



January 15, 2017

Mr. Paolo Abrão  
Executive Secretary  
Inter-American Commission on Human Rights  
1889 F St., N.W.  
Washington, D.C. 20006

Submitted through IACHR online portal to request a hearing (161 POS)

**Re: Request for a thematic hearing on measures taken by or at the request of the United States that impede access to asylum in the United States and interfere with the right to family life and other core human rights protections**

Distinguished Secretary Abrão:

We, the undersigned, have the honor of addressing you, in accordance with Articles 61 and 62 of the Rules of Procedure of the Inter-American Commission on Human Rights (IACHR or “the Commission”), to respectfully request a thematic hearing during the IACHR’s 161 Period of Sessions on measures taken by or at the request of the United States that impede access to asylum in the United States and interfere with the right to family life. The United States has adopted a number of policies and actions that severely impede access to asylum for migrants arriving at the United States/Mexico border, particularly from Central America, thereby resulting in a serious possibility of *refoulement* to dangerous conditions that jeopardize the life and safety of these individuals. These measures also separate families and thus have a very negative impact on the right to family life and family unity. These measures include: 1) turnarounds to Mexico of Central American and other migrants, including Mexicans, who seek to present themselves at the U.S. southern border to request asylum; 2) separation of families arriving at the U.S. southern border to seek asylum; 3) abusive conditions and treatment within Customs and Border Patrol (CBP) facilities, including active discouragement of attempts to seek asylum; and 4) the expansion of immigration detention of asylum seekers arriving at the U.S. southern border after processing by CBP.

The requesting 14 organizations have years, and many have decades, of experience working to protect the rights of vulnerable migrants and refugees in the United States and across the region. Collectively, our organizations are based in seven different states, with some of the undersigned having chapters or affiliates in all 50 states. Our organizations engage in direct services, litigation, and advocacy and public policy, the latter with a local, national, and/or international scope. Although we may each focus on different aspects, all our organizations seek to ensure access to protection, such as access to asylum; the enjoyment of due process guarantees in immigration proceedings; the elimination of immigration detention, except in those few, limited circumstances

where other, less restrictive measures are determined to be insufficient and always with the proper safeguards in place; and the right to non-interference in family life. Our organizations have served victims of human trafficking, asylum-seekers and refugees, unaccompanied and separated children, migrant farm workers, and undocumented workers, among other populations.

## **I. Background and Current Situation**

### **A. Blocking Asylum Seekers Arriving at the U.S. Southwestern Border**

#### **a. A Pattern of Blocking Asylum Seekers at the Border Arising in 2016**

Since at least October 2016, advocacy organizations, including several of the undersigned, have been closely monitoring an unfolding situation at the U.S. southwestern border: beginning around that time for the Nogales, Arizona area (Nogales, Sonora on the Mexican side), and by all accounts earlier than that in San Ysidro, California (Tijuana, Baja California Norte in Mexico), possibly as early as May 2016; and since then, in sectors of Texas, the undersigned organizations – starting with those based at the border – noticed that asylum seekers presenting themselves at certain U.S. Ports of Entry were no longer being accepted for processing.<sup>1</sup> Instead, these persons were refused entry.

At the downtown Nogales Port of Entry (POE), the only Port entrance (of three) that will accept asylum seekers, between the end of October and mid-December 2016, the Kino Border Initiative accompanied 27 persons who attempted to present themselves at the POE to ask for asylum but have been denied access. Kino estimates that there are many more cases that go unrecorded, as it only comes into contact with a portion of the migrant population in its “comedor” or cafeteria for migrants, located almost three kilometers from the downtown Nogales POE. The Women’s Refugee Commission (WRC), on a visit to Nogales in December 2016, accompanied three asylum seekers to the Port - a Guatemalan man and his adolescent son and a woman from El Salvador - and spoke with other asylum seekers. The Guatemalan family and two other asylum seekers from Guatemala stated to the WRC that they had previously tried to present themselves to the Port to request asylum but were instead turned around and denied the opportunity to do so.

In Tijuana (across the border from the San Ysidro, California POE), on two separate visits spanning four days (one in November 2016 and the second in December 2016), representatives from two organizations, one of which joins this request, spoke with a total of 49 persons, comprised of both individuals and families with children, who were denied the ability to seek asylum or were deterred from doing so. (34 persons were from Mexico; 6 from El Salvador; 7 from Belize; 1 from Colombia; and 1 from Guatemala.)

In Texas, legal services representatives from the Dilley Pro Bono Project who work in the Dilley family detention facility have come across at least 25 cases of asylum seeking families who were turned away at the border (along the El Paso and Rio Grande Valley sectors, primarily) at least once

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<sup>1</sup> In addition to asylum seekers, advocacy organizations, including several of the undersigned, noticed that other migrants who lacked proper documentation, for example not having a passport or a visa to enter the US, were also being restricted access to the U.S. This was seen most acutely among the arriving Haitian migrants (of whom some were certainly requesting asylum), but also to a smaller extent with migrants from other countries.

and some several times before finally being allowed into the Port and processed. These representatives also estimate that the figure is much higher.

Organizations in the El Paso area report that hundreds of individuals were turned back from the El Paso POEs between November and December 2016. The existence of the practice in Texas has been confirmed by CBP officials speaking with the press.<sup>2</sup>

#### **b. Variations in the Pattern and the Use of a Metering System**

When arriving asylum seekers are denied the opportunity to request asylum at a U.S. port of entry, the response across the border varies, depending on location. In Nogales and El Paso, several of the undersigned have observed that CBP officers at the Port are simply stating that there is “not enough space [to process and detain asylum seekers]” and sometimes tell people to come back at a later date.

At the San Ysidro POE, the process has been operationalized into a type of “metering system.” Persons wishing to present themselves at the Port must first (if he or she is not Mexican) go through Grupo Beta, an entity of the Mexican government, to set an appointment with CBP officials. This system is premised on CBP officials at the POE only accepting a certain number of persons per day. According to organizations on the ground, as of December 14, 2016, the earliest dates available were for February 2017.

#### **c. United States Collaboration with Mexican Officials and the Use of Private Security Firms**

In both San Ysidro and Nogales, advocacy organizations, including several of the undersigned, were alarmed to find that additional barriers have been put in place in the past few months that make reaching these two POEs more difficult. One measure is collaboration with Mexican immigration officials and police: some of the undersigned have received reports from migrants that, in Nogales, CBP has contacted officials from Mexico’s Institute for Migration (INM) and municipal police to detain individuals seeking to enter the POE. In San Ysidro, reports from migrants suggest that this “collaboration” may be even greater: by one account, a Mexican woman and her son were interviewed by CBP officers at the POE regarding their asylum claim and were sent to an enclosed area, whereupon Mexican immigration officials confronted them and informed them that the US had denied them relief. They were provided with repatriation papers and sent back to Tijuana.

Another measure has been the hiring of private security guards. In Nogales, a private security guard from a Mexican-based company controlled the turnstile through which persons seeking to enter the Port must pass. He repeated the CBP officer’s instructions (this CBP officer was located on the U.S. side of the turnstile) and checked each person to make sure they had a document in their hand. The security guard had handcuffs and a police baton tucked into his belt.

In San Ysidro, private security from a different Mexican-based company are even farther away from the Port and CBP officers. They stand next to a newly erected barrier located at the entrance to the

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<sup>2</sup> See, e.g., Aaron Nelson, “[Asylum-seeking immigrations flood international bridges, many sent back to Mexico](#),” San Antonio Express-News, Dec. 29, 2016 (last accessed Jan. 8, 2017).

long corridor that leads to the POE. Private security guards are stopping asylum seekers and turning them around there. This means that, if turned away, asylum seekers wishing to present themselves at San Ysidro may never have the opportunity to even call out or somehow get the attention of a CBP officer.

Organizations working in south Texas also report that Mexican authorities are stopping and physically preventing asylum seekers, particularly Central Americans, from arriving at the U.S. southern border POEs. These authorities have indicated that they are working with CBP to control migration and prevent arrivals at the U.S. southern border.

**d. Dangers for Migrants in Mexico's Northern Border Area and Other Impacts of the Efforts to Block Access to Asylum at the U.S. Southern Border**

Asylum seekers who are turned away from the U.S. southern border or prevented from reaching the border face significant danger in Mexico. The northern border of Mexico remains a highly unsafe and violent region, and particularly so for migrants. Not much has changed since this Commission's report on the situation of migrants and those in human mobility in Mexico in 2014. The following, excerpts from the report (presented below out of order), are still applicable in describing the situation on the border today:

The areas hardest hit by the breakdown in security in Mexico are along the borders and in the areas surrounding the routes that migrants in an irregular situation use to cross Mexican territory. [...] Along the northern border, organized crime groups position themselves at the main border crossings, so that they not only control the routes they use for trafficking drugs and weapons, but also control the smuggling of migrants and human trafficking.

The Commission observes that some of the entry points in the state of Tamaulipas are in the municipalities that have been repeatedly identified as high-risk areas for migrating or deported Mexican nationals and for migrants in an irregular situation. [...] The Commission is deeply concerned over the information it has received time and time again to the effect that **migrants in an irregular situation, asylum seekers, and refugees are victims of continuous abuses and acts of violence** committed by organized crime groups, common criminals and Mexican authorities or with the acquiescence, tolerance or omission of those authorities that allows non-State actors to engage in acts such as **extortion, abduction, physical, psychological and sexual violence, human trafficking, murders and even forced disappearances that victimize the migrants.**

[Regarding specific examples of violence,] information [received by] the Commission [ ] includes testimony given by migrants who said they had witnessed mass killings in which several dozen people were murdered and that they had been held in captivity with upwards of 400 people. **Some migrants told of having witnessed mutilations, decapitations, migrants who were hammered to death; there were even stories of bodies being dissolved in barrels of acid.** <sup>3</sup>

In fact, available information indicates that violence against migrants in Mexico's northern border region is on the rise. For example, in the northern border state of Coahuila, "2016 is on its way to

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<sup>3</sup> IACHR, *Human Rights Situation of Migrants and Other Persons in the Context of Human Mobility in Mexico*, OEA/Ser.L/V/II, December 30, 2013, paras. 101-102, 104, 107, 127, 129, 150.

becoming the year with the highest number of reported crimes against migrants in the state of Coahuila since 2013.”<sup>4</sup> Unfortunately, many of these crimes remain in impunity.<sup>5</sup> As this Commission put it: “The fragile institutional infrastructure, corruption by public officials, and the impunity that attends crimes committed against migrants in an irregular situation have nurtured the growth of the criminal activity and human rights violations committed against these persons.”<sup>6</sup>

Migrants prevented from reaching the U.S. southern border and prevented from accessing the asylum process in the United States also face the danger of deportation from Mexico. As the United States is aware, Mexico has dramatically increased its deportations of migrants in recent years, particularly Central Americans.<sup>7</sup> Thus, by forcing individuals seeking asylum to remain in Mexico, the United States places these individuals at great risk of deportation to dangerous situations in their home countries in violation of the principle of *non-refoulement*.<sup>8</sup>

Finally, by preventing migrants from accessing the United States and the U.S. asylum system, the United States prevents migrants from joining family members already living in the United States who may provide critical familial support during the asylum process. Even if Mexico were to provide asylum to some of these individuals who intended to seek protection in the United States, their right to maintain a cohesive family life would be hindered.

## **B. Other Interferences with the Right to Seek and Receive Asylum**

We have also documented an increase in other harmful practices, provided an asylum seeker or asylum seeking family is able to make it into the United States. These practices include: abuses or other mistreatment by CBP officials; family separation at the border; and the dramatic increase in the number of persons held in immigration detention and the length of detention.

### **a. CBP Mistreatment and Abuse of Migrants**

After arriving to the United States, migrants are held for hours or days in CBP facilities. The practice of CBP officials immediately deporting Central American asylum seekers and other migrants held in these facilities and without any chance to present their claim, a process known as expedited removal, has been well documented.<sup>9</sup> Furthermore, several of the signing organizations have received repeated reports of CBP officials mocking and humiliating individuals and families arriving at the U.S. southern border in recent months in order to dissuade or prevent these migrants from seeking asylum. CBP officials have told migrants that they are not wanted in the United States and do not have any right to seek asylum. These officials have, on occasion, made specific reference to the presidential transition in the United States as a reason why migrants will not be allowed to seek

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<sup>4</sup> Ximena Suarez Enriquez, Jose Knippen, Maureen Meyer, [A Trail of Impunity: Thousands of Migrants in Transit Face Abuses amid Mexico's Crackdown](#), WOLA (Oct. 20, 2016) (hereinafter “WOLA, *A Trail of Impunity*”).

<sup>5</sup> IACHR, *Human Rights Situation of Migrants and Other Persons in the Context of Human Mobility in Mexico*, paras. 234-248. See also, WOLA, *A Trail of Impunity*, *supra* (citing the situation in Coahuila).

<sup>6</sup> IACHR, *Human Rights Situation of Migrants and Other Persons in the Context of Human Mobility in Mexico*, para. 104.

<sup>7</sup> Mexican National Institute of Migration (INM), [Annual Statistics Bulletins](#) (Spanish only) (last accessed on Oct. 28, 2016).

<sup>8</sup> See generally, WOLA, *A Trail of Impunity*, *supra*; Human Rights Watch, [Closed Doors: Mexico's Failure to Protect Central American Refugee and Migrant Children](#), Mar. 31, 2016.

<sup>9</sup> See United States Commission on International Religious Freedom (USCIRF), [Barriers to Protection: The Treatment of Asylum Seekers in Expedited Removal](#), Aug. 2, 2016; see also, Human Rights Watch, [“You Don’t Have Rights Here”: US Border Screening and Returns of Central Americans to Risk of Serious Harm](#), Oct. 16, 2014.

asylum or have suggested that the migrants have come only because of fear that the incoming presidential administration will have harsher policies without regard to the validity of these migrants' asylum claims.

### **b. Separation of Families at the Border and in Detention<sup>10</sup>**

Over the past two years, a disturbing new trend has emerged at the U.S. border: families are being torn apart and separated. As an increasing number of families migrate together to the United States, the number of documented cases of family separation has escalated. **There is no agency-wide policy defining what constitutes a family, no traceable documentation of those familial relationships, nor a requirement for documentation of all family separation incidents.** These cases are not specific to certain families, nationalities, or regions of the U.S. border, and the practice affects siblings, parents, spouses, small children, and grandparents, both U.S. citizens and noncitizens.

Separation has long been recognized to occur during the migration journey, but it also occurs after apprehension and while in U.S. immigration custody, at official ports of entry, and to those apprehended while crossing into the United States at unofficial entry points, in states including California, Arizona, and Texas. Some of the undersigned organizations have observed cases in which fathers are separated from wives and children and sent to adult detention while the remaining family members are sent to family detention. Other observed cases include those where migrants who have reached the age of 18 are sent to adult detention while their mothers and younger siblings are sent to family detention. In some instances, the U.S. government affirmatively renders children "unaccompanied" by physically separating and transferring children away from their accompanying family members. In these cases, the parent is sent to adult detention and the child is sent to a government shelter for unaccompanied children.

These cases are sometimes the result of inadequate government systems and practices to protect families, and in others they are the result of an intentional focus on enforcement, deterrence, and punishment. Regardless of the intention, the practice of family separation causes great harm to traumatized family members fleeing violence who cannot remain with the family unit and results in inefficient and complicated asylum proceedings, with separate hearings and cases going forward on different docket at different speeds. Separation makes it exceedingly difficult for all family members to win their asylum claims, as they cannot readily communicate and share information regarding the reasons why they have come to the United States to seek protection. As a result, there is a great risk of violation of the principle of *non-refoulement* for at least some family members and almost a certainty of family separation, which violates the right to family life, as different proceedings reach different conclusions.

### **c. Immigration Detention of Asylum Seekers on the Rise**

The detention of asylum seekers in the United States has continued to expand, and detention has become prolonged in many cases. The United States has indicated that its expanded use of detention has been intended as a means of deterring future arrivals of asylum seekers, particularly from Central America, to the United States.

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<sup>10</sup> The information in this section is from a joint report by the Lutheran Immigration and Refugee Service (LIRS), Women's Refugee Commission (WRC), and Kids in Need of Defense (KIND) that has not yet been published (once the report is published, a copy will be provided to this Commission) and also the Jesuit Conference of Canada and the United States and the Kino Border Initiative, [Our Values on the Line: Migrant Abuse and Family Separation at the Border](#), Sept. 2015.

The United States has detained more than 400,000 migrants each year in recent years. During much of 2016, the number of individuals in detention each day well exceeded the 34,000 required by the controversial detention bed mandate from the U.S. Congress.<sup>11</sup> An increasing proportion of those detained are asylum seekers, and asylum seekers are increasingly likely to remain detained for lengthy periods or throughout their proceedings, in some cases without access to custody hearings or reasonable bond.<sup>12</sup> Since the United States made recent border crossers a priority enforcement category in November 2014, asylum seekers arriving at the border are much more likely to be detained and to remain detained for extended periods.

As this Commission has previously observed, detention of families expanded from under 100 beds to more than 3000 beds by 2015. Despite numerous reports and decisions condemning family detention<sup>13</sup>, the family detention centers have not closed and new families are detained each day. At the Berks facility in Pennsylvania, families have been detained for over a year.

Detention harms the mental and physical health of asylum seekers. Detention of families damages normal family relations and causes irreparable harm to family relations. Detention of adults often implicates separation of families, with an adult parent and care provider detained while the remaining family members struggle to survive independently.

Detention also serves as one more impediment to meaningful access to the asylum process. It is well-established that migrants in detention are much less likely to succeed on their claims to protection.<sup>14</sup> Some migrants in detention withdraw their claims to asylum out of desperation caused by the deprivation of liberty.<sup>15</sup> As a result of these considerations, detention can lead to *refoulement* and risk to life and safety.

## **II. Actions Taken Thus Far & Why a Thematic Hearing is Urgently Needed**

Over the past several months, the undersigned organizations (some separately and some in conjunction with organizations not party to this request) have filed formal complaints with the U.S. government (and the Mexican government), emitted a public statement to Mexican authorities<sup>16</sup>, conducted fact-finding missions to the border, and approached the U.S. Department of Homeland Security, including CBP and ICE officials, at different levels (at the Port, regional, and headquarters) to engage on these issues. However, our collective efforts have not resulted in any perceivable change to-date.

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<sup>11</sup> Devlin Barrett, [“Record Immigrant Numbers Force Homeland Security to Reach for New Jail Space.”](#) Wall Street Journal Oct. 21, 2016.

<sup>12</sup> Human Rights First, [Lifeline on Lockdown: Increased U.S. Detention of Asylum Seekers](#), July 2016.

<sup>13</sup> See, e.g., [Report of the DHS Advisory Committee on Family Residential Centers](#), Sept. 30, 2016.

<sup>14</sup> Trac Immigration, [Representation Is Key in Immigration Proceedings Involving Women with Children](#), Feb. 18, 2015, [<https://perma.cc/D26A-RNHV>] (establishing difficulty of detained families in obtaining representation and showing that “a critical factor influencing outcome is whether the immigrant is represented”).

<sup>15</sup> See Human Rights First, *supra*.

<sup>16</sup> See [Joint Statement to Mexican Authorities on Access to Asylum at the Border](#), Dec. 8, 2016.

We thank the Commission for its previous coverage of related issues in past hearings<sup>17</sup>, which have been very useful in getting relevant government actors from different Departments to the table at the same time; engaging in thoughtful discussion with the IACHR and U.S. government on the human rights impacts generated by certain policies and practices, which in certain cases has led to improvements and new initiatives; opening new channels of communication; and in gaining public awareness, among other benefits. Based on these previous experiences, we consider that a thematic hearing in March 2017 during this Honorable Commission's 161 Period of Sessions would be crucial for the above reasons, especially with a new administration, as well as in drawing international attention and pressure to stop these harmful practices. Although they started under the Obama administration, we firmly believe that, due to the importance of the rights at stake here, these issues must be urgently addressed with the new administration, early in its term. A hearing on these issues in March will provide a strong foundation for the undersigned, as well as other stakeholders, to follow-up on a series of recommendations and requests we plan to outline at the end of our presentation.

### **III. Conclusion and Proposed Format for the Hearing**

Should this request be granted, we anticipate that we will require approximately one hour for the hearing, during which time the undersigned organizations propose the following format:

- Expert testimony from representatives of our organizations providing an overview of the situation, with as up-to-date information as possible;
- Two short video clips taken in November/December 2016 showing private security guards turning away asylum-seekers at the San Ysidro POE;
- If at all possible, testimony from at least one person seeking protection at a U.S. POE who was turned back from the border, and if not possible, due to logistical or other challenges, clips from a video interview of a woman who was previously turned away at the border and is now in immigration detention in the US; and
- If at all possible (logistically or otherwise), testimony from at least one formerly detained asylum seeker or asylee to provide testimony on his or her experience in immigration detention and/or family separation.

The undersigned organizations respectfully request that, should this hearing request be granted, the Commission invite the Government of the United States to attend the hearing and to address the Commission. We also request that the United States delegation include the appropriate representative from the General Services Administration, which we understand is the entity within the U.S. federal government in charge of establishing contracts with private security firms to guard U.S. Ports of Entry along the southwest border. In addition, we respectfully request the inclusion of the appropriate official(s) from the DHS Office of Policy as well as the inclusion of other relevant

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<sup>17</sup> *E.g.*, IACHR, 157 Period of Sessions, Thematic Hearing on the "Human Rights Situation of Migrant and Refugee Children and Families in the United States," Apr. 4, 2016; IACHR, 156 Period of Sessions, Thematic Hearing on "Human Rights and the Interception of Persons Eligible for International Protection," Oct. 22, 2015.



authorities within DHS and its agencies, including CBP and ICE, at the regional and headquarters levels.

We propose to supplement the above with written submissions at the time of the hearing, which will address these issues in greater detail. Should the Commission desire additional information on points raised throughout the hearing, the undersigned will gladly provide that information as part of its follow-up.

We appreciate your consideration of our request for a thematic hearing and look forward to hearing from you.

Sincerely,

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