



**Written Testimony of Charanya Krishnaswami  
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Submitted to the  
Subcommittee on Africa, Global Health, Global Human Rights and International  
Organizations  
House Committee on Foreign Affairs

for a Hearing on “Humanitarian Aspects of the United States Migratory Crisis”

November 22, 2019

Chairwoman Bass, Ranking Member Smith, and Members of the Subcommittee:

On behalf of Amnesty International USA, I thank the Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations for the opportunity to submit this testimony today.

I am the Americas Advocacy Director of the U.S. country section of Amnesty International, where I direct our U.S.-facing policy advocacy related to human rights in the Americas, with an emphasis on border and asylum issues. Amnesty International is the world's largest grassroots human rights organization, comprising a global support base of over seven million individual members, supporters, and activists in more than 150 countries and territories. Amnesty International engages in activism, research, policy advocacy, litigation, and education to demand human rights for all people – no matter who they are or where they are.

A top priority for the U.S. section of Amnesty International is the protection of the right to seek asylum at the U.S. border – a right that has come under relentless attack by this administration.

We welcome this hearing, which is a critical opportunity to examine how disastrous recent policies at the border – including pushbacks of asylum-seekers, “Remain in Mexico,” the third-country transit ban on asylum, and “safe” third country agreements with countries that are anything but safe – endanger tens of thousands of people seeking safety, cause an untold amount of human suffering, and repudiate the United States’ obligations towards people seeking safety. These policies are causing a humanitarian crisis, and Congress must act to stop them.

### **The “Crisis” at the Border Is Created by U.S. Policy Choices, Not by Migration**

As a preliminary matter, the “crisis” at the border is not a migratory crisis – it is a crisis of deliberate policy choices by the United States government to exacerbate human suffering and wreak chaos and havoc at the border. While the current administration has repeatedly used the language of crisis to sensationalize the situation at the southern border, describing asylum-seekers “flooding our border”<sup>1</sup> and “overwhelming” the system,<sup>2</sup> the numbers of individuals arriving at the border are not dramatically different from those in years past, and still not commensurate with peak migration levels in previous decades.<sup>3</sup>

At their absolute highest peak in 2019, migration levels reached approximately 144,000 people in May 2019 – a number that has since plummeted to 45,520.<sup>4</sup> Even that peak number, an

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<sup>1</sup> “President Donald J. Trump Is Working to Stop the Abuse of Our Asylum System and Address the Root Causes of the Border Crisis,” April 29, 2019, <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-working-stop-abuse-asylum-system-address-root-causes-border-crisis/>.

<sup>2</sup> *Id.*

<sup>3</sup> For example, in the early 2000s, peak migration levels reached between 1.2-1.6 million people annually. See <https://www.migrationpolicy.org/news/crisis-border-not-numbers>. By contrast, in the previous fiscal year, migration levels reached approximately 977,509. See Southwest Border Statistics FY19, <https://www.cbp.gov/newsroom/stats/sw-border-migration/fy-2019> (last visited Nov. 20, 2019).

<sup>4</sup> See Southwest Border Statistics FY19, <https://www.cbp.gov/newsroom/stats/sw-border-migration/fy-2019> (last visited Nov. 20, 2019).

aberration, is less than the number of Venezuelan refugees that crossed into Colombia – a country one-ninth the size of the United States – every single month for the entire year of 2018.<sup>5</sup>

Generally, the number of individuals arriving at the southern border over the past few years have stood at approximately 50,000 individuals per month – a number that represents .01% of the U.S. population.<sup>6</sup> The numbers of people who seek asylum constitute a fraction of that total. In the entire fiscal year of 2019, U.S. administration officials reported that approximately 105,000 people at the border manifested a fear of return.<sup>7</sup> This is a figure that the United States – the richest country in the world, with a well-developed asylum corps – has ample resources to manage.

This is particularly true when these figures are compared with the numbers of asylum-seekers and refugees that countries around the world, with far fewer resources than the United States, are hosting. Indeed, lower-income countries (generally those neighboring countries experiencing significant levels of exodus) host an astonishing 80% of the world's 70 million refugees.<sup>8</sup> In the context of the largest regional refugee crisis in the Americas, nearly 75% of the over 4 million refugees from Venezuela are currently hosted in just five South American countries, whose resources combined measure less than the United States.<sup>9</sup>

While the migration numbers the United States has seen in recent years have not dramatically varied or differed from years past, the U.S.'s approach to people seeking safety at the border has. Instead of faithfully fulfilling its obligations, the government has sought to eviscerate asylum access in as many ways as possible, from forcibly returning asylum-seekers to dangerous conditions in Mexico to concocting ill-advised schemes that would ship asylum-seekers to unsafe third countries, as described in greater detail below. These schemes are not meant to provide meaningful protection to asylum-seekers, but rather to deter vulnerable individuals from seeking protection here in the first place.<sup>10</sup> The government has also punitively slashed vital foreign aid meant to address root causes of displacement in Central American countries<sup>11</sup> and threatened massive tariffs against Mexico to force the government to acquiesce to unlawful asylum and enforcement policies.<sup>12</sup>

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<sup>5</sup> Dylan Baddour, "Colombia's Radical Plan to Welcome Millions of Venezuelan Migrants," *The Atlantic*, Jan. 30, 2019, <https://www.theatlantic.com/international/archive/2019/01/colombia-welcomes-millions-venezuelans-maduro-guaido/581647/>.

<sup>6</sup> See Southwest Border Apprehension Statistics FY2019, <https://www.cbp.gov/newsroom/stats/sw-border-migration/fy-2019> (last visited Nov. 19, 2019),

<sup>7</sup> Testimony of Kenneth T. Cuccinelli II to the Senate Homeland Security and Government Affairs Committee, Nov. 13, 2019, <https://www.hsgac.senate.gov/imo/media/doc/Testimony-Cuccinelli-2019-11-13.pdf>, at 1.

<sup>8</sup> UNHCR, "Figures at a Glance," <https://www.unhcr.org/en-us/figures-at-a-glance.html> (last visited Nov. 19, 2019).

<sup>9</sup> UNHCR, "Refugees and Migrants from Venezuela Top 4 Million: UNHCR and IOM," June 7, 2019, <https://www.unhcr.org/en-us/news/press/2019/6/5cfa2a4a4/refugees-migrants-venezuela-top-4-million-unhcr-iom.html>.

<sup>10</sup> Nick Miroff, "Along Texas Border, Trump Administration Sets Up Tent Courts for Virtual Asylum Hearings," WASHINGTON POST, Sept. 18, 2019, [https://www.washingtonpost.com/immigration/along-texas-border-trump-administration-sets-up-tent-courts-for-virtual-asylum-hearings/2019/09/18/f29d1326-d9bc-11e9-adff-79254db7f766\\_story.html](https://www.washingtonpost.com/immigration/along-texas-border-trump-administration-sets-up-tent-courts-for-virtual-asylum-hearings/2019/09/18/f29d1326-d9bc-11e9-adff-79254db7f766_story.html).

<sup>11</sup> Pamela Larson, "Trump's Plan to Cut Aid to Central America Could Push More Migrants to Come to the United States," USA TODAY, Sept. 23, 2019, <https://www.usatoday.com/in-depth/news/nation/2019/09/23/foreign-aid-central-america-donald-trump-immigration-policy/2026687001/>.

<sup>12</sup> "Mexico Expects Relief on Tariff Threat As Migrant Flows Drop," REUTERS, Sept. 6, 2019, <https://www.reuters.com/article/us-usa-immigration-mexico/mexico-expects-relief-on-u-s-tariff-threat-as-migrant-flows-drop-idUSKCN1VR1KC>

These deliberate policy choices in response to foreseeable numbers of people seeking protection have wreaked havoc on the asylum system and on the human lives which depend on it. These policy choices are the crisis, and they have caused the dire humanitarian situation we now see at the border – from refugee camps to kidnappings by cartels to families dying as they attempt to cross the U.S. border in their search for safety.

### **The U.S. Is Obligated to Protect People Seeking Safety at the Border**

The United States' obligation to protect people seeking safety is a bedrock principle of domestic and international law. The 1951 Convention Relating to the Status of Refugees, drafted in the wake of World War II and the tragedy of states' failure to provide safe harbor to Jewish refugees fleeing genocide, establishes the requirement of non-refoulement – a prohibition on the forcible return of people to places where they would fear persecution, or serious violations of their human rights. The 1967 Protocol, to which the United States is a signatory, extended that requirement beyond the context of the war, and continues to bind state parties against refoulement.

The U.S. incorporated these legal obligations through the 1980 Refugee Act, a landmark piece of legislation in which Congress created the modern-day U.S. asylum system.<sup>13</sup> The Act codified in domestic law the right to seek asylum both at and between ports of entry along the U.S. border.<sup>14</sup>

Yet today, the United States has repudiated these inviolable obligations, seemingly forgetting the historical lessons that impelled their creation. An increasing number of individuals arriving at the U.S. southern border today are seeking protection from grave and immediate harm.<sup>15</sup> Citizens of Guatemala, El Salvador, and Honduras – which have, in recent years, comprised the majority of people seeking protection at the border<sup>16</sup> – are fleeing levels of targeted violence by State and non-State actors comparable to those found in war zones, including endemic levels of sexual and gender-based violence, from which government institutions are unable to protect them.<sup>17</sup> More and more nationals of Cuba and Venezuela are seeking safety in the United States from persecution by regimes the U.S. government has described as “brutal” and “fomenting violence and repression.”<sup>18</sup>

These individuals undertake arduous and harrowing journeys to the United States to seek safety here. Yet instead of providing safe harbor to them, both the President of the United States and the senior administration officials tasked with protecting refugees have unceasingly denigrated

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<sup>13</sup> Refugee Act of 1980, Pub. L. No. 96-212, available at <https://www.govinfo.gov/content/pkg/STATUTE-94/pdf/STATUTE-94-Pg102.pdf>.

<sup>14</sup> 8 U.S.C. § 1158.

<sup>15</sup> Dara Lind, “Why Border Crossings Are at An 11-Year High,” Vox, March 6, 2019, <https://www.vox.com/2019/3/6/18253444/border-statistics-illegal-immigration-trump>.

<sup>16</sup> *Id.*; see Southwest Border Statistics FY2019 <https://www.cbp.gov/newsroom/stats/sw-border-migration/fo-sw-border-inadmissibles-fy2019> (last visited Nov. 19, 2019).

<sup>17</sup> Doctors Without Borders, “War Zones: Violence in Central America Is Similar to What MSF Sees in Global Conflict Areas,” June 27, 2019, <https://www.doctorswithoutborders.ca/war-zones-violence-central-america-similar-what-msf-sees-global-conflict-areas>.

<sup>18</sup> “President Donald J. Trump Stands for Democracy In Venezuela,” May 1, 2019, <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-stands-democracy-venezuela/>.

them, describing them as “illegal immigrants”<sup>19</sup> who are exploiting “loopholes” in the law,<sup>20</sup> even going so far as to attack lawyers and advocates who work with migrants and asylum-seekers at the border.<sup>21</sup> Yet asylum-seekers who arrive at the border seeking protection are following asylum procedures exactly as they are written – it is the United States government that, by denying them access to protection, is violating the law.

### **How U.S. Attacks on Asylum Are Creating a Humanitarian Crisis at the Border**

In just the past few years, the U.S. government has radically restricted access to asylum at the U.S. border.

Until recently, people seeking asylum at the border were generally given the opportunity to articulate a “credible fear” of return to their home countries; if they established such a fear, they were placed into removal proceedings and allowed to apply for asylum and related protections from within the United States, based on their fear of return to their countries of origin.<sup>22</sup>

Today, however, this process has been upended by a series of policies designed to all but abolish asylum access at the border, including illegal pushbacks of asylum-seekers to Mexico and efforts to force people to seek protection in places that are anything but safe.

- **Stranded in Mexico: “Remain in Mexico” and Metering**

Today, tens of thousands of individuals are being forcibly returned to Mexico to await their asylum proceedings, where they are ripe targets for kidnapping, extortion, and other crime, under the “Remain in Mexico” policy, which is formally and misleadingly titled the “Migrant Protection Protocols” (or MPP).

MPP began in January 2019 and has since destroyed the established asylum process by forcibly returning people who arrive to the United States border, including asylum-seekers, to dangerous and precarious situations in Mexico for the duration of their asylum proceedings, which can last several months, if not years. Only after these individuals win asylum or another form of relief are they permitted entry to the United States.<sup>23</sup> So far, nearly 60,000 people have been forcibly returned to Mexico under the policy.<sup>24</sup> In August, the administration announced it would seize \$155 million of disaster relief funding to build secretive port courts exclusively for MPP

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<sup>19</sup> Ken Cuccinelli, “We Need to Tighten up Loopholes in Our Asylum Laws,” THE HILL, Nov. 15, 2019, <https://thehill.com/opinion/immigration/470596-ken-cuccinelli-we-need-to-tighten-up-loopholes-in-our-asylum-laws>.

<sup>20</sup> Miriam Jordan, “A Day After It Was Filed, New Trump Policy Gets Hit in Court,” N.Y. TIMES, July 16, 2019, <https://www.nytimes.com/2019/07/16/us/asylum-lawsuit-aclu.html>.

<sup>21</sup> See Amnesty International, “Saving Lives Is Not A Crime,” July 2019, available at <https://www.amnesty.org/es/documents/amr51/0583/2019/en/>.

<sup>22</sup> 8 U.S.C. § 1182.

<sup>23</sup> Gustavo Solis, “U.S. border agents wrote fake court dates on paperwork to send migrants back to Mexico,” Nov. 7, 2019, L.A. TIMES, <https://www.latimes.com/world-nation/story/2019-11-07/u-s-border-agents-wrote-fake-court-dates-on-paperwork-to-send-migrants-back-to-mexico>.

<sup>24</sup> Molly O’Toole, “Asylum Officers Revolt Against Trump Policies They Say Are Immoral and Illegal,” L.A. TIMES, Nov. 15, 2019, <https://www.latimes.com/politics/story/2019-11-15/asylum-officers-revolt-against-trump-policies-they-say-are-immoral-illegal>.

proceedings.<sup>25</sup> Two such courts, in south Texas, are currently in operation. Both are entirely shut off from public view: despite multiple requests, neither Amnesty International nor other rights groups have been granted access to the courts.

MPP is seemingly designed to discourage individuals from seeking asylum by making it as difficult as possible to do so.<sup>26</sup> Not only are asylum-seekers exposed to grave harm as they await their proceedings in Mexico, but they are also effectively cut off from legal services essential to securing relief. Asylum-seekers who appeared with attorneys were found to be five times as likely to obtain relief as those who represented themselves.<sup>27</sup> Yet, because MPP maroons asylum-seekers far from legal service providers, only between 1-2% of returnees are represented by counsel, meaning the vast majority are forced to fend for themselves, and are thus much less likely to successfully fight their asylum cases.<sup>28</sup>

By returning vulnerable individuals to some of the most dangerous places along the Mexico/U.S. border, MPP has directly resulted in grievous harms – including kidnappings, sexual assaults, extortion attempts, and other violent attacks – against people seeking protection. As of October 1, at least 343 individuals subjected to MPP had reportedly faced violent attacks or threats in Mexico, including on their way to their court dates in the United States – a number that is likely just the tip of the iceberg, considering that the vast majority of such crimes go unreported and unaddressed.<sup>29</sup> Service providers working with MPP returnees have reported that anywhere from “half”<sup>30</sup> to “over 70%”<sup>31</sup> of individuals they’ve worked with have described facing serious harm in Mexico. Asylum-seekers have described the harms they’ve faced, in their own words:

- A female asylum-seeker from Honduras, describing a kidnapping in Juarez, Mexico: “[The federal police] asked me what nationality I was, I told them I was from Honduras then they say: ‘Come with me.’ They grab my head, bend me over, and take me out of the house and put me in a black car. They covered my eyes with gray tape.” She was kidnapped by the police for ransom and raped multiple times. She stated that although her eyes were covered with tape, she managed to see because her tears soaked through the glue.<sup>32</sup>

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<sup>25</sup> Amnesty International USA, “Trump Administration Uses Disaster Relief Funding to Fund a Disaster of Its Own Making,” Aug. 27, 2019, <https://www.amnestyusa.org/press-releases/trump-administration-uses-disaster-relief-to-fund-a-disaster-of-its-own-making/>.

<sup>26</sup> Jason Kao and Denise Lu, “How Trump’s Asylum Policies Are Leaving Thousands of Asylum Seekers Waiting in Mexico,” N.Y. TIMES, Aug. 18, 2019, <https://www.nytimes.com/interactive/2019/08/18/us/mexico-immigration-asylum.html>.

<sup>27</sup> Asylum Representation Rates Have Fallen Among Rising Denial Rates,” TRAC Immigration, available at <https://trac.syr.edu/immigration/reports/491/> (last accessed Nov. 18, 2019).

<sup>28</sup> See “Details on MPP (Remain in Mexico) Deportation Proceedings,” available at <https://trac.syr.edu/phptools/immigration/mpp/> (last accessed Nov. 18, 2019).

<sup>29</sup> Human Rights First, “Orders From Above: Massive Human Rights Abuses Under Trump Administration’s Return to Mexico Policy,” Oct. 1, 2019, available at <https://www.humanrightsfirst.org/resource/orders-above-massive-human-rights-abuses-under-trump-administration-return-mexico-policy>.

<sup>30</sup> Mireya Villareal, “An Inside Look at Trump’s ‘Remain in Mexico’ Policy,” CBS NEWS, Oct. 8, 2019, <https://www.cbsnews.com/news/remain-in-mexico-donald-trump-immigration-policy-nuevo-laredo-mexico-streets-danger-migrants-2019-10-08/>

<sup>31</sup> Conversation with legal services provider in Laredo, Texas (Sept. 16, 2019).

<sup>32</sup> “Secuestraron Federales a Migrante Hondureña [Honduran Migrant Kidnapped by Federal Police],” El Diario, June 18, 2019, <https://www.eldiariodechiuhuahua.mx/estado/secuestraron-federales-a-migrante-hondurena-20190618-1528964.html>.

- A male asylum-seeker from El Salvador traveling with his baby daughter, describing a kidnapping in Tamaulipas state: “I was kidnapped in Mexico while waiting to come to court. We were headed to court over here. But we got stopped. They pulled us down. Mexican patrol cars were there, I thought they would help us. But they kidnapped us for three days. They let me go because of my family, because I didn’t have any money, but I don’t know what happened to the other men.”<sup>33</sup>

These stories of harm are so commonplace that one attorney who works with returnees in Matamoros, Mexico, commented to Amnesty International that “for people returned under the program, it’s not a question of if they’ll get kidnapped – it’s a question of when.”<sup>34</sup> The Mexican state of Tamaulipas, which abuts south Texas, carries a “Level 4 – Do Not Travel” warning from the U.S. Department of State because of risks of kidnapping and other violent crime by cartels.<sup>35</sup> The forcible return of tens of thousands vulnerable migrants and asylum-seekers to this area has constituted a veritable stimulus package for cartels operating in this region, which routinely kidnap returnees and extort their families for ransom.<sup>36</sup> Even a Border Patrol agent in El Paso remarked to Amnesty International how individuals who have recently crossed the border cry tears of relief upon seeing U.S. officials because they are so terrified of harm in Mexico, including by Mexican security officials.<sup>37</sup>

Even those returnees who have faced grave harm are typically unable to escape from MPP once they are placed in the program. Though the Department of Homeland Security (DHS) has instituted a fear-of-return-to-Mexico screening as part of MPP, called a “non-refoulement interview,” in practice, these screenings are a sham. First, they are available only to those individuals who affirmatively manifest a fear of harm in Mexico, violating a threshold principle of non-refoulement that *all* individuals must be screened for fear of harm in a given place before being forcibly sent there. Furthermore, the threshold is exceedingly high – higher than the showing required to win asylum on the merits.<sup>38</sup> Asylum officers have spoken openly about how they are pressured to issue negative determinations, even when they believe returnees will be subject to grave harm in Mexico, and have gone on the record to share their fears that they are being made complicit in human rights abuses.<sup>39</sup> Returnees have described how these interviews are cursory, in some cases lasting no more than 10 minutes.<sup>40</sup> Even those few returnees who have lawyers are generally unable to bring those attorneys to these interviews.<sup>41</sup> Returning

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<sup>33</sup> Remote observation of court proceedings in San Antonio, Texas (from the Laredo, Texas port of entry) (Sept. 17, 2019).

<sup>34</sup> Conversation with legal services provider in Brownsville, Texas (Oct. 23, 2019).

<sup>35</sup> “Mexico Travel Advisory,” U.S. Dep’t of State, <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/mexico-travel-advisory.html> (last accessed Nov. 18, 2019).

<sup>36</sup> Emily Green, “Trump’s Asylum Policies Sent Him Back to Mexico. He was Kidnapped Five Hours Later,” VICE NEWS, Sept. 16, 2019, [https://www.vice.com/en\\_us/article/pa7kkg/trumps-asylum-policies-sent-him-back-to-mexico-he-was-kidnapped-five-hours-later-by-a-cartel](https://www.vice.com/en_us/article/pa7kkg/trumps-asylum-policies-sent-him-back-to-mexico-he-was-kidnapped-five-hours-later-by-a-cartel).

<sup>37</sup> Interview with Border Patrol agent in El Paso Sector (April 19, 2019).

<sup>38</sup> Dep’t of Homeland Security, “Migrant Protection Protocols,” Jan. 24, 2019, <https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols>.

<sup>39</sup> Molly O’Toole, “Asylum Officers Revolt Against Trump Policies They Say Are Immoral and Illegal,” L.A. TIMES, Nov. 15, 2019, <https://www.latimes.com/politics/story/2019-11-15/asylum-officers-revolt-against-trump-policies-they-say-are-immoral-illegal>.

<sup>40</sup> Conversation with legal services provider in Harlingen, Texas (Sept. 20, 2019).

<sup>41</sup> ACLU of San Diego & Imperial Counties, “Class-Action Lawsuit Demands Access to Legal Representation for Detained Migrants Who Have Expressed a Fear of Being Returned to Mexico,” Nov. 5, 2019, <https://www.aclusandiego.org/aclu-asylum-seekers-subject-to-trumps-remain-in-mexico-policy-must-be-given-access-to->



asylum-seekers to any country without an adequate screening process is a flagrant violation of the U.S. obligation against refoulement.

Furthermore, returnees subject to MPP routinely face homelessness due to the lack of available shelter space and difficulty accessing work, which further exposes them to risks of violent crime. Returnees have reported having their identity documentation confiscated by Customs and Border Protection agents prior to return<sup>42</sup> and are not provided any identity documentation demonstrating their lawful status in Mexico, potentially exposing them to potential detention and deportation there. Without access to work or steady shelter, many are relegated to living in precarious conditions, often in squalor.<sup>43</sup>

For example, an open-air refugee tent camp full of returnees subjected to this unlawful program has sprung up in the Mexican city of Matamoros, just steps away from the bridge connecting Mexico and the United States. Along with Amnesty International directors from around the globe, I visited the tent camp in October and was horrified by what I saw – hundreds of tents and tarps patched together and over a thousand people, including families with babies and young children, struggling to survive in precarious, unsanitary conditions as they desperately waited for their next court date. At the time of our visit, there were five portable toilets for a camp that holds over 1,500 people. Families often bathe in the nearby Rio Grande, a river whose current can prove deadly. Women we spoke with described seeing decapitated bodies floating in the river as they bathed. The only groups who appear to be providing any assistance to camp residents are volunteer-run, U.S. NGOs. One medical responder, who has worked in humanitarian crises around the world, has described the camp in Matamoros as one of the “worst situations that [she’d] ever seen.”<sup>44</sup> The worst part about this devastation and suffering is that it is needless: none of these individuals should be stuck in Mexico in the first place; they should have been allowed to make their claims in the United States, as the law provides.

Furthermore, all along the southwest border, tens of thousands of asylum-seekers also continue to be subject to a regime of illegal asylum waitlists, known as “metering” lists. Under this practice, U.S. agents push asylum-seekers back to Mexico for months, 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 of vulnerable populations. A recent study concluded that, as of November, there were 21,398 people waiting on metering lists at ports of entry along the US-Mexico border.<sup>45</sup>

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[counsel/](#). On Nov. 14, 2019, a district court issued a temporary restraining order requiring a Guatemalan family the ability to consult with counsel in preparation for and during their non-refoulement interview. A hearing on whether that holding will be expanded to all MPP returnees will take place in December. See ACLU of San Diego & Imperial Counties, “Family Subjected to MPP Will Not Be Returned to Mexico to Pursue Their Asylum Claim,” Nov. 14, 2019, <https://www.aclusandiego.org/family-subjected-to-mpp-will-not-be-returned-to-mexico-to-pursue-their-asylum-claim/>.

<sup>42</sup> Julia Love & Kristina Cooke, “Asylum seekers say U.S. officials returned them to Mexico but kept their IDs,” REUTERS, May 31, 2019, <https://www.reuters.com/article/us-usa-immigration-returns/asylum-seekers-say-u-s-officials-returned-them-to-mexico-but-kept-their-ids-idUSKCN1T115L>.

<sup>43</sup> Rebecca Plevin, “Mexicali Residents Protest Shelter for Asylum-Seekers Returned to Mexico Under U.S. Policy,” USA Today, Oct. 15, 2019, <https://www.usatoday.com/story/news/world/2019/10/15/mexicali-protest-shelter-asylum-seekers-us-policy/3983901002/>.

<sup>44</sup> Nomaan Merchant, “Tents, Stench, Smoke: Health Risks Are Gripping Migrant Camp,” ASSOCIATED PRESS, Nov. 14, 2019, <https://apnews.com/337b139ed4fa4d208b93d491364e04da>.

<sup>45</sup> Strauss Center, “Metering Update: November 2019,” available at [https://www.strausscenter.org/images/strauss/18-19/MSI/MeteringUpdate\\_191107.pdf](https://www.strausscenter.org/images/strauss/18-19/MSI/MeteringUpdate_191107.pdf).



Metering and “Remain in Mexico” have had deadly consequences: conditions are often so dire for asylum-seekers forced to wait in Mexico that desperation drives them to attempt deadly crossings. The tragic deaths of Oscar Martinez and his baby daughter Valeria in June 2019, 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.”<sup>46</sup> In September 2019, 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 irregularly in south Texas.<sup>47</sup> According to a Honduran consular official, the mother was in “despair” after waiting in Mexico for several months and wished desperately to be with her husband and their other children, who were on the other side.<sup>48</sup>

These policies also manufacture chaos and create disorder and delay. For example, “Remain in Mexico” proceedings have so backlogged the courts that here in San Diego, immigration judges are exclusively hearing these cases and have abandoned their regular dockets, exacerbating their existing backlogs of cases; here and elsewhere, the MPP caseload has reportedly “broken” the courts.<sup>49</sup> Since the start of metering, increasing numbers of people who would have previously presented at ports of entry to seek asylum are now being driven to irregular, dangerous crossings between ports of entry – which, during the height of the “zero tolerance” policy, led to parents and caregivers being criminally prosecuted and their children taken away from them.<sup>50</sup> The administration then uses this environment of manufactured chaos to justify more draconian policies and an even further retreat from its asylum obligations.

- **Seeking Safety in Danger: Unsafe Third Country Agreements and the Asylum Transit Ban**

Along with policies pushing back asylum-seekers to Mexico, the Trump administration is now trying to abdicate its responsibility to receive asylum claims altogether by forcing people to seek asylum in places of danger.

Just this week, the United States announced a new rule that would implement a series of ill-conceived “safe third country” agreements with the governments of Guatemala, El Salvador, and Honduras.

These “safe third country” agreements are illegal on their face: under U.S. law, a country can only constitute a “safe third country” if an asylum-seeker’s “life or freedom” would not be threatened there *and* if the asylum-seeker can access a “full and fair” procedure.<sup>51</sup> In no circumstances could either of those conditions be considered met in these countries. The asylum systems in Guatemala, El Salvador, and Honduras have been described by the U.N. Refugee

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<sup>46</sup> Bill Chappell, “A Father and a 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>.

<sup>47</sup> Adolfo Flores, “More Immigrant Children Are Dying At The Border As The Trump Administration Sends People Back To Mexico,” BUZZFEED NEWS, Sept. 20, 2019, <https://www.buzzfeednews.com/article/adolfoflores/immigrant-children-dying-united-states-mexico-trump>.

<sup>48</sup> *Id.*

<sup>49</sup> Mica Rosenberg, Kristina Cooke, Reade Levinson, “Hasty Rollout of Trump Border Policy Has ‘Broken’ the Courts,” REUTERS, Sept. 10, 2019, <https://www.reuters.com/article/us-usa-immigration-courts-insight/hasty-rollout-of-trump-immigration-policy-has-broken-border-courts-idUSKCN1VV115>.

<sup>50</sup> DHS Office of the Inspector General, “Initial Observations Regarding Family Separation,” Sept. 2018, available at <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-84-Sep18.pdf>.

<sup>51</sup> 8 U.S.C. § 1158(a)(2).

Agency as “still very nascent.”<sup>52</sup> The U.S. State Department describes the asylum procedure in Guatemala as “inadequate,”<sup>53</sup> and reports note that there are fewer than four asylum officers in the country, which adjudicated 18 claims out of 200 received.<sup>54</sup> The environment of generalized impunity and corruption in all 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 United States.<sup>55</sup>

While there is little information about how the agreements will be applied in practice, or to whom they will apply, the rule contemplates sending back any asylum-seeker to any of these three countries to apply for asylum there, following an initial screening to determine whether the asylum-seeker would be “more likely than not” to face persecution or torture in the third country.<sup>56</sup> This screening, much like the “non-refoulement” screening that MPP returnees are subject to, demands a threshold showing higher than that required to obtain asylum and will likely be all but impossible to meet in practice.

Notwithstanding the lack of legal protections there, the United States is reportedly sending back asylum-seekers to Guatemala as early as this week, despite privately admitting that it has no idea what will happen to them after the U.S. forcibly sends them there.<sup>57</sup> Internal memos reportedly revealed that “there is uncertainty” as to who will provide basic reception services to those returned to Guatemala.<sup>58</sup>

These agreements are a humanitarian crisis in the making. They will, as the U.N. Refugee Agency has observed, risk “transfer of highly vulnerable individuals to countries where they may face life-threatening dangers.”<sup>59</sup> They constitute diplomatic assurances that will soon lead the United States to violate the absolute prohibition against torture by transferring asylum seekers to countries where they face a real risk of torture and other ill-treatment.<sup>60</sup>

These “safe third country” agreements join a rule announced in July which bars *any* asylum-seeker who has transited through *any* third country via land route to the United States from asylum eligibility here if they failed to apply for asylum in one of those countries of transit. The

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<sup>52</sup> UNHCR, “UNHCR Statement on New Asylum Policy,” Nov. 19, 2019, <https://www.unhcr.org/news/press/2019/11/5dd426824/statement-on-new-us-asylum-policy.html>.

<sup>53</sup> U.S. Department of State, 2018 Country Report – Guatemala, <https://www.state.gov/wp-content/uploads/2019/03/GUATEMALA-2018.pdf>.

<sup>54</sup> Hamed Aleaziz, “Trump Is Sending Asylum-Seekers to Guatemala. His Administration Admitted Privately It Had No Idea What Would Happen to Them Next,” BUZZFEED NEWS, Nov. 18, 2019, <https://www.buzzfeednews.com/article/hamedaleaziz/trump-asylum-guatemala-dhs-safe-third-plan>.

<sup>55</sup> Association for a More Just Society, “What is the Homicide Rate in Honduras?,” Nov. 2018, <https://www.ajs-us.org/content/homicides-honduras>.

<sup>56</sup> “Implementing Bilateral and Multilateral Asylum Cooperative Agreements Under the Immigration and Nationality Act,” 84 Fed. Reg. 223 (Nov. 19, 2019), available at <https://www.govinfo.gov/content/pkg/FR-2019-11-19/pdf/2019-25137.pdf>; Memorandum from James T. McHenry to All of EOIR, “Guidelines Regarding New Regulations for the Implementation of Asylum Cooperative Agreements,” Nov. 19, 2019, available at <https://www.justice.gov/eoir/page/file/1218516/download>.

<sup>57</sup> Hamed Aleaziz, “Trump Is Sending Asylum-Seekers to Guatemala. His Administration Admitted Privately It Had No Idea What Would Happen to Them Next,” BUZZFEED NEWS, Nov. 18, 2019, <https://www.buzzfeednews.com/article/hamedaleaziz/trump-asylum-guatemala-dhs-safe-third-plan>.

<sup>58</sup> *Id.*

<sup>59</sup> UNHCR, “UNHCR Statement on New Asylum Policy,” Nov. 19, 2019, <https://www.unhcr.org/news/press/2019/11/5dd426824/statement-on-new-us-asylum-policy.html>.

<sup>60</sup> See Amnesty International briefing paper, Diplomatic Assurances against Torture: Inherently Wrong, Inherently Unreliable (2017), available at <https://www.amnesty.org/download/Documents/IOR4061452017ENGLISH.pdf>.

rule, commonly known as the “asylum ban” or “transit ban,” effectively shuts down asylum at the Mexico/U.S. border for all nationals other than Mexicans. The U.S. Supreme Court has allowed the law to go into effect as it continues to be challenged in the lower courts.

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 not adequate substitutes for asylum. Unlike a grant of asylum, receiving withholding of removal protects from deportation but offers little else: no pathway to lawful permanent residence in the United States, significant barriers to education and work, and insurmountable barriers to family unity.

The story of one Venezuelan asylum-seeker whom I recently met illustrates the cascading harms wrought by these anti-asylum policies.<sup>61</sup> A former government official who defied the Maduro regime, he fled to the United States after receiving death threats, leaving his children behind. He initially arrived at a port of entry and was told to add his name to an unlawful metering list. He then tried to enter between ports of entry, just days after the asylum ban went into effect, and was subsequently placed into the “Remain in Mexico” program. He was sent back to a dangerous area of Mexico where he witnessed fellow returnees being kidnapped from the Mexican migration office where U.S. authorities had just returned them, and narrowly avoided being kidnapped and violently assaulted himself. Though his asylum claim was strong, because of the ban, he was barred from seeking asylum and could win only withholding of removal. While he is now safe from deportation, this form of relief gives him no way to reunite with his children, who remain in danger in Venezuela.

### **Conclusions and Recommendations**

U.S. asylum policy has become a cruel obstacle course which doubly persecutes the persecuted, delivering them to harm and eviscerating due process along the way. Until we recommit to a fair, safe, and humane response to those seeking protection at our shores, the humanitarian crisis at the border will not cease. Congress must act now to ensure that the lawlessness of this administration’s actions at the border do not continue.

Amnesty International recommends Congress take the following steps:

- **Conduct oversight of, and put an end to, policies unlawfully limiting access to asylum.** To meaningfully address the humanitarian crisis at the border, Congress must halt the series of unlawful policies the administration has sought to implement, which harm asylum-seekers, foster unlawful criminal activity, and violate long-standing U.S. asylum law.
  - **Defund:** Amnesty International urges Congress to ensure that no funding goes towards the implementation of these policies by retaining Section 534 of H.R. 3931, the DHS Appropriations Act of 2020, which defunds unlawful asylum programs including metering, MPP, and the asylum ban, in the final version of the DHS appropriations bill. Congress must also consider how the tens of thousands of people who already been impacted by these unlawful policies can be made whole, including by providing opportunities for automatic review of cases impacted by them.
  - **Investigate:** While these policies remain in place, given the lack of transparency and foresight with which they’ve been introduced, Amnesty International urges

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<sup>61</sup> Conversation with asylum-seeker (Nov. 19, 2019).

Congress to conduct robust oversight of (1) how these policies operate (including any implementing guidance or memoranda related to any of the policies); (2) which individuals are being subjected to which policies, and on what basis (including demographics, categories of vulnerable individuals subjected to the program, number of individuals, and areas in which the policies are operating); (3) how these policies are affecting the right to seek asylum and the prohibition on forcible return to places where individuals may face torture, as articulated under domestic and international law.

- **Ensure funding for a holistic response to people seeking protection at the border targeting root causes and ensuring a fair process.** The United States has ample resources to address the numbers of people seeking asylum at the southern border; it is simply a matter of will to channel those resources to do so. (For example, with the \$5 billion the administration has requested in wasteful border wall construction, it could instead hire potentially tens of thousands of adjudicatory officers to fairly and efficiently process claims – if it so chose.)
  - **Hiring officials to conduct fair processing:** Congress must prioritize spending to hire additional asylum adjudicatory officials, including asylum officers and immigration judges, as well as child welfare professionals who are much better placed to address the needs of children (both accompanied and unaccompanied) arriving at the border than the law enforcement officials currently tasked with doing so. Under no circumstances should Customs and Border Protection officials be tasked with adjudicating asylum claims or making determinations about children’s best interests.
  - **Ensure universal representation in immigration proceedings.** To ensure asylum proceedings are efficient and fair, Congress should also enact measures ensuring universal legal representation for individuals in asylum proceedings, particularly given stark disparities in ability to secure relief between people with and without representation.
  - **Reducing reliance on detention:** While the administration frequently argues it lacks capacity to respond to people seeking protection because it lacks detention space, Congress should enact measures to reduce the administration’s reliance on detention as a response of first resort. Detention for migratory-related reasons is lawful only where it is necessary and strictly proportionate to a legitimate government objective, and where no less restrictive means can suffice to meet that objective. The Dignity for Detained Immigrants Act, H.R. 2415, reduces U.S. reliance on immigration detention and makes it the exception, not the norm; Members of Congress should support and co-sponsor this important measure.
  - **Restoring funding to address root causes of forced displacement:** Earlier this year, the Trump administration announced it would be punishing Central American countries for failing to stem migration by slashing funding aimed at addressing the root causes of displacement. Congress should ensure that funding addressing root causes, including programs aimed at alleviating poverty, combatting violence, and strengthening institutions, is restored. It should, however, ensure that no funding is spent on programs, activities, or institutions engaged in human right

violations, and that funding is closely tied to continued efforts to combat corruption and ensure consistency with human rights standards.<sup>62</sup>

- **Expand protection pathways in the United States.** In addition to reforming and improving procedures for receiving asylum claims, Congress should also ensure that those who need protection are able to receive it, including by supporting passage of the forthcoming Refugee Protection Act of 2019, which strengthens several procedural and substantive aspects of U.S. asylum law.
  - **Increasing complementary protection pathways:** While many individuals seeking safety fall within the refugee definition as articulated in U.S. law, others who are forcibly displaced and who fear serious human rights violations (owing, for example, to generalized violence or events seriously disturbing public order) may not. Related forms of protection from forced return, including Temporary Protected Status, should be made available for individuals fleeing grave human rights crises whose profiles may not place them within the narrow ambit of the refugee definition.
  - **Ensuring orderly pathways to safety by restoring refugee resettlement:** Congress should also ensure that there are safe and orderly pathways to refuge in the United States, including by restoring the refugee resettlement ceiling to historic levels by passing the Guaranteed Refugee Admissions Ceiling, or GRACE, Act, H.R. 2146.
- **Ensure that lawyers and advocates assisting migrants and asylum-seekers at the border do not face unlawful criminal prosecution, surveillance, or targeting.** In recent years, Amnesty International has documented a concerning uptick in surveillance, targeting, and even criminal prosecution of humanitarian aid workers, lawyers, and advocates working with migrants. Congress must investigate this issue and enact measures ensuring that criminal statutes are not used to harass or intimidate humanitarian workers helping to alleviate human suffering at the border.

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<sup>62</sup> For more on the need to ensure that U.S. funding is not used to fuel or perpetrate rights violations, please see “AIUSA Appropriations Requests for FY20,” March 26, 2019, available at <https://www.amnestyusa.org/wp-content/uploads/2019/03/AIUSA-Appropriations-Requests-for-FY20.-26March19.pdf>.