‘SAVING LIVES IS NOT A CRIME’

POLITICALLY MOTIVATED LEGAL HARASSMENT AGAINST MIGRANT HUMAN RIGHTS DEFENDERS BY THE USA



AMNESTY INTERNATIONAL

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Cover photo: On 25 November 2018, a photojournalist documents US border authorities at the San Ysidro Port of Entry in San Diego as they fire teargas into Tijuana, in order to prevent asylum seekers from crossing irregularly into the USA to request protection. © Jeff Valenzuela

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GLOSSARY

WORD	DESCRIPTION
ASYLUM SEEKER	An asylum seeker is someone who has left their country seeking protection but has yet to be recognized as a refugee. During the time that their asylum claim is being examined, the asylum seeker must not be forced to return to their country of origin. Under international law, being a refugee is a fact-based status, and arises before the official, legal granting of asylum.
CBP	Customs and Border Protection (CBP) is a law enforcement agency of the US Department of Homeland Security (DHS), operating in the border area and ports-of-entry of the United States. The US Border Patrol is part of CBP.
COYOTE	Colloquial term for a human smuggler on the US–Mexico border.
DHS	US Department of Homeland Security.
FISCAL YEAR	The US government classifies some official information by the Fiscal Year (FY), which runs from October 1 to September 30 of each year.
HIELERA	Literally, the Spanish term for "cooler" or "ice box," which is a colloquial term for CBP border detention facilities that are frequently kept at very low temperatures.
ICE	Immigration and Customs Enforcement (ICE) is an agency of DHS, charged with carrying out detentions and deportations of asylum seekers and migrants.
INM	The Mexican government's border and immigration agency, National Institute of Migration (Instituto Nacional de Migración, or INM).
IRREGULAR ENTRY	Crossing into a country without a migration status that complies with requirements of domestic immigration legislation and rules. The term "irregular" refers only to a person's entry or stay.
MARA	Colloquial name commonly given to organized criminal groups from Central America that are characterized by violent activities and generally associated with territorial control.
PORT-OF-ENTRY	Ports-of-entry are official customs border entry points into the United States, where travellers show their identification and travel documents and request entry.
REFUGEE	Refugees are individuals who fled from their countries-of-origin due to a well-founded fear of persecution, from which their governments cannot or will not protect them. Asylum procedures are designed to determine whether someone meets the legal definition of a refugee. When a country recognizes an asylum seeker as a refugee, it gives them international protection as a substitute for the protection of their home country.

1. EXECUTIVE SUMMARY

"PROTECTING AND SUPPORTING HUMAN RIGHTS DEFENDERS IS A KEY PRIORITY OF US FOREIGN POLICY. BECAUSE HUMAN RIGHTS DEFENDERS SEEK TO HOLD THEIR GOVERNMENTS ACCOUNTABLE TO PROTECT UNIVERSALLY RECOGNIZED HUMAN RIGHTS, DEFENDERS ARE OFTEN HARASSED, DETAINED, INTERROGATED, IMPRISONED, TORTURED, AND EVEN KILLED FOR DOING THEIR WORK. THE DEPARTMENT'S OBJECTIVE IS TO ENABLE HUMAN RIGHTS DEFENDERS TO PROMOTE AND DEFEND HUMAN RIGHTS WITHOUT HINDRANCE OR UNDUE RESTRICTION AND FREE FROM FEAR OF RETRIBUTION AGAINST THEM OR THEIR FAMILIES. THE WORK OF THESE BRAVE INDIVIDUALS AND GROUPS IS AN INTEGRAL PART OF A VIBRANT CIVIL SOCIETY, AND OUR INVESTMENT IN AND SUPPORT OF THEM IS LIKEWISE AN INVESTMENT IN AND SUPPORT OF THE RULE OF LAW AND DEMOCRACY."

US Support for Human Rights Defenders – Fact Sheet (January 20, 2017)
US Department of State (Bureau of Democracy, Human Rights and Labor)

1.1 US AUTHORITIES UNLAWFULLY TARGETING HUMAN RIGHTS DEFENDERS

Amnesty International has found since 2018 that the United States (US) government has executed an unlawful and politically motivated campaign of intimidation, threats, harassment, and criminal investigations against people who defend the human rights of migrants, refugees and asylum seekers ("migrant human rights defenders") on the US–Mexico border.

A humanitarian crisis has erupted on the US–Mexico border over the last year, due to unlawful US asylum policies. US authorities have turned away thousands of people requesting asylum at the border, and are forcibly returning thousands more asylum seekers to Mexico even after they request protection, thereby denying them due process in their asylum claims. Yet neither the US nor the Mexican government has provided adequate shelter, food, services, or legal assistance to those asylum seekers now stranded in the violent and dangerous border region of northern Mexico. As a result, volunteers with non-governmental organizations (NGOs) and communities of faith in both countries have had to fill those gaps and protect the rights of migrants and asylum seekers being forsaken by authorities – while simultaneously shielding themselves from government abuses.

Among the human rights defenders targeted by US authorities – and interviewed by Amnesty International about their experiences – are activists, lawyers, journalists, and humanitarian volunteers, including a clergy member. The US Department of Homeland Security (DHS) and the US Department of Justice (DOJ) have increasingly misused and leveraged the criminal justice system to deter and punish those individuals for challenging – or even simply documenting – the systematic human rights violations by US authorities against migrants and asylum seekers.

"I ASKED THEM, 'ARE THERE CHARGES BEING PRESSED AT THIS TIME, OR WHAT IS THE CONCERN HERE?' AND HE [THE DHS OFFICER] SAID, 'I DON'T THINK YOU'RE A TRAFFICKER, OR COMMITTING CRIMES, OR SMUGGLING, BUT THERE ARE SOME PEOPLE WHO [...] WHO THINK THAT WAY.'"
Alex Mensing, project coordinator of the organization Pueblo Sin Fronteras.

DHS and DOJ have accused and investigated human rights defenders for alleged crimes including conspiracy, fraud, and the harboring and smuggling of migrants and asylum seekers, as well as misdemeanor crimes related to the provision of humanitarian aid. In the first half of 2019, nine humanitarian volunteers with the organization No More Deaths/No Más Muertes were prosecuted under misdemeanor or felony charges for providing potentially life-saving humanitarian aid, including water and food, to people in deadly desert areas along the US–Mexico border. In the specific geographical area where authorities prosecuted those human rights defenders for the provision of humanitarian aid, thousands of migrants have died over the last 20 years from thirst, hunger, and injuries in the harsh terrain.

In dozens of other cases since December 2018, DHS and DOJ have subjected human rights defenders to politically motivated legal harassment and administrative restrictions that have undermined their work, most frequently as they crossed the US–Mexico border, in violation of the prohibition of discrimination based on their protected views and speech.

Those measures have included:

- Surveillance and intelligence gathering by multiple law enforcement agencies;
- Warrantless and unreasonable searches of their electronic devices;
- Prolonged interrogations about their finances and relations with other activists;
- Prolonged detentions, involving partial stripping in one case, and false arrest in another; and
- Discriminatory threats and travel restrictions at the US–Mexico border, including through the placement of international migratory alerts, and the revocation of fast-track travel documents.

1.2 DEPARTMENT OF HOMELAND SECURITY'S VIOLATIONS OF US AND INTERNATIONAL LAW

The US government has sought to justify its actions as a legitimate law enforcement investigation into potential criminal wrongdoing by human rights defenders who support migrants and asylum seekers in Mexico. However, by discriminatorily targeting human rights defenders – most of them US citizens – based solely on their political or other opinions, speech and activities, the Trump administration has violated international law, the US Constitution, US laws, and corresponding DHS policies that acknowledge those legally binding civil liberties protections.

Under international law, the US government plainly violated the human rights defenders' freedom of expression; right to privacy; equality under the law; and freedom from discrimination, including on the basis of political or other opinion. In doing so, authorities may also have indirectly violated the human rights of migrants and asylum seekers, by undermining their access to asylum procedures and life-saving humanitarian aid. Under international law, it is also unlawful for US authorities to criminalize humanitarian aid.

The US government also violated equivalent protections of human rights defenders' civil liberties under US law. Those protections include Constitutional guarantees of freedom of speech under the First Amendment; and equal protection under the law, without discrimination, under the Fourteenth Amendment. Due to the discriminatory motivation of those human rights violations, authorities have also likely committed unreasonable searches and seizures in violation of the Fourth Amendment to the US Constitution.

> ***"HE SAID THAT I WAS SMUGGLING HUMANS, […] EVEN THOUGH I WAS AT A PORT OF ENTRY. […] THE SUPERVISOR TOLD ME I WAS GOING TO BE HELD INDEFINITELY. THEY KEPT REPEATING, 'THE FOURTH AMENDMENT DOESN'T APPLY HERE.'"***
> *Ana Adlerstein, humanitarian volunteer in Arizona.*

DHS's targeting of migrant human rights defenders for supporting asylum seekers and shelters on the US–Mexico border has similarly violated DHS policies, which prohibit discrimination and selective law enforcement on the basis of political or other opinion. Specifically, DHS policies require that CBP personnel respect the rights to freedom of speech, due process of law, protection from unreasonable searches and seizures, and unlawful intrusions into personal privacy. As CBP targeted specific human rights defenders for unreasonable searches and other restrictions due to their protected views and speech – including individuals who were not under criminal investigation – those measures violated their civil liberties, exposing US authorities to liability for civil damages due to their deprivation of civil rights.

In May 2019, the DHS border agency Customs and Border Protection (CBP) for the first time provided a legal justification for its recent targeting of migrant human rights defenders: they were being criminally investigated under smuggling charges, for "encouraging" or "inducing" illegal border crossings by asylum seekers. In early December 2018, however, a federal appeals court struck down as unconstitutional the subsection of the criminal law cited by CBP to justify its criminal investigations of human rights defenders in the weeks and months that followed. The court struck down the provision specifically due to its unconstitutional restriction of freedom of speech and noted in its decision that "the government has already shown its intent to prosecute those citizens (attorneys or sympathetic lay persons) who give general legal advice." The court's ruling was stayed, preventing it from entering into force, as the government petitioned in June 2019 for the US Supreme Court to review the appellate court decision.

The consequences and "chilling effect" of the Trump administration's criminalization of human rights defenders' protected speech and activities have been clear. It has undermined their legitimate professional activities, including their provision of legal assistance and life-saving humanitarian aid to migrants and asylum seekers in the US–Mexico border region.

US lawyers and human rights advocates have had to reduce their travel across the US–Mexico border, and their support for people in need. Likewise, Mexican lawyers and advocates have feared retaliatory abuses by US and Mexican authorities, which has in some cases deterred them from supporting asylum seekers stranded in the border region of northern Mexico as they wait to request and receive protection from US authorities.

The Trump administration has demonstrated its readiness to unlawfully leverage and misuse the criminal justice system in order to prosecute its perceived political enemies – including activists, journalists, and lawyers who defend the human rights of asylum seekers and migrants, as DHS continues to push them back into harm's way in Mexico. The Trump administration's recent treatment of migrant human rights defenders adds to its concerning past contempt for attorneys supporting asylum seekers, whom the then-Attorney General referred to as "dirty immigration lawyers," and journalists whom President Trump has routinely referred to as "the enemy of the people."

THE TRUMP ADMINISTRATION'S CRIMINALIZATION OF MIGRANT HUMAN RIGHTS DEFENDERS:



1.3 COLLABORATION IN ABUSES BY THE US AND MEXICAN GOVERNMENTS

In May 2019, DHS acknowledged in a letter to NGOs that it had collaborated with Mexican authorities in its surveillance operation and criminal investigation targeting human rights defenders along the US–Mexico border. According to DHS files leaked to the media, the surveillance operation was conducted as part of a bi-national program, called "OASSIS," under which US and Mexican law enforcement agencies share intelligence on border smuggling criminal investigations in real time.

In public, Mexican authorities have denied any involvement in politically motivated surveillance or restrictions against human rights defenders. Yet in the midst of harassing, threatening, or detaining human rights defenders, Mexican authorities have also indicated they were doing so at the behest of their US counterparts.

> ***"ALL OUR VOLUNTEERS STARTED GETTING HARASSED. [MEXICAN AUTHORITIES] TOLD US, 'CBP KEEPS YELLING AT US FOR THE WORK YOU'RE DOING, AND IT NEEDS TO STOP.'"***
>
> *Luis Guerra, volunteer coordinator with the NGO Al Otro Lado in Tijuana.*

For their part, Mexican immigration and law enforcement officials have investigated, conducted surveillance against, and threatened human rights defenders supporting asylum seekers in the border region. Authorities also denied several US nationals entry into Mexico, apparently based on politically motivated migratory alerts by US authorities.

In an alarming escalation in June 2019, Mexican authorities arrested two prominent migrant human rights defenders in Mexico, on criminal charges of "human smuggling." The arrests occurred a day prior to a US–Mexico agreement to further restrict the migration of asylum seekers through Mexico, and were referred to by the US government as one of the justifications for the agreement, under which the Trump administration lifted its threats of punitive tariffs against Mexico. One of the two human rights defenders arrested was a prime target of the unlawful surveillance operation by US authorities.

1.4 KEY RECOMMENDATIONS

RECOMMENDATIONS TO US CONGRESS:

- Adopt measures reaffirming the right of every person, individually or in association with others, to defend and promote human rights in accordance with the UN Declaration on Human Rights Defenders.
- Hold public hearings on the apparently politically-motivated surveillance operations and criminal investigations against migrant human rights defenders (including both US and non-US nationals) in the US–Mexico border region.
- Increase oversight of DHS and DOJ in order to prevent them from misusing the US criminal justice system to target human rights defenders (including activists, lawyers, journalists, humanitarian volunteers, or others defending human rights), on the basis of their protected views and speech.
- Amend 8 U.S.C. §1324(a) to include a "humanitarian exemption" clause, barring prosecution under crimes enumerated therein, for the provision of humanitarian assistance.
- Adopt measures requiring authorities to obtain warrants before engaging in searches of electronic devices at international boundaries, including by amending 8 U.S.C. §1357(c).

RECOMMENDATIONS TO DHS:

- Adopt and implement exemptions from criminal investigation, or referral for prosecution, for the provision of humanitarian assistance and other voluntary support to people in need.
- Halt any intimidation, harassment or stigmatization of humanitarian aid volunteers who are providing life-saving assistance to people in need.
- Halt issuing migratory alerts, in order to undermine the work of migrant human rights defenders.
- Reaffirm publicly that DHS personnel are prohibited from discriminatorily enforcing customs and immigration law, in a fashion that undermines freedom of speech, equal protection under the law, or other protected civil liberties.
- Refrain from collaborating with Mexican law enforcement on surveillance operations against human rights defenders, without a warrant based on probable cause for any criminal wrongdoing.
- Issue guidance to DHS personnel on smuggling crimes (including under 8 U.S.C. §1324(a)), in order to ensure they are not inappropriately used to target individuals based on their views and speech, or their corresponding humanitarian and human rights-related activities.

RECOMMENDATIONS TO US DEPARTMENT OF JUSTICE:

- Adopt as policy a "humanitarian exemption" from criminal prosecution related to "smuggling" and "harboring" charges, including in all situations involving the provision of humanitarian aid.
- Halt any and all prosecutions of humanitarian action, including under criminal charges emanating from 8 U.S.C. §1324.
- Issue guidance to DOJ personnel on smuggling crimes (including under 8 U.S.C. §1324(a)), in order to ensure they are not inappropriately used to target individuals based on their views and speech, or their corresponding humanitarian and human rights-related activities.
- Initiate an investigation by the DOJ Office of the Inspector General, in order to determine whether DOJ brought criminal charges against human rights defenders in violation of their protected views and speech.

RECOMMENDATIONS TO THE GOVERNMENT OF MEXICO:

- Adopt measures reaffirming the right of every person, individually or in association with others, to defend and promote human rights in accordance with the UN Declaration on Human Rights Defenders.
- Refrain from targeting any individuals for law enforcement on the basis of their human rights activism and humanitarian work.
- Decline any politically motivated requests from the US or other governments for surveillance, travel restrictions, or other discriminatory and unlawful measures violating the rights and freedoms of human rights defenders.
- Increase transparency and oversight of the National Center for Alerts, in order to prevent arbitrary or abusive restrictions of freedom of movement.
- Protect migrant human rights defenders from intimidation, threats and attacks by state or non-state actors.

1.5 METHODOLOGY

In its research for this report, Amnesty International conducted visits to both sides of the US–Mexico border, and conducted interviews with 23 human rights defenders, primarily from January to June 2019. Of those 23 human rights defenders, 17 were activists and volunteers with 10 non-governmental organizations (NGOs); four were lawyers with two NGOs; one was a journalist; and one was a clergy member. One of the interviewees worked for Amnesty International. All of those human rights defenders were selected for interview since they believed they were subjected to restrictions on account of their views, speech, and/or activities related to the situations of migrants and asylum seekers on the US–Mexico border. Several of the interviews were conducted immediately following abuses against the interviewees, including discriminatory travel restrictions. All of the interviewees were US citizens or dual citizens of the US and Mexico, with the exception of the Amnesty International staff member who was from Europe.

From January to May 2019, Amnesty International submitted several written requests to US and Mexican authorities for clarification and comment on the apparent targeting of human rights defenders for administrative restrictions and law enforcement actions. Among those engaged were the US Department of Homeland Security (DHS), the US Department of Justice (DOJ), the US Department of State, and the Mexican immigration agency (INM). None of those authorities provided substantive responses to Amnesty International on the legal bases for the restrictions against human rights defenders that are detailed in this report. DHS personnel with whom Amnesty International met and/or spoke included representatives of: US Customs and Border Protection (CBP); Immigration and Customs Enforcement (ICE); ICE Homeland Security Investigations (HSI); and internal oversight mechanisms including DHS's Office of the Inspector General (OIG), DHS's Office for Civil Rights and Civil Liberties (CRCL), and CBP's Office of Professional Responsibility (OPR).

Amnesty International reviewed a wide range of primary legal sources, including: national and international legal standards; DHS and DOJ policies and memoranda; federal court filings in multiple criminal cases against human rights defenders; and court decisions related to relevant case law. Amnesty International also reviewed official statements and correspondence by DHS regarding its surveillance of human rights defenders; images of HSI surveillance files on human rights defenders; and photographs of border and immigration forms provided by authorities to human rights defenders during their unlawful search and seizure by DHS.

Additionally, Amnesty International reviewed statements and correspondence by Special Procedures of the United Nations (UN) Human Rights Council, in relation to the US government's criminalization of human rights defenders' activities; as well as complaints submitted by human rights defenders to the Inter-American Commission on Human Rights (IACHR), Mexico's National Commission on Human Rights (CNDH), and DHS complaint mechanisms (CRCL and OPR), regarding intimidation, threats, harassment, restrictions, and failures of authorities to adopt adequate protective measures in response to threats of violence against them by non-state actors. Amnesty International also reviewed screenshots of death threats and other online harassment received by human rights defenders.

2. 'VIGOROUS ENFORCEMENT': US AUTHORITIES THREATEN TO PROSECUTE HUMAN RIGHTS DEFENDERS FOR 'HUMAN SMUGGLING'

Under President Trump, the US government has adopted border and asylum policies that violated the rights of thousands of migrants and asylum seekers on the US–Mexico border.[1] The Trump administration has sought to vilify asylum seekers, by suggesting they are criminals attempting to unlawfully enter the USA, despite the fact that US law provides all foreign nationals with the right to request asylum in the USA, even if they enter irregularly.[2]

In April 2018, as the Trump administration adopted increasingly egregious and unlawful asylum policies, it took a dangerous turn in both its xenophobic rhetoric toward refugees, and its efforts to criminalize the lawful and constitutionally protected activities of human rights defenders[3] advocating on their behalf. As a group of approximately 150 asylum seekers arrived at the US–Mexico border to request protection, both DHS and DOJ issued public statements suggesting that the lawyers and humanitarian volunteers supporting the asylum seekers were engaging in fraud and human smuggling, and threatened to criminally prosecute them for those offenses.[4]

The threats were real. The US Attorney General in April 2017 had instructed DOJ federal prosecutors to "vigorously" prosecute crimes related to smuggling migrants.[5] Among those criminal offenses were "encouraging" or "inducing" migrants to come to or enter the USA unlawfully,[6] under which human rights defenders could be prosecuted not only for providing legal advice and other protected speech, but also "providing transportation or travel assistance on a leg of the journey to the United States," even if the migrants never actually entered the country.[7]

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1. Those policies included the illegal turning away of asylum seekers from official border crossings ("metering"), which pushed some refugees to cross the border irregularly to request asylum protections. In parallel, the Trump administration implemented its unlawful policy of family separations against thousands of migrants and asylum seekers who crossed the border irregularly. See, Amnesty International report, *USA: 'You Don't Have Any Rights Here': Illegal Pushbacks, Arbitrary Detention, and Ill-treatment of Asylum-seekers in the United States (October 2018),* available at: https://www.amnesty.org/en/latest/research/2018/10/usa-treatment-of-asylum-seekers-southern-border/.
2. See, 8 U.S.C. §1158–Asylum: https://www.law.cornell.edu/uscode/text/8/1158. In November 2018, the Trump administration sought to revoke the right to seek asylum of anyone who crosses irregularly, but its interim rule was enjoined by a federal court. See, Interim Final Rule, "Aliens Subject to a Bar on Entry Under Certain Presidential Proclamations; Procedures for Protection Claims"; Federal Register (Vol. 83, No. 218; November 9, 2018), Rules and Regulations; at pp. 55934, et seq.: https://www.justice.gov/eoir/page/file/1109731/download.
3. The UN Declaration on Human Rights Defenders, which both the US and Mexican governments have adopted, defines human rights defenders as all those who act "individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms" at the local, national, regional and international levels, without discrimination and by peaceful means. See, Resolution adopted by the United Nations General Assembly A/RES/53/144, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on HRDs), Art. 2.1, 1999, https://www.ohchr.org/Documents/Issues/Defenders/Declaration/declaration.pdf.
4. See: DOJ statement, "Attorney General Jeff Sessions Statement on Central American 'Caravan'" (April 23, 2018; available at: https://www.justice.gov/opa/pr/attorney-general-jeff-sessions-statement-central-american-caravan); DHS statement, "Secretary Nielsen Statement on Arrival of Central American 'Caravan'" (25 April 2018; available at: https://www.dhs.gov/news/2018/04/25/secretary-nielsen-statement-arrival-central-american-caravan); and DHS statement, "Secretary Kirstjen M. Nielsen Statement on Central American 'Caravan'" (23 April 2018; available at: https://www.dhs.gov/news/2018/04/23/secretary-kirstjen-m-nielsen-statementcentral-american-caravan).
5. See, US Attorney General, "Memorandum for All Federal Prosecutors: Renewed Commitment to Criminal Immigration Enforcement" (April 11, 2017), available at: https://www.justice.gov/opa/press-release/file/956841/download.
6. See 8 U.S.C. §1324(a) – "Bringing in and harboring certain aliens," available at: https://www.law.cornell.edu/uscode/text/8/1324. See also, DOJ Criminal Resource Manual, available at: https://www.justice.gov/jm/criminal-resource-manual-1907-title-8-usc-1324a-offenses.
7. See, United States Attorneys' *Bulletin*, "Prosecuting Criminal Immigration Offenses" (July 2017; Volume 65, Number 4), at pp. 87–88: https://www.justice.gov/usao/page/file/986131/download.

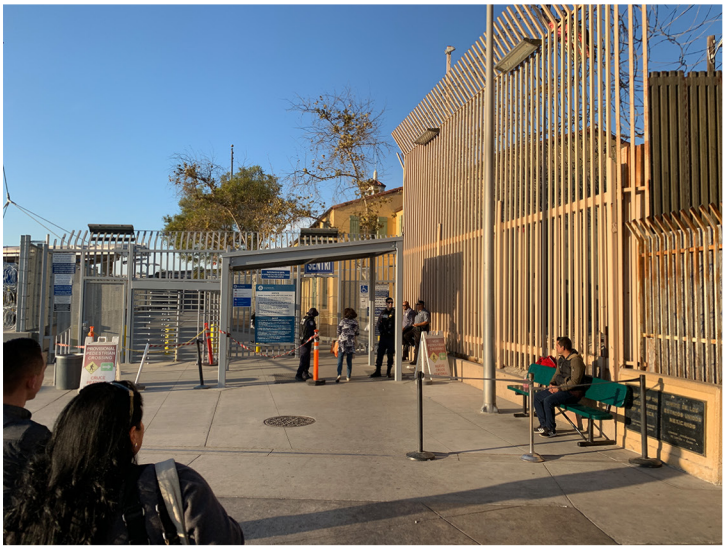
While the overall rate of criminal prosecutions on smuggling charges has increased only moderately since the Attorney General's April 2017 memorandum,[8] the Trump administration has more frequently investigated and prosecuted human rights defenders under charges of smuggling, including to deter their lawful activities.

In November 2018, the Trump administration intensified its targeting of human rights defenders under a DHS operation called "Operation Secure Line."[9] The operation was launched the week before the arrival of a caravan of several thousand Central American migrants, refugees and asylum seekers in Tijuana, Mexico at the US–Mexico border.

Under Operation Secure Line, DHS implemented a surveillance campaign and criminal investigation that targeted, among others, human rights defenders engaged in providing legal and humanitarian assistance to members of the caravan, as well as journalists who were reporting on their situation.[10]

Just as the caravan arrived in Tijuana, a US federal court blocked a newly announced Trump administration policy that would disqualify refugees from asylum protection if they crossed irregularly into the United States after being turned away by DHS at official border crossings. In the hours that followed, DHS further militarized the San Ysidro Port of Entry in San Diego, California, erecting cement barricades and concertina barbed wire, in order to prevent asylum seekers from reaching US territory and lawfully requesting protection.[11]

In tandem, under Operation Secure Line, DHS launched its criminal investigation of attorneys and activists who informed those asylum seekers of their right to seek asylum, or provided them with humanitarian assistance in Mexico, as US authorities turned them away at official border crossings.





The above photos show a before-and-after view from the Mexico side of a pedestrian crossing at the San Ysidro Port of Entry on the US–Mexico border, in San Diego, California. Overnight on 19-20 November 2018, DHS militarized the official border crossing with barbed wire and riot police, after a federal judge imposed a preliminary injunction on a new Trump administration policy to unlawfully deny people access to asylum procedures if they crossed the border irregularly. (Amnesty International, 18 and 20 November 2018.)

8. According to TRAC records on the monthly numbers of criminal prosecutions under 8 U.S.C. §1324, the average rate of prosecutions has been only 12.5 percent higher from May 2017 to February 2019 than the three months prior to the Attorney General's memo. Available at: https://tracfed.syr.edu/results/9x705ab2e55032.html.
9. See, CBP statement, "As Migrant Caravan Continues Toward U.S. Border, CBP Partners with DoD to Secure the Line" (6 November 2018), available at: https://www.cbp.gov/newsroom/spotlights/migrant-caravan-continues-toward-us-border-cbp-partners-dod-secure-line.
10. For details of the surveillance operation and related investigations, see Section 3 below.
11. See, Amnesty International statement, "US government endangers asylum seekers with unlawful policies" (26 November 2018); available at: https://www.amnesty.org/en/latest/news/2018/11/americas-us-government-endangers-asylum-seekers-with-unlawful-policies/.

3. ‘WE’RE NOT AN INTELLIGENCE AGENCY’: DHS SURVEILLANCE AND INVESTIGATION OF HUMAN RIGHTS DEFENDERS

In late December 2018, human rights defenders began to alert Amnesty International that DHS personnel were subjecting them to apparently politically motivated “secondary inspections,” including lengthy detentions, interrogations, and invasive searches of their electronic devices at ports of entry on the US–Mexico border. [12]

CBP had begun systematically abusing its authority to conduct warrantless “secondary inspections,” in order to snare dozens of human rights defenders in a criminal dragnet, without any apparent reasonable suspicion of wrongdoing by those being targeted. In January 2019, DHS escalated that surveillance operation by imposing serious travel restrictions against three attorneys with Al Otro Lado, the leading legal services provider for asylum seekers in Tijuana.[13]

As media reporting and outrage grew in response to the targeting of lawyers, activists and journalists by DHS agencies,[14] a DHS official leaked to news media screenshots of a surveillance watch list and dossiers that DHS had created to track those human rights defenders.[15]

“We are a criminal investigation agency, we’re not an intelligence agency,” said the DHS official who leaked evidence of the intelligence operation to the news outlet that broke the story.[16] Leaked email correspondence from the DHS agency Homeland Security Investigations (HSI) also confirmed the targeting and criminal investigation of migrant human rights defenders under DHS’s dragnet operation.[17]

12. See, Amnesty International USA, “Amnesty Response to Reports of Surveillance on Journalists and Immigration Advocates on the US-Mexico Border” (7 March 2019), available at: https://www.amnestyusa.org/press-releases/amnesty-response-to-reports-of-surveillance-on-journalists-and-immigration-advocates-on-the-us-mexico-border/.
13. See, Section 6 below.
14. *The Intercept*, “Journalists, Lawyers, and Activists Working on the Border Face Coordinated Harassment from U.S. and Mexican Authorities” (8 February 2019), https://theintercept.com/2019/02/08/us-mexico-border-journalists-harassment/. *San Diego Union Tribune*, “Volunteers, activists, journalists interrogated at border about caravan” (11 February 2019): https://www.sandiegouniontribune.com/news/immigration/sd-me-secondary-searches-migrant-caravan-20190211-story.html. National Public Radio, “Journalists, Lawyers, Volunteers Face Increased Scrutiny By Border Agents,” (15 February 2019): https://www.npr.org/2019/02/15/695164916/journalists-lawyers-volunteers-face-increased-scrutiny-by-border-agents.
15. See, NBC-7 Investigates, “Source: Leaked Documents Show the U.S. Government Tracking Journalists and Immigration Advocates Through a Secret Database” (6 March 2019), available at: https://www.nbcsandiego.com/investigations/Source-Leaked-Documents-Show-the-US-Government-Tracking-Journalists-and-Advocates-Through-a-Secret-Database-506783231.html.
16. Ibid.
17. See, NBC-7 Investigates, “Leaked Email Reveals How Federal Agents Used Confidential Sources and Informants to Gather Information about Migrant Caravan” (8 March 2019), available at: https://www.nbcsandiego.com/investigations/Blumenthal-Grave-Concerns-Over-Border-Surveillance-Documents-506892591.html.



Selected images of human rights defenders included on DHS's surveillance watch list, who spoke with Amnesty International about their experiences. The images have been modified and re-ordered for clarity. (Courtesy of NBC-7 Investigates.)

The surveillance files revealed that DHS had targeted at least 59 individuals, including activists, journalists and lawyers among others in the San Diego region, based on their supposed contact with migrants and asylum seekers in the caravan.[18] Amnesty International interviewed 10 human rights defenders among the 27 individuals who were publicly identified as being on the watch list, as well as nine other human rights defenders who faced similar restrictions, yet whose names were not on the leaked watch list.

Amnesty International also spoke with the executive director of an NGO that had three of its staff questioned and searched in "secondary inspections" by CBP, at three ports of entry in Arizona and Texas during November and December 2018.[19] News media reported additional such stops and searches of migrant human rights defenders in Texas, including searches of their electronic devices, during December 2018 and January 2019.[20] As those individuals were not included on DHS's San Diego Sector watch list, the instances raised questions as to whether other DHS areas of operation on the US–Mexico border maintained analogous watch lists, or were otherwise profiling migrant human rights defenders based on their protected views, speech and activities.

From February to June 2019, Amnesty International repeatedly engaged US authorities to request they provide further information on the legal basis for the apparently politically motivated surveillance operation and investigations targeting migrant human rights defenders.[21]

18. According to the news outlet that broke the story, the watch list of 59 individuals included approximately 10 journalists, three lawyers, and numerous activists, among others with unknown affiliation. See above at n. 15.
19. Phone conversation with Allegra Love, executive director of Santa Fe Dreamers Project, 22 March 2019. Written submission received from Ms. Love on 27 March 2019.
20. See, NBC News, "More lawyers, reporter stopped and questioned at border by U.S. officials" (17 March 2019): https://www.nbcnews.com/politics/immigration/more-lawyers-reporter-stopped-questioned-border-u-s-officials-n984256.
21. In February 2019, Amnesty International contacted the public affairs officers of DHS, DOJ and the US Department of State, and none of them would provide comment on any aspect of the legal harassment of human rights defenders, including its legal justification or whether there were any elements of public reporting with which they disagreed. In an in-person meeting with DHS leadership and representatives of CBP at CBP's headquarters, the officials declined to respond to any questions in person, and requested that all questions be submitted in writing. Amnesty International submitted the questions in writing in February 2019, and the DHS Office of Civil Rights and Civil Liberties was appointed to coordinate DHS agencies' responses. Amnesty International followed up on multiple occasions to renew its requests for responses, but as of 24 June 2019 had still not received one.

As of 24 June 2019, they had not formally responded to any of Amnesty International's written questions.

Following news reports of its intelligence operation against human rights defenders, DHS initially claimed that it was tracking individuals who participated in or witnessed a violent confrontation on 25 November 2018 at the US–Mexico border, during which CBP fired teargas into a crowd of asylum seekers on Mexican territory, some of whom had tried to cross irregularly into the United States.[22]

Yet several of those on the watch list informed Amnesty International they were not present during the incident. A freelance photojournalist on the watch list, Ariana Drehsler, told Amnesty International she was questioned by CBP twice, in relation to tear gas incidents in November and January, but she was not present at either incident.

> *"I wasn't there on November 25. I was on a flight from London to Los Angeles, after visiting family. I checked the internet and saw that it had happened. I was really frustrated that CBP said that the November incidents were why they were interested in us – in response to the NBC story – since that's already a lie. I told them that I thought it was really unfair that they were focusing on the migrants."*[23]



On 25 November 2018, journalists flee with their equipment as US border authorities at the San Ysidro Port of Entry in San Diego fire teargas into Tijuana, in order to prevent asylum seekers from crossing irregularly into the USA to request protection. © Jeff Valenzuela

22. See, NBC-7 Investigates, "Source: Leaked Documents Show the U.S. Government Tracking Journalists and Immigration Advocates Through a Secret Database" (6 March 2019), available at: https://www.nbcsandiego.com/investigations/Source-Leaked-Documents-Show-the-US-Government-Tracking-Journalists-and-Advocates-Through-a-Secret-Database-506783231.html.
23. Phone interview with Ariana Drehsler, on 14 March 2019.

On 9 May 2019, however, CBP issued a letter that for the first time stated the supposed legal basis for its surveillance operation against human rights defenders interacting with asylum seekers. CBP confirmed it was "investigating possible violations under 8 U.S.C. §1324, which pertains to any person who 'encourages' or 'induces' an alien to enter the United States, knowing or in reckless disregard that they are doing so in violation of law."[24]

The subsection[25] of the law on "human smuggling" cited by CBP as a basis for its surveillance campaign and criminal investigation was struck down as unconstitutional by the Ninth Circuit Court of Appeals on 4 December 2018, weeks before CBP intensified its border restrictions against human rights defenders. Yet as the DOJ appeals to the US Supreme Court, the Ninth Circuit has agreed to delay the implementation of its decision, which would have otherwise prohibited CBP's application and investigation of those criminal charges in the western United States, including in the border states of California and Arizona.

The court specifically found that the law's subsection on "encouraging" or "inducing" unlawful immigration "criminalizes a substantial amount of protected expression," including "both speech and conduct," such that "it is unconstitutionally overbroad in violation of the First Amendment." Moreover, the court observed that "the chilling effect of Subsection (iv) is both real and substantial," and that "the government has already shown its intent to prosecute those citizens (attorneys or sympathetic lay persons) who give even general immigration advice."[26]

Yet even after the federal court found that the Trump administration's criminalization of protected speech was in violation of the US Constitution, DHS nonetheless intensified its politically motivated intelligence operation and criminal investigations of migrant human rights defenders, in coordination with Mexican authorities.



Cover sheet of the leaked DHS intelligence files on surveillance of human rights defenders, with a logo for the joint US-Mexico law enforcement operation, 'OASISS' (dated 09 January 2019, courtesy of NBC-7 Investigates).

24. See CBP letter to Center for Democracy and Technology (9 May 2019), available at: https://www.documentcloud.org/documents/6009352-CBP-Response-to-DHS-Coalition-Letter.html.
25. See 8 U.S.C. §1324(a)(1)(A)(iv), at n. 6 above.
26. Opinion of the US Court of Appeals for the Ninth Circuit (4 December 2018), *USA v. Evelyn Sineneng-Smith*; No. 15-10614; D.C. No. CR 10-414 RMW.

3.1 MEXICAN COOPERATION WITH US AUTHORITIES ON RESTRICTIONS AGAINST MIGRANT HUMAN RIGHTS DEFENDERS

The cover sheet of the DHS surveillance watch list, which was leaked to news media in March 2019, indicated that DHS was conducting its surveillance operation against migrant human rights defenders under a bi-national law enforcement operation of US and Mexican authorities, called OASISS (the Operation Against Smugglers Initiative on Safety and Security).

In its May 2019 letter to NGOs, DHS further confirmed that the surveillance operation targeting human rights defenders was part of a joint law enforcement investigation by US and Mexican authorities into potential human smuggling.

Raising serious concerns about the two governments' intentions, the OASISS program under which CBP operated its surveillance campaign against human rights defenders is an international law enforcement initiative designed to prosecute human smugglers and transnational criminal organizations.[27] Created and funded under the Merida Initiative in 2005, the OASISS program allows Mexican and US law enforcement agencies to share real-time information on human smuggling investigations along the US–Mexico border, with a view toward the transfer of accused smugglers to Mexican custody for their prosecution in Mexican courts.

In stark contrast to its use in recent months, Mexico's Secretariat of the Interior (SEGOB) designated its implementation of the OASISS initiative from 2014 to 2018 as a program activity to increase protection and access to justice for migrant human rights defenders, as well as for the migrants whose rights they defend.

Under its "Special Operation on Migration for 2014 to 2018," SEGOB described the objective of its OASISS initiative to be for Mexico's attorney general (FGR, formerly PGR) and immigration agency (INM) to cooperate with DHS agencies in order to:

1. "Strengthen access to justice and safety of migrants, their relatives, and those who defend their rights"; and to
2. "Provide information, effective assistance and protection to migrant people, human rights defenders, and victims of crime."[28]

Instead of protecting human rights defenders, INM appears to have collaborated with DHS under the OASISS program to surveil defenders and restrict their freedom of movement, apparently based on travel warnings issued by the US government, under its politically motivated criminal investigation of migrant human rights defenders on smuggling charges.[29]

In an alarming escalation on 5 June 2019, Mexican authorities arrested and detained two prominent migrant human rights defenders in Mexico – Irineo Mujica and Cristobal Sanchez – on criminal charges of "human smuggling."[30] The arrests came a day prior to a US–Mexico agreement to restrict the migration of asylum seekers through Mexico, and were referred to by the US government as one of the justifications for its lifting of threats of punitive tariffs against Mexico.[31] Mr. Mujica, a dual US and Mexican citizen, is the Mexico director of the NGO Pueblo Sin Fronteras, which supported several caravans of asylum seekers in their journeys to the US–Mexico border. Mr. Mujica was a prime target of the unlawful surveillance operation by US authorities against migrant human rights defenders. On 12 June, a Mexican court ordered authorities to release the two defenders due to lack of evidence, after their week-long detention. Mexico's Attorney General immediately indicated its intention to appeal the decision, and further renew its cases against the human rights defenders.[32]

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27. See, Hearing before the Subcommittee on border, maritime, and global counterterrorism of the Committee on Homeland Security of the House of Representatives (22 July 2010). Available at: https://www.govinfo.gov/content/pkg/CHRG-111hhrg64702/html/CHRG-111hhrg64702.htm; and see, House Committee on Homeland Security hearing, "The Merida Initiative: Examining United States Efforts to Combat Transnational Criminal Organizations" (5 June 2008), available at: https://www.govinfo.gov/content/pkg/CHRG-110hhrg44011/html/CHRG-110hhrg44011.htm. See also, Frank Alvarado, US Supervisory Border Patrol Agent (CBP San Diego Sector), "Measuring an Intelligence Led Agency" (August 2016). Available at: https://frankalvaradojr.weebly.com/uploads/2/0/7/1/20717782/final_measuring_an_intelligence_led_agency.pdf.
28. See, SEGOB, "Programa Especial de Migración 2014-2018: Acciones Relevantes a Realizar en 2018" (March 2018). Available at: https://www.gobernacion.gob.mx/work/models/SEGOB/Resource/2587/1/images/Acciones _2018_PEM.PDF.
29. See, Section 6 below.
30. See, Animal Politico, "Irineo Mujica se ofreció a colaborar con la Fiscalía y testificar dos meses antes de ser detenido" (10 June 2019), available at: https://www.animalpolitico.com/2019/06/irineo-mujica-testificar-fiscalia-detencion/a-detencion/.
31. See, US Department of State, "US–Mexico Joint Declaration" (dated 7 June 2019), available at: https://www.state.gov/u-s-mexico-joint-declaration. The declaration noted, on the day following the arrests: "Mexico is also taking decisive action to dismantle human smuggling and trafficking organizations as well as their illicit financial and transportation networks."
32. See, Fiscalia General de la Republica (FGR), Comunicado FGR 288/19, Tapachula, Chiapas (dated 12 June 2019), available at: https://www.gob.mx/fgr/prensa/comunicado-fgr-288-19-la-fiscalia-general-de-la-republica-informa.

4. 'THE FOURTH AMENDMENT DOESN'T APPLY': DHS CRIMINAL DRAGNET VIOLATED CIVIL LIBERTIES OF HUMAN RIGHTS DEFENDERS

4.1 BORDER PROTECTIONS OF CIVIL LIBERTIES UNDER US LAW AND POLICY

Beyond the apparent illegality of DHS's criminal investigation, the DHS surveillance campaign also violated the civil liberties of human rights defenders who were not under criminal investigation.

While CBP has authority to conduct enhanced searches of travelers without criminal suspicion or warrants at international borders, it is strictly prohibited under the US Constitution[33] and DHS policies[34] from targeting individuals for selective enforcement of the law due to their protected views or expression.

DHS personnel are moreover prohibited from conducting warrantless and "suspicionless" border searches and seizures – including of electronic devices[35] – that are based on discriminatory grounds, and would thereby unlawfully restrict freedom of speech, due process of law, and the right to privacy.[36] The legality of CBP's searching of electronic devices, in general, is also currently being challenged in federal court.[37]

By targeting activists, lawyers and journalists in relation to their protected views and speech, DHS specifically violated the US Constitution's First Amendment, guaranteeing freedom of speech and the press; and the Fourteenth Amendment, which guarantees equal protection under the law, without discrimination.

Additionally, due to the discriminatory motivation of those human rights violations, authorities have arguably committed illegal searches and seizures in violation of the Fourth Amendment to the US Constitution, guaranteeing the right to privacy. In a letter sent to the Acting Secretary of DHS on 10 May 2019, four US Senators also raised concerns that DHS's surveillance operation may have violated the Privacy Act of 1974.[38]

Any time the intention of border searches and seizures is discriminatory, and is to limit freedom of expression or other civil liberties based on political or other opinion, then it is not in conformity with international law, US law, or DHS policy.

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33. See, the First and Fourteenth Amendments to the US Constitution.
34. See, CBP Directive No. 2130-021, "Roles and Responsibilities of U.S. Customs and Border Protection Component Offices and Employees Regarding Civil Rights and Civil Liberties Matters" (3 June 2011), at Sections 2, 5.1, and 6.6. Available at: https://www.cbp.gov/sites/default/files/documents/cbp-directive-2130-021.pdf.
35. CBP's updated policy on border searches of electronic devices notably does not exempt the agency from legally binding civil liberties protections. See, CBP Directive No. 3340-049A, "Border Search of Electronic Devices" (4 January 2018), available at: https://www.dhs.gov/sites/default/files/publications/CBP%20Directive%203340-049A_Border-Search-of-Electronic-Media.pdf.
36. In a civil rights impact assessment on DHS agencies' use of their search authority at borders, DHS's Office for Civil Rights and Civil Liberties (CRCL) specifically notes that CBP cannot discriminate in its application of suspicionless and warrantless searches, observing: "it is generally impermissible for officers to discriminate against travellers," and mechanisms exist for travelers to issue complaints regarding, "questioning or treatment during screening that was abusive or coercive; and that a search of his/her person violated freedom of speech or press." Moreover the CRCL observed that: "The traveling public is entitled to cross our borders without Fourth and First Amendment violations or invidious discrimination on the basis of […] protected characteristic[s]." See, CRCL, "Civil Rights/Civil Liberties: Impact Assessment Border Searches of Electronic Devices" (29 December 2011), available at: https://www.dhs.gov/sites/default/files/publications/crcl-border-search-impact-assessment_06-03-13_1.pdf.
37. See, ACLU case page for *Alasaad v. Nielsen*, available at: https://www.aclu.org/cases/alasaad-v-nielsen-challenge-warrantless-phone-and-laptop-searches-us-border.
38. Available at: https://www.tomudall.senate.gov/imo/media/doc/CBP Surveillance letter signed[2][3].pdf.

4.2 UNLAWFUL SEARCHES AND SEIZURES WITHOUT REASONABLE SUSPICION

By using the US–Mexico border as a dragnet, DHS unlawfully exploited reduced protections for travelers' civil rights, in order to unreasonably detain, search, and interrogate human rights defenders who were advocating for the rights of migrants and asylum seekers in Mexico.

As a prime target, the Trump administration sought to collect compromising intelligence on members of the NGO Pueblo Sin Fronteras, who had publicly advocated for the rights of asylum seekers in the November 2018 caravan, as well as in three smaller caravans earlier in 2018 and 2017.

Amnesty International interviewed four of the nine members of Pueblo Sin Fronteras who were included on DHS's surveillance watch list, as well as two members of the humanitarian aid group Border Angels who were included on the list. All six of them described being detained while crossing the US–Mexico border between December 2018 and May 2019, for periods ranging from one to six hours. In some cases, DHS detained and interrogated them every time they crossed the border during those months.

During their interrogations, DHS officers asked them a wide range of questions, which appeared simultaneously to be unaware of why asylum seekers were actually requesting protection at the US border, and to be feeding into a concocted criminal investigation to support prosecution on charges of human smuggling and asylum fraud.

Among the questions DHS officers asked migrant human rights defenders were: Where did they get their income? Did they own their own homes? Were they paying migrants to cross the border illegally? Were they being paid by migrants and asylum seekers in Mexico to help them? Had they provided transportation or shelter to any migrants or other activists in Mexico? How well did they know the directors of Pueblo Sin Fronteras? Who were the immigration attorneys representing asylum seekers in Tijuana?

Most alarmingly, DHS officers repeatedly asked the human rights defenders leading questions, which framed their legitimate human rights-related advocacy or support as potentially "encouraging" or "inducing" asylum seekers to cross irregularly into the USA.

In some instances, the DHS officers sought to frame the "secondary inspections" of activists as routine exercises under CBP's legal authority to conduct searches and seizures of any travelers crossing the border, without warrants or reasonable suspicion. Yet at the same time, they specifically contextualized their questions as being part of an ongoing criminal investigation of human smuggling by those in contact with migrants and asylum seekers in Mexico.

On 2 January, DHS officers asked David Abud, a volunteer with Pueblo Sin Fronteras, questions that appeared to be trying to entrap him:

> *"All they asked suggested to me they were trying to build a case that I was coaching immigrants on how to get into the US irregularly. They asked me questions about, 'How are people getting into the US? What if they can't get into the US through ports of entry? What do they do?' And they did ask, 'What kind of 'coaching' do you provide?' […] Anything I did in Tijuana was to advise people about their rights. So they asked, 'What kind of things do you advise them to do? What do you tell them? What are people's rights?'"*[39]

39. Phone interview with David Abud, 8 January 2019.

Another human rights defender on DHS's watch list, who requested anonymity, told Amnesty International that the DHS officers held and questioned her for several hours in January 2019. They did not inform her of the legal basis for her questioning, despite her asking several times. Yet their questions quickly turned into a criminal inquiry:

> *"The line of questions helped me to understand what they were investigating. […] They asked, 'Whom did you speak with? Did you coach people to lie so that they can get through our system?' […] They wanted more information about what's going on with the caravan and 'groups that might be helping people to cross illegally.' I came back on that very hard, and said of course we are not encouraging anyone to do anything but know their rights, and I assume you would want them to know them. […] I do think these intimidation tactics are really awful. Absolutely a big piece of it is to make the crossing of the border so difficult that they get to control the narrative."*

CBP officers at the Mexicali Port of Entry in Calexico, California detained Hugo Castro, a board member of the humanitarian NGO Border Angels, for almost six hours on 20 December when he was traveling to California for a medical appointment. During his protracted detention in "secondary inspection," CBP's supervisor at the port of entry informed him that he and other migrant human rights defenders in Mexico were under investigation (a fact later confirmed by his presence on DHS's surveillance watch list):

> *"He said again that I was under investigation, because many people were under investigation in relation to the migrant caravan. He said that the government wanted to know what was going on with the caravan. He asked me how I was getting money, and if I was getting money from the migrants. I just laughed, and said, 'What, you think I am a coyote or something like that?' And he said, 'No I'm just asking.' […] He asked if I knew that there were members of the maras who had infiltrated the shelters, and I told him all I could see was that people were hungry and needed food. […] They said they wanted to know if it was a plan that was specially designed to move Central Americans to the border."*[40]

After prolonged detention, questioning, and being forced to submit to an "advanced search" of his mobile phone without any apparent reasonable suspicion of wrongdoing, Mr. Castro said CBP officers asked him to become an informant for the US government.[41] He said he immediately declined and documented the incident in a video commentary he posted on Facebook as he left the port of entry.[42]

A leaked internal DHS email from 1 December 2018, which news media published in March 2019, revealed that Homeland Security Investigations had indeed instructed DHS personnel on the California border to recruit informants in order to identify any connections between "the migrants, the caravan and its leaders, and any criminal or cartel related actions concerning migrants or the caravan."[43]



Shelter for asylum seekers who arrived with the migrant caravan at the Benito Juarez Sports Center in Tijuana, Mexico. (Amnesty International, 18 November 2018).

40. Phone interview with Hugo Castro, 9 January 2019.
41. Ibid.
42. See the 20 December 2018 video commentary by Hugo Castro, posted on his Facebook page at: https://www.facebook.com/hugoicastrov/videos/10217580533327851/.
43. The leaked email instruction specifically directed DHS personnel to use informants and other sources of information to increase their "intelligence collection efforts" in those regards. See, NBC-7 Investigates, "Leaked Email Reveals How Federal Agents Used Confidential Sources and Informants to Gather Information about Migrant Caravan" (8 March 2019), available at: https://www.nbcsandiego.com/investigations/Blumenthal-Grave-Concerns-Over-Border-Surveillance-Documents-506892591.html. See also, NBC News, "Feds have paid undercover informants in migrant caravan" (20 November 2019), available at: https://www.nbcnews.com/politics/immigration/feds-have-paid-undercover-informants-migrant-caravan-n938416.

On 24 December 2018, CBP officers at the San Ysidro Port of Entry in California detained James Cordero, a volunteer with Border Angels, for two-and-a-half hours in "secondary inspection." He was just returning from delivering Christmas toys to children in migrant shelters in Tijuana. The officers interrogated him about his volunteer activities, and the situations in the shelters.

> *"They asked about the shelter in El Barretal [a complex in Tijuana], and what I thought about what would happen if there were an uprising. I told them I don't really speak Spanish, so couldn't answer that, since I wasn't talking to people. They asked me how people there at the shelter looked, and I said, 'in need of help.'"*[44]

They also asked Mr. Cordero to review dozens of pictures of migrant human rights defenders, and tell them about those whom he recognized, expressing special interest in several members of Pueblo Sin Fronteras. He recounted:

> *"There were about three printed pages with photos on them, about nine photos each in little squares. Some of them were California Driver's License photos; others looked like security camera footage; others proper mug shots, like America's Most Wanted. I said to them, 'You know who these guys are, that's obvious.'"*[45]

Yet when DHS personnel detained members of Pueblo Sin Fronteras at the US–Mexico border, who were on its surveillance "watch list," even the officials interrogating them acknowledged that their humanitarian activities appeared to be only that: humanitarian in nature. Nonetheless, the DHS officers suggested to the Pueblo Sin Fronteras members that their questions were part of an apparent criminal investigation against human rights defenders on the US–Mexico border, supposedly for human smuggling. Yet they provided no clear evidence supporting such serious accusations, nor any legal basis for their detention and interrogation.

On 23 December, two DHS officers detained and interrogated Alex Mensing, a project coordinator of Pueblo Sin Fronteras, at the San Ysidro Port of Entry as he crossed by foot from Tijuana into San Diego. He recalled:

> *"I asked them, 'Are there charges being pressed at this time, or what is the concern here?' And he [the DHS officer] said, 'I don't think you're a trafficker, or committing crimes, or smuggling, but there are some people who …who think that way.'"*[46]

Mr. Mensing said the DHS officer then asked to search his bag "for drugs," yet admitted that they had actually just photocopied his identity documents, "because they had to report that they had spoken with me."[47]

On 26 and 28 December, DHS detained photography teacher and Pueblo Sin Fronteras volunteer Jeff Valenzuela in "secondary inspection" at San Ysidro for two and five hours, respectively. In both instances, they asked him numerous questions about the caravan, his personal finances, and his activities as a volunteer with Pueblo Sin Fronteras. On both days, they also demanded to search his mobile phone.

On 26 December, when he crossed on foot, the DHS officers forced Mr. Valenzuela to unlock his phone and conduct a "basic search" (or have his phone seized), so that they could see if he had any photos of "child pornography." Contrary to that supposed legal basis, they looked closely through his photos of a recent border incident on 25 November, during which CBP fired tear gas into a crowd of asylum seekers on the Mexico side of the border.

When Mr. Valenzuela crossed by car two days later on December 28, he said DHS handcuffed him and escorted him inside the CBP border office, and then shackled him by his ankle to a metal bench for four hours. Following another interrogation by DHS personnel, he described being forced to submit to an "advanced search" of his phone, which requires reasonable suspicion of wrongdoing under DHS policies.

The DHS officials indicated neither any suspicion of wrongdoing, nor any legal justification for the "advanced search" of his phone. One of the CBP officers who interrogated Mr. Valenzuela said, before releasing him: "Look, I know you're doing this for humanitarian reasons. […] The only thing that concerns us, and what we don't want, is that you smuggle people." CBP sent Mr. Valenzuela to "secondary inspection" the following four times he crossed the border from 9 to 25 January 2019.

44. Phone interview with James Cordero, 9 January 2019.
45. Ibid.
46. Phone interview with Alex Mensing, 8 January 2019.
47. Ibid.

JEFF VALENZUELA (PUEBLO SIN FRONTERAS) 'HUMANITARIAN WORK IS NOT A CRIME.'

"I've actually faced pretty intense harassment and interrogation at the hands of DHS and CBP. Specifically, I've been subjected to interrogations crossing through ports of entry, primarily from Tijuana into the US. I've been taken out of my car, I've been removed in handcuffs, I've been detained for up to five hours, shackled by my ankle to the bench. Essentially, I've been criminalized for doing humanitarian work. And I've been paraded in secondary inspections as though I'm a criminal for the humanitarian work that I've done.

"I don't plan to let these intimidations, I don't plan to let harassment, any amount of handcuffs, to really stop me. Because none of the work that we're doing is a criminal act. Humanitarian work is not a crime. Standing in solidarity with migrants, standing in solidarity with our fellow brothers and sisters, is not a crime. So, I won't stop doing the work that I'm doing."



Jeff Valenzuela (Amnesty International, April 2019)

On 2 January 2019, DHS detained and interrogated the only known clergy member on its "watch list" of human rights defenders, Senior Pastor Kaji Douša of the Park Avenue Christian Church in New York. Pastor Douša was crossing back from Tijuana into San Diego just after dark, after providing spiritual counselling to migrants and asylum seekers in Mexico, when an alert on her passport resulted in her being sent to "secondary inspection." After waiting for a long time, two DHS officers questioned her extensively.[48]

The DHS watch list leaked to news media indicated that US authorities had revoked Pastor Douša's "SENTRI" pass, which allowed for her expedited crossings of the border by car.

> "I have lots of questions about my ability to travel after praying with migrants. […] At what point does freedom of religion end at the border? What laws do you invoke to say we are not free to exercise our rights at the border and cross back? Why does that become dangerous? […] I'm not going to be deterred from my path."[49]

48. Phone interview with Pastor Kaji Douša, 4 June 2019. See also, commentary by Kaji Douša, "I Prayed With Migrants. Now The Government Is Tracking Me." (24 March 2019), available at: https://www.buzzfeednews.com/article/kajidousa/opinion-i-prayed-with-migrants-now-the-government-is.
49. Ibid.

4.3 CBP CONDUCTS FALSE ARREST, THREATENS CHARGES 'AIDING AND ABETTING'

Despite Congressional inquiries, public outrage, and extensive news reporting on DHS's unlawful surveillance watch list, DHS personnel have reportedly continued to criminally investigate and harass migrant human rights defenders along the US–Mexico border.

Amnesty International interviewed two human rights defenders in Arizona whom CBP officers independently accused on three separate occasions from March to May 2019 of "aiding and abetting" human smuggling. Their supposed "smuggling" crime was the accompaniment of asylum seekers to the Lukeville Port of Entry in Arizona, where they sought to present themselves lawfully and request protection at an official border crossing. Both individuals were also involved in the provision of humanitarian aid in the border region.

The two human rights defenders, Ana Adlerstein and Emily Saunders, each said CBP informed them that they were being criminally investigated on those charges under 8 U.S.C. §1324. On May 5, Ms. Adlerstein was additionally subjected to a false arrest on those supposed smuggling charges, before CBP released her without charge after more than four hours in detention.

According to Ms. Adlerstein and Ms. Saunders, CBP first accused them of aiding and abetting human smuggling on 6 March 2019, just hours after news media reported on the leaked documentation of DHS's surveillance operation.[50] On that day, they and three other volunteers observed a Honduran family of 16 approach the Lukeville Port of Entry to request asylum, after driving to the port of entry together with the family on the Mexico side of the border.

Ms. Adlerstein recalled:

> *"In the family of 16, half of them were kids. They had been shot at the night prior, and wanted to present. One or two of them were wounded so badly, they were taken to a hospital. […] We drove them to the Mexican side of the port of entry, and it was a beautiful scene of triumph. And then half of the CBP officers ran and charged at them, and tackled them to the ground, pulled Tasers on them, while a CBP officer sought to close the gate. That night, when Emily and I were driving home, that was the first time we were taken to secondary. […] The things that stood out to me there were the word 'aiding,' and that brutality."*[51]

The CBP officer who questioned Ms. Adlerstein and Ms. Saunders that night informed them that they had been "aiding" the family in "an illegal entry, so technically you could be charged with aiding and abetting."[52]

50. See, Section 3 above.
51. Phone interview with Ana Adlerstein, 16 May 2019. Amnesty International also reviewed contemporaneous notes recorded soon after the incident in March 2019.
52. Phone interview with Emily Saunders, 14 April 2019. Phone interview with Ana Adlerstein, 16 May 2019.

4.3.1 CASE OF EMILY SAUNDERS

Emily Saunders is a clinical social worker, and a humanitarian volunteer with the organizations Ajo Samaritans and No More Deaths, in Ajo, Arizona. "So then is when the secondary regime began," Saunders said of the 6 March incident she witnessed with Ana Adlerstein. The intimidation escalated thereafter.

In late March, Ms. Saunders called CBP staff at the Lukeville Port of Entry, in order to ask if they would be able to receive an unaccompanied child that day, who intended to request asylum at the crossing. She said the CBP officer replied abruptly, "you're coaching them to cross." The child later crossed without incident.

On 3 and 10 April, Ms. Saunders said she was subjected to her second and third "secondary inspections" since the 6 March incident. After volunteering for five hours at a shelter in Sonora, Mexico on 10 April, CBP held and questioned her for approximately 45 minutes. During her questioning, the CBP officer informed her that she was under surveillance: "I know you. I know everything about you. I know you used to work at the school. I have my eyes on you, and Ana too," Ms. Saunders recalled him saying. "The intimidation worked," she said.



Emily Saunders (Amnesty International, April 2019)

> *"Before I left, he told me: 'We're keeping your belongings as evidence. We believe that you're aiding and abetting in human smuggling.' They brought out evidence bags. The 'evidence' was a spiral notebook, and a green file folder filled with blank documents, G-28s [legal representation forms], and pre-screening forms that paralegals and volunteers can complete. Another volunteer from Canada had a journal, and they took that as well. They're trying to say I'm 'coaching,' that I'm practicing law without a license, and that I'm getting people to lie."*[53]

The next day on 11 April, Ms. Saunders informed Amnesty International that two other humanitarian volunteers from the organization Humane Borders were also sent to secondary inspection.

53. Phone interview with Emily Saunders, 14 April 2019. Amnesty International also reviewed contemporaneous notes recorded soon after the incident on 10 April 2019; and discussed the incident with Ms. Saunders in person in Ajo, Arizona, on 11 April 2019.

4.3.2 CASE OF ANA ADLERSTEIN[54]

Ana Adlerstein is a migrant human rights defender, print and radio journalist, and international humanitarian worker. In recent months she has provided "know your rights" trainings to asylum seekers in Sonora, Mexico.

On 5 May 2019, Ms. Adlerstein approached the Lukeville Port of Entry accompanying an asylum seeker from Central America. The asylum seeker's attorney had already called ahead to arrange for safe passage with CBP, as his client had been turned away by CBP several hours earlier.

When Adlerstein and the asylum seeker approached the pedestrian entry point at the port of entry, a CBP officer ordered them to stop as they walked onto US territory.

> *"Then the supervisor came rushing out of the office, and said 'one or two?' And the other officer said, 'One.' And the supervisor responded, 'One and one illegal alien smuggler.' He said, 'You could get arrested for illegal alien smuggling. And I will arrest you.' And I said, 'Am I being arrested?' And he said, 'Yes, you are under arrest.'"*

The CBP officer then escorted her into the immigration building, confiscated her belongings (including her shoes), and put her in a cramped and narrow concrete cell, with a cot, toilet and sink. She was subjected to an invasive body search by a female officer inside the cell and held there for four hours.

> *"I had a headache, I think partially due to the stress. It was cold and I was barefoot with a Mylar blanket. Just before he let me out, the supervisor told me I was going to be held indefinitely. They kept repeating, 'the Fourth Amendment doesn't apply here.' I was banging on the door in a proper cell of concrete, with a tiny little window, and I kept demanding to see a lawyer. […] He said, 'we can hold you for as long as we want to.' I told him it was ridiculous, and that I'm an American citizen, and can't be held indefinitely and needed medical treatment. And then he opened the door. I asked if I was free to go, and he told me I was."*

After subjecting Ms. Adlerstein to a false arrest on supposed suspicion of "aiding and abetting human smuggling," she was released without being charged, and told that it was only "secondary inspection" all along.

> *"I asked if I was going to get hassled when I came through the port of entry in the future, and he said, 'What do you mean? Anybody can get pulled into secondary. I can get pulled into secondary.'"*

She crossed again through the port of entry on 9 and 11 May – on 11 May joined by two journalists – and was pulled into "secondary inspection" both times, yet for very short periods of time.

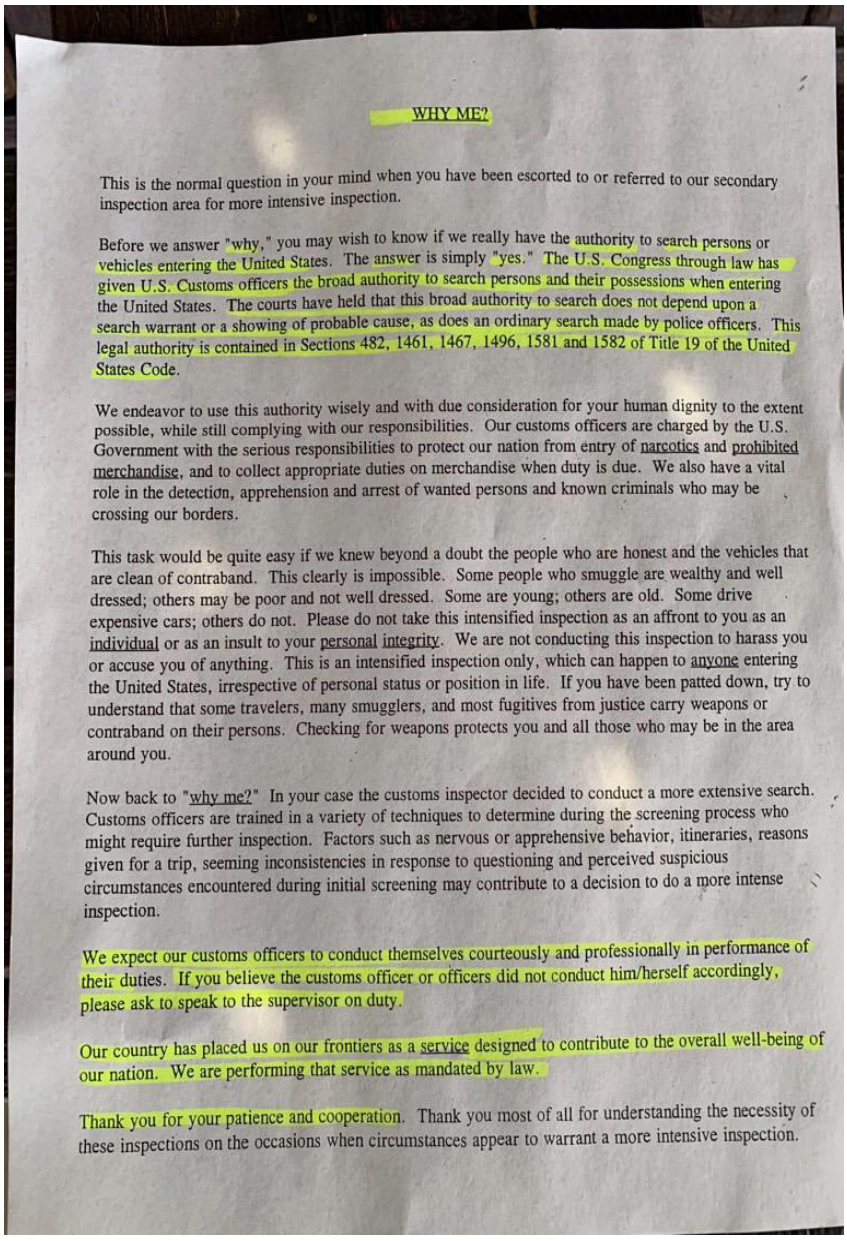
> *One thing that really stood out to me was a supervisor tried to explain to me why it was human smuggling, and he named 1324. […] When one officer was berating me for not knowing the law, and that I was smuggling people, the supervisor was talking to me about 1324. He said that I was smuggling humans. He said, 'it's just the statute of 1324 that you're breaking.' They said I had an illegal alien in my custody, even though I was at a port of entry. I'd rather not face charges and go to court, but if they're going to try to expand illegal entry to include a legal port of entry, hell no!"*

In addition to conducting what appeared to constitute a false arrest against Ms. Adlerstein, CBP appeared to have exceeded its authority under US law, as the incident described would not reasonably have suggested she had committed or was in the process of committing a felony.[55]

54. Phone interview with Ana Adlerstein, 16 May 2019. Amnesty International also reviewed: contemporaneous notes recorded soon after the incident in May 2019, including: a case report on the incident drafted by an observer of the international organization Front Line Defenders; and a formal complaint about the incident, submitted by Ms. Adlerstein and the organization Kino Border Initiative to CBP's Office of Professional Responsibility on 24 May 2019.
55. See, 19 U.S.C. §1589a–"Enforcement authority of customs officers," available at: https://www.law.cornell.edu/uscode/text/19/1589a.

Amnesty International conducted a separate interview with a member of Pueblo Sin Fronteras, who was reportedly detained by CBP at the Lukeville Port of Entry on 24 December 2018 for six hours, and 27 April 2019 for between two and three hours. He informed Amnesty International of a similar pattern of intimidation by a CBP supervisor with the same surname as recounted by Ms. Adlerstein. On 24 December, after being held for four hours and interrogated for another hour, he claimed that CBP handcuffed him, stripped him to his underwear, and detained him in a small cell matching the description provided by Ms. Adlerstein of the cell in which she was held several months later.[56]

As in the case of Ms. Adlerstein, the member of Pueblo Sin Fronteras said CBP told him that he was going to be detained at the port of entry indefinitely, and was informed by the CBP supervisor that he had unchecked authority to hold him there without cause. Also similar to Ms. Adlerstein's case, the member of Pueblo Sin Fronteras said he was released without charge soon after being given a Mylar blanket in the cold cell, and being threatened again with indefinite detention were he not to relent and submit to CBP's further interrogation.[57]



WHY ME?

This is the normal question in your mind when you have been escorted to or referred to our secondary inspection area for more intensive inspection.

Before we answer "why," you may wish to know if we really have the authority to search persons or vehicles entering the United States. The answer is simply "yes." The U.S. Congress through law has given U.S. Customs officers the broad authority to search persons and their possessions when entering the United States. The courts have held that this broad authority to search does not depend upon a search warrant or a showing of probable cause, as does an ordinary search made by police officers. This legal authority is contained in Sections 482, 1461, 1467, 1496, 1581 and 1582 of Title 19 of the United States Code.

We endeavor to use this authority wisely and with due consideration for your human dignity to the extent possible, while still complying with our responsibilities. Our customs officers are charged by the U.S. Government with the serious responsibilities to protect our nation from entry of narcotics and prohibited merchandise, and to collect appropriate duties on merchandise when duty is due. We also have a vital role in the detection, apprehension and arrest of wanted persons and known criminals who may be crossing our borders.

This task would be quite easy if we knew beyond a doubt the people who are honest and the vehicles that are clean of contraband. This clearly is impossible. Some people who smuggle are wealthy and well dressed; others may be poor and not well dressed. Some are young; others are old. Some drive expensive cars; others do not. Please do not take this intensified inspection as an affront to you as an individual or as an insult to your personal integrity. We are not conducting this inspection to harass you or accuse you of anything. This is an intensified inspection only, which can happen to anyone entering the United States, irrespective of personal status or position in life. If you have been patted down, try to understand that some travelers, many smugglers, and most fugitives from justice carry weapons or contraband on their persons. Checking for weapons protects you and all those who may be in the area around you.

Now back to "why me?" In your case the customs inspector decided to conduct a more extensive search. Customs officers are trained in a variety of techniques to determine during the screening process who might require further inspection. Factors such as nervous or apprehensive behavior, itineraries, reasons given for a trip, seeming inconsistencies in response to questioning and perceived suspicious circumstances encountered during initial screening may contribute to a decision to do a more intense inspection.

We expect our customs officers to conduct themselves courteously and professionally in performance of their duties. If you believe the customs officer or officers did not conduct him/herself accordingly, please ask to speak to the supervisor on duty.

Our country has placed us on our frontiers as a service designed to contribute to the overall well-being of our nation. We are performing that service as mandated by law.

Thank you for your patience and cooperation. Thank you most of all for understanding the necessity of these inspections on the occasions when circumstances appear to warrant a more intensive inspection.

A copy of the form provided to the human rights defender, Irineo Mujica, during his detention by CBP at the Lukeville Port of Entry on 27 April 2019.

The form titled, "Why me?" provides:

"Before we answer 'why,' you may wish to know if we really have the authority to search persons or vehicles entering the United States. The answer is simply, 'yes.'"

"We endeavor to use this authority wisely and with due consideration for your human dignity to the extent possible."

"We are not conducting this inspection to harass you or accuse you of anything."

56. Amnesty International interview conducted on 10 April 2019 with Irineo Mujica, a dual Mexico-US citizen and the director in Mexico of Pueblo Sin Fronteras. Amnesty International received a written update on 3 May 2019, regarding the incident on 27 April 2019.
57. Ibid.

5. 'NO US ATTORNEY WOULD PROSECUTE THAT': DHS LAW ENFORCEMENT OFFICIALS ACKNOWLEDGE INAPPROPRIATENESS OF SMUGGLING CHARGES

Amnesty International requested comment from the US Department of Justice on three occasions in May 2019 regarding the permissible scope of application of the charges of "encouraging or inducing" unlawful entry, under 8 U.S.C. §1324, yet the DOJ Office of Public Affairs declined to respond, after confirming receipt and forwarding the request to the issue expert. Notably, 8 U.S.C. §1324 also criminalizes "aiding" or "abetting" the act of "encouraging or inducing" unlawful entry (subsection [iv]) – among other charges – or "any conspiracy" to do so.

Even though CBP identified those vague provisions of 8 U.S.C. §1324 as the legal basis for the criminal investigations against migrant human rights defenders, DHS officials with HSI and the CBP's Office of Professional Responsibility both informed Amnesty International that US Attorneys with the Department of Justice would be unlikely to seriously consider pressing charges under those provisions simply for providing humanitarian assistance or legal advice.

In May 2019, a CBP investigator told Amnesty International, with specific reference to the false arrest of Ana Adlerstein:

> *"That's not the purpose of 1324, and no US Attorney would prosecute that. The purpose of that is if 10 people sneak across the border, and there's someone waiting on the other side with a car. That's more the intent of 1324."*

With regard to "encouraging or inducing" migrants and asylum seekers to enter the United States unlawfully, he continued:

> *"No US Attorney is going to touch that. For us it would have to be an abundantly clear violation. Helping people […] doesn't mean you can be stopped and detained […] particularly not based on political views or speech."*

In May 2019, an HSI agent similarly informed Amnesty International that US criminal charges for smuggling would be totally inappropriate to prosecute migrant human rights defenders for giving advice to asylum seekers in Mexico:

> *"No one is pursuing charges under 1324 [just] on the Mexican side. We would be interested if it is profit-based, and that is our entire interest in the caravans: Is there a connection to organized crime, and is there exploitation occurring? Otherwise there's a concern for immigration law, but HSI doesn't get involved unless there's an organized breach of law that involves crossing the border.*
>
> *"For the most part, we only apply 1324 for […] transporting them [migrants] away from the border. Financial interest. […] It's really subject to the prosecutors, and when you call them on the phone, you describe to them the circumstances. And they would be hard pressed to make a 1324 'aiding and abetting' claim against people just for providing advice and assistance to asylum seekers."*

If the professional views of those DHS personnel were correct, then it would suggest the criminal dragnet DHS broadly implemented to intimidate, threaten and legally harass human rights defenders along the US–Mexico border was either (1) a "fishing expedition," intended to snare them under serious criminal charges, without probable cause, or (2) intended to deter and undermine their work in support of asylum seekers, including through restrictions on their freedom of movement, in collaboration with Mexican authorities.

In either case, CBP targeted specific human rights defenders for unreasonable searches, seizures, and other restrictions due to their protected views and speech, in clear violation of their civil liberties, which exposes US authorities to liability for civil damages due to their deprivation of civil rights by law enforcement authorities.[58]

5.1 LIMITS ON THE CRIMINALIZATION OF SMUGGLING UNDER INTERNATIONAL LAW

Amnesty International does not categorically oppose the criminalization of smuggling and trafficking, when it is consistent with international human rights law. Indeed, parties to the UN Convention against Transnational Organized Crime are obliged to criminalize and prosecute these activities.

Under international law, however, the definition of "human smugglers" is restricted to individuals who assist others in crossing borders in order to gain a profit or other material gain. It is the exploitation involved that differentiates criminal smugglers who prey off the suffering of refugees, and human rights defenders who assist others in fleeing persecution or other harm for humanitarian or compassionate reasons.[59]

Any broader definition puts human rights defenders at real risk of being labelled as criminals, and refugees who are in genuine need of protection at risk of being prevented from reaching safety. Such an interpretation would deter human rights defenders from assisting refugees, under threat of criminal prosecution for their legitimate and lawful human rights-related activities.

Facing similar tensions between the need for law enforcement, and abusive governments' politically motivated restrictions on lawful humanitarian assistance, a European Parliament study recommended that the European Commission "make mandatory upon EU Member States the exemption of humanitarian assistance from criminalisation in cases of entry, transit and residence." The study further recommended:

> *"The humanitarian exemption should not be made a defence, but a bar to prosecutions, to ensure that no investigation is opened and no prosecution is pursued against private individuals and civil society organisations assisting migrants for humanitarian reasons;" and "to introduce the financial gain element to all forms of facilitation […] and qualified to encompass only 'unjust enrichment' or 'unjust profit', in order to exclude bona fide shopkeepers, landlords and businesses."*[60]

In line with those international standards, governments must not criminalize support for migrants, asylum seekers, refugees or other people on the move, unless they are being exploited for a specific "financial or other material benefit," which is the key constituent element of the crime of smuggling. If there is no profit, then assistance is categorically not criminal smuggling, and must not be deterred or punished as such.

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58. See, 42 U.S.C. §1983–Civil action for deprivation of rights; available at: https://www.law.cornell.edu/uscode/text/42/1983.
59. The difference between smuggling and solidarity is that smuggling involves a financial or other material benefit, whereas solidarity does not. The difference between smuggling and trafficking is that smuggling involves consent even when undertaken in dangerous or degrading conditions, and is not for the purpose of exploitation. Put another way, smuggling is not in and of itself a human rights abuse, though it may involve abuses. In contrast, trafficking is by its very nature abusive. See, UN Office on Drugs and Crime, "Migrant Smuggling FAQs" (2018), available at: https://www.unodc.org/unodc/en/human-trafficking/faqs-migrant-smuggling.html.
60. See, European Parliament study, *Fit for purpose? The Facilitation Directive and the criminalisation of humanitarian assistance to irregular migrants* (2016); available at: http://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_STU%282016%29536490, at p. 64. See also, 2018 update to this study (ibid.), available at: www.europarl.europa.eu/RegData/etudes/STUD/2018/608838/IPOL_STU(2018)608838_EN.pdf.

6. 'I AM SO SCARED': DISCRIMINATORY THREATS AND TRAVEL RESTRICTIONS BY US AND MEXICAN AUTHORITIES

In adopting the UN Declaration on Human Rights Defenders,[61] the US and Mexican governments committed to create a safe and enabling environment for human rights defenders to conduct their vital work.[62]

As part of that safe and enabling environment, human rights defenders should be allowed to enter and work in any country that they would otherwise be free to enter, without discrimination or threats to their integrity, and be guaranteed the right to freedom of expression in the conduct of their work.[63]

Instead, the US and Mexican governments have threatened and imposed travel restrictions against people defending the rights of migrants and asylum seekers, reflecting similar unlawful restrictions in Europe and beyond.[64]

61. See, UN Declaration on Human Rights Defenders, at n. 3 above.
62. For an elaboration of what such a "safe and enabling environment" should include, see the 2013 Report of the Special Rapporteur on the situation of human rights defenders Margaret Sekaggya (A/HRC/25/55), available at: http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Pages/ListReports.aspx. See also, International Service for Human Rights, "A Model Law for the Recognition and Protection of Human Rights Defenders," available at: https://www.ishr.ch/sites/default/files/documents/05_jan2017_english_model_law_all.pdf. The Model Law provides, inter alia, that no one should be "deprived of the right to enter or leave" a country "on the grounds of or in association with his or her status, activities or work as a human rights defender" (Section 13.3 on the right to freedom of movement).
63. The UN Special Rapporteur on the situation of human rights defenders has "expressed concern over the denial of entry […] of foreign human rights defenders," noting "that denying the defenders entry to the State seriously impinges their right to freedom of movement while carrying out their legitimate human rights work." See, *Human Rights Defenders World Report* (December 2018), available at: https://www.protecting-defenders.org/sites/protecting-defenders.org/files/UNSR%20HRDs-%20World%20report%202018.pdf. Any restrictions on the movement and travel of human rights defenders must also be compatible with other fundamental human rights norms, such as the prohibition on discrimination, including based on political or other opinion. See, OSCE-ODIHR, *Guidelines on the Protection of Human Rights Defenders* (June 2014), "Explanatory Report," at pp. 103 et seq. Available at: https://www.osce.org/odihr/guidelines-on-the-protection-of-human-rights-defenders. See also, UN Human Rights Committee, "Concluding Observations on Uzbekistan," UN Doc. CCPR/C/UZB/CO/3, 7 April 2010, at para. 24. Available at: https://undocs.org/en/CCPR/C/UZB/CO/3.
64. See, Amnesty International report, *Laws Designed to Silence: The Global Crackdown on Civil Society Organizations* (February 2019), available at: https://www.amnestyusa.org/reports/laws-designed-to-silence-the-global-crackdown-on-civil-society-organizations/. See also, Amnesty International report, *Targeting Solidarity: Criminalization and harassment of people defending migrant and refugee rights in northern France* (June 2019), available at: https://www.amnesty.org/en/latest/news/2019/06/france-police-harassing-intimidating-and-even-using-violence-against-people-helping-refugees/.

6.1 TRAVEL RESTRICTIONS AGAINST DEFENDERS BY US AND MEXICAN AUTHORITIES

In January and February 2019, US and Mexican authorities violated their international commitments by imposing migratory alerts on multiple migrant human rights defenders, which restricted their freedom of movement, apparently in relation to their legitimate professional activities. Lawyers, activists, and journalists were among those discriminatorily targeted under DHS's criminal investigation into the alleged "human smuggling" of migrants and asylum seekers.

Mexico's migratory alerts system has already received criticism from within Mexico, in relation to its arbitrariness and lack of appeals mechanisms.[65] Yet the rapid series of restrictions on migrant human rights defenders' freedom of movement appeared to be targeted and coordinated, stemming from the collaboration of INM and DHS under the bilateral OASISS program.[66]

The DHS surveillance files leaked to the news media[67] verified that the bi-national intelligence program targeted all three co-directors of the NGO Al Otro Lado, the leading legal services provider for asylum seekers in Tijuana.

On 10 January 2019, CBP revoked the preferred traveler "SENTRI pass" of Al Otro Lado's Border Rights Project director, Nicole Ramos, upon her return to the United States from Mexico. Ms. Ramos informed Amnesty International: "They said, 'We have to take your SENTRI pass from you. The system is telling us we have to take this card from you, it doesn't tell me why.'"[68]

On 29 January and 1 February 2019, respectively, INM denied entry into Mexico and removed from the country the other two co-directors of Al Otro Lado, Erika Pinheiro and Nora Phillips. The restrictions on their travel to Mexico disrupted their vital legal assistance to asylum seekers in desperate need of support, as well as their personal lives.[69] INM officials informed the two respective co-directors that the US government and an undisclosed "foreign government" had issued migratory alerts against them.

In the case of Ms. Pinheiro, INM held her for two hours while crossing by foot from San Diego into Tijuana, before denying her entry and returning her to the United States. In the course of being denied entry, Ms. Pinheiro was separated from her bi-national infant child, who was residing in Mexico with her partner.

Ms. Phillips messaged Amnesty International while still being held in "secondary inspection" at Guadalajara airport, since early in the morning on 1 February:

> *"I am so scared. Nine hours so far, detained with my seven-year-old in a cold room with no food or water. Although they promised us food from 2 a.m. I have a very serious illness that requires medication, and I had to beg for a glass of water to take my medication, and then an officer shouted at me. They asked me lots of questions about guns, and where I have lived, and how much cash I had on me, where was I going to stay, have I ever lived abroad, any ongoing criminal proceedings in the US.*
>
> *"I told them I work for a human rights organization, and suspected this is why the alert happened. It's definitely DHS. They said, 'Yes, your country placed the alert on you, they want it to be known that there is something pending and they don't want you to leave until it is resolved.'"*

DHS's surveillance watch list indicated that several other migrant human rights defenders had migratory alerts placed upon their passports, or their SENTRI pass revoked,[70] though the leaked files were dated prior to the restrictions against the three Al Otro Lado co-directors, so did not reflect the new restrictions against them.

The travel restrictions against all three co-directors of Al Otro Lado followed a broader campaign of intimidation, threats, and harassment that the organization had been facing for months in retaliation for its work. Yet the escalation coincided directly with the recently launched criminal investigation against migrant human rights defenders on criminal smuggling charges, under the binational surveillance operation.

65. See, Por Sin Fronteras, "Alertas Migratorias: La ilegalidad disfrazada de legalidad" (14 February 2019), available at: https://www.sinembargo.mx/14-02-2019/3536450. See also, CMDPDH, "Alertas migratorias: ¿seguridad o arbitrariedad?" (21 May 2018), available at: https://www.animalpolitico.com/verdad-justicia-y-reparacion/alertas-migratorias-seguridad-nacional-o-arbitrariedad/.
66. See, Section 3.1, "US and Mexican cooperation on restrictions against defenders."
67. See, above at n. 15.
68. Phone interview with Nicole Ramos, 14 January 2019.
69. See, NBC-7 Investigates, "As Quest for Information Continues, Targets of Secret Government Surveillance Effort Confront Its Consequences" (24 May 2019), available at: https://www.nbcsandiego.com/investigations/Another-Deadline-Passes-for-Answers-on-Secret-Database-510409751.html.
70. See, e.g., case of Pastor Douša in Section 4.2 above.

The US government funded not only the establishment of the OASISS program, for cross-border law enforcement information sharing on border smuggling investigations, but also the creation of Mexico's National Center for Alerts (the Center) in Mexico City.[71] Based on criminal investigations or other factors, the Center can issue different levels of migratory alerts against travelers, which can complicate or entirely block their entry into Mexico.[72]

Amnesty International spoke to all three of the Al Otro Lado directors regarding the travel restrictions imposed on them, as well as another migrant human rights defender who was subjected to a lesser migratory alert, border rights activist Josh Nichols. Ms. Pinheiro and Mr. Nichols had both been denied entry to Mexico at the San Ysidro Port of Entry. However, the INM delegate for Baja California informed Amnesty International that the travel alert placed on Ms. Pinheiro was a more serious restrictive alert, which was more difficult to overcome, though he still denied that it was punitive.[73]

On 7 May, Mr. Nichols was held for a total of four hours by INM as he twice sought at the San Ysidro Port of Entry to have a migratory alert removed from his profile. "They told me multiple times that the alert does not come from Mexico and that the alert was international," he said. Yet he believed it originated when the police took photos of his and other activists' passports at a shelter in Tijuana, one or more of whom had also had alerts placed on their passports, he claimed.

In February 2019, Amnesty International wrote to both DHS and Mexico's National Center for Alerts, requesting further information about the legal basis and justifications for the restrictions on the freedom of movement of human rights defenders, out of concern that the measures were retaliatory and intended to hinder their legitimate human rights-related activities.

In a letter to Amnesty International, Mexican authorities declined to clarify the legal basis or factual justification for the specific alerts, noting that travel restrictions are confidential (and are also kept secret from those against whom they are applied).[74] Yet the Center did respond that the individuals who were sanctioned could appeal to have their status reviewed and amended.[75] The Mexican Foreign Ministry publicly "condemned" any apparent "illegal espionage" reported by media with regard to the surveillance program, and stated that Mexico welcomed all professional visitors, in line with its immigration laws.[76] However, it remained unclear the extent to which Mexico's immigration agency, INM, knowingly collaborated with DHS in restricting the freedom of movement of the human rights defenders, on account of their work; or had limited knowledge of the basis for the migratory alerts, and agency in how to respond to them.

The US Department of Homeland Security, Department of Justice, and Department of State all declined to respond to questions submitted by Amnesty International about their role in the migratory alerts and directed Amnesty International to the government of Mexico.

The Mexican NGO, La Comisión Mexicana de Defensa y Promoción de los Derechos Humanos (CMDPDH), which has represented 10 individuals subjected to migratory alerts, expressed serious concerns to Amnesty International about the arbitrariness of the Mexican alerts system, and its routine violation of due process guarantees. In particular, the migratory alerts are not regulated by any public law, and are only provided for by a confidential internal rule that was issued by the director of INM in 2015. The NGO obtained a copy of the confidential rule, and confirmed to Amnesty International that there are two types of migratory alerts provided for by the administrative instruction: "informative" and "restrictive" alerts. Restrictive alerts are a consequence of a judicial or administrative procedure, and result in the denial of entry into Mexico, restrictions on leaving Mexican territory, or the inability to establish residency. Informative alerts inform authorities that a person has been previously deported from Mexico, and are attached to the records of all deportees. According to CMDPDH, its lawyers have identified at least one case in which a "restrictive alert" was imposed on an individual by Mexican authorities, based solely on an email from DHS accusing the individual of being affiliated with organized crime in another country, without any corroborating evidence. The secrecy and apparently arbitrary or abusive application of migratory alerts under the INM system raise serious rule-of-law concerns, which demand further oversight and transparency.[77]

71. See, US Department of State, *Country Reports on Terrorism 2006* (30 April 2007). Available at: https://www.refworld.org/docid/4681087e2a.html. See also, Narcotics Affairs Section (NAS) in Mission Mexico, "Advanced Acquisition Plan" (21 September 2010), available at: https://www.wola.org/files/20100921-NASAcquisitionPlan.PDF.
72. See, Presentation of the Fifth Report on Implementation of the National Development Plan, 2007–2012 (11 April 2012), at p. 71. Available at: http://gaceta.diputados.gob.mx/Gaceta/61/2012/abr/img10-20120411-I.pdf.
73. Phone conversation with INM delegate for Baja California, 7 May 2019.
74. Letter to Amnesty International from Mexico's National Center for Alerts, SEGOB, dated 12 March 2019.
75. See, Article 96 of Mexico's Law on Migration, available at: https://www.diputados.gob.mx/LeyesBiblio/pdf/LMigra_120718.pdf.
76. See, Statement by Ministry of Foreign Affairs of Mexico, "Mexico Condemns Illegal Espionage" (7 March 2019): https://www.gob.mx/sre/prensa/mexico-condemns-illegal-espionage?idiom=en.
77. Meeting on 12 June 2019 with La Comisión Mexicana de Defensa y Promoción de los Derechos Humanos.

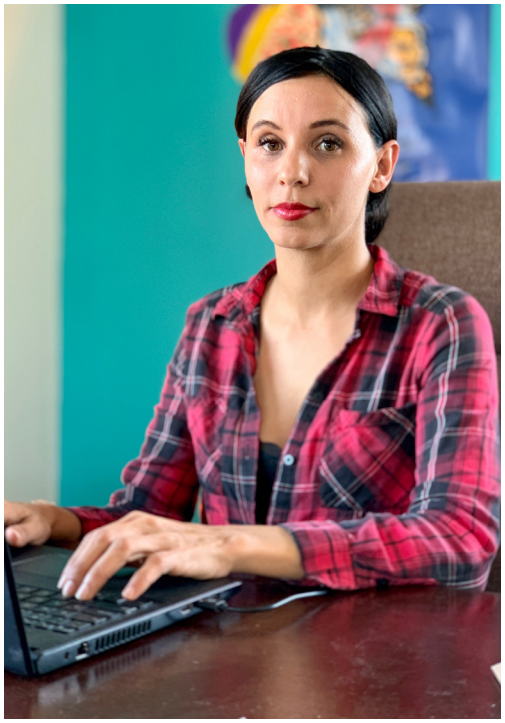
NICOLE RAMOS (AL OTRO LADO)
'IF THEY'RE STILL STANDING, THEN WE SHOULD BE AS WELL.'

"Al Otro Lado's border rights project has come under intense harassment and surveillance ever since the last fall (2018). My Global Entry and SENTRI pass was revoked by the US government. My two co-directors Erika Pinheiro and Nora Phillips were denied access to enter Mexico and were removed from the country. Our volunteers are regularly threatened by officials of Grupo Beta, which is a part of Mexican Immigration, for giving information to migrants in the port of entry about their legal rights in the US system."

"We have also been threatened by Mexican-American nationalists, who charge us with being traitors to the United States and coaching people to lie. […] In addition, we have received threats at our office from organized crime, looking for specific asylum seekers who they believe came to receive services at our office. And these threats included that they would kill everyone in our building."

"This harassment has impacted the culture of our work. We have to take security into consideration in ways that we previously did not, including threats to our personal safety, when we're even in spaces outside of this office. However, the coordinated harassment by two governments, along with nationalists and organized crime, is not going to deter us from our work. We are here to walk alongside migrants in this journey. And if they have been able to survive and make it to the border, and survive all the experiences that come with the migrant trail – including being abused and extorted by law enforcement, by Mexican immigration, by organized crime, and then turned away by US border officials – then we are going to bear witness, and we're going to accompany them, and we are going to fight for their rights, because if they're still standing, then we should be as well."

"We should be looking at transnational solutions that respect human rights, and not those that remove human rights, not only from migrants, but from all of us that are working to protect them."



Nicole Ramos (Amnesty International, April 2019)

6.2 THREATS AGAINST DEFENDERS BY STATE AND NON-STATE ACTORS IN MEXICO

Following the targeted restrictions against its three co-directors, in the context of a series of violent threats against them and their offices, Al Otro Lado submitted a petition for Precautionary Measures to the Inter-American Commission on Human Rights, in order to compel the Government of Mexico to lift the migratory alerts against them, and take proactive actions to protect the lives and liberty of Al Otro Lado staff and volunteers in Mexico.[78]

78. As of 10 June 2019, the IACHR had not responded to the petition, according to the director of Al Otro Lado's Border Rights Project. See, Al Otro Lado statement, "Al Otro Lado asks the Inter-American Commission on Human Rights to Issue Precautionary Measures Against Mexico Urging All Actions Necessary to Protect its Human Rights Defenders Working to Protect the Rights of Asylum Seekers in Tijuana" (12 February 2019), available at: https://alotrolado.org/programs/border-rights-project/. See also, Al Otro Lado petition to the Inter-American Commission on Human Rights (12 February 2019), available at: https://alotrolado.org/wp-content/uploads/2019/02/Request-for-Precautionary-Measures_AOL-Directors-FINAL_12Feb2019-1-1.pdf.

Al Otro Lado also decried in its petition the rising tide of threats and harassment targeting its volunteers in Tijuana, both by state and non-state actors. The complaint detailed alarmingly frequent anonymous death threats, apparently by criminal organizations, directed toward Al Otro Lado's directors and others at their office.

In public, Mexican authorities have denied any involvement in politically motivated surveillance or restrictions against human rights defenders. Yet Mexican officials have also directly[79] and indirectly[80] smeared migrant human rights defenders as "smugglers," which risks not only criminalizing their activities, but also fueling the increasingly frequent violent threats received by those defenders.[81]

On at least two occasions in November 2018 and March 2019, INM officers and its humanitarian units, called Grupos Beta, directly threatened to criminally prosecute and/or deport Al Otro Lado's legal monitors. In the midst of harassing, threatening, and detaining human rights defenders, Mexican immigration authorities have in some cases also indicated they were doing so at the behest of their US counterparts.

On 21 November 2018, Al Otro Lado volunteer attorneys and immigration advocates walked with eight unaccompanied child asylum seekers to the San Ysidro Port of Entry. INM officers swiftly intercepted the group and threatened the Al Otro Lado volunteers with criminal charges of "trafficking" the children if they did not immediately leave the port of entry. Six of the children raced onward to US territory to request protection, while INM apprehended the other two children, and transferred them to the custody of Mexico's child protective services agency, National System for Integral Family Development (DIF), where they risk deportation to their countries of origin.[82]

Amnesty International called and spoke with INM's sub-delegate at the port of entry, to intervene on the two children's cases and petition for their release to the migrant youth shelter where they had been staying. The official repeated his allegations that the volunteer attorneys and advocates were trafficking the children, according to the legal definition. The children were released to the shelter five days later and reported to the shelter manager that 20 or more other unaccompanied children were being detained by DIF.

On 6 March 2019, the same day as DHS's surveillance operation was revealed, members of Grupo Beta harassed and threatened Al Otro Lado monitors, who were offering advice and support to asylum seekers before they went to present their asylum claims at the San Ysidro Port of Entry. One of those Al Otro Lado representatives, Luis Guerra, told Amnesty International that an officer threatened to arrest and unlawfully deport him for offering support to the asylum seekers, even though he is a Mexican-American dual citizen. In particular, the Grupo Beta officer complained, "CBP keeps yelling at us for the work you're doing, and it needs to stop."[83]

Al Otro Lado co-director Nicole Ramos also posted publicly about the incident on the same day, reporting:

> *"Grupo Beta officers threatened Al Otro Lado human rights defenders that we are not allowed to advise asylum seekers to change into their warmest clothing to prepare for the hieleras in which they will be detained for days on end. Per Grupo Beta officers, CBP has directed them to take this action against us. […]"*[84]

Grupos Beta are supposed to provide care and protection for migrants and asylum seekers in their areas of responsibility. Yet they also function as the gatekeepers for thousands of asylum seekers on an asylum waitlist, who are unlawfully forced by Grupo Beta and CBP authorities to stay for weeks or months in Tijuana before being allowed to approach US territory and request asylum protection in the USA.[85] Approximately 40 to 45 percent of those asylum seekers waiting in Tijuana were Mexican nationals, such that Grupo Beta have routinely violated the Mexican asylum seekers' right to freedom of movement under the Mexican Constitution, which guarantees their right to leave their country.[86]

As Al Otro Lado began to document allegations by asylum seekers that Grupo Beta officers would solicit up to US$400 for them to skip the illegal asylum waitlist, the officers reportedly became more hostile.[87] Amnesty International was informed by an INM officer in Tijuana that it cost US$500 for asylum seekers to skip the illegal asylum waitlist. However, he attributed that corruption to the asylum seekers themselves.[88]

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79. In a November 2018 conversation with Amnesty International, an INM official accused the organization Pueblo Sin Fronteras of being involved with human smuggling, without providing any evidence when the assertion was challenged.
80. In a February 2019 speech at Migration Policy Institute (MPI), Mexico's Interior Secretary dangerously suggested through innuendo – though without providing any evidence, or claiming so overtly – that Pueblo Sin Fronteras could be involved in human smuggling in the context of its support for migrant caravans. See, MPI, "A New Migration Policy for A New Era: A Conversation with Mexico's Interior Secretary Olga Sánchez Cordero" (28 February 2019), available at: https://www.migrationpolicy.org/events/mexico-interior-secretary-sanchez-cordero.
81. Amnesty International reviewed several screenshots of online threats of death or other violence received by Pueblo Sin Fronteras.
82. See above at n. 78.
83. Interview in Tijuana with Luis Guerra, Shane Mulligan (witness), and other Al Otro Lado staff, on 9 April 2019. Amnesty International also reviewed a contemporaneous handwritten complaint to Mexico's National Commission of Human Rights (CNDH) regarding the incident, dated 6 March 2019 and listing all those present.
84. See, Facebook post of Nicole Ramos, 6 March 2019, available at: https://www.facebook.com/526998922/posts/10157340714153923?s=902060544&v=i&sfns=mo.
85. For more information on the illegal asylum waitlists, see the Amnesty International statement, "USA: Government must stop illegal pushbacks of asylum seekers to Mexico" (11 April 2019), available at: https://www.amnesty.org/en/latest/news/2019/04/usa-government-must-stop-illegal-pushbacks-of-asylum-seekers-to-mexico/.
86. Ibid.
87. Information received by phone from Nicole Ramos on 21 May 2019. Amnesty International received consistent reports during in-person meetings with Luis Guerra and Shane Mulligan at the Al Otro Lado office in Tijuana on 9 April 2019.
88. Conversation with INM official in Tijuana on 8 April 2019.

6.3 DISCRIMINATORY RESTRICTIONS AGAINST NON-CITIZEN DEFENDERS BY THE USA

In 2018 and 2019, the US government likewise threatened and retaliated against asylum seekers and other foreign nationals who are also migrant human rights defenders, when they attempted to exercise their right to freedom of speech in the United States.

In February 2018, four United Nations experts issued a joint statement condemning the US government's selective enforcement of immigration laws, apparently in retaliation against migrant rights activists with precarious or no legal residency status in the United States.[89]

A few days later, the Inter-American Commission on Human Rights likewise condemned the retaliatory efforts of the Trump administration to detain and deport non-US nationals, based upon their protected speech and activism as migrant human rights defenders.[90]

On 30 January 2019, during a high-level delegation of the directors of six Amnesty International national offices to the US–Mexico border, CBP officials also intimidated, threatened and harassed an Amnesty International staff member during her customs screening.

CBP officers targeted the Amnesty staff member based on her activism the previous day in Mexico, where she legally resides and works. Having seen her and the rest of the Amnesty International delegation walk with several unaccompanied minors to the San Ysidro Port of Entry on the previous day, CBP warned her not to engage in political activities or protests while in the United States as a foreign national.

> *"The officer asked me for my document, and I gave him my passport. A woman officer who was right behind him asked if it was a 'French passport,' and she said repeatedly, "It's her, it's her!" It was the same woman who was behind me the day before when we crossed with the unaccompanied kids. She asked me twice for my passport that day."*
>
> *"The officer asked me what I would be doing in the US. He said if I'm living in Mexico, I can't come to the US and disturb or protest, I could only be here as a tourist. He then asked to see the sign I had in my hand, and started asking what will I use it for, and said that I was lying and wanted to protest with it. I explained we used it for pictures on the border. He repeated that I can't protest or disturb in public places. And that the US is a free-speech country. He then let me go and cross."*[91]

Contrary to what CBP informed the Amnesty International staff member, political speech and activity are also generally protected for foreign nationals in the United States, even if present on a tourist visa.[92]

89. See, Joint statement of UN experts, "US urged to protect rights defenders as activist Maru Mora Villalpando faces deportation case" (14 February 2018), available at: https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22657&LangID=E.
90. See, IACHR statement, "IACHR Expresses Concern over Situation of Immigrant Defenders in the United States" (16 February 2018), available at: https://www.oas.org/en/iachr/media_center/PReleases/2018/029.asp.
91. Phone interview and notes provided by Amnesty International staff member, 30 January 2019. The staff member drafted contemporaneous notes immediately following the incident.
92. A few exceptional restrictions do exist for political speech by foreign nationals, in circumstances related to partisan electoral activities – and then primarily only where money is exchanged for the political speech. See, e.g., FEC Record: Outreach, "Foreign nationals" (23 June 2017), available at: https://www.fec.gov/updates/foreign-nationals/. Similarly, the Foreign Agent Registration Act (FARA) applies narrowly to "foreign agents" seeking economic or political gains for lobbying clients. It is tailored to prevent political misuse against those exercising legitimate First Amendment activities. For an analysis of FARA, see DOJ's archived Criminal Resource Manual, at: https://www.justice.gov/archives/usam/criminal-resource-manual-2062-foreign-agents-registration-act-enforcement.

7. 'SAVING LIVES IS NOT A CRIME': CRACKDOWN ON HUMANITARIAN AID

"HUMANITARIAN SERVICES PLAY A CENTRAL ROLE IN PREVENTING MIGRANTS' AND REFUGEES' UNLAWFUL DEATHS. […] STATES MUST NOT CRIMINALIZE OR OTHERWISE PENALIZE THE PROVISION OF SUPPORT OR ASSISTANCE TO MIGRANTS. STATES ARE TARGETING THOSE ENGAGED IN SEARCH AND RESCUE, […] TO ACCUSE HUMANITARIAN ORGANIZATIONS OF COLLUDING WITH SMUGGLING NETWORKS, [AND] TO PLACE ADMINISTRATIVE BURDENS ON, AND SOMETIMES EVEN TO CRIMINALIZE, HUMANITARIAN ACTION ON THE BORDER."[93]

Ms. Agnes Callamard, Special Rapporteur to the UN Human Rights Council on extrajudicial, summary or arbitrary executions.

In 2018 and 2019, the US Department of Justice launched an aggressive campaign of criminal prosecutions against humanitarian aid providers on the US–Mexico border. Prosecutors sought to conflate lifesaving assistance and "human smuggling," without providing any evidence that humanitarian aid has ever incentivized migrants and asylum seekers to cross inhospitable and sometimes deadly desert terrain.

On 11 April 2017, the US Attorney General traveled to Nogales, Arizona, to issue a policy memorandum instructing prosecutors to prioritize the criminal prosecutions of "human smuggling" charges.[94]

Setting the stage for misdemeanor prosecutions as well, two weeks later the Trump administration blacklisted members of the Arizona-based organization No More Deaths from obtaining permits to enter the Cabeza Prieta National Wildlife Reserve, which they had frequently requested in order to pre-position water and other humanitarian aid for migrants.[95]

In the months that followed, criminal charges rained down on No More Deaths, immediately interfering with their vital humanitarian volunteer work. In June 2017, authorities raided a humanitarian medical installation called Byrd Camp in Arivaca, Arizona, in a show of force that broke a written agreement between No More Deaths and border authorities, which had been in effect since 2013.[96] In August 2017, the Department of Justice charged nine humanitarian volunteers affiliated with No More Deaths with misdemeanor crimes of trespassing, driving a motor vehicle, and littering in Cabeza Prieta, in relation to their longstanding work conducting water drops for migrants.

In her August 2018 report on the criminalization of humanitarian aid, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions cautioned States not only against the criminalization of humanitarian aid, but also their potential responsibility for any deaths that are caused by such restrictions:

93. See, Report of the Special Rapporteur of the Human Rights Council on extrajudicial, summary or arbitrary executions, Agnes Callamard (7 August 2018), UN Doc. A/73/314; available at: https://undocs.org/A/73/314.
94. See, Department of Justice, "Attorney General Jeff Sessions Delivers Remarks Announcing the Department of Justice's Renewed Commitment to Criminal Immigration Enforcement" (11 April 2017), available at: https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-announcing-department-justice-s-renewed. See, also, n. 5 above.
95. See, US Department of the Interior letter to Bureau of Land Management (6 July 2017), available at: https://www.documentcloud.org/documents/5685152-1-1-Kender-Ltr-to-Deny-Access-Permits-7-6-2017.html.
96. See, No More Deaths statement, "Border Patrol Raids Humanitarian Aid Camp in Targeted Attack" (15 June 2017), available at: https://www.facebook.com/324712331025477/posts/787742148055824?s=902060544&sfns=mo.

> "The failure to exempt humanitarian services from the overreach of punishing policies, the active obstruction of life-saving services and/or the criminalization of acts of solidarity and compassion constitute violations of the State's obligation to protect the right to life. Any deaths attributable to such measures amount to the arbitrary deprivation of life, which engages the responsibility of the State."[97]

The Special Rapporteur's report specifically referred to the case of Dr. Scott Warren in Arizona, as a concerning example of smuggling crimes being mis-applied to humanitarian actors.[98]

7.1 CASE OF DR. SCOTT WARREN

In a retaliatory legal attack on 17 January 2018, US Border Patrol officers arrested Dr. Scott Warren, a geography lecturer and humanitarian volunteer with No More Deaths, on three felony criminal charges of "human smuggling."

The moment that US Border Patrol arrested Dr. Warren was just hours after No More Deaths released a damning video report, showing Border Patrol officers destroying and emptying plastic jugs of water, which No More Deaths had left in the desert for asylum seekers and migrants. As of June 2019, the video appeared to have been viewed approximately 30 million times online.[99]

The government charged Dr. Warren with two felony counts of "harboring illegal aliens"; and one of "conspiracy to harbor and transport illegal aliens." Dr. Warren was specifically accused of providing people with humanitarian aid in the form of food, water, clean clothing and bedding, in the desert town of Ajo, Arizona, where he lives.

If convicted on all three criminal charges against him, Dr. Warren could face up to 20 years in prison. His felony trial ran from 29 May to 7 June 2019. On 11 June, the trial of Dr. Warren resulted in a hung jury and mistrial. The jury of 12 could not reach a unanimous decision as required to acquit or convict Dr. Warren under the law, with a majority of eight jurors finding him innocent of the charges against him. The judge scheduled a hearing for 2 July 2019, for the government prosecutors to indicate before the court whether or not they intend to re-try the case against Dr. Warren, with a new jury. The prosecutors are still able to drop the charges at any time following the mistrial.

On 15 May 2019, Amnesty International sent an open letter[100] to the US Attorney's Office, and launched an international campaign[101] among the organization's members, calling for prosecutors to drop all charges against Dr. Warren. If Dr. Warren were convicted and imprisoned on these absurd charges, Amnesty International would recognize him as a prisoner of conscience – detained for his volunteer activities motivated by humanitarian principles and his religious beliefs – and would continue to campaign for his immediate and unconditional release, and for his criminal record to be expunged.[102] Following the 11 June mistrial of Dr. Warren, Amnesty International renewed its call on prosecutors to immediately drop the charges.[103]

Earlier in 2019, Dr. Warren and eight other volunteers with the organization No More Deaths/No Más Muertes were prosecuted on the misdemeanor charges of littering and trespassing in Cabeza Prieta, specifically for leaving water and other humanitarian aid in desert areas where people who crossed irregularly have frequently died.[104]

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97. See, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (7 August 2018), para. 13; at n. 93 above.
98. Ibid, para. 66.
99. See, No More Deaths, "US Border Patrol Destroys Life-Saving Humanitarian Aid Supplies" (17 January 2018), available at: https://www.facebook.com/NowThisPolitics/videos/1877266742304807/UzpfSTMyNDcxMjMzMTAyNTQ3NzoxMjY4MjM3ODgzMzM5NTc5/?s=902060544&sfns=mo. For the accompanying report, see also, No More Deaths, "Part II: Interference with Humanitarian Aid: Death and Disappearance on the US–Mexico Border" (17 January 2018), available at: www.thedisappearedreport.org/uploads/8/3/5/1/83515082/disappeared_report_part_2.pdf.
100. See, Amnesty International, "USA: Open Letter to the USA Government Calling for Criminal Charges Against Human Rights Defender to Be Dropped" (15 May 2019), available at: https://www.amnesty.org/en/documents/amr51/0368/2019/en/.
101. See, Amnesty International, Urgent Action, "USA: Drop Charges Against Human Rights Defender: Dr. Scott Warren" (17 May 2019), available at: https://www.amnesty.org/en/documents/amr51/0363/2019/en/.
102. See, Amnesty International statement, "USA: Authorities must stop criminalizing humanitarian aid" (21 May 2019), available at: https://www.amnesty.org/en/latest/news/2019/05/usa-authorities-must-stop-criminalizing-humanitarian-aid/.
103. See, Amnesty International statement, "Mistrial in Case of Dr. Scott Warren, Prosecution Must Drop Charges" (12 June 2019), available at: https://www.amnesty.org/en/latest/news/2019/06/mistrial-in-case-of-scott-warren-prosecution-must-drop-charges/.
104. See, DOJ statement, "No More Deaths Volunteers Sentenced on the Cabeza Prieta National Wildlife Refuge" (1 March 2019), available at: https://www.justice.gov/usao-az/pr/no-more-deaths-volunteers-sentenced-cabeza-prieta-national-wildlife-refuge. See also, DOJ statement, "'No More Deaths' Volunteers Plead Guilty to Civil Violations on the Cabeza Prieta National Wildlife Refuge" (4 March 2019), available at: https://www.justice.gov/usao-az/pr/no-more-deaths-volunteers-plead-guilty-civil-violations-cabeza-prieta-national-wildlife.

DR. SCOTT WARREN (NO MORE DEATHS/NO MÁS MUERTES)
'HUMANITARIAN AID CONTINUES …BECAUSE THE NEED CONTINUES.'

"The impact of the criminalization of humanitarian aid, it's definitely been felt. And it has definitely been a scary thing for me and for a lot of people who provide humanitarian aid. But humanitarian aid continues in Southern Arizona, because the need continues. So, every day along the border in Arizona, migrants are in need of food and water and medical care and are coming to people's doors needing those things. People continue to die in the desert, to go missing. The need continues and so the work continues."

"I want to say that here, in Ajo, the local people who live here have been providing humanitarian aid for generations. In the desert, where we live, if somebody comes to your door and they're thirsty, the right thing to do is to give them water. And that's been happening for generations here in Ajo."



Scott Warren (Amnesty International, April 2019)

The Trump administration's prioritization of prosecuting humanitarian volunteers in Arizona is alarming, insomuch as it has plainly displayed the administration's readiness to weaponize the desert, by denying migrants access to humanitarian aid, which may thereby deprive them of their human right to life.

In response to Dr. Warren's motion to dismiss the case against him – based on his religious beliefs and conscience, which inspire his humanitarian work – the government maintained that the deterrence of unlawful entry in the border area outweighed the potential risks to the lives of migrants.

> *"[E]ven if the men were dehydrated, hypothermic or famished, the government has a compelling interest in deterring the defendant from placing a higher priority on helping illegal aliens avoid detention by immigration authorities than seeking appropriate medical care in a clinical setting."*[105]

Among the humanitarian organizations active in the region are Ajo Samaritans, Humane Borders, and No More Deaths, which have all faced increased intimidation, threats, and legal harassment by the Trump administration in 2019, according to humanitarian volunteers with the organizations.

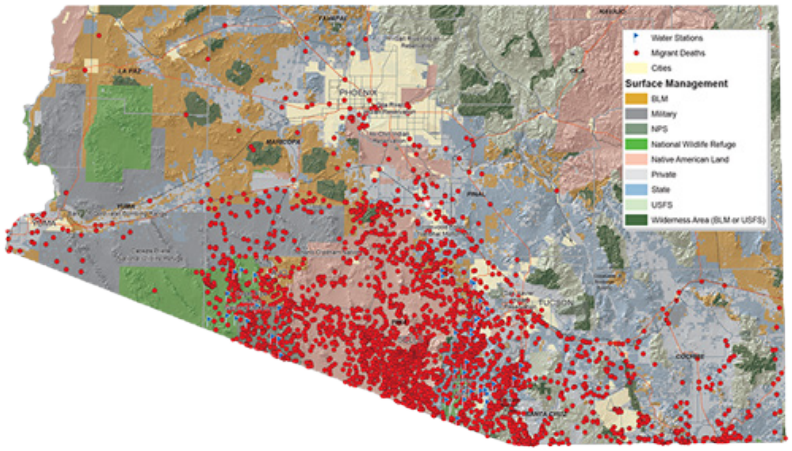
The town of Ajo, Arizona, located 35 miles north of the US–Mexico border, is in a 70-mile migration corridor in the Sonoran Desert in southern Arizona. No More Deaths leaves water and other humanitarian aid in desert areas where people have frequently died.

Arizona has the deadliest border area in the USA, accounting for 38.3 percent of the 7,242 border deaths recorded by U.S. border authorities over the last 20 years.[106] The actual number of deaths is likely higher, as local media and organizations have sometimes counted more than official statistics, and border authorities have not always registered or collected the remains of bodies reported to them by volunteers.[107]

105. US Attorney's Office, response to motion to dismiss, dated 30 April 2019.
106. See, US Border Patrol, "Southwest Border Sector Deaths (FY1998-FY2018)," available at: https://www.cbp.gov/sites/default/files/assets/documents/2019-Mar/bp-southwest-border-sector-deaths-fy1998-fy2018.pdf. In CBP's Tucson Sector (one of nine sectors along border), there were 2,774 officially recognized deaths from 1999 to 2018, such that there were 138.7 deaths per year on average for the last 20 years. At one death every 2.63 days, Tucson is the deadliest sector of all nine, accounting for 38.3 percent of the total southwest border death figures, which are: 7,242 since 1999; meaning an average of 362.1 per year (about one every day) for the last 20 years.
107. See, e.g., CNN, "Border Patrol failed to count hundreds of migrant deaths on US soil" (15 May 2018), available at: https://www.cnn.com/2018/05/14/us/border-patrol-migrant-death-count-invs/index.html.

Humanitarian organizations have been pre-positioning water and other humanitarian aid in the Sonoran Desert for decades to prevent the deaths of asylum seekers and migrants crossing the border through the inhospitable terrain of the area.[108]

Amnesty International has previously found that US border policies which funnel irregular migration into the Sonoran Desert violate US obligations to protect the right to life of migrants.[109]



Selected image of Migrant Death Map, showing locations of migrant deaths on the border of southern Arizona with Mexico. Available at HumaneBorders.org

7.2 CRIMINALIZATION OF HUMANITARIAN AID RISKS A DEADLY CHILLING EFFECT

In May 2019, Amnesty International called on the US government to immediately adopt and implement "humanitarian exemptions" from criminal prosecution under 'smuggling' and 'harboring' charges, including in all situations involving the provision of humanitarian aid.[110] In 2005 and 2006, Amnesty International opposed similar criminal prosecutions of humanitarian volunteers with No More Deaths, soon after the latter organization was founded.[111] Amnesty International remains concerned by the recurring efforts of anti-immigrant politicians to implement punitive policies that would likely have a chilling effect on humanitarian relief more broadly, with potentially deadly effects.

The day before his trial started, Dr. Warren issued a powerful plea in a commentary in the *Washington Post*, calling all citizens to stand up against the criminalization of humanitarian aid, as well as the slippery slope and dangerous course that his conviction could set off.[112]

In mid-2018, several leading UN experts issued a joint letter to the US government, likewise expressing deep concern about the "chilling effect" of the arrest and charges against Dr. Warren for exercising his human right to freedom of expression, particularly in relation to his legitimate human rights activities aimed at saving lives.[113]

Offering a glimpse of what a "chilling effect" could mean in the border communities, a leading human rights activist in Ciudad Juarez said she started to fear providing humanitarian assistance to migrants stranded on the Paso Del Norte bridge in El Paso, following the criminal charges pursued against Dr. Warren and his fellow volunteers.

The activist told Amnesty International in April 2019: "At that time, when the No More Deaths activists had received charges, we were afraid that if the US would do that to their own citizens, that they would also charge us."

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108. See, Briefing on Tragedy Along the Arizona-Mexico Border: Undocumented Immigrants Face Death in the Desert: Before the Arizona Advisory Committee to the US Commission on Civil Rights, Tucson (23 August 2002), available at: https://azmemory.azlibrary.gov/digital/collection/feddocs/id/50/.
109. See, Amnesty International report, *In Hostile Terrain: Human Rights Violation in Immigration Enforcement in the US Southwest* (March 2012), available at: https://www.amnesty.org/en/documents/amr51/018/2012/en/.
110. See, Amnesty International statement, " USA: Authorities must stop criminalizing humanitarian aid " (21 May 2019), available at: https://www.amnesty.org/en/latest/news/2019/05/usa-authorities-must-stop-criminalizing-humanitarian-aid/.
111. See, Amnesty International, "Amnesty International's Concerns about Criminal Charges Filed against Two Human Rights Activists who Assisted Migrants in Desert" (2005), cited in *Living in the Shadows: A Primer on the Human Rights of Migrants* (1 September 2006), at p. 60. Available at: https://www.amnesty.org/en/documents/POL33/006/2006/en/.
112. See, Scott Warren, *The Washington Post* commentary, "I gave water to migrants crossing the Arizona desert. They charged me with a felony." (28 May 2019), available at: https://www.washingtonpost.com/outlook/2019/05/28/i-gave-water-migrants-crossing-arizona-desert-they-charged-me-with-felony/?utm_term=.240b65220247.
113. See, UN Special Procedures, Letter to USA on case of Scott Warren (25 May 2018), available at: https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=23798.

8. CONCLUSION

In 2018 and 2019, the US government under the administration of President Trump executed an unlawful and politically motivated campaign of intimidation, threats, restrictions, and legal harassment against individuals and organizations defending the human rights of refugees, migrants, and asylum seekers on the US–Mexico border.

DHS has exploited legal ambiguities with regard to its authority on the US–Mexico border, in order to weaken civil liberties protections and conduct a criminal dragnet that appeared to violate both domestic and international human rights protections.

Additionally, the vague criminal provisions on "human smuggling," in relation to which US authorities were supposedly conducting those investigations, appeared to be overbroad and potentially unconstitutional, as well as applied with discriminatory intent.

The end results have been unlawful and discriminatory restrictions of migrant human rights defenders' freedom of expression, and equal protection under the law, based on their political or other opinions and speech.

Those restrictions are neither reasonable under US law, nor do they satisfy the high thresholds of necessity and proportionality to achieve a legitimate aim, as is required under international human rights law.

8. RECOMMENDATIONS

RECOMMENDATIONS TO US CONGRESS:

- Reaffirm the right of every person, individually or in association with others, to defend and promote human rights in accordance with the UN Declaration on Human Rights Defenders.
- Hold public hearings on the apparently politically-motivated surveillance operations and criminal investigations against migrant human rights defenders (including both US and non-US nationals) in the US–Mexico border region.
- Increase oversight of DHS and DOJ in order to prevent them from misusing the US criminal justice system to target human rights defenders (including activists, lawyers, journalists, humanitarian volunteers, or others defending human rights), on the basis of their protected views and speech.
- Strengthen the authority and independence of DHS and DOJ accountability mechanisms (including OIG, CRCL, OPR, and others) to hold responsible any law enforcement personnel who abuse their power and intimidate, threaten, harass, or punish human rights defenders on account of their views or speech, including humanitarian, political or other activities manifesting those views.
- Amend 8 U.S.C. § 1324(a) to include a "humanitarian exemption" clause, barring prosecution under crimes enumerated therein, for the provision of humanitarian assistance.
- Adopt measures requiring authorities to obtain warrants before engaging in searches of electronic devices at international boundaries, including by amending 8 U.S.C. §1357(c).
- Invite UN Special Procedures and OAS Special Rapporteurs on (1) the situation of human rights defenders, and (2) the human rights of migrants, to brief Congress on any concerns they may have in their areas of expertise, as relevant to the USA and its border regions, including places of detention or confinement.

RECOMMENDATIONS TO DHS:

- Adopt and implement exemptions from criminal investigation, or referral for prosecution, for the provision of humanitarian assistance and other voluntary support to people in need.
- Halt any intimidation, harassment or stigmatization of humanitarian aid volunteers who are providing life-saving assistance to people in need.
- Halt the destruction of humanitarian aid by all DHS personnel, including in particular US Border Patrol officers on the US–Mexico border.
- Halt issuing migratory alerts, in order to undermine the work of migrant human rights defenders.
- Expand anti-discrimination policy to include all prohibited grounds of discrimination, and not only race and ethnicity, so as not to unlawfully restrict any social group's human rights when not necessary and proportionate to a legitimate aim.
- Make public the findings and conclusions of any investigations by DHS oversight mechanisms (OIG, CRCL, OPR) into DHS's criminal investigations and surveillance operations against migrant human rights defenders.
- Reaffirm publicly that DHS personnel are prohibited from discriminatorily enforcing customs and immigration law in a fashion that undermines freedom of speech, equal protection under the law, or other protected civil liberties.
- Refrain from collaborating with Mexican law enforcement on surveillance operations against human rights defenders, without a warrant based on probable cause for any criminal wrongdoing.
- Issue guidance to DHS personnel on smuggling crimes (including under 8 U.S.C. §1324(a)), in order to ensure they are not inappropriately used to target individuals based on their views and speech, or their corresponding humanitarian and human rights-related activities.

RECOMMENDATIONS TO US DEPARTMENT OF JUSTICE:

- Adopt as policy a "humanitarian exemption" from criminal prosecution related to "smuggling" and "harboring" charges, including in all situations involving the provision of humanitarian aid.
- Halt any and all prosecutions of humanitarian action, including under criminal charges emanating from 8 U.S.C. §1324.

- Issue guidance to DOJ personnel on smuggling crimes (including under 8 U.S.C. §1324(a)), in order to ensure they are not inappropriately used to target individuals based on their views and speech, or their corresponding humanitarian and human rights-related activities.
- Investigate and hold accountable DHS personnel who violated the rights of human rights defenders, providing appropriate remedies for any identified abuses.
- Initiate an investigation by the DOJ Office of the Inspector General, in order to determine whether DOJ brought criminal charges against human rights defenders in violation of their protected views and speech.

RECOMMENDATIONS TO US DEPARTMENT OF STATE:

- Publicly affirm that foreign nationals' entry into the United States will not be restricted on the discriminatory basis of their activities in defense of human rights.
- Invite UN and OAS Special Rapporteurs on (1) the situation of human rights defenders, and (2) the human rights of migrants, to conduct country visits to the United States.
- In line with the US Department of State's own guidelines on "US Support for Human Rights Defenders," provide direct support to US and foreign human rights defenders (including activists, lawyers, journalists and others) in Mexico and other countries who are supporting the rights of migrants and asylum seekers – particularly if they experience threats to their lives, security or liberty; restrictions on their freedom of movement; or other risks of human rights violations.

RECOMMENDATIONS TO THE GOVERNMENT OF MEXICO:

- Adopt measures reaffirming the right of every person, individually or in association with others, to defend and promote human rights in accordance with the UN Declaration on Human Rights Defenders.
- Refrain from targeting any individuals for law enforcement on the basis of their human rights activism and humanitarian work.
- Decline any politically motivated requests from the US or other governments for surveillance, travel restrictions, or other discriminatory and unlawful measures violating the rights and freedoms of human rights defenders.
- Increase transparency and oversight of the National Center for Alerts, in order to prevent arbitrary or abusive restrictions of freedom of movement.
- Strengthen complaint mechanisms and protection measures for human rights defenders, including through the Ministry of Interior's "Protection Mechanism" for human rights defenders, and a broader policy framework on the protection of human rights defenders.
- Implement any precautionary or protective measures requested by the Inter-American Commission for Human Rights or the Inter-American Court on Human Rights, particularly in relation to migrant human rights defenders.
- Protect migrant human rights defenders from intimidation, threats and attacks by state or non-state actors.
- Survey the protection needs of asylum seekers and migrant human rights defenders in Mexican border cities, in order to better protect them from abuses by state or non-state actors.

AMNESTY INTERNATIONAL IS A GLOBAL MOVEMENT FOR HUMAN RIGHTS. WHEN INJUSTICE HAPPENS TO ONE PERSON, IT MATTERS TO US ALL.

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‘SAVING LIVES IS NOT A CRIME’

POLITICALLY MOTIVATED LEGAL HARASSMENT AGAINST MIGRANT HUMAN RIGHTS DEFENDERS BY THE USA

In 2018 and 2019, Amnesty International found the United States (US) government has executed an unlawful and politically motivated campaign of intimidation, threats, harassment, and criminal investigations against people who defend the human rights of migrants, refugees and asylum seekers (“migrant human rights defenders”) on the US–Mexico border.

Among the human rights defenders targeted by US authorities are activists, lawyers, journalists, and humanitarian volunteers, including a clergy member. The US Department of Homeland Security (DHS) and the US Department of Justice (DOJ) have increasingly misused and leveraged the criminal justice system to deter and punish those individuals for challenging – or even simply documenting – the systematic human rights violations by US authorities against migrants and asylum seekers.

DHS and DOJ have accused and investigated human rights defenders for alleged crimes including conspiracy, fraud, and the harboring and smuggling of migrants and asylum seekers, as well as misdemeanor crimes related to the provision of humanitarian aid.

In dozens of cases since December 2018, DHS and DOJ have subjected human rights defenders to politically motivated legal harassment and administrative restrictions that have undermined their work, most frequently as they crossed the US–Mexico border, in violation of the prohibition of discrimination based on their protected views and speech.

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