



December 10, 2018

The Honorable Charles Grassley
Chairman
Committee on the Judiciary
135 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Dianne Feinstein
Ranking Member
United States Senate
331 Hart Senate Office Building
Washington, D.C. 20510

RE: Senate Judiciary Committee Hearing “Oversight of U.S. Customs and Border Protection”

Dear Chairman Grassley, Ranking Member Feinstein, and Members of the Committee:

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

In [October](#) and [November](#) of this year, Amnesty International sent a team of researchers to Tijuana, Mexico and the San Ysidro port of entry (“POE”), where they interviewed asylum-seekers who have been illegally turned away by U.S. Department of Homeland Security (“DHS”) Customs and Border Protection (“CBP”) officials and are consequently being forced to wait for over a month in dangerous conditions in northern Mexico. By turning away asylum-seekers at the border without registering and processing their asylum claims, U.S. border authorities are regularly violating both U.S. and international law.

We urge the Committee to forcefully question CBP on the policies and practices that are keeping asylum-seekers from accessing protection at U.S. borders, and further demand that DHS issue clear policy guidance halting illegal pushbacks of asylum-seekers, both at and between POE.

A policy to keep asylum-seekers away from the U.S.

Since the start of President Trump’s administration, there has been a systematic effort to impose draconian immigration policies that have resulted in catastrophic harm to thousands of asylum-seekers along the U.S.–Mexico border. These policies and practices have included mass illegal pushbacks of asylum-seekers at the U.S.–Mexico border, including the “metering” of asylum claims; forcibly separating thousands of families in violation of both U.S. and international law, inflicting extreme suffering on families; and the increasingly arbitrary and indefinite detention of asylum-seekers, without parole, which constitutes cruel, inhumane, degrading treatment or punishment, which is prohibited under international law. Further threatening the rights of those seeking safety at our borders, on November 25, dozens of people who tried to cross into the U.S., including children and families, were met with tear gas by CBP agents. The use of tear gas in this situation was an assault on human dignity and human rights.

The dangerous conditions asylum-seekers have been forced to withstand will only worsen under a proposed “remain in Mexico” deal between the U.S. and Mexico that would force asylum-seekers to wait in Mexico indefinitely, rather than enter the U.S. in accordance with U.S. law while their protection claims are processed.

Continuing this disturbing trend, President Trump’s Presidential Proclamation issued on November 9, 2018 would drastically limit the ability of individuals to request asylum at the southern U.S. border, needlessly placing the lives of thousands of people in danger. While this proclamation is on hold in the courts, because of a temporary restraining order issued on November 19, the damage such a policy could inflict if it went into effect would be severe, with harmful and possibly even deadly consequences for those seeking asylum.

Illegal pushbacks and metering of asylum-seekers

In 2017 and 2018, despite historic lows in the number of people seeking to enter the U.S. without legal status, including asylum-seekers, the CBP has implemented an illegal de facto policy of pushbacks of asylum-seekers along the entire US–Mexico border at official POE. The Trump administration has leveraged vague claims of “capacity” constraints, as an escape hatch to violate its legal obligations to receive and process asylum-seekers’ requests for protection. There appears to be no official written or other record of interactions between CBP officers and asylum-seekers when CBP denies them the opportunity to claim asylum at U.S. POE. Yet CBP’s actions have been public, consistent, and synchronized at widely dispersed POE, despite variations in the numbers of asylum-seekers requesting protection at each crossing.

While there are no official statistics on how many people CBP has illegally turned away without processing their asylum requests, Amnesty International has received numerous secondary reports from non-governmental organizations indicating that CBP has forced thousands of asylum-seekers to wait in Mexico – including families with children, mostly from Central America. As CBP has increasingly turned away asylum-seekers at multiple POE, queues have formed on the Mexican side of those crossings – exposing asylum-seekers to extreme temperatures, threats of deportation, and potential exploitation or violence by criminal gangs and smugglers. By seeking to prevent asylum-seekers from entering U.S. POE, the U.S. government appears to assert an incorrect legal theory that CBP can escape its obligation to receive asylum-seekers’ requests for protection, by physically restraining them on or around the border of U.S. territory. Even at the outermost perimeter of U.S. territory, the turning away of asylum-seekers is a clear violation of international law. What is more, Mexican nationals have also been forced to wait to access the border, with the possibility that Mexican authorities and CBP are maintaining lists of those waiting to request asylum. Such actions risk the safety of those seeking asylum at the U.S. border and could violate international law.

Article 13 of the Universal Declaration of Human Rights allows for freedom of movement and the right to leave one’s country. By turning away asylum-seekers at POE, U.S. authorities are violating their right to seek asylum from persecution and manufacturing an emergency along the border. The prolonged closure of borders

increases uncertainty and despair among migrants, asylum-seekers and refugees. Arbitrarily closing border crossings increases the risks to the safety of those who are forced to wait for weeks or longer in precarious, unsanitary conditions or forced to take far more dangerous routes to continue their journey to safety.

Mexico is not a “safe third country” for all

[Amnesty International has documented](#) Mexican migration authorities routinely turning back and deporting asylum-seekers from Honduras, El Salvador, and Guatemala without considering the risks to their lives and security upon return. Our research has shown that migrants and asylum-seekers are frequently subject to muggings, extortions, kidnappings and killings and disappearances on their journey through Mexico. In many instances, these crimes are not properly investigated by authorities. Amnesty International has carried out research on the widespread failures of Mexico’s National Migration Institute (INM) to properly screen for people in need of international protection. For example, nearly three quarters of a group of hundreds of people recently surveyed by Amnesty International who were detained by Mexican migration authorities did not receive any information about their right to seek asylum in Mexico.

The United States cannot lawfully adopt a “safe third country agreement” to turn away asylum-seekers at POE, when Mexico is clearly violating its own obligations to protect asylum-seekers and refugees. Mexico does not provide effective protection to all asylum-seekers, and thus cannot be considered or treated as a uniformly safe country for them. Under U.S. law, DHS authorities must provide individualized and fair assessments of all asylum claims presented by people seeking protection at U.S. borders and in U.S. territory. Accordingly, anyone seeking asylum in the United States must have her or his claim received and assessed fairly and impartially on its merits.

CBP policies must respect human rights, including the right to seek asylum

Amnesty International does not oppose governments using border controls. However, such initiatives must be lawful and respectful of human rights, including the right to seek asylum. Our research over decades has shown that attempts by governments to implement hardline border controls to prevent irregular arrivals of migrants and refugees does not stem the number of people leaving their countries. Instead, it forces people to use more clandestine – and far more dangerous – routes, putting more human lives at risk and fueling criminal networks.

To provide a fair asylum process, the U.S. must ensure that official POE are sufficiently staffed and secure, such that asylum-seekers are able to immediately and safely request protection without unnecessary delays. Further, CBP must not deny people the chance to have their asylum claims heard. This is essential to ensure that the U.S. government does not violate the principle of non-refoulement, as enshrined in the 1951 UN Convention Relating to the Status of Refugees and binding on States Party to the 1967 Protocol, which the U.S. has ratified and integrated into U.S. law.

Further, no asylum-seeker should be denied their right to request asylum, no matter their manner of entry, or be punished for doing so by indefinite detention, forced family separation, or other punitive measures intended to deter people in need from requesting protection. These are fundamental human rights, guaranteed under U.S. and international law.

We urge this Committee to demand that both CBP and DHS:

- Immediately stop turning away asylum-seekers at the US–Mexico border, both at and between official POE.
- Bolster CBP capacity as necessary to receive immediately all asylum claims presented at U.S. ports of-entry.
- Halt negotiations with Mexico for a “safe third country agreement.”
- Discontinue all plans and actions that would require asylum-seekers at the US–Mexico border to wait in Mexico during pendency of their asylum claims.

For more information, please contact Ryan Mace, refugee specialist, at rmace@aiusa.org or 202.509-8185.

Sincerely,

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