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Inter-American Commission on Human Rights 1889 F St., NW Washington, DC

RE: REQUEST FOR COMPREHENSIVE *IN LOCO* VISIT TO THE UNITED STATES AND MEXICO TO CONSIDER HUMAN RIGHTS VIOLATIONS IMPACTING MIGRANTS AND REQUEST FOR ONGOING ROBUST MONITORING OF THE REGIONAL HUMAN RIGHTS SITUATION RELATING TO MIGRANTS

Dear Honorable President of the Commission, Honorable Commissioners and Executive Secretary of the Commission:

The below-named organizations and individuals¹ write to respectfully request urgent action by the Inter-American Commission on Human Rights to address grave human rights violations impacting migrants in Mexico and the United States, including asylum seekers, children and families. Specifically, we respectfully request that the Commission immediately conduct a comprehensive *in loco* visit to the United States and Mexico to consider actions and policies by both States that are having dramatic negative impacts on the human rights of migrants, particularly asylum-seeking Central Americans who transit through Mexico to reach the United States. We ask that the visit be followed by a report that considers the full extent of human rights violations experienced by migrants in Mexico and the United States. We further request that, after this visit, the Commission engage in ongoing, robust monitoring of the treatment of migrants in the region. This monitoring should include hearings before the Commission during its sessions, additional visits to the region—including the southern border of Mexico and Central America—, development of standards relating to the treatment of migrants (particularly in connection with new patterns in externalization of borders and proposals for "safe third country"

¹ For individual signatories, affiliation is listed for identification purposes only.

agreements), and prompt consideration of precautionary measures requests and individual complaints.

For more than a decade, the Commission has exercised leadership in using its various faculties to address the plight of migrants in Mexico and the United States by identifying human rights violations committed by States, setting standards regarding the human rights protections owed to migrants, and urging compliance with human rights obligations. For example, the Commission held a hearing in the fall of 2007, during its 130th period of sessions, entitled "Human Rights Situation of Migrant Workers, Refugee Children and Other Vulnerable Groups in the United States." Since that time, the Commission has held more than a dozen thematic hearings on topics relating to the treatment of migrants in the United States. Most recently, the Commission called an *ex oficio* hearing on the "Human rights situation of the persons that make part of the Caravan of Migrants." The Commission has also conducted several *in loco* visits to the United States and Mexico focused on the human rights of migrants.

This intensive involvement has resulted in a number of statements and recommendations by the Commission urging the States of Mexico and the United States to improve respect for the human rights of migrants. Many of these conclusions and recommendations are gathered in extensive reports prepared by the Commission including: *Report on Immigration in the United States: Detention and Due Process* (2011);² *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico* (2014);³ *Refugees and Migrants in the United States: Families and Unaccompanied Children* (2015).⁴

Unfortunately, Mexico and the United States have not effectively implemented many of the Commission's recommendations, and instead have implemented policies and practices that operate in direct contravention of the Commission's earlier recommendations and their human rights obligations. At the same time, the numbers of forced migrants have increased without an effective human rights-based response. The result: the human rights situation of migrants in the region has significantly worsened in magnitude, severity of the violations and in geographic scope.

Children and adults are dying: some while transiting through Mexico or seeking protection under the Mexican system; others while waiting for the opportunity to enter the United States or while crossing the U.S. southern border in dangerous circumstances when the wait becomes too prolonged; others while in government custody; and yet others who have been returned to Mexico by the United States to wait for their asylum case to be heard. Rather than prevent these deaths, actions by Mexico and the United States have directly endangered migrants. In addition, unaccompanied children are blocked from accessing U.S. ports of entry, and both Mexico and the United States forcibly separate families in the process of seeking asylum at the U.S.-Mexico border. Mexico and the United States are returning asylum seekers to danger without any meaningful opportunity to seek protection. Furthermore, both countries have acted to extend

² https://www.oas.org/en/iachr/migrants/docs/pdf/Migrants2011.pdf

³ https://www.oas.org/en/iachr/migrants/docs/pdf/Report-Migrants-Mexico-2013.pdf

⁴ <u>https://www.oas.org/en/iachr/reports/pdfs/Refugees-Migrants-US.pdf</u>

their borders even further south to Guatemala to block the entry of migrants into Mexico and the United States.

It is urgent that the Commission act in its leadership role and use all of its faculties to address this human rights crisis. While this situation has reached a heightened state of urgency along the U.S.-Mexico border, the human rights abuses permeate the interior of both countries, where detention and enforcement policies and practices operate in direct violation of human rights obligations, as well as the region overall.

We understand that the Commission has sought permission to conduct an *in loco* visit to the U.S.-Mexico border. We urge the Commission to finalize plans to conduct a comprehensive and unrestricted visit to the United States and Mexico in the very near future. Human rights violations affecting migrants are taking place along the entirety of the U.S.-Mexico border, in the interior of both the United States and Mexico, and at the southern Mexico border, and there are important variations in the manner and in the policies and conditions that apply to migrants in these different regions. We therefore request that the Commission's visit take into account the importance of visiting diverse geographic areas in both Mexico and the United States. We also urge the Commission to set forth a specific timeline for subsequent visits to locations that are not reached in its upcoming visit, including the southern border of Mexico and Central America. We ask the Commission to consult with civil society organizations in determining the scope and nature of the visit.

We urge the Commission to consider the following issues, among others that may be identified by the Commission, the involved States and civil society, in conducting its *in loco* visit. The Commission has been monitoring many of these issues for years, although long-standing problems have worsened in many cases and new concerns have arisen. At a time when the United States and Mexico have made public and clear their intent to prevent migrants from reaching the United States to seek asylum, it is critical for the Commission to take a comprehensive look at this broad range of human rights violations.

1. <u>Threats to life and well-being</u>. Migrants in Mexico, including asylum-seekers returned to Mexico after reaching the United States, confront extreme danger and insecurity in Mexico, including kidnappings, homicides, disappearances, sexual and gender-based violence, and increasing xenophobia and discrimination. Mexico has failed to adequately respond to and prevent violence against migrants. (American Declaration, Arts. I, XXVII; American Convention, Arts. 2, 4, 5). The Mexican government's failure to issue documentation to migrants has further contributed to the insecurity migrants face. (American Declaration, Art. XVII; American Convention, Art. 3).

Detention conditions in both Mexico and the United States, in border facilities as well as long-term detention centers, violate the right to life, liberty and well-being (American Declaration, Art. I; American Convention, Arts. 4, 5)

a. At least seven children have died in U.S. custody or shortly after being released, while 24 adults have died in U.S. immigration detention.

- b. Overcrowding and lack of proper sanitation, health care, food, and sleep compromise migrants' physical and psychological health.⁵
- c. Migrants often experience xenophobic comments and harassment by Mexican and U.S. officials.

In addition, human rights defenders working with migrants in Mexico and the United States have faced threats, harassment and criminal charges relating to their work. State agents have been involved in these rights violations or have failed to prevent them. The United States and Mexico have collaborated to impede border crossings by human rights defenders seeking to respond to the needs of migrants at the U.S.-Mexico border.

- Denial of access to asylum and due process rights. Mexico and the United States have both adopted measures that externalize borders and thereby block access to asylum, leading to increased risk of asylum-seekers being subject to *refoulement*, leaving migrants in situations of extreme risk and danger in countries of origin. (American Declaration, Arts. I, XVIII, XXVII; American Convention, Arts. 4, 5, 8, 22). Specifically:
 - a. Mexico and the United States have taken action to block entry of migrants arriving at Mexico's southern border with Guatemala and to quickly deport those who do enter;
 - b. The United States, in apparent cooperation with the Mexican government, has refused to process asylum seekers who approach a U.S. port of entry to seek protection, instead placing them on lengthy waitlists that are managed by Mexican authorities or non-governmental actors. Corruption and lack of transparency plague the lists. The restricted access forces families, unaccompanied children and other asylum seekers to wait to be processed for the U.S. asylum system in dangerous and unstable conditions in northern Mexico.
 - c. The United States has implemented its "Remain in Mexico" policy (under the misleading name, "Migrant Protection Protocols"), which requires asylum seekers processed at the southern U.S. border to await their U.S. immigration hearings in Mexico, and Mexico is complicit in the ensuing rights violations as it has accepted the return of asylum seekers to Mexican territory. The "Remain in Mexico" policy has resulted in the following rights violations:
 - Families with children, pregnant women, persons with serious medical conditions and other vulnerable individuals are forced to live in unstable camps and in the streets exposed to danger in northern Mexico while they await adjudication of their protection claims in the United States;

⁵ See, e.g., DHS Office of Inspector General, Management Alert – DHS Needs to Address Dangerous Overcrowding and Prolonged Detention of Children and Adults in the Rio Grande Valley (July 2, 2019).

- Families are separated, with parents, children, siblings, and partners divided where some family members are returned to Mexico and the other family members are detained and/or released in the United States;⁶
- iii. Asylum seekers are not guaranteed counsel and are denied meaningful access to counsel⁷ rights violations that are compounded by the U.S. and Mexican authorities' interference with and violation of the rights of those human rights defenders seeking to provide legal counsel to migrants trapped in Mexico;⁸
- iv. Asylum-seekers' due process rights are further eviscerated by the conduct of immigration proceedings without adequate notice or information, often by video hearings,⁹ and with inadequate interpretation services;¹⁰
- v. The United States does not take adequate measures to avoid the risks that migrants may face in Mexico while they await hearings, by conducting only minimal hearings on the issue only where concerns are raised by the asylum seeker, with placement of a high burden on the asylum seeker to seek non-return to Mexico;
- vi. The United States fails to ensure the safety of those who are returned to Mexico and has expanded the program to areas such as Tamaulipas that even the U.S. State Department has warned are extremely unsafe, while also failing to take measures to ensure that asylum seekers will not be returned by Mexican authorities to their countries of origin in violation of the principle of non-refoulement;
- vii. The United States and Mexico have, together with the International Organization for Migration, extended Mexico's assisted voluntary return program to migrants forced to wait in Mexico; however, those returning to their country of origin through this program are provided inadequate information about their legal options and the impact of return on their pending proceedings in U.S. immigration court, so that

⁶ See <u>https://www.npr.org/2019/07/15/741721660/follow-up-what-happened-after-a-border-agent-asked-toddler-to-pick-a-parent</u>

⁷ Recently, volunteer "friend of the court" attorneys, who have agreed to assist the proceedings without entering a formal appearance as counsel, have been barred from meeting with migrants to inform them of their rights and prepare them for hearings.

⁸ See Precautionary Measures Request filed February 12, 2019, by Al Otro Lado Co-Directors Nicole Ramos, Erika Pinheiro and Nora Phillips, with support from Alma Migrante, Inc., the Immigration Clinic at Washington and Lee Univ. School of Law, and the Transnational Legal Clinic at the University of Pennsylvania School of Law, and subsequently submitted supporting evidence.

⁹ In south Texas, those hearings are by video in makeshift tent courts.

¹⁰ The United States has recently announced a policy of removing in-person court interpreters and instead relying on pre-recorded orientation sessions and more limited use of telephonic interpretation. See http://immigrationimpact.com/2019/07/12/cutting-interpreters-immigration-court/#.XS9uROhKiM8

these returns may not be fully voluntary and may lead to refoulement to danger.

- d. The United States is negotiating so-called "safe third country" agreements that would block asylum seekers from seeking asylum in the United States if they have transited through other countries before reaching the United States and has recently adopted a regulation that denies asylum to individuals who have arrived at the southern U.S. border after transiting through Mexico or other countries that are parties to the U.N. Refugee Convention. Civil society organizations in the United States and Mexico have been excluded from discussions about potential regional agreements.
- 3. <u>Violations of the right to family life, and best interests of the child.</u> The United States continues to separate families at the U.S. southern border even after formally ending the "zero tolerance" criminal prosecution and separation policy in place during the summer of 2018 in response to significant public outcry, advocacy and a judicial order calling on the government to halt its policy. (American Declaration, Arts. I, V, VI, VII; American Convention, Arts. 5, 17, 20).
 - a. Over 750 new separations have taken place since the federal court enjoined the family separation practice in June of 2018; in addition, when family units arrive at the border, at least one parent or sibling is often separated, even if one parent remains with the child. There have also been reports of parents being re-detained after the family has settled with another family member or person deemed a suitable guardian for the child.
 - b. Separations include very young children left without any parent and treated as unaccompanied children who are placed in large state institutions. Even when children do ultimately reunify with their family it is often after a significant delay of six months or longer.
 - c. Reasons for separation are often not provided to the parent or the child, or to the attorney for the parent or the child, and there is no mechanism to challenge allegations of unfit parenthood or criminal history. In some cases very minor criminal history, such as theft, that has no bearing on safety to the child, is used to justify separation.
 - d. Some separations result from the discriminatory treatment of indigenous families and lack of familiarity with cultural practices.
 - e. Separation decisions are being made by immigration officials who are not qualified to make decisions about child safety and children's best interests. No court reviews the separation decision.
 - f. Once separated, families confront extreme difficulties in initiating and maintaining communication with their separated family members.
 - g. The United States has deported parents without their children even when there has been a clear expression of preference for reunification before return.
 - h. Children who are deemed unaccompanied, either because they initially approach the border without an immediate relative or because they are subsequently separated, face difficulty in reuniting with family members who are undocumented in the United States because of the U.S. government's decision to share information gathered for reunification purposes with

immigration enforcement entities. As a result of this information sharing, family members are fearful to step forward to reunite with children.

- 4. <u>Immigration detention in Mexico and the United States as an impermissible</u> <u>restriction on liberty</u>. Mexico and the United States continue to detain immigrants in their enforcement of civil immigration laws in ways that violate their obligations under international law. (American Declaration, Arts. I, XI, XXV, XXVI; American Convention, Arts. 4, 5, 7, 8, 25).
 - a. Both countries continue to detain asylum seekers, pregnant women, children and families.
 - b. Detention is used not as a "matter of last resort," but as a deterrent to future migrants.
 - c. Both countries engage in practices of categorical detention not based on individualized circumstances and not limited to those circumstances where there has been a showing of absolute necessity.
 - d. The lack of review of the need for detention by an independent judicial authority violates the due process rights of those detained. Furthermore, detention is often prolonged, without a time limit or regular review of necessity.
 - e. Detention and the psychological, physical and emotional toll it takes on the individual and their family members frequently compels the withdrawal of claims for protection, resulting in *refoulement* to situations of grave danger.
- 5. <u>Criminalization of Immigrants and Militarization of Borders</u>. Mexico and the United States have assumed a punitive enforcement approach to immigration, resulting in border militarization (American Declaration, Arts. XXV, XXVI; American Convention, Arts. 5, 8, 22, 25).
 - a. Rapid deportations occur along Mexico's southern border and the U.S. southern border, without access to the asylum process, and rapid deportations of unaccompanied children happen from Tapachula, Mexico without any determination or consideration of their best interests.
 - b. Mexico has deployed 20,000 members of the National Guard to both its southern and northern borders and also involved other military along the southern border. There have been reports of the Mexican National Guard threatening and intimidating migrants and staff at shelters for migrants run by civil society organizations.
 - c. Private militia in the United States detain and threaten migrants along the southern U.S. border. The militarization of the U.S. southern border forces migrants to cross the border in more dangerous locations, leading to migrant deaths.
 - d. The United States criminally charges migrants who cross the border in an irregular manner, including asylum seekers.
- 6. **Denial of Meaningful Asylum Protections.** Those who ultimately are able to present their claims for asylum confront bureaucratic hurdles and restrictions on meaningful

asylum protections that effectively serve to deny them the right to asylum. (American Declaration, Arts. XVIII, XXVI, XXVII; American Convention, Arts. 8, 22, 25).

- a. In Mexico, asylum seekers face an extensive backlog at the Comisión Mexicana de Ayuda a Refugiados (COMAR), the agency that adjudicates asylum claims, which lacks sufficient offices and personnel to respond to the number of asylum seekers within Mexico. This problem will only get worse as the United States further restricts access to asylum and more migrants find themselves trapped in Mexico. COMAR also does not have offices in a sufficient number of locations in Mexico to make the asylum process accessible to individuals throughout the country.
- b. Mexico has not taken adequate measures to ensure that migrants within Mexico are aware of their right to seek asylum and the process for doing so. This is a particularly acute problem for migrants in detention. In the case of unaccompanied children, some Mexican officials discourage them from seeking asylum by cautioning them that doing so would result in long term detention. Unaccompanied children who do seek asylum lack appropriate legal representation and appropriate shelter options.
- c. In the United States, migrants confront years-long backlogs in the Immigration Court system that adjudicates asylum claims; the possibility of detention during the pendency of their case; no meaningful right to counsel as there is no right to government-appointed counsel for immigrants in immigration proceedings; and widely disparate and arbitrary grant rates for release from detention and for asylum and related protections.
- d. The Trump Administration has also implemented new restrictions in U.S. law on asylum and asylum procedures, including:
 - i. In the summer of 2018, U.S. Attorney General Sessions issued a ruling in *Matter of A-B-* stating that claims by private actors (particularly gang-based claims and domestic violence claims) will not be recognized, as a means of screening out Central American asylum claims, and significantly narrowing what constitutes a "particular social group."
 - ii. The Department of Homeland Security published a new regulation that seeks to deny asylum to those who cross the border outside of a designated port-of-entry. This regulation is currently enjoined by the federal courts.
 - iii. The Department of Homeland Security published a new regulation that denies asylum to individuals who transited through another country prior to reaching the United States; in addition to denying asylum this regulation denies a credible fear of persecution interview to individuals who would be ineligible for asylum under the regulation (those who transited another country prior to reaching the United States) and instead limits them to a reasonable fear of persecution interview which subjects them to a much higher burden of proof and standard in order to qualify for a hearing before an immigration judge.
 - iv. The Administration has implemented procedural rules that make it extremely difficult for individuals to present asylum claims in the

adversarial Immigration Court process, particularly given the lack of right to counsel, including among others: rules disfavoring continuances; requirement that asylum seekers specifically designate the protected ground for asylum in their case at an early stage of the proceedings despite the complexity of the law, and regardless of whether they are represented by counsel; grant of authority to immigration judges to pretermit asylum claims without a full hearing and testimony.

v. The Department of Justice has taken further actions to limit the independence and autonomy of the immigration judges who seek to provide full due process rights to those migrants appearing before them, including imposing mandates on how many cases must be adjudicated in a year; limiting the ability of judges to administratively close cases where there are other forms of relief pending; appointing immigration judges almost exclusively from Immigration and Customs Enforcement; and, in at least one case, removing cases from the docket of an immigration judge who defied Department of Justice leadership.

In addition to the upcoming *in loco* visit and further visits in the near future, we urge the Commission to issue reports following its visit to address the broad range of human rights concerns described in this letter, and to renew its robust monitoring of the regional situation relating to migrants. We look forward to the opportunity to present additional information and briefing at the upcoming 173th period of sessions in Washington, D.C. and in subsequent sessions of the Commission. We urge the Commission to accept requests for hearings on the situation of migrants during this upcoming period of sessions and subsequent sessions as well.¹¹ We further urge the Commission to continue to interpret the Convention and Declaration to establish the relevant standards related to the human rights of migrants and to monitor and make findings on compliance with those standards.

Thank you for your attention.

¹¹ Several requests for general hearings on the situation of migrants in the region have been presented to the Commission for the 173rd period of sessions, demonstrating the widespread concern regarding the grave human rights situation affecting migrants. See, e.g., Human Rights First, IMUMI, Al Otro Lado, et al., 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; Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, Solicitud de audiencia temática sobre "Alertas Migratorias en México"; Red Jesuita con Migrantes, et al., Petición de Audiencia sobre violaciones a derechos humanos y criminalización de personas con necesidad de protección internacional a partir de la militarización de las fronteras en México; Texas Civil Rights Project & Robert F. Kennedy Human Rights Center, Thematic Hearing Request on the Deaths of Immigrants, Including Children, as a Result of the United States of America's Inhumane Treatment of Migrants at the U.S.-Mexico Border; Harvard Immigration and Refugee Clinical Program, Human Rights Situation of Asylum Seekers at the Mexico-U.S. Border.

Organizations

Al Otro Lado Alianza Americas American Civil Liberties Union (ACLU) American Friends Service Committee Americas Program, Center for International Policy Amnesty International Asociación B'lejeb' Tz'i' Asociación Comité de Familiares de Migrantes Fallecidos y Desaparecidos de El Salvador Asociación Coordinadora Comunitaria de Servicios para la Salud (ACCSS) Asociación Pop No'j Asylum Access Mexico (AAMX) A. C. Casa del Migrante de Saltillo Casa Monarca. Humanitarian Aid for Migrants Catholic Legal Immigration Network, Inc. Center for Gender & Refugee Studies Center for Justice and International Law (CEJIL) Center for the Human Rights of Children, Loyola University Chicago School of law Center for Victims of Torture Central American Resource Center (CARECEN) - DC Centro de Derechos Humanos Fray Matías de Córdova Centro Internacional para los Derechos Humanos de los Migrantes (CIDEHUM) Centro Legal de la Raza Chicago Religious Leadership Network on Latin America (CRLN) Colectiva Feminista para el Desarrollo Local Colectiva Sororidad Glocal Columbia Law School Immigrants' Rights Clinic Comisión Mexicana de Defensa y Promoción de los Derechos Humanos **DC-MD** Justice For Our Neighbors Derechos Humanos Integrales en Acción, A.C. Dignidad y Justicia en el Camino A.C "FM4 Paso Libre" **Disability Rights International** El Rescate Families Belong Together México

Florence Immigrant and Refugee Rights Project Foro Nacional para las Migraciones en Honduras (FONAMIH) Fundación Arcoiris por el respeto a la diversidad sexual. Fundación para la Justicia y el Estado Democrático de Derecho Fundacion Promigrante America Sin Muros Grupo de Monitoreo Independiente de El Salvador (GMIES) HIAS **HOPE Border Institute** Human Rights Advocates Human Rights and Gender Justice Clinic, CUNY School of Law Human Rights First Human Rights Initiative of North Texas Immigrant Defenders Law Center Immigrants' Rights and Human Trafficking Program, Boston University School of Law Instituto de Investigación y Proyección sobre Dinámicas Globales y Territoriales de La Universidad Rafael Landivar Instituto para las Mujeres en la Migración (IMUMI) International Human Rights Clinic, Boston University School of Law International Human Rights Clinic, Santa Clara University International Justice Resource Center International-Lawyers.Org **ISLA** Jesuit Conference Office of Justice and Ecology Justice in Motion Kids in Need of Defense (KIND) La 72, Hogar - Refugio para Personas Migrantes Latin America Working Group LatinoJustice PRLDEF Lowcountry Immigration Coalition MADRE Mesa Nacional de Migrantes y Refugiados de Panama Centro de Asistencia Legal Popular Migrant Center for Human Rights MOCRI CNPA MN Moravian Academy National Front for the People Health of Ecuador/South América

National Network for Immigrant and Refugee Rights Network in Solidarity with the People of Guatemala (NISGUA) Organizacion Mexico Americana para el Desarrollo Oxfam Pastoral Social, Iglesia Anglicana de México **Periodistas Digitales** Physicians for Human Rights Programas de Asuntos Migratorios, Ciudad de México-Tijuana Project Starfish Minnesota: Volunteers Supporting Asylum Seekers RAICES (Refugee and Immigrant Center for Education and Legal Services) Red Nacional de Organismos Civiles de Derechos Humanos "Todos los Derechos para Todas y Todos" **Refugees International** Rights & Democracy of Vermont and New Hampshire Robert F. Kennedy Human Rights **SHARE** Foundation Sin Fronteras IAP South Texas Human Rights Center Southern Poverty Law Center Tahirih Justice Center **Texas Civil Rights Project** The Promise Institute for Human Rights at UCLA School of Law The Scalabrini International Migration Network **Transnational Immigration Alliance** Unión de Trabajadoras del Hogar Unitarian Universalist Service Committee US Human Rights Network Washington Office on Latin America (WOLA) Women's Refugee Commission Young Center for Immigrant Children's Rights

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