



April 19, 2023

Chairman Jim Jordan
Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

Ranking Member Jerrold Nadler
Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

Re: Amnesty International USA Statement for the House Judiciary Markup of the Border Security and Enforcement Act of 2023

Dear Chairman Jim Jordan and Ranking Member Jerrold Nadler,

On behalf of Amnesty International USA and our members and supporters in the United States, we submit this statement in strong opposition to the Border Security and Enforcement Act of 2023 that the House Judiciary Committee will mark up on April 19th. This bill, if passed, would result in serious human rights violations against immigrants and asylum seekers. The House Judiciary committee should instead focus its efforts on advancing legislation that protects the human rights of immigrants and asylum seekers, rather than embracing the cruel, xenophobic policies in this bill.

Specifically, the Border Security and Enforcement Act would:

1. Make significant changes to the U.S. asylum system, making it nearly impossible for migrants to seek asylum in the U.S. and significantly easier to deport asylum seekers, including families and children into harm's way;
2. Restart the failed and dangerous Remain in Mexico program for all migrants, including unaccompanied children;
3. Require family detention for any families attempting to enter the U.S. to seek asylum, as well as any families who previously entered the U.S. without visas;
4. Subject all unaccompanied children to an expedited removal process, harming children, particularly those in danger of trafficking;
5. Criminalize and penalize immigrants compelled to overstay their visa, when Congress should focus on solutions that regularize the status of long-term residents by fixing the broken immigration system; and
6. Eliminate the parole power that presidents historically were able to use to parole individuals in response to humanitarian emergencies or in furtherance of foreign policy objectives and preclude the President's recent parole programs for Ukrainians, Cubans, Haitians, Nicaraguans, and Venezuelans, as well as cut work authorization available to many parolees.

All individuals have the universal human right to seek asylum from harm. Under domestic¹ and international law,² the United States is obligated to provide access to individualized and fair assessments of all requests for protection by asylum-seekers seeking safety at the border, in a way that does not discriminate based on manner of entry or immigration status. In fact, under its international human rights obligations, the United States is prohibited from “refusing to process claims for asylum or unduly prolong[ing] them”³ and must mandate “access to the territory and fair and efficient asylum procedures”.⁴ Further, the provisions of this bill which require individuals who travel through a third country before arriving to the southwest border to apply for asylum in that country, infringe on the rights of these individuals to seek asylum.

Amnesty International has documented that countries throughout the Americas through which asylum-seekers are likely to travel prior to reaching the southwest border of the United States are failing in their treaty obligations to protect those who are in need of international protection, as well as repeatedly violating the principle of *non-refoulement*.⁵ In a report published in 2018 based on 500 responses from migrants and asylum-seekers interviewed during their journey through Mexico, Amnesty International documented 120 statements containing strong indications that there had been *refoulement*. This represented 24% of the total number of responses and 40% of responses from former National Migration Institute (INM) detainees. These statements detailed how detainees who expressed fear for their lives in their countries of origin were nonetheless returned to these countries without consideration of their asylum requests.⁶ Amnesty International has also documented the particular challenges experienced by Haitian asylum-seekers, fueled by racism, which demonstrate that multiple states across the region are failing to provide them with protection.⁷ The documented deficiencies in asylum systems throughout the Americas and repeated violations of the principle of *non-refoulement* by these states make it unreasonable for Congress to request that asylum-seekers make asylum claims in these countries in order to be eligible for asylum in the U.S. People in vulnerable situations are once again the most impacted by such requirements.

Despite its intentions, this legislation, if enacted, will also likely result in asylum-seekers resorting to more dangerous routes to attempt to arrive in the United States.

The United States has domestic and international obligations to ensure that asylum-seekers are able to request protection either at official U.S. ports-of-entry or after they cross irregularly into

¹ The U.S. Code safeguards the right to seek asylum in the United States “whether or not at a designated port of arrival”. See: 8 U.S.C. § 1158 and §1225, <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1158&num=0&edition=prelim>.

² The United States is state party to the 1967 United Nations Protocol Relating to the Status of Refugees. Congress passed the Refugee Act in 1980 in a sweeping effort to bring the United States’ domestic laws in line with its international obligations and thereby provide additional assurances and protections to asylum-seekers and refugees. See: Refugee Act of 1980, Pub. L. No. 96-212, § 101(a), 94 Stat. 102 (1980), <https://www.govinfo.gov/content/pkg/STATUTE-94/pdf/STATUTE-94-Pg102.pdf>. See: *East Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 672 (9th Cir. 2021) (“To ... implement the country’s new treaty commitments, Congress passed the Refugee Act of 1980”), <https://cdn.ca9.uscourts.gov/datastore/opinions/2021/03/24/18-17274.pdf>.

³ U.N. Committee Against Torture, *General Comment No. 4 (2017) on the Implementation of Article 3 of the Convention in the context of article 22*, CAT/C/GC/4, 4 September 2018, para. 14, http://www.ohchr.org/Documents/HRBodies/CAT/CAT-C-GC-4_EN.pdf.

⁴ UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations Under the 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol*, 26 January 2007, para. 8, <https://www.unhcr.org/4d9486929.pdf>.

⁵ Amnesty International, *Overlooked, under-protected: Mexico’s deadly refoulement of Central Americans seeking asylum*, 23 January 2018, AMR 41/7602/2018, <https://www.amnesty.org/en/documents/amr41/7602/2018/en/>; Amnesty International, *Americas: Pushback practises and their impact on the human rights of migrants and refugees*, *Amnesty International Submission to the United Nations (UN) Special Rapporteur on the human rights of migrants*, February 2021, 8 February 2021, AMR 01/3658/2021, <https://www.amnesty.org/en/documents/amr01/3658/2021/en/>.

⁶ Amnesty International, *Overlooked, under-protected: Mexico’s deadly refoulement of Central Americans seeking asylum*, 23 January 2018, AMR 41/7602/2018, <https://www.amnesty.org/en/documents/amr41/7602/2018/en/>;

⁷ Amnesty International, *Not safe anywhere: Haitians on the move need urgent international protection*, 28 October 2021, AMR 36/4920/2021, <https://www.amnesty.org/en/documents/amr36/4920/2021/en/>.

the country.⁸ The turning away of asylum-seekers violates the principle of *non-refoulement*, which is binding on all countries as a principle of customary and non-derogable international law and is integrated into U.S. legislation. The principle of *non-refoulement*, as it applies to people who may be refugees and are in search of recognition as such, prohibits states from returning or turning away people to territories where their “life or freedom” would be threatened.⁹

The United Nations Refugee Agency (UNHCR) has described *non-refoulement* as encompassing “any measure attributable to a State which could have the effect of returning an asylum-seeker or refugee to the frontiers of territories where his or her life or freedom would be threatened,” or where an asylum-seeker or refugee would risk persecution. This includes rejection at the border, interception and indirect *refoulement*, whether of an individual seeking asylum or in situations of mass influx.¹⁰ In an authoritative advisory opinion on state obligations under refugee law,¹¹ UNHCR held that the principle of *non-refoulement* is violated in situations of non-admission at the border and applies to returns not only to countries-of-origin, but also to “any other place” where a person has reason to fear for their life.¹² Most importantly, it holds that “States will be required to grant individuals seeking international protection access to the territory and to fair and efficient asylum procedures.”¹³ The United Nations Convention Against Torture (CAT), which the United States has also ratified and incorporated into domestic law, similarly forbids *refoulement*.¹⁴

Under this legislation, individuals would not have access to fair and efficient asylum procedures and thus, could be returned to places where they are at risk, contrary to the United States’ domestic and international obligations. Further, asylum-seekers waiting in Mexico could be subjected to systematic *refoulement* back to their countries of origin. Amnesty International observed that systematic *refoulement* occurred under previous U.S. migration policies, including the Migrant Protection Protocols (MPP) and Title 42 expulsions. Specifically, migrants pushed back into Mexico under MPP and Title 42 faced rampant kidnapping and physical and sexual violence.¹⁵ As mentioned above, Mexico is also routinely failing to protect migrants in the country including by

⁸ 8 U.S.C. §1158–Asylum, [http://www.unhcr.org/3b66c2aa10](https://uscode.house.gov/view.xhtml?req=granuleid%3AUSC-prelim-title8-section1158&num=0&edition=prelim#:~:text=To%20establish%20that%20the%20applicant%20is%20a%20refugee%20within%20the,reason%20for%20persecuting%20the%20applicant.:UNGA, UNGA, Convention Relating to the Status of Refugees (1951), 189 UNTS 137, <a href=). Although the United States never ratified the 1951 Convention itself, it acceded to the 1967 Protocol, by which it became bound by Articles 2 to 34 of the 1951 Convention; UNGA, Protocol relating to the Status of Refugees (1967), 606 UNTS 267, <https://www.refworld.org/docid/3ae6b3ae4.html>.

⁹ Article 33 of the 1951 Convention codifies the principle of non-refoulement by prohibiting returning an asylum-seeker “in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” In recent decades, the principle has further developed in other areas of international human rights law and now applies to all individuals subjected to a transfer of jurisdiction, whether or not they claim international protection or are entitled to it.

¹⁰ UNHCR, *Note on International Protection*, 13 September 2001, A7AC.96/951, para. 16, <https://www.refworld.org/docid/3bb1c6cc4.html>.

¹¹ The legal status of Advisory Opinions of the UNHCR is explained in the Statute of the Office of the UNHCR: UNGA, Statute of the Office of the United Nations High Commissioner for Refugees, General Assembly Resolution 428(v) of 14 December 1950, <http://www.unhcr.org/4d944e589.pdf>. These Advisory Opinions are generally considered to be guidance for compliance with the 1951 Convention.

¹² UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations Under the 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol*, 26 January 2007, para. 7, <https://www.unhcr.org/4d9486929.pdf>.

¹³ UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations Under the 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol*, 26 January 2007, para. 8, <https://www.unhcr.org/4d9486929.pdf>.

¹⁴ Article 3 of the U.N. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: “No State Party shall expel, return (‘refouler’) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.” UNGA, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UNGA Resolution 39/46, 10 December 1984, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>.

¹⁵ Amnesty International, Amnesty International statement for hearing on “Examining the Human Rights and Legal Implications of DHS’s ‘Remain in Mexico’ Policy”, 18 November 2019, <https://www.amnestyusa.org/wp-content/uploads/2019/11/11.18.2019-Amnesty-International-Statement-for-House-HSC-Border-Security-Subcommittee-Hearing-on-RIM-1.pdf>.

refouling individuals seeking safety without protection screenings, to Guatemala, Haiti and Venezuela, among other countries.¹⁶

Furthermore, this legislation's aim to require family detention for prolonged periods of time is a shameful return to a policy that resulted in lasting trauma to children and families. First, detaining people solely on account of their immigration constitutes arbitrary detention, a violation of international law. And the detention of families violates the U.S.'s obligations toward the treatment of immigrant children. In fact, the detention of immigrant children, whether accompanied or unaccompanied, is prohibited in international law as it is not in their best interests. Family detention is an inherently cruel practice that results in significant trauma for children. For the years in which family detention was a common practice in the United States, detained families were subjected to dismal conditions, abuse, and trauma. Any amount of detention can cause trauma in children, and can compound the trauma that many children have already faced in their home countries that they fled, and the dangerous journeys they take to the United States.

Amnesty International USA strongly encourages committee members to reject the Border Security and Enforcement Act of 2023 and instead work towards policies of welcome rather than policies of hate and exclusion.

Sincerely,

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¹⁶ Amnesty International, *Americas: Pushback practises and their impact on the human rights of migrants and refugees*, Amnesty International Submission to the United Nations (UN) Special Rapporteur on the human rights of migrants, February 2021, 8 February 2021, AMR 01/3658/2021, <https://www.amnesty.org/en/documents/amr01/3658/2021/en/>; Amnesty International, *Pushed Into Harm's Way: Forced Returns of Unaccompanied Migrant Children To Danger By the USA and Mexico*, 11 June 2021, AMR 51/4200/2020, <https://www.amnesty.org/en/documents/amr51/4200/2021/en/>.