



July 9, 2019

Rep. Jamie Raskin
Chair

Rep. Chip Roy
Ranking Member

House Committee on Oversight & Government Reform
Subcommittee on Civil Rights and Civil Liberties

Re: Amnesty International Statement for Hearing on “Kids in Cages: Inhumane Treatment at the Border”

On behalf of Amnesty International USA and our over two million members and supporters in the United States, we submit this statement for the record. Amnesty International is an international human rights organization with national and regional offices in more than 70 countries, including in Mexico and the United States.

We welcome the Subcommittee’s oversight efforts in response to reports of children being housed in dangerous and unsanitary conditions at the border. We offer this statement to encourage the Subcommittee to consider how the administration’s full range of anti-immigrant border policies harm children and their families. These policies include illegal asylum waitlists at ports of entry, also known as “metering,” and the so-called “Migrant Protection Protocols.”

At the same time, we urge the Subcommittee to reject the administration’s proposed path forward: indefinite detention of children in the interior in facilities that do not abide by minimum legal standards. Warehousing unaccompanied children in facilities like the Homestead Temporary Influx Shelter in Florida replaces one wrong with another. Instead, the Subcommittee should immediately examine how the administration’s own policies have artificially inflated the need for child detention facilities, reverse those policies, and enact new measures whose touchstone is the safety and freedom of migrant children.

I. U.S. asylum policies at the border are endangering children and families.

The administration has enacted a series of policies at the border eviscerating access to asylum. By doing so, it has forced vulnerable asylum-seekers, including families and children, to either remain exposed to risks of violent crime and extortion in Mexico or to navigate perilous, and oftentimes deadly, irregular border crossings.

The concept of territorial asylum – the ability for those arriving at our shores to seek protection – is a bedrock principle of international and domestic law. Under the [1951 Convention Relating to the Status of Refugees](#) and its 1967 Protocol (the latter of which the United States has signed and incorporated into domestic law through the 1980 Refugee Act), governments have the

obligation not to forcibly return individuals to a place where they would fear harm – not just their countries of origin, but [any other place](#) where a person would have reason to fear for their lives. To ensure this obligation is met, Congress has codified the [right to seek asylum](#) both at and between ports of entry in domestic law, and it has specifically mandated that U.S. authorities refer individuals who express a fear of return at the border to a “[credible fear](#)” [process](#) to assess their asylum claims.

But recent policies have upended this historically entrenched right. In 2017, the administration intensified the illegal practice of keeping asylum waitlists at ports of entry, a policy it refers to as “**metering**.” Before 2017, asylum-seekers who approached U.S. officials at ports of entry to express a fear of return and need for protection could typically access U.S. territory and an asylum procedure, as domestic and international law require. Under the regime of “metering,” authorities instead push asylum-seekers back to Mexico, where their names are placed on a series of ad hoc waiting lists at ports of entry managed variously by Mexican authorities, NGO groups, and even fellow asylum-seekers, creating an environment ripe for abuse. A recent study concluded that there are currently close to [19,000 individuals](#) on metering lists at ports of entry along the US-Mexico border.

Similarly, under **Migrant Protection Protocols (MPP)**, individuals seeking asylum at the border are forcibly returned to Mexico for the duration of their U.S. court proceedings, which can typically take years to complete. In the meantime, they are all but cut off from access to attorneys, are routinely left homeless in cities without adequate shelter systems, lack status in Mexico, and regularly face serious risks of extortion, kidnapping, and violent crime. In the past few months, MPP has quietly and exponentially expanded: as of this writing, over 18,500 individuals have been sent back to Mexico to await their U.S. court proceedings.

These policies are not only illegal; they are deadly. The [wrenching story](#) of Oscar Martinez and his baby daughter Valeria exemplifies the dangers of policies that restrict access to asylum and force families into dangerous passage. News [reports suggest](#) the family made the decision to cross the border via the Rio Grande after “spending two weeks in a migrant camp waiting to apply for asylum in the United States.” In just the month of June, as admissions at ports of entry slowed to a trickle, deaths of individuals irregularly crossing the border [spiked](#): a week before the death of Oscar and Valeria, the [bodies of a woman, two infants, and a toddler](#) were recovered elsewhere along the Rio Grande. The Department of Homeland Security’s (DHS) own Inspector General [concluded](#) that metering has likely forced increasing numbers of families with children into irregular border crossings.

The desperation that causes people to attempt such dangerous journeys is fueled by the perilous conditions they face in Mexican border towns, reported to have some of the highest levels of violence in the world. Since the expansion of MPP, numerous individuals subjected to the program have described being [extorted by the police](#) and [kidnapped and raped](#) by armed criminal groups. Individuals subjected to metering face many of the same harms: a [transgender Guatemalan woman](#) recounted being turned away from the San Ysidro port of entry when attempting to seek asylum; upon return to Tijuana, she was detained and beaten by local police. Shortly afterward, a group of six armed men attacked a Tijuana shelter where eleven LGBTI asylum-seekers had been staying, [yelling homophobic slurs and threatening to kill them](#) if they

did not leave the neighborhood. In February 2019, [two Honduran teenagers were killed](#) near the youth migrant shelter where they were staying in Tijuana as they waited to apply for asylum.

Children are particularly harmed by policies like metering and MPP. While all migrants are harmed by policies like MPP and metering, children are disproportionately impacted. Because unaccompanied children are [prohibited from accessing metering lists](#) at ports of entry, they are directly driven into the hands of smugglers who offer to help them cross irregularly, detained by Mexican authorities in wholly unsuitable conditions, or forced to give up their asylum claims and return to their home countries. Meanwhile, MPP [appears to be](#) sweeping up families with young children – who are then relegated to survive in Mexico for the potentially years-long wait there, without access to education or even shelter, while exposed to grave risks of crime – and [separating children from their caregivers](#), who are subjected to the program while the children are treated as “unaccompanied” and swiftly detained in the United States.

Finally, while the administration repeatedly offers its limited capacity as justification for eviscerating the right of territorial asylum, both metering and MPP are resource-intensive measures that only serve to place further strains on the asylum process established by Congress. By forcing more individuals to cross irregularly, the administration is causing more resources to be diverted from ports of entry to remote areas with less staffing and infrastructure, even as the ports receive a [mere fraction](#) of the number of individuals they are typically able to process. Senior Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) officials at the San Ysidro port of entry confirmed to Amnesty International that the port has only [reached its detention capacity](#) a couple of times per year. Yet in 2017 and 2018, CBP personnel [frequently turned away](#) even small numbers of asylum-seekers at San Ysidro and other ports of entry. MPP, meanwhile, necessitates complex inter-agency coordination between ICE, CBP, U.S. Citizenship and Immigration Services (USCIS), and the Executive Office of Immigration Review and, per USCIS’s own asylum officers, [dramatically worsens](#) the already weighty backlogs in the asylum system.

II. Detaining children indefinitely in ORR influx facilities is not an appropriate alternative.

While children should not be subjected to detention in abysmal conditions along the border, the alternative the administration posits – indefinite detention in unlicensed, large-scale influx facilities operated by the Office of Refugee Resettlement (ORR) – should be rejected.

Just as the administration’s border policies have manufactured chaos, **its prioritization of enforcement over children’s best interests has led to a record number of children languishing in government custody** when they could instead be free and with their loved ones. In 2018, the number of children in ORR custody [skyrocketed](#) to over 12,000, and the length of time these children remained in custody similarly increased sharply. This can be traced to a Trump administration [information-sharing agreement](#) allowing ORR to provide data about children’s potential caregivers with ICE, which can then use that information to initiate enforcement actions against them. In practice, this means that parents and family members who could sponsor detained children for release are now forced to choose between a child’s liberty and their own potential deportation.

Children, meanwhile, are spending longer periods of time in facilities that do not meet the government's obligations towards them. In particular, **the administration's use of large-scale influx facilities to detain children is a violation of its obligations to protect the best interests of the child.** In April 2019, Amnesty International visited the Homestead Temporary Influx Facility, the largest and only for-profit facility in the country, where we found that the administration is violating the human rights of thousands of unaccompanied children by detaining them in a large-scale, highly restrictive setting, for prolonged periods of time. Because the facility is designated as "temporary" – even though it has been in operation for over 15 months as of this date – Homestead evades the legal requirements governing permanent ORR facilities.

Yet rather than using these facilities sparingly and for limited periods of time, the administration is poised to expand their use: it has just received \$3 billion for ORR facilities, and new influx facilities are cropping up in [Carrizo Springs, Texas](#), and in a military base in [Fort Sill, Oklahoma](#) – the site of a former Japanese internment camp. Though Congress has already appropriated this funding, it should put strict guardrails on its use to ensure that children are not indefinitely detained and their freedom prioritized to the greatest possible extent.

III. Recommendations

Congress should:

- Continue to engage in robust oversight of border policies, including detention conditions at the border as well as anti-asylum policies like metering and MPP. Such oversight should specifically assess the impact of MPP and metering on the rights of children, as well as demand greater transparency and accountability from the administration for these policies, which have largely operated without adequate oversight.
- Conduct immediate oversight of child detention in ORR facilities, including:
 - The use and potential expansion of ORR influx facilities to indefinitely detain children
 - Length of time children are detained in temporary and permanent ORR shelters
 - Impact of ICE-ORR information-sharing agreement on number of children in detention and length of time detained, including the number of potential sponsors or sponsor household members who have been deported based on information obtained through the agreement.
- Support the *Families, Not Facilities Act* (H.R. 2217), which promotes the reunification of children and families and prohibits enforcement actions from taking place through information gleaned via the ICE-ORR information-sharing agreement.
- Protect the right to territorial asylum, including by enacting measures to end metering and MPP.
- Refuse to fund detention facilities which are not in a child's best interests, and promote the use of robust, non-custodial alternatives to detention for children and families at the border and in the interior, prioritizing freedom and family unity.
- Ensure access by NGO observers to all places where children are detained, including border detention facilities and influx shelters.

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Sincerely,

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