





also focusing on the unusual and extreme measures enacted by the governments of the U.S. and Mexico in response to the COVID-19 global pandemic and the resulting violations under human rights law. The hearing would center on the following policies: (A) COVID-19 related measures; (B) Asylum Cooperative Agreements (“ACA”); and (C) the Migrant Protection Protocols (“MPP”).

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**I. BACKGROUND AND CURRENT SITUATION**

**A. COVID-19 Measures put in place by the governments of the United States and Mexico violate, among others, the rights to seek asylum; not to be returned to a country where one’s life or freedom would be threatened; to due process; not to be subjected to arbitrary detention; to family unity; to respect the best interests of the child; and to the preservation of health and wellbeing.**

On March 20, 2020, an order by the U.S. Centers for Disease Control and Prevention (CDC) was issued and used by U.S. agencies to justify closing the border indefinitely to refugees, denying them the right to seek humanitarian protection and to due

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Migrant Children in Central America, Mexico and United States" September 26, 2019; and "Migration and Asylum in Mexico" September 27, 2019.



process.<sup>2</sup> This order has been condemned by leading public health experts as having specious justifications and failing to protect public health.<sup>3</sup> Those experts made clear that there are public health measures that can be effectively used to process asylum seekers at the border and that do not involve the banning and expulsion of families, children and adults seeking life-saving asylum.<sup>4</sup> On May 19, 2020, the order was indefinitely extended.

After the order was enacted, U.S. Border Patrol agents were instructed to immediately expel anyone seeking entry to the U.S.<sup>5</sup> "Asylum seekers forced back into Mexico under MPP and the CDC order face brutal and highly dangerous conditions, made worse by the COVID-19 pandemic, many lacking safe shelter, adequate medical care, and sufficient food."<sup>6</sup> Almost 70,000 asylum seekers and migrants,<sup>7</sup> including over 2,000 unaccompanied children, have been expelled under the CDC order.<sup>8</sup> Expulsions under the order disproportionately affect asylum seekers and unaccompanied children coming primarily from Mexico and Central American countries like El Salvador, Honduras and Guatemala.<sup>9</sup> The order also adversely impacts many African, Cuban, Venezuelan, Nicaraguan, and other asylum seekers.

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<sup>2</sup>Centers for Disease Control and Prevention, "Order Suspending Introduction of Certain Persons from Countries Where a Communicable Disease Exists," May 19, 2020. <https://www.cdc.gov/quarantine/order-suspending-introduction-certain-persons.html>

<sup>3</sup>See letter To HHS Secretary Azar And CDC Director Redfield Signed By Leaders Of Public Health Schools, Medical Schools, Hospitals, And Other U.S. Institutions. May 18, 2020. <https://www.publichealth.columbia.edu/public-health-now/news/public-health-experts-urge-us-officials-withdraw-order-enabling-mass-expulsion-asylum-seekers>

<sup>4</sup>UNHCR. "Key Legal Considerations On Access To Territory For Persons In Need Of International Protection In The Context Of The Covid-19 Response." March 16, 2020. <https://www.refworld.org/docid/5e7132834.html>

<sup>5</sup>See letter to Acting Secretary of the Department of Homeland Security ("DHS") and Director of the Center for Disease Control and Prevention ("CDC").

<https://www.humanrightsfirst.org/sites/default/files/LetteronDHSExpulsionsUnderCDCOrder.pdf>

<sup>6</sup>Human Rights First. "Pandemic as Pretext: Trump Administration Exploits COVID-19, Expels Asylum Seekers and Children to Escalating Danger." May 2020.

<https://www.humanrightsfirst.org/sites/default/files/PandemicAsPretextFINAL.pdf>

<sup>7</sup>U.S. Customs and Border Protection, "Nationwide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions" (last modified July 9, 2020). <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics>

<sup>8</sup>Lauren Villagran. "The Trump administration is turning away unaccompanied children at the border because of coronavirus." June 10, 2020. <https://www.usatoday.com/story/news/nation/2020/06/10/border-patrol-rejects-migrant-children-cdc-rule-amid-covid-19/5333392002/>

<sup>9</sup>Yael Schacher and Chris Beyrer. "Expelling Asylum Seekers Is Not The Answer: U.S. Border Policy In The Time Of Covid-19" April 27, 2020. <https://www.refugeesinternational.org/reports/2020/4/26/expelling-asylum-seekers-is-not-the-answer-us-border-policy-in-the-time-of-covid-19>



U.S. Customs and Border Protection (CBP) is no longer conducting routine screenings of unaccompanied children to ensure they are not being returned to persecution or to human traffickers. Children traveling with any adult are being expelled without any screening to ensure that this adult is a safe person or even a family member.<sup>10</sup> These children are at very high risk of human trafficking. Adults and children traveling alone are being unlawfully pushed back into Mexico, sometimes in the middle of the night.<sup>11</sup> Asylum seekers expelled to Mexico under the CDC order have not only been denied their right to seek asylum in the U.S., but have also been victims of the National Institute of Migration's (INM) attempts to forcibly deport them to Guatemala through stealthy border crossings.<sup>12</sup>

Between February and June of this year, there have likely been more than 350 deportation flights to Latin America and Caribbean countries; about 240 of those flights went to Northern Central American countries and some flights included people who tested positive for COVID-19.<sup>13</sup> Adult and child asylum seekers from Guatemala, El Salvador, and Honduras who arrive at the border have been handed over to the U.S. Immigration and Customs Enforcement (ICE) and sent back to their countries on these crowded deportation flights,<sup>14</sup> in complete disregard of their right to seek asylum and children's welfare and best interests.<sup>15</sup> Similarly, ICE deportation flights to Haiti completely disregard the risk of the

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<sup>10</sup>Caitlin Dickerson and Kirk Semple. "U.S. Deported Thousands Amid Covid-19 Outbreak. Some Proved to Be Sick." April 18, 2020. <https://www.nytimes.com/2020/04/18/us/deportations-coronavirus-guatemala.html>

<sup>11</sup>Id.; Human Rights First. "Illegal Expulsions by the Department of Homeland Security under the March 20, 2020 Order by the Centers for Disease Control and Prevention." April 16, 2020.

<https://www.humanrightsfirst.org/resource/illegal-expulsions-department-homeland-security-under-march-20-2020-order-centers-disease>

<sup>12</sup>Tania Aguayo. "Denuncian que INAMI obligó a hondureños a cruzar ilegalmente a Guatemala." April 8, 2020. <https://latinus.us/2020/04/08/denuncian-inami-obligo-hondurenos-cruzar-ilegalmente-guatemala/>

<sup>13</sup>Melisa del Bosque & Isabel Macdonald. "Exporting the Virus: How Trump Deportation Flights are Putting Latin America and the Caribbean at Risk." June 26, 2020.

[https://theintercept.com/2020/06/26/coronavirus-ice-detention-deportation-haiti-guatemala/?utm\\_source=twitter&utm\\_medium=social&utm\\_campaign=theintercept](https://theintercept.com/2020/06/26/coronavirus-ice-detention-deportation-haiti-guatemala/?utm_source=twitter&utm_medium=social&utm_campaign=theintercept)

<sup>14</sup>Caitlin Dickerson and Kirk Semple. "U.S. Deported Thousands Amid Covid-19 Outbreak. Some Proved to Be Sick." April 18, 2020. <https://www.nytimes.com/2020/04/18/us/deportations-coronavirus-guatemala.html>

<sup>15</sup>UNICEF. "COVID-19: Dangers Mount for Migrant Children Forcibly Returned to Northern Central America and Mexico During Pandemic." May 21, 2020. <https://www.unicef.org/press-releases/covid-19-dangers-mount-migrant-children-forcibly-returned-northern-central-america>



spread of COVID-19 in a country that has limited resources and where the healthcare system is already at its limit.<sup>16</sup>

Furthermore, despite the high risk of infection at detention centers and recommendations by epidemiologists and the IACHR,<sup>17</sup> ICE is not allowing the release of most migrants detained within the United States. Many asylum seekers, migrants, and unaccompanied children are held in U.S. immigration detention facilities arbitrarily -and often without prompt court review, despite the availability of alternatives. According to ICE reports, as of July 13th, more than 3,180 detainees have tested positive for COVID-19 and 3 have died from the virus.<sup>18</sup> Public health and other experts have repeatedly recommended that asylum seekers, migrants and unaccompanied children should be released from detention - given the danger of COVID-19 spread in these facilities, and quarantined as needed.<sup>19</sup> The Office of Refugee Resettlement (ORR) has the capacity both to care for children safely, in accordance with public health guidance, and to expedite processing for family reunification to minimize the time unaccompanied children spend in its custody.<sup>20</sup> Even though a district judge ordered the release of all migrant children who have been in ICE custody for 20 days or more by July 17th,<sup>21</sup> ICE, by refusing to release the parents who are detained with their children, is forcing parents to make a horrible choice between protecting their children from COVID 19 and detention on the one hand, and separating from them on the other.

Detention centers hold migrants and refugees in precarious and inhumane conditions. These conditions, along with ICE's failure

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<sup>16</sup>Chantal Da Silva. "Exclusive: Hundreds of Rights Leaders Demand U.S. End Haiti Deportations." June 19, 2020. <https://www.newsweek.com/exclusive-hundreds-rights-leaders-demand-u-s-end-haiti-deportations-1511696>

<sup>17</sup>Comisión Interamericana de Derechos Humanos. "Pandemia y Derechos Humanos en las Américas" Resolución 01/2020. (Apr. 2020). <http://www.oas.org/es/cidh/decisiones/pdf/Resolucion-1-20-es.pdf>

<sup>18</sup>Camilo Montoya-Galvez. "Third Immigrant Detained by ICE Dies After Contracting the Coronavirus." <https://www.cbsnews.com/news/third-immigrant-dies-in-ice-custody-after-contracting-the-coronavirus/>

<sup>19</sup>Human Rights First. "Public Health Experts, Medical Doctors, Prison Experts, and Former ICE Officials Urge Releases from Immigration Detention Facilities to Control the Spread of COVID-19." April 2020. <https://www.humanrightsfirst.org/sites/default/files/ExpertsUrgeReleaseICEdetaineesCOVID19.pdf>

<sup>20</sup>Camilo Montoya-Galvez. "Chicago Coronavirus Outbreak Infects Dozens of Migrant Children in U.S. Custody." April 2020. <https://www.cbsnews.com/nchicago-coronavirus-outbreak-infects-dozens-of-migrant-children-in-us-custody/>

<sup>21</sup>Vanessa Romo. "Judge Orders ICE To Free Detained Immigrant Children Because Of COVID-19" June 26, 2020. <https://www.npr.org/sections/coronavirus-live-updates/2020/06/26/884186168/judge-orders-ice-to-free-detained-immigrant-children-because-of-covid-19>



to identify and isolate symptomatic individuals, has led to the rapid spread of COVID-19 within detention centers;<sup>22</sup> e.g. at the Farmville Detention Center in Virginia, 93% of the detainees whose results have been reported, tested positive for COVID-19, and at least 6 detainees have been hospitalized with severe symptoms.<sup>23</sup> In a detention center in California, ICE has been spraying a disinfectant that has caused skin conditions, bleeding and pain on detained migrants.<sup>24</sup> Similarly, since the start of the pandemic, for-profit ICE detention centers have used pepper spray or tear gas against detained migrants more than a dozen times.<sup>25</sup>

Detained migrants in detention centers in Mexico also face a risk of contracting the virus because of precarious conditions in detention centers. Patients who were treated by Doctors Without Borders in Tabasco, Mexico, presented symptoms consistent with COVID-19 and reported a lack of medical attention and basic necessities such as access to water.<sup>26</sup> Mexican federal judges have recognized INM's inability to protect migrant detainees from contracting COVID-19, and ordered the release of all vulnerable detainees and the development of protocols to ensure access to health services. Yet, Mexico has failed to comply with these orders, and achieved a reduction of its detained population only through a massive exercise of deportation and unlawful transport of migrants and refugees to Mexico's southern border areas<sup>27</sup> despite

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<sup>22</sup>Spencer Ackerman. "'They Put Us in Here to Let Us Die': ICE Prison Sees Outbreak of Coronavirus—and Guard Violence." July 14, 2020. <https://www.thedailybeast.com/ice-prison-sees-outbreak-of-coronavirus-and-guard-violence-they-put-us-in-here-to-let-us-die>; Alejandro Lazo and Zusha Elinson. "Inside the Largest Coronavirus Outbreak in Immigration Detention." July 15, 2020. <https://www.wsj.com/articles/inside-the-largest-coronavirus-outbreak-in-immigration-detention-11588239002>

<sup>23</sup>Jenny Gathright. "More Than 70% Of People Detained At The Farmville Detention Center Are COVID-Positive." July 10, 2020. <https://dcist.com/story/20/07/10/more-than-70-of-people-detained-at-the-farmville-detention-center-are-covid-positive/>

<sup>24</sup>Canela Lopez. "Report Finds ICE Detention Center is Using a Disinfectant Over 50 Times a Day that Causes Bleeding and Pain." June 5, 2020. <https://www.insider.com/report-detention-centers-use-disinfectant-causing-bleeding-and-pain-2020-6>

<sup>25</sup>Noah Lanard. "Prison CEOs Say They Had No Clue Guards Pepper-Sprayed Hundreds of Immigration Detainees." July 13, 2020. <https://www.motherjones.com/politics/2020/07/prison-ceos-say-they-had-no-clue-guards-pepper-sprayed-hundreds-of-immigration-detainees/>

<sup>26</sup>Médecos Sin Fronteras. "México: Demandamos el Cierre de las Estaciones Migratorias y el Acceso de Migrantes a Atención Médica y Protección Frente a la COVID 19." March 4, 2020. <https://www.msf.mx/article/mexico-demandamos-el-cierre-de-las-estaciones-migratorias-y-el-acceso-de-migrantes-a>

<sup>27</sup>Delgadillo, Kuhner, Macias. "Migrantes: El Desamparo en Medio de la Pandemia." Mayo 25, 2020. <https://www.eluniversal.com.mx/opinion/ana-lorena-delgadillo-gretchen-kuhner-y-alejandra-macias/migrantes-el-desamparo-en-medio-de>



the COVID-19 pandemic reaching peak numbers in Mexico and Central America.<sup>28</sup>

Additionally, the U.S. administration not only continues to refuse to end the Migrant Protection Protocols ("MPP") [Addressed in section C] -implemented at the beginning of 2019, but has cut off all access to assessments of fear of return to Mexico and evaluation of exemptions to MPP for vulnerable individuals,<sup>29</sup> forcing migrants to reside in dangerous regions near the U.S.-Mexico border, often in conditions where social distancing and preventive hygiene measures are impossible. Shelters in Baja California don't have the means to provide medical care<sup>30</sup> and migrants often sleep in rooms with 40 to 50 people.<sup>31</sup> A government-run shelter in Ciudad Juarez had detected 12 cases of COVID-19 by May 2020.<sup>32</sup> Similarly, the migrant camp in Matamoros, where COVID-19 spread may be inevitable despite the tremendous efforts of medical and health care volunteers to protect the encampment.<sup>33</sup> On June 25, 2020, Global Response Management identified the first COVID-19 infection in the camp.<sup>34</sup> It is worth noting that many humanitarian assistance groups have worked hard to prevent the spread of COVID-19 in the Matamoros camp by, among other things, providing access to water, basic health care, and additional handwashing stations.<sup>35</sup> Despite these

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<sup>28</sup>José Cancino. "Reactiva INM Redadas Contra los Migrantes." July 5, 2020.

<https://diariodechiapas.com/region/reactiva-inm-redadas-contra-los-migrantes/130238>; Diario de Mexico.

"México deporta a 129 migrantes hondureños; harán cuarentena por la Covid-19." July 2020.

<https://www.diariodemexico.com/mexico-deporta-129-migrantes-hondurenos-haran-cuarentena-por-la-covid-19>

<sup>29</sup>Human Rights First. "CBP Blocking "Migrant Protection Protocols" Fear Screenings." June 20, 2020.

<https://www.humanrightsfirst.org/resource/cbp-blocking-migrant-protection-protocols-fear-screenings>

<sup>30</sup>Elena Reina And Elías Camhaji. "Los Migrantes Varados en México, Desarmados Frente al Coronavirus."

March 21, 2020. <https://elpais.com/internacional/2020-03-20/los-migrantes-varados-en-mexico-desarmados-frente-al-coronavirus.html>

<sup>31</sup>Id.

<sup>32</sup>Reuters. "Twelve Migrants Test Positive for Coronavirus at Mexican Government Shelter." May 29, 2020.

<https://www.reuters.com/article/us-health-coronavirus-mexico-immigration/twelve-migrants-test-positive-for-coronavirus-at-mexican-government-shelter-idUSKBN23601V>

<sup>33</sup>Sister Norma Pimentel. "Covid-19 Has Come To Our Migrant Camp. It Makes Ending The Mpp Policy Even More Urgent." July 5, 2020. [https://www.washingtonpost.com/opinions/covid-19-has-come-to-our-migrant-camp-it-makes-ending-the-mpp-policy-even-more-urgent/2020/07/03/455cacf8-bd41-11ea-8cf5-9c1b8d7f84c6\\_story.html](https://www.washingtonpost.com/opinions/covid-19-has-come-to-our-migrant-camp-it-makes-ending-the-mpp-policy-even-more-urgent/2020/07/03/455cacf8-bd41-11ea-8cf5-9c1b8d7f84c6_story.html)

<sup>34</sup>Reinaldo Leños Jr. "First COVID-19 Case Reported At Migrant Camp In Matamoros." June 30, 2020.

<https://www.tpr.org/post/first-covid-19-case-reported-migrant-camp-matamoros>

<sup>35</sup>Sister Norma Pimentel. "Covid-19 Has Come To Our Migrant Camp. It Makes Ending The Mpp Policy Even More Urgent." July 5, 2020. [https://www.washingtonpost.com/opinions/covid-19-has-come-to-our-migrant-camp-it-makes-ending-the-mpp-policy-even-more-urgent/2020/07/03/455cacf8-bd41-11ea-8cf5-9c1b8d7f84c6\\_story.html](https://www.washingtonpost.com/opinions/covid-19-has-come-to-our-migrant-camp-it-makes-ending-the-mpp-policy-even-more-urgent/2020/07/03/455cacf8-bd41-11ea-8cf5-9c1b8d7f84c6_story.html)





conditions and the global COVID-19 pandemic, migrants have had their court dates delayed until 2021 and have been forced to risk their lives -often required to travel great distances and through highly dangerous areas- to go to the border to pick up their rescheduled hearing notices<sup>36</sup> and wait for their hearing in Mexico where they face additional high risk of kidnapping and attacks.<sup>37</sup>

Finally, on July 9, 2020, the U.S. government proposed a policy that would bar asylum and withholding of removal for refugees who have symptoms of, have come into contact with, come from or traveled through a country where a communicable disease is prevalent. CBP officials would be allowed to quickly expel migrants whom they deem to be a "health risk," violating their rights to seek asylum, a fair hearing and due process. This rule is an attempt to expand the CDC's order to shut down asylum under the guise of public health, even once COVID-19 no longer poses a public health threat.<sup>38</sup>

**B. The Asylum Cooperative Agreements ("ACA") violate the principle of non-refoulement; the requirements stipulated by the UNHCR and Immigration and Nationality Act (INA) for safe third country transfers; and the rights to a fair trial and due process.**

On July 26, 2019, the United States and Guatemala signed an Asylum Cooperative Agreement (ACA) allowing the U.S. to transfer asylum seekers to Guatemala, as long as the removed individuals are not nationals of that country.<sup>39</sup> Similar agreements

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[9c1b8d7f84c6\\_story.html](#); Reynaldo Leañes Jr. "COVID-19 At The Border: 'If One Case Gets Into The Camp, The Entire Camp Will Have It.'" March 20, 2020. <https://www.tpr.org/post/covid-19-border-if-one-case-gets-camp-entire-camp-will-have-it>

<sup>36</sup>Human Rights First. "Pandemic as Pretext: Trump Administration Exploits COVID-19, Expels Asylum Seekers and Children to Escalating Danger." May 2020.

<https://www.humanrightsfirst.org/sites/default/files/PandemicAsPretextFINAL.pdf>

<sup>37</sup>Id.; Jasmine Aguilera. "Many Asylum Seekers in Mexico Can't Get U.S. Court Hearings Until 2021. A Coronavirus Outbreak Could 'Devastate' Them." May 19, 2020. <https://time.com/5830807/asylum-seekers-coronavirus-mpp/>

<sup>38</sup>Suzanne Monyak. "Trump Admin. Looks To Deny Asylum Over Health Fears." July 8, 2020.

[https://www.law360.com/articles/1290174/trump-admin-looks-to-deny-asylum-over-health-fears?utm\\_source=AILA+Mailing&utm\\_campaign=b5d7121ec6-AILA8-07-09-2020&utm\\_medium=email&utm\\_term=0\\_3c0e619096-b5d7121ec6-292029917](https://www.law360.com/articles/1290174/trump-admin-looks-to-deny-asylum-over-health-fears?utm_source=AILA+Mailing&utm_campaign=b5d7121ec6-AILA8-07-09-2020&utm_medium=email&utm_term=0_3c0e619096-b5d7121ec6-292029917)

"Security Bars and Processing: A Proposed Rule by the Homeland Security Department and the Executive Office for Immigration Review" July 9, 2020. <https://www.federalregister.gov/documents/2020/07/09/2020-14758/security-bars-and-processing>

<sup>39</sup>Yael Schacher, et al. "Deportation with a Layover: Failure Of Protection Under The U.S.-Guatemala Asylum Cooperative Agreement." May 2020.

<https://static1.squarespace.com/static/506c8ea1e4b01d9450dd53f5/t/5ec3f0b370656c62ed7daa24/1589899466780/Guatemala+ACA+Report+-+May+2020+-+FINAL.pdf>





were signed with El Salvador on September 20, 2019 and with Honduras on September 25, 2019. Transfers to Guatemala began in November 2019 and were suspended in March 2020 by the Guatemalan government due to the pandemic.<sup>40</sup> However, the threat of implementation continues as the ACA with Guatemala could be resumed at any moment after the Guatemalan government establishes the appropriate "sanitary protocols."<sup>41</sup> These ACAs are unlawful. Under INA §208(a)(2)(A), an individual may only be removed to a country where she/he would not be persecuted and the attorney general and the secretary of Homeland Security must ensure that asylum seekers have access to a "full and fair" procedure or equivalent temporary protection.<sup>42</sup> However, Guatemala, El Salvador, and Honduras are among the most dangerous countries in the world, present a high risk of persecution for many asylum seekers, and have tiny, dysfunctional, and inadequate asylum systems.<sup>43</sup> The United Nations High Commissioner for Refugees (UNHCR) expressed serious concerns about the ACAs with northern Central American countries<sup>44</sup> and stated that ACAs are "an approach at variance with international law that could result in the transfer of highly vulnerable individuals to countries where they may face life-threatening dangers."<sup>45</sup>

The Asylum Cooperative Agreements effectively bar asylum seekers arriving at the U.S.-Mexico border and have virtually

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<sup>40</sup>Human Rights Watch. "US: Suspend Deportations During Pandemic." June 4, 2020.

<https://www.hrw.org/news/2020/06/04/us-suspend-deportations-during-pandemic>

<sup>41</sup>Camila DeChalus. "Guatemala Suspends US Flights Carrying Asylum-Seekers." March 17, 2020.

<https://www.rollcall.com/2020/03/17/guatemala-suspends-u-s-flights-carrying-asylum-seekers/>

<sup>42</sup>Peter Margulies. "New Homeland Security Asylum Rule Allows Removal to Central American Countries that Have Signed Agreements with the US." November 21, 2019. <https://www.lawfareblog.com/new-homeland-security-asylum-rule-allows-removal-central-american-countries-have-signed-agreements>

<sup>43</sup>Human Rights First, "Human Rights First Warns Against Implementation of Honduras Asylum Agreement During Pandemic," April 30, 2020. <https://www.humanrightsfirst.org/press-release/human-rights-first-warns-against-implementation-honduras-asylum-agreement-during>; Yael Schacher, et al. "Deportation with a Layover: Failure Of Protection Under The U.S.-Guatemala Asylum Cooperative Agreement." May 2020.

<https://static1.squarespace.com/static/506c8ea1e4b01d9450dd53f5/t/5ec3f0b370656c62ed7daq24/1589899466780/Guatemala+ACA+Report+-+May+2020+-+FINAL.pdf>; Refugees International, "Refugees International Opposes Asylum Cooperative Agreements with Guatemala, El Salvador, and Honduras," December 23, 2019. <https://www.refugeesinternational.org/reports/2019/12/23/refugees-international-opposes-asylum-cooperative-agreements-with-guatemala-el-salvador-and-honduras>.

<sup>44</sup>Peter Margulies. "New Homeland Security Asylum Rule Allows Removal to Central American Countries that Have Signed Agreements with the US." November 21, 2019. <https://www.lawfareblog.com/new-homeland-security-asylum-rule-allows-removal-central-american-countries-have-signed-agreements>

<sup>45</sup>UNHCR. "Statement On New U.S. Asylum Policy." <https://www.unhcr.org/en-us/news/press/2019/11/5dd426824/statement-on-new-us-asylum-policy.html>

guaranteed that refugees have been returned to danger. Officials with the Guatemalan State Human Rights Attorney's Office, responsible for ensuring the government's compliance with human rights law, have criticized the agreement given Guatemala's inability to provide safety and guarantee human rights of asylum seekers.<sup>46</sup> These inadequate asylum systems do not meet the requirements stipulated by the UNHCR for safe third country transfers. Additionally, the United States violates the non-refoulement principle because it does not examine the claims of asylum seekers, whom it forcibly sends to Guatemala,<sup>47</sup> a country where their lives may be in danger of violence and persecution.<sup>48</sup>

When asylum seekers reach the U.S.-Mexico border, U.S. immigration officials do not provide them with any notice that they will be deported to Guatemala.<sup>49</sup> Many deportees arrive in Guatemala thinking that their petitions for asylum in the U.S. are being processed or that Guatemala is where they will actually be allowed to initiate the request for asylum in the U.S. When they learn that their only option is to seek asylum in Guatemala or return to their home country, they leave Guatemala, either rejoining perilous migratory routes north or returning to their home countries where they may face harm or persecution. Given security conditions in Guatemala, many transferees also say they fear they would be subjected to the same harms in Guatemala from which they fled in their home countries. As a result of this and the

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<sup>46</sup>Mike Castillo. "PDH Expone a Organizaciones Pro Migrantes las Implicaciones de Tercer País Seguro." Noviembre 20, 2019. <https://www.prensalibre.com/ciudades/huehuetenango/pdh-expone-a-organizaciones-pro-migrantes-las-implicaciones-de-ser-tercer-pais-seguro/>

<sup>47</sup>IACHR, *Djamel Ameziane* (United States) (Merits, Publication), Report No. 29/20, Case 12.865, April 22, 2020, paras. 262-265; IACHR, *John Doe et al.* (Canada) (Merits), Report N° 78/11, Case 12.586, July 21, 2011, paras. 107, 112; Yael Schacher, et al. "Deportation with a Layover: Failure Of Protection Under The U.S.-Guatemala Asylum Cooperative Agreement." May 2020. <https://static1.squarespace.com/static/506c8ea1e4b01d9450dd53f5/t/5ec3f0b370656c62ed7daa24/1589899466780/Guatemala+ACA+Report+-+May+2020+-+FINAL.pdf>

<sup>48</sup>Guatemala, El Salvador and Honduras are countries that have faced socio-economic hardships that have resulted in large areas of extreme violence and poverty. Both, state and non-state actors are involved in acts of violence against vulnerable populations in these countries. The U.S. Department of State reported that these countries have not been successful at improving human rights conditions, police practices, and reducing generalized corruption and violence. In Guatemala, cases of domestic and gang violence, and femicides are rampant. In Honduras violence and crime are also prevalent. Honduras is in fact one of the poorest latin american countries and has one of the world's highest murder rates. El Salvador is also facing gang and gender violence in addition to frequent government corruption.

<sup>49</sup>Georgetown Law. "Dead Ends: No Path to Protection for Asylum Seekers Under the Guatemala Asylum Cooperative Agreement." June 10, 2020. <https://www.law.georgetown.edu/human-rights-institute/our-work/fact-finding-project/dead-ends/>

ineffectiveness of Guatemala's asylum system, many transferees are effectively compelled to abandon their claims.<sup>50</sup> Only about 2% of those deported under the ACA between November 2019 and March 2020 applied for asylum in Guatemala.<sup>51</sup> Up to now, only 61 asylum seekers have filed for asylum after being sent to Guatemala under ACA.<sup>52</sup> Even when asylum seekers are able to express fear of being deported to Guatemala, they are required, under the ACA, to demonstrate they are "more likely than not" to face persecution in that country, which makes it nearly impossible for them to prevail in their credible fear interviews, where they are generally unrepresented and have no opportunity to gather the evidence they need to satisfy that standard.<sup>53</sup> This situation is aggravated by the fact that the vast majority of asylum seekers do not have access to legal representation, especially when subject to fast track deportations under the ACA, and are often not allowed to make phone calls or present evidence to support their claims.<sup>54</sup>

**C. Under the Migrant Protection Protocols ("MPP"), the United States, in coordination with Mexico, violates the principle of non-refoulement, and fails to protect the rights to life, liberty and personal security, equality before the law, and due process.**

On January 24, 2019, the Migrant Protection Protocols (MPP), otherwise known as the "Remain in Mexico" policy, was implemented by the U.S. Department of Homeland Security, under the Trump administration. MPP requires asylum seekers and other migrants who have presented themselves at the U.S.-Mexico border or who have entered the United States and been

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<sup>50</sup>Yael Schacher, et al. "Deportation with a Layover: Failure Of Protection Under The U.S.-Guatemala Asylum Cooperative Agreement." May 2020.

<https://static1.squarespace.com/static/506c8ea1e4b01d9450dd53f5/t/5ec3f0b370656c62ed7daa24/1589899466780/Guatemala+ACA+Report+-+May+2020+-+FINAL.pdf>

<sup>51</sup>Yael Schacher, et al. "Deportation with a Layover: Failure Of Protection Under The U.S.-Guatemala Asylum Cooperative Agreement." May 2020.

<https://static1.squarespace.com/static/506c8ea1e4b01d9450dd53f5/t/5ec3f0b370656c62ed7daa24/1589899466780/Guatemala+ACA+Report+-+May+2020+-+FINAL.pdf>

<sup>52</sup> Oficina del Procurador de los Derechos Humanos en Guatemala

<sup>53</sup> Yael Schacher, et al. "Deportation with a Layover: Failure Of Protection Under The U.S.-Guatemala Asylum Cooperative Agreement." May 2020.

<https://static1.squarespace.com/static/506c8ea1e4b01d9450dd53f5/t/5ec3f0b370656c62ed7daa24/1589899466780/Guatemala+ACA+Report+-+May+2020+-+FINAL.pdf>

<sup>54</sup>Id.



apprehended to remain in Mexico while their asylum case is pending. As of July 2020, there are approximately 20,000 asylum seekers with pending cases under the MPP program;<sup>55</sup> overall there were more than 65,000 that were subject to the program.<sup>56</sup> In April 2019, a U.S. district judge blocked the program, but in May of that same year, an appellate decision allowed the Trump administration to continue with MPP.<sup>57</sup>

Both, the U.S. and Mexico, have failed to ensure adequate protections for asylum seekers who are stranded in Mexico due to MPP. In March 2020, U.S. authorities began blocking asylum seekers who fear remaining in Mexico under MPP from requesting non-refoulement interviews -leaving them with no means to request protection when their safety or lives are in danger in Mexico.<sup>58</sup> All of the cities that asylum seekers are forced to live in at the border are hotbeds for organized crime and some are in the state of Tamaulipas, which has the same threat level advisories that the U.S. Department of State has given to Afghanistan, Iraq, and Syria.<sup>59</sup> In Ciudad Juarez, there were 1,499 murders reported in 2019, an average of 4.1 murders a day.<sup>60</sup> As of May 2020, there had been approximately 1,114 reported cases of murder, rape, torture, kidnapping, and other violent assaults against those who have been forced to "Remain in Mexico."<sup>61</sup> People subject to MPP are frequently kidnapped for ransom, in some cases with the alleged

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<sup>55</sup>Jasmine Aguilera. "Many Asylum Seekers in Mexico Can't Get U.S. Court Hearings Until 2021. A Coronavirus Outbreak Could 'Devastate' Them." May 19, 2020. <https://time.com/5830807/asylum-seekers-coronavirus-mpp/>

<sup>56</sup>TRAC Immigration. "Details on MPP (Remain in Mexico) Deportation Proceedings." June 2020. <https://trac.syr.edu/phptools/immigration/mpp/>

<sup>57</sup>Human Rights Watch. "Q&A: Trump Administration's "Remain in Mexico" Program." January 29, 2020. <https://www.hrw.org/news/2020/01/29/qa-trump-administrations-remain-mexico-program>

<sup>58</sup>Human Rights First. "CBP Blocking "Migrant Protection Protocols" Fear Screenings." June 20, 2020. <https://www.humanrightsfirst.org/resource/cbp-blocking-migrant-protection-protocols-fear-screenings>

<sup>59</sup>See U.S. Department of State, Mexico Travel Advisory, Level 4 States. <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/mexico-travel-advisory.html>;

Tamaulipas is also the site of one of the most gruesome incidents of violence against migrants in recent history, the San Fernando Massacre. See MPR. "Mexican Police Helped Cartel Massacre 193 Migrants, Documents Show." December 22, 2014. <https://www.npr.org/2014/12/22/372579429/mexican-police-helped-cartel-massacre-193-migrants-documents-show>

<sup>60</sup>HOPE Border Institute. "2020 Situation Report: Remain in Mexico." January 29, 2020. [https://7dac4932-ebde-4b1a-96f5-fac5c6bec362.filesusr.com/ugd/e07ba9\\_42dc2e4ae15b49e5a833d297491fae6d.pdf](https://7dac4932-ebde-4b1a-96f5-fac5c6bec362.filesusr.com/ugd/e07ba9_42dc2e4ae15b49e5a833d297491fae6d.pdf)

<sup>61</sup>Human Rights First. "Pandemic as Pretext: Trump Administration Exploits COVID-19, Expels Asylum Seekers and Children to Escalating Danger." May 2020. <https://www.humanrightsfirst.org/sites/default/files/PandemicAsPretextFINAL.pdf>



participation of Mexican authorities.<sup>62</sup> Those who attempt to escape the dangerous conditions on the border have been relocated to locations hundreds or thousands of miles away from their future hearings in the U.S. -sometimes back to their home countries, by the Mexican government and international organizations. These individuals often misunderstand or are not informed of the logistical and legal challenges they will face if and when they attempt to return for their hearings, which have been routinely postponed on short notice during the COVID-19 pandemic.<sup>63</sup>

Moreover, when asylum seekers are forced to return to Mexico, they encounter extremely limited access to effective support services, such as legal representation and housing. With regards to legal representation, only 4% of asylum seekers who are subject to MPP obtain legal representation and less than 1% actually are able to receive protection in the U.S.<sup>64</sup> In terms of housing, migrants are often forced to choose between overcrowded migrant shelters or makeshift tents in Mexico at the border.<sup>65</sup> Even though it is the state's responsibility to ensure public education and health; and to ensure the physical integrity of those under its custody, the Hope Border Institute says that the conditions in the state-run migrant shelter in Ciudad Juárez are so deplorable that they violate fundamental human rights. For instance, conditions and lack of space are so bad that one group of Honduran migrants started their own shelter to house families that could not find beds elsewhere.<sup>66</sup> Migrants in Ciudad Juárez told

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<sup>62</sup>See "DHS OIG Formal Complaint Regarding 'Remain in Mexico.'" June 2, 2020.

<https://www.hrw.org/news/2020/06/02/dhs-oig-formal-complaint-regarding-remain-mexico>

<sup>63</sup>Wendy Fry. "Es posible que migrantes que realicen viajes gratuitos a casa financiados por EE.UU no puedan volver a ingresar a México." Septiembre 11, 2019. <https://www.latimes.com/espanol/mexico/articulo/2019-09-11/es-posible-que-migrantes-que-realicen-viajes-gratuitos-a-casa-financiados-por-eeuu-no-puedan-volver-a-ingresar-a-mexico>; Victoria Macchi & Ramon Taylor. "Migrants Assess Options as Mexico Buses Them From US Border." August 9, 2019. <https://www.voanews.com/usa/immigration/migrants-assess-options-mexico-buses-them-us-border>

<sup>64</sup>Human Rights Watch. "Q&A: Trump Administration's "Remain in Mexico" Program." January 29, 2020. <https://www.hrw.org/news/2020/01/29/qa-trump-administrations-remain-mexico-program>

<sup>65</sup>Silvia Foster-Frau. "First Coronavirus Cases in a "Remain in Mexico" Migrant Camp." June 30, 2020. <https://www.expressnews.com/news/us-world/border-mexico/article/First-coronavirus-case-in-a-Remain-in-15376600.php>

<sup>66</sup>Gustavo Solis. "Fed up with lack of space, migrants build their own shelter in Tijuana." September 5, 2019. <https://www.sandiegouniontribune.com/news/border-baja-california/story/2019-09-04/tijuana-shelter-migrants-remain-mexico>



researchers from Hope Border Institute that when they required hospital services they were denied care by hospitals in Mexico due to their status as migrants or lack of proper Mexican documentation.<sup>67</sup> Furthermore, the lack of proper medical care has led to a plethora of mental health issues for adult and child migrants—*anxiety, depression, and insomnia* are commonplace.<sup>68</sup>

As a result of COVID-19, many migrant shelters have closed their doors or limited capacity, leaving migrants at higher risk of homelessness.<sup>69</sup> Many migrants live in a makeshift migrant camp in Matamoros, Mexico, across the border from Brownsville, Texas. As of June 30, 2020, this camp housed more than 2,000 asylum seekers who are forced to remain in Mexico under MPP.<sup>70</sup> Doctors Without Borders and the Global Response Management team have reported very poor sanitary conditions and an urgent need for medical services.<sup>71</sup> Parents have in some cases chosen to send young children to the U.S. alone because of health conditions, concerns about safety and inability to access medical attention in Mexico.<sup>72</sup> Young women have begged for contraception out of

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<sup>67</sup>Human Rights Watch. "US: COVID-19 Policies Risk Asylum Seekers' Lives." April 2, 2020.

<https://www.hrw.org/news/2020/04/02/us-covid-19-policies-risk-asylum-seekers-lives#>; Human Rights Watch. "Mexico: Risks at Border for Those With Disabilities." October 29, 2019.

<https://www.hrw.org/news/2019/10/29/mexico-risks-border-those-disabilities#>; See report by the International Human Rights & Conflict Resolution Clinic. January 19, 2020. "Violations Of Human Rights Occurring In Mexico as a Result Of The Remain In Mexico Program."

[https://7dac4932-ebde-4b1a-96f5-fac5c6bec362.filesusr.com/ugd/e07ba9\\_b0e2d1ff662c41308737555d7d245572.pdf](https://7dac4932-ebde-4b1a-96f5-fac5c6bec362.filesusr.com/ugd/e07ba9_b0e2d1ff662c41308737555d7d245572.pdf)

<sup>68</sup>See report by the International Human Rights & Conflict Resolution Clinic. January 19, 2020. "Violations Of Human Rights Occurring In Mexico as a Result Of The Remain In Mexico Program."

[https://7dac4932-ebde-4b1a-96f5-fac5c6bec362.filesusr.com/ugd/e07ba9\\_b0e2d1ff662c41308737555d7d245572.pdf](https://7dac4932-ebde-4b1a-96f5-fac5c6bec362.filesusr.com/ugd/e07ba9_b0e2d1ff662c41308737555d7d245572.pdf); Michael Garcia Bochenek.

"US: 'Remain in Mexico' Program Harming Children." February 12, 2020.

<https://www.hrw.org/news/2020/02/12/us-remain-mexico-program-harming-children>

<sup>69</sup>Human Rights First. "Pandemic as Pretext: Trump Administration Exploits COVID-19, Expels Asylum Seekers and Children to Escalating Danger." May 2020.

<https://www.humanrightsfirst.org/sites/default/files/PandemicAsPretextFINAL.pdf>

<sup>70</sup>Silvia Foster-Frau. "First Coronavirus Cases in a "Remain in Mexico" Migrant Camp." June 30, 2020.

<https://www.expressnews.com/news/us-world/border-mexico/article/First-coronavirus-case-in-a-Remain-in-15376600.php>

<sup>71</sup>Doctors Without Borders. "No Way Out, The Humanitarian Crisis for Migrants and Asylum Seekers Trapped Between the United States, Mexico, and the Northern Triangle of Central America." February 2020.

[https://www.doctorswithoutborders.org/sites/default/files/documents/Doctors%20Without%20Borders\\_No%20Way%20Out%20Report.pdf](https://www.doctorswithoutborders.org/sites/default/files/documents/Doctors%20Without%20Borders_No%20Way%20Out%20Report.pdf); Global Response Management. "Medical Summary for Refugee Camp: Matamoros." 2020.

<https://www.humanrightsfirst.org/sites/default/files/GRM%20Report%20on%20Conditions%20in%20Matamoros.pdf>

<sup>72</sup>Lorena Arroyo y Almudena Toral. "'At least he can be saved' - Migrants trapped in Mexico are sending their children alone to the United States." November 18, 2019. <https://www.univision.com/univision->



fear that they would likely be sexually assaulted.<sup>73</sup>

## II. VIOLATION OF HUMAN RIGHTS OBLIGATIONS

The implementation of these policies result in clear violations of human rights and the United States and Mexico's obligations under the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights, and core principles of international human rights law.

In addition to the violation of the right to seek and receive asylum stipulated in article XXVII of the American Declaration of the Rights and Duties of Man, the implementation of these policies have also violated other rights protected by this instrument such as the rights to life, liberty and personal security (Article I), equality before the law (Article II), a family and to protection thereof (Article VI), protection for mothers and children (Article VII), preservation of health and well-being (Article XI), recognition of juridical personality and civil rights (Article XVII), a fair trial (Article XVIII), petition (Article XXIV), protection from arbitrary arrest (Article XXV), and due process of law (Article XXVI).

Moreover, these policies violate the right of individuals to seek humanitarian protection enshrined in articles 4, 5, 7, 8, 15, 19, 22 (2)(7)(8), 24, 25, and 26 of the American Convention on Human Rights; article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); articles 13(2) and 14 of the Universal Declaration of Human Rights; the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008, designed specifically to ensure safeguards for unaccompanied children to protect them from human trafficking and return to persecution;<sup>74</sup> the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and customary international law that asserts the right to seek asylum and not be returned to potential persecution or torture.

COVID-19 measures to close the border violate the right to apply for asylum in violation of U.S. laws, including 8 USC 1158(a)(1). The ACAs

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[news/immigration/at-least-he-can-be-saved-migrants-trapped-in-mexico-are-sending-their-children-alone-to-the-united-states](#)

<sup>73</sup>Sandra Sanchez. "'No Way Out': Central-American Migrants Face Violence at Home, on Journey North, at the Border, Report Finds." February 11, 2020. <https://www.borderreport.com/hot-topics/immigration/no-way-out-for-central-american-migrants-fleeing-violence-gangs-and-then-they-are-turned-away-at-border-and-further-victimized-report-says/>

<sup>74</sup>Section 235 William Wilberforce Trafficking Victims Protection Reauthorization Act 2008, Public Law 110-457, Codified at 8 U.S.C. Sec. 1232.



also violate 8 USC 1158 because Guatemala, El Salvador, and Honduras do not qualify as safe third countries and do not meet the extremely narrow exception for removal to a safe third country provided for in 8 USC 1158. COVID-19 measures also violate unaccompanied children's rights under the TVPRA and run completely afoul of the Convention on the Rights of the Child (CRC), which the United States is obligated not to undermine.

Furthermore, when the United States government, as a result of ACA and MPP, sends asylum seekers to dangerous countries where they face a risk of persecution and torture, it violates domestic and international laws obligating the United States to follow the principle of non-refoulement, including section 208(a)(2)(A) of the Immigration and Nationality Act ("INA"); article 33(1) of the 1951 Refugee Convention; its 1967 Protocol Relating to the Status of Refugees; and article 3 of the CAT.

In *Report No. 51/96 (Haitian Interdiction Case)* of March 13, 1997, the Commission found that the United States violated the principle of non-refoulement and Haitian migrants' right to seek and receive asylum when it engaged in the interdiction and repatriation of Haitian refugees to Haiti without properly considering and processing their asylum claims. Similarly, today the United States is not considering the asylum claims of those who arrive at the border and promptly returns them back to countries where they are likely to be persecuted and tortured.

### III. COALITION'S REQUEST TO THE INTER-AMERICAN COMMISSION

- A. Issue a statement expressing concern about the human rights violations resulting from the increasingly hostile immigration policies adopted by the U.S. government, and urging the state to implement immigration policies aligned with international law and the Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons, and Victims of Human Trafficking.
- B. Conduct an *In Loco* visit to the northern border of Mexico to investigate in-depth the precarious conditions in the migrant camp in Matamoros, detention centers, shelters, and in general the socioeconomic conditions of migrants and refugees.
- C. Produce a comprehensive report on the effects of the aforementioned U.S. immigration policies in the region based on the *In Loco* visits to the US (August 2019) and Mexico (to be

conducted), information provided by the petitioners, and updates on the implementation of the commission's recommendations submitted through the new monitoring tool, the Inter-American SIMORE.

We thank the commission in advance for the attention given to this urgent thematic hearing request. Attached are declarations from representatives of two of the undersigned organizations--Kids in Need of Defense and Centro Legal de la Raza. Please don't hesitate to contact us should you need further information.

Respectfully,

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University of San Francisco

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Co-director, Center for Human Rights and  
International Justice  
Boston College Law School

Alma Maquitico and Jen Ferrigno  
Co-Directors  
National Network for Immigrant and Refugee  
Rights

Ana Mercedes Saiz Valenzuela  
Directora  
Sin Fronteras IAP

## **DECLARATION OF FLORENCE CHAMBERLIN**

I, Florence Chamberlin, declare the following information under penalty of perjury:

1. I am an attorney licensed by the State of Florida since 1997. I am currently employed by KIND Kids in Need of Defense as the Managing Attorney for KIND in Mexico and am currently based in El Paso, Texas. My responsibilities involve the management of the organization's legal services and programming for the U.S. Mexico border region.
2. Since March 21, 2020, our office has been made aware of the ongoing expulsion of adults, families and children from the United States into Mexico and to Central America on the basis of the U.S. Customs and Border Patrol's implementation of the Title 42 CDC health policy. We have been referred cases where the U.S. Customs and Border has refused to process vulnerable children who have attempted to seek protection at various ports of entry including but not limited to, El Paso International Bridge/Ciudad Juarez; Columbus, Puerto Palomas; McAllen, Reynosa. The returns have impacted children who clearly would have been otherwise deemed unaccompanied under the TVPRA and provided an opportunity for protection under U.S. and international law. The basis of the expulsions has consistently been based on the CDC's health policy under Title 42. It is unclear if any of the children we have spoken to were screened for trafficking or interviewed for fear of torture or persecution. CBP did not screen the children to make sure they have a safe family member available to receive them, and some children were not questioned at all beyond name, age, and contact information of parents.
3. The following case examples describe specific instances referred to KIND involving unaccompanied children who were expelled under the Title 42 policy:
  - a. In late April, two Honduran siblings a girl, age 12 and a boy age 15 were referred to KIND after they were taken into custody by Mexican government officials. In this case, the children presented by themselves on the day that they were scheduled for an MPP hearing. The father was supposed to be with them for the hearing but was not. An adult they met at a shelter took them to their MPP appointment. During this time frame, CBP had been issuing new 'tearsheets' with future hearing dates because court hearings were being postponed. CBP brought each minor into their building; separated them and questioned them extensively (DOB/Parents location/ contact etc./provided them documents to sign and took a biometric information. They were not provided copies of the documents and do not know what they signed. The minors were with CBP for approximately 2 hours. They were sent back to cross the bridge into Mexico alone. They were not delivered into the custody of Mexican authorities and were completely alone once back in Mexico. They were only brought to the attention of the Mexican government after they took an UBER to the shelter where they had been staying and the director of the shelter contacted the Mexican authorities. The children reported being told that the border was closed because of the pandemic. They were not given their new hearing dates for MPP even though they had scheduled hearings for July 21, 2020. The father had been in a different city during this

time. The father had to travel from Nogales to Juarez to get the minors from DIF custody. The older child reported the when CBP questioned him they said to him that 'we know your dad is in Juarez' which was not the case.

- b. A 17 year old Guatemalan girl was traveling with her 1 y/o daughter. She was fleeing death threats and violence following a rape. She travelled to Arizona and turned herself into CBP on June 1, 2020. She had travelled with a group of about 10 other persons to the northern border of Mexico. She experienced an attempted assault by one of the guides during their travel and up to a point, she traveled with other migrants. She and another other woman migrating with her became lost in the desert late at night. Border Patrol located them and took them for processing. The officers did not have any face coverings when they first took them into custody, but they were later provided face masks. She was asked if she felt okay or had headache or fever. She replied 'no'. She did not feel ill. She was interviewed and asked her age. The officers said she looked to be 20 years old and accused her of lying to them.

While in detention, she talked on the phone with an official who she believes was in Guatemala. The man she spoke with (possibly a consular officer or other authority) said the process for minors going to the US had been terminated during the last 2 months; She expressed her fear to him and explained what had happened in Guatemala. He told her that in Guatemala he would help her, but she could not go to the US. They were not given a test for Covid-19 that she is aware of while in the U.S. She does not recall Border Patrol directly asking if she was afraid to return to Guatemala but said that the man on the phone from Guatemala asked if she was afraid to return. She had expressed that she 'told CBP her entire situation. ' CBP didn't ask where she would go if returned to Guatemala; They had her parents' phone numbers in the United States and they called her dad. She arrived at CBP Monday in the early am and was with them about three days. Consistent with other children that KIND has interviewed, she and the baby were taken to a hotel under ICE custody. She was not allowed to talk to her parents during her time with CBP or while at the hotel. She was not advised regarding her rights, the consequences of this expulsion to Guatemala or the possibility of return to US in the future. She does not recall if she signed anything and was not given any documents. On 6/5/2020 client and her baby were returned to Guatemala. Before she got on the plane, they took her temperature. There were about 10 migrants on the plane sitting in separate rows. When she got to Guatemala, they put the swab in their noses to check for Covid. She was later told that she and her baby tested positive and had to be moved and quarantined in a different location. An international organization has intervened on her behalf to secure protection in her home country.

- c. On 6/19/2020 KIND was referred the case of an 18 y/o Guatemalan male born on 6/7/2002, who had presented himself at the Paso del Norte port of entry on June 17 – days before turning 18. He presented himself to officers at the bridge stating that he was a minor traveling alone. He was not allowed a fear screening of any sort and was forced back across the bridge into Mexico alone and was not delivered to the custody of Mexican authorities.

They did not ask about his family. They did not take his prints or photo. They did not give him any papers. He reiterated the event took about 10-15 minutes. Officials only told him no one was getting in. They were not wearing masks. He was scared that he would be living on a dangerous street if he didn't get help, so he sought out Grupo Beta. They took him to the Hotel Filtro, where he was quarantined for 14 days. During the quarantine, he had access to some Wifi and was able to call his family. Then he was transferred to a different shelter. When asked about contact w/ the consulate, client did not seem to know what that meant, and indicated he had not talked to officials from his government.

- d. On 07/15/2020 KIND was referred the case of a 16-year-old Guatemalan/Garifuna client born on 05/16/04 who was believed to have crossed on or about 7/5/20. He is the child of a U.S. citizen. He called his mother on 7/8/20 from the immigration office and said that he had been in custody for 2-3 days at that point. He was detained somewhere in McAllen, but neither the mom nor the Guatemalan consulate knew his location. Child was attacked in Mexico while he and his cousin were on a train, by armed men who boarded the train and tried to chase them. The child had a gun held to his head during the attack, which he reported to his mother when he called her in custody on July 8. He lost his cousin when they were fleeing. He called his mom once while he was in Mexico after the attack but was unable to tell her where he was or what was going on, and he was only able to speak to her very briefly. She believes that this was about two weeks before she got the call from him on July 8 when he was in DHS custody. The mother was told he would be expelled from the U.S. Due to the intervention of KIND and the ACLU, on 7/16/2020 DOJ agreed to process him into the U.S. under Title 8 and transferred to ORR custody.
- e. On 7/15/2020 KIND was referred the cases of two Mexican male siblings, 14 and 16 y/o. They fled Mexico after they were brutally attacked on March 12, by members of a cartel in their home state. They were hospitalized for over a month due to the severity of their injuries which included head injuries, face lacerations and broken bones. Their uncle took them to the border to seek protection and reunification with their mother in the United States. Despite the fact that the children expressed fear of return to Mexico and multiple visible injuries they were expelled by CBP without any clear questioning or explaining of the process they were under. For example, the younger child was walking with crutches as his leg had been broken in two places (fibula and tibia) and had required insertion of screws via a surgery after the attack. The younger boy also showed scarring from second degree burns on his face and neck. He also still had scars on his head and forehead from the beatings to his head. The older child had head injuries and contusions on his ribs and his head from a beating he received from a pistol. The children had presented to CBP on 6/29/2020 and on 6/30/2020 their mother got a call from CBP saying they would be returned in a few hours to Mexico. The children are now at a shelter in Mexico and are terrified for their safety.
- f. On 07/15/2020 KIND learned of a case involving a Honduran minor who entered on 7/13 in Arizona. The minor had expressed a fear of return. His father who lives in the US was



contacted by CBP and also expressed concern for son's return. The minor had been held in a hotel for several days and it was extremely difficult to locate the child. KIND was able to submit a G-28 and requested contact with our client but within hours, learned that the child had already been returned to his home country.

- g. On 07/20/2020, KIND was informed about the case of a 17-year-old minor from Guatemala. She was fleeing domestic abuse in country of origin. Her mom got call at 12:30 am saying that her daughter was in CBP custody. The mother was only permitted to provide her name and contact info of someone in Guatemala. Mom gave the child's paternal great-grandmother's information, who she'd been living with. The mother was informed that her daughter would be returned to Guatemala and to wait to hear back from them. Mom wasn't allowed to ask any questions or given any more information. Due to the intervention of KIND and the ACLU, the DOJ agreed to process him into the U.S. under Title 8 and transferred to ORR custody.
- h. It has been brought to KIND's attention that the U.S. authorities are returning children at dangerous areas along the norther Mexican border during early morning and unsafe hours. The returns take place when there are no authorities available to receive the adults or more concerning the child migrants who are vulnerable to kidnappings and extortion. They are not being screened for signs of illness when they return. Minors have been returned to areas where there are no suitable youth shelters or available authorities who can screen them for protection concerns such as signs trafficking or abuse.

DATED: July 21, 2020

*Florence Chamberlin, Esq.*

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Florence Chamberlin, Esq.



**DECLARATION OF LISA KNOX, ESQ.**

I, Lisa Knox, hereby declare the following:

1. I am the Immigration Managing Attorney at Centro Legal de la Raza, a position I have held since 2016.
2. Centro Legal is a non-governmental organization based in Oakland, California that provides comprehensive legal services focused protecting and advancing the rights of low-income, immigrant, Black, and Latinx communities through bilingual legal representation, education, and advocacy.
3. Centro Legal's immigration practice includes comprehensive, full-service direct representation before U.S. Citizenship and Immigration Services, the immigration courts (Executive Office for Immigration Review), and federal district courts and courts of appeals; litigation; legal rights education; local and national advocacy. We specialize in representation of asylum seekers facing deportation before the Immigration Court.
4. In my current role as Immigration Managing Attorney, I supervise Centro Legal's detained immigrant representation project. Our team of nine attorneys and legal advocates represent individuals who are facing deportation in immigration detention centers throughout the state of California.

5. In 2018, after changes in the processing of asylum seekers resulted in large numbers of asylum seekers having to wait for months in Tijuana, Mexico to present at the border and request asylum, Centro Legal sent a group of attorneys and legal assistants to Tijuana to assist local organizations with providing asylum information and case consultations.
6. In January 2019, when the U.S. government implemented the Migrant Protection Protocols (“MPP”) program and began returning asylum seekers to Mexico to await their asylum hearings, Centro Legal was one of the first organizations to provide legal services to those returned to Mexico pursuant to MPP. Centro Legal represented two individuals who were part of the first group returned to Mexico under MPP on January 30, 2019, and who were among the first migrants to be granted asylum under the MPP program. Since that time, Centro Legal has provided representation to individuals in the MPP program.
7. Centro Legal is included on the list of free legal services providers available to asylum seekers who are returned to Mexico pursuant to MPP. Prior to March 2020, Centro Legal staff traveled to Tijuana approximately monthly or bimonthly to provide legal assistance workshops to individuals returned under MPP who do not have legal representation, to screen individuals for representation, and to meet with existing clients.
8. Though the current global pandemic has limited our services, since March 2020 Centro Legal has provided remote MPP assistance and support. Centro Legal currently provides remote legal consultations and assistance to individuals at Casa Hogar el Puente, a family shelter in Tijuana. Centro Legal also represents two Afro-Honduran families returned to Ciudad Juarez, Mexico through MPP, who have suffered serious threats and harm in Mexico due to their race.

## **A. DISCRIMINATION AND HARM FACED BY MIGRANTS IN MEXICO**

9. The majority of clients Centro Legal serves in Mexico are from Central America, and they report experiencing pervasive discrimination and harassment in Mexico.
10. **Employment:** Even where they have authorization to work, many of our clients report difficulties getting hired for work. Those that do find work report mistreatment, withholding of wages, and even physical abuse by their employers because they are Central American migrants. One client reported that an employer forced him to work 10-12 hour days without a meal break, and threatened to fire him when he complained.
11. **Education:** Of the dozens of migrant families we have assisted in Mexico with school-age children, only one of them had been able to successfully enroll their children in public schools. One of our clients is 16 years old. She has been out of school since at least May 2019, when she left her home country. Although she has been living in Mexico for over a year, her parents have not been able to enroll her in school. They have not even attempted to enroll her because they are afraid that she is more susceptible to attacks and kidnappings because she is a migrant. Instead of being in school, she accompanies her mother to work everyday.
12. **Law Enforcement:** Many of our clients also report suffering regular harassment by military and police officers, who target them because of their nationality. One client was stopped and harassed three times in the space of just a couple months by Mexican police and military officials. Each time, they demanded to see his immigration papers and were rude and threatening. During the third arrest, he was stopped by police officers, who called him a “dirty Honduran”. They handcuffed him so tightly that he had bruises and

was unable to use his hands for several days. They then took him to the police station and held him for several hours before he was released after a friend paid a “fine.” Because of this harassment, he had largely stopped leaving the house.

13. Another family of clients – a mother, father, and a daughter – were stopped at a police roadblock on their way to the Port of Entry to attend immigration court, and were robbed by a police officer there. Once inside the U.S. they disclosed this, among other information, at a Non-Refoulment Interview with the Asylum Office, to show why it was not safe for them to live in Mexico. The Asylum Office denied their request and returned them to Mexico.

14. Because of this anti-migrant bias within the police and military, our clients have reported that they are unable to seek protection from law enforcement. One client was the victim of a racist attack while sleeping on the street in Tijuana, by an angry mob that threw rocks and beat them. He did not report this incident to the police, because the police had previously harassed and insulted him. Another client’s family witnessed a shoot-out between civilians and members of the Mexican marines outside their home in Tijuana. During the shoot-out, civilians sought refuge in the family’s home, and told the family not to report the incident to the police. The family, given their experiences with the police and witnessing the brutality of the marines, did not report the incident.

15. **Black Migrants:** Black migrants face additional dangers in Mexico. According to a 2015 survey by Mexico’s National Institute of Geography and Statistics, only 1.2 percent of Mexico’s population is Black or Afro-descendant. Black migrants are therefore highly visible. Our Black clients report that they are unable to walk outside without stares and

being called racial slurs. Black women report constant sexual harassment and instances of sexual violence.

16. African migrants are at even higher risk. Cameroonian migrants have reported experiencing serious physical violence by the police. One Cameroonian woman showed us a mangled foot and several scars, that she received from a police beating.

**17. Lack of shelter space:** Our clients report that the most pressing issue they face is a lack of housing. They report difficulty finding shelter beds in Tijuana, where many shelters charge a small fee. As a result, many are forced to rent living space, and can only afford to live in Tijuana's poorest and most violent neighborhoods. In Ciudad Juarez, our clients report that the situation is even worse: one family we represent stated that they had to live in a shelter in the neighboring state of Chihuahua, and travel several hours by bus to Ciudad Juarez for their court hearings, because of lack of shelter space at the border.

The lack of shelter space in Tijuana is so dire that last year Honduran migrants, including two of our clients, created their own shelter, Casa Hogar El Puente, to house migrant families. The shelter survives based on donations and volunteer support from U.S. and Mexican activists.

## **B. LACK OF ACCESS TO LEGAL REPRESENTATION**

18. Only one percent of migrants returned to Mexico pursuant to MPP are able to obtain legal representation. Even where migrants are able to obtain legal representation, there are significant barriers to accessing counsel and preparing their cases.

19. Centro Legal has found it challenging to locate and communicate with potential clients to screen for representation. One method, through the workshops described above, is made difficult because the workshop space generally does not allow for confidential client meetings. Another method, through talking to individuals in the San Diego immigration court, where the Tijuana MPP cases are heard, is made almost impossible because even if people in MPP immigration proceedings approach a Centro Legal staff person in the court, the guards will not let them speak to us. The rule in the San Diego immigration court is that attorneys may not speak to individuals in proceedings unless they already have a formal representation agreement. Finding potential clients is further complicated by the fact that our office phone number, the one listed on the MPP Pro Bono Legal Services list, does not receive international calls.

20. Even when we have been able to locate, screen, and be retained by clients, MPP presents challenges to engaging in meaningful and ethical representation. As a US-based organization, Centro Legal does not have office space in Tijuana. We have tried various options to find safe and confidential meeting space to meet with our clients. We have spoken with organizations in Tijuana to use their existing space, but the space was not confidential and would clients were not able to speak freely with us.

21. There are also significant challenges to gathering documents and evidence for clients in Mexico. Many clients do not have reliable phone service, and those that do report they cannot afford to make international calls to request documents and evidence from their home country. Even where they are able to communicate with someone in their home country who can obtain documents on their behalf, they have no way to receive those documents. Mail service in Mexico is not reliable, and using a private courier such as



FedEx is also prohibitively expensive for our clients. Additionally, some clients do not have reliable mailing addresses. Thus, migrants who do not have an attorney or family in the US who can receive documents on their behalf report that they have no way to receive evidence sent from their home country.

22. U.S. immigration law requires that asylum seekers present all reasonably available corroborating evidence. An immigration judge may deny an asylum claim based simply on the lack of such evidence. Thus, these difficulties obtaining evidence can significantly decrease an individual's chance of being granted asylum.

### **C. IMPACT OF CURRENT COVID-19 PANDEMIC**

23. The current global COVID-19 pandemic and the US response, has worsened the already difficult situation our clients face. On March 23, 2020, the Department of Homeland Security announced the suspension of all MPP court hearings. That initial one-month suspension has been extended several times. The extensions have been announced only a day or two before court is expected to resume, creating significant confusion. The DHS has also changed the procedure for cancelled hearings several times; initially, individuals were required to report to the port of entry on the cancelled hearing date to obtain a new hearing date; then, they were required to report a month after the cancelled hearing. Many clients report that they did not hear of the cancellations or changes in time, and traveled to the port of entry on their hearing date only to be turned away.
24. Douglas Oviedo, founder of the Casa Hogar El Puente shelter, states that for the families at his shelter right now "the most difficult thing is the courts. People want to know

always, what has happened with the changes. Many have already abandoned their cases, some people have more than a year just waiting for their courts.”

25. Mr. Ovideo further reports that COVID is making every aspect of life more difficult “for migrants at the border, and for those who operate shelters: It is very complicated to obtain work, and to maintain the family out there. Many people are renting because there are no shelters, there is no help right now from any organization. There are some who are still waiting for their court dates, to continue with their cases. In the shelter, there are people who have come for two weeks, three weeks, a month, and they decide to leave and go find another place or go back to their homes because it’s so hard/ Right now, anyone who wants to go into our shelter, the OIM puts them in quarantine first so that they don’t arrive and spread anything to the shelter. After two weeks, they call us and tell us there are families. There are many shelters that aren’t taking people, because they don’t want too many people there because of contagion. All of them are living in a constant state of desperation, because they don’t know if they will enter the US one day, some are out of money, they don’t know what they will eat. Even if people want to go back, there is no transport, no way to get back.

26. Mr. Oviedo notes that the current economic crisis in Mexico is hitting migrants the hardest, and is threatening the survival of his shelter: “The biggest problem is that there is no work right now because of the virus. We have to depend on the good intentions of many Americans and people who donate right now. For the moment, we don’t have anything. We are trying to raise money because we don’t know how we will pay expenses for the month.”

I, Lisa Knox, declare under penalty of perjury of the laws of California that the foregoing is true and correct.

Executed this 19<sup>th</sup> day of July, 2020, at Oakland, California,

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