



Mr. Paulo Abrão
Executive Secretary
Inter-American Commission on Human Rights
Organization of American States
1889 F Street, N.W.
Washington, D.C. 20006

July 11, 2019

Re: Request for a Thematic Hearing on the Human Rights Implications of the United States’s “Remain in Mexico” (formally referred to as “Migrant Protection Protocols”) Policy of Returning Asylum Seekers to Mexico

Distinguished Secretary Abrão:

We, the undersigned petitioners respectfully request, in accordance with Articles 61 and 62 of the Rules of Procedure of the Inter-American Commission on Human Rights (“the Commission”), a thematic hearing during the 173rd Period of Sessions on the “Remain in Mexico” policy (formally referred to as the “Migrant Protection Protocols”). Implemented by the United States in cooperation with Mexico, this forced returns policy violates the fundamental human rights of asylum seekers and migrants. Returned asylum seekers face life-threatening dangers in Mexico. Some have been raped, kidnapped, and assaulted. They are at risk of onward *refoulement* by Mexico. Petitioners also seek to address a separate but related issue: the inadequate response taken by the Mexican government to ensure the human rights protection of those returned by the United States.

The six requesting organizations have years of experience working to protect the rights of vulnerable refugees and migrants in the United States, Mexico, and across the region. Currently, we provide legal representation and other services to asylum seekers returned to Mexico under the Remain in Mexico policy. Our organizations also conduct research and report on violations against the human rights of refugees and migrants.

I. Background and Current Situation

On January 29, 2019, the U.S. Department of Homeland Security (DHS) began implementing the “Remain in Mexico” policy in coordination with the Mexican *Instituto Nacional de Migración* (INM) at the San Ysidro/Tijuana border entry point. In an attempt to circumvent U.S. obligations to refugees under the American Convention on Human Rights,¹ Convention on the Status of Refugees, the Convention Against Torture, and relevant domestic asylum laws and regulations,

¹ As a signatory to the convention, the United States is obliged to refrain, in good faith, from acts that would defeat the object and the purpose of the treaty.

the return policy forces non-Mexican asylum seekers to remain in Mexico during the pendency of U.S. immigration court proceedings.

On February 14, 2019, legal action was initiated in *Innovation Law Lab v. Nielsen*² to challenge the forced return scheme. A U.S. federal court temporarily blocked Remain in Mexico; however, shortly thereafter that order was stayed pending resolution of the lawsuit. The United States began rapidly expanding implementation of the returns policy and reached formal agreement with the Mexican government to expand returns border-wide in the June 7, joint U.S.-Mexico declaration.³ Petitioner IMUMI and UNAM's *Programa Universitaria de Derechos Humanos* presented an *amparo* action in Mexico challenging the Mexican government's role in implementing the return policy; an *audiencia constitucional* (constitutional hearing) is currently scheduled for August 1, 2019.

As of July 9, 2019, the United States had forcibly returned over 18,513 asylum seekers, including many children, from Central America and other Latin American nations including Cuba, Nicaragua and Venezuela, now through four border entry points. The Mexican government expects total returns to reach 60,000 by the end of August.⁴

II. The Remain in Mexico Policy Violates Human Rights

Under the Remain in Mexico policy, U.S. border officers return asylum seekers (at official ports of entry or after crossing the border informally) to Mexico despite the life-threatening dangers they face after return and the risk that they will be refouled by Mexico to their countries of feared persecution or other harm. While those who pass a fear of harm in Mexico screening or fall within certain limited exceptions are supposedly protected from return to Mexico, even these unduly limited exceptions are not effectively implemented. DHS's descriptions of its policies and accounts of returned asylum seekers and U.S. government officials implementing the policy reveal that the entire process is a farce. The forced returns scheme violates due process protections, fails to comply with U.S. non-*refoulement* obligations, separates families, places particularly vulnerable individuals at risk of other harm, and deprives returned asylum seekers of fundamental human rights protections in Mexico.

The design and conduct of fear screenings for individuals returned to Mexico during their U.S. immigration court proceedings violates U.S. non-*refoulement* obligations.⁵ Returned asylum

² Now titled: *Innovation Law Lab v. McAleenan*, see ACLU, "Groups File Lawsuit Against Trump Policy that Forces the Return of Asylum Seekers to Mexico," available at <https://www.aclu.org/press-releases/groups-file-lawsuit-against-trump-policy-forces-return-asylum-seekers-mexico>.

³ See U.S. State Department, "U.S.-Mexico Joint Declaration," (Jun. 7, 2019), available at <https://www.state.gov/u-s-mexico-joint-declaration/>.

⁴ Echavarri, "Trump's 'Remain in Mexico' Policy Has Turned Back More Than 10,000 Asylum Seekers," Mother Jones (Jun. 10, 2019) available at <https://www.motherjones.com/politics/2019/06/trump-remain-mexico-asylum-seekers/>.

⁵ The United States is bound by Article 33 of the Refugee Convention, which states: "No Contracting State shall expel or return ("*refouler*") a refugee in any manner whatsoever to the frontiers of territories where his life or

seekers have been and are targeted for rape, assault, kidnapping, and extortion in Mexico because of their status as migrants, sexual orientation, gender, and other protected grounds.⁶ Returned refugees are also at high risk of onward *refoulement* by Mexican officials given INM's record of deporting refugees without information on or access to asylum procedures in Mexico.⁷ While the Remain in Mexico policy purports to protect asylum seekers from improper returns, these screenings are a sham. U.S. immigration officers are not required to—and routinely do not—inform individuals of the need to affirmatively express a fear of return to Mexico to trigger a screening and officers have failed to refer some individuals for screening who did express a fear of return.⁸ Asylum officers report that DHS officials interfere with and overturn determinations that returned asylum seekers would be at risk.⁹ Deplorable detention conditions during fear screenings interfere with the ability of asylum seekers to express themselves and discourage some with fears of return from requesting interviews. Further, the screening imposes an inappropriately high standard under which the individual must show a “more likely than not” probability of persecution on account of a protected ground or torture in Mexico¹⁰—a significantly higher standard than the “manifestly unfounded” standard recognized by the UN Refugee Agency for asylum screenings.

freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” Protocol Relating to the Status of Refugees, art. 33(1), Jan. 31, 1967, 19 U.S.T. 6223, 6225, 6276 (binding United States to comply with Article 33).

⁶ Asmann, “Mexico Police Collude With Criminals to Kidnap, Extort Migrant,” InSight Crime (Jun. 20, 2019), available at <https://www.insightcrime.org/news/brief/mexico-police-colludecriminals-kidnap-migrant/>; Human Rights Watch, “We Can’t Help You Here: US Returns of Asylum Seekers to Mexico” (July 2019) available at <https://www.hrw.org/report/2019/07/02/we-cant-help-you-here/us-returns-asylum-seekers-mexico>; Human Rights First, “The Trump Administration’s Migrant Persecution Protocols” (Jun. 12, 2019), available at <https://www.humanrightsfirst.org/blog/trump-administration-s-migrant-persecution-protocols>.

⁷ Amnesty International, “Overlooked, Under-Protected: Mexico’s Deadly Refoulement of Central Americans Seeking Asylum,” (Jan. 2018), 5 <https://www.amnestyusa.org/wpcontent/uploads/2018/01/AMR4176022018-ENGLISH-05.pdf>.

⁸ See Brief of Amicus Curiae Human Rights First in Support of Plaintiffs-Appellees, *Innovation Law Lab v. McAleenan et al.* (9th Cir.) (Jun. 26, 2019), available at: <https://www.humanrightsfirst.org/sites/default/files/Brief%20of%20Amicus%20Curiae%20HRF.pdf>;

⁹ Lind, “Exclusive: Civil servants say they’re being used as pawns in a dangerous asylum program,” VOX (May 2, 2019), available at <https://www.vox.com/2019/5/2/18522386/asylum-trump-mpp-remain-mexico-lawsuit>.

¹⁰ The Convention Against Torture, Art. 3 provides that: (1) 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.

Returns under the Remain in Mexico Policy have also resulted in family separation¹¹ and the expulsion of vulnerable individuals, including those with serious medical problems,¹² despite the policy's own guidelines prohibiting the return of those with medical health issues.¹³

The returns policy fundamentally interferes with basic due process and legal counsel protections by effectively preventing the vast majority of asylum seekers forced to remain in Mexico from meeting with or being represented by legal counsel during U.S. immigration court proceedings. The overwhelming majority of US based asylum lawyers cannot realistically travel to Mexico, or the borderlands, to meeting with asylum seekers returned to Mexico. There are serious concerns of safety in these areas, the complexities of crossing the border, office space, and the ability to practice law in Mexico on the part of the private bar. Very few non-profit organizations have the ability to offer even minimal pro bono assistance along the affected ports of entry and persons returned to Mexico report trouble making international phone calls to look for a lawyer. Given their lack of work authorization it is next to impossible to pay for an attorney even if one can be secured. Lack of access to counsel highly increases the likelihood that refugees will ultimately be denied protection and removed to a country where they face persecution.¹⁴

Following the U.S.' return of vulnerable individuals to Mexico—violating its non-*refoulement* obligations, placing individuals in direct danger in Mexico, and fundamentally interfering with their due process rights—Mexico also fails to ensure the personal integrity and non-*refoulement* of asylum seekers while on Mexican territory, and is complicit in the interference with due process in the United States.

Most concerning, it is clear that Mexico is unable to systematically ensure non-*refoulement* of asylum seekers to their home countries with many documented cases of *refouled* refugees.¹⁵ Amnesty International has already documented the case of an asylum seeker returned to Mexico

¹¹ Women's Refugee Commission, "Chaos, Confusion, and Danger: The Remain in Mexico Program in El Paso," (May 16, 2019) available at <https://www.womensrefugeecommission.org/rights/resources/1763-chaos-confusion-and-danger>; Human Rights First, "The Trump Administration's Migrant Persecution Protocols" (Jun. 12, 2019), available at <https://www.humanrightsfirst.org/blog/trump-administration-s-migrant-persecution-protocols>.

¹² Human Rights First, "Human Rights First Clients Ordered to Remain in Mexico Following Immigration Court Hearings" (Mar. 22, 2019), available at <https://www.humanrightsfirst.org/press-release/human-rights-first-clients-ordered-remain-mexico-following-immigration-court-hearings>.

¹³ DHS, Memorandum: "MPP Guiding Principles," (Jan. 28, 2019), available at: <https://www.aila.org/infonet/cbp-guiding-principles-migrant-protection-protocol>.

¹⁴ See Human Rights First, "A Sordid Scheme: The Trump Administration's Illegal Return of Asylum Seekers to Danger" (March 2019) available at <https://www.humanrightsfirst.org/resource/sordid-scheme-trump-administration-s-illegal-return-asylum-seekers-mexico>.

¹⁵ See Amnesty International, "Overlooked, Underprotected: Mexico's Deadly Refoulement of Central Americans Seeking Asylum" (January 2018), available at <https://www.amnestyusa.org/wp-content/uploads/2018/01/AMR4176022018-ENGLISH-05.pdf>; Voces Mesoamericanas, Executive Summary, "People in Migratory Detention in Mexico" (July 2017), available at <http://vocesmesoamericanas.org/noticias/resumen-ejecutivo-personas-en-detencion-migratoria-en-mexico>; Human Rights First, "Dangerous Territory: Mexico Still Not Safe for Refugees," (July 2017), available at <http://www.humanrightsfirst.org/sites/default/files/HRF-Mexico-Asylum-System-rep.pdf>.

under Remain in Mexico who was *refouled* to Guatemala by INM, despite expressing her fear of return there and showing Mexican police her U.S. court papers.¹⁶ Individuals subjected to Remain in Mexico are left even more vulnerable to *refoulement* because they generally receive visitor visas, which do not effectively guarantee *non-refoulement* if detained by Mexican law enforcement, particularly if they expire. Additionally, the United States frequently retains the identity documents of individuals subjected to the program, increasing the risk of detention and deportation in Mexico.¹⁷

In early July 2019, INM announced that 69 Central American asylum seekers subject to Remain in Mexico were returned to their home countries with the collaboration of the International Organization on Migration (IOM).¹⁸ While INM claims these returns are voluntary, the petitioners harbor serious concerns about possible *refoulement* of asylum seekers, particularly given the policy's interference with their due process and counsel rights in the United States, denial of access to work authorization, housing, and other social support in Mexico that call into question the voluntariness of return, and lack of safeguards to ensure effective informed consent.

Likewise, Mexico fails to ensure the personal integrity and safety of individuals subjected to Remain in Mexico. Apart from Mexican authorities' registry of asylum seekers upon their reception in Mexico, Mexico has pursued no public policy to safeguard these individuals' well-being or ensure access to other rights while in Mexico, including work, housing, food, and health care. Mexico is obligated to take affirmative measures to guarantee the rights of asylum seekers, and may be held internationally responsible for violations of the same.

Finally, Mexico is complicit in the violation of asylum seekers' due process rights. By receiving individuals with pending U.S. court proceedings onto Mexican territory, Mexico creates serious barriers to these individuals' ability to receive legal representation, gather evidence, and otherwise prepare their asylum cases to be presented in U.S. immigration court.

III. Urgent Need for a Thematic Hearing

Since the implementation of the Remain in Mexico policy, the undersigned organizations have emitted public statements to the U.S. and Mexican governments, conducted fact-finding missions to impacted areas along the U.S.-Mexico border, engaged DHS and U.S. immigration court

¹⁶ Brief of Amici Curiae Amnesty International USA, the Washington Office on Latin America, the Latin American Working Group & IMUMI in support of Plaintiffs-Appellees, *Innovation Law Lab et al. v. McAleenan et al.* (9th Cir.), (Jun. 26, 2019), available at https://www.splcenter.org/sites/default/files/documents/2019.06.26_0044_amnesty_international_amicus_brief1988_83.1.pdf.

¹⁷ See Associated Press, "Mexico Won't Accept Minors Awaiting US Asylum Claims" (Jan. 28, 2019), <https://apnews.com/8541781f26a8482ea0e35ff9102b67bc>; see also Brief of Amicus Curiae Human Rights First in Support of Plaintiffs-Appellees, *Innovation Law Lab v. McAleenan et al.* (9th Cir.) (Jun. 26, 2019), 27, available at: <https://www.humanrightsfirst.org/sites/default/files/Brief%20of%20Amicus%20Curiae%20HRF.pdf>.

¹⁸ Instituto Nacional de Migración, "Retornan a Centroamérica tras desistir de asilo," (Jul. 2, 2019), available at <https://www.inm.gob.mx/gobmx/word/index.php/retornan-a-centroamerica-tras-desistir-de-asilo/>.

officials at different levels, filed litigation and amicus briefs in support of ongoing litigation to end the policy in both the United States and Mexico, and struggled to provide minimal legal information and representation in the face of vast and overwhelming need. Notwithstanding these efforts, the policy continues to be expanded to new border entry points, forcibly returning vulnerable asylum seekers to dangerous conditions. A hearing would allow crucial evidence to be presented to the Commission and the international community about the serious violations of the fundamental human rights of migrants and asylum seekers. The hearing will also address the international and regional human rights norms and national practices regarding the treatment of asylum seekers, and the recommendations that the Commission should make to ensure that the United States and Mexico observe and protect these obligations.

IV. Conclusion

Should this request be granted, we anticipate that we will require approximately one hour for the hearing, during which time the undersigned organizations propose to present testimony of advocates, who can speak to the implementation of the policy and violation of human rights, and individuals who have been subjected to the Remain in Mexico policy. The undersigned organizations respectfully request that, should this hearing request be granted, the Commission invite the Governments of the United States and Mexico to attend the hearing and to address the Commission. We propose to supplement the above with written submissions at the time of the hearing, which will address these issues in greater detail. Should the Commission desire additional information on points raised throughout the hearing, the undersigned will gladly provide that information as part of its follow-up.

The undersigned organizations additionally respectfully request that the Commission engage in on-site visits to both sides of the U.S.-Mexico border to monitor the implementation of this policy directly and make further recommendations to both states, in light of the serious violations of inter-American human rights law discussed in this request.

Sincerely,

Al Otro Lado

Clínica Jurídica del Programa
Universitario de Derechos
Humanos de la Universidad
Nacional Autónoma de México

Derechos Humanos
Integrales en Acción

Human Rights First

Instituto para las Mujeres en la
Migración (IMUMI)

Las Americas Immigrant
Advocacy Center