



May 21, 2018

Rep. Martha McSally
Chair
Homeland Security Committee
Border Security Subcommittee
Washington, DC

Rep. Filemon Vela
Ranking Member
Homeland Security Committee
Border Security Subcommittee
Washington, DC

Re: May 22 hearing on “Stopping the Daily Border Caravan: Time to Build a Policy Wall”

Dear Chairwoman McNally, Ranking Member Vela, and Members of the Subcommittee:

On behalf of Amnesty International (“AI”)¹ and our more than two million members and supporters in the United States (U.S.), we hereby submit this statement for the record. AI is an international human rights organization with major offices around the world, including in the U.S. and Mexico. One of AI’s top global priorities is refugee protection. Within the Americas, AI’s top refugee focus is on the Northern Triangle region of Central America (Honduras, El Salvador, Guatemala), where we have researched the underlying causes that have led to large numbers of people fleeing the Northern Triangle region in search of protection. AI has also researched the experiences of refugees in Mexico and the experiences of people requesting protection at the U.S. border.

In April and May 2018 AI researchers conducted a multi-week research mission along the entire U.S.–Mexico border, from the Pacific Ocean to the Gulf of Mexico. Our team documented not only the situations of asylum seekers who sought to present themselves at U.S. ports of entry, but also the conduct of U.S. border and immigration authorities in facilitating and processing their asylum claims under U.S. law.

AI researchers met with dozens of asylum seekers along the U.S.-Mexico

¹ Amnesty International was awarded the Nobel Peace Prize in 1977.

border, including in all four U.S. border states. AI interviewed many of those asylum seekers in detention at Immigration and Customs Enforcement (“ICE”) facilities.

Despite numerous requests by AI, Customs and Border Protection (“CBP”) officials declined to meet with AI researchers at ports of entry (“POEs”) or CBP field offices in California, Arizona and Texas. Although AI researchers requested to meet with CBP leadership in San Diego in advance of the caravan, at both their San Diego Field Office and at the POE itself, officials declined those requests. They also declined to respond to emails requesting more information about CBP’s capacity to receive asylum seekers, and its preparation for the reception of the caravan.

I. The preliminary findings of Amnesty International’s research mission indicate violations of both U.S. and international law by Department of Homeland Security (“DHS”) agencies, in their treatment of asylum seekers (at borders and in detention) and in the reception of their asylum claims.

CBP is turning away large groups of asylum seekers at POEs along the southern border, thereby forcing asylum seekers to wait in perilous situations on the Mexico side of the border, where some have been subjected to further human rights violations.

On April 29 and 30 CBP closed its doors entirely to approximately 200 asylum seekers as they arrived in a “caravan” in Tijuana, to present themselves at the San Ysidro POE. That mass turn-away occurred mere minutes after a press conference announcing their intention to seek asylum at the POE. Most of those asylum seekers were families from the Northern Triangle of Central America; half of them were children, and approximately 15 percent of them were transgender individuals.

The announcement by CBP on April 29 that it would not admit any of those asylum seekers came days after DHS Secretary Nielsen [announced](#) that DHS was deploying additional asylum officers and other personnel to swiftly adjudicate the claims of those very same people from the caravan who were seeking asylum. Based on Secretary Nielsen’s own statement, and that the administration had been tracking the progress of the caravan through Mexico for a month, DHS clearly had the capacity to admit those asylum seekers in need of international protection at the U.S. border.

AI researchers documented, in real time, the negative effects caused by CBP's failure to process the applications of asylum seekers who presented themselves at the San Ysidro POE. AI researchers spoke with the coordinator of a group of 32 Central American trans asylum seekers from the caravan, at an LGBT shelter in Tijuana where they were staying after having been repeatedly turned away by CBP personnel at the San Ysidro POE between April 29 and May 1. On the evening after first being turned away by CBP on April 29, two of the trans women asylum seekers from the group were detained by municipal law enforcement authorities in Tijuana. One of those women informed AI on May 2 that the other had been beaten by municipal police when detained and then could not be located after she was released.

Asylum seekers are particularly vulnerable in Mexican border areas, including to abuse by law enforcement authorities or criminals due to their often-irregular status or otherwise precarious situations. The longer they wait to present their asylum claims to CBP, the greater they are at risk of violence, deportation back to their countries of origin, or other harm. On May 6, a group of men with guns attacked and robbed the shelter where 11 LGBT asylum seekers were staying (including minors, and trans women from the caravan), setting the door on fire. According to the shelter's legal representative and the coordinator of the group of trans asylum seekers, the men returned a few hours later shouting homophobic slurs at the asylum seekers, and threatened to kill them if they did not leave the neighborhood. Following those death threats, the trans asylum seekers [returned](#) with an immigration lawyer to the San Ysidro POE to request asylum and were once again turned away by CBP.

CBP's repeated turn-backs of asylum seekers in the caravan subjected these people to additional human rights violations while they waited in Mexico – in short, pushing vulnerable asylum seekers further into harm's way.

The unlawful rejection of asylum claims by CBP is not a new phenomenon. AI has documented similar turn-aways of asylum-seeking families and unaccompanied minors for months prior to the recent caravan. A shelter coordinator in Tijuana informed AI that CBP had turned away approximately 20 of the unaccompanied minors whom his shelter hosted in 2017, without allowing them to claim asylum at the US border, and at

least five already in 2018. The shelter coordinator said that most of those unaccompanied minors were Mexican nationals who had fled from Guerrero and Michoacán, two of Mexico's most violent states. AI spoke with one of those Mexican children at the shelter in January 2018 after she was turned away; the shelter coordinator informed AI on April 30 that the minor was only later received by CBP when accompanied by a lawyer to the POE. Prior to the caravan's arrival in April 2018, another shelter in Tijuana informed AI researchers that CBP turned away half of a group of 50 Mexican women seeking asylum at the San Ysidro POE. The shelter reported that CBP personnel at the San Ysidro POE had on several Sundays in 2018 declined to admit any asylum seekers at all.

II. Mexico is not a uniformly safe country for all asylum seekers.

The Trump administration is reportedly seeking to negotiate a "safe third country agreement" ("STCA") with Mexico, like the existing STCA with Canada, to make it a first country of refuge for asylum seekers. In two recent [statements](#), [DHS](#) insisted that any asylum seekers in the caravan should seek refuge in Mexico, rather than in the U.S.: "Individuals of the 'caravan' seeking asylum or other similar claims should seek protections in the first safe country they enter, including Mexico."

However, AI has concluded, based on our research, that Mexico cannot be considered a uniformly safe country for *all* asylum seekers. AI has identified an alarming pattern of Mexican immigration officials forcibly returning Central American asylum seekers to their home countries, where their lives are potentially at risk. While Mexico no doubt also has a responsibility to protect refugees, the U.S. cannot shirk its legal obligation to protect refugees. U.S. authorities must provide individualized and fair assessments of asylum claims presented by people seeking protection at its borders and in its territory.

In a January 2018 [report](#), AI found that Mexican migration authorities ("INM") routinely turn away thousands of people from Honduras, El Salvador and Guatemala to their home countries without considering the risks to their lives and security upon return, in many cases violating international and domestic Mexican law by doing so. In a survey of 297 people who were detained by INM, AI found that 75 percent of those people detained by 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 AI that the requirement is complied with. Even more alarming, AI found that INM forcibly deported 40 percent of those people to their home countries, despite the fact that they explicitly sought asylum in Mexico or expressed fear for their lives in their country of origin.

As Mexico does not always protect asylum seekers' rights, Mexico cannot be considered or treated as uniformly safe country for all asylum seekers. As such, anyone seeking asylum in the U.S. must have her or his claim received and assessed fairly and impartially on the merits. Without an individualized assessment of each asylum seeker's claim, there is a heightened risk of *refoulement* to ill-treatment, persecution or other irreparable harm, in violation of national and international law.²

III. U.S. authorities must protect asylum-seeking families and children from persecution – not turn them back to potential harm.

Based on the aforementioned preliminary findings of AI's recent research mission along the southern U.S. border, DHS must stop turning back asylum seekers, and the U.S. government should not consider Mexico to be a uniformly safe country to receive all asylum requests for international protection.

The global system established to protect women, men and children from harm is not a "legal loophole." All countries are able to impose necessary and proportionate legal restrictions on entry into their countries, in order to achieve legitimate aims. However, governments are also prohibited under international law from forcibly returning people in need of international protection to any country where they would be at risk of persecution or other serious human rights violations. International law likewise prohibits governments from deporting such individuals at risk to a third country that may subsequently deport them to the country where they are at risk of serious harm.

While apprehensions and "inadmissibles" at the southern U.S. border have been at near record lows over the last year, global refugee numbers are at their highest levels since World War Two. This is a moment when the U.S.

² See the Amnesty International report, *No Safe Refuge* (2016); available at: <https://www.amnesty.org/en/documents/eur44/3825/2016/en/> (at pp. 6-7).

should be shielding people seeking asylum from persecution and violence, not pushing them back into harm's way.

IV. The crisis does not lie with the caravan, but with the U.S. immigration courts which have long been under-funded and under-resourced.

Many of the asylum seekers arriving at the southern U.S. border are children and families from the Northern Triangle of Central America. According to the [U.N. Refugee Agency](#), many of the children fleeing the Northern Triangle region have strong protection claims. Those arriving to the U.S. are requesting relief through the long-established legal procedures to review asylum claims, in line with U.S. obligations under international refugee law and human rights law. Many asylum seekers are presenting themselves to border agents in order to affirmatively request asylum, and are not seeking to evade authorities.

All arriving asylum seekers are subject to a well-established legal regime and institutional process established by DHS and the Justice Department to assess individual asylum claims. DHS asylum officers are well-versed in interviewing individuals who have suffered trauma, and have specific knowledge of country conditions and training on evaluating witness credibility. A secondary level of review involves an immigration judge who examines witness testimony, documentary evidence, and State Department country conditions in evaluating the individual asylum claim.

The asylum process is extensive and rigorous, and is designed to ensure that those with strong refugee claims are not deported to conditions of persecution or torture, in accordance with U.S. legal obligations under the Refugee Convention and Convention Against Torture. However, due to a longstanding shortage of immigration judges, the asylum process in some cases takes years to conclude.

[DHS](#) has stated that the objective of indefinitely detaining asylum seekers is to deter them from entering the U.S. in search of safety. The President's recent deployment of the National Guard to the southern border is also part of the administration's plan to deter, detain, and punish people seeking protection, in violation of U.S. obligations under international law and standards.

In sum, there is indeed a crisis, but it is not a border security crisis embodied by caravans of children and families traveling through Mexico. The crisis lies with the U.S. immigration courts, which have been under-resourced for years and are thus unable to adjudicate asylum claims in a timely manner. That funding crisis, fortunately, can be readily addressed by Congress which controls the power of the purse

V. Amnesty International's policy recommendations

To Congress:

- Exercise oversight of DHS, CBP, and ICE to ensure that turn-backs of asylum seekers are halted and all people who present themselves at POEs are given the opportunity to seek asylum.
- Press the administration to halt negotiations with Mexico as a potential Safe Third Country for asylum.
- Dramatically increase funding for immigration judge teams and DHS asylum officers, to reduce the multi-year backlogs.
- Decline to fund the President's expansion of border patrol, and continuation of CBP operations – absent rigorous external oversight of CBP and border patrol.
- Decline to fund DHS's expansion of immigration detention, which sweeps in children and asylum seekers.

To the Trump administration:

- Halt CBP turn-backs of asylum seekers. As required by international law, CBP must provide a fair and accessible asylum process for all people seeking international protection in the U.S.
- Halt negotiations with Mexico to designate it as a Safe Third Country for all asylum seekers, as Mexico is not always safe for asylum seekers passing through the country.
- Discontinue plans outlined in the Border Security Executive Order to return arriving asylum seekers to Mexico to await their asylum proceedings, in violation of international law.
- End detention of all children, whether unaccompanied or in family units. Locking up children is never in their best interest.
- Implement policies to limit the detention of people seeking asylum, to only when it is determined to be necessary and proportionate to a legitimate purpose, based on an assessment of the individual's particular circumstances.

For more information, please contact Joanne Lin at 202/509-8151 or jlin@aiusa.org.

Sincerely,

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