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**Statement for the Record of Human Rights First
U.S. Senate, Committee on Homeland Security and Governmental
Affairs
Hearing on Customs and Border Protection Oversight**

June 25, 2020

Thank you for the opportunity to submit a statement for the record for the Hearing on Oversight of Customs and Border Protection (CBP). This hearing comes as CBP is blocking and expelling thousands of asylum seekers and unaccompanied children at the southern U.S. border in violation of U.S. law and treaty obligations and was recently inappropriately deployed in the interior of the United States in response to public protests in support of the Black Lives Matter movement.

Human Rights First is an independent advocacy and action organization that presses the U.S. government to respect human rights and the rule of law, both around the world and here at home. We advocate for fair asylum and refugee resettlement systems to protect and provide safe haven to refugees who have fled human rights abuses, and we partner with the nation's leading law firms to provide pro bono legal representation to refugees seeking asylum in the United States.

CBP Expelling Asylum Seekers and Unaccompanied Children

The administration is exploiting the coronavirus crisis to pursue its [long-held](#) goal of preventing refugees from seeking and receiving humanitarian protection in the United States. Under the guise of a [much-criticized](#) Centers for Disease Control and Prevention (CDC) [order](#), CBP is blocking and [expelling](#) asylum seekers and unaccompanied children without the legally required processes to countries where they face persecution, trafficking, and other serious violence.

Between March 20, 2020, when the CDC order was issued, and the end of May 2020, CBP expelled more than [42,000](#) people at the southern border, including many asylum seekers and at least [2,175](#) unaccompanied children to countries where they fear persecution and other violence.

In a report from May 2020, [Pandemic as Pretext](#), Human Rights First documented examples of those denied protection by CBP due to the CDC order including, a Honduran rape survivor and her two children, a mother with her five-day old daughter and three-year-old son, a Salvadoran family who faced threats from a gang that wanted to "rent" their 9-year-old daughter, and a Honduran asylum seeker and her daughter who were detained by Mexican migration after being expelled and forced to cross the border into Guatemala by Mexican migration agents who also denied them a chance to apply for asylum. CBP has also expelled some Central American unaccompanied children to Mexico in plain violation of the Trafficking Victims Protection Reauthorization Act, including 12- and 15-year-old Central American children sent alone by CBP to dangerous Ciudad Juárez, Mexico, where they were left homeless and on their own, according to a [KIND](#) policy brief from April 2020.

Government data received by [CBS News](#), but not publicly released by the administration, indicates that by the end of May 2020 border officials referred only 85 people for additional fear screening who were subject to the CDC order and only four were permitted to stay in the United States and request asylum.

Of the more than 42,000 expelled under the order in March and April 2020, 99.99 percent were denied even an opportunity to apply for refugee protection.

Using the CDC order, CBP is likely expelling or blocking from seeking protection at least [4,000](#) men, women, and children a month. This estimate by Human Rights First is a conservative one based on an 86 percent drop in [credible fear referrals](#) and steep declines in processing of [inadmissible](#) individuals, often asylum seekers, at southern ports of entry. Indeed, CBP has entirely stopped processing of requests for protection at ports of entry under the guise of the CDC order, including for the [14,000](#) asylum seekers who have been waiting in some instances for more than nine months on metering lists.

Expulsions of asylum seekers and other migrants by CBP violate U.S. treaty obligations to refugees and are an attempt to circumvent the laws passed by Congress that require the agency to process individuals seeking protection in the United States. As Senator Patrick Leahy and other senators [wrote](#) in expressing their grave concern about these expulsions, the administration “blatantly misinterpret[s] its limited authorities” under the CDC order in an attempt “to override existing federal statutes.”

Moreover, the CDC order CBP is citing as authority to carry out expulsions, lacks a public health rationale. In a [letter](#) to the director of the CDC, more than 40 public health experts from leading U.S. public health schools, medical schools, hospitals, and other public health institutions concluded that:

- “there is no public health rationale for denying admission to individuals based on legal status. The order’s stated justification is that the migrants and asylum seekers who are subject to it would normally be held by Customs and Border Protection (CBP) in ‘congregate settings’ for prolonged periods of time. However, instead of holding individuals in facilities widely recognized as dangerous and unsanitary, CBP has the discretion and legal authority to parole adults and families seeking asylum or other legal protection, and the government could facilitate the expeditious release of unaccompanied children from custody. A recent study found that of several hundred asylum seekers currently at the Mexico-U.S. border, [92 percent](#) have family or friends they could live with in the United States. Allowing individuals to shelter in place with family or friends would reduce the need for quarantine facilities, resolving another concern stated in the CDC order.”

These eminent public health experts wrote that “other safeguards – like use of masks, hand sanitizer, and other screening measures – are available” and urged CDC to rescind the order and to work with U.S. government agencies, including CDC, to implement measures grounded in the best available public health guidance, including:

- During border processing, facilitate social distancing through demarcations and the use of outdoor and other areas for processing; require wearing of masks or similar cloth coverings over the face and nose for both officers and persons crossing into the United States; use plexiglass barriers and/or face shields for officers during interviews and identity-checks; provide hand-sanitizer and other handwashing for both officers and other persons; and provide requisite distance, as well as masks and other measures, in transport;
- Rather than detaining asylum seekers in congregate settings, allow asylum seekers to wait for their court hearings with their families or other contacts in the United States through parole, case management and other alternatives to detention;
- Promptly transfer unaccompanied children to the legal authority of the Office of Refugee Resettlement for swift reunification with family members and caregivers in the United States; and

- Facilitate self-quarantine at destination locations, should all individuals crossing the southern border be required to do so. Under no circumstances should CBP operate mass quarantine facilities.

Indeed, the CDC also relies on [false](#) assertions by DHS about CBP's capacity to process asylum seekers, unaccompanied children and other migrants at the southern border. Contrary to the agency's claims that individuals subject to the CDC order must be held in congregate settings for many hours or days, Human Rights First recently detailed in a June 2020 analysis of government documents revealed in [litigation](#) and through [FOIA](#) as well as federal court [findings](#) that CBP is capable of completing border processing in a matter of hours, that CBP ports of entry have numerous detention cells and holding rooms where social distancing could be observed and that these ports have 11 percent more [staffing](#) compared to 2016 when CBP processed far more individuals. Even if people arriving at the border were placed in separate holding cells for 12 hours—far longer than generally needed to complete border processing—CBP could still process hundreds of families, unaccompanied children, and individuals requesting humanitarian protections at the southern border each day.

While administration officials use [debunked](#) public health [claims](#) made in the CDC order as a fresh opportunity to turn away asylum seekers and unaccompanied children, many CBP officers and Border Patrol agents fail to consistently observe even the most basic health precautions at border posts and on patrol, like wearing masks and maintaining safe distancing, as Human Rights First documented in our recent [report](#). For instance, we received reports from attorneys, humanitarian volunteers, and members of the public who have crossed the border on foot or vehicle at [San Ysidro, California](#), [Nogales, Arizona](#), Columbus, New Mexico, and [El Paso](#) and Brownsville, Texas ports of entry in April and May that some CBP officers in vehicle lanes and inside ports of entry who were not wearing masks and that none had been offered or observed hand-sanitizing gel available for use by the public. Recent photographs posted by Border Patrol officials on Twitter show uniformed, on-duty agents in [California](#), [Arizona](#), [New Mexico](#), and [Texas](#) not consistently using masks and not maintaining social distancing, even among agents [not wearing](#) protective gear.

CBP Continues to Strand Asylum Seekers and Other Migrants in Danger in Mexico

At the same time, despite escalating violence in Mexico, the administration continues to implement the [Remain in Mexico](#) policy threatening the lives of asylum seekers. Since the so-called Migrant Protection Protocols (MPP) went into effect in January 2019, DHS has returned thousands of asylum seekers primarily from Cuba, El Salvador, Guatemala, Honduras, Nicaragua, and Venezuela to Mexico. During the pandemic, CBP continues to place additional asylum seekers in MPP, including those from Cuba and Nicaragua, although all MPP hearings have been [cancelled](#) since March 23.

CBP has also halted all processing of asylum seekers requesting protection at U.S. ports of entry on the southern border leaving an estimated [14,000](#) asylum seekers from Angola, Cameroon, Cuba, the Democratic Republic of Congo, Eritrea, Nicaragua, and Venezuela, among other countries, in limbo – some [waiting](#) since August 2019.

Asylum seekers turned back to Mexico by CBP face life-threatening dangers. As of early May, Human Rights First had tracked [1,114](#) incidents of murder, rape, kidnapping, torture, and assault against individuals returned to Mexico under the MPP policy alone. But this count is only the tip of the iceberg, as the overwhelming majority of returned people have not spoken with human rights investigators or journalists. COVID-19-related restrictions have further limited reporting. Of the reported attacks, 265 were kidnappings or attempted kidnappings of children. Other victims documented in Human Rights First's

recent [report](#) include a Venezuelan asylum seeker kidnapped in Reynosa while traveling to her hearing, a Cuban LGBTQ asylum seeker twice attacked in Reynosa and nearly raped, a pregnant Cuban doctor who miscarried after being beaten and nearly kidnapped in Ciudad Juárez, and a Guatemalan man assaulted and robbed in Tijuana, where police refused to allow him to file a complaint.

Following the cancellation of MPP hearings, for weeks the Department of Homeland Security (DHS) needlessly forced asylum seekers to travel through dangerous border regions of Mexico to U.S. ports of entry, exposing them to the risk of COVID-19 infection, merely to pick up notices of MPP hearings cancelled due to COVID-19 court closures. CBP officers threatened that asylum seekers who failed to pick up updated notices would be deported, falsely informed individuals unable to reach the port of entry on the date of a cancelled hearing that they had already been ordered removed *in absentia*, at times failed to provide new hearing notices to asylum seekers who had traveled to the port of entry on the date of their hearing, and distributed hearing notices at some ports of entry in the middle of international bridges putting asylum seekers at additional risk of kidnapping. Indeed, a Venezuelan asylum seeker was kidnapped in April immediately after receiving a hearing notice on an international bridge while walking away from the Laredo port of entry. In mid-April 2020, Human Rights First and 26 other organizations providing services to those in MPP [wrote](#) to CBP and DHS warning of these and other dangers. Despite changes in rescheduling policy, many asylum seekers in MPP must and will still continue to undertake long and dangerous journeys through the border region to reach ports of entry, as the administration has no means to contact individuals in MPP to inform them of these changes.

Despite claims by some administration officials, including Acting CBP Commissioner [Mark Morgan](#), that asylum and [MPP fear screening interviews](#) are available on a “case-by-case” basis, CBP is rejecting requests for asylum and fear interviews without consideration. Those refused fear interviews by CBP include a Venezuelan asylum seeker forced back without a screening to highly dangerous Nuevo Laredo, a Brazilian lesbian couple and their child denied a fear screening in El Paso, and a Honduran asylum seeker denied a fear screening [after his finger was chopped off by his kidnappers](#) in Ciudad Juárez. On June 20, 2020, non-profit organizations serving asylum seekers in MPP [wrote](#) to DHS and CBP documenting recent instances in which asylum seekers from Cuba, El Salvador, Guatemala, Honduras, Nicaragua, Venezuela and other countries were blocked from fear screenings by CBP.

While the MPP screening process is deeply flawed and lacks basic [safeguards](#) that Congress created to prevent the deportation of asylum seekers to persecution through the credible fear screening process, these interviews are the only means for people whose safety and lives are at risk in MPP to be removed from the program and permitted to continue their asylum process in safety from within the United States. Conditioning access to refugee protection on the discretion of an individual border officer violates U.S. refugee and immigration laws and treaty-based obligations. It also contradicts the administration’s assertion to the [U.S. Supreme Court](#), in arguing for the legality of MPP, that fear screenings are available “at any time.”

On June 16, DHS and the Department of Justice (DOJ) [extended](#) the cancellation of MPP hearings through July 17, meaning that by the time hearings resume those in MPP will have been prevented from even requesting protection for at least four months.

CBP Fear Screening Farce

Trump Administration officials have repeatedly [complained](#) about the rate at which professional U.S. Citizenship and Immigration Services (USCIS) asylum officers determine that asylum seekers meet the

credible fear of persecution legal standard. Indeed, White House senior advisor [Stephen Miller](#) reportedly demanded that USCIS tighten, *i.e.* lower, the pass rate.

Indeed, the administration has proceeded to rig the asylum process through a barrage of illegal policy changes, agency regulations, and unilateral Attorney General rulings that render many refugees ineligible for asylum or effectively block them from this life-saving protection. Through [asylum cooperative agreements](#) with Central American countries that are unsafe for refugees, the [third-country transit asylum ban](#), [fast-track](#) “asylum review” programs that hold asylum seekers in substandard CBP border cells that effectively block them from legal representation, and by deploying CBP border enforcement officers to conduct some fear interviews, the administration is achieving its goal to block asylum seekers at the credible fear stage and deport them to the countries they have fled without letting them apply for asylum or have an asylum hearing. In fiscal year [2020](#), positive credible fear determinations dropped sharply by 50 percent from the preceding [year](#) to just 37 percent, according to USCIS data – a significant departure from credible fear rates during the Barack Obama and George W. Bush administrations, when they averaged 78 percent.

Another element of the administration’s efforts to rig the credible fear process is the use of CBP enforcement officers to conduct some screenings. These border enforcement officers are determining that asylum seekers meet the fear standard at a rate [20 percent](#) lower than compared to interviews conducted by trained asylum officers. Allowing CBP officers, who are [not suited](#) to carrying out sensitive, legally complex, non-adversarial screenings of often traumatized asylum seekers, undermines the safeguards Congress intended to protect refugees.

CBP Inappropriately Deployed in the Interior of the United States

The deployment of CBP air and ground resources and personnel in response to largely peaceful protesters also raises concerns given that CBP does not have a track record of prioritizing the protection of the rights of those it encounters or who have been placed in its care, as is made clear by the widespread [abuse of children in its custody](#). Considering the routine [lack of oversight](#), including [shoddy recordkeeping](#), [lack of accountability](#), [low hiring standards](#), [destruction of life-saving water](#) left for migrants in the desert, [frequent excessive use of force and escalation of force](#), [antiquated policies](#), as well as the high prevalence of [corruption and misconduct](#), CBP should not be deployed to “keep the peace.” For CBP officers to be deployed well beyond their [general responsibilities](#) over immigration and customs enforcement at the border, raises legitimate concerns, particularly for immigrant populations, attempting to exercise rights to peaceful assembly and protest. Further, these deployments may, in some instances, be illegal, such as the use of a CBP drone over the Minneapolis/St. Paul area well outside of the border zone in which CBP is authorized to operate.

Continued Congressional Oversight and Action Needed

To restore the asylum system that Congress established through the historic Refugee Act of 1980 and subsequent legislation and respect for the rule of law at our borders and in the interior of the United States, Human Rights First calls on Congress to:

- Withhold appropriations to DHS and DOJ used to carry out the Migrant Protection Protocols, expulsions under the CDC order, transfers under asylum cooperative agreements, the third-country transit asylum ban, fast-track asylum deportation programs, including the Prompt Asylum Claim Review (PACR) and Humanitarian Asylum Review Process (HARP) programs, and the use of CBP officers to conduct preliminary fear screenings.

- ☑ Pass the [Refugee Protection Act of 2019](#).
- ☑ Hold continued oversight hearings on the administration's policies designed to block or deter people seeking humanitarian protections in the United States, which violate the Immigration and Nationality Act, Refugee Act of 1980, Foreign Affairs Reform and Restructuring Act 1998, Trafficking Victims Protection Reauthorization Act of 2008, among other laws, as well as U.S. treaty obligations to refugees.
- ☑ Request investigations of the claimed justifications and legality of the CDC order by the Offices of Inspector General for DHS and the Department of Health and Human Services.
- ☑ Conduct official visits, when safe given the COVID-19 pandemic, to Mexican border towns, CBP facilities and Border Patrol stations on the southern border, and immigration courts to ensure compliance with U.S. laws and treaty obligations.
- ☑ Prohibit the future deployment of CBP and Immigration and Customs Enforcement officers and resources outside of DHS's border enforcement mandate in order to conduct general law enforcement activities, including policing of individuals exercising protected First Amendment rights to freedom of assembly and speech.