ad Hoc Congressional Hearing on Family Reunification and Immigration Reform, Chaired by Rep. Raúl Grijalva (D-AZ).* **113th United States Congress**. Washington, D.C. (Presented by **Daniel Martinez**, drafted jointly)

46. **Customs and Border Protections, CBP Headquarters. Washington, D.C. (May 2013)**

47. *"Illicit Geographies."* **Panel Discussion at the Annual Meeting for the Association of American Geographers**. Los Angeles, CA. (April 2013) Organizer with **Jeffery Banister and Geoffrey Boyce**.

48. *Round Table Discussion on Immigration Reform.* **Latin American Studies, University of Arizona. Tucson, AZ. (April, 2013)**

49. **Women's Refugee Commission, (March, 2013) Washington, D.C.**

50. **2012**. *Captive Bodies: Migrant Kidnapping on the U.S. Mexico Border.* **Borderline Slavery: Contemporary Issues in Border Security and Human Trade**. The University of New Mexico. Albuquerque, NM. (October 2012)

51. **2012**. *The Consequence Delivery System: Decision to Return among Deportees.* **Bi-National Migration Institute**. Tucson, AZ. (November 2012) with Dan Martinez.

52. **2012**. *The Use of Social Media as a Tool for Collaborative Research on the U.S. Mexico Border.*

Presented at the Puentes Consortium for Binational Research, Rice University, Houston, Texas. (November, 2012) with **Alison Elizabeth Lee**

53. **2012**. *Migrant Experiences with Repatriation and Violence*. **Immigration Policy Conference. New Mexico State University**, Las Cruces, NM. (June 2012) with **Scott Whiteford**

54. **Border Safety in Journalism, Nogales, Arizona. April 2013**

55. **2010**. *Corruption on the Border: Violence and Security Concerns.* **Presented at the Puentes Consortium for Binational Research**, Rice University, Houston, Texas. February 2010. With **Scott Whiteford**

56. 2009 *"Manifestaciones de violencia: tres proyectos con los migrantes en tránsito." Seminario Migración y Derecho "Violencia y Vulnerabilidad Legal."* **Universidad de Sonora**. Hermosillo, Son. December, 2009 with **Prescott Vandervoet**

<u>Community Presentations (Selected):</u>

57. **Alianza Indígena sin Fronteras**. Tucson, AZ (July, 2013) with **Scott Whiteford**

58. **Comisión de los Derechos Humanos** Tucson, AZ. (June, 2013)

59. **Tucson Samaritans**. Tucson, AZ (May, 2013)

60. **Catalina High School, English Language Learners**, Tucson, AZ. (April, 2013)

61. **Green Valley Samaritans**. Tucson, AZ. (March, 2013)

Research Experience

- **The Migrant Border Crossing Study (MBCS), Center for Latin American Studies**, U.S. Mexico Border

  August, 2007 - Present

  http://las.arizona.edu/mbcs

  2007 – 2009 Interviewer with Department of Sociology in Nogales, Sonora (PIs Daniel Martínez and Kraig Beyerlein). 2009—the expansion for wave two funded by the Ford Foundation, which added five additional cities in Mexico. Pls - Jeremy Slack, Scott Whiteford and Daniel E. Martínez

- **NOAA-SARP, Climate Adaptation in the Sonoran Desert, Climate Assessment for the Southwest**. Ambos Nogales

  August, 2009 – August 2010

  http://udallcenter.arizona.edu/sarp/

  Project lead for the Nogales case study on climate adaptation to water scarcity. In charge of interviews with officials, archival work on past

droughts, focus group interviews and ride-alongs with water truck drivers.

- **ARAN—*Association of Reforestation in Ambos Nogales*, Bureau of Applied Research in Anthropology**, Tucson, AZ,

  http://bara.arizona.edu

  2004-2005 Student Employee, 2006 Staff, coordinating and assisting in office duties for a grant project; 2006-Graduate Research Assistant: PI - Dr. Diane Austin, Funded by EPA Border 2012 program, AZDEQ, BECC and MMS; Web Page Development; Transcribing Interviews and Data Base Work; Development Work with Alternative Heating, Cooking and Housing Strategies; Giving Informative Workshops to Community; Developing and Implementing research plans, June-October 2008 – building rainwater harvesting systems in Nogales, Sonora for monitoring and

June, 2004 - May, 2007, June

2008 – October 2008

evaluation as a water saving strategy

Teaching Experience

- Violence and the State (Graduate)
- Border Research Methods (Graduate)
- Drug Use Abuse and Trafficking
- Intro to Cultural Geography
- Sociological Theory
- Qualitative Research Methods Graduate Seminar–Soc5233
- Research Methods – Sociology 3311
- Drugs and Violence in Mexico – Las354
- Geography of Mexico – Geog311
- Border Field Studies Course (with University of Maynooth)
- Introduction to International Studies *(Preceptor)*–INTS250

Affiliations/Memberships

• Visiting Student (Movilidad Estudiantil), El Colegio de la Frontera Norte (COLEF) Nuevo Laredo and Tijuana campuses	Fall 2013-Spring 2014
• Association of American Geographers	Fall, 2010-

- Political Geography Specialty Group — Fall, 2010-
  - Elected **Student Representative**, 2012-2013
- Cultural Geography Specialty Group — Fall, 2010-
- Consortium of Latin American Geographers — Fall, 2010-
- Latin American Studies Association — Spring, 2012-
- Society for Applied Anthropology — Fall, 2007-
- Association for Borderlands Studies — Spring, 2008-

Miscellaneous Skills

- ***Language***: Fluency in Spanish and Portuguese; experience translating at group presentations and with simultaneous translation equipment; have conducted research in both languages and published in Spanish
- ***Computer***: Proficient with Microsoft and Mac operating systems, Windows Office suite: Word, Excel, Access, PowerPoint; Databases through EndNote; Limited Web Development knowledge with Dreamweaver, Microsoft Frontpage, Wordpress; Familiarity with NVivo, SPSS, Stata, Blackboard, D2L and ArcGIS
- ***Research Methods***: Surveying Design, Implementation and Coding, Focus Group Interviews, Ethnographic methods, Field Notes,

Participant Observation, Interview Techniques, Content Analysis, Rapid Appraisal Techniques

- ***Experiential Learning and Study Abroad***: Field trips with groups of students and community members on border tours ranging from day trips to several weeks. This includes acquiring external funding to take my classes to the border as well as a three week field school run in conjunction with the University of Maynooth and Dr. Lawrence Taylor.
- **Expert Witness Experience**: I have served as an expert witness including asylum cases from Mexico, and criminal cases involving blind mules, and coercion by drug cartels.
- *Media Appearances*: Significant experience working with the media, writing and presenting press releases, holding press conferences, and being interviewed for print, radio and television. As a result of these efforts, our report *"In the Shadow of the Wall"* was featured in over 140 news outlets in the United States, Mexico, Argentina, Venezuela and Brazil. I have appeared on television and documentary segments for: 60 Minutes, *The Situation Room with Wolf Blitzer* on CNN, PBS' *Need to Know*, CBS, Al Jazeera *Faultlines*, Univision, *Dan Rather Reports,* all Southern Arizona news broadcasts as well as NPR, *Morning Edition* and CBS radio. My work has been featured in the New York Times, the Washington Post, USA Today, the Associated Press and Reforma (Mexico). I have also appeared on 60 Minutes.

U.S. Department of Homeland Security

Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID [redacted] FIN #: [redacted] File No: [redacted]

SIGMA Event: [redacted] DOB: [redacted] Event No: SYS19[redacted]

In the Matter of: Alex Doe

Respondent: [redacted] currently residing at:

DOMICILIO CONOCIDO [redacted], TIJUANA BAJA CALIFORNIA [redacted]

(Number, street, city and ZIP code) (Area code and phone number)

☒ 1. You are an arriving alien.

☐ 2. You are an alien present in the United States who has not been admitted or paroled.

☐ 3. You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States.
2. You are a native of Honduras and a citizen of Honduras.
3. On or about January 29, 2019, you applied for admission into the United States from Mexico at the San Ysidro Port of Entry.
4. You are an immigrant not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and Nationality Act.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

See Continuation Page Made a Part Hereof

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.

☐ Section 235(b)(1) order was vacated pursuant to: ☐8CFR 208.30(f)(2) ☐8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

401 West A Street Suite 800 San Diego CALIFORNIA US 92101

(Complete Address of Immigration Court, including Room Number, if any)

on March [redacted] 2019 (*Date*) at [redacted] (*Time*) to show why you should not be removed from the United States based on the charge(s) set forth above.

[redacted] CBP OFFICER

(Signature and Title of Issuing Officer)

Date: January 30, 2019

SAN YSIDRO PORT OF ENTRY, CA

(City and State)

See reverse for important information

Form I-862 (Rev. 08/01/07)

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are under removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 3.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents, which you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear and that you are inadmissible or removable on the charges contained in the Notice to Appear. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses

presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge.

You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of departure voluntarily. You will be given a reasonable opportunity to make any such application to the immigration judge.

Failure to appear: You are required to provide the DHS, in writing, with your full mailing address and telephone number. You must notify the Immigration Court immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

Mandatory Duty to Surrender for Removal: If you become subject to a final order of removal, you must surrender for removal to one of the offices listed in 8 CFR 241.16(a). Specific addresses on locations for surrender can be obtained from your local DHS office or over the internet at http://www.ice.gov/about/dro/contact.htm. You must surrender within 30 days from the date the

order becomes administratively final, unless you obtain an order from a Federal court, immigration court, or the Board of Immigration Appeals staying execution of the removal order. Immigration regulations at 8 CFR 241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Act.

Request for Prompt Hearing

To expedite a determination in my case, I request an immediate hearing. I waive my right to a 10-day period prior to appearing before an immigration judge.

Before: _____

(Signature of Respondent)

Date: _____

_____

(Signature and Title of Immigration Officer)

Certificate of Service

This Notice To Appear was served on the respondent by me on January 30, 2019, in the following manner and in compliance with section 239(a)(1)(F) of the Act.

☒ in person ☐ by certified mail, returned receipt requested

☐ by regular mail ☐ Attached is a credible fear worksheet

☒ Attached is a list of organization and attorneys which provide free legal services.

The alien was provided oral notice in the SPANISH language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act

[**REDACTED**]

(Signature of Respondent if Personally Served)

CBP OFFICER [**REDACTED**]

(Signature and Title of officer)

Alien's Name **[REDACTED]**	File Number: **[REDACTED]** SIGMA Event: **[REDACTED]** Event No: SYS19 **[REDACTED]**	Date January 30, 2019
ON THE BASIS OF THE FOREGOING, IT IS CHARGED THAT YOU ARE SUBJECT TO REMOVAL FROM THE UNITED STATES PURSUANT TO THE FOLLOWING PROVISION(S) OF LAW: ********** 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (Act), as amended, as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act.		
Signature **[REDACTED]** **[REDACTED]**		Title CBP OFFICER

Protocolos de Protección del Migrante
Informacion de Procesamiento Inicial

- Usted ha sido identificado para procesamiento bajo los Protocolos de Protección del Migrante y se le ha expedido un Formulario I-862, Citatorio (NTA, por sus siglas en inglés), para procedimientos ante una corte de inmigración, donde podrá solicitar todas las formas de alivio de inmigración disponibles bajo la Ley de Inmigración y Nacionalidad. Cumpliendo con las leyes de los Estados Unidos, incluso la sección 240 de la Ley de Inmigración y Nacionalidad y la implementación de regulaciones, un juez de inmigración determinará si usted es sujeto a remoción de los Estados Unidos, y en caso de serlo si es elegible o no a alivio o protección de remoción. Aunque usted podrá buscar ese alivio o protección bajo los mismos términos y condíciones de cualquier extranjero, en los procedimientos de la sección 240, de acuerdo a las leyes de los Estados Unidos, usted será devuelto a México y no podrá intentar entrar a los Estados Unidos hasta que regrese al puerto de entrada apropiado en la fecha de su audiencia ante un juez de inmigración.
- La NTA, proporciona la fecha y hora de su primera audiencia ante un juez de inmigración en los Estados Unidos en la corte identificada en su NTA. En la fecha de su audiencia, usted debe presentarse al puerto de entrada [San Ysidro Ped West], localizado en [El Chaparral], en la fecha y hora listada más abajo. Si su caso no puede completarse en una sola audiencia, la corte de inmigración le proveerá una Notificación de Audiencia en Procedimientos de

Remoción, que indica la fecha y hora de cualquier audiencia subsecuente.

- Usted puede llamar a la corte de inmigración al teléfono 1-800-898-7180 para obtener información de su caso las 24 horas al día, los 7 días de la semana. Si está llamando desde fuera de Estados Unidos, usted debe marcar 001-880-898-7180.

- Usted debe llegar al puerto de entrada listado arriba a las [**REDACTED**], a.m./p.m. el [**REDACTED**] de Marzo 2019, para asegurarse de tener tiempo para ser procesado, transportado a su audiencia y para que pueda reunirse con su abogado o representante acreditado (si usted hace arreglos para ser representado durante sus procedimientos de remoción). El Gobierno de los Estados Unidos Le proporcionará transportación desde el puerto de entrada designado hasta la corte el dia de su audiencia. Si usted falla en llegar en la fecha y hora apropiadas, podría ordenarse su remoción en ausencia.

  - Al llegar al puerto de entrada designado para su audiencia, debe traer consigo la NTA o Notificación de Audiencia en Procesos de Remoción, así como cualquier identificación emitida por el gobierno y/o documentos de viaje.

  - Al llegar al puerto de entrada designado para su audiencia, debe traer cualquier menor o otro familiar que haya entrado a los Estados Unidos con usted y que recibieron una NTA par a la misma fecha y hora.

- Usted tiene el privilegio legal de ser representado por un abogado o representante acreditado de su elección, que esté acreditado para ejercer la práctica de inmigración ante una corte de inmigración de los Estados Unidos, sin cargo al gobierno estadounidense.
    - A usted se le proporcionó anteriormente un Listado de Proveedores de Servicios Legales, la cual contiene información acerca de servicios de bajo costo o gratuitos de parte de los proveedores legales que practican cerca de la corte de inmigración donde su audiencia(s) tendrá lugar.
    - Un listado de los proveedores de servicios leg ales también está disponible en el sitio web de la Oficina Ejecutiva para la Revisión de Imnigración en https://www.justice.gov/eoir/list-pro-bono-legal-service-providers
- Si usted elige ser representado, puede consultar con un consejero sin cargo al Gobierno de los Estados Unidos por medio de cualquier mecanismo que incluyen los siguientes, si aplica:
    - Usted puede consultar con su consejero por teléfono, correo electrónico, videoconferencía o cualquier otro método de comunicación remota de su elección.
    - Usted puede hacer arreglos para consultar con su consejero en persona en una localidad de su elección en México.
    - El día de su audiencia de inmigración, usted puede hacer los arreglos pra una reunión en persona con su consejero en los Estados

Unidos en la localidad de su corte asignada, previo a su audiencia.

[**REDACTED**]

Migrant Protection Protocols

Initial Processing Information

- You have been identified for processing under the Migrant Protection Protocols and have been issued a Form I-862 Notice to Appear (NTA) for proceedings before an immigration court where you may apply for all forms of relief available under the Immigration and Nationality Act. Pursuant to U.S. law, including section 240 of the Immigration and Nationality Act and implementing regulations, an immigration judge will determine whether you are removable from the United States, and if you are, whether you are eligible for relief or protection from removal. While you will be able to pursue such relief or protection under the same terms and conditions as any alien in section 240 proceedings, pursuant to U.S. law, you will be returned to Mexico and may not attempt to enter the United States until you return to the appropriate port of entry on the date of your hearing before an immigration judge.
- The NTA provides the date and time of your first hearing before an immigration judge in the United States at the court identified on your NTA. On the date of your hearing, you must report to the [SYS PED West] port of entry, located at [EL Chaparral], at the date and time listed below. If your case cannot be completed in one hearing, the immigration court will provide you with a Notice of Hearing in Removal Proceedings, indicating the date and time for any subsequent hearings.
    - o You may call the immigration court at 1-800-898-7180 to obtain case status information 24 hours

a day, 7 days a week. If you are calling from outside of the United States, you should dial 001-880-898-7180.

- You should arrive at the port of entry listed above at [**REDACTED**] a.m./p.m. on [**REDACTED**] [MAR 2019] to ensure that you have time to be processed, transported to your hearing and meet with attorney or accredited representative (if you arrange to be represented during your removal proceedings). The U.S. Government will provide transportation for you from the designated port of entry to the court on the day of your hearing. If you fail to arrive at the appropriate date and time, you may be ordered removed in absentia.
    - When you arrive at the designated port of entry for your hearing, you should bring your NTA or Notice of Hearing in Removal Proceedings and any available government-issued identification and/or travel documents.
    - When you arrive at the designated port of entry for your hearing, you should bring any minor children or other family members who arrived with you to the United States and received an NTA for the same date and time.
- You have the statutory privilege of being represented by an attorney or accredited representative of your choosing who is authorized to practice before the immigration courts of the United States, at no expense to the U.S. Government.
    - You have been provided with a List of Legal Service Providers, which has information on low cost or free legal service providers practicing

near the immigration court where your hearing(s) will take place.

- o A list of legal service providers is also available on the Executive Office for Immigration Review website at https://www.justice.gov/eoir/list-pro-bono-legal-service-providers.

- If you choose to be represented, you may consult with counsel at no expense to the U.S. Government through any available mechanism, including the following, as applicable:

  - o You may consult with your counsel by telephone, email, video conference, or any other remote communication method of your choosing.

  - o You may arrange to consult with your counsel in person at a location in Mexico of your choosing.

  - o On the day of your immigration hearing, you may arrange to meet with your counsel in-person, in the United States, at your assigned court facility, prior to that hearing.

U.S. Department of Homeland Security

Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID : [redacted] FIN #: [redacted] File No: [redacted]

SIGMA Event: [redacted] DOB: [redacted] Event No: SYS19[redacted]

In the Matter of: Bianca Doe

Respondent: [redacted] currently residing at:

DOMICILIO CONOCIDO [redacted] TIJUANA BAJA CALIFORNIA

(Number, street, city and ZIP code) (Area code and phone number)

☒ 1. You are an arriving alien.

☐ 2. You are an alien present in the United States who has not been admitted or paroled.

☐ 3. You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States.
2. You are a native of Honduras and a citizen of Honduras.
3. On or about January 29, 2019, you applied for admission into the United States from Mexico at the San Ysidro Port of Entry.
4. You are an immigrant not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document as required by the Immigration and Nationality Act.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

See Continuation Page Made a Part Hereof

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.

☐ Section 235(b)(1) order was vacated pursuant to: ☐ 8CFR 208.30(f)(2) ☐ 8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

401 West A Street Suite 800 San Diego CALIFORNIA US 92101

(Complete Address of Immigration Court, including Room Number, if any)

on March [redacted] 2019 at [redacted] to show why you should not be removed from the United States based on the

(Date) *(Time)*

charge(s) set forth above.

[redacted] CBP OFFICER

(Signature and Title of Issuing Officer)

Date: January 30, 2019 SAN YSIDRO, CA

(City and State)

See reverse for important information

Form I-862 (Rev. 08/01/07)

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are under removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 3.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents, which you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear and that you are inadmissible or removable on the charges contained in the Notice to Appear. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses

presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge.

You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of departure voluntarily. You will be given a reasonable opportunity to make any such application to the immigration judge.

Failure to appear: You are required to provide the DHS, in writing, with your full mailing address and telephone number. You must notify the Immigration Court immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

Mandatory Duty to Surrender for Removal: If you become subject to a final order of removal, you must surrender for removal to one of the offices listed in 8 CFR 241.16(a). Specific addresses on locations for surrender can be obtained from your local DHS office or over the internet at http://www.ice.gov/about/dro/contact.htm. You must surrender within 30 days from the date

the order becomes administratively final, unless you obtain an order from a Federal court, immigration court, or the Board of Immigration Appeals staying execution of the removal order. Immigration regulations at 8 CFR 241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimm igrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Act.

Request for Prompt Hearing

To expedite a determination in my case, I request an immediate hearing. I waive my right to a 10-day period prior to appearing before an immigration judge.

Before: _____

(Signature of Respondent)

Date: _____

_____

(Signature and Title of Immigration Officer)

Certificate of Service

This Notice To Appear was served on the respondent by me on January 30, 2019, in the following manner and in compliance with section 239(a)(1)(F) of the Act.

☒ in person ☐ by certified mail, returned receipt requested

☐ by regular mail ☐ Attached is a credible fear worksheet

☒ Attached is a list of organization and attorneys which provide free legal services.

The alien was provided oral notice in the SPANISH language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act

[**REDACTED**]

(Signature of Respondent if Personally Served)

CBP OFFICER [**REDACTED**]

(Signature and Title of officer)

Alien's Name **[REDACTED]**	File Number: **[REDACTED]** SIGMA Event: **[REDACTED]** Event No: SYS19 **[REDACTED]**	Date January 30, 2019
ON THE BASIS OF THE FOREGOING, IT IS CHARGED THAT YOU ARE SUBJECT TO REMOVAL FROM THE UNITED STATES PURSUANT TO THE FOLLOWING PROVISION(S) OF LAW: ********** 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (Act), as amended, as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act.		
Signature **[REDACTED]** **[REDACTED]**		Title CBP OFFICER

U.S. Department of Homeland Security

Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID : [redacted] FIN #: [redacted] File No: [redacted]

SIGMA Event: [redacted] DOB: [redacted] Event No: SYS19[redacted]

In the Matter of Christopher Doe

Respondent: [redacted] currently residing at:

DOMICILIO CONOCIDO , TIJUANA BAJA CALIFORNIA

(Number, street, city and ZIP code) (Area code and phone number)

☒ 1. You are an arriving alien.

☐ 2. You are an alien present in the United States who has not been admitted or paroled.

☐ 3. You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States.
2. You are a native of HONDURAS and a citizen of HONDURAS.
3. On or about January 29, 2019, you applied for admission into the United States from Mexico at the San Ysidro Port of Entry.
4. You are an immigrant not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and Nationality Act.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

See Continuation Page Made a Part Hereof

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.

☐ Section 235(b)(1) order was vacated pursuant to: ☐ 8CFR 208.30(f)(2) ☐ 8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

401 West A Street Suite 800 San Diego CALIFORNIA US 92101

(Complete Address of Immigration Court, including Room Number, if any)

on March [redacted] 2019 at [redacted] to show why you should not be removed from the United States based on the

(Date) *(Time)*

charge(s) set forth above. [redacted] CBPO

(Signature and Title of Issuing Officer)

Date: January 30, 2019 SAN YSIDRO, CA

(City and State)

See reverse for important information

Form I-862 (Rev. 08/01/07)

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are under removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 3.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents, which you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear and that you are inadmissible or removable on the charges contained in the Notice to Appear. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses

presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge.

You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of departure voluntarily. You will be given a reasonable opportunity to make any such application to the immigration judge.

Failure to appear: You are required to provide the DHS, in writing, with your full mailing address and telephone number. You must notify the Immigration Court immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

Mandatory Duty to Surrender for Removal: If you become subject to a final order of removal, you must surrender for removal to one of the offices listed in 8 CFR 241.16(a). Specific addresses on locations for surrender can be obtained from your local DHS office or over the internet at http://www.ice.gov/about/dro/contact.htm. You must surrender within 30 days from the date the

order becomes administratively final, unless you obtain an order from a Federal court, immigration court, or the Board of Immigration Appeals staying execution of the removal order. Immigration regulations at 8 CFR 241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Act.

Request for Prompt Hearing

To expedite a determination in my case, I request an immediate hearing. I waive my right to a 10-day period prior to appearing before an immigration judge.

Before: _____

(Signature of Respondent)

Date: _____

_____

(Signature and Title of Immigration Officer)

Certificate of Service

This Notice To Appear was served on the respondent by me on January 30, 2019, in the following manner and in compliance with section 239(a)(1)(F) of the Act.

☒ in person ☐ by certified mail, returned receipt requested

☐ by regular mail ☐ Attached is a credible fear worksheet

☒ Attached is a list of organization and attorneys which provide free legal services.

The alien was provided oral notice in the SPANISH language of the time and place of his or her hearing and of the consequences of failure to appear as provided section 240(b)(7) of the Act

[**REDACTED**]

(Signature of Respondent if Personally Served)

CBP OFFICER [**REDACTED**]

(Signature and Title of officer)

Alien's Name **[REDACTED]**	File Number: **[REDACTED]** SIGMA Event: **[REDACTED]** Event No: SYS19 **[REDACTED]**	Date January 30, 2019
ON THE BASIS OF THE FOREGOING, IT IS CHARGED THAT YOU ARE SUBJECT TO REMOVAL FROM THE UNITED STATES PURSUANT TO THE FOLLOWING PROVISION(S) OF LAW: ********** 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (Act), as amended, as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act.		
Signature [**REDACTED**] [**REDACTED**]		Title CBPO

Protocolos de Protección del Migrante
Información de Procesamiento Inicial

- Usted ha sido identificado para procesamiento bajo los Protocolos de Protección del Migrante y se le ha expedido un Formulario I-862, Citatorio (NTA, por sus siglas en inglés), para procedimientos ante una corte de inmigración, donde podrá solicitar todas las formas de alivio de inmigración disponibles bajo la Ley de Inmigración y Nacionalidad. Cumpliendo con las leyes de los Estados Unidos, incluso la sección 240 de la Ley de Inmigración y Nacionalidad y la implementación de regulaciones, un juez de inmigración determinará si usted es sujeto a remoción de los Estados Unidos, y en caso de serlo si es elegible o no a alivio o protección de remoción. Aunque usted podrá buscar ese alivio o protección bajo los mismos términos y condíciones de cualquier extranjero, en los procedimientos de la sección 240, de acuerdo a las leyes de los Estados Unidos, usted será devuelto a México y no podrá intentar entrar a los Estados Unidos hasta que regrese al puerto de entrada apropiado en la fecha de su audiencia ante un juez de inmigración.
- La NTA, proporciona la fecha y hora de su primera audiencia ante un juez de inmigración en los Estados Unidos en la corte identificada en su NTA. En la fecha de su audiencia, usted debe presentarse al puerto de entrada San Ysidro Ped West, localizado en El Chaparral, en la fecha y hora listada más abajo. Si su caso no puede completarse en una sola audiencia, la corte de inmigración le proveerá una Notificación de Audiencia en Procedimientos de

Remoción, que indica la fecha y hora de cualquier audiencia subsecuente.

- Usted puede llamar a la corte de inmigración al teléfono 1-800-898-7180 para obtener información de su caso las 24 horas al día, los 7 días de la semana. Si está llamando desde fuera de Estados Unidos, usted debe marcar 001-880-898-7180.

- Usted debe llegar al puerto de entrada listado arriba a las [**REDACTED**], a.m./p.m. el [**REDACTED**] de Marzo 2019, para asegurarse de tener tiempo para ser procesado, transportado a su audiencia y para que pueda reunirse con su abogado o representante acreditado (si usted hace arreglos para ser representado durante sus procedimientos de remoción). El Gobierno de los Estados Unidos le proporcionará transportación desde el puerto de entrada designado hasta la corte el dia de su audiencia. Si usted falla en llegar en la fecha y hora apropiadas, podría ordenarse su remoción en ausencia.

  - Al llegar al puerto de entrada designado para su audiencia, debe traer consigo la NTA o Notificación de Audiencia en Procesos de Remoción, así como cualquier identificación emitida por el gobierno y/o documentos de viaje.

  - Al llegar al puerto de entrada designado para su audiencia, debe traer cualquier menor o otro familiar que haya entrado a los Estados Unidos con usted y que recibieron una NTA par a la misma fecha y hora.

- Usted tiene el privilegio legal de ser representado por un abogado o representante acreditado de su elección, que esté acreditado para ejercer la práctica de inmigración ante una corte de inmigración de los Estados Unidos, sin cargo al gobierno estadounidense.
    - A usted se le proporcionó anteriormente un Listado de Proveedores de Servicios Legales, la cual contiene información acerca de servicios de bajo costo o gratuitos de parte de los proveedores legales que practican cerca de la corte de inmigración donde su audiencia(s) tendrá lugar.
    - Un listado de los proveedores de servicios legales también está disponible en el sitio web de la Oficina Ejecutiva para la Revisión de Imnigración en https://www.justice.gov/eoir/list-pro-bono-legal-service-providers
- Si usted elige ser representado, puede consultar con un consejero sin cargo al Gobierno de los Estados Unidos por medio de cualquier mecanismo que incluyen los siguientes, si aplica:
    - Usted puede consultar con su consejero por teléfono, correo electrónico, videoconferencía o cualquier otro método de comunicación remota de su elección.
    - Usted puede hacer arreglos para consultar con su consejero en persona en una localidad de su elección en México.
    - El día de su audiencia de inmigración, usted puede hacer los arreglos pra una reunión en persona con su consejero en los Estados

Unidos en la localidad de su corte asignada, previo a su audiencia.

[**REDACTED**]

U.S. Department of Homeland Security

Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID: [redacted] FIN #: [redacted] File No: [redacted]

SIGMA Event: [redacted] DOB: [redacted] Event No: SYS19[redacted]

In the Matter of: Dennis Doe

Respondent: [redacted] currently residing at:

DOMICILIO CONOCIDO , TIJUANA BAJA CALIFORNIA [redacted]

(Number, street, city and ZIP code) (Area code and phone number)

☒ 1. You are an arriving alien.

☐ 2. You are an alien present in the United States who has not been admitted or paroled.

☐ 3. You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States.
2. You are a native of HONDURAS and a citizen of HONDURAS.
3. On or about January 29, 2019, you applied for admission into the United States from Mexico at the San Ysidro Port of Entry.
4. You are an immigrant not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and Nationality Act.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

See Continuation Page Made a Part Hereof

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.

☐ Section 235(b)(1) order was vacated pursuant to: ☐8CFR 208.30(f)(2) ☐8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

401 West A Street Suite 800 San Diego CALIFORNIA US 92101

(Complete Address of Immigration Court, including Room Number, if any)

on March [redacted] 2019 at [redacted] to show why you should not be removed from the United States based on the charge(s) set forth above.

(Date) *(Time)*

[redacted] CBPO

(Signature and Title of Issuing Officer)

Date: January 30, 2019 SAN YSIDRO

(City and State)

See reverse for important information

Form I-862 (Rev. 08/01/07)

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are under removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 3.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents, which you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear and that you are inadmissible or removable on the charges contained in the Notice to Appear. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses

presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge.

You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of departure voluntarily. You will be given a reasonable opportunity to make any such application to the immigration judge.

Failure to appear: You are required to provide the DHS, in writing, with your full mailing address and telephone number. You must notify the Immigration Court immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

Mandatory Duty to Surrender for Removal: If you become subject to a final order of removal, you must surrender for removal to one of the offices listed in 8 CFR 241.16(a). Specific addresses on locations for surrender can be obtained from your local DHS office or over the internet at http://www.ice.gov/about/dro/contact.htm. You must surrender within 30 days from the date the

order becomes administratively final, unless you obtain an order from a Federal court, immigration court, or the Board of Immigration Appeals staying execution of the removal order. Immigration regulations at 8 CFR 241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Act.

Request for Prompt Hearing

To expedite a determination in my case, I request an immediate hearing. I waive my right to a 10-day period prior to appearing before an immigration judge.

Before: _____

(Signature of Respondent)

Date: _____

_____

(Signature and Title of Immigration Officer)

Certificate of Service

This Notice To Appear was served on the respondent by me on January 30, 2019, in the following manner and in compliance with section 239(a)(1)(F) of the Act.

☒ in person ☐ by certified mail, returned receipt requested

☐ by regular mail ☐ Attached is a credible fear worksheet

☒ Attached is a list of organization and attorneys which provide free legal services.

The alien was provided oral notice in the SPANISH language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act

[REDACTED]

(Signature of Respondent if Personally Served)

[REDACTED]

(Signature and Title of officer)

Alien's Name **[REDACTED]**	File Number: **[REDACTED]** SIGMA Event: **[REDACTED]** Event No: SYS19 **[REDACTED]**	Date January 30, 2019
ON THE BASIS OF THE FOREGOING, IT IS CHARGED THAT YOU ARE SUBJECT TO REMOVAL FROM THE UNITED STATES PURSUANT TO THE FOLLOWING PROVISION(S) OF LAW: ********** 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (Act), as amended, as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act.		
Signature **[REDACTED]** **[REDACTED]**		Title CBPO

Protocolos de Protección del Migrante
Información de Procesamiento Inicial

- Usted ha sido identificado para procesamiento bajo los Protocolos de Protección del Migrante y se le ha expedido un Formulario I-862, Citatorio (NTA, por sus siglas en inglés), para procedimientos ante una corte de inmigración, donde podrá solicitar todas las formas de alivio de inmigración disponibles bajo la Ley de Inmigración y Nacionalidad. Cumpliendo con las leyes de los Estados Unidos, incluso la sección 240 de la Ley de Inmigración y Nacionalidad y la implementación de regulaciones, un juez de inmigración determinará si usted es sujeto a remoción de los Estados Unidos, y en caso de serlo si es elegible o no a alivio o protección de remoción. Aunque usted podrá buscar ese alivio o protección bajo los mismos términos y condíciones de cualquier extranjero, en los procedimientos de la sección 240, de acuerdo a las leyes de los Estados Unidos, usted será devuelto a México y no podrá intentar entrar a los Estados Unidos hasta que regrese al puerto de entrada apropiado en la fecha de su audiencia ante un juez de inmigración.
- La NTA, proporciona la fecha y hora de su primera audiencia ante un juez de inmigración en los Estados Unidos en la corte identificada en su NTA. En la fecha de su audiencia, usted debe presentarse al puerto de entrada San Ysidro Ped West, localizado en El Chaparral, en la fecha y hora listada más abajo. Si su caso no puede completarse en una sola audiencia, la corte de inmigración le proveerá una Notificación de Audiencia en Procedimientos de

Remoción, que indica la fecha y hora de cualquier audiencia subsecuente.

- Usted puede llamar a la corte de inmigración al teléfono 1-800-898-7180 para obtener información de su caso las 24 horas al día, los 7 días de la semana. Si está llamando desde fuera de Estados Unidos, usted debe marcar 001-880-898-7180.

- Usted debe llegar al puerto de entrada listado arriba a las [**REDACTED**], a.m./p.m. el [**REDACTED**] de Marzo 2019, para asegurarse de tener tiempo para ser procesado, transportado a su audiencia y para que pueda reunirse con su abogado o representante acreditado (si usted hace arreglos para ser representado durante sus procedimientos de remoción). El Gobierno de los Estados Unidos le proporcionará transportación desde el puerto de entrada designado hasta la corte el dia de su audiencia. Si usted falla en llegar en la fecha y hora apropiadas, podría ordenarse su remoción en ausencia.

  - Al llegar al puerto de entrada designado para su audiencia, debe traer consigo la NTA o Notificación de Audiencia en Procesos de Remoción, así como cualquier identificación emitida por el gobierno y/o documentos de viaje.

  - Al llegar al puerto de entrada designado para su audiencia, debe traer cualquier menor o otro familiar que haya entrado a los Estados Unidos con usted y que recibieron una NTA par a la misma fecha y hora.

- Usted tiene el privilegio legal de ser representado por un abogado o representante acreditado de su elección, que esté acreditado para ejercer la práctica de inmigración ante una corte de inmigración de los Estados Unidos, sin cargo al gobierno estadounidense.
    - A usted se le proporcionó anteriormente un Listado de Proveedores de Servicios Legales, la cual contiene información acerca de servicios de bajo costo o gratuitos de parte de los proveedores legales que practican cerca de la corte de inmigración donde su audiencia(s) tendrá lugar.
    - Un listado de los proveedores de servicios legales también está disponible en el sitio web de la Oficina Ejecutiva para la Revisión de Imnigración en https://www.justice.gov/eoir/list-pro-bono-legal-service-providers
- Si usted elige ser representado, puede consultar con un consejero sin cargo al Gobierno de los Estados Unidos por medio de cualquier mecanismo que incluyen los siguientes, si aplica:
    - Usted puede consultar con su consejero por teléfono, correo electrónico, videoconferencía o cualquier otro método de comunicación remota de su elección.
    - Usted puede hacer arreglos para consultar con su consejero en persona en una localidad de su elección en México.
    - El día de su audiencia de inmigración, usted puede hacer los arreglos pra una reunion en persona con su consejero en los Estados

Unidos en la localidad de su corte asignada, previo a su audiencia.

[**REDACTED**]

Migrant Protection Protocols

Initial Processing Information

- You have been identified for processing under the Migrant Protection Protocols and have been issued a Form I-862 Notice to Appear (NTA) for proceedings before an immigration court where you may apply for all forms of relief available under the Immigration and Nationality Act. Pursuant to U.S. law, including section 240 of the Immigration and Nationality Act and implementing regulations, an immigration judge will determine whether you are removable from the United States, and if you are, whether you are eligible for relief or protection from removal. While you will be able to pursue such relief or protection under the same terms and conditions as any alien in section 240 proceedings, pursuant to U.S. law, you will be returned to Mexico and may not attempt to enter the United States until you return to the appropriate port of entry on the date of your hearing before an immigration judge.
- The NTA provides the date and time of your first hearing before an immigration judge in the United States at the court identified on your NTA. On the date of your hearing, you must report to the SYS PED West POE port of entry, located at EL Chaparral, at the date and time listed below. If your case cannot be completed in one hearing, the immigration court will provide you with a Notice of Hearing in Removal Proceedings, indicating the date and time for any subsequent hearings.
    - o You may call the immigration court at 1-800-898-7180 to obtain case status information 24 hours

a day, 7 days a week. If you are calling from outside of the United States, you should dial 001-880-898-7180.

- You should arrive at the port of entry listed above at [**REDACTED**] a.m./p.m. on [**REDACTED**] MAR 2019 to ensure that you have time to be processed, transported to your hearing and meet with attorney or accredited representative (if you arrange to be represented during your removal proceedings). The U.S. Government will provide transportation for you from the designated port of entry to the court on the day of your hearing. If you fail to arrive at the appropriate date and time, you may be ordered removed in absentia.
    - When you arrive at the designated port of entry for your hearing, you should bring your NTA or Notice of Hearing in Removal Proceedings and any available government-issued identification and/or travel documents.
    - When you arrive at the designated port of entry for your hearing, you should bring any minor children or other family members who arrived with you to the United States and received an NTA for the same date and time.
- You have the statutory privilege of being represented by an attorney or accredited representative of your choosing who is authorized to practice before the immigration courts of the United States, at no expense to the U.S. Government.
    - You have been provided with a List of Legal Service Providers, which has information on low cost or free legal service providers practicing

near the immigration court where your hearing(s) will take place.

- A list of legal service providers is also available on the Executive Office for Immigration Review website at https://www.justice.gov/eoir/list-pro-bono-legal-service-providers.

- If you choose to be represented, you may consult with counsel at no expense to the U.S. Government through any available mechanism, including the following, as applicable:

  - You may consult with your counsel by telephone, email, video conference, or any other remote communication method of your choosing.

  - You may arrange to consult with your counsel in person at a location in Mexico of your choosing.

- On the day of your immigration hearing, you may arrange to meet with your counsel in- person, in the United States, at your assigned court facility, prior to that hearing.

[**REDACTED**]

U.S. Department of Homeland Security

Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID : [redacted] FIN #: [redacted] File No: [redacted]

SIGMA Event: [redacted] DOB: [redacted] Event No: SYS19[redacted]

In the Matter of: Evan Doe

Respondent: [redacted] currently residing at:

DOMICILIO CONOCIDO , TIJUANA BAJA CALIFORNIA [redacted]

(Number, street, city and ZIP code) (Area code and phone number)

☒ 1. You are an arriving alien.

☐ 2. You are an alien present in the United States who has not been admitted or paroled.

☐ 3. You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States.
2. You are a native of El Salvador and a citizen of El Salvador.
3. On or about January 29, 2019, you applied for admission into the United States from Mexico at the San Ysidro Port of Entry.
4. You are an immigrant not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and Nationality Act.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

See Continuation Page Made a Part Hereof

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.

☐ Section 235(b)(1) order was vacated pursuant to: ☐8CFR 208.30(f)(2) ☐8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

401 West A Street Suite 800 San Diego CALIFORNIA US 92101

(Complete Address of Immigration Court, including Room Number, if any)

on March [redacted] 2019 *(Date)* at [redacted] *(Time)* to show why you should not be removed from the United States based on the charge(s) set forth above.

[redacted] CBPO

(Signature and Title of Issuing Officer)

Date: January 30, 2019 SAN YSIDRO, CA

(City and State)

See reverse for important information

Form I-862 (Rev. 08/01/07)

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are under removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 3.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents, which you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear and that you are inadmissible or removable on the charges contained in the Notice to Appear. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses

presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge.

You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of departure voluntarily. You will be given a reasonable opportunity to make any such application to the immigration judge.

Failure to appear: You are required to provide the DHS, in writing, with your full mailing address and telephone number. You must notify the Immigration Court immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

Mandatory Duty to Surrender for Removal: If you become subject to a final order of removal, you must surrender for removal to one of the offices listed in 8 CFR 241.16(a). Specific addresses on locations for surrender can be obtained from your local DHS office or over the internet at http://www.ice.gov/about/dro/contact.htm. You must surrender within 30 days from the date the

order becomes administratively final, unless you obtain an order from a Federal court, immigration court, or the Board of Immigration Appeals staying execution of the removal order. Immigration regulations at 8 CFR 241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Act.

Request for Prompt Hearing

To expedite a determination in my case, I request an immediate hearing. I waive my right to a 10-day period prior to appearing before an immigration judge.

Before: _____

(Signature of Respondent)

Date: _____

_____

(Signature and Title of Immigration Officer)

Certificate of Service

This Notice To Appear was served on the respondent by me on January 30, 2019, in the following manner and in compliance with section 239(a)(1)(F) of the Act.

☒ in person ☐ by certified mail, returned receipt requested

☐ by regular mail ☐ Attached is a credible fear worksheet

☒ Attached is a list of organization and attorneys which provide free legal services.

The alien was provided oral notice in the SPANISH language of the time and place of his or her hearing and of the consequences of failure to appear as provided section 240(b)(7) of the Act

[**REDACTED**]

(Signature of Respondent if Personally Served)

CBPO [**REDACTED**]

(Signature and Title of officer)

Alien's Name **[REDACTED]**	File Number: **[REDACTED]** SIGMA Event: **[REDACTED]** Event No: SYS190 **[REDACTED]**	Date January 30, 2019
ON THE BASIS OF THE FOREGOING, IT IS CHARGED THAT YOU ARE SUBJECT TO REMOVAL FROM THE UNITED STATES PURSUANT TO THE FOLLOWING PROVISION(S) OF LAW: ********** 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (Act), as amended, as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act.		
Signature **[REDACTED]** **[REDACTED]**		Title CBPO

Migrant Protection Protocols

Initial Processing Information

- You have been identified for processing under the Migrant Protection Protocols and have been issued a Form I-862 Notice to Appear (NTA) for proceedings before an immigration court where you may apply for all forms of relief available under the Immigration and Nationality Act. Pursuant to U.S. law, including section 240 of the Immigration and Nationality Act and implementing regulations, an immigration judge will determine whether you are removable from the United States, and if you are, whether you are eligible for relief or protection from removal. While you will be able to pursue such relief or protection under the same terms and conditions as any alien in section 240 proceedings, pursuant to U.S. law, you will be returned to Mexico and may not attempt to enter the United States until you return to the appropriate port of entry on the date of your hearing before an immigration judge.
- The NTA provides the date and time of your first hearing before an immigration judge in the United States at the court identified on your NTA. On the date of your hearing, you must report to the SAN Ysidro, CA port of entry, located at SYS Ped West/EL Chaparral, at the date and time listed below. If your case cannot be completed in one hearing, the immigration court will provide you with a Notice of Hearing in Removal Proceedings, indicating the date and time for any subsequent hearings. o

  You may call the immigration court at 1-800-898-7180 to obtain case status information 24 hours a

day, 7 days a week. If you are calling from outside of the United States, you should dial 001-880-898-7180.

- You should arrive at the port of entry listed above at [**REDACTED**] a.m./p.m. on [**REDACTED**] MAR [**REDACTED**] 2019 to ensure that you have time to be processed, transported to your hearing and meet with attorney or accredited representative (if you arrange to be represented during your removal proceedings). The U.S. Government will provide transportation for you from the designated port of entry to the court on the day of your hearing. If you fail to arrive at the appropriate date and time, you may be ordered removed in absentia.
  - o When you arrive at the designated port of entry for your hearing, you should bring your NTA or Notice of Hearing in Removal Proceedings and any available government-issued identification and/or travel documents.
  - o When you arrive at the designated port of entry for your hearing, you should bring any minor children or other family members who arrived with you to the United States and received an NTA for the same date and time.
- You have the statutory privilege of being represented by an attorney or accredited representative of your choosing who is authorized to practice before the immigration courts of the United States, at no expense to the U.S. Government. o You have been provided with a List of Legal Service Providers, which has information on low cost or free legal

service providers practicing near the immigration court where your hearing(s) will take place.

- A list of legal service providers is also available on the Executive Office for Immigration Review website at https://www.justice.gov/eoir/list-pro-bono-legal-service-providers.

- If you choose to be represented, you may consult with counsel at no expense to the U.S. Government through any available mechanism, including the following, as applicable: o You may consult with your counsel by telephone, email, video conference, or any other remote communication method of your choosing.

  - o You may arrange to consult with your counsel in person at a location in Mexico of your choosing.

  - o On the day of your immigration hearing, you may arrange to meet with your counsel in-person, in the United States, at your assigned court facility, prior to that hearing.

[REDACTED] [REDACTED] Jan. 25, 2019

U.S. Department of Homeland Security

Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID : [redacted] FIN #: [redacted] File No: [redacted]

SIGMA Event: [redacted] DOB: [redacted] Event No: SYS19[redacted]

In the Matter of: Frank Doe

Respondent: [redacted] currently residing at:

DOMICILIO CONOCIDO , TIJUANA BAJA CALIFORNIA [redacted]

(Number, street, city and ZIP code) (Area code and phone number)

☒ 1. You are an arriving alien.

☐ 2. You are an alien present in the United States who has not been admitted or paroled.

☐ 3. You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States.
2. You are a native of HONDURAS and a citizen of HONDURAS.
3. On or about FEBRUARY 02, 2019 you applied for admission into the United States from Mexico at the San Ysidro Port of Entry.
4. You are an immigrant not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document as required by the Immigration and Nationality Act.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

See Continuation Page Made a Part Hereof

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.

☐ Section 235(b)(1) order was vacated pursuant to: ☐8CFR 208.30(f)(2) ☐8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

401 West A Street Suite 800 San Diego CALIFORNIA US 92101

(Complete Address of Immigration Court, including Room Number, if any)

on March [redacted] 2019 at [redacted] to show why you should not be removed from the United States based on the

(Date) *(Time)*

charge(s) set forth above. [redacted] CBPO

(Signature and Title of Issuing

Date: February 3, 2019 SAN YSIDRO POE, CA [redacted]

(City and State)

See reverse for important information

Form I-862 (Rev. 08/01/07)

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are under removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 3.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents, which you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear and that you are inadmissible or removable on the charges contained in the Notice to Appear. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses

presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge.

You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of departure voluntarily. You will be given a reasonable opportunity to make any such application to the immigration judge.

Failure to appear: You are required to provide the DHS, in writing, with your full mailing address and telephone number. You must notify the Immigration Court immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

Mandatory Duty to Surrender for Removal: If you become subject to a final order of removal, you must surrender for removal to one of the offices listed in 8 CFR 241.16(a). Specific addresses on locations for surrender can be obtained from your local DHS office or over the internet at http://www.ice.gov/about/dro/contact.htm. You must surrender within 30 days from the date the

order becomes administratively final, unless you obtain an order from a Federal court, immigration court, or the Board of Immigration Appeals staying execution of the removal order. Immigration regulations at 8 CFR 241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Act.

Request for Prompt Hearing

To expedite a determination in my case, I request an immediate hearing. I waive my right to a 10-day period prior to appearing before an immigration judge.

Before: _____

(Signature of Respondent)

Date: _____

_____

(Signature and Title of Immigration Officer)

Certificate of Service

This Notice To Appear was served on the respondent by me on February 3, 2019 in the following manner and in compliance with section 239(a)(1)(F) of the Act.

☒ in person ☐ by certified mail, returned receipt requested

☐ by regular mail ☐ Attached is a credible fear worksheet

☒ Attached is a list of organization and attorneys which provide free legal services.

The alien was provided oral notice in the SPANISH language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act

[REDACTED]

(Signature of Respondent if Personally Served)

CPBO **[REDACTED]**

(Signature and Title of officer)

Alien's Name **[REDACTED]**	File Number: **[REDACTED]** SIGMA Event: **[REDACTED]** Event No: SYS19 **[REDACTED]**	Date February 3, 2019
ON THE BASIS OF THE FOREGOING, IT IS CHARGED THAT YOU ARE SUBJECT TO REMOVAL FROM THE UNITED STATES PURSUANT TO THE FOLLOWING PROVISION(S) OF LAW: ********** 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (Act), as amended, as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality a required under the regulations issued by the Attorney General under section 211(a) of the Act.		
Signature [**REDACTED**] [**REDACTED**]		Title CBPO

Migrant Protection Protocols

Initial Processing Information

- You have been identified for processing under the Migrant Protection Protocols and have been issued a Form I-862 Notice to Appear (NTA) for proceedings before an immigration court where you may apply for all forms of relief available under the Immigration and Nationality Act. Pursuant to U.S. law, including section 240 of the Immigration and Nationality Act and implementing regulations, an immigration judge will determine whether you are removable from the United States, and if you are, whether you are eligible for relief or protection from removal. While you will be able to pursue such relief or protection under the same terms and conditions as any alien in section 240 proceedings, pursuant to U.S. law, you will be returned to Mexico and may not attempt to enter the United States until you return to the appropriate port of entry on the date of your hearing before an immigration judge.
- The NTA provides the date and time of your first hearing before an immigration judge in the United States at the court identified on your NTA. On the date of your hearing, you must report to the PEDESTRIAN WEST port of entry, located at EL CHAPARRAL, at the date and time listed below. If your case cannot be completed in one hearing, the immigration court will provide you with a Notice of Hearing in Removal Proceedings, indicating the date and time for any subsequent hearings.
    - o You may call the immigration court at 1-800-898-7180 to obtain case status information 24 hours

a day, 7 days a week. If you are calling from outside of the United States, you should dial 001-880-898-7180.

- You should arrive at the port of entry listed above at [**REDACTED**] a.m./p.m. on [MARCH [**REDACTED**] 2019] to ensure that you have time to be processed, transported to your hearing and meet with attorney or accredited representative (if you arrange to be represented during your removal proceedings). The U.S. Government will provide transportation for you from the designated port of entry to the court on the day of your hearing. If you fail to arrive at the appropriate date and time, you may be ordered removed in absentia.
    - When you arrive at the designated port of entry for your hearing, you should bring your NTA or Notice of Hearing in Removal Proceedings and any available government-issued identification and/or travel documents.
    - When you arrive at the designated port of entry for your hearing, you should bring any minor children or other family members who arrived with you to the United States and received an NTA for the same date and time.
- You have the statutory privilege of being represented by an attorney or accredited representative of your choosing who is authorized to practice before the immigration courts of the United States, at no expense to the U.S. Government.
    - You have been provided with a List of Legal Service Providers, which has information on low cost or free legal service providers practicing

near the immigration court where your hearing(s) will take place.

- ☐ A list of legal service providers is also available on the Executive Office for Immigration Review website at https://www.justice.gov/eoir/list-pro-bono-legal-service-providers.

- If you choose to be represented, you may consult with counsel at no expense to the U.S. Government through any available mechanism, including the following, as applicable:

  - o You may consult with your counsel by telephone, email, video conference, or any other remote communication method of your choosing.

  - o You may arrange to consult with your counsel in person at a location in Mexico of your choosing.

  - o On the day of your immigration hearing, you may arrange to meet with your counsel in-person, in the United States, at your assigned court facility, prior to that hearing.

[REDACTED] Date: [3/2/19] January 25, 2019

Protocolos de Protección del Migrante
Información de Procesamiento Inicial

- Usted ha sido identificado para procesamiento bajo los Protocolos de Protección del Migrante y se le ha expedido un Formulario I-862, Citatorio (NTA, por sus siglas en inglés), para procedimientos ante una corte de inmigración, donde podrá solicitar todas las formas de alivio de inmigración disponibles bajo la Ley de Inmigración y Nacionalidad. Cumpliendo con las leyes de los Estados Unidos, incluso la sección 240 de la Ley de Inmigración y Nacionalidad y la implementación de regulaciones, un juez de inmigración determinará si usted es sujeto a remoción de los Estados Unidos, y en caso de serlo si es elegible o no a alivio o protección de remoción. Aunque usted podrá buscar ese alivio o protección bajo los mismos términos y condíciones de cualquier extranjero, en los procedimientos de la sección 240, de acuerdo a las leyes de los Estados Unidos, usted será devuelto a México y no podrá intentar entrar a los Estados Unidos hasta que regrese al puerto de entrada apropiado en la fecha de su audiencia ante un juez de inmigración.
- La NTA, proporciona la fecha y hora de su primera audiencia ante un juez de inmigración en los Estados Unidos en la corte identificada en su NTA. En la fecha de su audiencia, usted debe presentarse al puerto de entrada San Ysidro Ped West, localizado en El Chaparral, en la fecha y hora listada más abajo. Si su caso no puede completarse en una sola audiencia, la corte de inmigración le proveerá una Notificación de Audiencia en Procedimientos de

Remoción, que indica la fecha y hora de cualquier audiencia subsecuente.

- Usted puede llamar a la corte de inmigración al teléfono 1-800-898-7180 para obtener información de su caso las 24 horas al día, los 7 días de la semana. Si está llamando desde fuera de Estados Unidos, usted debe marcar 001-880-898-7180.

- Usted debe llegar al puerto de entrada listado arriba a las [**REDACTED**], a.m./p.m. el [**REDACTED**] de Marzo 2019, para asegurarse de tener tiempo para ser procesado, transportado a su audiencia y para que pueda reunirse con su abogado o representante acreditado (si usted hace arreglos para ser representado durante sus procedimientos de remoción). El Gobierno de los Estados Unidos le proporcionará transportación desde el puerto de entrada designado hasta la corte el dia de su audiencia. Si usted falla en llegar en la fecha y hora apropiadas, podría ordenarse su remoción en ausencia.
  - Al llegar al puerto de entrada designado para su audiencia, debe traer consigo la NTA o Notificación de Audiencia en Procesos de Remoción, así como cualquier identificación emitida por el gobierno y/o documentos de viaje.
  - Al llegar al puerto de entrada designado para su audiencia, debe traer cualquier menor o otro familiar que haya entrado a los Estados Unidos con usted y que recibieron una NTA par a la misma fecha y hora.
- Usted tiene el privilegio legal de ser representado por un abogado o representante acreditado de su

elección, que esté acreditado para ejercer la práctica de inmigración ante una corte de inmigración de los Estados Unidos, sin cargo al gobierno estadounidense.

- A usted se le proporcionó anteriormente un Listado de Proveedores de Servicios Legales, la cual contiene información acerca de servicios de bajo costo o gratuitos de parte de los proveedores legales que practican cerca de la corte de inmigración donde su audiencia(s) tendrá lugar.
- Un listado de los proveedores de servicios legales también está disponible en el sitio web de la Oficina Ejecutiva para la Revisión de Imnigración en https://www.justice.gov/eoir/list-pro-bono-legal-service-providers

- Si usted elige ser representado, puede consultar con un consejero sin cargo al Gobierno de los Estados Unidos por medio de cualquier mecanismo que incluyen los siguientes, si aplica:
  - Usted puede consultar con su consejero por teléfono, correo electrónico, videoconferencía o cualquier otro método de comunicación remota de su elección.
  - Usted puede hacer arreglos para consultar con su consejero en persona en una localidad de su elección en México.

- El día de su audiencia de inmigración, usted puede hacer los arreglos pra una reunión en persona con su consejero en los Estados Unidos en la localidad de su corte asignada, previo a su audiencia.

[REDACTED] Fecha: [3/2/19]

25 de Enero del 2019

U.S. Department of Homeland Security

Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID : [redacted] FIN #: [redacted] File No: [redacted]

SIGMA Event: [redacted] DOB: [redacted] Event No: SYS19[redacted]

In the Matter of: Gregory Doe

Respondent: C[redacted] currently residing at:

DOMICILIO CONOCIDO , TIJUANA BAJA CALIFORNIA

(Number, street, city and ZIP code) (Area code and phone number)

☒ 1. You are an arriving alien.

☐ 2. You are an alien present in the United States who has not been admitted or paroled.

☐ 3. You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States.
2. You are a native of HONDURAS and a citizen of HONDURAS.
3. On or about January 29, 2019, you applied for admission into the United States from Mexico at the San Ysidro Port of Entry.
4. You are an immigrant not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and Nationality Act.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

See Continuation Page Made a Part Hereof

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.

☐ Section 235(b)(1) order was vacated pursuant to: ☐8CFR 208.30(f)(2) ☐8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

401 West A Street Suite 800 San Diego CALIFORNIA US 92101

(Complete Address of Immigration Court, including Room Number, if any)

on March [redacted] 2019 at [redacted] to show why you should not be removed from the United States based on the

(Date) *(Time)*

charge(s) set forth above. [redacted] CBPO

(Signature an

Date: January 30, 2019 SAN YSIDRO, CA [redacted]

See reverse for important information

Form I-862 (Rev. 08/01/07)

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are under removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 3.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents, which you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear and that you are inadmissible or removable on the charges contained in the Notice to Appear. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses

presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge.

You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of departure voluntarily. You will be given a reasonable opportunity to make any such application to the immigration judge.

Failure to appear: You are required to provide the DHS, in writing, with your full mailing address and telephone number. You must notify the Immigration Court immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

Mandatory Duty to Surrender for Removal: If you become subject to a final order of removal, you must surrender for removal to one of the offices listed in 8 CFR 241.16(a). Specific addresses on locations for surrender can be obtained from your local DHS office or over the internet at http://www.ice.gov/about/dro/contact.htm. You must surrender within 30 days from the date the

order becomes administratively final, unless you obtain an order from a Federal court, immigration court, or the Board of Immigration Appeals staying execution of the removal order. Immigration regulations at 8 CFR 241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Act.

Request for Prompt Hearing

To expedite a determination in my case, I request an immediate hearing. I waive my right to a 10-day period prior to appearing before an immigration judge.

Before: _____

(Signature of Respondent)

Date: _____

_____

(Signature and Title of Immigration Officer)

Certificate of Service

This Notice To Appear was served on the respondent by me on January 30, 2019, in the following manner and in compliance with section 239(a)(1)(F) of the Act.

☒ in person ☐ by certified mail, returned receipt requested

☐ by regular mail ☐ Attached is a credible fear worksheet

☒ Attached is a list of organization and attorneys which provide free legal services.

The alien was provided oral notice in the SPANISH language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act

[**REDACTED**]

(Signature of Respondent if Personally Served)

CPBO [**REDACTED**]

(Signature and Title of officer)

Alien's Name **[REDACTED]**	File Number: **[REDACTED]** SIGMA Event: **[REDACTED]** Event No: SYS19 **[REDACTED]**	Date January 30, 2019
ON THE BASIS OF THE FOREGOING, IT IS CHARGED THAT YOU ARE SUBJECT TO REMOVAL FROM THE UNITED STATES PURSUANT TO THE FOLLOWING PROVISION(S) OF LAW: ********** 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (Act), as amended, as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act.		
Signature **[REDACTED]** **[REDACTED]**		Title CBPO

Migrant Protection Protocols

Initial Processing Information

- You have been identified for processing under the Migrant Protection Protocols and have been issued a Form I-862 Notice to Appear (NTA) for proceedings before an immigration court where you may apply for all forms of relief available under the Immigration and Nationality Act. Pursuant to U.S. law, including section 240 of the Immigration and Nationality Act and implementing regulations, an immigration judge will determine whether you are removable from the United States, and if you are, whether you are eligible for relief or protection from removal. While you will be able to pursue such relief or protection under the same terms and conditions as any alien in section 240 proceedings, pursuant to U.S. law, you will be returned to Mexico and may not attempt to enter the United States until you return to the appropriate port of entry on the date of your hearing before an immigration judge.
- The NTA provides the date and time of your first hearing before an immigration judge in the United States at the court identified on your NTA. On the date of your hearing, you must report to the [EL CHAPARRAL] port of entry, located at TIJUANA, at the date and time listed below. If your case cannot be completed in one hearing, the immigration court will provide you with a Notice of Hearing in Removal Proceedings, indicating the date and time for any subsequent hearings.
    - o You may call the immigration court at 1-800-898-7180 to obtain case status information 24 hours

a day, 7 days a week. If you are calling from outside of the United States, you should dial 001-880-898-7180.

- You should arrive at the port of entry listed above at [**REDACTED**] a.m./p.m. on MARCH [**REDACTED**] 2019 to ensure that you have time to be processed, transported to your hearing and meet with attorney or accredited representative (if you arrange to be represented during your removal proceedings). The U.S. Government will provide transportation for you from the designated port of entry to the court on the day of your hearing. If you fail to arrive at the appropriate date and time, you may be ordered removed in absentia.
  - o When you arrive at the designated port of entry for your hearing, you should bring your NTA or Notice of Hearing in Removal Proceedings and any available government-issued identification and/or travel documents.
  - o When you arrive at the designated port of entry for your hearing, you should bring any minor children or other family members who arrived with you to the United States and received an NTA for the same date and time.
- You have the statutory privilege of being represented by an attorney or accredited representative of your choosing who is authorized to practice before the immigration courts of the United States, at no expense to the U.S. Government.
  - You have been provided with a List of Legal Service Providers, which has information on low cost or free legal service providers practicing

near the immigration court where your hearing(s) will take place.

- ☐ A list of legal service providers is also available on the Executive Office for Immigration Review website at https://www.justice.gov/eoir/list-pro-bono-legal-service-providers.

- If you choose to be represented, you may consult with counsel at no expense to the U.S. Government through any available mechanism, including the following, as applicable:

  - o You may consult with your counsel by telephone, email, video conference, or any other remote communication method of your choosing.

  - o You may arrange to consult with your counsel in person at a location in Mexico of your choosing.

  - o On the day of your immigration hearing, you may arrange to meet with your counsel in-person, in the United States, at your assigned court facility, prior to that hearing.

[REDACTED] Date: [30/1/19] January 25, 2019

Protocolos de Protección del Migrante
Información de Procesamiento Inicial

- Usted ha sido identificado para procesamiento bajo los Protocolos de Protección del Migrante y se le ha expedido un Formulario I-862, Citatorio (NTA, por sus siglas en inglés), para procedimientos ante una corte de inmigración, donde podrá solicitar todas las formas de alivio de inmigración disponibles bajo la Ley de Inmigración y Nacionalidad. Cumpliendo con las leyes de los Estados Unidos, incluso la sección 240 de la Ley de Inmigración y Nacionalidad y la implementación de regulaciones, un juez de inmigración determinará si usted es sujeto a remoción de los Estados Unidos, y en caso de serlo si es elegible o no a alivio o protección de remoción. Aunque usted podrá buscar ese alivio o protección bajo los mismos términos y condíciones de cualquier extranjero, en los procedimientos de la sección 240, de acuerdo a las leyes de los Estados Unidos, usted será devuelto a México y no podrá intentar entrar a los Estados Unidos hasta que regrese al puerto de entrada apropiado en la fecha de su audiencia ante un juez de inmigración.
- La NTA, proporciona la fecha y hora de su primera audiencia ante un juez de inmigración en los Estados Unidos en la corte identificada en su NTA. En la fecha de su audiencia, usted debe presentarse al puerto de entrada San Ysidro Ped West, localizado en El Chaparral, en la fecha y hora listada más abajo. Si su caso no puede completarse en una sola audiencia, la corte de inmigración le proveerá una Notificación de Audiencia en Procedimientos de

Remoción, que indica la fecha y hora de cualquier audiencia subsecuente.

- Usted puede llamar a la corte de inmigración al teléfono 1-800-898-7180 para obtener información de su caso las 24 horas al día, los 7 días de la semana. Si está llamando desde fuera de Estados Unidos, usted debe marcar 001-880-898-7180.

- Usted debe llegar al puerto de entrada listado arriba a las [**REDACTED**], a.m./p.m. el [**REDACTED**] de Marzo 2019, para asegurarse de tener tiempo para ser procesado, transportado a su audiencia y para que pueda reunirse con su abogado o representante acreditado (si usted hace arreglos para ser representado durante sus procedimientos de remoción). El Gobierno de los Estados Unidos le proporcionará transportación desde el puerto de entrada designado hasta la corte el dia de su audiencia. Si usted falla en llegar en la fecha y hora apropiadas, podría ordenarse su remoción en ausencia.

  - Al llegar al puerto de entrada designado para su audiencia, debe traer consigo la NTA o Notificación de Audiencia en Procesos de Remoción, así como cualquier identificación emitida por el gobierno y/o documentos de viaje.

  - Al llegar al puerto de entrada designado para su audiencia, debe traer cualquier menor o otro familiar que haya entrado a los Estados Unidos con usted y que recibieron una NTA par a la misma fecha y hora.

- Usted tiene el privilegio legal de ser representado por un abogado o representante acreditado de su elección, que esté acreditado para ejercer la práctica de inmigración ante una corte de inmigración de los Estados Unidos, sin cargo al gobierno estadounidense.
    - A usted se le proporcionó anteriormente un Listado de Proveedores de Servicios Legales, la cual contiene información acerca de servicios de bajo costo o gratuitos de parte de los proveedores legales que practican cerca de la corte de inmigración donde su audiencia(s) tendrá lugar.
    - Un listado de los proveedores de servicios legales también está disponible en el sitio web de la Oficina Ejecutiva para la Revisión de Imnigración en https://www.justice.gov/eoir/list-pro-bono-legal-service-providers
- Si usted elige ser representado, puede consultar con un consejero sin cargo al Gobierno de los Estados Unidos por medio de cualquier mecanismo que incluyen los siguientes, si aplica:
    - Usted puede consultar con su consejero por teléfono, correo electrónico, videoconferencía o cualquier otro método de comunicación remota de su elección.
    - Usted puede hacer arreglos para consultar con su consejero en persona en una localidad de su elección en México.
    - El día de su audiencia de inmigración, usted puede hacer los arreglos pra una reunión en persona con su consejero en los Estados

Unidos en la localidad de su corte asignada, previo a su audiencia.

[REDACTED] Date: [30/1/19]

25 de Enero del 2019

U.S. Department of Homeland Security

Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID : [redacted] FIN #: [redacted] File No: [redacted]

SIGMA Event: [redacted] DOB: [redacted] Event No: SYS19[redacted]

In the Matter of: **Howard Doe**

Respondent: [redacted] currently residing at:

DOMICILIO CONOCIDO, [redacted] TIJUANA BAJA CALIFORNIA [redacted]

(Number, street, city and ZIP code) (Area code and phone number)

☒ 1. You are an arriving alien.

☐ 2. You are an alien present in the United States who has not been admitted or paroled.

☐ 3. You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States.
2. You are a native of Honduras and a citizen of Honduras.
3. On or about February 03, 2019 you applied for admission into the United States from Mexico at the San Ysidro Port of Entry.
4. You are an immigrant not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document as required by the Immigration and Nationality Act.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

See Continuation Page Made a Part Hereof

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.

☐ Section 235(b)(1) order was vacated pursuant to: ☐8CFR 208.30(f)(2) ☐8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

401 West A Street Suite 800 San Diego CALIFORNIA US 92101

(Complete Address of Immigration Court, including Room Number, if any)

on March [redacted] 2019 at [redacted] to show why you should not be removed from the United States based on the charge(s) set forth above.

[redacted] CBPO

(Signature and Title of Issuing Officer)

Date: February 4, 2019 SAN YSIDRO, CA

(City and State)

See reverse for important information

Form I-862 (Rev. 08/01/07)

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are under removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 3.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents, which you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear and that you are inadmissible or removable on the charges contained in the Notice to Appear. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses

presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge.

You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of departure voluntarily. You will be given a reasonable opportunity to make any such application to the immigration judge.

Failure to appear: You are required to provide the DHS, in writing, with your full mailing address and telephone number. You must notify the Immigration Court immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

Mandatory Duty to Surrender for Removal: If you become subject to a final order of removal, you must surrender for removal to one of the offices listed in 8 CFR 241.16(a). Specific addresses on locations for surrender can be obtained from your local DHS office or over the internet at http://www.ice.gov/about/dro/contact.htm. You must surrender within 30 days from the date the

order becomes administratively final, unless you obtain an order from a Federal court, immigration court, or the Board of Immigration Appeals staying execution of the removal order. Immigration regulations at 8 CFR 241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Act.

Request for Prompt Hearing

To expedite a determination in my case, I request an immediate hearing. I waive my right to a 10-day period prior to appearing before an immigration judge.

Before: _____

(Signature of Respondent)

Date: _____

_____

(Signature and Title of Immigration Officer)

Certificate of Service

This Notice To Appear was served on the respondent by me on February 4, 2019, in the following manner and in compliance with section 239(a)(1)(F) of the Act.

☒ in person ☐ by certified mail, returned receipt requested

☐ by regular mail ☐ Attached is a credible fear worksheet

☒ Attached is a list of organization and attorneys which provide free legal services.

The alien was provided oral notice in the SPANISH language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act

[REDACTED]

(Signature of Respondent if Personally Served)

Cbpo **[REDACTED]**

(Signature and Title of officer)

Alien's Name	File Number:	Date
[REDACTED]	**[REDACTED]**	February 4, 2019

	SIGMA Event: **[REDACTED]** Event No: SYS19 **[REDACTED]**	

ON THE BASIS OF THE FOREGOING, IT IS CHARGED THAT YOU ARE SUBJECT TO REMOVAL FROM THE UNITED STATES PURSUANT TO THE FOLLOWING PROVISION(S) OF LAW:

****

212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (Act), as amended, as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act.

Signature	Title
[REDACTED] **[REDACTED]**	CBPO

Protocolos de Protección del Migrante
Información de Procesamiento Inicial

- Usted ha sido identificado para procesamiento bajo los Protocolos de Protección del Migrante y se le ha expedido un Formulario I-862, Citatorio (NTA, por sus siglas en inglés), para procedimientos ante una corte de inmigración, donde podrá solicitar todas las formas de alivio de inmigración disponibles bajo la Ley de Inmigración y Nacionalidad. Cumpliendo con las leyes de los Estados Unidos, incluso la sección 240 de la Ley de Inmigración y Nacionalidad y la implementación de regulaciones, un juez de inmigración determinará si usted es sujeto a remoción de los Estados Unidos, y en caso de serlo si es elegible o no a alivio o protección de remoción. Aunque usted podrá buscar ese alivio o protección bajo los mismos términos y condíciones de cualquier extranjero, en los procedimientos de la sección 240, de acuerdo a las leyes de los Estados Unidos, usted será devuelto a México y no podrá intentar entrar a los Estados Unidos hasta que regrese al puerto de entrada apropiado en la fecha de su audiencia ante un juez de inmigración.
- La NTA, proporciona la fecha y hora de su primera audiencia ante un juez de inmigración en los Estados Unidos en la corte identificada en su NTA. En la fecha de su audiencia, usted debe presentarse al puerto de entrada [PED WEST/EL CHAPARRAL], localizado en [405 VIRGINIA AVE, SAN DIEGO, CA 92173], en la fecha y hora listada más abajo. Si su caso no puede completarse en una sola audiencia, la corte de inmigración le proveerá una Notificación de Audiencia en Procedimientos de

Remoción, que indica la fecha y hora de cualquier audiencia subsecuente.

- Usted puede llamar a la corte de inmigración al teléfono 1-800-898-7180 para obtener información de su caso las 24 horas al día, los 7 días de la semana. Si está llamando desde fuera de Estados Unidos, usted debe marcar 001-880-898-7180.

- Usted debe llegar al puerto de entrada listado arriba a las [**REDACTED**], a.m./p.m. el [**REDACTED**] [de Marzo 2019], para asegurarse de tener tiempo para ser procesado, transportado a su audiencia y para que pueda reunirse con su abogado o representante acreditado (si usted hace arreglos para ser representado durante sus procedimientos de remoción). El Gobierno de los Estados Unidos le proporcionará transportación desde el puerto de entrada designado hasta la corte el dia de su audiencia. Si usted falla en llegar en la fecha y hora apropiadas, podría ordenarse su remoción en ausencia.

  - Al llegar al puerto de entrada designado para su audiencia, debe traer consigo la NTA o Notificación de Audiencia en Procesos de Remoción, así como cualquier identificación emitida por el gobierno y/o documentos de viaje.

  - Al llegar al puerto de entrada designado para su audiencia, debe traer cualquier menor o otro familiar que haya entrado a los Estados Unidos con usted y que recibieron una NTA par a la misma fecha y hora.

- Usted tiene el privilegio legal de ser representado por un abogado o representante acreditado de su elección, que esté acreditado para ejercer la práctica de inmigración ante una corte de inmigración de los Estados Unidos, sin cargo al gobierno estadounidense.
    - A usted se le proporcionó anteriormente un Listado de Proveedores de Servicios Legales, la cual contiene información acerca de servicios de bajo costo o gratuitos de parte de los proveedores legales que practican cerca de la corte de inmigración donde su audiencia(s) tendrá lugar.
    - Un listado de los proveedores de servicios legales también está disponible en el sitio web de la Oficina Ejecutiva para la Revisión de Imnigración en https://www.justice.gov/eoir/list-pro-bono-legal-service-providers
- Si usted elige ser representado, puede consultar con un consejero sin cargo al Gobierno de los Estados Unidos por medio de cualquier mecanismo que incluyen los siguientes, si aplica:
    - Usted puede consultar con su consejero por teléfono, correo electrónico, videoconferencía o cualquier otro método de comunicación remota de su elección.
    - Usted puede hacer arreglos para consultar con su consejero en persona en una localidad de su elección en México.
    - El día de su audiencia de inmigración, usted puede hacer los arreglos pra una reunión en persona con su consejero en los Estados

Unidos en la localidad de su corte asignada, previo a su audiencia.

[**REDACTED**] 25 de Enero del 2019

U.S. Department of Homeland Security

Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID : [redacted] FIN #: [redacted] File No: [redacted]

SIGMA Event: [redacted] DOB: [redacted] Event No: SYS19[redacted]

In the Matter of: Ian Doe

Respondent: [redacted] currently residing at:

DOMICILIO CONOCIDO; [redacted] TIJUANA BAJA CALIFORNIA [redacted]

(Number, street, city and ZIP code) (Area code and phone number)

☒ 1. You are an arriving alien.

☐ 2. You are an alien present in the United States who has not been admitted or paroled.

☐ 3. You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States.
2. You are a native of Honduras and a citizen of Honduras.
3. On or about February 3, 2019, you applied for admission into the United States from Mexico at the San Ysidro Port of Entry.
4. You are an immigrant not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and Nationality Act.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

See Continuation Page Made a Part Hereof

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.

☐ Section 235(b)(1) order was vacated pursuant to: ☐8CFR 208.30(f)(2) ☐8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

401 West A Street Suite 800 San Diego CALIFORNIA US 92101

(Complete Address of Immigration Court, including Room Number, if any)

on March [redacted] 2019 *(Date)* at [redacted] *(Time)* to show why you should not be removed from the United States based on the charge(s) set forth above.

[redacted] CBP OFFICER

(Issuing Officer)

Date: February 4, 2019 SAN YSIDRO PORT [redacted]

(City and State)

See reverse for important information

Form I-862 (Rev. 08/01/07)

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are under removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 3.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents, which you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear and that you are inadmissible or removable on the charges contained in the Notice to Appear. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses

presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge.

You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of departure voluntarily. You will be given a reasonable opportunity to make any such application to the immigration judge.

Failure to appear: You are required to provide the DHS, in writing, with your full mailing address and telephone number. You must notify the Immigration Court immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

Mandatory Duty to Surrender for Removal: If you become subject to a final order of removal, you must surrender for removal to one of the offices listed in 8 CFR 241.16(a). Specific addresses on locations for surrender can be obtained from your local DHS office or over the internet at http://www.ice.gov/about/dro/contact.htm. You must surrender within 30 days from the date the

order becomes administratively final, unless you obtain an order from a Federal court, immigration court, or the Board of Immigration Appeals staying execution of the removal order. Immigration regulations at 8 CFR 241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Act.

Request for Prompt Hearing

To expedite a determination in my case, I request an immediate hearing. I waive my right to a 10-day period prior to appearing before an immigration judge.

Before: _____

(Signature of Respondent)

Date: _____

_____

(Signature and Title of Immigration Officer)

Certificate of Service

This Notice To Appear was served on the respondent by me on February 4, 2019, in the following manner and in compliance with section 239(a)(1)(F) of the Act.

☒ in person ☐ by certified mail, returned receipt requested

☐ by regular mail ☐ Attached is a credible fear worksheet

☒ Attached is a list of organization and attorneys which provide free legal services.

The alien was provided oral notice in the SPANISH language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act

[**REDACTED**]

(Signature of Respondent if Personally Served)

CPB OFFICER [**REDACTED**]

(Signature and Title of officer)

Alien's Name **[REDACTED]**	File Number: **[REDACTED]** SIGMA Event: **[REDACTED]** Event No: SYS19 **[REDACTED]**	Date February 4, 2019
ON THE BASIS OF THE FOREGOING, IT IS CHARGED THAT YOU ARE SUBJECT TO REMOVAL FROM THE UNITED STATES PURSUANT TO THE FOLLOWING PROVISION(S) OF LAW: ********** 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (Act), as amended, as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act.		
Signature **[REDACTED]** **[REDACTED]**		Title CBP OFFICER

Protocolos de Protección del Migrante
Información de Procesamiento Inicial

- Usted ha sido identificado para procesamiento bajo los Protocolos de Protección del Migrante y se le ha expedido un Formulario I-862, Citatorio (NTA, por sus siglas en inglés), para procedimientos ante una corte de inmigración, donde podrá solicitar todas las formas de alivio de inmigración disponibles bajo la Ley de Inmigración y Nacionalidad. Cumpliendo con las leyes de los Estados Unidos, incluso la sección 240 de la Ley de Inmigración y Nacionalidad y la implementación de regulaciones, un juez de inmigración determinará si usted es sujeto a remoción de los Estados Unidos, y en caso de serlo si es elegible o no a alivio o protección de remoción. Aunque usted podrá buscar ese alivio o protección bajo los mismos términos y condíciones de cualquier extranjero, en los procedimientos de la sección 240, de acuerdo a las leyes de los Estados Unidos, usted será devuelto a México y no podrá intentar entrar a los Estados Unidos hasta que regrese al puerto de entrada apropiado en la fecha de su audiencia ante un juez de inmigración.
- La NTA, proporciona la fecha y hora de su primera audiencia ante un juez de inmigración en los Estados Unidos en la corte identificada en su NTA. En la fecha de su audiencia, usted debe presentarse al puerto de entrada San Ysidro Ped West, localizado en El Chaparral, en la fecha y hora listada más abajo. Si su caso no puede completarse en una sola audiencia, la corte de inmigración le proveerá una Notificación de Audiencia en Procedimientos de

Remoción, que indica la fecha y hora de cualquier audiencia subsecuente.

- Usted puede llamar a la corte de inmigración al teléfono 1-800-898-7180 para obtener información de su caso las 24 horas al día, los 7 días de la semana. Si está llamando desde fuera de Estados Unidos, usted debe marcar 001-880-898-7180.

- Usted debe llegar al puerto de entrada listado arriba a las [**REDACTED**], a.m./p.m. el [**REDACTED**] de Marzo 2019, para asegurarse de tener tiempo para ser procesado, transportado a su audiencia y para que pueda reunirse con su abogado o representante acreditado (si usted hace arreglos para ser representado durante sus procedimientos de remoción). El Gobierno de los Estados Unidos le proporcionará transportación desde el puerto de entrada designado hasta la corte el dia de su audiencia. Si usted falla en llegar en la fecha y hora apropiadas, podría ordenarse su remoción en ausencia.

  - Al llegar al puerto de entrada designado para su audiencia, debe traer consigo la NTA o Notificación de Audiencia en Procesos de Remoción, así como cualquier identificación emitida por el gobierno y/o documentos de viaje.

  - Al llegar al puerto de entrada designado para su audiencia, debe traer cualquier menor o otro familiar que haya entrado a los Estados Unidos con usted y que recibieron una NTA par a la misma fecha y hora.

- Usted tiene el privilegio legal de ser representado por un abogado o representante acreditado de su elección, que esté acreditado para ejercer la práctica de inmigración ante una corte de inmigración de los Estados Unidos, sin cargo al gobierno estadounidense.
    - A usted se le proporcionó anteriormente un Listado de Proveedores de Servicios Legales, la cual contiene información acerca de servicios de bajo costo o gratuitos de parte de los proveedores legales que practican cerca de la corte de inmigración donde su audiencia(s) tendrá lugar.
    - Un listado de los proveedores de servicios legales también está disponible en el sitio web de la Oficina Ejecutiva para la Revisión de Imnigración en https://www.justice.gov/eoir/list-pro-bono-legal-service-providers
- Si usted elige ser representado, puede consultar con un consejero sin cargo al Gobierno de los Estados Unidos por medio de cualquier mecanismo que incluyen los siguientes, si aplica:
    - Usted puede consultar con su consejero por teléfono, correo electrónico, videoconferencía o cualquier otro método de comunicación remota de su elección.
    - Usted puede hacer arreglos para consultar con su consejero en persona en una localidad de su elección en México.
    - El día de su audiencia de inmigración, usted puede hacer los arreglos pra una reunión en persona con su consejero en los Estados

Unidos en la localidad de su corte asignada, previo a su audiencia.

[**REDACTED**] 25 de Enero del 2019

U.S. Department of Homeland Security

Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID : [redacted] FIN #: [redacted] File No: [redacted]

SIGMA Event: [redacted] DOB: [redacted] Event No: SYS19[redacted]

In the Matter of: John Doe [redacted]

Respondent: [redacted] currently residing at:

DOMICILIO CONOCID[redacted] CALIFORNIA [redacted]

(Number, street, city and ZIP code) (Area code and phone number)

☒ 1. You are an arriving alien.

☐ 2. You are an alien present in the United States who has not been admitted or paroled.

☐ 3. You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States.
2. You are a native of Guatemala and a citizen of Guatemala.
3. On or about January 29, 2019, you applied for admission into the United States from Mexico at the San Ysidro Port of Entry.
4. You are an immigrant not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and Nationality Act.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

See Continuation Page Made a Part Hereof

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.

☐ Section 235(b)(1) order was vacated pursuant to: ☐8CFR 208.30(f)(2) ☐8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

401 West A Street Suite 800 San Diego CALIFORNIA US 92101

(Complete Address of Immigration Court, including Room Number, if any)

on March [redacted] 2019 (*Date*) at [redacted] (*Time*) to show why you should not be removed from the United States based on the charge(s) set forth above.

[redacted] cbp officer

(Signature and Title of Issuing Officer)

Date: January 30, 2019 san ysidro, CA

(City and State)

See reverse for important information

Form I-862 (Rev. 08/01/07)

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are under removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 3.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents, which you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear and that you are inadmissible or removable on the charges contained in the Notice to Appear. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses

presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge.

You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of departure voluntarily. You will be given a reasonable opportunity to make any such application to the immigration judge.

Failure to appear: You are required to provide the DHS, in writing, with your full mailing address and telephone number. You must notify the Immigration Court immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

Mandatory Duty to Surrender for Removal: If you become subject to a final order of removal, you must surrender for removal to one of the offices listed in 8 CFR 241.16(a). Specific addresses on locations for surrender can be obtained from your local DHS office or over the internet at http://www.ice.gov/about/dro/contact.htm. You must surrender within 30 days from the date the

order becomes administratively final, unless you obtain an order from a Federal court, immigration court, or the Board of Immigration Appeals staying execution of the removal order. Immigration regulations at 8 CFR 241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Act.

Request for Prompt Hearing

To expedite a determination in my case, I request an immediate hearing. I waive my right to a 10-day period prior to appearing before an immigration judge.

Before: _____

(Signature of Respondent)

Date: _____

_____

(Signature and Title of Immigration Officer)

Certificate of Service

This Notice To Appear was served on the respondent by me on January 30, 2019 in the following manner and in compliance with section 239(a)(1)(F) of the Act.

☒ in person ☐ by certified mail, returned receipt requested

☐ by regular mail ☐ Attached is a credible fear worksheet

☒ Attached is a list of organization and attorneys which provide free legal services.

The alien was provided oral notice in the SPANISH language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act

[**REDACTED**]
(Signature of Respondent if Personally Served)

CBP OFFICER [**REDACTED**] [CBPO]
(Signature and Title of officer)

Alien's Name **[REDACTED]**	File Number: **[REDACTED]** SIGMA Event: **[REDACTED]** Event No: SYS19 **[REDACTED]**	Date January 30, 2019
ON THE BASIS OF THE FOREGOING, IT IS CHARGED THAT YOU ARE SUBJECT TO REMOVAL FROM THE UNITED STATES PURSUANT TO THE FOLLOWING PROVISION(S) OF LAW: ********** 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (Act), as amended, as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act.		
Signature [**REDACTED**]		Title cbp officer

Protocolos de Protección del Migrante
Información de Procesamiento Inicial

- Usted ha sido identificado para procesamiento bajo los Protocolos de Protección del Migrante y se le ha expedido un Formulario I-862, Citatorio (NTA, por sus siglas en inglés), para procedimientos ante una corte de inmigración, donde podrá solicitar todas las formas de alivio de inmigración disponibles bajo la Ley de Inmigración y Nacionalidad. Cumpliendo con las leyes de los Estados Unidos, incluso la sección 240 de la Ley de Inmigración y Nacionalidad y la implementación de regulaciones, un juez de inmigración determinará si usted es sujeto a remoción de los Estados Unidos, y en caso de serlo si es elegible o no a alivio o protección de remoción. Aunque usted podrá buscar ese alivio o protección bajo los mismos términos y condíciones de cualquier extranjero, en los procedimientos de la sección 240, de acuerdo a las leyes de los Estados Unidos, usted será devuelto a México y no podrá intentar entrar a los Estados Unidos hasta que regrese al puerto de entrada apropiado en la fecha de su audiencia ante un juez de inmigración.
- La NTA, proporciona la fecha y hora de su primera audiencia ante un juez de inmigración en los Estados Unidos en la corte identificada en su NTA. En la fecha de su audiencia, usted debe presentarse al puerto de entrada San Ysidro Ped West, localizado en El Chaparral, en la fecha y hora listada más abajo. Si su caso no puede completarse en una sola audiencia, la corte de inmigración le proveerá una Notificación de Audiencia en Procedimientos de

Remoción, que indica la fecha y hora de cualquier audiencia subsecuente.

- Usted puede llamar a la corte de inmigración al teléfono 1-800-898-7180 para obtener información de su caso las 24 horas al día, los 7 días de la semana. Si está llamando desde fuera de Estados Unidos, usted debe marcar 001-880-898-7180.

- Usted debe llegar al puerto de entrada listado arriba a las [**REDACTED**], a.m./p.m. el [**REDACTED**] de Marzo 2019, para asegurarse de tener tiempo para ser procesado, transportado a su audiencia y para que pueda reunirse con su abogado o representante acreditado (si usted hace arreglos para ser representado durante sus procedimientos de remoción). El Gobierno de los Estados Unidos le proporcionará transportación desde el puerto de entrada designado hasta la corte el dia de su audiencia. Si usted falla en llegar en la fecha y hora apropiadas, podría ordenarse su remoción en ausencia.

  - Al llegar al puerto de entrada designado para su audiencia, debe traer consigo la NTA o Notificación de Audiencia en Procesos de Remoción, así como cualquier identificación emitida por el gobierno y/o documentos de viaje.

  - Al llegar al puerto de entrada designado para su audiencia, debe traer cualquier menor o otro familiar que haya entrado a los Estados Unidos con usted y que recibieron una NTA par a la misma fecha y hora.

- Usted tiene el privilegio legal de ser representado por un abogado o representante acreditado de su elección, que esté acreditado para ejercer la práctica de inmigración ante una corte de inmigración de los Estados Unidos, sin cargo al gobierno estadounidense.
    - A usted se le proporcionó anteriormente un Listado de Proveedores de Servicios Legales, la cual contiene información acerca de servicios de bajo costo o gratuitos de parte de los proveedores legales que practican cerca de la corte de inmigración donde su audiencia(s) tendrá lugar.
    - Un listado de los proveedores de servicios legales también está disponible en el sitio web de la Oficina Ejecutiva para la Revisión de Imnigración en https://www.justice.gov/eoir/list-pro-bono-legal-service-providers
- Si usted elige ser representado, puede consultar con un consejero sin cargo al Gobierno de los Estados Unidos por medio de cualquier mecanismo que incluyen los siguientes, si aplica:
    - Usted puede consultar con su consejero por teléfono, correo electrónico, videoconferencía o cualquier otro método de comunicación remota de su elección.
    - Usted puede hacer arreglos para consultar con su consejero en persona en una localidad de su elección en México.
    - El día de su audiencia de inmigración, usted puede hacer los arreglos pra una reunión en persona con su consejero en los Estados

Unidos en la localidad de su corte asignada, previo a su audiencia.

[**REDACTED**] 25 de Enero del 2019

Migrant Protection Protocols

Initial Processing Information

- You have been identified for processing under the Migrant Protection Protocols and have been issued a Form I-862 Notice to Appear (NTA) for proceedings before an immigration court where you may apply for all forms of relief available under the Immigration and Nationality Act. Pursuant to U.S. law, including section 240 of the Immigration and Nationality Act and implementing regulations, an immigration judge will determine whether you are removable from the United States, and if you are, whether you are eligible for relief or protection from removal. While you will be able to pursue such relief or protection under the same terms and conditions as any alien in section 240 proceedings, pursuant to U.S. law, you will be returned to Mexico and may not attempt to enter the United States until you return to the appropriate port of entry on the date of your hearing before an immigration judge.
- The NTA provides the date and time of your first hearing before an immigration judge in the United States at the court identified on your NTA. On the date of your hearing, you must report to the San Ysidro Ped West port of entry, located at El Chaparral, at the date and time listed below. If your case cannot be completed in one hearing, the immigration court will provide you with a Notice of Hearing in Removal Proceedings, indicating the date and time for any subsequent hearings.
    - o You may call the immigration court at 1-800-898-7180 to obtain case status information 24 hours

a day, 7 days a week. If you are calling from outside of the United States, you should dial 001-880-898-7180.

- You should arrive at the port of entry listed above at [**REDACTED**] a.m./p.m. on [**REDACTED**] de Marzo 2019 to ensure that you have time to be processed, transported to your hearing and meet with attorney or accredited representative (if you arrange to be represented during your removal proceedings). The U.S. Government will provide transportation for you from the designated port of entry to the court on the day of your hearing. If you fail to arrive at the appropriate date and time, you may be ordered removed in absentia.
    - o When you arrive at the designated port of entry for your hearing, you should bring your NTA or Notice of Hearing in Removal Proceedings and any available government-issued identification and/or travel documents.
    - o When you arrive at the designated port of entry for your hearing, you should bring any minor children or other family members who arrived with you to the United States and received an NTA for the same date and time.
- You have the statutory privilege of being represented by an attorney or accredited representative of your choosing who is authorized to practice before the immigration courts of the United States, at no expense to the U.S. Government.
    - o You have been provided with a List of Legal Service Providers, which has information on low cost or free legal service providers practicing

near the immigration court where your hearing(s) will take place.

- ☐ A list of legal service providers is also available on the Executive Office for Immigration Review website at https://www.justice.gov/eoir/list-pro-bono-legal-service-providers.

- If you choose to be represented, you may consult with counsel at no expense to the U.S. Government through any available mechanism, including the following, as applicable:

  - o You may consult with your counsel by telephone, email, video conference, or any other remote communication method of your choosing.

  - o You may arrange to consult with your counsel in person at a location in Mexico of your choosing.

  - o On the day of your immigration hearing, you may arrange to meet with your counsel in-person, in the United States, at your assigned court facility, prior to that hearing.

[REDACTED] January 25, 2019

U.S. Department of Homeland Security

Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID : [redacted] FIN #: [redacted] File No [redacted]

SIGMA Event: [redacted] DOB: [redacted] Event No: SYS190[redacted]

In the Matter of: Kevin Doe

Respondent: [redacted] currently residing at:

DOMICILIO CONOCIDO [redacted]

(Number, street, city and ZIP code) (Area code and phone number)

☒ 1. You are an arriving alien.

☐ 2. You are an alien present in the United States who has not been admitted or paroled.

☐ 3. You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States
2. You are a native of Honduras and citizen of Honduras.
3. On or about January 29, 2019 you applied for admission into the United States from Mexico at the San Ysidro Port of Entry.
4. You are an immigrant not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document as required by the Immigration and Nationality Act.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

See Continuation Page Made a Part Hereof

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.

☐ Section 235(b)(1) order was vacated pursuant to: ☐8CFR 208.30(f)(2) ☐8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

401 West A Street Suite 800 San Diego CALIFORNIA US 92101

(Complete Address of Immigration Court, including Room Number, if any)

on March [redacted], 2019 at [redacted] to show why you should not be removed from the United States based on the

(Date) *(Time)*

charge(s) set forth above. [redacted] CBP OFFICER

(Signature and Title)

Date: January 30, 2019 SAN YSIDRO,CA POE, CA

(City and State)

See reverse for important information

Form I-862 (Rev. 08/01/07)

AF1

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are under removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 3.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents, which you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear and that you are inadmissible or removable on the charges contained in the Notice to Appear. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses

presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge.

You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of departure voluntarily. You will be given a reasonable opportunity to make any such application to the immigration judge.

Failure to appear: You are required to provide the DHS, in writing, with your full mailing address and telephone number. You must notify the Immigration Court immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

Mandatory Duty to Surrender for Removal: If you become subject to a final order of removal, you must surrender for removal to one of the offices listed in 8 CFR 241.16(a). Specific addresses on locations for surrender can be obtained from your local DHS office or over the internet at http://www.ice.gov/about/dro/contact.htm. You must surrender within 30 days from the date the

order becomes administratively final, unless you obtain an order from a Federal court, immigration court, or the Board of Immigration Appeals staying execution of the removal order. Immigration regulations at 8 CFR 241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Act.

Request for Prompt Hearing

To expedite a determination in my case, I request an immediate hearing. I waive my right to a 10-day period prior to appearing before an immigration judge.

Before: _____

(Signature of Respondent)

Date: _____

_____

(Signature and Title of Immigration Officer)

Certificate of Service

This Notice To Appear was served on the respondent by me on January 30, 2019 in the following manner and in compliance with section 239(a)(1)(F) of the Act.

☒ in person ☐ by certified mail, returned receipt requested

☐ by regular mail ☐ Attached is a credible fear worksheet

☒ Attached is a list of organization and attorneys which provide free legal services.

The alien was provided oral notice in the SPANISH language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act

[**REDACTED**]
(Signature of Respondent if Personally Served)

CBP OFFICER [**REDACTED**] [CBPO]
(Signature and Title of officer)

Alien's Name **[REDACTED]**	File Number: **[REDACTED]** SIGMA Event: **[REDACTED]** Event No: SYS19 **[REDACTED]**	Date January 30, 2019
ON THE BASIS OF THE FOREGOING, IT IS CHARGED THAT YOU ARE SUBJECT TO REMOVAL FROM THE UNITED STATES PURSUANT TO THE FOLLOWING PROVISION(S) OF LAW: ********** 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (Act), as amended, as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act.		
Signature **[REDACTED]** **[REDACTED]**		Title CBP OFFICER

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- The NTA provides the date and time of your first hearing before an immigration judge in the United States at the court identified on your NTA. On the date of your hearing, you must report to the [SAN YSIDRO PED WEST] port of entry, located at [EL CHAPARRAL], at the date and time listed below. If your case cannot be completed in one hearing, the immigration court will provide you with a Notice of Hearing in Removal Proceedings, indicating the date and time for any subsequent hearings.
    - o You may call the immigration court at 1-800-898-7180 to obtain case status information 24 hours

a day, 7 days a week. If you are calling from outside of the United States, you should dial 001-880-898-7180.

- You should arrive at the port of entry listed above at [**REDACTED**] a.m./p.m. on [MARCH] [**REDACTED**] [2019] to ensure that you have time to be processed, transported to your hearing and meet with attorney or accredited representative (if you arrange to be represented during your removal proceedings). The U.S. Government will provide transportation for you from the designated port of entry to the court on the day of your hearing. If you fail to arrive at the appropriate date and time, you may be ordered removed in absentia.
    - When you arrive at the designated port of entry for your hearing, you should bring your NTA or Notice of Hearing in Removal Proceedings and any available government-issued identification and/or travel documents.
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    - You have been provided with a List of Legal Service Providers, which has information on low cost or free legal service providers practicing

near the immigration court where your hearing(s) will take place.

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- If you choose to be represented, you may consult with counsel at no expense to the U.S. Government through any available mechanism, including the following, as applicable:
  - o You may consult with your counsel by telephone, email, video conference, or any other remote communication method of your choosing.
  - o You may arrange to consult with your counsel in person at a location in Mexico of your choosing.
  - On the day of your immigration hearing, you may arrange to meet with your counsel in-person, in the United States, at your assigned court facility, prior to that hearing.

[**REDACTED**] January 25, 2019

Protocolos de Protección del Migrante
Información de Procesamiento Inicial

- Usted ha sido identificado para procesamiento bajo los Protocolos de Protección del Migrante y se le ha expedido un Formulario I-862, Citatorio (NTA, por sus siglas en inglés), para procedimientos ante una corte de inmigración, donde podrá solicitar todas las formas de alivio de inmigración disponibles bajo la Ley de Inmigración y Nacionalidad. Cumpliendo con las leyes de los Estados Unidos, incluso la sección 240 de la Ley de Inmigración y Nacionalidad y la implementación de regulaciones, un juez de inmigración determinará si usted es sujeto a remoción de los Estados Unidos, y en caso de serlo si es elegible o no a alivio o protección de remoción. Aunque usted podrá buscar ese alivio o protección bajo los mismos términos y condíciones de cualquier extranjero, en los procedimientos de la sección 240, de acuerdo a las leyes de los Estados Unidos, usted será devuelto a México y no podrá intentar entrar a los Estados Unidos hasta que regrese al puerto de entrada apropiado en la fecha de su audiencia ante un juez de inmigración.
- La NTA, proporciona la fecha y hora de su primera audiencia ante un juez de inmigración en los Estados Unidos en la corte identificada en su NTA. En la fecha de su audiencia, usted debe presentarse al puerto de entrada [SAN YSIDRO PED WEST], localizado en [EL CHAPARRAL], en la fecha y hora listada más abajo. Si su caso no puede completarse en una sola audiencia, la corte de inmigración le

proveerá una Notificación de Audiencia en Procedimientos de Remoción, que indica la fecha y hora de cualquier audiencia subsecuente.

- Usted puede llamar a la corte de inmigración al teléfono 1-800-898-7180 para obtener información de su caso las 24 horas al día, los 7 días de la semana. Si está llamando desde fuera de Estados Unidos, usted debe marcar 001-880-898-7180.

- Usted debe llegar al puerto de entrada listado arriba a las [**REDACTED**], a.m./p.m. el [MARCH] [**REDACTED**] [2019], para asegurarse de tener tiempo para ser procesado, transportado a su audiencia y para que pueda reunirse con su abogado o representante acreditado (si usted hace arreglos para ser representado durante sus procedimientos de remoción). El Gobierno de los Estados Unidos le proporcionará transportación desde el puerto de entrada designado hasta la corte el dia de su audiencia. Si usted falla en llegar en la fecha y hora apropiadas, podría ordenarse su remoción en ausencia.

  - Al llegar al puerto de entrada designado para su audiencia, debe traer consigo la NTA o Notificación de Audiencia en Procesos de Remoción, así como cualquier identificación emitida por el gobierno y/o documentos de viaje.

  - Al llegar al puerto de entrada designado para su audiencia, debe traer cualquier menor o otro familiar que haya entrado a los Estados

Unidos con usted y que recibieron una NTA par a la misma fecha y hora.

- Usted tiene el privilegio legal de ser representado por un abogado o representante acreditado de su elección, que esté acreditado para ejercer la práctica de inmigración ante una corte de inmigración de los Estados Unidos, sin cargo al gobierno estadounidense.
    - A usted se le proporcionó anteriormente un Listado de Proveedores de Servicios Legales, la cual contiene información acerca de servicios de bajo costo o gratuitos de parte de los proveedores legales que practican cerca de la corte de inmigración donde su audiencia(s) tendrá lugar.
    - Un listado de los proveedores de servicios legales también está disponible en el sitio web de la Oficina Ejecutiva para la Revisión de Imnigración en https://www.justice.gov/eoir/list-pro-bono-legal-service-providers
- Si usted elige ser representado, puede consultar con un consejero sin cargo al Gobierno de los Estados Unidos por medio de cualquier mecanismo que incluyen los siguientes, si aplica:
    - Usted puede consultar con su consejero por teléfono, correo electrónico, videoconferencía o cualquier otro método de comunicación remota de su elección.
    - Usted puede hacer arreglos para consultar con su consejero en persona en una localidad de su elección en México.

- El día de su audiencia de inmigración, usted puede hacer los arreglos pra una reunión en persona con su consejero en los Estados Unidos en la localidad de su corte asignada, previo a su audiencia.

[**REDACTED**]

25 de Enero del 2019