



May 22, 2018

Sen. John Cornyn, Chair
Border Security and
Immigration Subcommittee
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Sen. Richard Durbin, Ranking Member
Border Security and
Immigration Subcommittee
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Re: May 23 hearing on “TVPRRA and Exploited Loopholes Affecting Unaccompanied Alien Children”

Dear Chairman Cornyn, Ranking Member Durbin, and Members of the Subcommittee:

On behalf of Amnesty International USA and our more than two million supporters and members nationwide, we submit this statement for the hearing record.

Since 2015 Amnesty International has documented the deepening refugee crisis from the Northern Triangle region of Central America, its [push factors](#) and [how Mexico](#) and the [United States](#) have responded to the regional crisis. The [evidence gathered](#) shows that the justice systems in Honduras, El Salvador, and Guatemala are failing to protect those under their jurisdiction. Thus, many coming from those countries, especially women, children and [those who identify as LGBTI](#) could qualify as refugees. In the June 2017 report [Facing Walls](#) Amnesty International [documented](#) the cases of asylum seekers from the Northern Triangle who fled persecution by law enforcement as well as criminal networks and how Homeland Security Customs Border Protection (CBP) has routinely prevented them from requesting asylum at U.S. ports of entry (PoE).

Published in November 2017, the report [No Safe Place](#) uncovers the treacherous journey faced by gay men and trans women asylum seekers fleeing gender-based violence in El Salvador, Guatemala and Honduras committed by criminal gangs and security forces. Mexican authorities have failed to protect these asylum seekers from violations and abuses while travelling through the country. Based on a [survey](#) of 500 Central Americans travelling through Mexico, published in January 2018, Amnesty International report [Overlooked and Under-Protected](#) found that the Mexican National Institute of Migration has been systematically returning people with a real risk of persecution to their country of origin, endangering their lives or safety.

In May 2018, Amnesty International staff conducted a three-week research mission along the U.S. southwest border (California, Arizona, New Mexico, Texas, and some adjacent border areas of Mexico). The final report will be published later this year and this statement for the hearing record includes our preliminary findings.

DHS is increasingly forcibly separating children from their parents or guardians when these family units request asylum.

Homeland Security (DHS) agents are [increasingly](#) forcibly separating children from their parents/legal guardians, who have presented themselves in a PoE with a credible fear claim. DHS then funnels the children into the unaccompanied children program run by the Office of Refugee Resettlement (ORR) in the Department of Health and Human Services (DHHS).

This DHS practice of family separation is scattering children into facilities throughout the country. This practice destroys families and amounts to [cruel, inhuman and degrading treatment](#), in violation of U.S human rights obligations.

Many of the parents interviewed by Amnesty International have fled to save their children from dangerous situations, including being forced to become a “girlfriend” of a gang member in Honduras. Other parents have fled to save themselves and their children from being killed by police in [Brazil](#), where [extrajudicial executions](#) at the hands of police officials are frequent. Below is a sample of some of the stories that Amnesty International has documented:

A 63-year-old grandmother from Honduras was separated at the El Paso PoE from her 14-year-old granddaughter. They fled after gangs threatened to make the girl their gang “girlfriend.” When the family arrived in the U.S. and requested asylum in November 2016, DHS agents separated them. The grandmother has been in detention for the past 18 months.

[In November 2017, DHS officials forcibly separated four Central American fathers from their children after their arrival to the U.S. in the San Ysidro PoE](#), including a one year-old-boy, who developed a medical condition in detention. All four fathers requested asylum, and presented valid legal documents proving their family relationship.

A grandmother and legal guardian of a child with autism presented themselves at the El Paso POE in August 2017 and requested asylum. The grandmother also presented to CBP officials with notarized documentation proving legal guardianship of her minor grandson, his medical records and a doctor’s note warning that the child had severe cognitive disabilities and would have epileptic attacks if separated from her. CBP agents, nonetheless, stripped the sick child from his grandmother and flew him to an ORR facility in Connecticut. The biological parents have abandoned the child and are unable and unwilling to care for him. A Connecticut social worker has requested that the grandmother be part of the plan to care for the child, and yet they still remain separated – grandmother in detained in Texas, sick child alone in an institution in Connecticut. U.S government is perpetuating their trauma and suffering every day they remain separated.

A mother who presented herself at the El Paso PoE in March 2018 with her seven-year-old son and requested asylum was retraumatized instead of offered protection. She recounted the heartwrenching experience of having CBP officers ripping her son from her arms and telling her: “You don’t have any rights here, you don’t have rights to your son.” This mother was not informed of her son’s whereabouts for 15 days, and she has been in immigration detention since.

The separation of families seeking asylum is [cruel and exacerbates the trauma of asylum seekers](#) who have fled persecution, torture, or violence. The idea that children can be protected by tearing them away from their families defies all sense of logic and humanity. Prying children from their parents' arms as they seek asylum is a flagrant violation of parents' human rights and is also a [violation of U.S. obligations under refugee law](#).

Family unity is recognized as a fundamental human right, enshrined in international law. The U.S. has an obligation to respect the right to establish a family and refrain from arbitrary or unlawful interference with the family unit.¹ The individual right to family life is one of the factors that a state needs to take into account when deciding upon entry, residence, deportation or expulsion².

The U.N. Special Rapporteur on torture and other cruel and inhuman or degrading treatment or punishment has concluded that "detention based solely on migration status can amount to torture, most notably where it is being intentionally imposed or perpetuated for purposes such as deterring, intimidating, or punishing irregular migrants or their families, coercing them into withdrawing their requests for asylum, subsidiary protection or other stay, agreeing to voluntary repatriation, providing information or fingerprints."³

If sent back to their country of origin, they could suffer irreparable harm. Under international law, refusing to admit asylum seekers directly violates the principle of *non-refoulement*, which is binding on the U.S. as a party to the 1967 Protocol of the 1951 U.N. Convention Relating to the Status of Refugees and as a principle of international

¹ Universal Declaration of Human Rights (UDHR), Article 16(1); International Covenant on Civil and Political Rights (ICCPR), Articles 17(1), 23(2). U.N. Convention on the Rights of the Child (CRC), art. 9 (Sept. 2, 1990); General Comment 6 to the Convention, "Treatment of Unaccompanied and Separated Children Outside their Country of Origin" (CRC 2005). Final Act of the 1951 U. N. Conference of Plenipotentiaries on the Status Of Refugees and Stateless Persons, Recommendation B. While the U.S. has signed but not ratified by CRC the convention's principles remain obligations under international human rights law.

² Human Rights Committee, General Comment No. 15, par5. CAT, GC_No.4_(2017)_Art.3, §14

³ [Report of the UN Special Rapporteur on torture and other cruel and inhuman or degrading treatment or punishment to the UN Human Rights Council](#) § 28, 29 (February 26, 2018)

customary law. Such principle provides that states must not return persons to territories where their “life or freedom” would be threatened.⁴

Conclusion

Amnesty International USA urges the Senate Judiciary Committee to press the administration to ensure the following:

- (1) Those families that have been separated, must be reunified as quickly as possible.
- (2) Halt the forced separation of children from their parents or guardians. Family units must be kept together in accordance with international standards on family unity.
- (3) Halt the prolonged detention of parents and guardians who arrived in the U.S. with children.

For more information, please contact Marselha Gonçalves Margerin by phone at: (202)-675-8766 or email at: marselha@aiusa.org.

Sincerely,



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⁴ United Nations Convention and Protocol Relating to the Status of Refugees, Article 33