



May 7, 2018

Chairman Shelley Moore Capito
U.S. Senate
Committee on Appropriations
Subcommittee on Homeland Security
SD-131, The Capitol
Washington, DC 20510

Ranking Member Jon Tester
U.S. Senate
Committee on Appropriations
Subcommittee on Homeland Security
SD-131, The Capitol
Washington, DC 20510

Re: FY 2019 ("FY19") funding request and budget justification for Homeland Security ("DHS")

Dear Chairwoman Capito, Ranking Member Tester, and Members of the Subcommittee:

On behalf of Amnesty International USA ("AIUSA"), and our more than one million members nationwide, we submit this statement for the [hearing](#) record. This statement will focus on the FY19 budget request for Customs and Border Protection ("CBP").

The FY19 CBP budget request – at \$14.4 billion -- is the highest discretionary funding level in the agency's 15-year history. As recently as FY13, CBP's budget was set at \$10.3 billion. The FY19 CBP budget would provide an additional \$1.6 billion for the construction of a 65-mile border wall system, and would increase funding levels by \$211 million to support the hiring of an additional 750 border patrol agents.

This Committee should not fund any activities that violate U.S. human rights obligations. Specifically this Committee should not appropriate any funds for purported "border security measures" that would violate the rights of people seeking refugee protection, of residents living in U.S. border communities, and of Native American Nations in the southwest border region. At a minimum, this Committee should not appropriate any funds to support the work of CBP or border patrol agents, without putting in place rigorous external oversight and accountability mechanisms over the conduct of CBP and border patrol agents.

I. Trends and Developments along the U.S.-Mexico Border

Congress has substantially increased the CBP budget even though southwest border apprehensions have plummeted to their lowest levels in decades. The dramatic downward trend of border apprehensions undermines the President's call for "The Wall" and a "deportation force" that includes more border patrol agents.

Beyond the significant downward trend in border apprehensions, the demographics of people crossing the Mexico border have dramatically changed as well. More than one third of border apprehensions in the first five months of FY18 were unaccompanied children and families with children, oftentimes seeking out border patrol in order to request humanitarian protection. These children and families are not seeking to evade border authorities; rather they are affirmatively requesting help and protection.

I. The U.S.-Mexico Border Wall Would Violate U.S. Human Rights Obligations with Respect to Asylum Seekers and Native American Nations.

The FY19 CBP budget would provide an additional \$1.6 billion for the construction of a 65-mile border wall system. The FY18 appropriation already provided \$445 million for fencing in several southwest border sectors.

The construction of a border wall could prevent asylum seekers from entering the U.S., including Central American children and families who have survived torture or other persecution. 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 to ensure that people are not returned to situations where they would be persecuted, tortured or killed.

Furthermore, the President's proposed border wall risks violating the rights of Native American Nations. As prescribed by Article 19 of the United Nations ("U.N.") [Declaration on the Rights of Indigenous Peoples](#), the U.S. government must obtain the free, prior, and informed consent of affected Nations and consult in good faith with Native American Nations 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, have both passed resolutions opposing the construction of the wall without tribal consent. Congress has not yet obtained the consent of affected Native American Nations. Absent 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, to which the U.S. is a signatory.

II. Increasing CBP Personnel Would Violate Human Rights Obligations with Respect to Asylum Seekers and Residents in the Southern Border Region.

As a party to the Refugee Convention and the Convention Against Torture, the U.S. is legally bound to prevent the deportation of people facing persecution and/or torture. While all sovereign states have a legitimate interest in regulating entry into their territories, they can only do so within the limits of their [obligations under international law](#). The U.S. government has an obligation under international human rights law to ensure that its laws, policies, and practices do not place immigrants at an increased risk of human rights abuses. Specifically, individuals have a right to seek asylum from persecution, and protection from being returned to a place where their lives are at risk. All individuals, regardless of immigration status, have a right to family unity, which can include limits on the State's power to deport, as recognized by the Human Rights Committee's interpretation of the International Convention on Civil and Political Rights obligations. CBP operations must comply with these obligations.

Under international law, *non-admission of 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 Refugee Convention and as a principle of international customary law. The *non-refoulement* principle, provided for in Article 33 of the Refugee Convention, provides that states must not return persons to territories where their "life or freedom" would be threatened.

[Amnesty International](#) ("AI") has investigated CBP conduct and has documented agents making arbitrary decisions that violate U.S. and international law. Based on evidence gathered in 2017 at six

major ports of entry,¹ AI determined that there is a recurring CBP practice of agents arbitrarily not admitting asylum seekers who request protection at the U.S. border. CBP agents have routinely told asylum seekers that they cannot apply for asylum in the U.S. and they must return to Mexico. This recurring CBP practice violates the Refugee Convention.


Beyond CBP, the proposed expansion of the border patrol in the FY19 budget presents serious human rights concerns. The Homeland Security Inspector General (“DHS IG”) found that between FY13 and FY16, CBP spent about \$5 million completing more than 2,300 polygraphs for border patrol applicants with serious admissions of [wrongdoing](#) including child pornography, sex with minors, domestic violence, felony theft, and conspiracy to commit murder. Given the alarmingly high rates of misconduct by border patrol applicants, this Committee should decline to provide any funds to increase the border patrol – which wields tremendous power and authority over asylum seekers, immigrants, and residents of the southwest border region.

As the guardians of the purse, this Committee should not increase CBP funding, especially when southwest border apprehensions are at historic low levels and the President has announced plans to [deploy the National Guard](#) to the southern border. Appropriators should not throw billions of dollars of taxpayer money at two different agencies (CBP, Defense Department) to deal with a non-existent problem. Congressional spending decisions must be based on facts and data, not on presidential campaign promises. At a minimum, this Committee should not appropriate any funds to support the work of CBP or border patrol agents, without putting in place rigorous external oversight and accountability mechanisms over the conduct of CBP and border patrol agents. If you have any further inquiries, please contact Joanne Lin at (202) 509-8151 or jlin@aiusa.org.

Sincerely,



Joanne Lin
National Director
Advocacy and Government Affairs



Marselha Gonçalves Margerin
Advocacy Director for the Americas

¹ The ports of entry are San Diego, California; Nogales, Arizona; El Paso, Texas; Laredo, Texas; McCallen, Texas; and Brownsville, Texas.