

Inter-American Commission on Human Rights
Public Hearing: Limitations on Access to Asylum and Refuge in the United States
for Citizens of the Northern Triangle Countries

Statement of Charanya Krishnaswami, Americas Advocacy Director
Amnesty International USA
September 24, 2019

On behalf of Amnesty International USA, I thank the Commissioners for the opportunity to offer this statement today and for holding this public hearing, as well as for the Commission's recent visit to the Mexico/U.S. border to investigate the conditions faced by asylum-seekers.

Amnesty International engages in activism, research, policy advocacy, litigation, and education to demand human rights for all people. A top priority for our organization is protecting the human right to seek asylum.

At this moment in the United States, that right is in grave peril.

The concept of territorial asylum – the ability for people seeking refuge at U.S. shores to request protection here – is a bedrock principle of international, regional, and domestic law, reflected in Article 27 of the American Declaration. 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 must not 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, the U.S. government has codified in domestic law the right to seek asylum both at and between ports of entry along the U.S. border.

In the past two years, however, a series of reckless, unlawful policies implemented by the U.S. government have eviscerated territorial asylum. In these few short minutes, I'll address some of gravest current threats to asylum at the border. These fall into two categories: first, measures that rest on the fiction that common countries of transit for asylum-seekers are "safe" countries of refuge, and second, policies and practices that push asylum-seekers back to perilous conditions in Mexico.

Unsafe Third Countries: The Third-Country Transit Rule and Regional Asylum Agreements

Just last Friday, the USA announced that it signed an asylum agreement with El Salvador – a country with levels of violence comparable to war zones – under which asylum-seekers at the Mexico/U.S. border could be sent there.¹ This is just the latest in a series of such measures, including a similar agreement in Guatemala² and an agreement in process in Honduras.³

A rule announced in July, commonly known as the "asylum ban," would bar *any* asylum-seeker who has transited through *any* third country via land route to the USA from asylum eligibility here if they had failed to apply for asylum in countries of transit.⁴ In practice, the rule would virtually shut down asylum at our border,

¹ Dep't of Homeland Security, "Joint Statement Joint Statement Between the U.S. Government and the Government of El Salvador," Sept. 20, 2019, <https://www.dhs.gov/news/2019/09/20/joint-statement-between-us-government-and-government-el-salvador>.

² Dep't of Homeland Security, "Joint Statement between the U.S. Government and the Government of Guatemala," <https://www.dhs.gov/news/2019/07/22/joint-statement-between-us-government-and-government-guatemala>; Kirk Semple, "The US and Guatemala Have Reached a Safe-Third Country Agreement: Here's What It Means," N.Y. Times, July 28, 2019, <https://www.nytimes.com/2019/07/28/world/americas/guatemala-safe-third-asylum.html>.

³ Gwen Aviles, "U.S. seeking to make Cubans seek asylum in Honduras, minister says," NBC News, Sept. 18, 2019, <https://www.nbcnews.com/news/latino/u-s-seeking-make-cubans-seek-asylum-honduras-minister-n1055816>.

⁴ U.S. Department of State, 2018 Country Report – Guatemala, <https://www.state.gov/wp-content/uploads/2019/03/GUATEMALA-2018.pdf>.

and the U.S. Supreme Court has just allowed it to go into effect as it continues to be challenged in the lower courts.

These policies are predicated on the pure fiction that common countries of transit for asylum-seekers are safe countries of refuge. Ample reporting demonstrates that they are some of the least safe countries for their own nationals, let alone for the migrants and refugees who pass through them.

Amnesty International has documented that the environment of generalized impunity and corruption in these three countries has engendered unchecked violence: El Salvador has one of the highest homicide rates in the Americas, and, in Honduras, the murder rate is 800% higher than that of the USA. The U.S. State Department report on Guatemala describes the asylum procedure there as “inadequate” and notes the disappointing backslide towards corruption and impunity in the country.⁵

The asylum ban contemplates that a lesser form of protection, known as withholding of removal and relief under the Convention against Torture, would still be available to people subject to the ban. But these forms of relief are in no way adequate substitutes for asylum. For one, withholding of removal requires asylum-seekers to meet a more stringent standard of proof to establish their eligibility for this relief.⁶ Furthermore, unlike a grant of asylum, receiving withholding of removal protects from deportation but offers little else: no pathway to lawful permanent residence, significant barriers to education and work, and insurmountable barriers to family unity.⁷ In sum, it fails to provide the panoply of rights to which refugees are entitled under domestic law, Inter-American law, or international law.

Stranded in Mexico: The “Migrant Protection Protocols” and Metering

In the second category of restrictions, the USA is forcing people in need of protection to fight their asylum cases while remaining in dangerous and precarious conditions in Mexico, in violation of its obligation against *refoulement*. As the Commission recently recognized in its press release following its visit to south Texas, these policies “seriously impact[] the effective enjoyment of human rights by migrants, asylum-seekers and other people seeking international protection in the United States.”⁸

The so-called “Migrant Protection Protocols,” informally known as “Remain in Mexico,” potentially represent the most radical transformation to asylum adjudication in the USA. Over 42,000 people have thus far been sent to Mexico for the duration of their U.S. court proceedings, which can typically take months, if not years, to complete.⁹

In the meantime, they are all but cut off from access to attorneys: fewer than 1% have managed to secure legal counsel.¹⁰ They are routinely left homeless and in cities without adequate shelter systems: there is now an open-air tent camp in Matamoros, a Mexican city near south Texas, where hundreds of people impacted by the policy, including families with small children and people with disabilities, bathe in an open river and sleep on the

⁵ U.S. Department of State, 2018 Country Report – Guatemala, <https://www.state.gov/wp-content/uploads/2019/03/GUATEMALA-2018.pdf>.

⁶ *INS v. Stevic*, 476 U.S. 407 (1984).

⁷ See INA 241(b)(3); 8 CFR. §§ 208.16-208.18; Human Rights First, “Withholding of Removal and the U.N. Convention Against Torture—No Substitute for Asylum, Putting Refugees at Risk,” Nov. 2018, https://www.humanrightsfirst.org/sites/default/files/CAT_Withholding.pdf.

⁸ “IACHR Conducted Visit to the United States’ Southern Border,” Sept. 16, 2019, http://www.oas.org/en/iachr/media_center/PReleases/2019/228.asp.

⁹ “Press Briefing by Acting CBP Commissioner Mark Morgan,” Sept. 9, 2019, <https://www.whitehouse.gov/briefings-statements/press-briefing-cbp-acting-commissioner-mark-morgan/>.

¹⁰ “Access to Attorneys Difficult for Those Required to Remain in Mexico,” TRAC Immigration, July 29, 2019, <https://trac.syr.edu/immigration/reports/568/>.

streets.¹¹ They are not provided documentation of lawful presence in Mexico: some returnees have even faced detention and deportation by Mexican authorities, even with their U.S. court documents.¹² They are being sent by the U.S. government to grave danger: there are at least 240 documented cases of returnees who have been kidnapped, raped, assaulted, and even extorted by the very police tasked with protecting them.¹³

Just last week, Amnesty International was in south Texas to investigate an alarming new development in this policy: the construction of secret tent courts in two ports of entry that abut Tamaulipas state in Mexico, an area so dangerous the U.S. State Department warns its citizens not to travel there. These tent courts are due process blackholes, entirely closed off from public access: Amnesty International was turned away from both facilities when we requested entry, even though immigration court generally must be open to the public. They will reportedly be the site of anywhere from 400 to 700 assembly line-style proceedings per day, with the immigration judge and government prosecutor appearing remotely, via video.¹⁴ In the proceedings I managed to observe, from a courtroom hundreds of miles away, a mere fraction of asylum-seekers had managed to secure attorneys. Several asylum-seekers, including two fathers with young children, described being kidnapped *as they were traveling to court in the United States* – literally forced to endanger themselves in the act of asking for safety.

Furthermore, all along the southwest border, asylum-seekers also continue to be subject to a regime of illegal pushbacks and asylum waitlists at the ports of entry, known as “metering” lists. Under this practice, U.S. agents push asylum-seekers back to Mexico to wait for months to seek asylum. Their names are then 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.¹⁵ A recent study concluded that, as of August, there were 26,000 people on metering lists at ports of entry along the US-Mexico border.¹⁶

The Human Costs of Anti-Asylum Policies

Metering and Remain in Mexico have already had deadly consequences: conditions are often so dire for asylum-seekers forced to wait in Mexico that desperation drives them to attempt irregular, deadly crossings. The tragic deaths of Oscar Martinez and his baby daughter Valeria, the father and daughter who drowned in the Rio Grande, are linked to the practice of metering – 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.”¹⁷

Just last week, a [young mother](#) named Idalia Herrera Hernandez and her baby boy, Iker Gael Cordova Herrera, both subjected to the “Remain in Mexico” policy and stranded in Matamoros, died while attempting to cross in south Texas. According to a Honduran consular official, the mother was in a state of “despair” after waiting in

¹¹ Carlos Sanchez, “Migrants Stuck in Squalid Tent Camps Begin Asylum Process,” Texas Monthly, Sept. 17, 2019, <https://www.texasmonthly.com/news/migrants-mexico-tent-camps-asylum/>.

¹² Brief of Amnesty International in *Innovation Law Lab v. McAleenan*, available at: <https://www.amnestyusa.org/our-work/government-relations/advocacy/amnesty-international-supports-challenge-to-remain-in-mexico-policy-describing-dangerous-conditions-asylum-seekers-face-in-mexico/>.

¹³ “The U.S. Administration Delivers Asylum Seekers to Grave Danger in Mexico,” Human Rights First, Sept. 17, 2019, <https://www.humanrightsfirst.org/resource/trump-administration-delivers-asylum-seekers-grave-danger-mexico-200-publicly-reported>.

¹⁴ American Imm. Lawyers Ass’n, “AILA Policy Brief: DHS and DOJ Are Opening Secretive Tent Courts Along the Border,” Sept. 6, 2019, <https://www.aila.org/advo-media/aila-policy-briefs/aila-policy-brief-dhs-and-doj-are-opening-secret>.

¹⁵ Amnesty International, “You Have No Rights Here,” Oct. 2018, <https://www.amnesty.org/download/Documents/AMR5191012018ENGLISH.PDF>.

¹⁶ Robert Strauss Center, Metering Update: August 2019, available at: https://www.strausscenter.org/images/MSI/MeteringUpdate_190808.pdf.

¹⁷ Bill Chappell, “A Father and Daughter Who Drowned At the Border Put Attention on Immigration,” NPR News, June 26, 2019, <https://www.npr.org/2019/06/26/736177694/a-father-and-daughter-drowned-at-the-border-put-attention-on-immigration>.

Mexico for several months and wished desperately to be with her husband and their other children, who were on the other side. Iker is the fifteenth child to die at the Mexico/U.S. border in 2019.¹⁸

Today, asylum-seekers can be cut off from eligibility for asylum because they transited through an unsafe third country. They can be relegated to a waiting list for months. And even when they get to the top of that list, they can be summarily forced to Mexico for the duration of their asylum cases. All the while, their safety is at stake, and their desperation grows.

The right to seek asylum shouldn't be an obstacle course, a feat of the impossible. It is a human right. But unless these policies are halted, both asylum-seekers and the right to seek asylum at the border are in grave danger.

Thank you.

¹⁸ Adolfo Flores, "More Immigrant Children Are Dying at the Border as the United States Sends People Back to Mexico," BuzzFeed News, Sept. 19, 2019, <https://www.buzzfeednews.com/article/adolfoflores/immigrant-children-dying-united-states-mexico-trump>.