



Washington, DC February 6, 2018

Dear Member of Congress,

As Congress negotiates a spending package to keep the government funded and discuss the immigration framework proposed by the President during the State of the Union address,<sup>1</sup> on behalf of Amnesty International (AIUSA) and our more than one million members and supporters nationwide, we reiterate our call for Congress to pass a clean DREAM Act. The only acceptable immigration reform is one that protects human rights.<sup>2</sup>

### **1. The Construction of a Border Wall Would Violate United States Human Rights Obligations**

President Trump conditioned the path to citizenship for DREAMers to a \$25 billion trust to fund a “border wall system.” DREAMers should not be used as bargaining chip, and any type of “border security” measure must guarantee people’s right to seek asylum. We strongly urge you to reject any and all requests to fund a southern border wall.

Amnesty International USA vigorously [objected](#) to the \$1.6 billion for a border wall that was passed by the House of Representatives in July 2017 as part of the Department of Defense Appropriations Act, 2018 (H.R. 3219). The construction of a border wall would pose serious human rights consequences and would violate international law and standards in at least two major ways.

First, the construction of a wall cuts through tribal land, requiring the U.S. government to obtain the free, prior, and informed consent of affected Nations, as prescribed by Article 19 of the United Nations (“U.N.”) [Declaration on the Rights of Indigenous Peoples](#). The U.S. must consult in good faith with Native American Nations that would be impacted by the construction of any wall. [The National Congress of American Indians](#) and the [Tohono O’odham Legislative Council](#), the second-largest tribe in the U.S. by land holdings, both passed resolutions opposing the construction of the wall without tribal consent. Absent the free, prior, and informed consent of affected Native American Nations, Congress may not approve border wall funding without violating the U.N. Declaration on the Rights of Indigenous Peoples.

Second, the construction of a border wall would prevent asylum seekers from entering the U.S., including Central American children and families who have survived torture or other persecution. In order to provide a fair asylum process, the U.S. government must ensure the existence of sufficiently located, secure, regulated border crossing points for asylum seekers. This is essential to ensure that the U.S. government does not violate the principle of *non-refoulement*, which is enshrined in the 1951 [UN Convention Relating to the Status of Refugees and binding on States Party to the 1967 Protocol](#).

Under U.S. and international law, the U.S. government must provide a fair and accessible asylum process, in order to ensure that people are not returned to situations where they would be persecuted,

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<sup>1</sup> White House Immigration Reform Brief available at: <https://www.whitehouse.gov/briefings-statements/common-sense-immigration-reform-keeps-families-together/>

<sup>2</sup> Documented in Amnesty International reports such as [Jailed Without Justice: Immigration detention in the USA](#) and [In Hostile Terrain: Human rights violations in immigration enforcement in the U.S. southwest](#).

tortured or killed. Their protections must be upheld and cannot be sacrificed, compromised or negotiated away.

## **2. Congress Must Uphold Protections to Asylum Seekers Established in U.S. Law.**

Under international law, non-admission of asylum-seekers at the border directly violates the principle of *non-refoulement*, which is binding on the U.S. as a party to the 1967 Protocol of the 1951 UN Convention Relating to the Status of Refugees and as a principle of international customary law. The *non-refoulement* principle, provided for in Article 33 of the Convention, provides that states must not return persons to territories where their “life or freedom” would be threatened.

In the June 2017 report, [Facing Walls](#)<sup>3</sup>, Amnesty International documented how U.S. border authorities have routinely denied asylum seekers the ability to claim asylum at U.S. ports of entry, resulting in greater flows of asylum seekers across the US-Mexico border. Practices of sending asylum seekers back without granting them a credible fear interview, separating children from their parents, and detaining people seeking humanitarian protection violate U.S law and U.S human rights obligations.

Amnesty International has [documented](#) occurrences of non-admission of asylum seekers at the border as early as 2015. Evidence gathered by Amnesty International in 2017 at six different major ports of entry at the cities of San Diego, California; Nogales, Arizona; El Paso, Laredo, McCallen and Brownsville, Texas, demonstrates that this has continued on a frequent basis. Given that Customs and Border Protection (CBP) agents operate under administrative guidelines that allow them wide discretion, they often make arbitrary decisions that violate U.S. and international law. There is no written record of these interactions with asylum seekers by CBP officers, and internal compliance bodies rarely conduct supervision visits to ports of entry. Asylum seekers are routinely told that they cannot apply for asylum in the United States, that they need to go back to Mexico, and at times wrongly told that they are not eligible to ask for asylum in the United States.

Amnesty International has also documented U.S. immigration agents forcibly separating families of asylum seekers, even when they have proof of their family relationships and the persecution that they have fled. The long-term detention of asylum seekers is widely documented to negatively affect both their psychological well-being and their ability to lodge asylum claims under U.S. law. Under the UN Refugee Convention and its 1967 Protocol, states are not allowed to apply punitive measures to those seeking asylum.

Rather than denying asylum seekers access to procedures at the border, changing the standards used to evaluate claims, or using potential criminal liability for fraud or family separation as a means of deterrence, the U.S. government must ensure that its immigration policies comply with international obligations with respect to asylum seekers and afford them a process whereby they can seek protection.

## **3. Any Regularization of Status Scheme Must Respect Family Unity Principles and Protect Asylum Seekers**

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<sup>3</sup> Amnesty International Report *Facing Walls, USA and Mexico’s Violations of the Rights of Asylum-Seekers (July 2017)* Available at: <https://www.amnestyusa.org/wp-content/uploads/2017/06/USA-Mexico-Facing-Walls-REPORT-ENG.pdf>

Amnesty International acknowledges the United States' sovereignty to control the entry and stay of non-nationals into its territory. Notwithstanding these migration controls, powers must be exercised within the bounds of U.S. human rights obligations.

Family unity is recognized as a fundamental human right, enshrined in international law. The United States has an obligation to respect the right to establish a family and refrain from arbitrary or unlawful interference with the family.<sup>4</sup> The individual right to family life is one of the factors that a state must take into account when deciding upon entry, residence, deportation or expulsion.<sup>5</sup> Separating asylum seeking families at the border or immigrant families within the country with mixed legal status who made a life in the United States, is not in the best interest of the children impacted nor of the U.S.

The American Academy of Pediatrics vehemently opposes the Department of Homeland Security reported "proposals to separate children from their families as a tool of law enforcement to deter immigration" and urged authorities to "exercise caution to ensure that the emotional and physical stress children experience as they seek refuge in the United States is not exacerbated by the additional trauma of being separated from their siblings, parents or other relatives and caregivers."<sup>6</sup>

Deterrence policies have little effect when someone is fleeing threats of death or severe human rights abuses to seek the hope of life-saving protection. Deterrence-based policies have already failed under court scrutiny<sup>7</sup>. In October 2016, the U.S. Immigration and Customs Enforcement ("ICE") Advisory Committee on Family Residential Centers ("ACFRC") stated that separating families is never in the best interest of the child and recommended ending family detention altogether.<sup>8</sup>

The United States must provide full access to the asylum system to determine who needs protection. Detention must be used only as a last resort and must be demonstrated as necessary in each individual case, with an immigration judge to determine whether detention is necessary.

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<sup>4</sup> Universal Declaration of Human Rights (UDHR), Article 16(1); International Covenant on Civil and Political Rights (ICCPR), Articles 17(1), 23(2).

<sup>5</sup> Human Rights Committee, General Comment No. 15, par5.

<sup>6</sup> See "AAP Statement Opposing Separation of Mothers and Children at the Border." March 4, 2017. Available at: <https://www.aap.org/en-us/about-the-aap/aap-press-room/Pages/immigrantmotherschildreparation.aspx>. For further discussion and recommendations on the treatment of immigrant children, see also: Linton JM, Griffin M, Shapiro AJ, AAP COUNCIL ON COMMUNITY PEDIATRICS. Detention of Immigrant Children. *Pediatrics*. March 2017. Available at: <http://pediatrics.aappublications.org/content/pediatrics/early/2017/03/09/peds.2017-0483.full.pdf>

<sup>7</sup> *R.I.L-R v. Johnson*, 80 F. Supp. 3d 164 (D.D.C. 2015). [www.aclu.org/cases/rilr-v-johnson](http://www.aclu.org/cases/rilr-v-johnson).

<sup>8</sup> On October 7, 2016, ACFRC unanimously recommended that ICE "operationalize the presumption that detention is generally neither appropriate nor necessary for families – and that detention or the separation of families for purposes of immigration enforcement or management are never in the best interest of children." [www.ice.gov/sites/default/files/documents/Report/2016/acfrc-report-final-102016.pdf](http://www.ice.gov/sites/default/files/documents/Report/2016/acfrc-report-final-102016.pdf).

The White House immigration framework is aimed at criminalizing, detaining and punishing people who flee to the U.S. in search of refuge and humanitarian protection. If implemented, the White House's plan would result in asylum seekers, including Central American children, being deported back into situations in which they are at grave risk of being raped, beaten, and even killed.

A fair and humane immigration policy that upholds human rights must:

- Provide a formal process through which undocumented people can obtain legal status.
- Place immigrants and their communities at the center of the debate on immigration by recognizing and ensuring their role in formulating and implementing strategies to protect their rights.
- Review and revise border control policies and practices to ensure they are compliant with the United States obligations under international law and standards. All laws, policies and practices must also respect the rights of Indigenous peoples and adhere to the standards set in the UN Declaration on the Rights of Indigenous Peoples.
- Suspend federal immigration enforcement programs that involve collaboration with state and local law enforcement agencies until it can be determined that the programs can be implemented in a non-discriminatory manner and do not foster racial profiling.
- Provide every immigrant and asylum seeker an immigration judge's hearing to determine the necessity of custody.
- Give immigration judges the authority to review all decisions to detain immigrants and the discretion to stop deportation in the interest of family unity, including families headed by same-sex couples.
- Reduce worker exploitation by fully guaranteeing immigrant workers' labor rights, including the right to join unions.

Any immigration deal requires the following:

- 1- Providing residency and a pathway to citizenship for all DREAMers
- 2- No border wall, and
- 3- No purported "border" security measures that would endanger people seeking protection in the United States and would violate the human rights of residents living in U.S. border communities.

Thank you for your attention to this important matter. If you have any further inquiries, do not hesitate to contact Marselha Gonçalves Margerin by phone at: (202)-675-8766 or email at: [marselha@aiusa.org](mailto:marselha@aiusa.org).

Sincerely,



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