No. 19-16487

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

EAST BAY SANCTUARY COVENANT, *et al.*,

Plaintiffs-Appellees,

v.

WILLIAM BARR, Attorney General, *et al.*

Defendants-Appellants.

On Appeal from the United States District Court for the Northern District of California
No. 3:19-cv-04073-JST

APPELLEES' OPPOSITION TO APPELLANTS' MOTION FOR STAY PENDING APPEAL

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INTRODUCTION

Since Congress enacted the asylum laws in 1980, the unbroken rule has been that mere transit through a third country does not render a person ineligible for asylum. The Rule here upends that principle, forcing people to first apply for and be denied asylum in a transit country before being able to seek asylum in the United States. The new transit bar applies no matter the conditions or purpose of an asylum seeker's journey through the third country; whether she practically or legally could have sought asylum there; whether she would have been safe there; or the degree of danger she would face if removed to her home country.

The government asks the Court to upset this forty-year status quo even before the merits can be heard, but it has not made the showing required for that extraordinary relief— particularly since this Court already rejected many of its arguments in a binding decision declining to grant a stay of the first asylum ban, a stay the Supreme Court likewise refused to grant. *See East Bay Sanctuary Covenant v. Trump*, 2018 WL 8807133 (9th Cir. 2018); *Trump v. East Bay Sanctuary Covenant*, 139 S.Ct. 782 (2018).

Indeed, the government makes only a half-hearted attempt to argue that it satisfies the harm prongs of the stay standard. That is understandable given that the government unsuccessfully made identical arguments before this Court and the Supreme Court in the first asylum ban case.

The government's merits analysis is equally untenable. Congress specifically addressed when a noncitizen can be denied asylum because of protections available in a third country, and identified only two specific circumstances where that could happen: if she (1) was *firmly* resettled there with permanent rights and other indicia of safety; or (2) is subject to a formal safe-third-country agreement, which requires that the third country be both willing to receive the asylum seeker and able to afford her a safe, fair, and full hearing. *See* 8 U.S.C. §§ 1158(a)(2)(A), (b)(2)(A)(vi). Congress thus struck a careful balance between protecting vulnerable individuals from harm and sharing the burdens of asylum processing with other countries in which safety and fair procedures can be assured. But under the government's reading of the statute, it could simply impose a "transit" ban, and there would never be any reason to assess firm resettlement or negotiate a formal agreement with the required safeguards. That cannot be what Congress intended. As this Court stated in the first asylum ban case, the government's real disagreement is not with the courts but with Congress. Thus, at bottom, this case is about "separation of powers." *East Bay*, 2018 WL 8807133, at *20.

The Rule is also arbitrary and capricious. The administrative record does not remotely support the Rule's premises that Mexico or the countries in Central America offer safe and fair asylum processes, and that anyone who chooses not to

linger there to seek asylum must not have a legitimate claim or urgent need for protection. And the Rule does not even mention, much less address, the extensive evidence in the record that contradicts the Rule's core justifications. In fact, the government now tries to pivot away from its own administrative record, and claims that the only evidence necessary to support this sweeping change is that Mexico has signed an international refugee treaty. But a country can sign the Refugee Convention without providing any showing that it offers safety and a fair process; indeed, war-torn countries like Somalia have signed.[1]

If upheld, the Rule would essentially eliminate asylum at the southern border for all but Mexican nationals, putting countless families and children at risk of harm. Plaintiffs have no objection to the government's request to expedite the merits of this appeal. But with this much at stake, and the status quo having remained constant for forty years, the Court should decline to grant the extraordinary remedy of a stay pending appeal, as it did in the first asylum ban case.

[1] The Rule provides a narrow exception for those who pass through a country that has not signed an international refugee treaty, a category that includes very few countries, such as North Korea. AR560-86. Its other narrow exception is for those who are trafficked. 84 Fed. Reg. 33,835.

ARGUMENT

I. THE GOVERNMENT HAS NOT SHOWN LIKELIHOOD OF SUCCESS.

A. The Rule Violates the INA.

Congress has long been aware that most asylum seekers must pass through other countries before they find a safe place to apply for asylum. Congress thus specifically addressed when asylum can be denied based on the possible protection available in a third country: if the noncitizen was firmly resettled in a transit country or subject to a safe-third-country agreement. *See* 8 U.S.C. §§ 1158(a)(2)(A), (b)(2)(A)(vi). Recognizing the many barriers to protection in other countries, Congress required an assessment of whether the asylum seeker would be safe in the third country and have access to an adequate asylum system. Congress also provided that noncitizens may apply for asylum "whether or not at a designated port of arrival." *Id.* § 1158(a)(1). Except for Mexicans, all asylum seekers entering the United States at or between ports of entry along the southern land border necessarily transited through at least one other country.

As the government recognizes, and this Court held in the first asylum ban, the new eligibility bar must be "consistent with" Congress's asylum scheme. *East*

Bay, 2018 WL 8807133, at *18; 8 U.S.C. § 1158(b)(2)(C).[2] But the Rule eviscerates Congress's carefully drawn third-country provisions, and is "unmoored from the purposes and concerns of the underlying statutory regime." *Altera Corp. & Subsidiaries v. Comm'r of Internal Revenue*, 926 F.3d 1061, 1076 (9th Cir. 2019); *see also Univ. of Tex. v. Nassar*, 570 U.S. 338, 353 (2013).

The government maintains that agency-created limits are "consistent with" with § 1158 unless they do something the statute literally forbids. Mot. 3, 8, 10. But that view renders Congress's "consistent with" requirement meaningless, as an agency obviously can never do something Congress has expressly forbidden. Indeed, under its view, the government asserts it could replace Congress's express time limits, imposing a six-month deadline for asylum applications, even though Congress provided a year. *See* 8 U.S.C. § 1158(a)(2)(B); Gov't Br., *CAIR v. Trump*, No. 1:19-cv-2117 (D.D.C.), ECF 20 at 25 n.6.

1. Firm Resettlement

Section 1158(b)(2)(A)(vi) provides that a noncitizen is ineligible for asylum if she "was firmly resettled in another country prior to arriving in the United States." When Congress codified this bar in 1996, it incorporated the long-

[2] Congress's decision to impose the "consistent with" requirement in § 1158(b)(2)(C) was a deliberate one. The House predecessor did not include that language. *Compare* H.R. REP. NO. 104-469 at 80 (1996), *with* H.R. REP. NO. 104-828 at 164 (1996) (Conf. Rep.).

standing term-of-art definition of "firm resettlement." *See* 8 C.F.R. § 208.15 (1991); *Air Wisconsin Airlines Corp. v. Hoeper*, 571 U.S. 237, 248 (2014). That definition provides that a noncitizen will *not* be considered firmly resettled, and so will *not* be categorically barred from asylum, merely for having transited through another country. Asylum remains available where transit "was a necessary consequence of his or her flight from persecution," lasted "only as long as was necessary to arrange onward travel," and the person "did not establish significant ties in that country." 8 C.F.R. § 208.15. Indeed, for at least half a century, our immigration system has not barred asylum based on mere transit, because "many refugees make their escape to freedom from persecution in successive stages and come to this country only after stops along the way." *Rosenberg v. Woo*, 402 U.S. 49, 57 n.6 (1971); *see* Op. 15-18, 22; Stay Op. (Ex. B) 2-3.[3]

[3] International law has long reflected this principle. *See, e.g.*, UNHCR, Note on Asylum ¶ 11, U.N. Doc. EC/SCP/12 (Aug. 30, 1979), https://bit.ly/2ZwJ9Zb ("[A]sylum should not be refused … solely on the ground that it could be sought from another State."); *Mohammed v. Gonzales*, 400 F.3d 785, 798 (9th Cir. 2005) ("[UNHCR's] analysis provides significant guidance for issues of refugee law"). The day the Rule was announced, UNHCR accordingly stated that the Rule "excessively curtails the right to apply for asylum, jeopardizes the right to protection from refoulement, … and is not in line with international obligations." UNHCR Deeply Concerned About New U.S. Asylum Restrictions (July 15, 2019), https://bit.ly/30XJjsY.

The Rule turns Congress's choice on its head, as it *bars* asylum precisely where the statute *preserves* asylum: where a noncitizen entered another country as a necessary consequence of persecution, stayed only to arrange for onward travel, and did not establish significant ties. The Rule cuts the text "firmly resettled" right out of the statute, barring asylum simply because a person "was ~~firmly resettled~~ *in* another country prior to arriving."

The Rule also jettisons Congress's paramount concern for safety and rights in the third country. The firm resettlement provision requires an individualized inquiry into whether a noncitizen will be safe and have access to things like housing, employment, property rights, and naturalization. *See* 8 C.F.R. § 208.15(b); *id.* § 208.15(b) (1991); *id.* § 208.14 (1981). The Rule abandons these considerations, barring asylum regardless of an asylum seeker's safety or rights. Op. 22. It is thus at odds with Congress's "purposes and concerns," *Altera Corp.*, 926 F.3d at 1076, and "inconsisten[t] with the design and structure of the statute as a whole," *Nassar*, 570 U.S. at 353.

In addressing the role of transit, Congress previously considered a blanket ban, which, similar to the Rule, would have barred asylum for those who transited through another country that the Secretary of State identified as providing asylum. *See* H.R. 2182, 104th Cong. (1995), https://bit.ly/337CeYB. Congress instead

chose a different path, enacting the firm resettlement bar and thereby providing that mere transit would *not* bar asylum. The Rule reverses this deliberate choice.

In fact, the Rule would render the firm-resettlement provision entirely unnecessary. Instead of undertaking the statute's individualized inquiry into whether a person was firmly resettled in the course of transit, the agencies can simply bar asylum if the person passed through another country without securing a formal judgment denying protection—firmly resettled or not. *See Torres v. Barr*, 925 F.3d 1360, 1364 (9th Cir. 2019) (Berzon, J., concurring) (rejecting rules that render statutory provisions "insignificant" or "ineffective[]").

The government does not grapple with these obvious conflicts. Instead, it contends that the Rule has nothing to do with the firm-resettlement provision because they concern different groups of people: those who transited through another country and did not apply for asylum or wait for a final judgment, and those who transited through another country where they had an offer of permanent resettlement. Mot. 11. But that merely describes the *result* of who is barred by each rule. Clearly both concern the same group of people: those who passed through another country prior to seeking asylum in the United States. And as to that group, the Rule adopts a fundamentally different approach than the one chosen by Congress.

2. Safe Third Country

The Rule is equally inconsistent with the safe-third-country provision. Congress provided that asylum can be denied if the United States has a formal agreement with a country under which the country agrees to receive the asylum seeker and provide safety and "access to a full and fair" asylum procedure. 8 U.S.C. § 1158(a)(2)(A). Like the firm-resettlement provision, safety and meaningful access to asylum are key. *See Matter of B-R-*, 26 I&N Dec. 119, 122 (BIA 2013) (these provisions "limit an alien's ability to claim asylum in the United States when other *safe* options are available") (emphasis added); Op. 22.

The Rule bypasses these safeguards. It forces a person to seek asylum abroad even if she will be subject to harm there; even if the country's asylum system is corrupt, inaccessible, or insufficiently protective; and even if the country has refused to sign the agreement required by § 1158(a)(2)(A). The Rule is a classic end-run around Congress. *See East Bay*, 2018 WL 8807133, at *20 (rejecting agencies' attempt to "do[] indirectly what the Executive cannot do directly").

The government strains to avoid this conflict by asserting that the safe-third-country provision bars asylum *applications* but does not speak to *eligibility*. Mot. 10. But this Court has previously rejected the government's effort to artificially separate eligibility from the right to apply for asylum. *East Bay*, 2018 WL

8807133, at *18 ("The technical differences between applying for and eligibility for asylum are of no consequence to a refugee when the bottom line—no possibility of asylum—is the same.").

The government also notes that the safe-third-country provision can, theoretically, apply where a noncitizen "may have no connection with (and may have never transited) that country." Mot. 10. But a third-party agreement need not apply in that fashion. *See* AR525 (U.S.-Canada Agreement requires transit). In any event, that is beside the point. The salient commonality between the Rule and the safe-third-country provision is that both address when asylum can be denied because of an asserted ability to apply in another country. The statute requires a formal agreement and specific protections; the Rule does not. Op. 23 (explaining that "[t]he government's focus … is misplaced" because the key question is whether a country is "a safe option").

Lastly, the government contends that the Rule "complements" the safe-third-country provision because both prevent "forum-shopping." Mot. 10. But the Rule ignores the specific rules Congress created to determine which fora provide enough safety and asylum access to force people to apply there. Nor is the Rule tailored to prevent forum-shopping: It forecloses asylum no matter why an individual did not first seek asylum in another country.

3. The Government's Other Arguments Are Unpersuasive.

The government claims that Plaintiffs are arguing that any noncitizen who falls outside the firm-resettlement and safe-third-country bars is entitled to asylum. *See* Mot. 10. But Plaintiffs' position is simply that the government cannot erect categorical bars inconsistent with the asylum statute, not that all new categorical bars are necessarily inconsistent. That is precisely what the district court held in the first asylum ban case when the government argued that Plaintiffs' position would eliminate all regulatory bars. *See East Bay Sanctuary Covenant v. Trump*, 349 F. Supp. 3d 838, 857 n.16 (N.D. Cal. 2018).

The government also suggests that a transit bar is supported by *Matter of Pula*, 19 I&N Dec. 467 (BIA 1987), which stated that, in certain circumstances, a person's decision not to apply for asylum in a transit country might be one relevant factor in determining whether they should ultimately receive asylum at the end of the process. Mot. 9. But this Court rejected the identical argument in the first *East Bay* case, holding that the ability to consider a factor in particular circumstances as one of many discretionary factors does not allow the categorical denial of asylum based on that same factor. *East Bay*, 2018 WL 8807133, at *18 n.13, 19. As with the first asylum ban, the categorical bar here is foreclosed because Congress has "spoken to the precise issue" involved. *Id.* at *18 n.3. And *Pula* itself explained that, even as one factor, transit is only relevant where the transit country provides

"orderly refugee procedures," adequate "living conditions, [and] *safety*." 19 I&N Dec. at 473-74 (emphasis added); *see also* Op. 25-26.[4]

* * *

In sum, Congress carefully crafted the asylum statute to ensure that, but for two narrow exceptions, noncitizens could seek asylum here even if they first transited through another country. The Rule upends that careful scheme. Whatever Defendants' policy disagreements with Congress, they cannot "rewrite our immigration laws." *East Bay*, 2018 WL 8807133, at *20; *see Air All. Houston v. EPA*, 906 F.3d 1049, 1061 (D.C. Cir. 2018) ("[A]n agency may not circumvent specific statutory limits on its actions by relying on separate, general rulemaking authority.").

B. The Rule Is Arbitrary and Capricious.

The Rule also violates the APA's basic mandate that agencies engage in "reasoned decisionmaking." *Altera Corp.*, 926 F.3d at 1080. The district court did not "second-guess" any considered agency findings, Mot. 19, but correctly

[4] In any event, the firm-resettlement statute superseded *Pula*'s discretionary factors. *See Mamouzian v. Ashcroft*, 390 F.3d 1129, 1138 (9th Cir. 2004); Op. 18, 25. *Kalubi v. Ashcroft* offers no help to the government for the same reason. 364 F.3d 1134, 1140 & n.6 (9th Cir. 2004) (explaining that transit "might conceivably be part of the totality of circumstances" in an asylum determination, but the relevance of transit could be "severely if not completely undermined" by the person's reasons for not seeking protection in the transit country).

concluded that the administrative record utterly failed to support the Rule's core premises: that transiting through a third country indicates a "meritless" asylum claim, 84 Fed. Reg. 33,831, 33,839, and that the enormous class of people subject to the Rule "could have obtained" protection in Mexico or Guatemala, *id.* at 33,831. The Rule does not even acknowledge, much less address, the "mountain of evidence" in the record that migrants in those countries face rampant violence, illegal deportation to their home countries, and inadequate asylum procedures—all of which directly undermines the Rule's main justifications. *See* Op. 24-25, 32-40; AR286-317, 533-36, 638-57, 702-727, 756-66, 771-76. These are textbook APA violations.

First, the Rule failed to provide "any reasoned explanation" for its core assumption "that the failure to seek asylum" in a third country "casts doubt on the validity of an applicant's claim." Op. 33. The government "cites nothing in the administrative record to support" this assumption. Op. 25; *see* Mot. 17 (citing only headline numbers about arrests and adjudications). And this Circuit has deemed the Rule's assumption "erroneous as a matter of law." Op. 24. For example, in *Damaize-Job v. INS*, 787 F.2d 1332 (9th Cir. 1986), this Court ruled that there "is no basis for th[e] assumption" that transit undermines the credibility of a persecution claim, because "it is quite reasonable" for persecuted individuals "to seek a new homeland that is insulated from the instability" of their home countries.

Id. at 1337; *see also id.* at 1338 (transit "reveals nothing" about persecution claim); *Melkonian v. Ashcroft*, 320 F.3d 1061, 1071 (9th Cir. 2003). Far from screening out weak claims, the Rule will indiscriminately bar *all* claims from non-Mexicans—a reality even the government does not deny. Mot. 17 ("meritorious claims" will be barred).

Second, the Rule fails to address, or even acknowledge, copious record evidence contradicting its foundational assumptions. The record contains "an unbroken succession" of evidence, Op. 35, that Mexico is "repeatedly violating the *non-refoulement* principle," AR708, and that "migrants face acute risks of kidnapping, disappearance, sexual assault, trafficking, and other grave harms," AR703; *see* Op. 33-38 (reviewing unrebutted evidence in human rights reports). This evidence directly undermines the Rule, because it shows exactly why people with valid claims would not stop in Mexico or Guatemala. And yet the Rule does not even *mention* this evidence, much less explain why the Rule remains justified. Op. 38 & n.23; *see also Butte Cty. v. Hogen*, 613 F.3d 190, 194 (D.C. Cir. 2010) ("an agency cannot ignore evidence contradicting its position"); *El Rio Health Ctr. v. HHS*, 396 F.3d 1265, 1278 (D.C. Cir. 2005) (same). The government's motion claims the agencies weighed this evidence, Mot. 19, but the Rule itself does not mention or evaluate it. Op. 38. *See Arrington v. Daniels*, 516 F.3d 1106, 1113

(9th Cir. 2008) (rejecting "appellate counsel's *post hoc* rationalizations for agency action") (quotation marks omitted).[5]

Notably, the government tries to pivot away from its own administrative record, and claims that Mexico being a party to international refugee agreements is enough to support the Rule. But any country can sign the Refugee Convention without any showing that it offers a safe and fair process, *see* ECF 3-7 (Anker & Hathaway Decl.) ¶¶ 7, 11; indeed, even volatile countries like Afghanistan, the Democratic Republic of Congo, and Sudan are signatories. *See* AR560-65; *see also* ECF 3-1 (TRO Br.) at 11 (discussing State Department reports recognizing that some signatories lack functioning asylum systems). The Rule's requirement that a country be a party to one of various refugee treaties, 84 Fed. Reg. 33,843, is thus meaningless. Op. 22-23.

Finally, the Rule's failure to consider the unique rights and needs of unaccompanied children is arbitrary and capricious. Congress exempted unaccompanied children from certain asylum requirements, including the safe-third-country provision, in recognition of their special vulnerabilities. Op. 39-40.

[5] Any evidence that "Mexico is improving its asylum system," Mot. 19, cannot justify the Rule's sweeping assumptions about failure to apply for protection there. Op. 34. That evidence says nothing about the system's *current* capacity or accessibility, nor does it account for the severe ongoing obstacles to asylum and grave dangers migrants face in Mexico that the very same reports amply document.

The government argues it was not *required* by these statutes to exempt unaccompanied children, but even assuming that were correct, the Rule arbitrarily fails to consider whether such children *should be* exempted for the same reasons Congress exempted them from the safe-third-country provision and other asylum requirements applicable to adults. The Rule even fails to grapple with whether vulnerable unaccompanied children can possibly access fledgling asylum systems like Mexico's. Op. 40 (Rule's factual premises apply with even less force to children travelling alone).

C. The Government Improperly Bypassed Notice and Comment.

The government did not give the public a chance to comment before cancelling most of the asylum system at the southern border. Even if an agency could enact such a tectonic shift, notice and comment is crucial to "foster the fairness and deliberation that should underlie a pronouncement of such force." *East Bay*, 2018 WL 8807133, at *20 (quotation marks omitted); *see* Op. 27-32.

The government largely recycles the foreign affairs arguments it made in defense of the last asylum ban: that the ban "implicates" foreign affairs, and that immediate enactment would "facilitate," "strengthen," and provide "leverage" in negotiations. 84 Fed. Reg. 33,841-42; Mot. 16. This Court properly rejected those

abstract assertions the last time. *See East Bay*, 2018 WL 8807133, at *21-22. The government once again has offered nothing more concrete than its own ipse dixit.[6]

Similarly, the good cause exception is a "high bar" that "is narrowly construed and only reluctantly countenanced." *Id.* at *22 (quotation marks omitted). Theoretical harms are not enough: An agency must actually "*show* that 'delay *would* do real harm' to life, property, or public safety." *Id.* (quoting *United States v. Valverde*, 628 F.3d 1159, 1164-65 (9th Cir. 2010)) (emphasis added).

The government claims that a public comment period might cause a new surge of migrants. Mot. 13-14. But for that to happen, large numbers of Central Americans would have to instantly learn about the proposal, decide to uproot and leave their homes, travel thousands of miles through Mexico, and cross the U.S. border—all during the 30-day comment period. This Court rejected similar speculation about a "surge" in the first *East Bay* case. 2018 WL 8807133, at *23 (finding this position "speculative" and "too difficult to credit"). It held that the government must produce actual "evidence" demonstrating that "the very announcement of the Rule" would cause an immediate influx beyond current numbers. *Id.* at *22-23 & n.16 (quotation marks omitted).

[6] The government cites a recent agreement with Mexico, Mot. 15-16, but as the record and the government's public statements make clear, that agreement resulted from the threat of tariffs. *See* AR675; Ana Swanson & Jeanna Smialek, *Trump Says Mexico Tariffs Worked*, N.Y. Times (June 10, 2019).

The current Rule mentions the agencies' "experience" with surges in response to "public announcements," 84 Fed. Reg. 33,841, but the record is devoid of any such evidence. The government's "failure to produce more robust evidence" is striking. Op. 31. Under its theory, the injunction of the first asylum ban should have caused a new wave of migrants to rush the U.S. border before the injunction could be stayed on appeal. The same thing should have happened during prior notice-and-comment periods. Yet the government has failed to document *any* immediate surge that has *ever* occurred during a temporary pause in an announced policy.

The only factual evidence the Rule mentions is "[a] single, progressively more stale article" which did not purport to document any increase in migration. Op. 31; *see* 84 Fed. Reg. 33,841. The article contains two sentences stating that smugglers told migrants about a policy change last year. AR439. It does not say whether anyone heeded the smugglers' "sales pitch," and if so how quickly, or in what numbers. *Id.* These two sentences do not justify ignoring the congressional command for notice and cutting the public out of such a momentous rule change.[7]

[7] The government's brief (but not the Rule) also cites a few other "news articles," but they are even further afield. Mot. 13-14; *see, e.g.*, AR452-53 (describing concerns Mexico would quickly deport migrants despite their asylum claims); AR662-63 (describing "small groups" of migrants who "seemed" to migrate after Mexico offered them new humanitarian visas); AR683 (describing smugglers' new express buses).

If the government could rely on such thin evidence, it could *always* skip notice and comment, simply by speculating about a surge. This Court has repeatedly rejected that outcome. *East Bay*, 2018 WL 8807133, at *21-23; *see also California v. Azar*, 911 F.3d 558, 576 (9th Cir. 2018).

II. THE EQUITIES AND PUBLIC INTEREST SHARPLY FAVOR PLAINTIFFS.

The government fails to identify any irreparable injury from maintaining the forty-year-long status quo while this case is heard on an expedited basis, and certainly nothing beyond what it offered in the first asylum ban case. *See East Bay*, 2018 WL 8807133, at *24 (noting stay would "upend" the status quo). Tellingly, in that case, although the government told this Court and the Supreme Court that an emergency stay was needed to address a national crisis, it has slow-walked the appeal at every turn: It moved to place the appeal in abeyance during the federal shutdown, even though it could have invoked an "emergenc[y]" exception, 31 U.S.C. § 1342. *See East Bay*, No. 18-17274, Dkt. 13 at 1-2. And the government even asked for and received two extensions *after* the shutdown. *Id.*, Dkt. 20, 59.

Moreover, this Court and the Supreme Court declined to stay the last asylum ban despite the government's similar invocations of apprehension numbers—numbers that *decreased* significantly in June 2019, further undermining the

government's claims of urgency.[8] Finally, this Court has rejected the government's contention that a stay is warranted on the ground that the Rule involves core executive concerns, Mot. 21, as any such injury is not irreparable: The government "may pursue and vindicate its interests in the full course of this litigation." *East Bay*, 2018 WL 8807133, at *23 (quotation marks omitted).[9]

In contrast, Plaintiffs and the public would face severe harms if the injunction were stayed. Plaintiff organizations "have adduced evidence indicating that, if a stay were issued, they would be forced to divert substantial resources to its implementation"—the same irreparable harm that this Court previously found sufficient. *East Bay*, 2018 WL 8807133, at *24; *see also* Op. 41. The government's arguments simply ignore *East Bay*'s binding authority.

The public interest also tips decidedly against a stay, given that families and children will be forced to seek asylum in some of the most dangerous regions of the world, in asylum systems that are at best embryonic. *See* ECF 3-6 (Frydman Decl.) ¶¶ 12-24. Moreover, before the injunction issued, Asylum Officers were

[8] S*ee* U.S. Customs and Border Protection, Southwest Border Migration FY2019, https://www.cbp.gov/newsroom/stats/sw-border-migration.

[9] As the district court noted in this case, *Innovation Law Lab v. McAleenan* is not on point, as Plaintiffs "have shown that the [transit] Rule is unlikely to be a 'congressionally authorized measure[],'" Op. 42 n.26 (quoting 924 F.3d 503, 510 (9th Cir. 2019)), and the policy at issue in *Innovation Law Lab* still formally allows asylum in the United States.

conducting and even prioritizing screening interviews under the Rule. *See* ECF 31 (TRO Reply Br.) at 13. If a stay is granted, families and children will be at imminent risk of being denied asylum and wrongfully removed to their countries of persecution. *See Nken v. Holder*, 556 U.S. 418, 436 (2009) ("[T]here is a public interest in preventing aliens from being wrongfully removed, particularly to countries where they are likely to face substantial harm."); *Leiva-Perez v. Holder*, 640 F.3d 962, 971 (9th Cir. 2011) (noting "the public's interest in ensuring that we do not deliver aliens into the hands of their persecutors").[10]

Finally, as this Court also previously explained, although the public has an interest in the "efficient administration of the immigration laws at the border," it possesses a greater interest in ensuring that those very same laws are "not imperiled by executive fiat." *East Bay*, 2018 WL 8807133, at *24. Whatever the executive's interest in deterring asylum seekers, it "is not a sufficient basis under our Constitution for the Executive to rewrite our immigration laws." *Id.* at *20.

[10] That withholding of removal remains available—which was also true of the first asylum ban—does not reduce the irreparable harm to Plaintiffs and asylum seekers. The burden of proof to obtain withholding is much higher than for asylum, and withholding does not carry all the benefits of asylum, such as the ability to obtain protection for one's family. The administration is not free to substitute its judgment that withholding is an adequate replacement where *Congress* decided that *asylum* is valuable regardless of one's ability to obtain other forms of relief. Op. 43; *see East Bay*, 2018 WL 8807133, at *8.

III. THE INJUNCTION'S SCOPE IS APPROPRIATE.

The district court's injunction follows this Court's "uncontroverted line of precedent" upholding nationwide injunctions against unlawful immigration policies. Op. 45 (quoting *East Bay*, 2018 WL 8807133, at *24). Indeed, this Court and the Supreme Court both refused to narrow the first asylum ban injunction. *See East Bay*, 2018 WL 8807133, at *24 (concluding that "[s]uch relief is commonplace in APA cases," it "promotes uniformity in immigration enforcement," and "the Government failed to explain how the district court could have crafted a narrower remedy that would have provided complete relief to the Organizations," given that the Organizations serve a nationwide and constantly evolving set of asylum seekers) (quotation marks and alterations omitted). The same is true here.[11] Indeed, the same Organizations are plaintiffs here.[12]

[11] Contrary to the government's suggestion, a nationwide injunction is appropriate even where similar challenges to the Rule have been filed elsewhere. Parallel cases regularly continue to proceed despite nationwide injunctions. *See, e.g.*, *Regents of Univ. of Cal. v. DHS*, 279 F. Supp. 3d 1011 (N.D. Cal. 2018); *NAACP v. Trump*, 315 F. Supp. 3d 457 (D.D.C. 2018).

[12] The government suggests the injunction could be limited to Plaintiffs' "bona fide, identified clients subjected to the rule." Mot. 22. It unsuccessfully made the same suggestion to the Supreme Court, this Court, and the district court in the first asylum ban case. *Trump v. East Bay*, No. 18A615, Gov't Stay Br. at 40; *East Bay*, 2018 WL 8807133, at *24; *East Bay*, 354 F. Supp. 3d 1094, 1121 (N.D. Cal. 2018).

CONCLUSION

The stay motion should be denied.

Dated: August 5, 2019

Respectfully submitted,

By: /s/ Lee Gelernt

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CERTIFICATE OF SERVICE

I hereby certify that on August 5, 2019, I electronically filed the foregoing with the Clerk for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. All participants in this case are registered CM/ECF users and will be served by the appellate CM/ECF system. There are no unregistered participants.

/s/ Lee Gelernt
Lee Gelernt
Dated: August 5, 2019

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing motion complies with the type-volume limitation of Fed. R. App. P. 27 because it contains 5,185 words. This brief complies with the typeface and the type style requirements of Fed. R. App. P. 27 because this brief has been prepared in a proportionally spaced typeface using Word 14-point Times New Roman typeface.

/s/ Lee Gelernt
Lee Gelernt
Dated: August 5, 2019

Exhibit A

Interim Final Rule, 84 FR 33829

to $44.00 per ton of assessable olives. The Committee unanimously recommended 2019 expenditures of $1,628,923 and an assessment rate of $44.00 per ton of assessable olives. The recommended assessment rate of $44.00 is $20.00 higher than the 2018 rate. The quantity of assessable olives for the 2019 Fiscal year is 17,953 tons. The $44.00 rate should provide $789,932 in assessment revenue. The higher assessment rate is needed because annual receipts for the 2018 crop year are 17,953 tons compared to 90,188 tons for the 2017 crop year. Olives are an alternate-bearing crop, with a small crop followed by a large crop. Income derived from the $44.00 per ton assessment rate, along with funds from the authorized reserve and interest income, should be adequate to meet this fiscal year's expenses.

The major expenditures recommended by the Committee for the 2019 fiscal year include $713,900 for program administration, $513,500 for marketing activities, $343,523 for research, and $58,000 for inspection equipment. Budgeted expenses for these items during the 2018 fiscal year were $401,200 for program administration, $973,500 for marketing activities, $297,777 for research, and $77,000 for inspection equipment. The Committee deliberated on many of the expenses, weighed the relative value of various programs or projects, and increased their expenses for marketing and research activities.

Prior to arriving at this budget and assessment rate, the Committee considered information from various sources including the Committee's executive, marketing, inspection, and research subcommittees. Alternate expenditure levels were discussed by these groups, based upon the relative value of various projects to the olive industry. The assessment rate of $44.00 per ton of assessable olives was derived by considering anticipated expenses, the low volume of assessable olives, and a late season freeze.

A review of NASS information indicates that the average producer price for the 2017 crop year was $974.00 per ton. Therefore, utilizing the assessment rate of $44.00 per ton, the assessment revenue for the 2019 fiscal year as a percentage of total producer revenue would be approximately 4.52 percent.

This action increases the assessment obligation imposed on handlers which are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's December 11, 2018 meeting was widely publicized throughout the production area and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. chapter 35), the marketing order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581–0178 Vegetable and Specialty Crops. No changes in those requirements because of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This final rule imposes no additional reporting or recordkeeping requirements on either small or large California olive handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

A proposed rule concerning this action was published in the **Federal Register** on April 24, 2019 (84 FR 17089). Copies of the proposed rule were provided to all California olive handlers. The proposal was also made available through the internet by USDA and the Office of the Federal Register. A 30-day comment period ending May 24, 2019, was provided for interested persons to respond to the proposal. No comments were received. Accordingly, no changes will be made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Richard Lower at the previously-mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 932

Olives, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 932 is amended as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 932 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 932.230 is revised to read as follows:

§ 932.230 Assessment rate.

On and after January 1, 2019, an assessment rate of $44.00 per ton is established for California olives.

Dated: July 11, 2019.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2019–15061 Filed 7–15–19; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 208

RIN 1615–AC44

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Parts 1003 and 1208

[EOIR Docket No. 19–0504; A.G. Order No. 4488–2019]

RIN 1125–AA91

Asylum Eligibility and Procedural Modifications

AGENCY: Executive Office for Immigration Review, Department of Justice; U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Interim final rule; request for comment.

SUMMARY: The Department of Justice and the Department of Homeland Security (''DOJ,'' ''DHS,'' or collectively, ''the Departments'') are adopting an interim final rule (''interim rule'' or ''rule'') governing asylum claims in the context of aliens who enter or attempt to enter the United States across the southern land border after failing to apply for protection from persecution or torture while in a third country through which

they transited en route to the United States. Pursuant to statutory authority, the Departments are amending their respective regulations to provide that, with limited exceptions, an alien who enters or attempts to enter the United States across the southern border after failing to apply for protection in a third country outside the alien's country of citizenship, nationality, or last lawful habitual residence through which the alien transited en route to the United States is ineligible for asylum. This basis for asylum ineligibility applies only prospectively to aliens who enter or arrive in the United States on or after the effective date of this rule. In addition to establishing a new mandatory bar for asylum eligibility for aliens who enter or attempt to enter the United States across the southern border after failing to apply for protection from persecution or torture in at least one third country through which they transited en route to the United States, this rule would also require asylum officers and immigration judges to apply this new bar on asylum eligibility when administering the credible-fear screening process applicable to stowaways and aliens who are subject to expedited removal under section 235(b)(1) of the Immigration and Nationality Act. The new bar established by this regulation does not modify withholding or deferral of removal proceedings. Aliens who fail to apply for protection in a third country of transit may continue to apply for withholding of removal under the Immigration and Nationality Act (''INA'') and deferral of removal under regulations issued pursuant to the legislation implementing U.S. obligations under Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

DATES:

Effective date: This rule is effective July 16, 2019.

Submission of public comments: Written or electronic comments must be submitted on or before August 15, 2019. Written comments postmarked on or before that date will be considered timely. The electronic Federal Docket Management System will accept comments prior to midnight eastern standard time at the end of that day.

ADDRESSES: You may submit comments, identified by EOIR Docket No. 19–0504, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2616, Falls Church, VA 22041. To ensure proper handling, please reference EOIR Docket No. 19–0504 on your correspondence. This mailing address may be used for paper, disk, or CD–ROM submissions.
- *Hand Delivery/Courier:* Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2616, Falls Church, VA 22041. Contact Telephone Number (703) 305–0289 (not a toll-free call).

FOR FURTHER INFORMATION CONTACT: Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2616, Falls Church, VA 22041. Contact Telephone Number (703) 305–0289 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this rule. The Departments also invite comments that relate to the potential economic or federalism effects that might result from this rule. To provide the most assistance to the Departments, comments should reference a specific portion of the rule; explain the reason for any recommended change; and include data, information, or authority that supports the recommended change. Comments received will be considered and addressed in the process of drafting the final rule.

All comments submitted for this rulemaking should include the agency name and EOIR Docket No. 19–0504. Please note that all comments received are considered part of the public record and made available for public inspection at *www.regulations.gov.* Such information includes personally identifiable information (such as a person's name, address, or any other data that might personally identify that individual) that the commenter voluntarily submits.

If you want to submit personally identifiable information as part of your comment, but do not want it to be posted online, you must include the phrase ''PERSONALLY IDENTIFIABLE INFORMATION'' in the first paragraph of your comment and precisely and prominently identify the information of which you seek redaction.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment and precisely and prominently identify the confidential business information of which you seek redaction. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *www.regulations.gov.* Personally identifiable information and confidential business information provided as set forth above will be placed in the public docket file of DOJ's Executive Office for Immigration Review (''EOIR''), but not posted online. To inspect the public docket file in person, you must make an appointment with EOIR. Please see the **FOR FURTHER INFORMATION CONTACT** paragraph above for the contact information specific to this rule.

II. Purpose of This Interim Rule

As discussed further below, asylum is a discretionary immigration benefit that generally can be sought by eligible aliens who are physically present or arriving in the United States, irrespective of their status, as provided in section 208 of the INA, 8 U.S.C. 1158. Congress, however, has provided that certain categories of aliens cannot receive asylum and has further delegated to the Attorney General and the Secretary of Homeland Security (''Secretary'') the authority to promulgate regulations establishing additional bars on eligibility to the extent consistent with the asylum statute, as well as the authority to establish ''any other conditions or limitations on the consideration of an application for asylum'' that are consistent with the INA. *See* INA 208(b)(2)(C), (d)(5)(B), 8 U.S.C. 1158(b)(2)(C), (d)(5)(B). This interim rule will limit aliens' eligibility for this discretionary benefit if they enter or attempt to enter the United States across the southern land border after failing to apply for protection in at least one third country through which they transited en route to the United States, subject to limited exceptions.

The United States has experienced a dramatic increase in the number of aliens encountered along or near the southern land border with Mexico. This increase corresponds with a sharp increase in the number, and percentage, of aliens claiming fear of persecution or torture when apprehended or encountered by DHS. For example, over the past decade, the overall percentage of aliens subject to expedited removal and referred, as part of the initial screening process, for a credible-fear interview on claims of a fear of return has jumped from approximately 5

percent to above 40 percent. The number of cases referred to DOJ for proceedings before an immigration judge has also risen sharply, more than tripling between 2013 and 2018. These numbers are projected to continue to increase throughout the remainder of Fiscal Year (''FY'') 2019 and beyond. Only a small minority of these individuals, however, are ultimately granted asylum.

The large number of meritless asylum claims places an extraordinary strain on the nation's immigration system, undermines many of the humanitarian purposes of asylum, has exacerbated the humanitarian crisis of human smuggling, and affects the United States' ongoing diplomatic negotiations with foreign countries. This rule mitigates the strain on the country's immigration system by more efficiently identifying aliens who are misusing the asylum system to enter and remain in the United States rather than legitimately seeking urgent protection from persecution or torture. Aliens who transited through another country where protection was available, and yet did not seek protection, may fall within that category.

Apprehending the great number of aliens crossing illegally into the United States and processing their credible-fear and asylum claims consumes an inordinate amount of resources of the Departments. DHS must surveil, apprehend, screen, and process the aliens who enter the country. DHS must also devote significant resources to detain many aliens pending further proceedings and to represent the United States in immigration court proceedings. The large influx of aliens also consumes substantial resources of DOJ, whose immigration judges adjudicate aliens' claims and whose officials are responsible for prosecuting and maintaining custody over those who violate Federal criminal law. Despite DOJ deploying close to double the number of immigration judges as in 2010 and completing historic numbers of cases, currently more than 900,000 cases are pending before the immigration courts. This represents an increase of more than 100,000 cases (or a greater than 13 percent increase in the number of pending cases) since the start of FY 2019. And this increase is on top of an already sizeable jump over the previous five years in the number of cases pending before immigration judges. From the end of FY 2013 to the close of FY 2018, the number of pending cases more than doubled, increasing nearly 125 percent.

That increase is owing, in part, to the continued influx of aliens and record numbers of asylum applications being filed: More than 436,000 of the currently pending immigration cases include an asylum application. But a large majority of the asylum claims raised by those apprehended at the southern border are ultimately determined to be without merit. The strain on the immigration system from those meritless cases has been extreme and extends to the judicial system. The INA provides many asylum-seekers with rights of appeal to the Article III courts of the United States. Final disposition of asylum claims, even those that lack merit, can take years and significant government resources to resolve, particularly where Federal courts of appeals grant stays of removal when appeals are filed. *See De Leon* v. *INS,* 115 F.3d 643 (9th Cir. 1997).

The rule's bar on asylum eligibility for aliens who fail to apply for protection in at least one third country through which they transit en route to the United States also aims to further the humanitarian purposes of asylum. It prioritizes individuals who are unable to obtain protection from persecution elsewhere and individuals who are victims of a ''severe form of trafficking in persons'' as defined by 8 CFR 214.11, many of whom do not volitionally transit through a third country to reach the United States. By deterring meritless asylum claims and de-prioritizing the applications of individuals who could have obtained protection in another country, the Departments seek to ensure that those refugees who have no alternative to U.S.-based asylum relief or have been subjected to an extreme form of human trafficking are able to obtain relief more quickly.

Additionally, the rule seeks to curtail the humanitarian crisis created by human smugglers bringing men, women, and children across the southern border. By reducing the incentive for aliens without an urgent or genuine need for asylum to cross the border—in the hope of a lengthy asylum process that will enable them to remain in the United States for years, typically free from detention and with work authorization, despite their statutory ineligibility for relief—the rule aims to reduce human smuggling and its tragic effects.

Finally, the rule aims to aid the United States in its negotiations with foreign nations on migration issues. Addressing the eligibility for asylum of aliens who enter or attempt to enter the United States after failing to seek protection in at least one third country through which they transited en route to the United States will better position the United States as it engages in ongoing diplomatic negotiations with Mexico and the Northern Triangle countries (Guatemala, El Salvador, and Honduras) regarding migration issues in general, related measures employed to control the flow of aliens into the United States (such as the recently implemented Migrant Protection Protocols [1]), and the urgent need to address the humanitarian and security crisis along the southern land border between the United States and Mexico.

In sum, this rule provides that, with limited exceptions, an alien who enters or arrives in the United States across the southern land border is ineligible for the discretionary benefit of asylum unless he or she applied for and received a final judgment denying protection in at least one third country through which he or she transited en route to the United States. The alien would, however, remain eligible to apply for statutory withholding of removal and for deferral of removal under the CAT.

In order to alleviate the strain on the U.S. immigration system and more effectively provide relief to those most in need of asylum—victims of a severe form of trafficking and refugees who have no other option—this rule incorporates the eligibility bar on asylum into the credible-fear screening process applicable to stowaways and aliens placed in expedited removal proceedings.

III. Background

A. Joint Interim Rule

The Attorney General and the Secretary publish this joint interim rule pursuant to their respective authorities concerning asylum determinations.

The Homeland Security Act of 2002 (''HSA''), Public Law 107–296, as amended, transferred many functions related to the execution of Federal immigration law to the newly created DHS. The HSA charged the Secretary ''with the administration and enforcement of this chapter and all other laws relating to the immigration and naturalization of aliens,'' 8 U.S.C. 1103(a)(1), and granted the Secretary the power to take all actions ''necessary for carrying out'' the provisions of the INA, *id.* at 1103(a)(3). The HSA also transferred to DHS some responsibility for affirmative asylum applications, *i.e.,* applications for asylum made outside the removal context. *See* 6 U.S.C. 271(b)(3). That authority has been delegated within DHS to U.S. Citizenship and Immigration Services (''USCIS''). USCIS asylum officers

[1] *See* Notice of Availability for Policy Guidance Related to Implementation of the Migrant Protection Protocols, 84 FR 6811 (Feb. 28, 2019).

determine in the first instance whether an alien's affirmative asylum application should be granted. *See* 8 CFR 208.4(b), 208.9.

But the HSA retained authority over certain individual immigration adjudications (including those related to defensive asylum applications) for DOJ, under EOIR and subject to the direction and regulation of the Attorney General. *See* 6 U.S.C. 521; 8 U.S.C. 1103(g). Thus, immigration judges within DOJ continue to adjudicate all asylum applications made by aliens during the removal process (defensive asylum applications), and they also review affirmative asylum applications referred by USCIS to the immigration court. *See* INA 101(b)(4), 8 U.S.C. 1101(b)(4); 8 CFR 1208.2; *Dhakal* v. *Sessions,* 895 F.3d 532, 536–37 (7th Cir. 2018) (describing affirmative and defensive asylum processes). The Board of Immigration Appeals (Board), also within DOJ, hears appeals from certain decisions by immigration judges. 8 CFR 1003.1(b)–(d). Asylum-seekers may appeal certain Board decisions to the Article III courts of the United States. *See* INA 242(a), 8 U.S.C. 1252(a).

The HSA also provided ''[t]hat determination and ruling by the Attorney General with respect to all questions of law shall be controlling.'' INA 103(a)(1), 8 U.S.C. 1103(a)(1). This broad division of functions and authorities informs the background of this interim rule.

B. Legal Framework for Asylum

Asylum is a form of discretionary relief under section 208 of the INA, 8 U.S.C. 1158, that generally, if granted, keeps an alien from being subject to removal, creates a path to lawful permanent resident status and U.S. citizenship, and affords a variety of other benefits, such as allowing certain alien family members to obtain lawful immigration status derivatively. *See R–S–C* v. *Sessions,* 869 F.3d 1176, 1180 (10th Cir. 2017); *see also, e.g.,* INA 208(c)(1)(A), (C), 8 U.S.C. 1158(c)(1)(A), (C) (asylees cannot be removed subject to certain exceptions and can travel abroad with prior consent); INA 208(c)(1)(B), (d)(2), 8 U.S.C. 1158(c)(1)(B), (d)(2) (asylees shall be given work authorization; asylum applicants may be granted work authorization 180 days after the filing of their applications); INA 208(b)(3), 8 U.S.C. 1158(b)(3) (allowing derivative asylum for an asylee's spouse and unmarried children); INA 209(b), 8 U.S.C. 1159(b) (allowing the Attorney General or Secretary to adjust the status of an asylee to that of a lawful permanent resident); 8 CFR 209.2; 8 U.S.C. 1612(a)(2)(A) (asylees are eligible for certain Federal means-tested benefits on a preferential basis compared to most legal permanent residents); INA 316(a), 8 U.S.C. 1427(a) (describing requirements for the naturalization of lawful permanent residents).

Aliens applying for asylum must establish that they meet the definition of a ''refugee,'' that they are not subject to a bar to the granting of asylum, and that they merit a favorable exercise of discretion. INA 208(b)(1), 240(c)(4)(A), 8 U.S.C. 1158(b)(1), 8 U.S.C. 1229a(c)(4)(A); *see Moncrieffe* v. *Holder,* 569 U.S. 184, 187 (2013) (describing asylum as a form of ''discretionary relief from removal''); *Delgado* v. *Mukasey,* 508 F.3d 702, 705 (2d Cir. 2007) (''Asylum is a discretionary form of relief . . . . Once an applicant has established eligibility . . . it remains within the Attorney General's discretion to deny asylum.''). Because asylum is a discretionary form of relief from removal, the alien bears the burden of showing both eligibility for asylum and why the Attorney General or Secretary should exercise the discretion to grant relief. *See* INA 208(b)(1), 240(c)(4)(A), 8 U.S.C. 1158(b)(1), 1229a(c)(4)(A)(ii); 8 CFR 1240.8(d); *see Romilus* v. *Ashcroft,* 385 F.3d 1, 8 (1st Cir. 2004).

Section 208 of the INA provides that, in order to apply for asylum, an applicant must be ''physically present'' or ''arriving'' in the United States, INA 208(a)(1), 8 U.S.C. 1158(a)(1). Furthermore, to obtain asylum, the alien must demonstrate that he or she meets the statutory definition of a ''refugee,'' INA 208(b)(1)(A), 8 U.S.C. 1158(b)(1)(A), and is not subject to an exception or bar, INA 208(b)(2), 8 U.S.C. 1158(b)(2); 8 CFR 1240.8(d). The alien bears the burden of proof to establish that he or she meets these criteria. INA 208(b)(1)(B)(i), 8 U.S.C. 1158(b)(1)(B)(i); 8 CFR 1240.8(d).

For an alien to establish that he or she is a ''refugee,'' the alien generally must be someone who is outside of his or her country of nationality and ''is unable or unwilling to return to . . . that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.'' INA 101(a)(42)(A), 8 U.S.C. 1101(a)(42)(A). In addition, if evidence indicates that one or more of the grounds for mandatory denial may apply, *see* INA 208(b)(2)(A)(i)–(vi), 8 U.S.C. 1158(b)(2)(A)(i)–(vi), an alien must show not only that he or she does not fit within one of the statutory bars to granting asylum but also that he or she is not subject to any ''additional limitations and conditions . . . under which an alien shall be ineligible for asylum'' established by a regulation that is ''consistent with'' section 208 of the INA, *see* INA 208(b)(2)(C), 8 U.S.C. 1158(b)(2)(C). The asylum applicant bears the burden of establishing that the bar at issue does not apply. 8 CFR 1240.8(d); *see also, e.g., Rendon* v. *Mukasey,* 520 F.3d 967, 973 (9th Cir. 2008) (applying 8 CFR 1240.8(d) in the context of the aggravated felony bar to asylum); *Chen* v. *U.S. Att'y Gen.,* 513 F.3d 1255, 1257 (11th Cir. 2008) (applying 8 CFR 1240.8(d) in the context of the persecutor bar); *Gao* v. *U.S. Att'y Gen.,* 500 F.3d 93, 98 (2d Cir. 2007) (same).

Because asylum is a discretionary benefit, those aliens who are statutorily eligible for asylum (*i.e.,* those who meet the definition of ''refugee'' and are not subject to a mandatory bar) are not entitled to it. After demonstrating eligibility, aliens must further meet their burden of showing that the Attorney General or Secretary should exercise his or her discretion to grant asylum. *See* INA 208(b)(1)(A), 8 U.S.C. 1158(b)(1)(A) (the ''Secretary of Homeland Security or the Attorney General may grant asylum to an alien'' who applies in accordance with the required procedures and meets the definition of a ''refugee''). The asylum statute's grant of discretion ''[i]s a broad delegation of power, which restricts the Attorney General's discretion to grant asylum only by requiring the Attorney General to first determine that the asylum applicant is a 'refugee.' '' *Komarenko* v. *INS,* 35 F.3d 432, 436 (9th Cir. 1994), *overruled on other grounds by Abebe* v. *Mukasey,* 554 F.3d 1203 (9th Cir. 2009) (en banc) (per curiam). Immigration judges and asylum officers exercise that delegated discretion on a case-by-case basis.

C. Establishing Bars to Asylum

The availability of asylum has long been qualified both by statutory bars and by administrative discretion to create additional bars. Those bars have developed over time in a back-and-forth process between Congress and the Attorney General. The original asylum statute, as set out in the Refugee Act of 1980, Public Law 96–212, simply directed the Attorney General to ''establish a procedure for an alien physically present in the United States or at a land border or port of entry, irrespective of such alien's status, to apply for asylum, and the alien may be granted asylum in the discretion of the Attorney General if the Attorney General determines that such alien is a refugee'' within the meaning of the INA. *See* 8 U.S.C. 1158(a) (1982); *see also INS* v. *Cardoza-Fonseca,* 480 U.S. 421, 427–

29 (1987) (describing the 1980 provisions).

In the 1980 implementing regulations, the Attorney General, in his discretion, established several mandatory bars to granting asylum that were modeled on the mandatory bars to eligibility for withholding of deportation under the then-existing section 243(h) of the INA. *See* Refugee and Asylum Procedures, 45 FR 37392, 37392 (June 2, 1980). Those regulations required denial of an asylum application if it was determined that (1) the alien was ''not a refugee within the meaning of section 101(a)(42)'' of the INA, 8 U.S.C. 1101(a)(42); (2) the alien had been ''firmly resettled in a foreign country'' before arriving in the United States; (3) the alien ''ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular group, or political opinion''; (4) the alien had ''been convicted by a final judgment of a particularly serious crime'' and therefore constituted ''a danger to the community of the United States''; (5) there were ''serious reasons for considering that the alien ha[d] committed a serious nonpolitical crime outside the United States prior to the arrival of the alien in the United States''; or (6) there were ''reasonable grounds for regarding the alien as a danger to the security of the United States.'' *See* 45 FR at 37394–95.

In 1990, the Attorney General substantially amended the asylum regulations while retaining the mandatory bars for aliens who (1) persecuted others on account of a protected ground; (2) were convicted of a particularly serious crime in the United States; (3) firmly resettled in another country; or (4) presented reasonable grounds to be regarded as a danger to the security of the United States. *See* Asylum and Withholding of Deportation Procedures, 55 FR 30674, 30683 (July 27, 1990); *see also Yang* v. *INS,* 79 F.3d 932, 936–39 (9th Cir. 1996) (upholding firm-resettlement bar); *Komarenko,* 35 F.3d at 436 (upholding particularly-serious-crime bar), *abrogated on other grounds, Abebe* v. *Mukasey,* 554 F.3d 1203 (9th Cir. 2009) (en banc). In the Immigration Act of 1990, Congress added an additional mandatory bar to applying for or being granted asylum for ''an[y] alien who has been convicted of an aggravated felony.'' Public Law 101–649, sec. 515 (1990).

In the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (''IIRIRA''), Public Law 104–208, div. C, and the Antiterrorism and Effective Death Penalty Act of 1996, Public Law 104–132, Congress amended section 208 of the INA, 8 U.S.C. 1158, to include the asylum provisions in effect today: Among other things, Congress designated three categories of aliens who, with limited exceptions, are ineligible to apply for asylum: (1) Aliens who can be removed to a safe third country pursuant to a bilateral or multilateral agreement; (2) aliens who failed to apply for asylum within one year of arriving in the United States; and (3) aliens who have previously applied for asylum and had the application denied. Public Law 104–208, div. C, sec. 604(a); *see* INA 208(a)(2)(A)–(C), 8 U.S.C. 1158(a)(2)(A)–(C). Congress also adopted six mandatory bars to granting asylum, which largely tracked the pre-existing asylum regulations. These bars prohibited asylum for (1) aliens who ''ordered, incited, or otherwise participated'' in the persecution of others on account of a protected ground; (2) aliens convicted of a ''particularly serious crime'' in the United States; (3) aliens who committed a ''serious nonpolitical crime outside the United States'' before arriving in the United States; (4) aliens who are a ''danger to the security of the United States''; (5) aliens who are inadmissible or removable under a set of specified grounds relating to terrorist activity; and (6) aliens who have ''firmly resettled in another country prior to arriving in the United States.'' Public Law 104–208, div. C, sec. 604(a); *see* INA 208(b)(2)(A)(i)–(vi), 8 U.S.C. 1158(b)(2)(A)(i)–(vi). Congress further added that aggravated felonies, defined in 8 U.S.C. 1101(a)(43), would be considered ''particularly serious crime[s].'' Public Law 104–208, div. C, sec. 604(a); *see* INA 201(a)(43), 8 U.S.C. 1101(a)(43).

Although Congress enacted specific bars to asylum eligibility, that statutory list is not exhaustive. Congress, in IIRIRA, expressly authorized the Attorney General to expand upon two of those exceptions—the bars for ''particularly serious crimes'' and ''serious nonpolitical offenses.'' While Congress prescribed that all aggravated felonies constitute particularly serious crimes, Congress further provided that the Attorney General may ''designate by regulation offenses that will be considered'' a ''particularly serious crime,'' the perpetrator of which ''constitutes a danger to the community of the United States.'' Public Law 104–208, div. C, sec. 604(a); *see* INA 208(b)(2)(A)(ii), (B)(ii), 8 U.S.C. 1158(b)(2)(A)(ii), (B)(ii). Courts and the Board have long held that this grant of authority also authorizes the Board to identify additional particularly serious crimes (beyond aggravated felonies) through case-by-case adjudication. *See, e.g., Delgado* v. *Holder,* 648 F.3d 1095, 1106 (9th Cir. 2011) (en banc) (finding that Congress's decisions over time to amend the particularly serious crime bar by statute did not call into question the Board's additional authority to name serious crimes via case-by-case adjudication); *Ali* v. *Achim,* 468 F.3d 462, 468–69 (7th Cir. 2006) (relying on the absence of an explicit statutory mandate that the Attorney General designate ''particular serious crimes'' *only* via regulation). Congress likewise authorized the Attorney General to designate by regulation offenses that constitute ''a serious nonpolitical crime outside the United States prior to the arrival of the alien in the United States.'' Public Law 104–208, div. C, sec. 604(a); *see* INA 208(b)(2)(A)(iii), (B)(ii), 8 U.S.C. 1158(b)(2)(A)(iii), (B)(ii).[2]

Congress further provided the Attorney General with the authority, by regulation, to ''establish additional limitations and conditions, consistent with [section 208 of the INA], under which an alien shall be ineligible for asylum under paragraph (1).'' Public Law 104–208, div. C, sec. 604(a); *see* INA 208(b)(2)(C), 8 U.S.C. 1158(b)(2)(C). As the Tenth Circuit has recognized, ''the statute clearly empowers'' the Attorney General and the Secretary to ''adopt[ ] further limitations'' on asylum eligibility. *R–S–C,* 869 F.3d at 1187 & n.9. By allowing the creation by regulation of ''additional limitations and conditions,'' the statute gives the Attorney General and the Secretary broad authority in determining what the ''limitations and conditions'' should be. The additional limitations on eligibility must be established ''by regulation,'' and must be ''consistent with'' the rest of section 208 of the INA. INA 208(b)(2)(C), 8 U.S.C. 1158(b)(2)(C).

Thus, the Attorney General has previously invoked section 208(b)(2)(C) of the INA to limit eligibility for asylum based on a ''fundamental change in circumstances'' and on the ability of an applicant to safely relocate internally within the alien's country of nationality or of last habitual residence. *See* Asylum Procedures, 65 FR 76121, 76126 (Dec. 6, 2000). More recently, the Attorney General and Secretary invoked section 208(b)(2)(C) to limit eligibility for asylum for aliens subject to a bar on entry under certain presidential proclamations. *See* Aliens Subject to a Bar on Entry Under Certain Presidential

[2] These provisions continue to refer only to the Attorney General, but the Departments interpret the provisions to also apply to the Secretary by operation of the HSA, Public Law 107–296. *See* 6 U.S.C. 552; 8 U.S.C. 1103(a)(1).

Proclamations; Procedures for Protection Claims, 83 FR 55934 (Nov. 9, 2018).[3] The courts have also viewed section 208(b)(2)(C) as conferring broad discretion, including to render aliens ineligible for asylum based on fraud. *See R–S–C,* 869 F.3d at 1187; *Nijjar* v. *Holder,* 689 F.3d 1077, 1082 (9th Cir. 2012) (noting that fraud can be ''one of the 'additional limitations . . . under which an alien shall be ineligible for asylum' that the Attorney General is authorized to establish by regulation'').

Section 208(d)(5) of the INA, 8 U.S.C. 1158(d)(5), also establishes certain procedures for consideration of asylum applications. But Congress specified that the Attorney General ''may provide by regulation for any other conditions or limitations on the consideration of an application for asylum,'' so long as those limitations are ''not inconsistent with this chapter.'' INA 208(d)(5)(B), 8 U.S.C. 1158(d)(5)(B).

In sum, the current statutory framework leaves the Attorney General (and, after the HSA, also the Secretary) significant discretion to adopt additional bars to asylum eligibility. As noted above, when creating mandatory bars to asylum eligibility in the IIRIRA, Congress simultaneously delegated the authority to create additional bars in section 1158(b)(2)(C). Public Law 104–208, sec. 604 (codified at 8 U.S.C. 1158(b)(2)). Pursuant to this broad delegation of authority, the Attorney General and the Secretary have in the past acted to protect the integrity of the asylum system by limiting eligibility for those who do not truly require this country's protection, and do so again here. *See, e.g.,* 83 FR at 55944; 65 FR at 76126.

In promulgating this rule, the Departments rely on the broad authority granted by 8 U.S.C. 1158(b)(2)(C) to protect the ''core regulatory purpose'' of asylum law by prioritizing applicants ''with nowhere else to turn.'' *Matter of B–R–,* 26 I&N Dec. 119, 122 (BIA 2013) (internal quotation marks omitted) (explaining that, in light of asylum law's ''core regulatory purpose,'' several provisions of the U.S. Code ''limit an alien's ability to claim asylum in the United States when other safe options are available''). Such prioritization is consistent with the purpose of the statutory firm-resettlement bar (8 U.S.C. 1158(b)(2)(A)(vi)), which likewise was implemented to limit the availability of asylum for those who are seeking to choose among a number of safe countries. *See Sall* v. *Gonzales,* 437 F.3d 229, 233 (2d Cir. 2006); *Matter of A–G–G–,* 25 I&N Dec. 486, 503 (BIA 2011); *see also* 8 U.S.C. 1158(a)(2)(A) (providing that aliens who may be removed, pursuant to a bilateral or multilateral agreement, to a safe third country may not apply for asylum, and further demonstrating the intention of Congress to afford asylum protection only to those applicants who cannot seek effective protection in third countries). The concern with avoiding such forum-shopping has only been heightened by the dramatic increase in aliens entering or arriving in the United States along the southern border after transiting through one or more third countries where they could have sought protection, but did not. *See infra* at 33–41; *Kalubi* v. *Ashcroft,* 364 F.3d 1134, 1140 (9th Cir. 2004) (noting that forum-shopping might be ''part of the totality of circumstances that sheds light on a request for asylum in this country''). While under the current regulatory regime the firm-resettlement bar applies only in circumstances in which offers of permanent status have been extended by third countries, *see* 8 CFR 208.15, 1208.15, the additional bar created by this rule also seeks—like the firm-resettlement bar—to deny asylum protection to those persons effectively choosing among several countries where avenues to protection from return to persecution are available by waiting until they reach the United States to apply for protection. *See Sall,* 437 F.3d at 233. Thus, the rule is well within the authority conferred by section 208(b)(2)(C).

D. Other Forms of Protection

Aliens who are not eligible to apply for or receive a grant of asylum, or who are denied asylum on the basis of the Attorney General's or the Secretary's discretion, may nonetheless qualify for protection from removal under other provisions of the immigration laws. A defensive application for asylum that is submitted by an alien in removal proceedings is deemed an application for statutory withholding of removal under section 241(b)(3) of the INA, 8 U.S.C. 1231(b)(3). *See* 8 CFR 208.30(e)(2)–(4); 8 CFR 1208.16(a). And an immigration judge may also consider an alien's eligibility for withholding and deferral of removal under regulations issued pursuant to the implementing legislation regarding U.S. obligations under Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (''CAT''). *See* Foreign Affairs Reform and Restructuring Act of 1998, Public Law 105–277, sec. 2242(b) (1998); 8 CFR 1208.13(c); 8 CFR 1208.3(b), *see also* 8 CFR 1208.16(c) and 1208.17.

Those forms of protection bar an alien's removal to any country where the alien would ''more likely than not'' face persecution or torture, meaning that the alien would face a clear probability that his or her life or freedom would be threatened on account of a protected ground or a clear probability of torture. 8 CFR 1208.16(b)(2), (c)(2); *see Kouljinski* v. *Keisler,* 505 F.3d 534, 544 (6th Cir. 2007); *Sulaiman* v. *Gonzales,* 429 F.3d 347, 351 (1st Cir. 2005). Thus, if an alien proves that it is more likely than not that the alien's life or freedom would be threatened on account of a protected ground, but is denied asylum for some other reason—for instance, because of a statutory exception, an eligibility bar adopted by regulation, or a discretionary denial of asylum—the alien nonetheless may be entitled to statutory withholding of removal if not otherwise barred from that form of protection. INA 241(b)(3)(A), 8 U.S.C. 1231(b)(3)(A); 8 CFR 208.16, 1208.16; *see also Garcia* v. *Sessions,* 856 F.3d 27, 40 (1st Cir. 2017) (''[W]ithholding of removal has long been understood to be a mandatory protection that must be given to certain qualifying aliens, while asylum has never been so understood.''). Likewise, an alien who establishes that he or she will more likely than not face torture in the country of removal will qualify for CAT protection. *See* 8 CFR 208.16(c), 208.17(a), 1208.16(c), 1208.17(a). In contrast to the more generous benefits available through asylum, statutory withholding and CAT protection do not: (1) Prohibit the Government from removing the alien to a third country where the alien would not face the requisite probability of persecution or torture (even in the absence of an agreement with that third country); (2) create a path to lawful permanent resident status and citizenship; or (3) afford the same ancillary benefits (such as derivative protection for family members) and access to Federal means-tested public benefits. *See R–S–C,* 869 F.3d at 1180.

E. Implementation of International Treaty Obligations

The framework described above is consistent with certain U.S. obligations under the 1967 Protocol relating to the Status of Refugees (''Refugee Protocol''), which incorporates Articles 2–34 of the 1951 Convention relating to the Status of Refugees (''Refugee Convention''), as well as U.S. obligations under Article 3 of the CAT. Neither the Refugee Protocol nor the CAT is self-executing in the United States. *See Khan* v.

[3] This rule is currently subject to a preliminary injunction against its enforcement. *See East Bay Sanctuary Covenant* v. *Trump,* 354 F. Supp. 3d 1094, 1115, 1121 (N.D. Cal. 2018), *on remand from* 909 F.3d 1219 (9th Cir. 2018).

Holder, 584 F.3d 773, 783 (9th Cir. 2009) (''[T]he [Refugee] Protocol is not self-executing.''); *Auguste* v. *Ridge,* 395 F.3d 123, 132 (3d Cir. 2005) (the CAT ''was not self-executing''). These treaties are not directly enforceable in U.S. law, but some of their obligations have been implemented by domestic legislation. For example, the United States has implemented the non-refoulement provisions of these treaties—*i.e.,* provisions prohibiting the return of an individual to a country where he or she would face persecution or torture—through the withholding of removal provisions at section 241(b)(3) of the INA and the CAT regulations, rather than through the asylum provisions at section 208 of the INA. *See Cardoza-Fonseca,* 480 U.S. at 440–41; Foreign Affairs Reform and Restructuring Act of 1998 at sec. 2242(b); 8 CFR 208.16(b)–(c), 208.17–208.18; 1208.16(b)–(c), 1208.17–1208.18. Limitations on the availability of asylum that do not affect the statutory withholding of removal or protection under the CAT regulations are consistent with these provisions. *See R–S–C,* 869 F.3d at 1188 & n. 11; *Cazun* v. *U.S. Att'y Gen.,* 856 F.3d 249, 257 & n.16 (3d Cir. 2017); *Ramirez-Mejia* v. *Lynch,* 813 F.3d 240, 241 (5th Cir. 2016).

Courts have rejected arguments that the Refugee Convention, as implemented, requires that every qualified refugee receive asylum. For example, the Supreme Court has made clear that Article 34, which concerns the assimilation and naturalization of refugees, is precatory and not mandatory, and, accordingly, does not mandate that all refugees be granted asylum. *See Cardoza-Fonseca,* 480 U.S. at 441. Section 208 of the INA reflects that Article 34 is precatory and not mandatory, and accordingly does not provide that all refugees shall receive asylum. *See id.; see also R–S–C,* 869 F.3d at 1188; *Mejia* v. *Sessions,* 866 F.3d 573, 588 (4th Cir. 2017); *Cazun,* 856 F.3d at 257 & n. 16; *Garcia,* 856 F.3d at 42; *Ramirez-Mejia,* 813 F.3d at 241. As noted above, Congress has also recognized the precatory nature of Article 34 by imposing various statutory exceptions and by authorizing the creation of new bars to asylum eligibility through regulation.

Courts have likewise rejected arguments that other provisions of the Refugee Convention require every refugee to receive asylum. For example, courts have held, in the context of upholding the bar on eligibility for asylum in reinstatement proceedings under section 241(a)(5) of the INA, 8 U.S.C. 1231(a)(5), that limiting the ability to apply for asylum does not constitute a prohibited ''penalty'' under Article 31(1) of the Refugee Convention. *Mejia,* 866 F.3d at 588; *Cazun,* 856 F.3d at 257 & n.16. Courts have also rejected the argument that Article 28 of the Refugee Convention, governing the issuance of international travel documents for refugees ''lawfully staying'' in a country's territory, mandates that every person who might qualify for statutory withholding must also be granted asylum. *R–S–C,* 869 F.3d at 1188; *Garcia,* 856 F.3d at 42.

IV. Regulatory Changes

A. Limitation on Eligibility for Asylum for Aliens Who Enter or Attempt To Enter the United States Across the Southern Land Border After Failing To Apply for Protection in at Least One Country Through Which They Transited En Route to the United States

Pursuant to section 208(b)(2)(C) of the INA, 8 U.S.C. 1158(b)(2)(C), the Departments are revising 8 CFR 208.13(c) and 8 CFR 1208.13(c) to add a new mandatory bar to eligibility for asylum for an alien who enters or attempts to enter the United States across the southern border, but who did not apply for protection from persecution or torture where it was available in at least one third country outside the alien's country of citizenship, nationality, or last lawful habitual residence through which he or she transited en route to the United States, such as in Mexico via that country's robust protection regime. The bar would be subject to several limited exceptions, for (1) an alien who demonstrates that he or she applied for protection from persecution or torture in at least one of the countries through which the alien transited en route to the United States, and the alien received a final judgment denying the alien protection in such country; (2) an alien who demonstrates that he or she satisfies the definition of ''victim of a severe form of trafficking in persons'' provided in 8 CFR 214.11; or (3) an alien who has transited en route to the United States through only a country or countries that were not parties to the 1951 Convention relating to the Status of Refugees, the 1967 Protocol, or the CAT.

In all cases the burden would remain with the alien to establish eligibility for asylum consistent with current law, including—if the evidence indicates that a ground for mandatory denial applies—the burden to prove that a ground for mandatory denial of the asylum application does not apply. 8 CFR 1240.8(d).

In addition to establishing a new mandatory bar for asylum eligibility for an alien who enters or attempts to enter the United States across the southern border after failing to apply for protection from persecution or torture in at least one third country outside the alien's country of citizenship, nationality, or last lawful habitual residence through which he or she transited en route to the United States, this rule would also modify certain aspects of the process for screening fear claims asserted by such aliens who are subject to expedited removal under section 235(b)(1) of the INA, 8 U.S.C. 1225(b)(1). Under current procedures, aliens subject to expedited removal may avoid being removed by making a threshold showing of a credible fear of persecution or torture at an initial screening interview. At present, those aliens are often released into the interior of the United States pending adjudication of such claims by an immigration court in removal proceedings under section 240 of the INA, especially if those aliens travel as family units. Once an alien is released, adjudications can take months or years to complete because of the increasing volume of claims and the need to expedite cases in which aliens have been detained. The Departments expect that a substantial proportion of aliens subject to a third-country-transit asylum eligibility bar would be subject to expedited removal, since approximately 234,534 aliens in FY 2018 who presented at a port of entry or were apprehended at the border were referred to expedited-removal proceedings. The procedural changes within expedited removal would be confined to aliens who are ineligible for asylum because they are subject to a regulatory bar for contravening the new mandatory third-country-transit asylum eligibility bar imposed by the present rule.

1. Under existing law, expedited-removal procedures—streamlined procedures for expeditiously reviewing claims and removing certain aliens—apply to those individuals who arrive at a port of entry or those who have entered illegally and are encountered by an immigration officer within 100 miles of the border and within 14 days of entering. *See* INA 235(b), 8 U.S.C. 1225(b); Designating Aliens For Expedited Removal, 69 FR 48877, 48880 (Aug. 11, 2004). To be subject to expedited removal, an alien must also be inadmissible under section 212(a)(6)(C) or (a)(7) of the INA, 8 U.S.C. 1182(a)(6)(C) or (a)(7), meaning that the alien has either tried to procure documentation through misrepresentation or lacks such documentation altogether. Thus, an

alien encountered in the interior of the United States who entered the country after the publication of this rule imposing the third-country-transit bar and who is not otherwise amenable to expedited removal would be placed in proceedings under section 240 of the INA.

Section 235(b)(1) of the INA, 8 U.S.C. 1225(b)(1), prescribes procedures in the expedited-removal context for screening an alien's eligibility for asylum. When these provisions were being debated in 1996, the House Judiciary Committee expressed particular concern that ''[e]xisting procedures to deny entry to and to remove illegal aliens from the United States are cumbersome and duplicative,'' and that ''[t]he asylum system has been abused by those who seek to use it as a means of 'backdoor' immigration.'' H.R. Rep. No. 104–469, pt. 1, at 107 (1996). The Committee accordingly described the purpose of expedited removal and related procedures as ''streamlin[ing] rules and procedures in the Immigration and Nationality Act to make it easier to deny admission to inadmissible aliens and easier to remove deportable aliens from the United States.'' *Id.* at 157; *see Am. Immigration Lawyers Ass'n* v. *Reno,* 18 F. Supp. 2d 38, 41 (D.D.C. 1998), *aff'd,* 199 F.3d 1352 (D.C. Cir. 2000) (rejecting several constitutional challenges to IIRIRA and describing the expedited-removal process as a ''summary removal process for adjudicating the claims of aliens who arrive in the United States without proper documentation'').

Congress thus provided that aliens ''inadmissible under [8 U.S.C.] 1182(a)(6)(C) or 1182(a)(7)'' shall be ''removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under [8 U.S.C. 1158] or a fear of persecution.'' INA 235(b)(1)(A)(i), 8 U.S.C. 1225(b)(1)(A)(i); *see* INA 235(b)(1)(A)(ii), 8 U.S.C. 1225(b)(1)(A)(ii) (such aliens shall be referred ''for an interview by an asylum officer''). On its face, the statute refers only to proceedings to establish eligibility for an affirmative grant of asylum, not to statutory withholding of removal or CAT protection against removal to a particular country.

An alien referred for a credible-fear interview must demonstrate a ''credible fear,'' defined as a ''significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum under [8 U.S.C. 1158].'' INA 235(b)(1)(B)(v), 8 U.S.C. 1225(b)(1)(B)(v). According to the House report, ''[t]he credible-fear standard [wa]s designed to weed out non-meritorious cases so that only applicants with a likelihood of success will proceed to the regular asylum process.'' H.R. Rep. No. 104–69, at 158.

If the asylum officer determines that the alien lacks a credible fear, then the alien may request review by an immigration judge. INA 235(b)(1)(B)(iii)(III), 8 U.S.C. 1225(b)(1)(B)(iii)(III). If the immigration judge concurs with the asylum officer's negative credible-fear determination, then the alien shall be removed from the United States without further review by either the Board or the courts. INA 235(b)(1)(B)(iii)(I), (b)(1)(C), 8 U.S.C. 1225(b)(1)(B)(iii)(I), (b)(1)(C); INA 242(a)(2)(A)(iii), (e)(5), 8 U.S.C. 1252(a)(2)(A)(iii), (e)(5). By contrast, if the asylum officer or immigration judge determines that the alien has a credible fear—*i.e.,* ''a significant possibility . . . that the alien could establish eligibility for asylum,'' INA 235(b)(1)(B)(v), 8 U.S.C. 1225(b)(1)(B)(v)—then the alien, under current regulations, is placed in section 240 proceedings for a full hearing before an immigration judge, with appeal available to the Board and review in the Federal courts of appeals, *see* INA 235(b)(1)(B)(ii), (b)(2)(A), 8 U.S.C. 1225(b)(1)(B)(ii), (b)(2)(A); INA 242(a), 8 U.S.C. 1252(a); 8 CFR 208.30(e)(5), 1003.1.

By contrast, section 235 of the INA is silent regarding procedures for the granting of statutory withholding of removal and CAT protection; indeed, section 235 predates the legislation directing implementation of U.S. obligations under Article 3 of the CAT. *See* Foreign Affairs Reform and Restructuring Act of 1998 at sec. 2242(b) (requiring implementation of the CAT); IIRIRA at sec. 302 (revising section 235 of the INA to include procedures for dealing with inadmissible aliens who intend to apply for asylum). The legal standards for ultimately meeting the statutory standards for asylum on the merits versus statutory withholding or CAT protection are also different. Asylum requires an applicant to ultimately establish a ''well-founded fear'' of persecution, which has been interpreted to mean a ''reasonable possibility'' of persecution—a ''more generous'' standard than the ''clear probability'' of persecution or torture standard that applies to statutory withholding or CAT protection. *See INS* v. *Stevic,* 467 U.S. 407, 425, 429–30 (1984); *Santosa* v. *Mukasey,* 528 F.3d 88, 92 & n.1 (1st Cir. 2008); *compare* 8 CFR 1208.13(b)(2)(i)(B), *with* 8 CFR 1208.16(b)(2), (c)(2). As a result, applicants who establish eligibility for asylum are not necessarily eligible for statutory withholding or CAT protection.

Current regulations instruct USCIS adjudicators and immigration judges to treat an alien's request for asylum in expedited-removal proceedings under section 1225(b) as a request for statutory withholding and CAT protection as well. *See* 8 CFR 208.13(c)(1), 208.30(e)(2)–(4), 1208.13(c)(1), 1208.16(a). In the context of expedited-removal proceedings, ''credible fear of persecution'' is defined to mean a ''significant possibility'' that the alien ''could establish eligibility for asylum,'' not the CAT or statutory withholding. INA 235(b)(1)(B)(v), 8 U.S.C. 1225(b)(1)(B)(v). Regulations nevertheless have generally provided that aliens in expedited removal should be subject to the same process and screening standard for considering statutory withholding of removal claims under INA 241(b)(3), 8 U.S.C. 1231(b)(3), and claims for protection under the CAT regulations, as they are for asylum claims. *See* 8 CFR 208.30(e)(2)–(4).

Thus, when the former Immigration and Naturalization Service provided for claims for statutory withholding of removal and CAT protection to be considered in the same expedited-removal proceedings as asylum, the result was that if an alien showed that there was a significant possibility of establishing eligibility for asylum and was therefore referred for removal proceedings under section 240 of the INA, any potential statutory withholding and CAT claims the alien might have had were referred as well. This was done on the assumption that it would not ''disrupt[] the streamlined process established by Congress to circumvent meritless claims.'' Regulations Concerning the Convention Against Torture, 64 FR 8478, 8485 (Feb. 19, 1999). But while the INA authorizes the Attorney General and Secretary to provide for consideration of statutory withholding and CAT claims together with asylum claims or other matters that may be considered in removal proceedings, the INA does not mandate that approach, *see Foti* v. *INS,* 375 U.S. 217, 229–30 & n.16 (1963), or that they be considered in the same manner.

Since 1999, regulations also have provided for a distinct ''reasonable fear'' screening process for certain aliens who are categorically ineligible for asylum and can thus make claims only for statutory withholding or CAT protection. *See* 8 CFR 208.31. Specifically, if an alien is subject to having a previous order of removal reinstated or is a non-permanent

resident alien subject to an administrative order of removal resulting from an aggravated felony conviction, then he or she is categorically ineligible for asylum. *See id.* § 208.31(a), (e). Such an alien can be placed in withholding-only proceedings to adjudicate his statutory withholding or CAT claims, but only if he first establishes a ''reasonable fear'' of persecution or torture through a screening process that tracks the credible-fear process. *See id.* § 208.31(c), (e).

To establish a reasonable fear of persecution or torture, an alien must establish a ''reasonable possibility that [the alien] would be persecuted on account of his or her race, religion, nationality, membership in a particular social group or political opinion, or a reasonable possibility that he or she would be tortured in the country of removal.'' *Id.* § 208.31(c). ''This . . . screening process is modeled on the credible-fear screening process, but requires the alien to meet a higher screening standard.'' Regulations Concerning the Convention Against Torture, 64 FR at 8485; *see also Garcia* v. *Johnson,* No. 14–CV–01775, 2014 WL 6657591, at *2 (N.D. Cal. Nov. 21, 2014) (describing the aim of the regulations as providing ''fair and efficient procedures'' in reasonable-fear screening that would comport with U.S. international obligations).

Significantly, when establishing the reasonable-fear screening process, DOJ explained that the two affected categories of aliens should be screened based on the higher reasonable-fear standard because, ''[u]nlike the broad class of arriving aliens who are subject to expedited removal, these two classes of aliens are ineligible for asylum,'' and may be entitled only to statutory withholding of removal or CAT protection. Regulations Concerning the Convention Against Torture, 64 FR at 8485. ''Because the standard for showing entitlement to these forms of protection (a clear probability of persecution or torture) is significantly higher than the standard for asylum (a well-founded fear of persecution), the screening standard adopted for initial consideration of withholding and deferral requests in these contexts is also higher.'' *Id.*

2. Drawing on the established framework for considering whether to grant withholding of removal or CAT protection in the reasonable-fear context, this interim rule establishes a bifurcated screening process for aliens subject to expedited removal who are ineligible for asylum by virtue of falling subject to this rule's third-country-transit eligibility bar, but who express a fear of return or seek statutory withholding or CAT protection. The Attorney General and Secretary have broad authority to implement the immigration laws, *see* INA 103, 8 U.S.C. 1103, including by establishing regulations, *see* INA 103(a)(3), 8 U.S.C. 1103(a)(3), and to regulate ''conditions or limitations on the consideration of an application for asylum,'' *id.* 1158(d)(5)(B). Furthermore, the Secretary has the authority—in his ''sole and unreviewable discretion,'' the exercise of which may be ''modified at any time''—to designate additional categories of aliens that will be subject to expedited-removal procedures, so long as the designated aliens have not been admitted or paroled nor continuously present in the United States for two years. INA 235(b)(1)(A)(iii), 8 U.S.C. 1225(b)(1)(A)(iii). The Departments have frequently invoked these authorities to establish or modify procedures affecting aliens in expedited-removal proceedings, as well as to adjust the categories of aliens subject to particular procedures within the expedited-removal framework.

This rule does not change the credible-fear standard for asylum claims, although the regulation would expand the scope of the inquiry in the process. An alien who is subject to the third-country-transit bar and nonetheless has entered the United States along the southern land border after the effective date of this rule creating the bar would be ineligible for asylum and would thus not be able to establish a ''significant possibility . . . [of] eligibility for asylum under section 1158.'' INA 235(b)(1)(B)(v), 8 U.S.C. 1225(b)(1)(B)(v). Consistent with section 235(b)(1)(B)(iii)(III) of the INA, the alien could still obtain review from an immigration judge regarding whether the asylum officer correctly determined that the alien was subject to a limitation or suspension on entry imposed by the third-country-transit bar. Further, consistent with section 235(b)(1)(B) of the INA, if the immigration judge reversed the asylum officer's determination, the alien could assert the asylum claim in section 240 proceedings.

Aliens determined to be ineligible for asylum by virtue of falling subject to the third-country-transit bar, however, would still be screened, but in a manner that reflects that their only viable claims could be for statutory withholding or CAT protection pursuant to 8 CFR 208.30(e)(2)–(4) and 1208.16. After determining the alien's ineligibility for asylum under the credible-fear standard, the asylum officer would apply the long-established reasonable-fear standard to assess whether further proceedings on a possible statutory withholding or CAT protection claim are warranted. If the asylum officer determined that the alien had not established the requisite reasonable fear, the alien then could seek review of that decision from an immigration judge (just as the alien may under existing 8 CFR 208.30 and 208.31), and would be subject to removal only if the immigration judge agreed with the negative reasonable-fear finding. Conversely, if either the asylum officer or the immigration judge determined that the alien cleared the reasonable-fear threshold, the alien would be put in section 240 proceedings, just like aliens who receive a positive credible-fear determination for asylum. Employing a reasonable-fear standard in this context, for this category of ineligible aliens, would be consistent with DOJ's longstanding rationale that ''aliens ineligible for asylum,'' who could only be granted statutory withholding of removal or CAT protection, should be subject to a different screening standard that would correspond to the higher bar for actually obtaining these forms of protection. *See* Regulations Concerning the Convention Against Torture, 64 FR at 8485 (''Because the standard for showing entitlement to these forms of protection . . . is significantly higher than the standard for asylum[,] . . . the screening standard adopted for initial consideration of withholding and deferral requests in these contexts is also higher.'').

3. The screening process established by the interim rule accordingly will proceed as follows. For an alien subject to expedited removal, DHS will ascertain whether the alien seeks protection, consistent with INA 235(b)(1)(A)(ii), 8 U.S.C. 1225(b)(1)(A)(ii). All such aliens will continue to go before an asylum officer for screening, consistent with INA 235(b)(1)(B), 8 U.S.C. 1225(b)(1)(B). The asylum officer will ask threshold questions to elicit whether an alien is ineligible for a grant of asylum pursuant to the third-country-transit bar. If there is a significant possibility that the alien is not subject to the eligibility bar (and the alien otherwise demonstrates that there is a significant possibility that he or she can establish eligibility for asylum), then the alien will have established a credible fear.

If, however, an alien lacks a significant possibility of eligibility for asylum because of the third-country-transit bar, then the asylum officer will make a negative credible-fear finding.

The asylum officer will then apply the reasonable-fear standard to assess the alien's claims for statutory withholding of removal or CAT protection.

An alien subject to the third-country-transit asylum eligibility bar who clears the reasonable-fear screening standard will be placed in section 240 proceedings, just as an alien who clears the credible-fear standard will be. In those proceedings, the alien will also have an opportunity to raise whether the alien was correctly identified as subject to the third-country-transit ineligibility bar to asylum, as well as other claims. If an immigration judge determines that the alien was incorrectly identified as subject to the third-country-transit bar, the alien will be able to apply for asylum. Such aliens can appeal the immigration judge's decision in these proceedings to the Board and then seek review from a Federal court of appeals.

Conversely, an alien who is found to be subject to the third-country-transit asylum eligibility bar and who does not clear the reasonable-fear screening standard can obtain review of both of those determinations before an immigration judge, just as immigration judges currently review negative credible-fear and reasonable-fear determinations. If the immigration judge finds that either determination was incorrect, then the alien will be placed into section 240 proceedings. In reviewing the determinations, the immigration judge will decide de novo whether the alien is subject to the third-country-transit asylum eligibility bar. If, however, the immigration judge affirms both determinations, then the alien will be subject to removal without further appeal, consistent with the existing process under section 235 of the INA. In short, aliens subject to the third-country-transit asylum eligibility bar will be processed through existing procedures by DHS and EOIR in accordance with 8 CFR 208.30 and 1208.30, but will be subject to the reasonable-fear standard as part of those procedures with respect to their statutory withholding and CAT protection claims.

4. The above process will not affect the process in 8 CFR 208.30(e)(5) (to be redesignated as 8 CFR 208.30(e)(5)(i) under this rule) for certain existing statutory bars to asylum eligibility. Under that regulatory provision, many aliens who appear to fall within an existing statutory bar, and thus appear to be ineligible for asylum, can nonetheless be placed in section 240 proceedings and have their asylum claim adjudicated by an immigration judge, if they establish a credible fear of persecution, followed by further review of any denial of their asylum application before the Board and the courts of appeals.

B. Anticipated Effects of the Rule

When the expedited procedures were first implemented approximately two decades ago, very few aliens within those proceedings claimed a fear of persecution. Since then, the numbers have dramatically increased. In FY 2018, USCIS received 99,035 credible-fear claims, a 175 percent increase from five years earlier and a 1,883 percent increase from ten years earlier. FY 2019 is on track to see an even greater increase in claims, with more than 35,000 credible-fear claims received in the first four months of the fiscal year. This unsustainable, increased burden on the U.S. immigration system also extends to DOJ: Immigration courts received over 162,000 asylum applications in FY 2018, a 270 percent increase from five years earlier.

This dramatic increase in credible-fear claims has been complicated by a demographic shift in the alien population crossing the southern border from Mexican single adult males to predominantly Central American family units and unaccompanied alien minors. Historically, aliens coming unlawfully to the United States along the southern land border were predominantly Mexican single adult males who generally were removed or who voluntarily departed within 48 hours if they had no legal right to stay in the United States. As of January 2019, more than 60 percent are family units and unaccompanied alien children; 60 percent are non-Mexican. In FY 2017, CBP apprehended 94,285 family units from the Northern Triangle countries at the southern land border. Of those family units, 99 percent remained in the country (as of January 2019). And, while Mexican single adults who are not legally eligible to remain in the United States may be immediately repatriated to Mexico, it is more difficult to expeditiously repatriate family units and unaccompanied alien children not from Mexico or Canada. And the long and arduous journey of children to the United States brings with it a great risk of harm that could be relieved if individuals were to more readily avail themselves of legal protection from persecution in a third country closer to the child's country of origin.

Even though the overall number of apprehensions of illegal aliens was relatively higher two decades ago than it is today (around 1.6 million in 2000), given the demographic of aliens arriving to the United States at that time, they could be processed and removed more quickly, often without requiring detention or lengthy court proceedings. Moreover, apprehension numbers in past years often reflected individuals being apprehended multiple times over the course of a given year.

In recent years, the United States has seen a large increase in the number and proportion of inadmissible aliens subject to expedited removal who claim a fear of persecution or torture and are subsequently placed into removal proceedings before an immigration judge. This is particularly true for non-Mexican aliens, who now constitute the overwhelming majority of aliens encountered along the southern border with Mexico, and the overwhelming majority of aliens who assert claims of fear. But while the number of non-Mexican aliens encountered at the southern border has dramatically increased, a substantial number of such aliens failed to apply for asylum or refugee status in Mexico—despite the availability of a functioning asylum system.

In May of FY 2017, DHS recorded 7,108 enforcement actions with non-Mexican aliens along the southern border—which accounted for roughly 36 percent of all enforcement actions along the southern border that month. In May of FY 2018, DHS recorded 32,477 enforcement actions with non-Mexican aliens along the southern border—which accounted for roughly 63 percent of that month's enforcement actions along the southern border. And in May of FY 2019, DHS recorded 121,151 enforcement actions with non-Mexican aliens along the southern border—which accounted for approximately 84 percent of enforcement actions along the southern border that month. Accordingly, the number of enforcement actions involving non-Mexican aliens increased by more than 1,600 percent from May FY 2017 to May FY 2019, and the percentage of enforcement actions at the southern land border involving non-Mexican aliens increased from 36 percent to 84 percent. Overall, southern border non-Mexican enforcement actions in FY 2017 totaled 233,411; they increased to 298,503 in FY 2018; and, in the first eight months of FY 2019 (through May) they already total 524,446.

This increase corresponds to a growing trend over the past decade, in which the overall percentage of all aliens subject to expedited removal who are referred for a credible-fear interview by DHS jumped from approximately 5 percent to above 40 percent. The total number of aliens referred by DHS for credible-fear screening increased from

fewer than 5,000 in FY 2008 to more than 99,000 in FY 2018. The percentage of aliens who receive asylum remains small. In FY 2018, DHS asylum officers found over 75 percent of interviewed aliens to have a credible fear of persecution or torture and referred them for proceedings before an immigration judge within EOIR under section 240 of the INA. In addition, EOIR immigration judges overturn about 20 percent of the negative credible-fear determinations made by asylum officers, finding those aliens also to have a credible fear. Such aliens are referred to immigration judges for full hearings on their asylum claims.

But many aliens who receive a positive credible-fear determination never file an application for asylum. From FY 2016 through FY 2018, approximately 40 percent of aliens who received a positive credible-fear determination failed to file an asylum application. And of those who did proceed to file asylum applications, relatively few established that they should be granted such relief. From FY 2016 through FY 2018, among aliens who received a positive credible-fear determination, only 12,062 aliens [4]—an average of 4,021 per year—were granted asylum (14 percent of all completed asylum cases, and about 36 percent of asylum cases decided on the merits).[5] The many cases that lack merit occupy a large portion of limited docket time and absorb scarce government resources, exacerbating the backlog and diverting attention from other meritorious cases. Indeed, despite DOJ deploying the largest number of immigration judges in history and completing historic numbers of cases, a significant backlog remains. There are more than 900,000 pending cases in immigration courts, at least 436,000 of which include an asylum application.

Apprehending and processing this growing number of aliens who cross illegally into the United States and invoke asylum procedures consumes an ever-increasing amount of resources of DHS, which must surveil, apprehend, screen, and process the aliens who enter the country and must represent the U.S. Government in cases before immigration judges, the Board, and the U.S. Courts of Appeals. The interim rule seeks to ameliorate these strains on the immigration system.

The rule also aims to further the humanitarian purposes of asylum by prioritizing individuals who are unable to obtain protection from persecution elsewhere and individuals who have been victims of a ''severe form of trafficking in persons'' as defined by 8 CFR 214.11,[6] many of whom do not volitionally transit through a third country to reach the United States.[7] By deterring meritless asylum claims and de-prioritizing the applications of individuals who could have sought protection in another country before reaching the United States, the Departments seek to ensure that those asylees who need relief most urgently are better able to obtain it.

The interim rule would further this objective by restricting the claims of aliens who, while ostensibly fleeing persecution, chose not to seek protection at the earliest possible opportunity. An alien's decision not to apply for protection at the first available opportunity, and instead wait for the more preferred destination of the United States, raises questions about the validity and urgency of the alien's claim and may mean that the claim is less likely to be successful.[8] By barring such claims, the interim final rule would encourage those fleeing genuine persecution to seek protection as soon as possible and dissuade those with non-viable claims, including aliens merely seeking employment, from further overburdening the Nation's immigration system.

Many of the aliens who wait to seek asylum until they arrive in the United States transit through not just one country, but multiple countries in which they may seek humanitarian protection. Yet they do not avail themselves of that option despite their claims of fear of persecution or torture in their home country. Under these circumstances, it is reasonable to question whether the aliens genuinely fear persecution or torture, or are simply economic migrants seeking to exploit our overburdened immigration system by filing a meritless asylum claim as a way of entering, remaining, and legally obtaining employment in the United States.[9]

All seven countries in Central America plus Mexico are parties to both the Refugee Convention and the Refugee Protocol. Moreover, Mexico has expanded its capacity to adjudicate asylum claims in recent years, and the number of claims submitted in Mexico has increased. In 2016, the Mexican government received 8,789 asylum applications. In 2017, it received 14,596. In 2018, it received 29,623 applications. And in just the first three months of 2019, Mexico received 12,716 asylum

[4] These numbers are based on data generated by EOIR on April 12, 2019.

[5] Completed cases include both those in which an asylum application was filed and those in which an application was not filed. Cases decided on the merits include only those completed cases in which an asylum application was filed and the immigration judge granted or denied that application.

[6] ''Severe form of trafficking in persons means sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act is under the age of 18 years; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.'' 8 CFR 214.11. Determinations made with respect to this exception will not be binding on Federal departments or agencies in subsequent determinations of eligibility for T or U nonimmigrant status under section 101(a)(15)(T) or (U) of the Act or for benefits or services under 22 U.S.C. 7105 or 8 U.S.C. 1641(c)(4).

[7] This rule does not provide for a categorical exception for unaccompanied alien children (''UAC''), as defined in 6 U.S.C. 279(g)(2). The Departments recognize that UAC are exempt from two of three statutory bars to applying for asylum: The ''safe third country'' bar and the one-year filing deadline, *see* INA 208(a)(2)(E), 8 U.S.C. 1158(a)(2)(E). Congress, however, did not exempt UAC from the bar on filing successive applications for asylum, *see* INA 208(a)(2)(C), 8 U.S.C. 1158(a)(2)(C), the various bars to asylum eligibility in INA 208(b)(2)(A), 8 U.S.C. 1158(b)(2)(A), or the bars, like this one, established pursuant to the Departments' authorities under INA 208(b)(2)(C), 8 U.S.C. 1158(b)(2)(C). But UAC, like others subject to this rule, will be able to apply for withholding of removal under INA section 241(b)(3), 8 U.S.C. 1231(b)(3), or the CAT regulations. UAC will not be returned to the transit country for consideration of these protection claims.

[8] Indeed, the Board has previously held that this is a relevant consideration in asylum applications. In *Matter of Pula,* 19 I&N Dec. 467, 473–74 (BIA 1987), the Board stated that ''in determining whether a favorable exercise of discretion is warranted'' for an applicant under the asylum statute, INA 208(a), 8 U.S.C. 1158(2)(a), ''[a]mong those factors which should be considered are whether the alien passed through any other countries or arrived in the United States directly from his country, whether orderly refugee procedures were in fact available to help him in any country he passed through, and whether he made any attempts to seek asylum before coming to the United States.'' Consistent with the reasoning in *Pula,* this rule establishes that an alien who failed to request asylum in a country where it was available is not eligible for asylum in the United States. Even though the Board in *Pula* indicated that a range of factors is relevant to evaluating discretionary asylum relief under the general *statutory* asylum provision, the INA also authorizes the establishment of additional limitations to asylum eligibility by *regulation*—beyond those embedded in the statute. *See* INA 208(b)(2)(C), 8 U.S.C. 1158(b)(2)(C). This rule uses that authority to establish one of the factors specified as relevant in *Pula* as the foundation of a new categorical asylum bar. This rule's prioritization of the third-country-transit factor, considered as just one of many factors in *Pula,* is justified, as explained above, by the increased numbers and changed nature of asylum claims in recent years.

[9] Economic migrants are not eligible for asylum. *See, e.g., In re: Brenda Leticia Sonday-Chavez,* No. A–7–969, 2017 WL 4946947, at *1 (BIA Sept. 7, 2017) (''[E]conomic reasons for coming to the United States . . . would generally not render an alien eligible for relief from removal.''); *see also Sale* v. *Haitian Centers Council Inc.,* 509 U.S. 155, 161–62 & n.11 (1993); *Hui Zhuang* v. *Gonzales,* 471 F.3d 884, 890 (8th Cir. 2006) (''Fears of economic hardship or lack of opportunity do not establish a well-founded fear of persecution.'').

applications, putting Mexico on track to receive more than 50,000 asylum applications by the end of 2019 if that quarterly pace continues. Instead of availing themselves of these available protections, many aliens transiting through Central America and Mexico decide not to seek protection, likely based upon a preference for residing in the United States. The United States has experienced an overwhelming surge in the number of non-Mexican aliens crossing the southern border and seeking asylum. This overwhelming surge and its accompanying burden on the United States has eroded the integrity of our borders, and it is inconsistent with the national interest to provide a discretionary benefit to those who choose not to seek protection at the first available opportunity.

The interim final rule also is in keeping with the efforts of other liberal democracies to prevent forum-shopping by directing asylum-seekers to present their claims in the first safe country in which they arrive. In 1990, European states adopted the Dublin Regulation in response to an asylum crisis as refugees and economic migrants fled communism at the end of the Cold War; it came into force in 1997. *See* Convention Determining the State Responsible for Examining Applications for Asylum Lodged in One of the Member States of the European Communities, 1997 O.J. (C 254). The United Nations High Commission for Refugees praised the Dublin Regulation's ''commendable efforts to share and allocate the burden of review of refugee and asylum claims.'' *See* UN High Comm'r for Refugees, *UNHCR Position on Conventions Recently Concluded in Europe (Dublin and Schengen Conventions),* 3 Eur. Series 2, 385 (1991). Now in its third iteration, the Dublin III Regulation sets asylum criteria and protocol for the European Union (''EU''). It instructs that asylum claims ''shall be examined by a single Member State.'' Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013, Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Application for International Protection Lodged in One of the Member States by a Third-Country National or a Stateless Person (Recast), 2013 O.J. (L 180) 31, 37. Typically, for irregular migrants seeking asylum, the member state by which the asylum applicant first entered the EU ''shall be responsible for examining the application for international protection.'' *Id.* at 40. Generally, when a third-country national seeks asylum in a member state other than the state of first entry into the EU, that state may transfer the asylum-seeker back to the state of first safe entry. *Id.* at 2.

This rule also seeks to curtail the humanitarian crisis created by human smugglers bringing men, women, and children across the southern border. By reducing a central incentive for aliens without a genuine need for asylum to cross the border—the hope of a lengthy asylum process that will enable them to remain in the United States for years despite their statutory ineligibility for relief—the rule aims to reduce human smuggling and its tragic effects.

Finally, as discussed further below, this rule will facilitate ongoing diplomatic negotiations with Mexico and the Northern Triangle countries regarding general migration issues, related measures employed to control the flow of aliens (such as the Migrant Protection Protocols), and the humanitarian and security crisis along the southern land border between the United States and Mexico.

In sum, the rule would bar asylum for any alien who has entered or attempted to enter the United States across the southern border and who has failed to apply for protection from persecution or torture in at least one country outside the alien's country of citizenship, nationality, or last lawful habitual residence through which the alien transited en route to the United States, unless the alien demonstrates that the alien only transited through countries that were not parties to the 1951 United Nations Convention relating to the Status of Refugees, the 1967 Protocol Relating to the Status of Refugees, or the CAT, or the alien was a victim of ''a severe form of trafficking in persons'' as defined by 8 CFR 214.11.

Such a rule would ensure that the ever-growing influx of meritless asylum claims do not further overwhelm the country's immigration system, would promote the humanitarian purposes of asylum by speeding relief to those who need it most (*i.e.,* individuals who have no alternative country where they can escape persecution or torture or who are victims of a severe form of trafficking and thus did not volitionally travel through a third country to reach the United States), would help curtail the humanitarian crisis created by human smugglers, and would aid U.S. negotiations on migration issues with foreign countries.

V. Regulatory Requirements

A. Administrative Procedure Act

1. Good Cause Exception

While the Administrative Procedure Act (''APA'') generally requires agencies to publish notice of a proposed rulemaking in the **Federal Register** for a period of public comment, it provides an exception ''when the agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(B). That exception relieves agencies of the notice-and-comment requirement in emergency situations, or in circumstances where ''the delay created by the notice and comment requirements would result in serious damage to important interests.'' *Woods Psychiatric Inst.* v. *United States,* 20 Cl. Ct. 324, 333 (1990), *aff'd,* 925 F.2d 1454 (Fed. Cir. 1991); *see also United States* v. *Dean,* 604 F.3d 1275, 1279 (11th Cir. 2010); *Nat'l Fed'n of Federal Emps.* v. *Nat'l Treasury Emps. Union,* 671 F.2d 607, 611 (D.C. Cir. 1982). Agencies have previously relied on that exception in promulgating immigration-related interim rules.[10] Furthermore, DHS has relied on that exception as additional legal justification when issuing orders related to expedited removal—a context in which Congress explicitly recognized the need for dispatch in addressing large volumes of aliens by giving the Secretary significant discretion to ''modify at any time'' the classes of aliens who would be subject to such procedures. *See* INA 235(b)(1)(A)(iii)(I), 8 U.S.C. 1225(b)(1)(A)(iii)(I).[11]

[10] *See, e.g.,* Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended, 81 FR 5906, 5907 (Feb. 4, 2016) (interim rule citing good cause to immediately require additional documentation from certain Caribbean agricultural workers to avoid ''an increase in applications for admission in bad faith by persons who would otherwise have been denied visas and are seeking to avoid the visa requirement and consular screening process during the period between the publication of a proposed and a final rule''); Suspending the 30-Day and Annual Interview Requirements From the Special Registration Process for Certain Nonimmigrants, 68 FR 67578, 67581 (Dec. 2, 2003) (interim rule claiming the good cause exception for suspending certain automatic registration requirements for nonimmigrants because ''without [the] regulation approximately 82,532 aliens would be subject to 30-day or annual re-registration interviews'' over a six-month period).

[11] *See, e.g.,* Eliminating Exception to Expedited Removal Authority for Cuban Nationals Arriving by Air, 82 FR 4769, 4770 (Jan. 17, 2017) (identifying the APA good cause factors as additional justification for issuing an immediately effective expedited removal order because the ability to detain certain Cuban nationals ''while admissibility and identity are determined and protection claims are adjudicated, as well as to quickly remove those without protection claims or claims to lawful status,

The Departments have concluded that the good cause exceptions in 5 U.S.C. 553(b)(B) and (d)(3) apply to this rule. Notice and comment on this rule, along with a 30-day delay in its effective date, would be impracticable and contrary to the public interest. The Departments have determined that immediate implementation of this rule is essential to avoid a surge of aliens who would have strong incentives to seek to cross the border during pre-promulgation notice and comment or during the 30-day delay in the effective date under 5 U.S.C. 553(d). As courts have recognized, smugglers encourage migrants to enter the United States based on changes in U.S. immigration policy, and in fact ''the number of asylum seekers entering as families has risen'' in a way that ''suggests a link to knowledge of those policies.'' *East Bay Sanctuary Covenant* v. *Trump,* 354 F. Supp. 3d 1094, 1115 (N.D. Cal. 2018). If this rule were published for notice and comment before becoming effective, ''smugglers might similarly communicate the Rule's potentially relevant change in U.S. immigration policy, albeit in non-technical terms,'' and the risk of a surge in migrants hoping to enter the country before the rule becomes effective supports a finding of good cause under 5 U.S.C. 553. *See id.*

This determination is consistent with the historical view of the agencies regulating in this area. DHS concluded in January 2017 that it was imperative to give immediate effect to a rule designating Cuban nationals arriving by air as eligible for expedited removal because ''pre-promulgation notice and comment would . . . . endanger[ ] human life and hav[e] a potential destabilizing effect in the region.'' Eliminating Exception to Expedited Removal Authority for Cuban Nationals Arriving by Air, 82 FR 4769, 4770 (Jan. 17, 2017). DHS cited the prospect that ''publication of the rule as a proposed rule, which would signal a significant change in policy while permitting continuation of the exception for Cuban nationals, could lead to a surge in migration of Cuban nationals seeking to travel to and enter the United States during the period between the publication of a proposed and a final rule.'' *Id.* DHS found that ''[s]uch a surge would threaten national security and public safety by diverting valuable Government resources from counterterrorism and homeland security responsibilities. A surge could also have a destabilizing effect on the region, thus weakening the security of the United States and threatening its international relations.'' *Id.* DHS concluded that ''a surge could result in significant loss of human life.'' *Id.; accord, e.g.,* Designating Aliens for Expedited Removal, 69 FR 48877 (Aug. 11, 2004) (noting similar destabilizing incentives for a surge during a delay in the effective date); Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended, 81 FR 5906, 5907 (Feb. 4, 2016) (finding the good cause exception applicable because of similar short-run incentive concerns).

DOJ and DHS raised similar concerns and drew similar conclusions in the November 2018 joint interim final rule that limited eligibility for asylum for aliens, subject to a bar on entry under certain presidential proclamations. *See* 83 FR at 55950. These same concerns would apply to an even greater extent to this rule. Pre-promulgation notice and comment, or a delay in the effective date, would be destabilizing and would jeopardize the lives and welfare of aliens who could surge to the border to enter the United States before the rule took effect. The Departments' experience has been that when public announcements are made regarding changes in our immigration laws and procedures, there are dramatic increases in the numbers of aliens who enter or attempt to enter the United States along the southern border. *See East Bay Sanctuary Covenant,* 354 F. Supp. 3d at 1115 (citing a newspaper article suggesting that such a rush to the border occurred due to knowledge of a pending regulatory change in immigration law). Thus, there continues to be an ''urgent need to deter foreign nationals from undertaking dangerous border crossings, and thereby prevent the needless deaths and crimes associated with human trafficking and alien smuggling operations.'' 69 FR at 48878.

Furthermore, an additional surge of aliens who sought to enter via the southern border prior to the effective date of this rule would be destabilizing to the region, as well as to the U.S. immigration system. The massive increase in aliens arriving at the southern border who assert a fear of persecution is overwhelming our immigration system as a result of a variety of factors, including the significant proportion of aliens who are initially found to have a credible fear and therefore are referred to full hearings on their asylum claims; the huge volume of claims; a lack of detention space; and the resulting high rate of release into the interior of the United States of aliens with a positive credible-fear determination, many of whom then abscond without pursuing their asylum claims. Recent initiatives to track family unit cases revealed that close to 82 percent of completed cases have resulted in an *in absentia* order of removal. A large additional influx of aliens who intend to enter unlawfully or who lack proper documentation to enter this country, all at once, would exacerbate the existing border crisis. This concern is particularly acute in the current climate in which illegal immigration flows fluctuate significantly in response to news events. This interim final rule is thus a practical means to address the time-sensitive influx of aliens and avoid creating an even larger short-term influx. An extended notice-and-comment rulemaking process would be impracticable and self-defeating for the public.

2. Foreign Affairs Exemption

Alternatively, the Departments may forgo notice-and-comment procedures and a delay in the effective date because this rule involves a ''foreign affairs function of the United States.'' 5 U.S.C. 553(a)(1), and proceeding through notice and comment may ''provoke definitely undesirable international consequences,'' *City of New York* v. *Permanent Mission of India to United Nations,* 618 F.3d 172, 201 (2d Cir. 2010) (quoting the description of the purpose of the foreign affairs exception in H.R. Rep. No. 79–1980, 69th Cong., 2d Sess. 257 (1946)). The flow of aliens across the southern border, unlawfully or without appropriate travel documents, directly implicates the foreign policy and national security interests of the United States. *See, e.g.,* Exec. Order 13767 (Jan. 25, 2017) (discussing the important national security and foreign affairs-related interests associated with securing the border); Presidential Memorandum on Additional Measures to Enhance Border Security and Restore Integrity to Our Immigration System (Apr. 29, 2019) (''This strategic exploitation of our Nation's humanitarian programs undermines our Nation's security and sovereignty.''); *see also, e.g., Malek-Marzban* v. *INS,* 653 F.2d 113, 115–16 (4th Cir. 1981) (finding that a regulation

is a necessity for national security and public safety''); Designating Aliens For Expedited Removal, 69 FR 48877, 48880 (Aug. 11, 2004) (identifying the APA good cause factors as additional justification for issuing an immediately effective order to expand expedited removal due to ''[t]he large volume of illegal entries, and attempted illegal entries, and the attendant risks to national security presented by these illegal entries,'' as well as ''the need to deter foreign nationals from undertaking dangerous border crossings, and thereby prevent the needless deaths and crimes associated with human trafficking and alien smuggling operations'').

requiring the expedited departure of Iranians from the United States in light of the international hostage crisis clearly related to foreign affairs and fell within the notice-and-comment exception).

This rule will facilitate ongoing diplomatic negotiations with foreign countries regarding migration issues, including measures to control the flow of aliens into the United States (such as the Migrant Protection Protocols), and the urgent need to address the current humanitarian and security crisis along the southern land border between the United States and Mexico. *See City of New York,* 618 F.3d at 201 (finding that rules related to diplomacy with a potential impact on U.S. relations with other countries fall within the scope of the foreign affairs exemption). Those ongoing discussions relate to proposals for how these other countries could increase efforts to help reduce the flow of illegal aliens north to the United States and encourage aliens to seek protection at the safest and earliest point of transit possible.

Those negotiations would be disrupted if notice-and-comment procedures preceded the effective date of this rule—provoking a disturbance in domestic politics in Mexico and the Northern Triangle countries, and eroding the sovereign authority of the United States to pursue the negotiating strategy it deems to be most appropriate as it engages its foreign partners. *See, e.g., Am. Ass'n of Exps. & Imps.-Textile & Apparel Grp.* v. *United States,* 751 F.2d 1239, 1249 (Fed. Cir. 1985) (the foreign affairs exemption facilitates ''more cautious and sensitive consideration of those matters which so affect relations with other Governments that . . . public rulemaking provisions would provoke definitely undesirable international consequences'' (internal quotation marks omitted)). During a notice-and-comment process, public participation and comments may impact and potentially harm the goodwill between the United States and Mexico and the Northern Triangle countries—actors with whom the United States must partner to ensure that refugees can more effectively find refuge and safety in third countries. *Cf. Rajah* v. *Mukasey,* 544 F.3d 427, 437–38 (2d Cir. 2008) (''[R]elations with other countries might be impaired if the government were to conduct and resolve a public debate over why some citizens of particular countries were a potential danger to our security.'').

In addition, the longer that the effective date of the interim rule is delayed, the greater the number of people who will pass through third countries where they may have otherwise received refuge and reach the U.S. border, which has little present capacity to provide assistance. *Cf. East Bay Sanctuary Covenant* v. *Trump,* 909 F.3d 1219, 1252 (9th Cir. 2018) (''Hindering the President's ability to implement a new policy in response to a current foreign affairs crisis is the type of 'definitely undesirable international consequence' that warrants invocation of the foreign affairs exception.''). Addressing this crisis will be more effective and less disruptive to long-term U.S. relations with Mexico and the Northern Triangle countries the sooner that this interim final rule is in place to help address the enormous flow of aliens through these countries to the southern U.S. border. *Cf. Am. Ass'n of Exps. & Imps.-Textile & Apparel Grp.,* 751 F.2d at 1249 (''The timing of an announcement of new consultations or quotas may be linked intimately with the Government's overall political agenda concerning relations with another country.''); *Rajah,* 544 F.3d at 438 (finding that the notice-and-comment process can be ''slow and cumbersome,'' which can negatively impact efforts to secure U.S. national interests, thereby justifying application of the foreign affairs exemption); *East Bay Sanctuary Covenant,* 909 F.3d at 1252–53 (9th Cir. 2018) (suggesting that reliance on the exemption is justified where the Government ''explain[s] how immediate *publication* of the Rule, instead of *announcement* of a proposed rule followed by a thirty-day period of notice and comment'' is necessary in light of the Government's foreign affairs efforts).

The United States and Mexico have been engaged in ongoing discussions regarding both regional and bilateral approaches to asylum. This interim final rule will strengthen the ability of the United States to address the crisis at the southern border and therefore facilitate the likelihood of success in future negotiations. This rule thus supports the President's foreign policy with respect to Mexico and the Northern Triangle countries in this area and is exempt from the notice-and-comment and delayed-effective-date requirements in 5 U.S.C. 553. *See Am. Ass'n of Exps. & Imps.-Textile & Apparel Grp.,* 751 F.2d at 1249 (noting that the foreign affairs exception covers agency actions ''linked intimately with the Government's overall political agenda concerning relations with another country''); *Yassini* v. *Crosland,* 618 F.2d 1356, 1361 (9th Cir. 1980) (because an immigration directive ''was implementing the President's foreign policy,'' the action ''fell within the foreign affairs function and good cause exceptions to the notice and comment requirements of the APA'').

Invoking the APA's foreign affairs exception is also consistent with past rulemakings. In 2016, for example, in response to diplomatic developments between the United States and Cuba, DHS changed its regulations concerning flights to and from the island via an immediately effective interim final rule. Flights to and From Cuba, 81 FR 14948, 14952 (Mar. 21, 2016). In a similar vein, DHS and the State Department recently provided notice that they were eliminating an exception to expedited removal for certain Cuban nationals. The notice explained that the change in policy was consistent with the foreign affairs exception for rules subject to notice-and-comment requirements because the change was central to ongoing negotiations between the two countries. Eliminating Exception To Expedited Removal Authority for Cuban Nationals Encountered in the United States or Arriving by Sea, 82 FR 4902, 4904–05 (Jan. 17, 2017).

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). A regulatory flexibility analysis is not required when a rule is exempt from notice-and-comment rulemaking.

C. Unfunded Mandates Reform Act of 1995

This interim final rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

D. Congressional Review Act

This interim final rule is not a major rule as defined by section 804 of the Congressional Review Act. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-

based companies in domestic and export markets.

E. Executive Order 12866, Executive Order 13563, and Executive Order 13771 (Regulatory Planning and Review)

This rule is not subject to Executive Order 12866 as it implicates a foreign affairs function of the United States related to ongoing discussions with potential impact on a set of specified international relationships. As this is not a regulatory action under Executive Order 12866, it is not subject to Executive Order 13771.

F. Executive Order 13132 (Federalism)

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

G. Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

H. Paperwork Reduction Act

This rule does not propose new, or revisions to existing, ''collection[s] of information'' as that term is defined under the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320.

List of Subjects

8 CFR Part 208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 1003

Administrative practice and procedure, Aliens, Immigration, Legal services, Organization and functions (Government agencies).

8 CFR Part 1208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

Regulatory Amendments

DEPARTMENT OF HOMELAND SECURITY

Accordingly, for the reasons set forth in the preamble, the Secretary of Homeland Security amends 8 CFR part 208 as follows:

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

■ 1. The authority citation for part 208 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1158, 1226, 1252, 1282; Title VII of Public Law 110–229; 8 CFR part 2.

■ 2. Section 208.13 is amended by adding paragraphs (c)(4) and (5) to read as follows:

§ 208.13 Establishing asylum eligibility.

* * * * *

(c) * * *

(4) *Additional limitation on eligibility for asylum.* Notwithstanding the provisions of § 208.15, any alien who enters, attempts to enter, or arrives in the United States across the southern land border on or after July 16, 2019, after transiting through at least one country outside the alien's country of citizenship, nationality, or last lawful habitual residence en route to the United States, shall be found ineligible for asylum unless:

(i) The alien demonstrates that he or she applied for protection from persecution or torture in at least one country outside the alien's country of citizenship, nationality, or last lawful habitual residence through which the alien transited en route to the United States, and the alien received a final judgment denying the alien protection in such country;

(ii) The alien demonstrates that he or she satisfies the definition of ''victim of a severe form of trafficking in persons'' provided in 8 CFR 214.11; or

(iii) The only countries through which the alien transited en route to the United States were, at the time of the transit, not parties to the 1951 United Nations Convention relating to the Status of Refugees, the 1967 Protocol Relating to the Status of Refugees, or the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

(5) *Non-binding determinations.* Determinations made with respect to paragraph (c)(4)(ii) of this section are not binding on Federal departments or agencies in subsequent determinations of eligibility for T or U nonimmigrant status under section 101(a)(15)(T) or (U) of the INA or for benefits or services under 22 U.S.C. 7105 or 8 U.S.C. 1641(c)(4).

■ 3. In § 208.30, revise the section heading, the first sentence of paragraph (e)(2), and paragraphs (e)(3) and (5) to read as follows:

§ 208.30 Credible fear determinations involving stowaways and applicants for admission who are found inadmissible pursuant to section 212(a)(6)(C) or 212(a)(7) of the Act, whose entry is limited or suspended under section 212(f) or 215(a)(1) of the Act, or who failed to apply for protection from persecution in a third country where potential relief is available while en route to the United States.

* * * * *

(e) * * *

(2) Subject to paragraph (e)(5) of this section, an alien will be found to have a credible fear of persecution if there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, the alien can establish eligibility for asylum under section 208 of the Act or for withholding of removal under section 241(b)(3) of the Act. * * *

(3) Subject to paragraph (e)(5) of this section, an alien will be found to have a credible fear of torture if the alien shows that there is a significant possibility that he or she is eligible for withholding of removal or deferral of removal under the Convention Against Torture, pursuant to § 208.16 or § 208.17.

* * * * *

(5)(i) Except as provided in this paragraph (e)(5)(i) or paragraph (e)(6) of this section, if an alien is able to establish a credible fear of persecution but appears to be subject to one or more of the mandatory bars to applying for, or being granted, asylum contained in section 208(a)(2) and 208(b)(2) of the Act, or to withholding of removal contained in section 241(b)(3)(B) of the Act, the Department of Homeland Security shall nonetheless place the alien in proceedings under section 240 of the Act for full consideration of the alien's claim, if the alien is not a stowaway. If the alien is a stowaway, the Department shall place the alien in proceedings for consideration of the alien's claim pursuant to § 208.2(c)(3).

(ii) If the alien is found to be an alien described in § 208.13(c)(3), then the asylum officer shall enter a negative credible fear determination with respect to the alien's intention to apply for asylum. The Department shall nonetheless place the alien in proceedings under section 240 of the Act for full consideration of the alien's

claim for withholding of removal under section 241(b)(3) of the Act, or for withholding or deferral of removal under the Convention Against Torture, if the alien establishes, respectively, a reasonable fear of persecution or torture. However, if an alien fails to establish, during the interview with the asylum officer, a reasonable fear of either persecution or torture, the asylum officer will provide the alien with a written notice of decision, which will be subject to immigration judge review consistent with paragraph (g) of this section, except that the immigration judge will review the reasonable fear findings under the reasonable fear standard instead of the credible fear standard described in paragraph (g) and in 8 CFR 1208.30(g).

(iii) If the alien is found to be an alien described as ineligible for asylum in § 208.13(c)(4), then the asylum officer shall enter a negative credible fear determination with respect to the alien's application for asylum. The Department shall nonetheless place the alien in proceedings under section 240 of the Act for consideration of the alien's claim for withholding of removal under section 241(b)(3) of the Act, or for withholding or deferral of removal under the Convention Against Torture, if the alien establishes, respectively, a reasonable fear of persecution or torture. The scope of review shall be limited to a determination of whether the alien is eligible for withholding or deferral of removal, accordingly. However, if an alien fails to establish, during the interview with the asylum officer, a reasonable fear of either persecution or torture, the asylum officer will provide the alien with a written notice of decision, which will be subject to immigration judge review consistent with paragraph (g) of this section, except that the immigration judge will review the reasonable fear findings under the reasonable fear standard instead of the credible fear standard described in paragraph (g) and in 8 CFR 1208.30(g).

* * * * *

DEPARTMENT OF JUSTICE

Accordingly, for the reasons set forth in the preamble, the Attorney General amends 8 CFR parts 1003 and 1208 as follows:

PART 1003—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

■ 4. The authority citation for part 1003 continues to read as follows:

Authority: 5 U.S.C. 301; 6 U.S.C 521; 8 U.S.C. 1101, 1103, 1154, 1155, 1158, 1182, 1226, 1229, 1229a, 1229b, 1229c, 1231, 1254a, 1255, 1324d, 1330, 1361, 1362; 28 U.S.C. 509, 510, 1746; sec. 2 Reorg. Plan No. 2 of 1950; 3 CFR, 1949–1953 Comp., p. 1002; section 203 of Pub. L. 105–100, 111 Stat. 2196–200; sections 1506 and 1510 of Pub. L. 106–386, 114 Stat. 1527–29, 1531–32; section 1505 of Pub. L. 106–554, 114 Stat. 2763A–326 to –328.

■ 5. In § 1003.42, revise paragraph (d) to read as follows:

§ 1003.42 Review of credible fear determination.

* * * * *

(d) *Standard of review.* (1) The immigration judge shall make a de novo determination as to whether there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the immigration judge, that the alien could establish eligibility for asylum under section 208 of the Act or withholding under section 241(b)(3) of the Act or withholding or deferral of removal under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

(2) If the alien is determined to be an alien described in 8 CFR 208.13(c)(3) or 1208.13(c)(3) and is determined to lack a reasonable fear under 8 CFR 208.30(e)(5)(ii), the immigration judge shall first review de novo the determination that the alien is described in 8 CFR 208.13(c)(3) or 1208.13(c)(3) prior to any further review of the asylum officer's negative determination.

(3) If the alien is determined to be an alien described as ineligible for asylum in 8 CFR 208.13(c)(4) or 1208.13(c)(4) and is determined to lack a reasonable fear under 8 CFR 208.30(e)(5)(iii), the immigration judge shall first review de novo the determination that the alien is described as ineligible for asylum in 8 CFR 208.13(c)(4) or 1208.13(c)(4) prior to any further review of the asylum officer's negative determination.

* * * * *

PART 1208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

■ 6. The authority citation for part 1208 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1158, 1226, 1252, 1282; Title VII of Public Law 110–229.

■ 7. In § 1208.13, add paragraphs (c)(4) and (5) to read as follows:

§ 1208.13 Establishing asylum eligibility.

* * * * *

(c) * * *

(4) *Additional limitation on eligibility for asylum.* Notwithstanding the provisions of 8 CFR 208.15, any alien who enters, attempts to enter, or arrives in the United States across the southern land border on or after July 16, 2019, after transiting through at least one country outside the alien's country of citizenship, nationality, or last lawful habitual residence en route to the United States, shall be found ineligible for asylum unless:

(i) The alien demonstrates that he or she applied for protection from persecution or torture in at least one country outside the alien's country of citizenship, nationality, or last lawful habitual residence through which the alien transited en route to the United States and the alien received a final judgment denying the alien protection in such country;

(ii) The alien demonstrates that he or she satisfies the definition of ''victim of a severe form of trafficking in persons'' provided in 8 CFR 214.11; or

(iii) The only country or countries through which the alien transited en route to the United States were, at the time of the transit, not parties to the 1951 United Nations Convention relating to the Status of Refugees, the 1967 Protocol, or the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

(5) *Non-binding determinations.* Determinations made with respect to paragraph (c)(4)(ii) of this section are not binding on Federal departments or agencies in subsequent determinations of eligibility for T or U nonimmigrant status under section 101(a)(15)(T) or (U) of the Act or for benefits or services under 22 U.S.C. 7105 or 8 U.S.C. 1641(c)(4).

■ 8. In § 1208.30, revise the section heading and paragraph (g)(1) to read as follows:

§ 1208.30 Credible fear determinations involving stowaways and applicants for admission who are found inadmissible pursuant to section 212(a)(6)(C) or 212(a)(7) of the Act, whose entry is limited or suspended under section 212(f) or 215(a)(1) of the Act, or who failed to apply for protection from persecution in a third country where potential relief is available while en route to the United States.

* * * * *

(g) * * *

(1) *Review by immigration judge of a mandatory bar finding.* (i) If the alien is determined to be an alien described in 8 CFR 208.13(c)(3) or 1208.13(c)(3) and is determined to lack a reasonable fear under 8 CFR 208.30(e)(5), the immigration judge shall first review de novo the determination that the alien is described in 8 CFR 208.13(c)(3) or 1208.13(c)(3). If the immigration judge

finds that the alien is not described in 8 CFR 208.13(c)(3) or 1208.13(c)(3), then the immigration judge shall vacate the order of the asylum officer, and DHS may commence removal proceedings under section 240 of the Act. If the immigration judge concurs with the credible fear determination that the alien is an alien described in 8 CFR 208.13(c)(3) or 1208.13(c)(3), the immigration judge will then review the asylum officer's negative decision regarding reasonable fear made under 8 CFR 208.30(e)(5) consistent with paragraph (g)(2) of this section, except that the immigration judge will review the findings under the reasonable fear standard instead of the credible fear standard described in paragraph (g)(2).

(ii) If the alien is determined to be an alien described as ineligible for asylum in 8 CFR 208.13(c)(4) or 1208.13(c)(4) and is determined to lack a reasonable fear under 8 CFR 208.30(e)(5), the immigration judge shall first review de novo the determination that the alien is described as ineligible for asylum in 8 CFR 208.13(c)(4) or 1208.13(c)(4). If the immigration judge finds that the alien is not described as ineligible for asylum in 8 CFR 208.13(c)(4) or 1208.13(c)(4), then the immigration judge shall vacate the order of the asylum officer, and DHS may commence removal proceedings under section 240 of the Act. If the immigration judge concurs with the credible fear determination that the alien is an alien described as ineligible for asylum in 8 CFR 208.13(c)(4) or 1208.13(c)(4), the immigration judge will then review the asylum officer's negative decision regarding reasonable fear made under 8 CFR 208.30(e)(5) consistent with paragraph (g)(2) of this section, except that the immigration judge will review the findings under the reasonable fear standard instead of the credible fear standard described in paragraph (g)(2).

* * * * *

Approved:

Dated: July 12, 2019.

Kevin K. McAleenan,

Acting Secretary of Homeland Security.

Approved:

Dated: July 12, 2019.

William P. Barr,

Attorney General.

[FR Doc. 2019–15246 Filed 7–15–19; 8:45 am]

BILLING CODE 4410–30–P; 9111–97–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2018–0984; Airspace Docket No. 18–ASW–8]

RIN 2120–AA66

Expansion of R–3803 Restricted Area Complex; Fort Polk, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action expands the R–3803 restricted area complex in central Louisiana by establishing four new restricted areas, R–3803C, R–3803D, R–3803E, and R–3803F, and makes minor technical amendments to the existing R–3803A and R–3803B legal descriptions for improved operational efficiency and administrative standardization. The restricted area establishments and amendments support U.S. Army Joint Readiness Training Center training requirements at Fort Polk for military units preparing for overseas deployment.

DATES: *Effective date:* 0901 UTC, September 13, 2019.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Airspace Policy Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes restricted area airspace at Fort Polk, LA, to enhance aviation safety and accommodate essential U.S. Army hazardous force-on-force and force-on-target training activities.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2018–0984 in the **Federal Register** (83 FR 60382; November 26, 2018) establishing four new restricted areas, R–3803C, R–3803D, R–3803E, and R–3803F, and making minor technical amendments to the R–3803A and R–3803B descriptions for improved operational efficiency and administrative standardization in support of hazardous U.S. Army force-on-force and force-on-target training activities. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. Two comments were received.

Discussion of Comments

While supportive of the U.S. Army's need to train as they fight, the first commenter noted that modern general aviation aircraft have longer flight endurance today, making timely NOTAM publication of restricted area activations necessary for effective flight planning. To overcome the possibility of the restricted areas being activated with no advance notification, the commenter recommended adding ''at least 4 hours in advance'' to the ''By NOTAM'' time of designation proposed for the R–3803A, R–3803C, and R–3803D restricted areas. Additionally, the commenter requested the effective date of the proposed restricted areas, if approved, coincide with the next update of the Houston Sectional Aeronautical Chart.

It is FAA policy that when NOTAMs are issued to activate special use airspace, the NOTAMs should be issued as far in advance as feasible to ensure the widest dissemination of the information to airspace users. The FAA acknowledges that the addition of the ''at least 4 hours in advance'' provision to the proposed ''By NOTAM'' time of designation, as recommended by the commenter, would contribute to ensuring the widest dissemination of the restricted areas being activated to effected airspace users. As such, the FAA adopts the commenter's recommendation to amend the time of designation for R–3803A, R–3803C, and R–3803D to reflect ''By NOTAM issued at least 4 hours in advance.''

Additionally, the establishment of R–3803C, R–3803D, R–3803E, and R–3803F, and the minor technical amendments to the existing R–3803A and R–3803B legal descriptions are being made effective to coincide with the upcoming Houston Sectional Aeronautical Chart date.

The second commenter raised aerial access concerns of the area in which the new restricted areas were proposed to be established. The commenter stated

Exhibit B

Order Denying Motion for Stay Pending Appeal

East Bay Sanctuary Covenant v. Barr, 3:19-cv-04073 (N.D. Cal. August 1, 2019)

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

EAST BAY SANCTUARY COVENANT, et al.,

Plaintiffs,

v.

WILLIAM BARR, et al.,

Defendants.

Case No. 19-cv-04073-JST

ORDER DENYING STAY PENDING APPEAL

Re: ECF No. 47

On July 24, 2019, the Court preliminary enjoined the implementation of a joint interim final rule promulgated by the Department of Justice and Department of Homeland Security, entitled "Asylum Eligibility and Procedural Modifications." 84 Fed. Reg. 33,829 (July 16, 2019) (codified at 8 C.F.R. pts. 208, 1003, 1208) (the "Rule"). ECF No. 42. The details of the Rule and Plaintiff Organizations' challenge are set forth fully in that Order.

The government now seeks a stay of the injunction while it pursues an appeal. ECF No. 47. Because the government has not met its burden to demonstrate that a stay is warranted, the Court will deny the motion.

I. LEGAL STANDARD

The issuance of a stay is a matter of judicial discretion, not a matter of right, and the "party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion." *Nken v. Holder*, 556 U.S. 418, 433-34 (2009). In exercising its discretion, the Court must consider four factors: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Id.* at 434 (citation omitted). Under Ninth

Circuit precedent, the movant "must show that irreparable harm is probable and either: (a) a strong likelihood of success on the merits and that the public interest does not weigh heavily against a stay; or (b) a substantial case on the merits and that the balance of hardships tips sharply in the [movant's] favor." *Leiva-Perez v. Holder*, 640 F.3d 962, 970 (9th Cir. 2011) (per curiam).

II. DISCUSSION

A. Likelihood of Success on the Merits

For the reasons articulated in the Court's order granting a preliminary injunction, the government is not likely to prevail on the merits on appeal. The government's stay arguments are largely the same as those the Court already rejected. Only two arguments merit additional discussion.

First, the government now contends that the Rule cannot be inconsistent with the firm resettlement bar because the definition of "firm resettlement" is set forth by regulation rather than in the Immigration and Nationality Act ("INA") itself. ECF No. 47 at 6; *see also* 8 C.F.R. §§ 208.15, 1208.15. This argument does not alleviate the fundamental conflict that the Court identified.

The Court found that the Rule was substantively invalid because it conflicted with the core principle that asylum, as provided for in the INA, is designed to "protect [refugees] with nowhere else to turn." *Matter of B-R-*, 26 I. & N. Dec. 119, 122 (BIA 2013) (alteration in original) (citation omitted); *see also Rosenberg v. Yee Chien Woo*, 402 U.S. 49, 55 (1971) ("Both the terms 'firmly resettled' and 'fled' are closely related to the central theme of all 23 years of refugee legislation – the creation of a haven for the world's homeless people."). More specifically, the Court concluded that the Rule was inconsistent with the INA's statutory provisions that "limit an alien's ability to claim asylum in the United States when other safe options are available," *Matter of B-R-*, 26 I. & N. Dec. at 122, because the Rule contained no reasonable assurances that the third countries implicated presented safe options, yet would deny claims on that basis. ECF No. 42 at 22-24.

As detailed in the Court's order, when Congress enacted the firm resettlement bar, the link between firm resettlement and a lack of persecution was well recognized. *Id.* at 15-18, 22; *see*

also Rosenberg, 402 U.S. at 55 (holding that, even absent an express statutory command, "the established concept of 'firm resettlement'" was "one of the factors which the Immigration and Naturalization Service must take into account to determine whether a refugee seeks asylum in this country as a consequence of his flight to avoid persecution"); *Yang v. I.N.S.*, 79 F.3d 932, 939 (9th Cir. 1996) (upholding regulatory predecessor to firm resettlement bar as consistent with Refugee Act of 1980 "[b]ecause firmly resettled aliens are by definition no longer subject to persecution"). That Congress left it to the Attorney General to define the precise contours of firm resettlement does not imply that the statutory term itself lacks meaning. *See Air Wisconsin Airlines Corp. v. Hoeper*, 571 U.S. 237, 248 (2014) ("[I]t is a cardinal rule of statutory construction that, when Congress employs a term of art, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it is taken." (alteration in original) (quoting *F.A.A. v. Cooper*, 566 U.S. 284, 292 (2012)).

Second, having initially emphasized the Rule's purported "conclusion that asylum in Mexico is a feasible alternative to relief in the United States," ECF No. 28 at 31,[1] the government now claims that "the feasibility of Mexico's asylum system to absorb transiting aliens" is irrelevant to whether the agencies provided an adequate explanation for the Rule, ECF No. 47 at 8. The government's about-face lacks merit because, as the Court explained, every applicant subject to the Rule will have passed through Mexico. ECF No. 42 at 39.[2] The risk of violence and availability of fair asylum procedures in Mexico is therefore paramount. If Mexico is not a "safe option[]," *Matter of B-R-*, 26 I. & N. Dec. at 122, then the decision not to apply for asylum there does not "raise[] questions about the validity and urgency of the alien's claim" or "mean that the

[1] *See* ECF No. 28 at 19 n.2 ("[T]he government has determined that Mexico's law for considering asylum applications [is] consistent with international law and sufficiently robust to be a potential alternative to relief in the United States."), 31 ("Moreover, the government determined that Mexico is a signatory to and in compliance with the relevant international instruments governing consideration of refugee claims, that its domestic law and procedures regarding such relief are robust and capable of handling claims made by Central American aliens in transit to the United States, and that the statistics regarding the influx of claims in that country support the conclusion that asylum in Mexico is a feasible alternative to relief in the United States.").

[2] Further, as the Court noted, "the Rule does not consider the asylum systems of any other countries." ECF No. 42 at 39 n.25.

claim is less likely to be successful," 84 Fed. Reg. at 33,839.

The government's contention that the Court failed to defer to the agencies' view of the facts is likewise unfounded. ECF No. 42 at 38-39. The Court explained that "[i]f the government offered a reasoned explanation why it reached a contrary conclusion from respected third-party humanitarian organizations, the Court would give that explanation the deference that it was due." ECF No. 42 at 38 n.23. Agencies cannot reach a contrary conclusion, however, by "ignor[ing] inconvenient facts" *Organized Vill. of Kake v. U.S. Dep't of Agric.*, 795 F.3d 956, 969 (9th Cir. 2015) (citation omitted), or providing "no reasons at all," *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2127 (2016).

Because the government has failed to raise even serious questions to two independent bases for invalidating the Rule, it has not satisfied this factor.[3]

B. Remaining Factors

The government's arguments regarding the remaining factors are, to the greatest extent possible, carbon copies of the ones that it made in seeking a stay of this Court's temporary restraining order in the first *East Bay* litigation. *Compare* ECF No. 47 at 3-6, *with E. Bay Sanctuary Covenant v. Trump*, No. 18-cv-6810-JST (N.D. Cal.), ECF No. 52 at 3-6. This Court finds them no more convincing the second time around, and also notes that these arguments previously failed to persuade every court to consider them. *See Trump v. E. Bay Sanctuary Covenant*, 139 S. Ct. 782 (2018) (denying stay); *E. Bay Sanctuary Covenant v. Trump*, No. 18-17274, 2018 WL 8807133 (9th Cir. Dec. 7, 2018) (denying stay); *E. Bay Sanctuary Covenant v. Trump*, 354 F. Supp. 3d 1085 (N.D. Cal. 2018) (denying stay).

The Ninth Circuit has already rejected the government's irreparable injury theory, reasoning that "'claims that [the Government] has suffered an institutional injury by erosion of the separation of powers' do not alone amount to an injury that is 'irreparable,' because the Government may 'pursue and vindicate its interests in the full course of this litigation.'" *E. Bay*

[3] For reasons the Court explained in denying a stay in the first *East Bay* case, further consideration of the merits of the Organizations' notice-and-comment claims is therefore unnecessary. *See E. Bay Sanctuary Covenant v. Trump*, 354 F. Supp. 3d 1085, 1091 (N.D. Cal. 2018).

Sanctuary Covenant, 2018 WL 8807133, at *23 (quoting *Washington v. Trump*, 847 F.3d 1151, 1168 (9th Cir. 2017)); *see also E. Bay Sanctuary Covenant*, 354 F. Supp. 3d at 1092 n.3 (explaining why "a requirement to implement the existing statutory scheme per the status quo – under which the government retains the discretion to deny asylum in every case" does not "come close to the affirmative intrusions required by the injunctions stayed in [the] other cases" again cited by the government). Nor does the Court's injunction foreclose other "enforcement measures that the President and the Attorney General can take to ameliorate the" Rule's stated concerns about the quantity and quality of asylum claims. *E. Bay Sanctuary Covenant*, 2018 WL 8807133, at *20; *see also* AR 231-32, 635-37 (describing other immigration initiatives the government implemented or was pursuing shortly prior to promulgating the Rule).

Because the government has not carried its burden on the first two factors, the Court "need not dwell on the final two." *E. Bay Sanctuary Covenant*, 2018 WL 8807133, at *24. The Court simply notes that, on the third factor, the government again disregards controlling law regarding monetary harms in Administrative Procedure Act suits, where damages are precluded by sovereign immunity, *see California v. Azar*, 911 F.3d 558, 581 (9th Cir. 2018), and ignores the substantial injuries to other persons or entities regulated by the Rule, *see Latta v. Otter*, 771 F.3d 496, 500 (9th Cir. 2014); *Lair v. Bullock*, 697 F.3d 1200, 1215 (9th Cir. 2012). Finally, nothing in the government's motion alters the Court's findings as to where the public interest lies in this case. ECF No. 42 at 40-44.

CONCLUSION

For the foregoing reasons, the Court denies the motion for a stay pending appeal.

IT IS SO ORDERED.

Dated: August 1, 2019

JON S. TIGAR
United States District Judge

Exhibit C

Excerpts of the Administrative Record

Index to Administrative Record Excerpts

MSF MEXICO CITY / NEW YORK / RIO DE JANEIRO / BARCELONA

MAY 2017

© ANNA SURINYACH

FORCED TO FLEE CENTRAL AMERICA'S NORTHERN TRIANGLE:

A NEGLECTED HUMANITARIAN CRISIS

MEDECINS SANS FRONTIERES

When you have no strength left, when you no longer have anyone around to help you keep going, when you have lost all hope, when fear and distrust are your only travel companions, when you can't take another hit, when you have lost your identity, when you feel that your dignity has been missing since the last time you were assaulted, or the last time they forced you to undress —it is during these moments when you need to take a seat, regain your strength, and build the confidence to talk to people and let them help you.

Carmen Rodríguez
MSF Mental Health Referent in Mexico

Cover: Migrants and refugees cross the Suchiate River to enter Mexico from Guatemala in 2014.

EDITOR'S NOTE: This report was updated on June 14, 2017, to include the following corrections and clarifications: On pp. 5 and 21, we noted the number of people detained and deported based on data from 2016, not 2015 as reported earlier. On p. 6, we corrected the list of places where MSF has worked along the migration route to properly identify the respective states. And on p. 27, we changed the final sentence to clarify that the humanitarian crisis is a regional issue involving countries of origin, transit, and destination.

CONTENT

© ANNA SURINYACH

Migrants travel through Mexico on a cargo train, known locally as "The Beast."

1

EXECUTIVE SUMMARY

An estimated 500,000 people cross into Mexico every year[1]. The majority making up this massive forced migration flow originate from El Salvador, Honduras, and Guatemala, known as the Northern Triangle of Central America (NTCA), one of the most violent regions in the world today.

Since 2012, the international medical humanitarian organization Doctors Without Borders/Médecins Sans Frontières (MSF) has been providing medical and mental health care to tens of thousands of migrants and refugees fleeing the NTCA's extreme violence and traveling along the world's largest migration corridor in Mexico. Through violence assessment surveys and medical and psychosocial consultations, MSF teams have witnessed and documented a pattern of violent displacement, persecution, sexual violence, and forced repatriation akin to the conditions found in the deadliest armed conflicts in the world today[2].

For millions of people from the NTCA region, trauma, fear and horrific violence are dominant facets of daily life. Yet it is a reality that does not end with their forced flight to Mexico. Along the migration route from the NTCA, migrants and refugees are preyed upon by criminal organizations, sometimes with the tacit approval or complicity of national authorities, and subjected to violence and other abuses —abduction, theft, extortion, torture, and rape— that can leave them injured and traumatized.

1_ Source: UNHCR MEXICO FACTSHEET. February 2017. Last visited 18 April 2017. Data compiled by UNHCR based on SEGOB and INM official sources.

2_The Geneva Declaration on Armed Violence and Development. Global Burden of Armed Violence 2015: Every Body Counts, October 2015, Chapter Two, http://www.genevadeclaration.org/fileadmin/docs/GBAV3/GBAV3_Ch2_pp49-86.pdf

Despite existing legal protections under Mexican law, they are systematically detained and deported--with devastating consequences on their physical and mental health. In 2016, 152,231 people from the NTCA were detained/presented to migration authorities in Mexico, and 141,990 were deported.

The findings of this report, based on surveys and medical programmatic data from the past two years, come against the backdrop of heightened immigration enforcement by Mexico and the United States, including the use of detention and deportation. Such practices threaten to drive more refugees and migrants into the brutal hands of smugglers or criminal organizations.

From January 2013 to December 2016, MSF teams have provided 33,593 consultations to migrants and refugees from the NTCA through direct medical care in several mobile health clinics, migrant centers and hostels —known locally as albergues— across Mexico. Through these activities, MSF has documented the extensive levels of violence against patients treated in these clinics, as well as the mental health impact of trauma experienced prior to fleeing countries of origin and while on the move.

Since the program's inception, MSF teams have expressed concern about the lack of institutional and government support to the people it is treating and supporting along the migration route. In 2015 and 2016, MSF began surveying patients and collecting medical data and testimonies. This was part of an effort by MSF to better understand the factors driving migration from the NTCA, and to assess the medical needs and vulnerabilities specific to the migrant and refugee population MSF is treating in Mexico.

The surveys and medical data were limited to MSF patients and people receiving treatment in MSF-supported clinics. Nevertheless, this is some of the most comprehensive medical data available on migrants and refugees from Central America. This report provides stark evidence of the extreme levels of violence experienced by people fleeing from El Salvador, Honduras, and Guatemala, and underscores the need for adequate health care, support, and protection along the migration route through Mexico.

In 2015, MSF carried out a survey of 467 randomly sampled migrants and refugees in facilities the organization supports in Mexico. We gathered additional data from MSF clinics from 2015 through December 2016. Key findings of the survey include:

Reasons for leaving:

- Of those interviewed, almost 40 percent (39.2%) mentioned direct attacks or threats to themselves or their families, extortion or gang-forced recruitment as the main reason for fleeing their countries.
- Of all NTCA refugees and migrants surveyed, 43.5 percent had a relative who died due to violence in the last two years. More than half of Salvadorans surveyed (56.2 percent) had a relative who died due to violence in this same time span.
- Additionally, 54.8% of Salvadorans had been the victim of blackmail or extortion, significantly higher than respondents from Honduras or Guatemala.

Violence on the Journey:

- 68.3 percent of the migrant and refugee populations entering Mexico reported being victims of violence during their transit toward the United States.
- Nearly one-third of the women surveyed had been sexually abused during their journey.
- MSF patients reported that the perpetrators of violence included members of gangs and other criminal organizations, as well as members of the Mexican security forces responsible for their protection.

According to medical data from MSF clinics from 2015 through December 2016:

- One-fourth of MSF medical consultations in the migrants/refugee program were related to physical injuries and intentional trauma that occurred en route to the United States.
- 60 percent of the 166 people treated for sexual violence were raped, and 40 percent were exposed to sexual assault and other types of humiliation, including forced nudity.
- Of the 1,817 refugees and migrants treated by MSF for mental health issues in 2015 and 2016, close to half (47.3 percent) were victims of direct physical violence en route, while 47.2 percent of this group reported being forced to flee their homes.

The MSF survey and project data from 2015-2016 show a clear pattern of victimization—both as the impetus for many people to flee the NTCA and as part of their experience along the migration route. The pattern of violence documented by MSF plays out in a context where there is an inadequate response from governments, and where immigration and asylum policies disregard the humanitarian needs of migrants and refugees.

Despite the existence of a humanitarian crisis affecting people fleeing violence in the NTCA, the number of related asylum grants in the US and Mexico remains low. Given the tremendous levels of violence against migrants and refugees in their countries of origin and along the migration route in Mexico, the existing legal framework should provide effective protection mechanisms to victimized populations. Yet people forced to flee the NTCA are mostly treated as economic migrants by countries of refuge such as Mexico or the United States. Less than 4,000 people fleeing El Salvador, Honduras, and Guatemala were granted asylum status in 2016[3]. In addition, the government of Mexico deported 141,990 people from the NTCA. Regarding the situation in US, by the end of 2015, 98,923 indiviudals from the NTCA had submitted requests for refugee or asylum status according to UNHCR[4]. Nevertheless, the number of asylums status granted to individuals from the NTCA has been comparatively low, with just 9,401 granted status since FY 2011[5].

As a medical humanitarian organization that works in more than 60 countries, MSF delivers emergency aid to people affected by armed conflict, epidemics, disasters, and exclusion from health care. The violence suffered by people in the NTCA is comparable to the experience in war zones where MSF has been present for decades. Murder, kidnappings, threats, recruitment by non-state armed actors, extortion, sexual violence and forced disappearance are brutal realities in many of the conflict areas where MSF provides support.

The evidence gathered by MSF points to the need to understand that the story of migration from the NTCA is not only about economic migration, but about a broader humanitarian crisis.

While there are certainly people leaving the NTCA for better economic opportunities in the United States, the data presented in this report also paints a dire picture of a story of migration from the NTCA as one of people running for their lives. It is a picture of repeated violence, beginning in NTCA countries and causing people to flee, and extending through Mexico, with a breakdown in people's access to medical care and ability to seek protection in Mexico and the United States.

It is a humanitarian crisis that demands that the governments of Mexico and United States, with the support of countries in the region and international organizations, rapidly scale up the application of legal protection measures —asylum, humanitarian visas, and temporary protected status— for people fleeing violence in the NTCA region; immediately cease the systematic deportation of NTCA citizens; and expand access to medical, mental health, and sexual violence care services for migrants and refugees.

3_ Source: UNHCR MEXICO FACTSHEET. February 2017.

4_ Regional Response to the Northern Triangle of Central America Situation. UNHCR. Accessed on 01/02/2017 at http://reporting.unhcr.org/sites/default/files/UNHCR%20-%20NTCA%20Situation%20Supplementary%20Appeal%20-%20June%202016.pdf

5_ Source: MSF calculations based on information from US Homeland Security. Yearbook of Immigration Statistics 2015.

2

INTRODUCTION: **CARING FOR REFUGEES AND MIGRANTS**

MSF has worked with migrants and refugees in Mexico since 2012, offering medical and psychological care to thousands of people fleeing the Northern Triangle of Central America (NTCA). Since the MSF program started, the organization has worked in several locations along the migration route: Ixtepec (Oaxaca State); Arriaga (Chiapas); Tenosique (Tabasco); Bojay (Hidalgo); Tierra Blanca (Veracruz State); Lechería-Tultitlán, Apaxco, Huehuetoca (State of Mexico); San Luis Potosí (San Luis Potosí State); Celaya (Guanajuato State); and Mexico City. Locations have changed based on changes in routes used by migrants and refugees or the presence of other organizations. MSF's services have mainly been provided inside hostels, or albergues, along the route. In some locations, MSF set up mobile clinics close to the rail roads and train stations.

In addition, MSF teams have trained 888 volunteers and staff at 71 shelters and hostels in "psychological first aid"—in which patients are counseled for a short period of time before they continue their journey. Health staff and volunteers in key points along the transit route, at 41 shelters and 166 medical facilities, received training on counseling related to sexual and gender-based violence (SGBV).

From January 2013 to December 2016, MSF teams carried out 28,020 medical consultations and 5,573 mental health consultations. More than 46,000 individuals attended psychosocial activities organized

Migrant and refugee patients attended by MSF from 2013-2016

by our teams to address the following topics: stress on the road, violence on the road, mental health promotion and prevention, myths and truths about the migration route, and developing tools to deal with anxiety.

Some of the people treated by MSF report extreme pain and suffering due to physical and emotional violence inflicted on them on the migration route. In 2016, MSF, in collaboration with the Scalabrinian Mission for Migrants and Refugees (SMR), opened a rehabilitation center for victims of extreme violence and other cruel, inhuman or degrading treatment. Since then MSF has treated 93 patients who required longer-term mental health and rehabilitation services.

Torture is inflicted by governmental security actors, while criminal organizations inflict extreme degrees of violence on these already vulnerable populations. Migrants and refugees are often easy prey, and they face severe difficulties in making any formal legal complaint. Some patients reported having been kidnapped, repeatedly beaten for days or even weeks for the purposes of extortion and ransom, or sometimes to frighten or intimidate other migrants and refugees. Attacks often include sexual assault and rape.

- Center Route: From Tierra Blanca to Querétaro
- Northeast Route: From Querétaro to Ciudad Acuña
- Northwest Route: From Querétaro to Tijuana
- North Route: From Querétaro to Puerto Palomas
- Southeast Route: From Tenosique to Tierra Blanca
- Southwest Route: From Tapachula to Tierra Blanca

- Capital City
- Transmigrant project, town of interest
- Health facities
- International boundary
- Coastline

© GUSTAVO GRAF.

After disembarking a train, migrants traveling from Central America to the United States walk to a shelter in Ixtepec, Oaxaca, Mexico, in 2014.

3

NORTHERN TRIANGLE OF CENTRAL AMERICA: UNPRECEDENTED LEVELS OF VIOLENCE OUTSIDE A WAR ZONE

The violence experienced by the population of the NTCA is not unlike that of individuals living through war. Citizens are murdered with impunity, kidnappings and extortion are daily occurrences. Non-state actors perpetuate insecurity and forcibly recruit individuals into their ranks, and use sexual violence as a tool of intimidation and control. This generalized and pervasive threat of violence contributes to an increasingly dire reality for the citizens of these countries. It occurs against a backdrop of government institutions that are incapable of meeting the basic needs of the population.

The global study on homicide carried out by the United Nations Office on Drugs and Crime (UNODC) in 2013, placed Honduras and El Salvador first and fourth respectively on the list of countries with the highest murder rates in the world[6]. In the last ten years, approximate 150,000 people have been killed in the NTCA[7]. Since then, the situation has only worsened, with a particularly worrying situation in El Salvador, where 6,650 intentional homicides were reported in 2015, reaching a staggering murder rate of 103 per 100,000 inhabitants in 2015, while Honduras suffered 57 per 100,000 (8,035 homicides) and Guatemala 30 per 100,000 (4,778 homicides).

6_ UNODC, *Global Study on Homicide 2013: Trends, Contexts, Data*, 10 April 2014, https://www.unodc.org/documents/gsh/pdfs/2014_GLOBAL_HOMICIDE_BOOK_web.pdf, p. 126

7_ International Crisis Group calculation of total homicides since 2006 based on data from "Crime and Criminal Justice, Homicides counts and rates (2000-2014)"

Data from the UNODC report shows that homicidal violence in the NTCA resulted in considerably more civilian casualties than in any other countries, including those with armed conflicts or war[8]. Rates of violent death in El Salvador have lately been higher than all countries suffering armed conflict except for Syria[9].

In this context, an estimated 500,000 people from the Northern Triangle of Central America (NTCA) enter Mexico every year fleeing poverty and violence, according to the UN High Commissioner for Refugees (UNHCR). As an organization treating patients in Mexico fleeing these violent contexts, MSF teams witness the harrowing stories that have pushed people to make the urgent decision to flee their homes. Lack of economic opportunities are mentioned by a significant number of individuals interviewed by MSF, however, they systematically describe personal exposure to a violent event that triggered their decision to emigrate. The cycle of poverty and violence creates an untenable setting for many, and drives them toward the treacherous path through Mexico.

Due to MSF's experience treating migrants throughout Mexico, the organization sought to better understand the realities of life for individuals making the journey north, first to assess how to improve services to this marginalized population, and second to raise awareness about the conditions they face. This information is often missing from national statistics or publicly available data. This led to the development and implementation of a survey tool to measure an individual's reasons for fleeing, and the health impacts experienced before and after embarking on the route through Mexico. These findings, along with medical project data from the past two years, illustrate that the insecurity they fled at home and the violence they experience on the route north have significant physical and emotional impact.

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Art adorns the front of the men's dormitory building at a shelter for migrants in Mexico.

The VAT Background & Methodology

As a Victimization Assessment Tool (VAT), a survey was conducted among 467 refugees and migrants in September 2015 in the albergues along the migration route in Mexico where MSF was providing health and mental care at the time: Tenosique, Ixtepec, Huehuetoca, Bojay and San Luis Potosí (see Annex 3 for methodology).

The findings from this survey paint a detailed picture of the violence migrants faced at home and as they made their way through Mexico. This aggregated information allows MSF to identify avenues for further medical programming or to modify existing approaches in reaching this population. Although demonstrative of the harrowing realities faced by many people on the route north, this study is a snapshot in time and included a selective population accessible to MSF. Interviews were conducted in albergues, where migrants seek out food, shelter, information, and health care. These interviews are not necessarily representative of the entire migrant population traveling through Mexico. MSF avoids drawing sweeping conclusions, however the survey provides valuable information about the realities that many people on this route experienced, in a specific time period, as reported to MSF teams.

8_ ACAPS. Other Situations of Violence in the Northern Triangle of Central America. Humanitarian Impact July 2014.

9_ International Crisis Group. Mafia of the Poor: Gang Violence and Extortion in Central America Latin America Report N°62 | 6 April 2017.

Who was interviewed

Most of the people interviewed—88 percent—were male and 12 percent were female. Of those interviewed 4.7 percent were minors, 59 percent of them unaccompanied. Most interviewed, 67.6 percent, were from Honduras, while 15.7 percent were from El Salvador, 10.5 percent from Guatemala and 6.2 percent represented other nationalities. The average person surveyed was 28 years old, with 79 percent under 35.

Nationalities of people surveyed

	Number Surveyed	Percentage of Total
Honduras	315	67.6%
El Salvador	73	15.7%
Guatemala	49	10.5%
Nicaragua	15	3.2%
Mexico	11	2.4%
No Response	1	0.2%
Dominican Republic	1	0.2%
Suriname	1	0.2%

The majority of respondents—65 percent— confirmed that they have children and 52 percent of them lived in large households (with five or more people). A majority said that their family had financially supported them to help them make their way north.

Violence in countries of origin

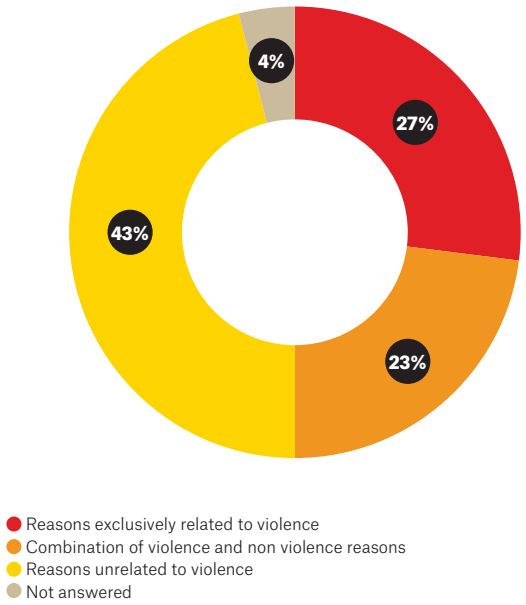
Respondents were asked several questions about their experience with direct and generalized violence in their home countries. Collectively, their individual stories show a population continuously exposed to some degree of violence or targeted threats, and, depending on their nationality, that experience can vary greatly.

- According to the survey, 57 percent of Honduran and 67 percent of Salvadoran migrants reported that they never feel safe at home, whereas only 33 percent of Guatemalans and 12 percent of Nicaraguans felt the same way.
- One third (32.5 percent) of the population from NTCA entering Mexico has been exposed to physical violence perpetrated by a non-family member (mainly members of organized crime) in the previous two years.
- Half of the population (48.4 percent) from NTCA entering Mexico received a direct threat from a non-family member (61.6 percent for Salvadorans alone). Of this group, 78 percent said that the threat seriously affected their social and professional activities.
- 45.4 percent of Hondurans and 56.2 percent of Salvadorans entering Mexico have lost a family member because of violence in the last two years before they migrated. 31 percent of the Central Americans entering Mexico knew someone who was kidnapped and 17 percent know someone who has disappeared and not been found.
- The vast majority —72 percent of Hondurans and 70 percent of Salvadorans interviewed—heard regular gunshots in their neighborhoods. Respectively, 75 percent and 79 percent had witnessed a murder or seen a corpse in the previous two years.

Reasons for leaving country of origin

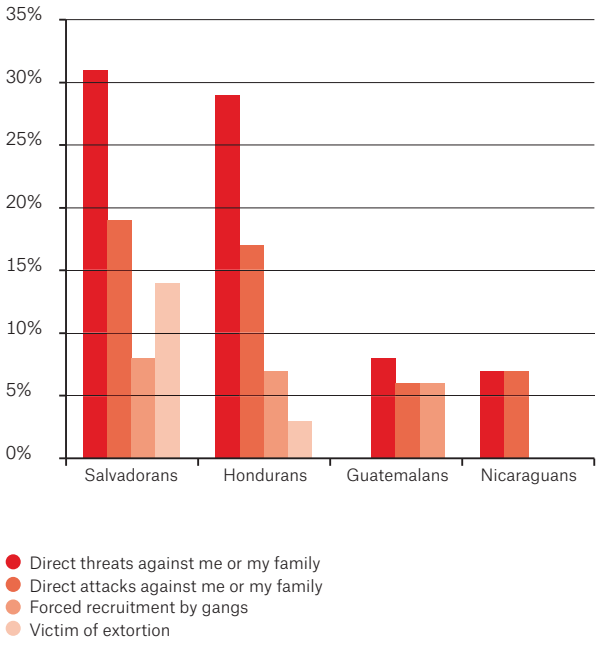
Half (50.3 percent) of those interviewed from the NTCA entering Mexico leave their country of origin for at least one reason related to violence. For those fleeing violence, a significant 34.9 percent declared more than one violence-related reason.

Reasons given for leaving country of origin



Direct attacks, threats, extortion or a forced recruitment attempt by criminal organizations were given as main reasons for survey respondents to flee their countries, with numbers significantly higher in El Salvador and Honduras. Of the surveyed population, 40 percent left the country after an assault, threat, extortion or a forced recruitment attempt.

Migration related to direct violence

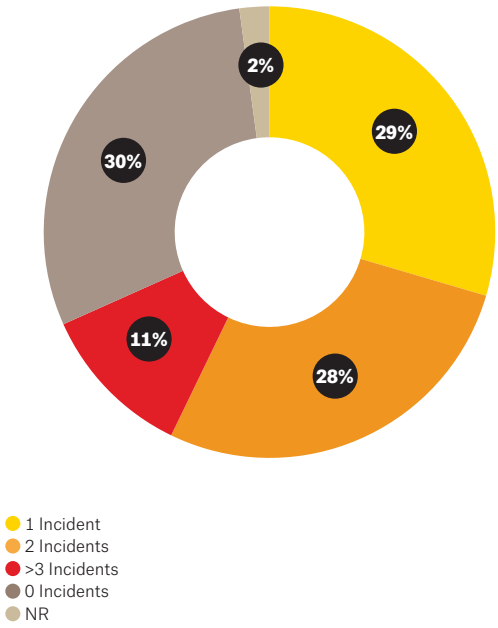


Regarding exposure to violence along the migration route through Mexico

The findings related to violence in the survey are appalling: more than half the sample population had experienced recent violence at the time they were interviewed: 44 percent had been hit, 40 percent had been pushed, grabbed or asphyxiated, and 7 percent had been shot.

Of the migrants and refugees surveyed in Mexico, 68.3 percent of people from the NTCA reported that they were victims of violence during their transit. Repeated exposure to violence is another reality for the population from NTCA crossing Mexico. Of the total surveyed population, 38.7 percent reported more than one violent incident, and 11.3 percent reported more than three incidents.

Number of violent incidents experienced per person during migration



In a migration context marked by high vulnerability like the one in Mexico, sexual violence, unwanted sex, and transactional sex in exchange for shelter, protection or for money was mentioned by a significant number of male and female migrants in the surveys. Considering a comprehensive definition of those categories, out of the 429 migrants and refugees that answered SGBV questions, **31.4 percent of women and 17.2 percent of men had been sexually abused during their transit through Mexico**. Considering only rape and other forms of direct sexual violence, 10.7 percent of women and 4.4 percent of men were affected during their transit through Mexico.

The consequences of violence on the psychological well-being and the capacity to reach out for assistance are striking: 47.1 percent of the interviewed population expressed that the violence they suffered had affected them emotionally.

Honduran—Male—30 years old— "I am from San Pedro Sula, I had a mechanical workshop there. Gangs wanted me to pay them for "protection", but I refused, and then they wanted to kill me. First they threatened me; they told me that if I stayed without paying, they would take my blood and one of my children. In my country, killing is ordinary; it is as easy as to kill an animal with your shoe. Do you think they would have pitied me? They warn you, and then they do it, they don't play, and so they came for me. Last year in September, they shot me three times in the head, you can see the scars. Since then my face is paralyzed, I cannot speak well, I cannot eat. I was in a coma for 2 months. Now I cannot move fingers on this hand. But what hurts most is that I cannot live in my own country, is to be afraid every day that they would kill me or do something to my wife or my children. It hurts to have to live like a criminal, fleeing all the time."

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A woman and her granddaughter attend an MSF support session for women at the Tenosique migrant shelter in Mexico in 2017.

4

MSF PROJECT DATA 2015-2016: EXPOSURE TO VIOLENCE AND ITS IMPACT ON HEALTH

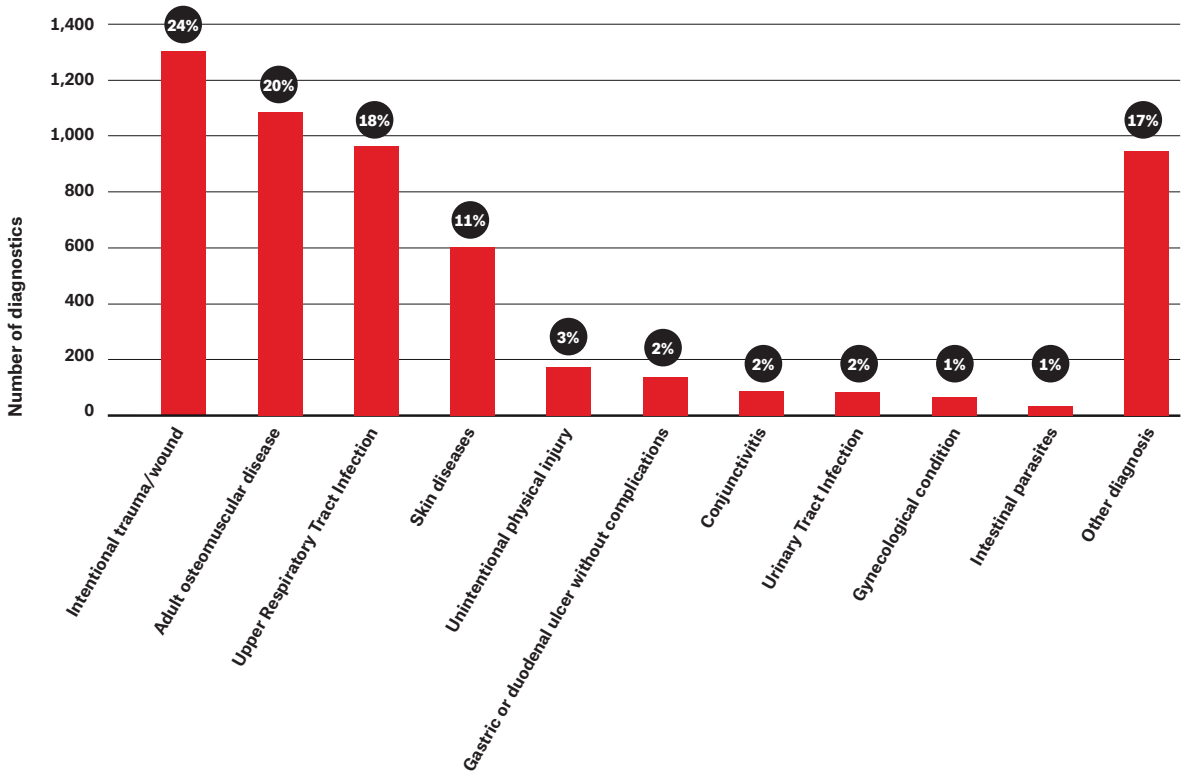
Through MSF project data of more than 4,700 medical consultations in 2015 and 2016, a picture of an often harrowing and traumatic journey emerges. Crossing Mexico from the NTCA is a constant challenge for survival which can take a severe toll both physically and psychologically. Migrants and refugees walk for hours in high temperatures, on unsafe and insecure routes to evade authorities. They risk falling from the cargo trains that transport them along the route, or ride on overcrowded trucks without food, water or ventilation for hours. In addition to these challenges, migrants and refugees do not have access to medical care or safe places to eat and sleep, and must constantly be on guard against the threat of violence or sexual assault by criminal groups or deportation and detention by authorities.

The symptoms managed in MSF clinics inside shelters or in mobile clinics close to railways are directly related to the conditions associated with the route itself: exposure to violence, days spent outdoors in harsh conditions on the train or in the forest, and long walking hours that cause dehydration, foot lesions, muscle pain, and other morbidities. Contaminated and/or scarce food found on the route result in gastro-intestinal problems or diarrheal disorders and parasites.

Main Morbidities Treated by MSF

From 2015 through December 2016, **one fourth of MSF medical consultations in the migrants/ refugee program were related to physical injuries and intentional trauma**. A morbidity analysis based on MSF consultations during 2015 and 2016 showed that most common health issues affecting migrants and refugees were intentional traumas and wounds (24 percent). Other common health issues included acute osteomuscular syndromes affecting 20 percent of respondents, upper respiratory tract infections (18 percent), skin diseases (11 percent) and unintentional physical traumas (3 percent).

10 main morbidities in MSF Clinics in 2015 and 2016



Some patients treated by our teams reported extreme pain and unbearable suffering due to physical and emotional violence inflicted as an extortion strategy. Patients tell of being tortured and abused in order to force migrants and refugees to reveal contact information for family members in order to demand a ransom payment, or as punishment for delay in ransom payment. Others report that violence is used to psychologically terrorize other migrants and refugees to ensure that they not report crimes to authorities or try to escape.

The mental health and physical consequences of this cruel, inhumane and degrading treatment are devastating. Their functionality is severely reduced, making survivors of violence unable to continue their journey or take care of themselves. Secondary and tertiary levels of care (including surgery, psychiatry, and neurology) are often required for patients to make a more complete recovery, and these are not always available in the areas where this violence took place or where albergues are located.

M. fled domestic and gang violence in Honduras. In early 2017, she and her nine-year-old son were living in a shelter in Mexico, where she is filing for asylum.

Sexual Violence

During 2015 and 2016, a total of 166 sexual violence survivors were treated by MSF. Among them, 60 percent were raped and 40 percent were exposed to sexual assault and other types of humiliation, including forced nudity.

Honduran—Female—35 years old— "I am from Honduras, it's the fourth time that I try to cross through Mexico, but this had never happened before. This time, I came with my neighbor, and we were both seized by a group of delinquents. A federal police officer was their accomplice, and each one of us was handed over to gang members. I was raped. They put a knife on my neck, so I did not resist. I am ashamed to say this, but I think it would have been better if they had killed me."

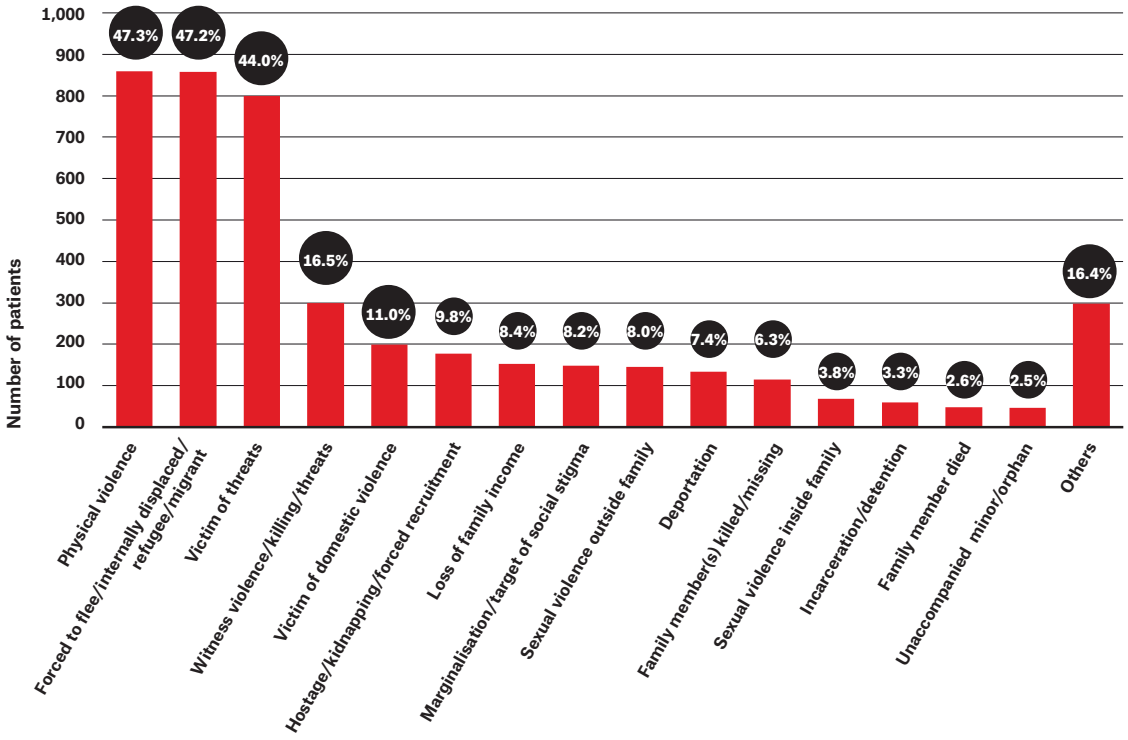
Honduran—Male—19 years old—"Today, in the early morning, hooded men assaulted us. I was traveling with my wife and my son. They beat us, and they hit me with a machete--look at my arm [there are bruises and wounds]. They took my wife to the mountain, took her away. They threatened me and told me not to turn around. They wanted us to give them information about our family to ask for ransom. But I told them we had nothing. I thought they were going to kill us. She says they did not do anything to her, but I know they abused her".

Mental Health

An important facet of MSF's work in Mexico is to provide support for the mental health needs of migrants and refugees. The data collected by the mental health teams of the project during 2015 and 2016 reveals a worrying situation. Out of 1,817 refugees and migrants treated by MSF for mental health issues over the last two years, 92.2 percent have lived through a violent event in their country of origin or during the route that threatens their mental health and well-being. A large number of MSF patients presented more than one risk factor directly linked to their exposure to violence as a precipitating factor for their mental health condition.

The graphic below portrays the fifteen risk factors most commonly identified by our teams. A detailed list of risk factors in 2015-2016 may be found in Annex 1 of the report.

Risk factors identified in mental health consultations during 2015 and 2016



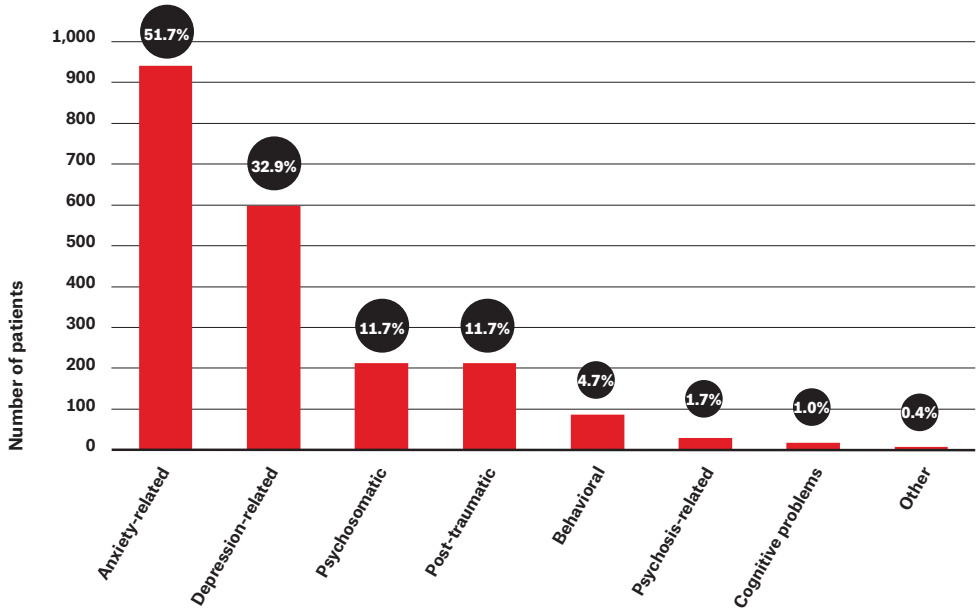
Of the 1,817 refugees and migrants seen by MSF in 2015-2016, 47.3 percent of patients survived "physical violence" as a precipitating event for the mental health consultation. Injuries included gunshot wounds, blunt force trauma from kicks and punches, mutilation of body parts during kidnappings, wounds from machete attacks, breaking of bones by blows from baseball bats, and wounds from being thrown out of a running train. In most cases, incidents registered under "physical violence" by MSF occurred along the migration route in Mexico.

The "precipitating event" most frequently mentioned during consultations was "Forced to flee/internally displaced/refugee/migrant" —registered by 47.2 percent of patients. This covers the period before people made the decision to flee.

Being a "victim of threats" (44.0 percent) and having "witnessed violence or crime against others" (16.5 percent) are the third and fourth most common risk factors. Witnesses to violence included patients forced to watch while others were tortured, mutilated, and/or killed —often in scenarios where they were deprived of their liberty, such as during a kidnapping for extortion.

The anguish and stress that migrants and refugees face both in their home countries and along the migration route make this population particularly vulnerable to anxiety, depression and post-traumatic stress disorder. The following graphic shows the main categories of symptoms presented by the 1,817 MSF patients seen in mental health consultations during 2015 and 2016.

Symptoms identified in mental health consultations during 2015 and 2016



More than half of patients who receive a mental health consultation (51.7 percent) report anxiety-related symptoms. Anxiety is described as an immediate, biological, physiological and psychological alarm reaction when faced with an assault or a threat. Migrants and refugees are under constant threat and risk along the migration route, and a heightened state of alert is an appropriate adaptive response to survive in a legitimately dangerous context. Problems arise when a person's reaction is exaggerated or out of proportion with the risk, making the individual incapable of adapting to new situations.

Nearly one-third (32.9 percent) of the migrants and refugees counseled by MSF in Mexico have symptoms associated with depression. Migration involves situations of psychological and social loss that trigger mourning processes, which begin at the moment of departure, are experienced on the route and continue at the place of destination. These elements represent significant psychological distress and suffering with an impact on a person's life.

In 11.7 percent of the cases, mental health teams are seeing manifestations of post-traumatic stress disorder. This rate documented in MSF programs in 2015 and 2016 are well above rates in the general population, which range from 0.3 percent to 6.1 percent. The PTSD rate among migrants and refugees that MSF is documenting in Mexico is much closer to the rates in populations affected by direct conflict (15.4 percent)[10, 11]. PTSD is a serious form of mental illness, which is usually caused by devastating life events and generally associated with impaired daily functioning in those affected. Individuals suffering from PTSD face greater risks to survival along the migration route, due to the multiple challenges associated with the journey.

Migrant and refugee women deserve special attention when it comes to mental health as data clearly show a particular vulnerability in this population. During migration, 59 percent of the women involved in the MSF study reported symptoms of depression, and 48.3 percent reported symptoms of anxiety. Other vulnerable groups—such as unaccompanied minors and LGBTQ people—are often specifically targeted by criminal groups and need greater support and protection.

The complete and detailed list of reaction symptoms presented by migrants and refugees during the mental health consultation can be found in Annex 2. Although these symptoms might be explained by the violence and the conditions of the route and do not always lead to depression or anxiety, they show how difficult the conditions for the patients can be and the importance of adapted case-detection strategies for mental health. If not addressed properly, these mental health issues can be a significant barrier during migration, interfering with daily functioning and putting their lives at risk.

MSF psychologist tells the story of a 43-year-old Honduran woman—This woman decided to leave Arriaga [Chiapas] out of fear, and walked with a group of Hondurans who would make their way along the train tracks to the town of Chahuites. However, when they slept in the mountains, they attempted to sexually abuse her. She managed to escape and arrived at the Chahuites shelter, where the patient again met her alleged assailants. She decided to flee that night to the city of Ixtepec. She was attended at the Ixtepec shelter by an MSF mental health team. She arrived with a high level of anxiety and presented post-traumatic symptoms such as flashbacks, auditory hallucinations, and sleep problems.

10_ Kessler, R.C. & Üstün, T. B. (eds). (2008). The WHO World Mental Health Surveys: global perspectives on the epidemiology of mental disorders. New York: Cambridge University Press, 1-580.

11_ Steel, Z., Chey, T., Silove, D., Marnane, C., Bryant, R.A., van Ommeren, M. (2009) Association of torture and other potentially traumatic events with mental health outcomes among populations exposed to mass conflict and displacement. Journal of the American Medical Association, 302(5), 537-549.

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A patient receives a medical consultation inside an MSF mobile clinic in Mexico State in 2014.

5

BARRIERS TO HEALTHCARE

Through its constitution and subsequent ratifications of international human rights treaties, Mexico has several legal instruments in place that protect the human rights of its citizens and all people within its borders, including provisions for adequate access to health care. Recently, Mexico has instituted laws that protect the passage of migrants through its country, ensuring that their entry into Mexico is not deemed as a criminal offense, and guaranteeing certain protections, with special attention to minorities, including women, children, indigenous people and the elderly.[12] In December 2014, the federal government instituted the *Seguro Popular* plan, entitling undocumented immigrants to receive health care coverage for a period of three months, without discrimination.[13]

Despite these legal protections, the recognition of basic rights, and programs that are supposed to guarantee access to health care, migrants and refugees have restricted access to health services. Across health structures in the country, there is a lack of clear, standardized regulations regarding the provision of health services to migrants and refugees seeking care. Additionally, there is a lack of training or understanding by the staff at these health facilities regarding the rights of migrants and refugees to receive care and, according to testimonies delivered to MSF, there is persistent discrimination of migrants

12_ Ley de Migración – Op.Cit. – Article 2 - http://cis.org/sites/cis.org/files/Ley-de-Migracion.pdf and Refugee Law.

13_ Presidential Decree December 2014 – National Commission of Social Health Protection Mexico DF 28.12.2014 http://www.gob.mx/salud/prensa/otorgan-seguro-popular-a-migrantes-7519

and refugees who seek out care. The right to be informed of the duties and rights as well as the criteria for admission, request of asylum is clearly stated in the Mexican Law,[14] however in practice, there is a lack of information for migrants and asylum seekers regarding their rights and the means available to them regarding health services at public health facilities. According to some testimonies of MSF patients, those refugees and migrants who do manage to access a health facility are often confronted with additional obstacles —including delays in granting appointments, even for absolute emergencies, resistance to providing care free of charge, or the filing of a complaint before judicial authorities as a prerequisite to the provision of care. There is also a risk at the health facilities that they will be handed over to migration authorities directly. In addition, the three-month limit on access to the Seguro Popular plan might not be enough to cover the current waiting period to get asylum status.

As described above in the findings of the MSF VAT, 59 percent of migrants affected by violence did not seek any assistance during their transit through Mexico despite self-identified needs, mainly due to concerns for their security, fear of retaliation, or deportation.

In providing free health care to migrants along the route north from the border with Guatemala, MSF has itself encountered barriers to providing urgent and effective care to its patients. In Tenosique, for example, MSF teams have encountered several administrative or organizational obstacles when they needed to urgently refer victims of sexual violence for Post-Exposure Prophylaxis (PEP). The lack of knowledge regarding protocols for the treatment of sexual violence by Ministry of Health providers, and the lack of availability of treatment or PEP kits, continues to represent a significant obstacle preventing appropriate treatment of survivors of sexual violence. In areas where sexual violence against migrants is widespread, such as Tenosique, or the corridor between the Guatemalan border and Arriaga, there is limited understanding of the population needs in the area. Furthermore, the needs of marginalized minorities, including migrants and refugees, who are at higher risk of violence and sexual abuse, are ignored.

Accessing mental health support and treatment is even more challenging for refugees and migrants. The scarcity of psychologists led MSF to systematically provide mental health consultations in all the albergues where it works throughout the country.

Survivors of sexual violence (SSV) who can reach medical facilities (including MSF's) to receive comprehensive care are just a tiny part of the total affected population. There are a considerable number of reasons that help explain why many survivors do not access medical care, including stigma and fear of being judged by hospital professionals; lack of knowledge about their medical needs and rights; fear that they will increase their risk of being abandoned or further abused; and a normalization of sexual violence as part of what's expected from men and women in order to reach their destination, in exchange for "payment" or for protection and guidance.

MSF has tried to overcome these barriers using a strategy that combines direct health care provision in migrant and refugee hostels and mobile clinics, sensitization and education of migrant and refugee populations, and additional training and staffing. Over the past two years, MSF has designed and implemented a training program to raise awareness and to provide training to health care workers, volunteers in the migrant hostels and key civil society actors on the right of migrants and refugees to health care, care protocols, mental health first aid and sexual violence case detection and management.

Honduras—Male— "I fell off the train and hit my knee so hard, but, at that moment, I did not [think I] hurt anything. They [doctors] told me it was a sprain. I fell on some very large stones. The backpack I wore was completely destroyed, and that was what saved my back. If I did not have it, I would have killed myself when I fell. I screamed as hard as I could to tell my cousin: 'Run, run, do not stop, faster. They are coming for us.' I could swear I saw them behind us. I was very scared. I felt the most intense fear of my life. Then, we arrived at a street where there was light, and I realized that my cousin was bathed in blood. I stopped a taxi, and asked the driver to take us to the hospital. He said that he could take us, but we would have to pay. I did not think twice. He left us at the hospital door. I asked for help, but no one helped me to get my cousin to the hospital. Nobody wanted to attend to my cousin. I asked for help, and I told everyone who saw that he was dying.

A doctor told us, 'Look, I cannot do anything until I call immigration.' I told him it does not matter if they deport us, if they want. All we want is for them to take care of us, and we do not want to be here anymore. They just sewed him up. We spent a few hours there. Two people came from the ministry. When I tried to explain what happened, one told me: 'Sure, they are thieves and that's why it happened to you. Do not tell me lies. I'm going to speak to immigration and they are going to take you.' A person who was in the adjoining bed got us the address of the migrants shelter and gave us money to get there.

14_ Ley de Migración – Op.Cit. – Article 13 - http://cis.org/sites/cis.org/files/Ley-de-Migracion.pdf

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A group of transgender women pose for a picture in the Tenosique migrant shelter in 2017. LGBTQ people are often at the highest risk of harassment and abuse both in their countries of origin and on their routes as migrants. Some shelters provide separate living spaces for greater security and support.

6

LIMITED ACCESS TO PROTECTION IN MEXICO

Legal framework applicable to the protection of refugees in Mexico

The Americas region already has relatively robust normative legal frameworks to protect refugees: the countries of Central and North America either signed the 1951 convention on refugees or its 1967 protocol and all have asylum systems in place. Furthermore, Mexico has been at the forefront of international efforts to protect refugees: its diplomats promoted the 1984 Cartagena Declaration on Refugees, which expands the definition to those fleeing "generalized violence".

In 2010, UNHCR established a guideline[15] for the consideration of asylum and refugee status for victims of gang violence, inviting concerned countries to apply broader criteria to the refugee definition of the 1951 Convention. In relation to these specific patterns of violence, the UNHCR concluded that direct or indirect threats (harm done to family members) and consequences (forced displacement, forced recruitment, forced "marriage" for women and girls, etc.) constituted "well-founded grounds for fear of persecution" and bases for the recognition of the refugee status or the application of the non-refoulement principle, the practice of not forcing refugees or asylum seekers to be returned to a country where their life is at risk or subject to persecution. Mexico integrated those recommendations and the right to protection stated in Article 11 of Mexico's constitution in its 2011 Refugee Law[16]. This law

15_ UNHCR Guidance Note on Refugee Claims Related to Victims of Organized Gangs – March 2010. Available at:http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=4bb21fa02&skip=0&query=organized%20gangs

16_ Available in spanish at http://www.diputados.gob.mx/LeyesBiblio/pdf/LRPCAP_301014.pdf

considers broad inclusion criteria for refugees —stating, alongside the internationally recognized definition from the 1951 Convention, the eligibility of persons fleeing situations of generalized violence, internal conflict, massive violations of human rights or other circumstances severely impacting public order.

After Brazil Declaration of December 2014 and in line with its 2010 recommendations, the UNHCR established specific guidelines for the access to international protection mechanisms for asylum seekers from El Salvador and Honduras.

Nevertheless, despite the relatively adequate legal framework and the goodwill expressed in regional and international forums, the reality at the field level is extremely worrying: seeking asylum, getting refugee status, or even securing other forms of international protection, such as complementary measures in Mexico and the United States, remains almost impossible for people fleeing violence in the NTCA.

Detentions and deportations from Mexico

The number of undocumented migrants from the NTCA detained[17] in Mexico has been growing exponentially for the last five years, rising from 61,334 in 2011 to 152,231 in 2016. Migrants from NTCA account for 80.7 percent of the total population apprehended in Mexico during 2016. The number of minors apprehended is extremely worrying as it nearly multiplied by 10 in the last five years, from 4,129 in 2011 to 40,542 in 2016[18]. Of children under 11 years old, 12.7 percent were registered as travelling through Mexico as unaccompanied minors (without an adult relative or care taker).

Despite the exposure to violence and the deadly risks these populations face in their countries of origin, the non-refoulement principle is systematically violated in Mexico. In 2016, 152,231 migrants and refugees from the NTCA were detained/presented to migration authorities in Mexico and 141,990 were deported[19].The sometimes swift repatriations (less than 36 hours) do not seem to allow sufficient time for the adequate assessment of individual needs for protection or the determination of a person's best interest, as required by law.

Refugee and asylum recognition in Mexico

In 2016, Mexican authorities processed 8,781 requests for asylum from the NTCA population[20]. Out of the total asylum requests, less than 50 precent were granted. Despite the fact that Mexico appears to be consolidating its position as a destination country for asylum seekers from the NTCA, and that the recognition rate improved from last year's figures, people fleeing violence in the region still have limited access to protection mechanisms. Many asylum seekers have to abandon the process due to the conditions they face during the lengthy waiting period in detention centers.

Protection for refugee and migrant victims of violence while crossing Mexican territory

Foreign undocumented victims or witnesses of crime in Mexico are entitled by law to regularization on humanitarian grounds and to get assistance and access to justice[21]. In 2015, a total of 1,243 humanitarian visas were granted by Mexico for victims or witnesses of crime from the NTCA[22]. These numbers might seem implausible, however the vast majority of patients (68.3 percent) in MSF's small cohort of migrants and refugees report having been victims of violence and crime.

Lack of access to the asylum and humanitarian visa processes, lack of coordination between different governmental agencies, fear of retaliation in case of official denunciation to a prosecutor, expedited deportation procedures that do not consider individual exposure to violence: These are just some of the reasons for the gap between rights and reality.

Failure to provide adequate protection mechanisms has direct consequences on the level of violence to which refugees and migrants are exposed. The lack of safe and legal pathways effectively keeps refugees and migrants trapped in areas controlled by criminal organizations.

17_ SEGOB. Mexico. Boletín Estadístico Mensual 2016. Eventos de extranjeros presentados ante la autoridad migratoria, según continente y país de nacionalidad, 2016. Accessed on 06/09/2017. http://www.politicamigratoria.gob.mx/work/models/SEGOB/CEM/PDF/Estadisticas/Boletines_Estadisticos/2016/Boletin_2016.pdf

18_ Ibíd.

19_ Ibíd.

20_ Source: UNHCR MEXICO FACTSHEET. February 2017.

21_ Ley General de Migración – Article 52 Section V-a. See also Article 4 for a definition of the "victims" covered by the law.

22_ Source: Boletín Mensual de Estadísticas Migratorias 2015. Secretaría de Gobernación. Gobierno de México. Accessed on 01/02/2017.

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At Tenosique migrant shelter in 2017, an MSF psychologist checks on a patient who became pregnant as a result of rape in Honduras. She fled her country out of fear that her attacker would find out about the pregnancy.

7

LIMITED ACCESS TO PROTECTION IN THE UNITED STATES

Legal framework and mechanisms for the recognition of refugees and asylum seekers in the United States

The US Immigration and Nationality Act (INA)[23], the main body of immigration law, does not embrace as broad a criteria for eligibility as the Mexican legal system. The definitions of asylum seeker and refugee reflect the one stated in the 1951 Convention, and, on paper, the law does not take into consideration contextual changes in the NTCA, recommendations formulated through the UNHCR or regional mechanisms such as the Inter American Convention on Torture or the UN Convention against Transnational Organized Crime.

Under the existing procedure, it is extremely difficult for those fleeing violence in the NTCA to obtain asylum or refugee status in the United States. Success depends on many factors, including good

23_ Available at: https://www.uscis.gov/ilink/docView/SLB/HTML/SLB/act.html. Section 101 (a)(42) and Acts 207, 208 and 209 of specific interest for the question of asylum and refuge.

legal representation, something that many asylum and refugee applications simply do not have. NTCA refugees may not be granted recognition on the grounds that they are not fleeing a country at war. Those who are not able to demonstrate physical consequences of violence —for example because they cannot provide forensic or legal documentation to prove specifics of their case, or were not "rescued" by authorities— will face insurmountable obstacles on the road to refuge/protection. According to UNHCR, by the end of 2015, 98,923 individuals from the NTCA had submitted requests for refugee or asylum status in the US[24]. Nevertheless, the number of asylum grants to individuals from the NTCA has been comparatively low, with just 9,401 granted asylum status since FY 2011. Out of the 26,124 individuals granted asylum status in the United States during FY 2015, 21.7 percent came from the NTCA: 2,173 were from El Salvador, 2,082 were from Guatemala, and 1,416 were from Honduras[25].

During FY 2015, out of the 69,920 arrivals to the United States with refugee status, not one was from an NTCA country. The United States does not have an effective system in place to facilitate refugee recognition of individuals from NTCA when they are in their country of origin or during the transit process in Mexico.

The Central American Minors Refugee/Parole Program (CAM[26]) was created in 2014 to reduce the exposure to transnational crime and trafficking, and more generally to the dangers and violence encountered by minors of age while trying to reach the US alone. The program, currently under threat of being dissolved under current US administration, has specific quotas and is reachable through US Embassies in Guatemala, El Salvador and Honduras. The program may also be accessed through a specific request from a child's family in the United States, provided that the eligible minor can prove that she or he is in the process of reuniting with close relatives legally residing in the United States. The program does not ensure adequate protection of these minors pending the analysis of their request (according to the US Department of State, this process can take up to 18 to 24 months). It is therefore not adequate for safeguarding the lives of minors at risk. Individuals who do not have direct family members legally residing in the United States have little option but to try to reach US territory by any means. The CAM program is not accessible through a third country like Mexico, where the US embassy does not have a dedicated office or department. As a result, thousands of unaccompanied minors have no other choice but to continue their journey alone or through organized crime networks, hoping to reach US soil.

24_ Call to Action: Protection Needs in the Northern Triangle of Central America. UNHCR. Discussion Paper A Proposal for a Strategic Regional Response.

25_Source: MSF calculations based on information from US Homeland Security. Yearbook of Immigration Statistics 2015.

26_ https://www.uscis.gov/CAM

Border control, detention, and deportation from the United States to the NTCA

US Customs and Border Protection (CBP) **apprehended** 337,117 people nationwide in FY 2015[27], compared to 486,651 in FY 2014, a 31 percent decrease. Of those, 39,970 were unaccompanied children[28]. From the total apprehended, 134,572 were from the NTCA—43,564 of whom were from El Salvador, 57,160 from Guatemala, and 33,848 from Honduras. Among other factors, the decrease in 2015 could be partly due to the shift of border control from US territory to Mexican territory under the Plan Frontera Sur joint effort. Apprehension of people from the NTCA is declining in the United States in the same proportion as it is climbing in Mexico.

In FY 2015, US Immigration and Customs Enforcement **removed/deported**[29] 21,920 people from El Salvador, 33,249 from Guatemala, and 20,309 from Honduras.

Many returnees who fled violence fear returning to their neighborhood. Upon return, women are often targeted and experience direct threats from gang members, often the same individuals who drove the families to flee. These threats include pressure to join criminal groups, pay money or "rent" to them, or sell drugs. Most of the women interviewed for this report revealed that upon return they were forced to live in hiding as a way to protect themselves from violent groups[30].

According UNHCR, some returnees remain identifiable by gang members near the reception centers and elsewhere, and some returnees have been killed by gangs shortly after return[31].

27_ Fiscal Year 2015 CBP Border Security Report December 22, 2015. https://www.dhs.gov/sites/default/files/publications/CBP%20FY15%20Border%20Security%20Report_12-21_0.pdf

28_ U.S. Custom and border protection. Official website of the Department of Homeland Security. https://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2015

29_ Source: ICE Enforcement and Removal Operations Report. Fiscal Year 2015. U.S. Immigration and Customs Enforcement. https://www.ice.gov/sites/default/files/documents/Report/2016/fy2015removalStats.pdf

30_ American Immigration Council, DETAINED, DECEIVED, AND DEPORTED. Experiences of Recently Deported Central American Families.

31_ Call to Action: Protection Needs in the Northern Triangle of Central America. UNHCR. Discussion Paper A Proposal for a Strategic Regional Response.

Honduran—Male—24 years old—

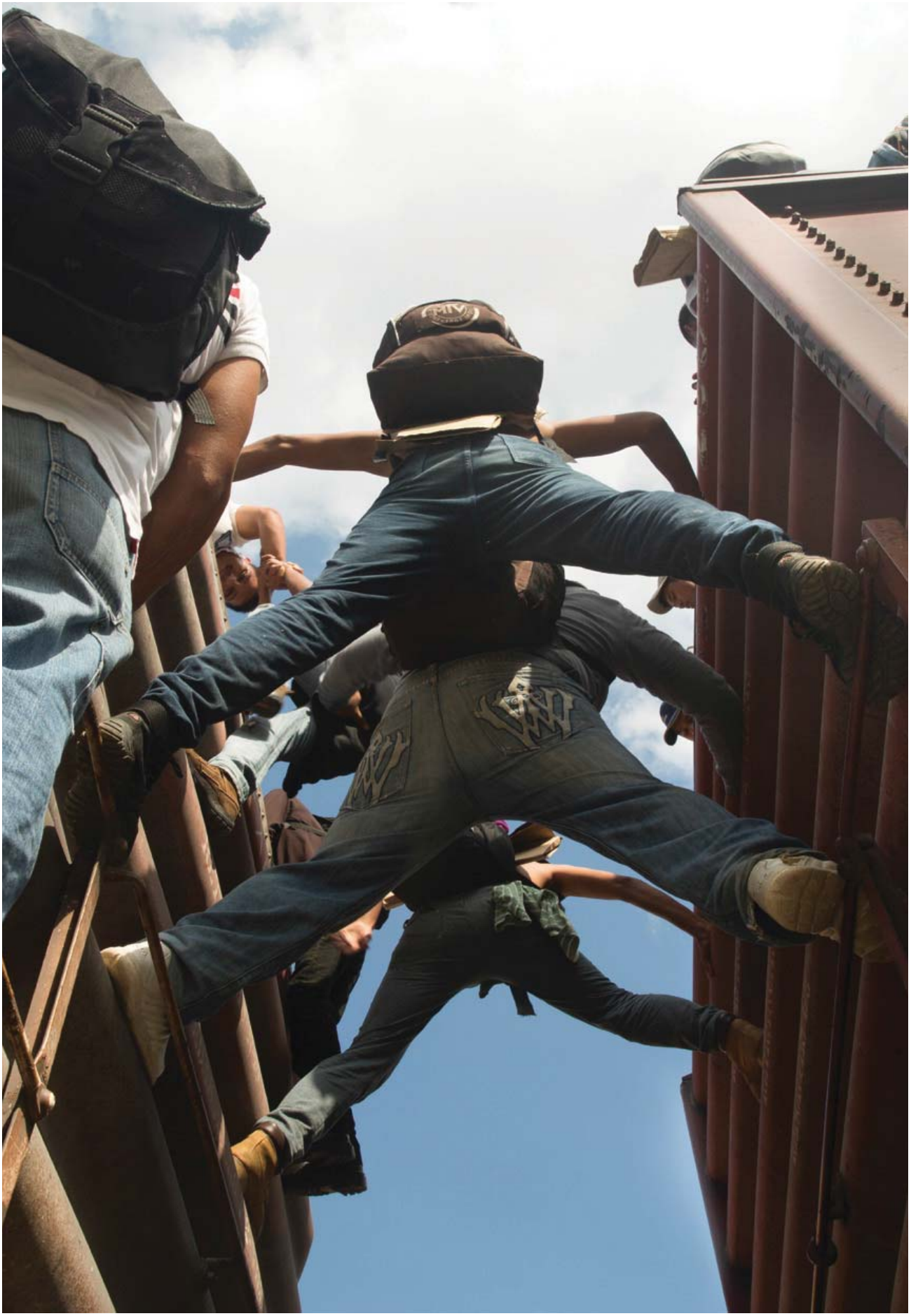
"I decided to leave my country due to threats of death and persecution by criminal groups. I did not know what to do because my family does not support me because of my sexual preference. I made the decision to leave my country because I was afraid and I did not know where to go. We arrived here at Tenosique, where they stopped us. They asked me for my documents and told me that if I did not have papers, I would be deported.

I started to remember [the past] and said that I did not want to go back to Honduras. I started to cry. I felt the world crumbling down over me. Then we arrived at the station, and they interviewed me. I discussed my case with a migration officer and started talking about the shelter, but he told me that I had to be in a migration station for three to four months and asked if I could manage this. This is nothing compared to everything I have lived through in Honduras. He told me to think about it, and I told him that I had nothing to think about--that I want to ask for refuge even if I am at the station for three months. I spent a month in the migration station.

I arrived here [Albergue la 72] and spent two months. The refugee [application] process lasted three months, and then they gave me the answer denying me refuge. So I was very sad, and I did not know what to do. I said I wanted to appeal, because I do not want to return to Honduras."

Salvadoran—Female—36 years old—

"I requested asylum through the US embassy in San Salvador in 2011. My husband was a police officer, and [also] worked with the Mara [criminal gang]. I was threatened several times by the other gangs, because they wanted to retaliate against my husband for being a spy. I survived this, but then they started to threaten my children. I thought I should leave. My sister lives in the USA. I thought I could go there and join her. But I never received an answer to my request. I had no other choice but to stay and try to survive. My husband was killed in 2015. Then they came, they raped my kid and chased me from my house. They said I should leave, or they would take my kids. I had no other choice. The little money I had, I gave to the pollero [smuggler] to help us. I heard there were stories of rape and kidnapping along the road, but I thought: God will help me through it."



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Central American migrants travel by train in Mexico in 2014. Many fall victim to violence along the journey.

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A Central American migrant in Tenosique shows the identification card issued by Mexico's National Institute of Migration, which enables him to stay in Mexico with legal protections.

8

CONCLUSION: ADDRESSING THE GAPS

As a medical humanitarian organization providing care in Mexico, in particular to migrants and refugees, since 2012, MSF staff has directly witnessed the medical and humanitarian consequences of the government's failure to implement existing policies meant to protect people fleeing violence and persecution in El Salvador, Guatemala and Honduras, as described in the report.

As of 2016, MSF teams have provided 33,593 consultations through direct assistance to patients from NTCA with physical and mental traumas. People tell our staff that they are fleeing violence, conflict and extreme hardship. Instead of finding assistance and protection, they are confronted with death, different forms of violence, arbitrary detention and deportation. The dangers are exacerbated by the denial of or insufficient medical assistance, and the lack of adequate shelter and protection.

Furthermore, the findings of this report – the extreme levels of violence experienced by refugees and migrants in their countries of origin and in transit through Mexico -- comes against a backdrop of increasing efforts in Mexico and the United States to detain and deport refugees and migrants with little regard for their need for protection.

Medical data, patient surveys, and terrifying testimonies illustrate that NTCA countries are still plagued by extreme levels of crime and violence not dissimilar from the conditions found in the war zones. Many parts of the region are extremely dangerous, especially for vulnerable women, children, young adults, and members of the LGBTQ community. As stated by MSF patients in the report, violence was mentioned as a key factor for 50.3 percent of Central Americans leaving their countries. Those being denied refugee or asylum status or regularization under humanitarian circumstances are left in limbo. Furthermore, being deported can be a death sentence as migrants and refugees are sent back to the very same violence they are fleeing from. The principle of non-refoulement must be respected always, and in particular for people fleeing violence in the NTCA.

A stunning 68.3 percent of migrants and refugees surveyed by MSF reported having been victims of violence on the transit route to the United States.

Mexican authorities should respect and guarantee —in practice and not only in rhetoric— the effective protection and assistance to this population according to existing legal standards and policies.

There is a longstanding need to strengthen the Refugee Status Determination System (RSD). It must ensure that individuals in need of international protection and assistance are recognized as such and are given the support —including comprehensive health care, to which they are all entitled. Access to fair and effective RSD procedures must be granted to all asylum-seekers either in Mexico, the US, Canada and the region.

Governments across the region—mainly El Salvador, Guatemala, Honduras, Mexico, Canada and the United States—should cooperate to ensure that there are better alternatives to detention, and should adhere to the principle of non-refoulement. They should increase their formal resettlement and family reunification quotas, so that people from NTCA in need of protection and asylum can stop risking their lives and health.

Attempts to stem migration by fortifying national borders and increasing detention and deportation, as we have seen in Mexico and the United States, do not curb smuggling and trafficking operations. Instead, these efforts increase levels of violence, extortion and price of trafficking. As described in the report, these strategies have devastating consequences on the lives and health of people on the move.

The impact of forced migration on the physical and mental well-being of people on the move—in particular refugees and migrants, and, among them, the most vulnerable categories represented by women, minors, and LGBTQ individuals—requires immediate action. The response should ensure strict respect of the law and the adequate allocation of resources to provide access to health care and humanitarian assistance, regardless of the administrative status of the patient (as enshrined by Mexican law).

Addressing gaps in mental health care, emergency care for wounded, and strengthening medical and psychological care for victims of sexual violence by ensuring the implementation of adequate protocols, including provision of and access to the PEP kit, is fundamental to treating refugee patients with dignity and humanity.

As witnessed by MSF teams in the field, the plight of an estimated 500,000 people on the move from the NTCA described in this report represents a failure of the governments in charge of providing assitance and protection. Current migration and refugee policies are not meeting the needs and upholding the rights of assistance and international protection of those seeking safety outside their countries of origin in the NTCA. This unrecognized humanitarian crisis is a regional issue that needs immediate attention and coordinated action, involving countries of origin, transit, and destination.

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An MSF psychologist meets with a young patient in Mexico in 2016.

ANNEX 1
RISK FACTORS

Precipitating events identified in mental health consultations during 2015 and 2016

Precipitating Events and percentage of MSF patients affected	2015	2016	TOTAL	%
Violence as precipitating event: Other physical violence	517	342	859	47.2%
Violence as precipitating event: Forced to flee/IDP/refugee/migration	552	305	857	47.1%
Violence as precipitating event: Received threats	516	284	800	44.0%
Violence as precipitating event: Witnessed violence/killing/threats	202	97	299	16.4%
Violence as precipitating event: Domestic violence	96	103	199	10.9%
Violence as precipitating event: Hostage/Kidnapping/Forced recruitment	97	81	178	9.7%
Separation/Loss as precipitating event: Loss of family income	108	45	153	8.4%
Violence as precipitating event: Marginalization/target of social stigma/discrimination	93	56	149	8.2%
Violence as precipitating event: Sexual violence outside family	82	64	146	8.0%
Violence as precipitating event: Deportation	94	40	134	7.3%
Separation/Loss as precipitating event: Family member(s) killed / missing	75	40	115	6.3%
Violence as precipitating event: Sexual violence inside family	28	41	69	3.7%
Violence as precipitating event: Incarceration / Detention	35	25	60	3.3%
Separation/Loss as precipitating event: Family member died	28	20	48	2.6%
Separation/Loss as precipitating event: Unaccompanied minor/orphan	28	19	47	2.5%
Medical condition as precipitating event: Severe medical condition	31	14	45	2.5%
Medical condition as precipitating event: Highly stigmatized diseases	32	13	45	2.5%
Disaster/Catastrophes as precipitating event: Accidents	31	14	44	2.4%
Medical condition as precipitating event: History of psychological or psychiatric disorder	19	10	29	1.6%
Violence as precipitating event: Combat experience	17	9	26	1.4%
Violence as precipitating event: Victim of human trafficking/smuggling	8	16	24	1.3%
Violence as precipitating event: Torture	3	14	17	0.9%
Separation/Loss as precipitating event: Property destroyed or lost	11	5	16	0.9%
Medical condition as precipitating event: Unwanted pregnancy	9	6	15	0.8%
Other event/risk	13	0	13	0.7%
Separation/Loss as precipitating event: Family member(s) arrested/detained	0	12	12	0.7%
Separation/Loss as precipitating event: Caretaker neglected	3	6	9	0.5%
Disaster/Catastrophes as precipitating event: Natural disaster	0	2	2	0.1%
Violence as precipitating event: home incursion	0	1	1	0.1%

ANNEX 2
REACTION SYMPTOMS

Reaction symptoms identified in mental health consultations during 2015 and 2016

Reaction symptoms and percentage of MSF patients affected	2015	2016	TOTAL	%
Anxiety-related reaction: Anxiety / stress	732	295	1027	56.50%
Anxiety-related reaction: Constant worry	666	312	978	53.82%
Depression-related reaction: Sad mood	586	294	880	48.43%
Anxiety-related reaction: Excessive fear/Phobia/Feeling threatened	209	118	327	17.99%
Psychosomatic reaction: Sleeping problems	245	78	323	17.77%
Psychosomatic reaction: General body pain and other psychosomatic complaints	206	75	281	15.46%
Depression-related reaction: Irritability/anger	180	74	254	13.97%
Depression-related reaction: Guilt/Self-blame/Feeling worthless/Low Self-esteem	105	60	165	9.08%
Depression-related reaction: Hopeless	89	68	157	8.64%
Post-traumatic reaction: Intrusive feelings, thoughts	99	56	155	8.53%
Post-traumatic reaction: Hyper vigilance/Exaggerated startle response	87	40	127	6.98%
Post-traumatic reaction: Flashbacks	68	43	111	6.10%
Depression-related reaction: Loss of interest/anhedonia	47	41	88	4.84%
Behavioral problems reaction: Alcohol/substance abuse	62	23	85	4.69%
Post-traumatic reaction: Avoidance	39	37	76	4.18%
Behavioral problems reaction: Impulsiveness	28	23	51	2.80%
Psychosomatic reaction: Eating problems	33	10	43	2.36%
Behavioral problems reaction: Aggressiveness	23	19	42	2.31%
Behavioral problems reaction: Social/inter-personal isolation	23	12	35	1.92%
Behavioral problems reaction: Reduction of family attachment / involvement	25	10	35	1.92%
Depression-related reaction: Suicidal thoughts	19	15	34	1.87%
Cognitive problems reaction	21	10	30	1.65%
Anxiety-related reaction: Compulsive or repetitive behavior	20	10	30	1.65%
Psychosis-related reaction: Disorganized thoughts/speech	20	6	26	1.43%
Psychosis-related reaction: Bizarre behavior	16	8	24	1.32%
Depression-related reaction: Suicidal intention/attempts	14	8	22	1.21%
Psychosis-related reaction: Hallucinations	15	4	19	1.04%
Psychosomatic reaction: Hypo/hyper-activity	14	3	17	0.93%
Post-traumatic reaction: Dissociation	10	5	15	0.82%
Psychosis-related reaction: Delusions	9	2	11	0.60%
Depression-related reaction: Self-harm	5	3	8	0.44%
Behavioral problems reaction: Delinquent behavior	3	5	8	0.44%
Other reaction	1	6	7	0.38%
Psychosomatic reaction: Enuresis and/or encopresis	5	2	7	0.38%
Psychosomatic reaction: Sexual problems	3	3	6	0.33%
Psychosomatic reaction: Psycho-motor changes	5	0	5	0.27%
Behavioral problems reaction: Regression in development	2	3	5	0.27%
Psychosomatic reaction: Verbal expression changes	3	0	3	0.16%

ANNEX 3
SURVEY METHODOLOGY

The victimization survey technique measures violence actually "experienced" by people and not only the violence known through police and other official reports. The survey consists of asking questions directly to people about the acts of violence they have suffered and how they felt about them. The protocol has been adapted for MSF's specific purpose, with a focus on medical/physical health and mental health consequences of violence. It includes three parts:

1) What is the violence actually experienced by people?
2) What did people do about what they experienced (focus on health)?
3) What direct or indirect impacts did violent experiences have on medical/physical health and mental health?

The cluster sampling method was used. Four clusters corresponding to the MSF attention points in the migrants' hostels were selected. Representativeness of the survey population is therefore significantly above the normal statistical level, guaranteeing a margin of error less than the 3 percent generally tolerated in this kind of study. The survey provides an accurate picture, but it is nevertheless a snapshot of the situation for these migrants and refugees at a specific moment in time. By no means are the results representative over the long term, especially given the nomadic nature of the population, the rapid changes in immigration policy, and the volatility of organized crime.

The acceptance rate was a main initial concern, given the subject of the survey (explicit violence) and the population it was applied to (migrants in irregular situations). People were actually quite eager to talk about their situation. The final acceptance rate was a satisfying 74.3 percent. 120 migrants rejected participation, 73 of whom (61 percent) were in Tenosique alone. The rejection rate in Tenosique was 49.6 percent, and fell down to 15 percent in Ixtepec, 9.8 percent in San Luis Potosí, and 22.2 percent in Huehuetoca/Bojay.

The investigators and data manager were trained and controlled during the entire process by a BRAMU survey coordinator. Each questionnaire has been checked and eventually returned to the investigator in the event of incoherence.

The study design and adapted questionnaire was submitted to OCBA medical department for feedback and approval. Approval was solicited by a Mexican ethical review board. The questionnaire was fine-tuned in collaboration with the surveyor's team and members of the project to avoid or rephrase potentially risky questions. Albergues staff and coordination members were previously informed. No smart-phones, cameras, or recording devices were allowed.

Terms of consent were presented to all participants orally (in this context of migration, anonymity was crucial for participation and accuracy, so no signatures were collected). Participants were informed that they were entitled to psychological support during and after the survey. At all survey points and during all working hours, a clinical psychologist was present with the survey teams, along with MSF social workers in two albergues. 12.6 percent of the survey participants were referred to mental health services provided by MSF staff.

A dedicated email was established for participants wanting more information on the survey and results restitution.

No security incident was reported during the survey.

ANNEX 4
LIST OF ACRONYMS

CAM: Central American Minors

COMAR: Comisión Mexicana de Ayuda a Refugiados

CPSB: Comprehensive Plan for the Southern Border (most known in Spanish as "Plan Frontera Sur")

FY 2015: Fiscal Year 2015

INGO: International Non-Governmental Organization

INM: Instituto Nacional de Migración

LGBTQ: Lesbian-Gay-Bisexual-Transgender-Queer

MSF: Médecins Sans Frontières /Doctors Without Borders

NTCA: Northern Triangle of Central America

OC: Organized Crime

PEP: Post-Exposure Prophylaxis

PTSD: Post-Traumatic Stress Disorder

RSD: Refugee Status Determination

SEGOB: Secretaría de Gobernación de México

SSV: Survivors of Sexual Violence

SV: Sexual Violence

TCO: Transnational Criminal Organizations

TPS: Temporary Protected Status

UN: United Nations

UNHCR: United Nations High Commissioner for Refugees

UNODC: United Nations Office on Drugs and Crime

USA: United States of America

VAT: Victimization Assessment Tool

WHO: World Health Organization

MEDECINS SANS FRONTIERES

Proposed Rules

Federal Register
Vol. 69, No. 45
Monday, March 8, 2004

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 208 and 212

[CIS No. 2255–03]

RIN 1615–AA91

Implementation of the Agreement Between the Government of the United States of America and the Government of Canada Regarding Asylum Claims Made in Transit and at Land Border Ports-of-Entry

AGENCY: Department of Homeland Security.

ACTION: Proposed rule.

SUMMARY: On March 1, 2003, the Immigration and Naturalization Service transferred from the Department of Justice to the Department of Homeland Security (DHS), pursuant to the Homeland Security Act of 2002 (Public Law 107–296). The responsibility for administering the asylum program was transferred to U.S. Citizenship and Immigration Services ("USCIS") within DHS. The terms of a recently signed agreement between the United States and Canada bar certain categories of aliens arriving from Canada at land border ports-of-entry and in transit from Canada from applying for protection in the United States. This proposed rule would establish USCIS asylum officers' authority to make threshold determinations concerning applicability of the Agreement in the expedited removal context.

DATES: Written comments must be submitted on or before May 7, 2004.

ADDRESSES: Please submit written comments to the Director, Regulations and Forms Services Division, Department of Homeland Security, 425 I Street, NW, Room 4034, Washington, DC 20536. To ensure proper handling please reference CIS No. 2255–03 on your correspondence. You may also submit comments electronically to USCIS at *rfs.regs@dhs.gov.* When submitting comments electronically, you must include CIS No. 2255–03 in the subject box. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Joanna Ruppel, Deputy Director, Asylum Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Ave., NW., Third Floor, Washington, DC 20536, telephone number (202) 305–2663.

SUPPLEMENTARY INFORMATION:

What Legal Authority Permits USCIS To Use a Safe Third Country Agreement as a Bar To Applying for Asylum?

Section 208(a)(1) of the Immigration and Nationality Act ("Act") permits any alien who is physically present in or who arrives at the United States to apply for asylum. However, section 208(a)(2)(A) of the Act specifically states that paragraph (1) shall not apply where, "pursuant to a bilateral or multilateral agreement, the alien may be removed to a country where the alien's life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien would have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection, unless the Attorney General [now deemed to be the Secretary of Homeland Security under the Homeland Security Act] finds that it is in the public interest for the alien to receive asylum in the United States."

On December 5th, 2002, the governments of the United States and Canada signed the Agreement Between the Government of the United States and the Government of Canada For Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries ("Safe Third Country Agreement" or "Agreement"). The Agreement will take effect when the United States has promulgated implementing regulations and Canada has completed its own domestic procedures necessary to bring the Agreement into force. This Agreement will be implemented by USCIS asylum officer determinations.

The Agreement allocates responsibility between the United States and Canada whereby one country or the other (but not both) will assume responsibility for processing the claims of certain asylum seekers who are traveling from Canada into the United States or from the United States into Canada. The Agreement provides for a threshold determination to be made concerning which country will consider the merits of an alien's protection claim, enhancing the two nations' ability to manage, in an orderly fashion, asylum claims brought by persons crossing our common border. This Safe Third Country Agreement between the United States and Canada currently constitutes the only agreement, for purposes of section 208(a)(2)(A) of the Act, that would bar an individual in or arriving at the United States from applying for asylum.

During the bilateral negotiations that have resulted in the Safe Third Country Agreement, the delegations of both countries acknowledged certain differences in their respective asylum systems. However, harmonization of asylum laws and procedures is not a prerequisite to entering into responsibility-sharing arrangements. The salient factor is whether the countries sharing responsibility for refugee protection have laws and mechanisms in place that adhere to their international obligations to protect refugees. The Executive Committee for the Office of the United Nations High Commissioner for Refugees (UNHCR) has concluded, "Overall it is UNHCR's position that, while in principle each State Party to the 1951 Convention and 1967 Protocol has a responsibility to examine refugee claims made to it, "burden-sharing" arrangements allowing for readmission and determination of status elsewhere are reasonable, provided they always ensure protection of refugees and solutions to their problems." Background Note on the Safe Country Concept and Refugee Status (EC/SCP/68), July 26, 1991. While the asylum systems in Canada and the U.S. are not identical, both country's asylum systems meet and exceed international standards and obligations under the 1951 Convention relating to the Status of Refugees (1951 Refugee Convention) and the 1967 Protocol relating to the Status of Refugees (1967 Protocol), and the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (Convention Against Torture).

What Are the Terms of the Safe Third Country Agreement Between the United States and Canada?

The Agreement permits the United States to remove to Canada certain asylum seekers attempting to enter the United States from Canada at a land border port-of-entry and aliens who are being removed from Canada in transit through the United States. Similarly, it permits Canada to return to the United States certain asylum seekers attempting to enter Canada from the United States at a land border port-of-entry and certain aliens being removed from the United States through Canada. In either case, the Agreement provides (with certain exceptions) that the alien be returned to the "country of last presence" for consideration of his or her protection claims, including asylum, withholding of removal, and protection under the Convention Against Torture, under the laws of that country.

For aliens arriving at a land border port-of-entry, the Agreement provides for a number of exceptions. These exceptions are based upon the principles underlying the U.S. position while negotiating the Agreement: (1) To the extent practicable, the Agreement should not act to separate families; (2) the Agreement must guarantee that persons subject to it would have their protection claims adjudicated in one of the two countries; and (3) it would be applied only in circumstances where it is indisputable that the alien arrived directly from the other country. These principles have been achieved by including a robust family unity exception that allows asylum seekers to join certain family members residing in the United States or Canada while they pursue their protection claims; by clearly stipulating that the alien must have his or her claim adjudicated in either Canada or the United States; and by limiting the application of the Agreement to situations where it is clear that the alien arrived directly from the other country; *e.g.*, at land border ports-of-entry or in-transit while being removed from Canada.

The Agreement's family unity exceptions are particularly generous. The range of family members who may qualify as "anchor" relatives due to their presence in the United States is far broader than those recognized under other provisions of immigration law. The list of eligible family members includes spouses, sons, daughters, parents, legal guardians, siblings, grandparents, grandchildren, aunts, uncles, nieces, and nephews. For purposes of the Agreement, a "legal guardian" will be construed as someone who is currently vested with legal custody of the asylum seeker or with the authority to act on behalf of the asylum seeker, provided that the asylum seeker is both unmarried and less than 18 years of age. USCIS will provide field guidance to asylum officers to standardize the approach used in construing other family member relationships relevant to the Agreement but not defined in the Act. Finally, these family members may qualify as anchor relatives even if they themselves do not possess permanent immigration status in the U.S. Aliens in valid immigrant or nonimmigrant status may qualify as anchor relatives, with the exception of aliens who maintain only nonimmigrant visitor status under section 101(a)(15)(B) of the Act or based on admission under the Visa Waiver Program, who are precluded from serving as anchor relatives by the language of the Agreement.

More specifically, an alien who arrives at a land border port-of-entry is exempt from return under the Agreement if the alien:

(1) Is a citizen of Canada or, not having a country of nationality, is a habitual resident of Canada;

(2) Has in the United States a spouse, son, daughter, parent, legal guardian, sibling, grandparent, grandchild, aunt, uncle, niece, or nephew who has been granted asylum, refugee, or other lawful status in the United States, except visitor status;

(3) Has in the United States a spouse, son, daughter, parent, legal guardian, sibling, grandparent, grandchild, aunt, uncle, niece, or nephew who is at least 18 years of age and has an asylum application pending in the United States;

(4) Is unmarried, under 18 years of age, and does not have a parent or legal guardian in either Canada or the United States;

(5) Is applying for admission at a United States land border port-of-entry with a validly issued visa or other valid admission document, other than for transit, issued by the United States, or, being required to hold a visa to enter Canada, was not required to obtain a visa to enter the United States; or

(6) Has been permitted, as an unreviewable exercise of discretion by DHS, to pursue a protection claim in the United States because it was determined that it is in the public interest to do so.

The specific terms of the Safe Third Country Agreement are available on the USCIS Web site at *http://www.uscis.gov.*

How Does This Rule Propose To Implement the Safe Third Country Agreement?

The rule proposes to revise § 208.4 and add a new § 208.30(e)(6) to permit asylum officers to conduct a "threshold screening interview" in order to determine whether an alien is ineligible to apply for asylum under section 208(a)(2)(A) of the Act by operation of the Safe Third Country Agreement. New § 208.30(e)(6)(iii) would codify the exceptions to the Agreement. Under this rule, in any case where an asylum officer determines that the alien qualifies for an exception to the Agreement with Canada, the asylum officer will proceed immediately to a determination as to whether or not the alien has a credible fear of persecution or torture, as provided under existing law.

In § 208.30(e)(6)(i), this proposed rule also makes clear that, when an asylum officer determines that an alien is ineligible to pursue his or her protection claims in the United States based on the applicability of the Safe Third Country Agreement, the alien will be removed to Canada, the country of the alien's last presence, in order to pursue his or her claims there.

The rule also proposes to incorporate the existing definitions of "credible fear of persecution" and "credible fear of torture" in the new §§ 208.30(e)(2) and (e)(3). The definition of credible fear of persecution, derived from section 235(b)(1)(B)(v) of the Act and existing policy that incorporates consideration of eligibility for withholding of removal, is "a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, the alien can establish eligibility for asylum under section 208 of the Act or for withholding of removal under section 241(b)(3) of the Act." The proposed rule incorporates the existing definition of credible fear of torture provided in the supplementary information to the interim rule implementing the United States' obligations under the Convention Against Torture published in the **Federal Register** at 64 FR 8484 on February 19, 1999. Under current procedures, as provided in the supplementary information to the interim rule, an alien is found to have a credible fear of torture if the alien shows that there is a significant possibility that he or she is eligible for withholding of removal or deferral of removal under the Convention Against Torture. The rule does not propose to

alter current procedures related to these existing definitions.

Finally, this rule proposes to remove the provisions of 8 CFR 208.30(g)(2) relating to the conduct of credible fear review by immigration judges. In view of the transfer of the responsibilities of the former INS to DHS on March 1, 2003, the Attorney General published a rule creating a new chapter V in 8 CFR, beginning with part 1001 and containing the regulations pertaining to the functions of the Executive Office for Immigration Review (EOIR), which remains under the authority of Attorney General. The Attorney General's rule was published in the **Federal Register** at 68 FR 9824 on February 28, 2003. Accordingly, this rule revises § 208.30(g)(2) to remove the previous provisions and to substitute a new cross-reference to the current EOIR regulations which are now codified at 8 CFR 1208.30(g)(2).

Why Is USCIS Proposing To Amend the Regulations Governing Credible Fear Determinations?

The Safe Third Country Agreement between the United States and Canada bars certain aliens from pursuing protection claims in the United States if they are either arriving from Canada at land border ports-of-entry or are being removed from Canada in transit through the United States. Instead, those aliens will be returned to Canada to have their protection claims adjudicated by Canada. In general, the Agreement will be applied to such aliens who are subject to expedited removal provisions under section 235(b) of the Act, which provides a specific removal mechanism for aliens who are inadmissible under sections 212(a)(6)(C) (fraud or willful misrepresentation) or 212(a)(7) (failure to have proper documents) of the Act. However, in light of the Safe Third Country Agreement's purpose in allowing asylum seekers access to only one of the signatory countries' protection systems, this rule proposes a modified approach to the expedited removal process in the form of a threshold asylum officer screening as to which country (Canada or the United States) will consider an alien's protection claims. Only after this threshold issue has been resolved in favor of allowing the alien to pursue an asylum claim in the United States will an asylum officer make a determination as to whether or not the alien has a credible fear of persecution or torture.

Under section 235(b), aliens subject to expedited removal who seek asylum in the United States or otherwise express a fear of persecution or torture are referred to an asylum officer. During a "credible fear interview," the asylum officer inquires as to the nature and basis of the alien's claims relating to past persecution and fear of future persecution or torture. The asylum officer then determines whether or not there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claims and other facts known to the officer, that the alien could establish eligibility for protection under U.S. law. In the event that the asylum officer determines that the alien has not established a credible fear of persecution or torture, the alien may request review of that determination by an immigration judge.

For aliens who are subject to the Agreement, however, the threshold question is whether the alien should be returned to Canada for Canadian authorities to consider the merits of the alien's claims, or whether the alien will instead be allowed to pursue his or her protection claims in the United States. Accordingly, this rule provides for a threshold screening interview by an asylum officer to determine whether an alien subject to the Agreement will be permitted to remain in the U.S. to pursue his or her protection claims, based on the alien's qualification for one of the Agreement's exceptions. It is only after this threshold screening interview (*i.e.*, only after the asylum officer has decided that the alien is not going to be removed to Canada for an adjudication of the alien's claims) that the asylum officer would proceed to promptly consider the alien's claims for protection under United States law through the credible fear determination process. The asylum officer's notes regarding the threshold issues raised by the Agreement would then be included in the asylum officer's written record of the credible fear determination. In those instances where an asylum officer determines, after review by a supervisory asylum officer, that the alien has not provided reason to believe, by a preponderance of the evidence, that he or she qualifies for any of the Agreement's exceptions, then the asylum officer will advise the alien that he or she is being returned to Canada based on the terms of the Agreement so that the alien will be able to pursue his or her claims for asylum or protection under Canadian law.

Given the narrowness of the factual issues relevant to the threshold screening determination that the Agreement and/or its exceptions are applicable to an alien, which can readily be considered and adjudicated by asylum officers, this rule does not provide for referral to immigration judges for further review of these threshold screening determinations. The narrow factual issues concerning the Agreement's applicability and exceptions (such as the presence of family members in the U.S. or the possession of validly issued visas) do not relate to whether an alien has a fear of persecution or torture, and can adequately be resolved by asylum officers. Thus, under this proposed rule, when an asylum officer makes and a supervisor reviews this threshold determination, there would be no further administrative review of that decision. Elsewhere in the **Federal Register**, the Department of Justice is publishing a proposed rule to specify the authority of the immigration judges with respect to issues arising under the Agreement.

This method for implementing the Safe Third Country Agreement, which bars certain aliens from applying for asylum in the United States, is within the authority of the Secretary of DHS, under section 208(a)(2)(A) of the Act and under section 208(d)(5)(B) of the Act, which provides authority to impose regulatory conditions or limitations on the consideration of an application for asylum not inconsistent with the Act. Section 208(a)(2)(A) of the Act makes an alien ineligible to apply for asylum in the United States if, pursuant to a bilateral agreement, the Secretary concludes that the alien "would have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection" in a safe third country. An alien who is covered by section 208(a)(2)(A) is thus not eligible to apply for asylum regardless of the statutory means by which he is ordered removed from the United States. By this rule, the Secretary is proposing, in a manner consistent with the Act, to delegate to asylum officers the authority to make the threshold determination whether an alien is ineligible to apply for asylum by operation of the Agreement with Canada.

USCIS thus proposes to amend the regulations governing the credible fear determination in order to implement the threshold screening process described above for aliens subject to the Safe Third Country Agreement, prior to a credible fear determination. However, this rule preserves unchanged the existing credible fear process itself, including the availability of a credible fear review by an immigration judge, in every case where the asylum officer determines that an alien subject to the Agreement does satisfy any of the threshold jurisdictional exceptions, including a discretionary decision by

DHS to allow the alien to pursue an asylum claim as a matter in the public interest. If the asylum officer determines the alien is not barred by the Agreement from pursuing his or her protection claims in the U.S., the asylum officer will then proceed immediately to a credible fear determination on the merits of the alien's claims, and, if necessary, an immigration judge will conduct a review of this determination on the merits, as provided under existing law and regulations.

How Does This Rule or the Safe Third Country Agreement Affect Unaccompanied Minors?

In order to understand how this rule affects unaccompanied minors, it is important to understand that the definition of an "unaccompanied minor" customarily used in determining appropriate immigration processes is different than the definition used in the Agreement for determining whether an exception to the Agreement applies. While "unaccompanied minor" has not been formally defined in the Act or in regulations, for immigration processing purposes, an individual who is under age 18 and is not accompanied by an adult relative or guardian is considered an "unaccompanied minor." This definition differs from the Agreement's language. Article 1(f) of the Agreement defines "unaccompanied minor" as "an unmarried refugee status claimant who has not yet reached his or her eighteenth birthday and does not have a parent or legal guardian in either Canada or the United States." This rule does not propose replacing the customary definition of "unaccompanied minor" with the Agreement's definition for purposes of determining immigration issues unrelated to the Agreement. However, in applying the Agreement, this difference in definitions will result in finding that some individuals under age 18 who are not accompanied by an adult relative or legal guardian when they arrive at a land border port-of-entry will not qualify for the unaccompanied minor exception in the Agreement, because they have a parent or legal guardian in the United States or Canada.

Since August of 1997, the Immigration and Naturalization Service's policy, now DHS's policy, has been to place unaccompanied minors into expedited removal proceedings only under limited circumstances. Under existing policy, an unaccompanied minor would be placed into expedited removal proceedings only if he or she (1) in the presence of a DHS immigration officer, engaged in a crime that would qualify as an aggravated felony if committed by an adult; (2) has been convicted or adjudicated delinquent of an aggravated felony in the United States or any other country, and a U.S. Customs and Border Protection (CBP) officer has confirmation of that order; or (3) has been formally removed, excluded, or deported previously from the United States. Existing guidelines permit granting a waiver, deferring the inspection, permitting a withdrawal of the application for admission, or using other discretionary means to process unaccompanied minors who seek admission to the United States, where appropriate. This rule does not propose to change that existing policy. The Safe Third Country Agreement will be applied in the expedited removal proceedings of unaccompanied minors only when such other processing of an unaccompanied minor seeking admission at a land border port-of-entry is not appropriate. When an unaccompanied minor arrives from Canada at a land border port-of-entry and seeks protection, he or she still will be processed according to existing guidelines, which often results in placing the minor into removal proceedings under section 240 of the Act. Where the minor is placed into removal proceedings under section 240 of the Act, the Agreement, including its definition of "unaccompanied minor," will be applied by the immigration judge, as provided in the Department of Justice proposed rule published in the **Federal Register**.

What Type of Evidence Will Satisfy USCIS When Determining Whether an Individual Meets One of the Exceptions in the Agreement?

As specified in the proposed rule at § 208.30(e)(6)(ii) and pursuant to a Statement of Principles concerning the implementation of the Agreement, the alien bears the burden of proof to establish by a preponderance of the evidence that an exception applies, such that the alien falls outside the scope of the Agreement. Asylum officers will use all available evidence, including the individual's testimony, affidavits and other documentation, as well as available records and databases, to determine whether an exception to the Agreement applies in each individual's case. Credible testimony alone may be sufficient to establish that an exception applies, if there is a satisfactory explanation of why corroborative documentation is not reasonably available. DHS recognizes that computer systems and DHS records will not be sufficient to verify family relationships in all circumstances and that asylum seekers fleeing persecution often will not have documents establishing family relationships with them at the time they seek to enter the United States. Asylum officers receive extensive training in evaluating credibility of testimony when there is little or no documentation in support of that testimony. Asylum officers will document their findings that the Agreement or its exceptions are applicable to an alien, and in the case of any alien who qualifies for one of the Agreement's exceptions, will immediately proceed to make a credible fear determination, as described in sections 235(b)(1)(B)(ii) and (iii) of the Act.

How Does the Safe Third Country Agreement Address the Possibility That Individuals Will Be Removed Without Having Their Protection Claims Heard?

An individual referred by either Canada or the United States to the other country under the terms of Article 4 cannot be removed to a third country until an adjudication of the individual's protection claims has been made. The Agreement also provides, in Article 3, that an individual returned to the country of last presence shall not be removed to another country pursuant to any other Safe Third Country Agreement or regulation.

How Does the Safe Third Country Agreement Affect People Who Are Being Removed From Canada or the United States and Then Seek Protection While Transiting Through the Other Country?

Pursuant to Article 5(a) of the Agreement, if an alien is being removed from Canada through the United States and expresses a fear of persecution or torture, the alien will be returned to Canada for Canada to adjudicate his or her protection claims, in accordance with Canada's protection system. Generally, individuals being removed by Canada through the United States are pre-inspected in Canada and escorted by Canadian immigration officials to their onward destination. Individuals who make a protection claim during pre-inspection will not be allowed to transit through the United States. Individuals being removed by Canada in transit through the United States are considered arriving aliens in parole status, as described in section 212(d)(5) of the Act. If such an individual asserts a fear of persecution or torture to a U.S. immigration officer, while in transit through the United States, the individual's parole status will be terminated pursuant to § 212.5(e)(2)(i), and he or she generally will be placed in expedited removal proceedings, though there may be some rare instances

in which the individual will be placed in removal proceedings under section 240 of the Act. Transit aliens placed in expedited removal proceedings under this provision will be subject to the same asylum officer threshold screening process as aliens arriving at U.S.-Canada land border ports-of-entry. For those rare instances in which such a transit alien is placed in removal proceedings pursuant to section 240 of the Act, the Agreement will be applied by the immigration judge as provided in the Department of Justice proposed rule, published in the **Federal Register**.

The effect of the Agreement on an asylum seeker being removed from the United States through Canada depends on whether the United States already has considered any asylum, withholding, or Torture Convention claim(s). If the United States has considered but denied the alien's protection claims, the person will be permitted onward movement, in accordance with Article 5(c) of the Agreement. If the United States has not already adjudicated the alien's protection claims, the person will be returned to the United States for such an adjudication.

How Does the Agreement Affect Individuals Who Seek Withholding of Removal or Protection Under the Convention Against Torture?

Article 33 of the 1951 Refugee Convention, as supplemented by the 1967 Refugee Protocol, requires that signatory states not return persons to any country where their lives or freedom would be threatened on account of their race, religion, nationality, political opinion, or membership in a particular social group. The U.S. is a signatory to the 1967 Protocol, and Canada is a signatory to both the 1951 Refugee Convention and the 1967 Protocol. The U.S. implements its obligations under the 1967 Protocol in section 241(b)(3) of the Act, which, as implemented, prohibits DHS from removing aliens to any country where it is more likely than not that their lives or freedom would be threatened on account of the grounds enumerated above. Nevertheless, DHS is not prevented from removing aliens to countries where their lives or freedom would not be threatened.

Article 3 of the Convention Against Torture prohibits the return of persons to any country where there are substantial grounds for believing that they would be subject to torture. Like the United States, Canada is a signatory to the Convention Against Torture. The United States implements this obligation by granting withholding of removal or deferral of removal to a country where it is more likely than not that the applicant would be subject to torture.

Article 3 of the Agreement provides that "the Parties shall not return or remove a refugee status claimant referred by either Party under the terms of [the Agreement] to another country until an adjudication of the person's refugee status claim has been made." In Article 1, the Agreement defines a refugee status claim to include a request for protection under the 1951 Refugee Convention, 1967 Protocol, or Convention Against Torture. Returning any alien to Canada pursuant to the terms of the Agreement for a consideration of the alien's protection claims, in the absence of any grounds for believing that the alien would be persecuted or tortured in Canada, is consistent with the United States' international protection obligations.

Does CBP Plan To Place Aliens Returned to the United States From Canada Under the Safe Third Country Agreement Into Expedited Removal Proceedings?

No. For an alien to be subject to the expedited removal provisions, the alien must first meet the definition of arriving alien. The Board of Immigration Appeals has held that an alien who goes abroad but is returned to the United States after having been formally denied admission by the foreign country is not an applicant for admission, since, in contemplation of law, the alien did not leave the United States. Matter of T, 6 I&N Dec. 638 (1955). Those who entered the United States legally or illegally and are later denied admission by Canada are not arriving aliens and therefore not subject to expedited removal. Depending on their status, they may or may not be subject to removal proceedings before an immigration judge, pursuant to section 240 of the Act, or removal pursuant to sections 241(a)(5) (reinstatement of a prior order) or 238(b) (administrative removal based on aggravated felony conviction) of the Act. For example, this return to the United States would not qualify as an "arrival" for purposes of determining whether an applicant has filed for asylum within one year of the date of his or her last arrival in the United States, as required under section 208(a)(2)(B) of the Act.

How Does This Proposed Rule Affect Individuals Who Enter the United States Through Canada and Who Then Apply for Asylum?

The proposed rule does not affect any individuals who apply for asylum after entering the United States from Canada. The proposed rule is limited only to those individuals who are placed in expedited removal or removal proceedings upon arrival at U.S.-Canada land border ports-of-entry and to those who are aliens in transit through the United States subsequent to removal from Canada. Individuals who previously entered the United States, having come from Canada, and later apply for asylum affirmatively with USCIS or defensively in removal proceedings before an immigration judge are not arriving aliens and so will not be barred from applying for asylum by operation of the Agreement.

Regulatory Flexibility Act

DHS has reviewed this regulation in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) and by approving it, DHS preliminarily certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule affects individual aliens, as it relates to claims of asylum. It does not affect small entities, as that term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one-year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

The Department of Homeland Security has determined that this rule is a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and, accordingly, this rule has been submitted to the Office of Management and Budget for review. In particular, the

Department has assessed both the costs and benefits of this rule as required by Executive Order 12866, section 1(b)(6) and has made a reasoned determination that the benefits of this regulation justify its costs.

The proposed rule would implement a bilateral agreement that allocates responsibility between the United States and Canada for processing claims of certain asylum seekers. The rule applies to individuals who are subject to expedited removal and, under existing regulations, would receive a credible fear interview by an asylum officer. This rule simply adds a preliminary screening by asylum officers to determine whether the alien is even eligible to seek protection in the United States, in which case the asylum officer will then proceed to make the credible fear determination under existing rules. Based on statistical evidence, it is anticipated that approximately 200 aliens may seek to enter the United States from Canada at a land border port-of-entry and be placed into expedited removal proceedings. A significant number of these aliens will be found exempt from the Agreement and eligible to seek protection in the United States after the threshold screening interview proposed in this rule. It is difficult to predict how many aliens will be returned to the U.S.-Canadian border under the Agreement, but the costs incurred in detaining and transporting them are not likely to be substantial. Therefore, the "tangible" costs of this rulemaking to the U.S. Government are minimal. Applicants who are found to be subject to the Safe Third Country Agreement will be returned to Canada to seek protection, saving the U.S. Government the cost of adjudicating their asylum claims and, in some cases, the cost of detention throughout the asylum process.

The cost to asylum seekers who, under the proposed rule, will be returned to Canada are the costs of pursuing an asylum claim in Canada, as opposed to the United States. There is no fee to apply for asylum in Canada and, under Canadian law, asylum seekers are provided social benefits that they are not eligible for in the United States, including access to medical coverage, adult public education, and public benefits. Therefore, the tangible costs of seeking asylum in Canada are no greater than they are in the United States. However, because there may be other tangible costs to asylum seekers attempting to enter the United States from Canada at a land border port-of-entry (*e.g.*, transportation costs to the U.S. border), public comment is invited for further consideration of what such additional costs may include. The "intangible" costs to asylum seekers who would be returned to Canada under the proposed rule are the costs of potential separation from support networks they may be seeking to join in the United States. However, the Agreement contains broad exceptions based on principles of family unity that would generally allow those with family connections in the United States to seek asylum in the United States under existing regulations governing the credible process.

The proposed rule benefits the United States because it enhances the ability of the U.S. and Canada to manage, in an orderly fashion, asylum claims brought by persons crossing our common border. By implementing the Agreement, the proposed rule furthers U.S. and Canadian goals, as outlined in the 30-Point Action Plan under the Smart Border Declaration signed by Secretary Ridge and former Canadian Deputy Foreign Minister John Manley, to ensure a secure flow of people between the two countries while preserving asylum seekers' access to a full and fair asylum process in a manner consistent with U.S. law and international obligations. Further, the Agreement and proposed rule save the U.S. the time and expense of adjudicating protection claims brought by asylum seekers who have already had a full and fair opportunity to present their claims in Canada.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

The regulations at 8 CFR 208.30 require that an asylum officer conduct a threshold screening interview to determine whether an alien is ineligible to apply for asylum pursuant to section 208(a)(2)(A) of the Act. The threshold screening interview is considered an information collection requirement subject to review by OMB under the Paperwork Reduction Act of 1995. Written comments are encouraged and will be accepted until May 7, 2004. When submitting comments on the information collection, your comments should address one or more of the following four points.

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of the information on those who are to respond, including through the use of any and all appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* New.

(2) *Title of Form/Collection:* Credible fear threshold screening interview.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No form number, U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Individuals. The information collection is necessary in order for the CIS to make a determination whether an alien is eligible to apply for asylum pursuant to section 208(a)(2)(A) of the Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 200 respondents at 30 minutes per response.

(6) *An estimate of the total of public burden (in hours) associated with the collection:* Approximately 100 burden hours.

All comments and suggestions or questions regarding additional information should be directed to the Department of Homeland Security, U.S. Citizenship and Immigration Services, Regulations and Forms Services Division, 425 I Street, NW., Room 4034, Washington, DC 20536; Attention: Richard A. Sloan, Director, 202–514–3291.

Family Assessment Statement

DHS has reviewed this regulation and determined that it may affect family well-being as that term is defined in section 654 of the Treasury General Appropriations Act, 1999, Public Law 105–277, Div. A. Accordingly, DHS has assessed this action in accordance with the criteria specified by section 654(c)(1). In this proposed rule, an alien arriving at a land border port-of-entry with Canada may qualify for an exception to the Safe Third Country Agreement, which otherwise requires individuals to seek protection in the country of last presence (Canada), by establishing a relationship to a family member in the United States who has lawful status in the United States, other than a visitor, or is 18 years of age or older and has an asylum application pending. This proposed rule incorporates the Agreement's definition of "family member," which may be a spouse, son, daughter, parent, legal guardian, sibling, grandparent, grandchild, aunt, uncle, niece, or nephew. The "family member" definition was intended to be broad in scope, to promote family unity. This proposed rule thereby strengthens the stability of the family by providing a mechanism to reunite separated family members in the United States.

In some cases the proposed rule will have a negative effect resulting in the separation of family members. The Agreement's exceptions, as expressed in the proposed rule, require the family member to have either lawful status in the United States, other than visitor, or else to be 18 years of age or older and have a pending asylum application. Family members who do not meet one of these conditions, therefore, would be separated under the proposed rule. However, this proposed rule's definition of "family member" and the exceptions to the Agreement are more generous than other family-based immigration laws, which require the anchor family member to have more permanent status in the United States (such as citizen, lawful permanent resident, asylee or refugee) and which have a more restricted list of the type of family relationships that can be used to sponsor someone for immigration to the United States (although, unlike those laws, this Agreement provides only an opportunity to apply for protection and does not directly confer an affirmative immigration benefit). Under this rule, family members will be able to reunite even if the anchor relative's status is less than permanent in the United States.

List of Subjects

8 CFR Part 208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

1. The authority citation for part 208 continues to read as follows:

Authority: 8 U.S.C. 1103, 1158, 1226, 1252, 1282; 8 CFR part 2.

2. Section 208.4 is amended by adding a new paragraph (a)(6) to read as follows:

§ 208.4 Filing the application.

* * * * *

(a) * * *

(6) *Safe Third Country Agreement.* Asylum officers have authority to apply section 208(a)(2)(A) of the Act, relating to the determination that the alien may be removed to a safe country pursuant to a bilateral or multilateral agreement, only as provided in § 208.30(e). For provisions relating to the authority of immigration judges with respect to section 208(a)(2)(A), see 8 CFR 1240.11(g).

* * * * *

3. Section 208.30 is amended by:

a. Redesignating paragraph (e)(4) as (e)(7);

b. Redesignating paragraphs (e)(2) and (e)(3) as (e)(4) and (e)(5) respectively;

c. Revising newly designated paragraphs (e)(4) and (e)(5);

d. Adding new paragraphs (e)(2), (e)(3), and (e)(6);

e. Revising paragraph (g)(2)(i), and by

f. Removing paragraphs (g)(2)(iii) and (g)(2)(iv).

The additions and revisions read as follows:

§ 208.30 Credible fear determinations involving stowaways and applicants for admission found inadmissible pursuant to section 212(a)(6)(C) or 212(a)(7) of the Act.

* * * * *

(e) * * *

(2) An alien will be found to have a credible fear of persecution if there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, the alien can establish eligibility for asylum under section 208 of the Act or for withholding of removal under section 241(b)(3) of the Act.

(3) An alien will be found to have a credible fear of torture if the alien shows that there is a significant possibility that he or she is eligible for withholding of removal or deferral of removal under the Convention Against Torture, pursuant to §§ 208.16 or 208.17.

(4) In determining whether the alien has a credible fear of persecution, as defined in section 235(b)(1)(B)(v) of the Act, or a credible fear of torture, the asylum officer shall consider whether the alien's case presents novel or unique issues that merit consideration in a full hearing before an immigration judge.

(5) Except as provided in paragraph (e)(6) of this section, if an alien is able to establish a credible fear of persecution or torture but appears to be subject to one or more of the mandatory bars to applying for, or being granted, asylum contained in section 208(a)(2) and 208(b)(2) of the Act, or to withholding of removal contained in section 241(b)(3)(B) of the Act, the Department of Homeland Security shall nonetheless place the alien in proceedings under section 240 of the Act for full consideration of the alien's claim, if the alien is not a stowaway. If the alien is a stowaway, the Department shall place the alien in proceedings for consideration of the alien's claim pursuant to § 208.2(c)(3).

(6) Prior to any determination concerning whether an alien arriving in the United States at a U.S.-Canada land border port-of-entry or in transit through the U.S. during removal by Canada has a credible fear of persecution or torture, the asylum officer shall conduct a threshold screening interview to determine whether such an alien is ineligible to apply for asylum pursuant to section 208(a)(2)(A) of the Act and subject to removal to Canada under the Agreement Between the Government of the United States and the Government of Canada For Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries ("Agreement"). In conducting this threshold screening interview, the asylum officer shall advise the alien of the Agreement's exceptions and question the alien as to applicability of any of these exceptions to the alien's case.

(i) If the asylum officer determines that an alien does not qualify for an

exception under the Agreement during this threshold screening interview, the alien is ineligible to apply for asylum in the United States. After review of this finding by a supervisory asylum officer, the alien shall be advised that he or she will be removed to Canada in order to pursue his or her claims relating to a fear of persecution or torture under Canadian law. Aliens found ineligible to apply for asylum under this paragraph shall be removed to Canada.

(ii) If the alien establishes by a preponderance of the evidence that he or she qualifies for an exception under the terms of the Agreement, the asylum officer shall make a written notation of the basis of the exception, and then proceed immediately to a determination concerning whether an alien has a credible fear of persecution or torture.

(iii) An alien qualifies for an exception to the Agreement if the alien is not being removed from Canada in transit through the United States and:

(A) Is a citizen of Canada or, not having a country of nationality, is a habitual resident of Canada;

(B) Has in the United States a spouse, son, daughter, parent, legal guardian, sibling, grandparent, grandchild, aunt, uncle, niece, or nephew who has been granted asylum, refugee, or other lawful status in the United States, provided, however, that this exception shall not apply to an alien whose relative maintains only nonimmigrant visitor status, as defined in section 101(a)(15)(B) of the Act, or whose relative maintains only visitor status based on admission to the U.S. pursuant to the Visa Waiver Program;

(C) Has in the United States a spouse, son, daughter, parent, legal guardian, sibling, grandparent, grandchild, aunt, uncle, niece, or nephew who is at least 18 years of age and has an asylum application pending before U.S. of Citizenship and Immigration Services, the Executive Office for Immigration Review, or on appeal in federal court in the United States;

(D) Is unmarried, under 18 years of age, and does not have a parent or legal guardian in either Canada or the United States;

(E) Arrived in the United States with a validly issued visa or other valid admission document, other than for transit, issued by the United States, or, being required to hold a visa to enter Canada, was not required to obtain a visa to enter the United States; or

(F) The Department of Homeland Security determines, in the exercise of unreviewable discretion, that it is in the public interest to allow the alien to pursue a claim for asylum, withholding of removal, or protection under the Convention Against Torture, in the United States.

(iv) As used in § 208.30(e)(6)(iii)(B), (C) and (D) only, "legal guardian" means a person currently vested with legal custody of such an alien or vested with legal authority to act on the alien's behalf, provided that such an alien is both unmarried and less than 18 years of age, and provided further that any dispute with respect to whether an individual is a legal guardian will be resolved on the basis of U.S. law.

* * * * *

(g) * * *

(2) * * *

(i) Immigration judges will review negative credible fear findings as provided in 8 CFR 1208.30(g)(2).

* * * * *

PART 212—DOCUMENTARY REQUIREMENTS; NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

4. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1225, 1226, 1227, 1228; 8 CFR part 2.

5. Section 212.5 is amended by adding new paragraph (e)(2)(iii) to read as follows:

§ 212.5 Parole of aliens into the United States.

* * * * *

(e) * * *

(2) * * *

(iii) Any alien granted parole into the United States so that he or she may transit through the United States in the course of removal from Canada shall have his or her parole status terminated upon notice, as specified in § 212.5(e)(2)(i), if he or she makes known to an immigration officer of the United States a fear of persecution or an intention to apply for asylum. Upon termination of parole, any such alien shall be regarded as an applicant for admission, and processed accordingly by the Department of Homeland Security.

* * * * *

Dated: January 26, 2004.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 04–5077 Filed 3–5–04; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF JUSTICE

8 CFR Parts 1003, 1208, 1212, and 1240

[EOIR No. 142P; AG Order No. 2709–2004]

RIN 1125–AA46

Asylum Claims Made by Aliens Arriving from Canada at Land Border Ports-of-Entry

AGENCY: Executive Office for Immigration Review, Justice.

ACTION: Proposed rule.

SUMMARY: The recent Safe Third Country agreement between the United States and Canada provides new procedures for dealing with certain categories of aliens crossing at land border ports-of-entry between the United States and Canada, or in transit from Canada or the United States, and who express a fear of persecution or torture if returned to the country of their nationality or habitual residence. The Agreement recognizes that the United States and Canada are safe third countries, each of which offers full procedures for nationals of other countries to seek asylum or other protection. Accordingly, subject to several specific exceptions, the Agreement provides for the United States to return such arriving aliens to Canada, the country of last presence, to seek protection under Canadian law, rather than applying for asylum in the United States. Subject to the stated exceptions, such aliens attempting to travel from Canada to the United States, or vice versa, will be allowed to seek asylum or other protection in one country or the other, but not in both.

Elsewhere in this issue of the **Federal Register**, the Department of Homeland Security (DHS) is publishing a proposed rule that would, among other things, give asylum officers the authority to apply the Agreement with respect to arriving aliens. This proposed rule provides that the immigration judges will not review the threshold factual determinations by asylum officers that an alien does not satisfy any of the exceptions under the Agreement. However, for any alien who the asylum officer determines is not barred by the Agreement, the existing credible fear process under section 235(b) of the Immigration and Nationality Act (Act) remains unchanged, including the right to seek review by an immigration judge. Finally, this rule provides authority for an immigration judge to apply the Agreement with respect to aliens whom DHS has chosen to place in removal proceedings under section 240 of the Act.

UNHCR
The UN Refugee Agency

Mexico

April 2019

Key Figures

From January to 31 March 2019, **12,716** people applied for **asylum** in Mexico; **3,904** in January, **4,037** in February, and **4,775** in March.*

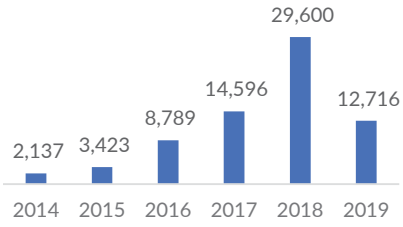
From January-March 2019, the **increase in claimants** over the same period of 2018 was:

- Honduras: 237%
- El Salvador: 112%
- Venezuela: 71%
- Guatemala: 224%
- Nicaragua: 1,367%

In total, **631 people** have been **relocated** to facilitate local integration from 1 January till 31 March 2019.*
Preliminary COMAR figures (subject to change).

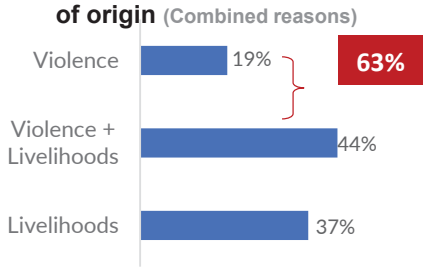
Evolution of asylum claims

Asylum claims in Mexico
as of 31March 2019



Protection Monitoring

Reasons for leaving country of origin (Combined reasons)



Conducted in January 2019 in Ciudad Hidalgo. 988 people interviewed.

OPERATIONAL CONTEXT

- The number of people arriving at Mexico's southern border with Guatemala fleeing criminal violence, political unrest and economic hardship is soaring. The number of asylum claims in Mexico rose by more than 103% in 2018 over the previous year, from 14,596 to 29,623. The upward trend is likely to continue as the drivers of displacement remain in place and because return options in the region are limited.
- Asylum-seekers from Honduras, El Salvador and Venezuela represent 86% of all asylum claimants so far in 2019. The outbreak of violence in Nicaragua and the deterioration of the situation in Venezuela are also driving an increasing number of people from these countries to seek protection in Mexico.
- A significant percentage of people entering Mexico are fleeing persecution and violence, and are in need of international protection.
- The Mexican Government announced a new migration policy which refers to the Global Compact on Migration. It is expected that during Mexico's current presidency of the Comprehensive Regional Protection and Solutions Framework (MIRPS), Mexico will transform its migration policy from a policy guided by security and control, to an approach which places greater emphasis on human rights, protection and regional cooperation.

Participatory Assessment in Tapachula, February 2019. © ACNUR/ Rafael Sanchez.

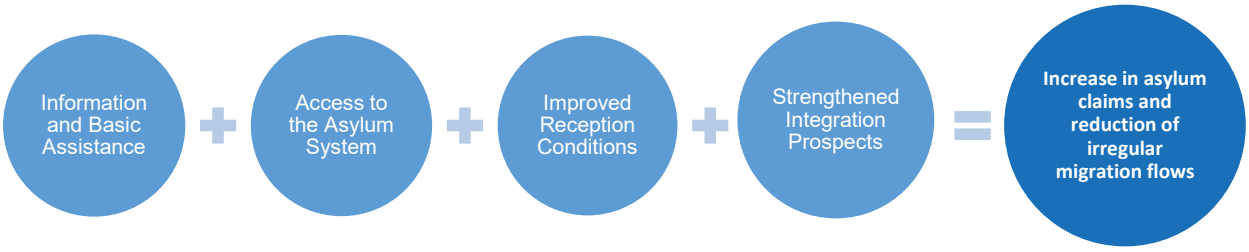
UNHCR Strategy

UNHCR Mexico has made important commitments to significantly increase its staff and activities to support the work of the Mexican authorities in processing an increased number of asylum claims and ensure protection of its Persons of Concern (PoC). This includes the provision of technical support to ensure timely registration of asylum-seekers, setting up identification and referral mechanisms for those with specific vulnerabilities/needs, increasing the capacity and sustainability of shelters and promoting local integration opportunities.

Information and Basic Assistance

- One main challenge associated with protecting persons in need of international protection in Mexico has been the lack of information to access the asylum procedure.
- UNHCR, the UN agencies, COMAR and the National Human Rights Commission set up a platform to provide information on the asylum system in the country of origin, transit, and destination for people fleeing from insecurity and persecution. The platform is unique as it is built on a simple and easy to access Facebook page and hotline under the name "Confiar en el Jaguar" (in English 'trust the jaguar'). Facebook is used because it is the principal means of communication for asylum-seekers. UNHCR is currently sharing information and protection messages with people of concern, in addition to directly answering questions or responding to doubts via Facebook's messenger function.

UNHCR
The UN Refugee Agency



- UNHCR also strengthens the **sustainability and protection capacity of selected shelters** that provide support and assistance to migrants and refugees along the migratory routes in Mexico. Shelters continue to be key actors in identifying persons in need of international protection, inform about the right to seek asylum and refer people in need of international protection to the Mexican asylum system.
- UNHCR also works with a network of legal partners, the **Mexican Commission for Refugee Assistance (COMAR) and the National Migration Institute (INM)** to assure that persons in need of international protection are adequately informed about the asylum procedure and other forms of legal pathways at the point of entry into Mexico.
- The goal is to provide information to 30,000 persons per year. UNHCR is now assisting COMAR to increase its regional presence through the opening of new offices in key locations.
- UNHCR is providing Humanitarian Assistance in the form of **Multi-Purpose Cash Grants (MPG)** intended to cover basic needs such as food, NFIs, and contribution towards housing/utility bills. UNHCR also issues **Sectoral Top Up-Grants** using a protection-lens and in association with other technical sectors so that response options are tailored to the needs of the most vulnerable population. The expansion of its **Cash-Based Intervention (CBI)** program in 2019 allows UNHCR to engage in a more holistic and forward-looking CBI strategy with a view to transitioning over time to the inclusion of PoCs into government social safety programs, while fostering socio-economic inclusion and self-reliance.

Access to the Asylum System

- UNHCR estimates that the number of people with international protection needs entering Mexico is much higher than those requesting asylum. The absence of proper protection screening protocols for families and adults, the lack of a systematic implementation of existing best interest determination procedures for unaccompanied children and detention of asylum-seekers submitting their claim at border entry points are strong obstacles to accessing the asylum procedure.
- The abandonment rate of asylum procedures, especially in Southern Mexico is a key protection concern. This situation, compounded by insufficient resources and limited field presence of COMAR in key locations in Northern and Central Mexico, continues to pose challenges to efficient processing of asylum claims.
- UNHCR **promotes the capacity and efficiency of Mexico's asylum system**. UNHCR has currently 39 contractors on loan to **COMAR, mainly to support with registration**. Support for additional 63 UNHCR secondments to COMAR is underway. COMAR and UNHCR are discussing additional staffing support. Plans for **additional office expansions** are also being worked on. New COMAR field locations are to include Palenque in Southern Mexico, Monterrey and Tijuana in the North. Through support to COMAR, UNHCR hopes for reduced waiting times for asylum decisions, improved quality of decisions, freedom of movement for asylum-seekers, improved access to documentation and steps to facilitate access to the labour market for asylum-seekers. These steps would reduce the number of people who abandon or withdraw their claims.

Improved Reception Conditions

- Due to limited COMAR presence in the South and absence of opportunities to apply for asylum at the border, many PoC enter Mexico irregularly. While traveling to locations with COMAR presence they face a risk of being detained.
- Persons in need of international protection often take dangerous routes to reach COMAR offices. Women and girls in particular are at risk of sexual and gender-based violence.
- PoC often seek assistance in the network of shelters located along the migrant routes, which currently includes some 140 shelters. UNHCR will continue **strengthening the capacities of the shelters to carry out this outreach and to provide safe conditions for persons seeking asylum, including necessary legal and psycho-social support.** A range of infrastructure improvements are now being implemented in key locations, including Coatzacoalcos (Veracruz), Mexico City and Monterrey.
- UNHCR will continue to provide trainings to shelter management to reinforce their capacity to provide necessary protection and assistance for persons in need of international protection, starting with the necessary follow-up for release from detention (identification of special needs, capacity to refer to relevant institutions and finally facilitating local integration).

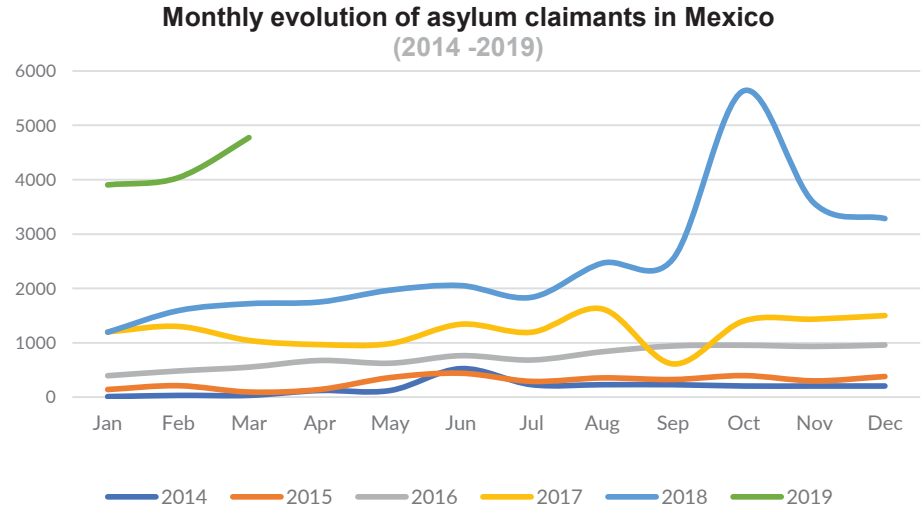
Strengthened Integration Prospects

- An increasing number of persons in need of international protection see **Mexico as a destination country rather than a transit country and this trend is likely to continue.** One reason why Mexico is increasingly viewed as a destination country is that **prospects for formal employment are good in specific parts of the country**.
- Two years ago, UNHCR started its **relocation, job placement and local integration project**, the results are very promising: Within the first month of the integration process, refugee families become independent from assistance. 92% of participants in working age find a suitable job, 100% of school age children and youth are enrolled in school, and 60% of the participants graduate out of poverty within the first year of the integration process, in accordance with national indicators. Relocated refugees can apply for nationality within the first two years of the integration process and generally can purchase their own house within the first three years. A **UNHCR scholarship program** enables children of relocated families to access tertiary education, which further strengthens their long term integration prospects.
- In 2019, UNHCR's local integration programme will further **expand beyond Saltillo and Guadalajara to include also Monterrey,** and **Aguascalientes**, and on a limited basis in **Tijuana**.
- UNHCR also engages with ministries at federal and state level in order to train civil servants to be able to **recognize documentation issued to asylum-seekers and refugees** and thereby facilitate access to public and private services.
- Through **community-based protection projects**, UNHCR works towards increased social interaction between refugees, asylum-seekers and host communities to reduce social tensions.
- The sustainability of UNHCR's interventions will largely depend on the level of the **inclusion of the PoC into national programmes, development of Public Private Partnership's, as well as on the sustainability of shelters** and other interventions.

WORKING WITH PARTNERS

In line with the Global Compact on Refugees and Sustainable Development Goal 16 "Peace, Justice and Strong Institutions", UNH Mexico works closely with the Government of Mexico, namely with COMAR, INM, the National System for Integral Family Developn (DIF), the Foreign Affairs Ministry, and the Public Defender's Office and the Child Protection Authority (Procuraduría). UNHCR continue to support these institutions through targeted and thematic capacity-building sessions, expert support in areas such as Qu Assurance as well as through financial support. UNHCR Mexico currently works with 17 partner organizations and indirectly witl shelters

- UNHCR Mexico works closely with IOM Mexico as part of the coordination for the Venezuela Situation. In 2019, partners of Regional Refugee and Migrant Response Plan in Mexico and Central America are supporting Governments in collecting analyzing data on human mobility and the needs of refugees and migrants from Venezuela.
- IOM and UNHCR also co-lead the Working Group on migration and refugees and UNHCR engages with UN Women, UNICEF UNFPA within the Interagency Group on Gender and Migration.
- Regional cooperation, in particular with Honduras, El Salvador and Guatemala continues to be of utmost importance to improve protecting space for PoC. UNHCR hopes that Mexico's leadership of the MIRPS process, coupled with the Comprehen Development Plan under discussion with the NCA countries, will lead to a more coordinated effort to address the root cause forced displacement from Central America.
- Fostering private sector engagement and diversifying its donor base will remain key priorities in 2019.



UNHCR
The UN Refugee Agency

MEXICO: UNHCR Presence
3 April 2019

UNHCR ACNUR
La Agencia de la ONU para los refugiados

Creation date: 3 April 2019
Sources: UNHCR

Offices

1 Branch Office in Mexico City

1 Sub Office in Tapachula

2 Field Offices in Monterrey and Tenosique

4 Field Units in Saltillo, Tijuana, Aguacalientes, and Acayucan

$59.6 million
UNHCR's financial requirements 2019

Donors

UNHCR Mexico wishes to convey a special thank you to its donors – the United States of America, Nacional Monte Piedad, I.A.P, the European Union, miscellaneous donors in Mexico, and miscellaneous private donors; as well as to the following donors of softly earmarked funds: Iceland, Italy, New Zealand, Sweden, the United States of America and major donors of un-earmarked contributions: Sweden, Norway, Netherlands, United Kingdom, Germany, Denmark, Switzerland, and Private donors in Spain.

Donors, including the United States of America, have projected additional contributions for 2019 which are not yet reflected in the below funding chart. UNHCR is however concerned that it has not been able to secure **sufficient, predictable, flexible and multi-year funding within the coming years** to protect, respond, include, empower, solve and support asylum-seekers and refugees, as well as the Mexican government in its **sustainable shift from a transit to an asylum country. UNHCR strives to broaden its donor basis and mobilize private sector engagement and investment in refugee hosting areas** to enable greater social and economic inclusion and build the resilience of refugees and their host communities alike. We are looking forward to collaborating with you!

Contacts

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Ernesto Diaz, Information Manager, Diaze@unhcr.org

2. Convention relating to the Status of Refugees

Geneva, 28 July 1951

ENTRY INTO FORCE: 22 April 1954, in accordance with article 43.

REGISTRATION: 22 April 1954, No. 2545.

STATUS: Signatories: 19. Parties: 146.

TEXT: United Nations, *Treaty Series* , vol. 189, p. 137.

Note: The Convention was adopted by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, held at Geneva from 2 to 25 July 1951. The Conference was convened pursuant to resolution 429 (V)[1], adopted by the General Assembly of the United Nations on 14 December 1950.

Participant	*Signature*	*Accession(a), Succession(d), Ratification*
Afghanistan		30 Aug 2005 a
Albania		18 Aug 1992 a
Algeria		21 Feb 1963 d
Angola		23 Jun 1981 a
Antigua and Barbuda		7 Sep 1995 a
Argentina		15 Nov 1961 a
Armenia		6 Jul 1993 a
Australia		22 Jan 1954 a
Austria	28 Jul 1951	1 Nov 1954
Azerbaijan		12 Feb 1993 a
Bahamas		15 Sep 1993 a
Belarus		23 Aug 2001 a
Belgium	28 Jul 1951	22 Jul 1953
Belize		27 Jun 1990 a
Benin		4 Apr 1962 d
Bolivia (Plurinational State of)		9 Feb 1982 a
Bosnia and Herzegovina[2]		1 Sep 1993 d
Botswana		6 Jan 1969 a
Brazil	15 Jul 1952	16 Nov 1960
Bulgaria		12 May 1993 a
Burkina Faso		18 Jun 1980 a
Burundi		19 Jul 1963 a
Cambodia		15 Oct 1992 a
Cameroon		23 Oct 1961 d
Canada		4 Jun 1969 a
Central African Republic		4 Sep 1962 d
Chad		19 Aug 1981 a
Chile		28 Jan 1972 a
China[3]		24 Sep 1982 a
Colombia	28 Jul 1951	10 Oct 1961
Congo		15 Oct 1962 d
Costa Rica		28 Mar 1978 a
Côte d'Ivoire		8 Dec 1961 d
Croatia[2]		12 Oct 1992 d
Cyprus		16 May 1963 d
Czech Republic[4]		11 May 1993 d
Democratic Republic of the Congo		19 Jul 1965 a
Denmark	28 Jul 1951	4 Dec 1952
Djibouti		9 Aug 1977 d
Dominica		17 Feb 1994 a
Dominican Republic		4 Jan 1978 a
Ecuador		17 Aug 1955 a
Egypt		22 May 1981 a
El Salvador		28 Apr 1983 a
Equatorial Guinea		7 Feb 1986 a
Estonia		10 Apr 1997 a
Eswatini		14 Feb 2000 a
Ethiopia		10 Nov 1969 a
Fiji		12 Jun 1972 d
Finland		10 Oct 1968 a
France	11 Sep 1952	23 Jun 1954
Gabon		27 Apr 1964 a
Gambia		7 Sep 1966 d
Georgia		9 Aug 1999 a
Germany[5,6]	19 Nov 1951	1 Dec 1953
Ghana		18 Mar 1963 a
Greece	10 Apr 1952	5 Apr 1960
Guatemala		22 Sep 1983 a

Participant	*Signature*	*Accession(a), Succession(d), Ratification*
Guinea		28 Dec 1965 d
Guinea-Bissau		11 Feb 1976 a
Haiti		25 Sep 1984 a
Holy See	21 May 1952	15 Mar 1956
Honduras		23 Mar 1992 a
Hungary		14 Mar 1989 a
Iceland		30 Nov 1955 a
Iran (Islamic Republic of)		28 Jul 1976 a
Ireland		29 Nov 1956 a
Israel	1 Aug 1951	1 Oct 1954
Italy	23 Jul 1952	15 Nov 1954
Jamaica		30 Jul 1964 d
Japan		3 Oct 1981 a
Kazakhstan		15 Jan 1999 a
Kenya		16 May 1966 a
Kyrgyzstan		8 Oct 1996 a
Latvia		31 Jul 1997 a
Lesotho		14 May 1981 a
Liberia		15 Oct 1964 a
Liechtenstein	28 Jul 1951	8 Mar 1957
Lithuania		28 Apr 1997 a
Luxembourg	28 Jul 1951	23 Jul 1953
Madagascar		18 Dec 1967 a
Malawi		10 Dec 1987 a
Mali		2 Feb 1973 d
Malta		17 Jun 1971 a
Mauritania		5 May 1987 a
Mexico		7 Jun 2000 a
Monaco		18 May 1954 a
Montenegro		10 Oct 2006 d
Morocco		7 Nov 1956 d
Mozambique		16 Dec 1983 a
Namibia		17 Feb 1995 a
Nauru		28 Jun 2011 a
Netherlands	28 Jul 1951	3 May 1956
New Zealand		30 Jun 1960 a
Nicaragua		28 Mar 1980 a
Niger		25 Aug 1961 d
Nigeria		23 Oct 1967 a
North Macedonia[2]		18 Jan 1994 d
Norway	28 Jul 1951	23 Mar 1953
Panama		2 Aug 1978 a
Papua New Guinea		17 Jul 1986 a
Paraguay		1 Apr 1970 a
Peru		21 Dec 1964 a
Philippines		22 Jul 1981 a
Poland		27 Sep 1991 a
Portugal[3]		22 Dec 1960 a
Republic of Korea		3 Dec 1992 a
Republic of Moldova		31 Jan 2002 a
Romania		7 Aug 1991 a
Russian Federation		2 Feb 1993 a
Rwanda		3 Jan 1980 a
Samoa		21 Sep 1988 a
Sao Tome and Principe		1 Feb 1978 a
Senegal		2 May 1963 d
Serbia[2]		12 Mar 2001 d
Seychelles		23 Apr 1980 a
Sierra Leone		22 May 1981 a
Slovakia[4]		4 Feb 1993 d
Slovenia[2]		6 Jul 1992 d
Solomon Islands		28 Feb 1995 a
Somalia		10 Oct 1978 a
South Africa		12 Jan 1996 a
South Sudan		10 Dec 2018 a
Spain		14 Aug 1978 a
St. Kitts and Nevis		1 Feb 2002 a
St. Vincent and the Grenadines		3 Nov 1993 a
Sudan		22 Feb 1974 a
Suriname[7]		29 Nov 1978 d
Sweden	28 Jul 1951	26 Oct 1954
Switzerland	28 Jul 1951	21 Jan 1955
Tajikistan		7 Dec 1993 a
Timor-Leste		7 May 2003 a
Togo		27 Feb 1962 d
Trinidad and Tobago		10 Nov 2000 a
Tunisia		24 Oct 1957 d
Turkey	24 Aug 1951	30 Mar 1962
Turkmenistan		2 Mar 1998 a
Tuvalu[8]		7 Mar 1986 d
Uganda		27 Sep 1976 a
Ukraine[9]		10 Jun 2002 a
United Kingdom of Great Britain and Northern Ireland	28 Jul 1951	11 Mar 1954
United Republic of Tanzania		12 May 1964 a

Participant	*Signature*	*Accession(a), Succession(d), Ratification*	*Participant*	*Signature*	*Accession(a), Succession(d), Ratification*
Uruguay		22 Sep 1970 a	Zambia		24 Sep 1969 d
Yemen[10]		18 Jan 1980 a	Zimbabwe		25 Aug 1981 a

Declarations under section B of article 1 of the Convention (Unless otherwise indicated in a footnote, the declarations were received upon ratification, accession or succession.)

(a) "Events occurring in Europe before 1 January 1951"

Participant

Congo
Madagascar
Monaco
Turkey

(b) "Events occurring in Europe or elsewhere before 1 January 1951"

Participant

Afghanistan
Albania
Algeria
Antigua and Barbuda
Argentina[11,12]
Armenia
Australia[12]
Austria
Azerbaijan
Bahamas
Belarus
Belgium
Belize
Benin[12]
Bolivia
Bosnia and Herzegovina[2]
Botswana[13]
Brazil[12]
Bulgaria
Burkina Faso
Burundi
Cameroon[12]
Canada

Participant

Central African Republic[12]
Chad
Chile[12]
Colombia[11,12]
Costa Rica
Côte d'Ivoire[12]
Croatia[2]
Cyprus
Czech Republic[4]
Democratic Republic of the Congo
Denmark
Djibouti
Dominica
Dominican Republic
Ecuador[12]
Egypt
El Salvador
Equatorial Guinea
Estonia
Ethiopia
Fiji
Finland
France[12]
Gabon
Gambia
Georgia
Germany[6]
Ghana
Greece
Guatemala
Guinea
Guinea-Bissau
Haiti
Holy See[12]
Honduras
Hungary[11,12]
Iceland
Iran (Islamic Republic of)[12]
Ireland
Israel
Italy[12]
Jamaica
Japan
Kazakhstan
Kenya
Kyrgyzstan

Participant

Latvia[11,12]
Lesotho
Liberia
Liechtenstein
Lithuania
Luxembourg[12]
Malawi[14]
Mali
Malta[12]
Mauritania
Mexico
Moldova
Montenegro
Morocco
Mozambique
Namibia
Nauru
Netherlands
New Zealand
Nicaragua
Niger[12]
Nigeria
Norway
Panama
Papua New Guinea
Paraguay[11,12]
Peru[12]
Philippines
Portugal[12]
Republic of Korea
Romania
Russian Federation
Rwanda
Samoa
Sao Tome and Principe
Senegal[12]
Serbia[2]
Seychelles
Sierra Leone
Slovakia[4]
Slovenia[2]
Solomon Islands
Somalia
South Africa
South Sudan
Spain

Participant
St. Kitts and Nevis
St. Vincent and the Grenadines
Sudan[12]
Suriname
Swaziland
Sweden
Switzerland
Tajikistan
The former Yugoslav Republic of Macedonia[2]
Timor-Leste
Togo[12]
Trinidad and Tobago
Tunisia
Turkmenistan
Tuvalu
Uganda
United Kingdom of Great Britain and Northern Ireland
United Republic of Tanzania
Uruguay
Yemen[10]
Zambia
Zimbabwe

Declarations and Reservations
(Unless otherwise indicated, the declarations and reservations were made upon ratification, accession or succession.)

ANGOLA

The Government of the People's Republic of Angola also declares that the provisions of the Convention shall be applicable in Angola provided that they are not contrary to or incompatible with the constitutional and legal provisions in force in the People's Republic of Angola, especially as regards articles 7, 13, 15, 18 and 24 of the Convention. Those provisions shall not be construed so as to accord to any category of aliens resident in Angola more extensive rights than are enjoyed by Angolan citizens.

The Government of the People's Republic of Angola also considers that the provisions of articles 8 and 9 of the Convention cannot be construed so as to limit its right to adopt in respect of a refugee or group of refugees such measures as it deems necessary to safeguard national interests and to ensure respect for its sovereignty, whenever circumstances so require.

In addition, the Government of the People's Republic of Angola wishes to make the following reservations:

Ad article 17: The Government of the People's Republic of Angola accepts the obligations set forth in article 17, provided that:

(a) Paragraph 1 of this article shall not be interpreted to mean that refugees must enjoy the same privileges as may be accorded to nationals of countries with which the People's Republic of Angola has signed special co-operation agreements;

(b) Paragraph 2 of this article shall be construed as a recommendation and not as an obligation.

The Government of the People's Republic of Angola reserves the right to prescribe, transfer or circumscribe the place of residence of certain refugees or groups of refugees, and to restrict their freedom of movement, whenever considerations of national or international order make it advisable to do so.

AUSTRALIA[15]

AUSTRIA[16]

The Convention is ratified:

(a) Subject to the reservation that the Republic of Austria regards the provisions of article 17, paragraphs 1 and 2 (excepting, however, the phrase "who was already exempt from them at the date of entry into force of this Convention for the Contracting State concerned, or . . ." in the latter paragraph) not as a binding obligation, but merely as a recommendation.

(b) Subject to the reservation that the provisions of article 22, paragraph 1, shall not be applicable to the

establishment and maintenance of private elementary schools, that the "public relief and assistance" referred to in article 23 shall be interpreted solely in the sense of allocations from public welfare funds (*Armenversorgung)* , and that the "documents or certifications" referred to in article 25, paragraphs 2 and 3 shall be construed to mean the identity certificates provided for in the Convention of 30 June 1928 relating to refugees.

BAHAMAS

"Refugees and their dependants would normally be subjected to the same laws and regulations relating generally to the employment of non-Bahamians within the Commonwealth of the Bahamas, so long as they have not acquired status in the Commonwealth of the Bahamas."

BELGIUM

1. In all cases where the Convention grants to refugees the most favourable treatment accorded to nationals of a foreign country, this provision shall not be interpreted by the Belgian Government as necessarily involving the régime accorded to nationals of countries with which Belgium has concluded regional customs, economic or political agreements.

2. Article 15 of the Convention shall not be applicable in Belgium; refugees lawfully staying in Belgian territory will enjoy the same treatment, as regards the right of association, as that accorded to aliens in general.

BOTSWANA

"Subject to the reservation of articles 7, 17, 26, 31, 32 and 34 and paragraph 1 of article 12 of the Convention."

BRAZIL[17]

"Refugees will be granted the same treatment accorded to nationals of foreign countries in general, with the exception of the preferential treatment extended to nationals of Portugal through the Friendship and Consultation Treaty of 1953 and Article 199 of the Brazilian Constitutional Amendment No.1, of 1969."

CANADA

"Subject to the following reservation with reference to Articles 23 and 24 of the Convention:

"Canada interprets the phrase `lawfully staying' as referring only to refugees admitted for permanent residence: refugees admitted for temporary residence will be accorded the same treatment with respect to the matters dealt with in articles 23 and 24 as is accorded visitors generally."

CHILE

(1) With the reservation that, with reference to the provisions of article 34, the Government of Chile will be unable to grant to refugees facilities greater that those granted to aliens in general, in view of the liberal nature of Chilean naturalization laws;

(2) With the reservation that the period specified in article 17, paragraph 2 (a) shall, in the case of Chile, be extended from three to ten years;

(3) With the reservation that article 17, paragraph 2 (c) shall apply only if the refugee is the widow or the widower of a Chilean spouse;

(4) With the reservation that the Government of Chile cannot grant a longer period for compliance with an expulsion order than that granted to other aliens in general under Chilean law.

CHINA

"[Subject to] reservations on the following articles:

(1). The latter half of article 14, which reads

'In the territory of any other Contracting State, he shall be accorded the same protection as is accorded in that territory to nationals of the country in which he has his habitual residence.'

(2). Article 16 (3)."

CYPRUS[18]

With confirmation of the reservations made by the Government of the United Kingdom upon application of the Convention to the territory of Cyprus.

DENMARK[19]

"[Subject to] the following reservation:

The obligation in article 17, paragraph 1, to accord to refugees lawfully staying in Denmark the most favourable treatment accorded to nationals of a foreign country as regards the right to engage in wage-earning employment shall not be construed to mean that refugees shall be entitled to the privileges which in this respect are accorded to nationals of Finland, Iceland, Norway and Sweden."

ECUADOR

[Subject to] the following declarations and reservation:

With respect to article 1, relating to the definition of the term "refugee", the Government of Ecuador declares that its accession to the Convention relating to the Status of Refugees does not imply its acceptance of the Conventions which have not been expressly signed and ratified by Ecuador.

With respect to article 15, Ecuador further declares that its acceptance of the provisions contained therein shall be limited in so far as those provisions are in conflict with the constitutional and statutory provisions in force prohibiting aliens, and consequently refugees, from being members of political bodies.

EGYPT

With reservations in respect of article 12 (1), articles 20 and 22 (1), and articles 23 and 24.

1. Egypt formulated a reservation to article 12 (1) because it is in contradiction with the internal laws of Egypt. This article provides that the personal status of a refugee shall be governed by the law of the country of his domicile or, failing this, of his residence. This formula contradicts article 25 of the Egyptian civil code, which reads as follows:

"The judge declares the applicable law in the case of persons without nationality or with more than one nationality at the same time. In the case of persons where there is proof, in accordance with Egypt, of Egyptian nationality, and at the same time in accordance with one or more foreign countries, of nationality of that country, the Egyptian law must be applied."

The competent Egyptian authorities are not in a position to amend this article (25) of the civil code.

2. Concerning articles 20, 22 (paragraph 1), 23 and 24 of the Convention of 1951, the competent Egyptian authorities had reservations because these articles consider the refugee as equal to the national.

We made this general reservation to avoid any obstacle which might affect the discretionary authority of Egypt in granting privileges to refugees on a case-by-case basis.

ESTONIA

"[Subject to the following] reservations ...:

1) to Articles 23 and 24 as follows:

The Republic of Estonia considers articles 23 and 24 merely as recommendatory, not as legally binding.

2) to Article 25 as follows:

The Republic of Estonia shall not be bound to cause a certificate to be delivered by an Estonian authority, in place of the authorities of a foreign country, if documentary records necessary for the delivery of such a certificate do not exist in the Republic of Estonia.

3) to Article 28, paragraph 1 as follows:

The Republic of Estonia shall not be obliged within five years from the entry into force of the present Convention to issue travel documents provided in article 28."

ETHIOPIA

"[S]ubject to the following reservations made under the terms of Article 42, paragraph 1, of the Convention and Article VII, paragraph 1, of the Protocol :

The provisions of articles 8, 9, 17 (2) and 22 (1) of the Convention are recognized only as recommendations and not as legally binding obligations."

FIJI

The Government of Fiji stated that "...[t]he first and fourth reservations made by the United Kingdom are affirmed but have been redrafted as more suitable to the application of Fiji in the following terms:

1. The Government of Fiji understands articles 8 and 9 as not preventing them from taking in time of war or other grave and exceptional circumstances measures in the interests of national security in the case of a refugee on the ground of his nationality. The provisions of article 8 shall not prevent the Government of Fiji from exercising any rights over property and interests which they may acquire or have acquired as an Allied or Associated Power under a Treaty of Peace or other agreement or arrangement for the restoration of peace which has been or may be completed as a result of the Second World War. Furthermore the provisions of article 8 shall not affect the treatment to be accorded to any property or interests which at the date of entry into force of this Convention on behalf of Fiji were under the control of the Government of the United Kingdom of Great Britain and Northern Ireland or of the Government of Fiji respectively by reason of a state of war which existed between them and any other State.

2. The Government of Fiji cannot undertake to give effect to the obligations contained in paragraphs 1 and 2 of article 25 and can only undertake to apply the provisions of paragraph 3 so far as the law allows.

Commentary:

No arrangements exist in Fiji for the administrative assistance for which provision is made in article 25 nor have any such arrangements been found necessary in the case of refugees. Any need for the documents or certifications mentioned in paragraph 2 of that article would be met by affidavits...

All other reservations made by the United Kingdom to the above-mentioned [Convention are] withdrawn."

FINLAND[20]

"[S]ubject to the following reservations:

(1) A general reservation to the effect that the application of those provisions of the Convention which grant to refugees the most favourable treatment accorded to nationals of a foreign country shall not be affected by the fact that special rights and privileges are now or may in future be accorded by Finland to the nationals of Denmark, Iceland, Norway and Sweden or to the nationals of any one of those Countries;

[...]

(5) A reservation to article 24, paragraph 3 to the effect that it shall not be binding on Finland;

[...]

FRANCE

In depositing its instrument of ratification, the Government of the French Republic, acting in accordance with article 42 of the Convention, makes the following statements:

(a) It considers that article 29, paragraph 2, does not prevent the application in French territory of the provisions of the Act of 7 May 1934 authorizing the levying of the Nansen tax for the support of refugee welfare, resettlement and relief work.

(b) Article 17 in no way prevents the application of the laws and regulations establishing the proportion of alien workers that employers are authorized to employ in France or affects the obligations of such employers in connexion with the employment of alien workers.

GAMBIA[21]

GEORGIA

"According to the paragraph 1, article 40 of the [...] Convention, before the full restoration of the territorial integrity of Georgia, this Convention is applicable only to the territory where the jurisdiction of Georgia is exercised."

GREECE[22]

"In cases or circumstances which, in its opinion, would justify exceptional procedure for reasons of national security or public order, the Hellenic Government *reserves* the right to derogate from the obligations imposed by the provisions of article 26."

GUATEMALA[23]

HOLY SEE

The Holy See, in conformity with the terms of article 42, paragraph 1, of the Convention, makes the reservation that the application of the Convention must be compatible in practice with the special nature of the Vatican City State and without prejudice to the norms governing access to and sojourn therein.

HONDURAS[24]

(a) With respect to article 7:

The Government of the Republic of Honduras understands this article to mean that it shall accord to refugees such facilities and treatment as it shall deem appropriate at its discretion, taking into account the economic, social, democratic and security needs of the country;

(b) With respect to article 17:

This article shall in no way be understood as limiting the application of the labour and civil service laws of the country, especially is so far as they refer to the requirements, quotas and conditions of work which an alien must fulfil in his employment;

(e) With respect to article 34:

The Government of the Republic of Honduras shall not be obligated to guarantee refugees more favourable naturalization facilities than those ordinarily granted to aliens in accordance with the laws of the country.

IRAN (ISLAMIC REPUBLIC OF)

Subject to the following reservations:

1. In all cases where, under the provisions of this Convention, refugees enjoy the most favourable treatment accorded to nationals of a foreign State, the Government of Iran reserves the right not to accord refugees the most favourable treatment accorded to nationals of States with which Iran has concluded regional establishment, customs, economic or political agreements.

2. The Government of Iran considers the stipulations contained in articles 17, 23, 24 and 26 as being recommendations only.

IRELAND[25]

"[S]ubject to the following declarations and reservations:

...

2. The Government of Ireland understands the words `public order' in article 32 (1) and the words `in accordance with due process of law' in article 32 (2) to mean, respectively, `public policy' and `in accordance with a procedure provided by law'.

3. With regard to article 17 the Government of Ireland do not undertake to grant to refugees rights of wage-earning employment more favourable than those granted to aliens generally.

4. The Government of Ireland undertake to give effect to article 25 only insofar as may be practicable and permissible under the laws of Ireland.

5. With regard to article 29 (1) the Government of Ireland do not undertake to accord to refugees treatment more favourable than that accorded to aliens generally with respect to

. . .

(c) Income Tax (including Surtax)."

ISRAEL

"[S]ubject to the following statements and reservations:

...

2. Articles 8 and 12 shall not apply to Israel.

3. Article 28 shall apply to Israel with the limitations which result from Section 6 of the Passport Law of 5712-1952, according to which the Minister may, at his discretion:

(a) Refuse to grant, or to extend the validity of a passport or laissez-passer;

(b) Attach conditions to the grant or the extension of the validity of a passport or laissez-passer;

(c) Cancel, or shorten the period of validity of a passport or laissez-passer issued, and order the surrender thereof;

(d) Limit, either at or after the issue of a passport or laissez-passer, the range of countries for which it is to be valid.

4. Permits provided for by Article 30 shall be issued by the Minister of Finance at his discretion."

ITALY[26]

JAMAICA

"The Government of Jamaica confirms and maintains the following reservations, which were made when the Convention was extended to Jamaica by the United Kingdom of Great Britain and Northern Ireland:

(i) The Government of the United Kingdom understand articles 8 and 9 as not preventing the taking by the above-mentioned territory, in time of war or other grave and exceptional circumstances, of measures in the interests of national security in the case of a refugee on the ground of his nationality. The provisions of article 8 shall not prevent the Government of the United Kingdom from exercising any rights over property or interests which they may acquire or have acquired as an Allied or Associated Power under a Treaty of Peace or other agreement or arrangement for the restoration of peace which has been or may be completed as a result of the Second World War. Furthermore, the provisions of article 8 shall not affect the treatment to be accorded to any property or interests which, at the date of entry into force of the Convention for the above-mentioned territory, are under the control of the Government of the United Kingdom by reason of a state of war which exists or existed between them and any other State.

(ii) The Government of the United Kingdom accept paragraph 2 of article 17 in its application to the above-mentioned territory with the substitution of `four years' for `three years' in subparagraph (a) and with the omission of subparagraph (c).

(iii) The Government of the United Kingdom can only undertake that the provisions of subparagraph (b) of paragraph 1 of article 24 and of paragraph 2 of that article will be applied to the above-mentioned territory so far as the law allows.

(iv) The Government of the United Kingdom cannot undertake that effect will be given in the above-mentioned territory to paragraphs 1 and 2 of article 25 and can only undertake that the provisions of paragraph 3 will be applied in the above-mentioned territory so far as the law alows."

LATVIA

"Reservation

In accordance with paragraph 1 of article 42 of the [said Convention], the Republic of Latvia declares that it does not consider itself bound by the article 8 and the article 34 of the Convention.

Reservation

In accordance with paragraph 1 of the article 42 of the [said Convention], the Republic of Latvia, in respect of the article 26 of the Convention, reserves the right to designate the place or places of residence of the refugees whenever considerations of national security or public order so require.

Reservation

In accordance with paragraph 1of the article 42 of the [said Convention], the Republic of Latvia declares that the provisions of paragraphs 1 and 2 of the article 17 and article 24 of the Convention it considers as recommendations and not legal obligations.

Reservation

In accordance with paragraph 1 of the article 42 of the [said Convention], the Republic of Latvia declares that in all cases where the Convention grants to refugees the most favourable treatment accorded to nationals of a foreign country, this provision shall not be interpreted by the Government of the Republic of Latvia as necessarily involving the regime accorded to nationals of countries with which the Republic of Latvia had concluded regional customs, economic, political or social security agreements."

LIECHTENSTEIN[27]

LUXEMBOURG

Subject to the following reservation: in all cases where this Convention grants to refugees the most favourable treatment accorded to nationals of a foreign country, this provision shall not be interpreted as necessarily involving the régime accorded to nationals of countries with which the Grand Duchy of Luxembourg has concluded regional, customs, economic or political agreements.

The Grand Duchy of Luxembourg considers that the reservation made by the Republic of Guatemala concerning the Convention relating to the Status of Refugees of 28 July 1951 and the Protocol relating to the Status of Refugee of 31 January 1967 does not affect the

obligations of Guatemala deriving from those instruments.

MADAGASCAR

The provisions of article 7 (1) shall not be interpreted as requiring the same treatment as is accorded to nationals of countries with which the Malagasy Republic has concluded conventions of establishment or agreements on co-operation;

The provisions of articles 8 and 9 shall not be interpreted as forbidding the Malagasy Government to take, in time of war or other grave and exceptional circumstances, measures with regard to a refugee because of his nationality in the interests of national security.

The provisions of article 17 cannot be interpreted as preventing the application of the laws and regulations establishing the proportion of alien workers that employers are authorized to employ in Madagascar or affecting the obligations of such employers in connexion with the employment of alien workers.

MALAWI

"In respect of articles 7, 13, 15, 19, 22 and 24

The Government of the Republic of Malawi considers these provisions as recommendations only and not legally binding ob ligations.

In respect of article 17

The Government of the Republic of Malawi does not consider itself bound to grant a refugee who fulfils any of the conditions set forth in subparagraphs (a) to (c) to paragraph (2) of article 17 automatic exemption for the obligation to obtain a work permit.

In respect of article 17 as a whole, the Government of the Republic of Malawi does not undertake to grant to refugees rights of wage earning employment more favourable than those granted to aliens generally.

In respect of article 26

The Government of the Republic of Malawi reserves its right to designate the place or places of residence of the refugees and to restrict their movements whenever considerations of national security or public order so require.

In respect of article 34

The Government of the Republic of Malawi is not bound to grant to refugees any more favourable naturalization facilities than are granted, in accordance with the relevant laws and regulations, to aliens generally."

MALTA[28]

MEXICO[29]

It will always be the task of the Government of Mexico to determine and grant, in accordance with its legal provisions in force, refugee status, without prejudice to the definition of a refugee provided for under article 1 of the Convention and article 1 of its Protocol.

The Government of Mexico has the power to grant refugees greater facilities for naturalization and assimilation than those accorded to aliens in general, within the framework of its population policy and, particularly, with regard to refugees, in accordance with its national legislation.

The Government of Mexico is convinced of the importance of ensuring that all refugees can obtain wage-earning employment as a means of subsistence and affirms that refugees will be treated, in accordance with the law, under the same conditions as aliens in general, including the laws and regulations which establish the proportion of alien workers that employers are authorized to employ in Mexico, and this will not affect the obligations of employers with regard to the employment of alien workers.

On the other hand, since the Government of Mexico is unable to guarantee refugees who meet any of the requirements referred to in article 17, paragraph 2 (a), (b) and (c), of the Convention, the automatic extension of the obligations for obtaining a work permit, it lodges an express reservation to these provisions.

The Government of Mexico reserves the right to assign, in accordance with its national legislation, the place or places of residence of refugees and to establish the conditions for moving within the national territory, for which reason it lodges an express reservation to articles 26 and 31 (2) of the Convention.

MONACO

Subject to the reservation that the stipulations contained in articles 7 (paragraph 2), 15, 22 (paragraph 1), 23 and 24 shall be provisionally considered as being recommendations and not legal obligations.

MOZAMBIQUE

The Government of Mozambique will take these provisions as simple recommendations not binding it to accord to refugees the same treatment as is accorded to Mozambicans with respect to elementary education and property.

The Government of Mozambique will interpret [these provisions] to the effect that it is not required to grant privileges from obligation to obtain a work permit.

The Government of Mozambique will not be bound to accord to refugees or groups of refugees resident in its territory more extensive rights than those enjoyed by nationals with respect to the right of association and it reserves the right to restrict them in the interest of national security.

The Government of Mozambique reserves its right to designate place or places for principal residence for refugees or to restrict their freedom of movement whenever considerations of national security make it advisable.

The Government of Mozambique does not consider itself bound to grant to refugees facilities greater than those granted to other categories of aliens in general, with respect to naturalization laws."

NAMIBIA

"[S]ubject to the following reservation in respect of article 26:

The Government of the Republic of Namibia reserves the right to designate a place or places for principal reception and residence for refugees or to restrict their freedom of movement if consideration of national security so required or make it advisable."

NETHERLANDS

This signature is appended subject to the reservation that in all cases where this Convention grants to refugees the most favourable treatment accorded to nationals of a foreign country this provision shall not be interpreted as involving the régime accorded to nationals of countries with which the Netherlands has concluded regional, customs, economic or political agreements.

(1) With reference to article 26 of this Convention, the Netherlands Government reserves the right to designate a place of principal residence for certain refugees or groups of refugees in the public interest.

(2) In the notifications concerning overseas territories referred to in article 40, paragraph 2, of this Convention, the Netherlands Government reserves the right to make a declaration in accordance with section B of article 1 with respect to such territories and to make reservations in accordance with article 42 of the Convention.

In depositing the instrument of ratification by the Netherlands, . . . I declare on behalf of the Netherlands Government that it does not regard the Amboinese who were transported to the Netherlands after 27 December 1949, the date of the transfer of sovereignty by the Kingdom of the Netherlands to the Republic of the United States of Indonesia, as eligible for the status of refugees as defined in article 1 of the said Convention.

NEW ZEALAND

"The Government of New Zealand can only undertake to give effect to the provisions contained in paragraph 2 of article 24 of the Convention so far as the law of New Zealand allows."

NORWAY[30]

"The obligation stipulated in article 17 (1) to accord to refugees lawfully staying in the country the most favourable treatment accorded to nationals of a foreign country in the same circumstances as regards the right to engage in wage-earning employment, shall not be construed as extending to refugees the benefits of agreements which may in the future be concluded between Norway, Denmark, Finland, Iceland and Sweden, or between Norway and any one of these countries, for the purpose of establishing special conditions for the transfer of labour between these countries."

PAPUA NEW GUINEA[31]

"The Government of Papua New Guinea in accordance with article 42 paragraph 1 of the Convention makes a reservation with respect to the provisions contained in articles 17 (1), 21, 22 (1), 26, 31, 32 and 34 of the Convention and does not accept the obligations stipulated in these articles."

POLAND

The Republic of Poland does not consider itself bound by the provisions of article 24, paragraph 2, of the Convention.

PORTUGAL[32]

"In all cases in which the Convention confers upon the refugees the most favoured person status granted to nationals of a foreign country, this clause will not be interpreted in such a way as to mean the status granted by Portugal to the nationals of Brazil."

REPUBLIC OF KOREA[33]

REPUBLIC OF MOLDOVA

" ... with the following declarations and reservations:

1. According to paragraph 1, article 40 of the Convention, the Republic of Moldova declares that, until the full restoration of the territorial integrity of the Republic of Moldova, the provisions of this Convention are applicable only in the territory where the jurisdiction of the Republic of Moldova is exercised.

2. The Republic of Moldova shall apply the provisions of this convention with no discrimination generally not only as to race, religion or country of origin as stipulated in Article 3 of the Convention.

3. For the purposes of this Convention by the notion "residence"shall be understood the permanent and lawful domicile.

4. According to paragraph 1 of Article 42 of the Convention, the Republic of Moldova reserves the right that the provisions of the Convention, according to which refugees shall be accorded treatment not less favorable than hat accorded aliens generally, are not interpreted as an obligation to offer refugees a regime similar to that accorded to the citizens of the states with which the Republic of Moldova has signed regional customs, economic, political and social security treaties.

5. According to paragraph 1 of Article 42 of the Convention, the Republic of Moldova reserves the right to consider the provisions of Article 13 as recommendations and not as obligations.

6. According to paragraph 1 of Article 42 of the Convention, the Republic of Moldova reserves the right to consider the provisions of Article 17 (2) as recommendations and not as obligations.

7. According to paragraph 1 of Article 42 of the Convention, the Republic of Moldova interprets the provisions of Article 21 of the Convention as not obliged to accord housing to refugees.

8. The Government of the Republic of Moldova reserves the right to apply the provisions of Article 24 so that they do not infringe upon the constitutional and domestic legislation provisions rerding the right to labor and social protection.

9. According to paragraph 1 of Article 42 of the Convention, in implementing Article 26 of this Convention, the Republic of Moldova reserves the right to establish the place of residence for certain refugees or groups of refugees in the interest of the state and society.

10. The Republic of Moldova shall apply the provisions of Article 31 of the Convention as of the date of the entry into force of the Law on Refugee Status.

RWANDA

For reasons of public policy (*ordre public*), the Rwandese Re public reserves the right to determine the place of residence of refugees and to establish limits to their freedom of movement.

SIERRA LEONE

"The Government of Sierra Leone wishes to state with regard to article 17 (2) that Sierra Leone does not consider itself bound to grant to refugees the rights stipulated therein.

Further, with regard to article 17 as a whole, the Government of Sierra Leone wishes to state that it considers the article to be a recommendation only and not a binding obligation.

The Government of Sierra Leone wishes to state that it does not consider itself bound by the provisions of article 29, and it reserves the right to impose special taxes on aliens as provided for in the Constitution."

SOMALIA

"[Subject to] the following declaration:

The Government of the Somali Democratic Republic acceded to the Convention and Protocol on the understanding that nothing in the said Convention or Protocol will be construed to prejudice or adversely affect the national status, or political aspiration of displaced people from Somali Territories under alien domination.

It is in this spirit, that the Somali Democratic Republic will commit itself to respect the terms and provisions of the said Convention and Protocol."

SPAIN

(a) The expression "the most favourable treatment" shall, in all the articles in which it is used, be interpreted as not including rights which, by law or by treaty, are granted to nationals of Portugal, Andorra, the Philippines or the Latin American countries or to nationals of countries with which international agreements of a regional nature are concluded.

(b) The Government of Spain considers that article 8 is not a binding rule but a recommendation.

(c) The Government of Spain reserves its position on the application of article 12, paragraph 1. Article 12, paragraph 2, shall be interpreted as referring exclusively to rights acquired by a refugee before he obtained, in any country, the status of refugee.

(d) Article 26 of the Convention shall be interpreted as not precluding the adoption of special measures concerning the place of residence of particular refugees, in accordance with Spanish law.

SUDAN

SWEDEN[34]

First , a general reservation to the effect that the application of those provisions of the Convention which grant to refugees the most favourable treatment accorded to nationals of a foreign country shall not be affected by the fact that special rights and privileges are now or may in future be accorded by Sweden to the nationals of Denmark, Finland, Iceland and Norway or to the nationals of any one of those countries; and, *secondly* , the following reservations: a reservation to article 8 to the effect that that article shall not be binding on Sweden; a reservation to article 12, paragraph 1, to the effect that the Convention shall not modify the rule of Swedish private international law, as now in force, under which the personal status of a refugee is governed by the law of his country of nationality . . .; a reservation to article 17, paragraph 2, to the effect that Sweden does not consider itself bound to grant a refugee who fulfils any one of the conditions set out in subparagraphs (a)-(c) an automatic exemption from the obligation to obtain a work permit; a reservation to article 24, paragraph 1 (b), to the effect that notwithstanding the principle of national treatment for refugees, Sweden shall not be bound to accord to refugees the same treatment as is accorded to nationals in respect of the possibility of entitlement to a national pension under the provisions of the National Insurance Act; and likewise to the effect that, in so far as the right to a supplementary pension under the said Act and the computation of such pension in certain respects are concerned, the rules applicable to Swedish nationals shall be more favourable than those applied to other insured persons; a reservation to article 24, paragraph 3, to the effect that the provisions of this paragraph shall not be binding on Sweden; and a reservation to article 25, to the effect that Sweden does not consider itself bound to cause a certificate to be delivered by a Swedish authority, in the place of the authorities of a foreign country, if the documentary records necessary for the delivery of such a certificate do not exist in Sweden.

SWITZERLAND[35]

TIMOR-LESTE

“In conformity with Article 42 of the Covention, the Democratic Republic of Timor-Leste accedes to the Convention with reservations in respect of Articles 16 (2), 20, 21, 22, 23 and 24."

TURKEY

The Turkish Government considers moreover, that the term "events occurring before 1 January 1951" refers to the beginning of the events. Consequently, since the pressure exerted upon the Turkish minority in Bulgaria, which began before 1 January 1951, is still continuing, the provision of this Convention must also apply to the Bulgarian refugees of Turkish extraction compelled to leave that country as a result of this pressure and who, being unable to enter Turkey, might seek refuge on the territory of another contracting party after 1 January 1951.

The Turkish Government will, at the time of ratification, enter reservations which it could make under article 42 of the Convention.

No provision of this Convention may be interpreted as granting to refugees greater rights than those accorded to Turkish citizens in Turkey;

The Government of the Republic of Turkey is not a party to the Arrangements of 12 May 1926 and of 30 June 1928 mentioned in article 1, paragraph A, of this Convention. Furthermore, the 150 persons affected by the Arrangement of 30 June 1928 having been amnestied under Act No.3527, the provisions laid down in this Arrangement are no longer valid in the case of Turkey. Consequently, the Government of the Republic of Turkey considers the Convention of 28 July 1951 independently of the aforementioned Arrangements . . .

The Government of the Republic understands that the action of "re-availment" or "reacquisition" as referred to in article 1, paragraph C, of the Convention–that is to say: "If (1) He has voluntarily re-availed himself of the protection of the country of his nationality; or (2) Having lost his nationality, he has voluntarily reacquired it"–does not depend only on the request of the person concerned but also on the consent of the State in question.

UGANDA

"(1) *In respect of article 7:* The Government of the Republic of Uganda understands this provision as not conferring any legal, political or other enforceable right upon refugees who, at any given time, may be in Uganda. On the basis of this understanding the Government of the Republic of Uganda shall accord refugees such facilities and treatment as the Government of the Republic of Uganda shall in her absolute discretion, deem fit having regard to her own security, economic and social needs.

(2) *In respect of articles 8 and 9:* The Government of the Republic of Uganda declares that the provisions of articles 8 and 9 are recognized by it as recommendations only.

(3) *In respect of article 13:* The Government of the Republic of Uganda reserves to itself the right to abridge this provision without recourse to courts of law or arbitral tribunals, national or international, if the Government of the Republic of Uganda deems such abridgement to be in the public interest.

(4) *In respect of article 15:* The Government of the Republic of Uganda shall in the public interest have the full freedom to withhold any or all rights conferred by this article from any refugees as a class of residents within her territory.

(5) *In respect of article 16:* The Government of the Republic of Uganda understands article 16 paragraphs 2 and 3 thereof as not requiring the Government of the Republic of Uganda to accord to a refugee in need of legal assistance, treatment more favourable than that extended to aliens generally in similar circumstances.

(6) *In respect of article 17:* The obligation specified in article 17 to accord to refugees lawfully staying in the country in the same circumstances shall not be construed as extending to refugees the benefit of preferential treatment granted to nationals of the states who enjoy special privileges on account of existing or future treaties between Uganda and those countries, particularly sttes of the East African Community and the Organization of African Unity, in accordance with the provisions which govern such charters in this respect.

(7) *In respect of article 25:* The Government of the Republic of Uganda understands that this article shall not require the Government of the Republic of Uganda to incur expenses on behalf of the refugees in connection with the granting of such assistance except in so far as such assistance is requested

by and the resulting expense is reimbursed to the Government of the Republic of Uganda by the United Nations High Commissioner for Refugees or any other agency of the United Nations which may succeed it.

(8) *In respect of article 32:* Without recourse to legal process the Government of the Republic of Uganda shall, in the public interest, have the unfettered right to expel any refugee in her territory and may at any time apply such internal measures as the Government may deem necessary in the circumstances; so however that, any action taken by the Government of the Republic of Uganda in this regard shall not operate to the prejudice of the provisions of article 33 of this Convention."

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

"(i) The Government of the United Kingdom of Great Britain and Northern Ireland understand articles 8 and 9 as not preventing them from taking in time of war or other grave and exceptional circumstances measures in the interests of national security in the case of a refugee on the ground of his nationality. The provisions of article 8 shall not prevent the Government of the United Kingdom of Great Britain and Northern Ireland from exercising any rights over property or interests which they may acquire or have acquired as an Allied or Associated power under a Treaty of Peace or other agreement or arrangement for the restoration of peace which has been or may be completed as a result of the Second World War. Furthermore, the provisions of article 8 shall not affect the treatment to be accorded to any property or interests which at the date of entry into force of this Convention for the United Kingdom of Great Britain and Northern Ireland are under the control of the Government of the United Kingdom of Great Britain and Northern Ireland by reason of a state of war which exists or existed between them and any other State.

(ii) The Government of the United Kingdom of Great Britain and Northern Ireland accept paragraph 2 of article 17 with the substitution of "four years" for "three years" in sub-paragraph (a) and with the omission of sub-paragraph (c).

(iii) The Government of the United Kingdom of Great Britain and Northern Ireland, in respect of such of the matters referred to in sub-paragraph (b) of paragraph 1 of article 24 as fall within the scope of the National Health Service, can only undertake to apply the provisions of that paragraph so far as the law allows; and it can only undertake to apply the provisions of paragraph 2 of that Article so far as the law allows.

(iv) The Government of the United Kingdom of Great Britain and Northern Ireland cannot undertake to give effect to the obligations contained in paragraphs 1 and 2 of article 25 and can only undertake to apply the provisions of paragraph 3 so far as the law allows.

Commentary

In connexion with sub-paragraph (b) of paragraph 1 of article 24 relating to certain matters within the scope of the National Health Service, the National Health Service (Amendment) Act, 1949, contains powers for charges to be made to persons not ordinarily resident in Great Britain (which category would include refugees) who receive treatment under the Service. While these powers have not yet been exercised it is possible that this might have to be done at some future date. In Northern Ireland the health services are restricted to persons ordinarily resident in the country except where regulations are made to extend the Service to others. It is for these reasons that the Government of the United Kingdom while they are prepared in the future, as in the past, to give the most sympathetic consideration to the situation of refugees, find it necessary to make a reservation to sub-paragraph (b) of paragraph 1 of article 24 of the Convention.

The scheme of Industrial Injuries Insurance in Great Britain does not meet the requirements of paragraph 2 of article 24 of the Convention. Where an insured person has died as the result of an industrial accident or a disease due to the nature of his employment, benefit cannot generally be paid to his dependants who are abroad unless they are in any part of the British Commonwealth, in the Irish Republic or in a country with which the United Kingdom has made a reciprocal agreement concerning the payment of industrial injury benefits. There is an exception to this rule in favour of the dependants of certain seamen who die as a result of industrial accidents happening to them while they are in the service of British ships. In this matter refugees are treated in the same way as citizens of the United Kingdom and Colonies and by reason of paragraphs 3 and 4 of article 24 of the Convention, the dependants of refugees will be able to take advantage of reciprocal agreements which provide for the payment of United Kingdom industrial injury benefits in other countries. By reason of paragraphs (3) and (4) of article 24 refugees will enjoy under the scheme of National Insurance and Industrial Injuries Insurance certain rights which are withheld from British subjects who are not citizens of the United Kingdom and Colonies.

No arrangements exist in the United Kingdom for the administrative assistance for which provision is made in article 25 nor have any such arrangements been found necessary in the case of refugees. Any need for the documents or certifications mentioned in paragraph 2 of that article would be met by affidavits."

ZAMBIA

"Subject to the following reservations made pursuant to article 42 (1) of the Convention:

Article 17 (2)

The Government of the Republic of Zambia wishes to state with regard to article 17, paragraph 2, that Zambia does not consider itself bound to grant to a refugee who fulfils any one of the conditions set out in sub-paragraphs (a) to (c) automatic exemption from the obligation to obtain a work permit.

Further, with regard to article 17 as a whole, Zambia does not wish to undertake to grant to refugees rights of wage-earning employment more favourable than those granted to aliens generally.

Article 22 (1)

The Government of the Republic of Zambia wishes to state that it considers article 22 (1) to be a recommendation only and not a binding obligation to accord to refugees the same treatment as is accorded to nationals with respect to elementary education.

Article 26

The Government of the Republic of Zambia wishes to state with regard to article 26 that it reserves the right to designate a place or places of residence for refugees.

Article 28

The Government of the Republic of Zambia wishes to state with regard to article 28 that Zambia considers itself not bound to issue a travel document with a return clause in cases where a country of second asylum has accepted or indicated its willingness to accept a refugee from Zambia."

ZIMBABWE

"1. The Government of the Republic of Zimbabwe declares that it is not bound by any of the reservations to the Convention relating to the Status of Refugees, the application of which had

been extended by the Government of the United Kingdom to its territory before the attainment of independence.

2. The Government of the Republic of Zimbabwe wishes to state with regard to article 17, paragraph 2, that it does not consider itself bound to grant a refugee who

fulfills any of the conditions set out in subparagraphs (a) to (c) automatic exemption from the obligation to obtain a work permit. In addition, with regard to article 17 as a whole, the Republic of Zimbabwe does not undertake to grant to refugees rights of wage-earning employment more favourable than those granted to aliens generally.

3. The Government of the Republic of Zimbabwe wishes to state that it considers article 22 (1) as being a recommendation only and not an obligation to accord to refugees the same treatment as it accords to nationals with respect to elementary education.

4. The Government of the Republic of Zimbabwe considers articles 23 and 24 as being recommendations only.

5. The Government of the Republic of Zimbabwe wishes to state with regard to article 26 that it reserves the right to designate a place or places of residence for refugees."

Objections
(Unless otherwise indicated, the objections were made upon ratification, accession or succession.)

BELGIUM

[Regarding the reservation made by Guatemala upon accession] [the Belgian Government] considers that it is impossible for the other States parties to determine the scope of a reservation which is expressed in such broad terms and which refers for the most part to domestic law, and that the reservation is thus not acceptable. It therefore voices an objection to the said reservation.

ETHIOPIA

"The Provisional Military Government of Socialist Ethiopia wishes to place on record its objection to the declaration [made by Somalia upon accession] and that it does not recognize it as valid on the ground that there are no Somali territories under alien domination."

FRANCE

GERMANY[6]

"The Federal Government views [the reservation made by Guatemala] as being worded in such general terms that its application could conceivably nullify the provisions of the Convention and the Protocol. Consequently, this reservation cannot be accepted."

GREECE[22]

ITALY

[The Government of Italy] considers [the reservation made by Guatemala] to be unacceptable since the very general terms in which it is couched and the fact that it refers for the most part to domestic law and leaves it to the Guatemalan Government to decide whether to apply numerous aspects of the Convention make it impossible for other States parties to determine the scope of the reservation.

LUXEMBOURG

NETHERLANDS

"The Government of the Kingdom of the Netherlands is of the opinion that a reservation phrased in such general terms and referring to the domestic law only is undesirable, since its scope is not entirely clear."

Territorial Application

Participant	*Date of receipt of the notification*	*Territories*
Australia	22 Jan 1954	Nauru, Norfolk Island and Papua New Guinea
Denmark	4 Dec 1952	Greenland
France	23 Jun 1954	All territories for the international relations of which France is responsible
Netherlands[7]	29 Jul 1971	Suriname
United Kingdom of Great Britain and Northern Ireland[8,18,21,36,37,38,39,40,41,42]	11 Mar 1954	Channel Islands and Isle of Man
	25 Oct 1956	The following territories with reservations: British Solomon Islands Protectorate, Cyprus, Dominica, Falkland Islands, Fiji, Gambia, Gilbert and Ellice Islands, Grenada, Jamaica, Kenya, Mauritius, St. Vincent, Seychelles, Somaliland Protectorate, Zanzibar and St. Helena
	19 Jun 1957	British Honduras
	11 Jul 1960	Federation of Rhodesia and Nyasaland

Participant	*Date of receipt of the notification*	*Territories*
	11 Nov 1960	Basutoland, Bechuanaland Protectorate and Swaziland
	4 Sep 1968	Montserrat and St. Lucia
	20 Apr 1970	Bahama Islands

Declarations and Reservations

(Unless otherwise indicated the declarations and reservations were made upon notification of territorial application.)

DENMARK

Greenland

Subject to the reservations made on ratification by the Government of Denmark.

NETHERLANDS[7]

Surinam

The extension is subject to the following reservations, which had been made in substance by the Government of the Netherlands upon ratification:

"1. that in all cases where the Convention, in conjunction with the Protocol, grants to refugees the most favourable treatment accorded to nationals of a foreign country, this provision shall not be interpreted as involving the régime accorded to nationals of countries with which the Kingdom of the Netherlands has concluded regional, customs, economic or political agreements which apply to Surinam;

"2. that the Government of Surinam as regards article 26 of the Convention, in conjunction with article 1, paragraph 1, of the Protocol, reserves the right for reasons of public order to appoint for certain refugees or groups of refugees a principal place of residence."

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND[8,18,21,36,37,38,39,41,42]

The Channel Islands and the Isle of Man

"(i) The Government of the United Kingdom of Great Britain and Northern Ireland understand articles 8 and 9 as not preventing the taking in the Isle of Man and in the Channel Islands, in time of war or other grave and exceptional circumstances, of measures in the interests of national security in the case of a refugee on the ground of his nationality. The provisions of article 8 shall not prevent the Government of the United Kingdom of Great Britain and Northern Ireland from exercising any rights over property or interests which they may acquire or have acquired as an Allied or Associated Power under a Treaty of Peace or other agreement or arrangement for the restoration of peace which has been or may be completed as a result of the Second World War. Furthermore, the provisions of article 8 shall not affect the treatment to be accorded to any property or interests which at the date of the entry into force of this Convention for the Isle of Man and the Channel Islands are under the control of the Government of the United Kingdom of Great Britain and Northern Ireland by reason of a state of war which exists or existed between them and any other state.

"(ii) The Government of the United Kingdom of Great Britain and Northern Ireland accept paragraph 2 of article 17 in its application to the Isle of Man and the Channel Islands with the substitution of "four years" for "three years" in sub-paragraph (a) and with the omission of subparagraph (c).

"(iii) The Government of the United Kingdom of Great Britain and Northern Ireland can only undertake that the provisions of sub-paragraph (b) of paragraph 1 of article 24 and of paragraph 2 of that article will be applied in the Channel Islands so far as the law allows, and that the provisions of that sub-paragraph, in respect of such matters referred to therein as fall within the scope of the Isle of Man Health Service, and of paragraph 2 of that article will be applied in the Isle of Man so far as the law allows.

"(iv) The Government of the United Kingdom of Great Britain and Northern Ireland cannot undertake that effect will be given in the Isle of Man and the Channel Islands to paragraphs 1 and 2 of article 25 and can only undertake that the provisions of paragraph 3 will be applied in the Isle of Man and the Channel Islands so far as the law allows.

"The considerations upon which certain of these reservations are based are similar to those set out in the memorandum relating to the corresponding reservations made in respect of the United Kingdom, which was enclosed in my note under reference."

British Solomon Islands Protectorate, Cyprus, Dominica, Falkland Islands, Fiji, Gambia, Gilbert and Ellice Islands, Grenada, Jamaica, Kenya, Mauritius, St. Vincent, Seychelles and Somaliland Protectorate

[Same reservations, in essence, as those made for the Channel Islands and the Isle of Man.]

Zanzibar and St. Helena

[Same reservations, in essence, as those made for the Channel Islands and the Isle of Man under Nos. (i), (iii) and (iv).]

British Honduras

[Same reservations, in essence, as those made for the Channel Islands and the Isle of Man under No. (i).]

Federation of Rhodesia and Nyasaland

[Same reservations, in essence, as those made for the Channel Islands and the Isle of Man.]

Basutoland, Bechuanaland Protectorate and Swaziland

[Same reservations, in essence, as those made for the Channel Islands and the Isle of Man under Nos. (i), (iii) and (iv).]

The Bahama Islands

"Subject to the following reservation in respect of paragraphs 2 and 3 of article 17 of the Convention:

"Refugees and their dependants would normally be subject to the same laws and regulations relating generally to the employment of non-Bahamians within the Commonwealth of the Bahama Islands, so long as they have not acquired Bahamian status."

Notes:

[1] *Official Records of the General Assembly, Fifth Session, Supplement No. 20 (A/1775),* p.48.

[2] The former Yugoslavia had signed and ratified the Convention on 28 July 1951 and 15 December 1959, respectively declaring that it considered itself bound by alternative (b) of Section B(1) of the Convention.. See also note 1 under “Bosnia and Herzegovina”, “Croatia”, “former Yugoslavia”, “Slovenia”, “The Former Yugoslav Republic of Macedonia” and “Yugoslavia” in the “Historical Information” section in the front matter of this volume.

[3] On 27 April 1999, the Government of Portugal informed the Secretary-General that the Convention would apply to Macau. Subsequently, on 18 November and 3 December 1999, the Secretary-General received communications concerning the status of Macao from the Governments of China and Portugal (see also note 3 under “China” and note 1 under “Portugal” regarding Macao in the “Historical Information” section in the front matter of this volume). Upon resuming the exercise of sovereignty over Macao, China notified the Secretary-General that the Convention with the reservation made by China will also apply to the Macao Special Administrative Region.

[4] Czechoslovakia had acceeded to the Convention on 26 November 1991 declaring that it considered itself bound by alternative (b) of Section B (1) of the Convention. See also note 1 under “Czech Republic” and note 1 under “Slovakia” in the “Historical Information” section in the front matter of this volume.

[5] See note 1 under “Germany” regarding Berlin (West) in the “Historical Information” section in the front matter of this volume.

[6] The German Democratic Republic had acceded to the Convention on 4 September 1990 choosing alternative (b) of Section B (1) of the Convention. See also note 2 under “Germany” in the “Historical Information” section in the front matter of this volume.

[7] Upon notifying its succession (29 November1978) the Government of Suriname informed the Secretary-General that the Republic of Suriname did not succeed to the reservations formulated on 29 July 1951 by the Netherlands when the Convention and Protocol relating to the Status of Refugees were extended to Suriname.

[8] In a declaration contained in the notification of succession to the Convention, the Government of Tuvalu confirmed that it regards the Convention [. . .] as continuing in force subject to reservations previously made by the Government of the United Kingdom of Great Britain and Northern Ireland in relation to the Colony of the Gilbert and Ellice Islands.

[9] The instrument of accession was accompanied by the following communication:

"Having transmitted to the Secretary-General the Instrument of Accession of Ukraine simultaneously to the 1951 Convention and 1967 Protocol relating to the status of refugees, and in view of the fact that the Protocol provides in article I (2) that "the term ‘refugee' shall...mean any person within the definition of article 1 of the Convention as if the words ‘As result of events occurring before 1 anuary 1951 and...'and the words ‘...as a result of such events' in article 1 A (2) were omitted" and thus modifies in effect the provisions of article 1 of the Convention, it is the position of the Government of Ukraine that no separate declaration under article 1 B (1) of the Convention is required in the circumstances."

[10] The formality was effected by the Yemen Arab Republic. See also note 1 under “Yemen” in the “Historical Information” section in the front matter of this volume.

[11] States having previously specified alternative (a) under section B (1) of article 1.

[12] Notifications of the extension of their obligations under the Convention by adopting alternative (b) of section B (1) of article 1 of the Convention were received by the Secretary-General on the dates indicated:

Participant	***Date of notification***		
Argentina	5	Nov	1984
Australia	1	Dec	1967
Benin	6	Jul	1970
Brazil	14	Feb	1990
Cameroon	29	Dec	1961
Central African Republic	15	Oct	1962
Chile	28	Jan	1972
Colombia	10	Oct	1961
Côte d'Ivoire	20	Dec	1966
Ecuador	1	Feb	1972
France	3	Feb	1971
Holy See	17	Nov	1961
Hungary	8	Jan	1998
Iran (Islamic Republic of)	27	Sep	1976
Italy	1	Mar	1990
Latvia	3	Nov	1997
Luxembourg	22	Aug	1972
Malta	17	Jan	2002
Niger	7	Dec	1964
Paraguay	10	Jan	1991
Peru	8	Dec	1980
Portugal	13	Jul	1976
Senegal	12	Oct	1964
Sudan	7	Mar	1974
Togo	23	Oct	1962

[13] On 21 January 1983, the Secretary-General received from the Government of Botswana the following communication:

"Having simultaneously acceded to the Convention and Protocol [relating to the status of refugees done at New York on 31January 1967] on the 6th January 1969 and in view of the fact that the Protocol provides in article I (2) that the term ‘refugee’ shall ...mean any person within the definition of article 1 of the Convention' as if the words `As a result of events occurring before 1 January 1951 and' . . . and the words `. . . as a result of such events', in article [I(A)(2)] were omitted and thus modifies in effect the provisions of article 1 of the Convention, it is the position of the Government of Botswana that no separate declaration under article 1.B(1) of the Convention is required in the circumstances."

On the basis of the afore-mentioned communication, the Secretary-General has included Botswana in the list of States having chosen formula (b) under section B of article 1.

Subsequently, in a communication, received by the Secretary-General on 29 April 1986, and with reference to article 1 B (1) of the above-mentioned Convention, the Government of Botswana confirmed that it has no objection to be listed among the States applying the Convention without any geographical limitation.

[14] The instrument of accession contains the following declaration:

"... The mandatory declaration specifying which of the two meanings in Article 1 (B) (l) a Contracting State applies for the purpose of its obligations under the Convention has been superseded by the provisions of Article 1 of the Protocol Relating to the Status of Refugees of 31 January 1967. Furthermore, the previous date-line would render Malawi's accession nugatory.

"Consequently, and since [the Government of the Republic of Malawi] is simultaneously acceding to the said Protocol, the obligations hereby assumed by the Government of the Republic of Malawi are not limited by the previous dateline or bounded by the concomi tant geographic limitation in the Convention."

On the basis of the above declaration, the Secretary-General has included Malawi in the list of States having chosen formula (b) under sec tion B of article l.

Further, on 4 February 1988, the Secretary-General received the following declaration from the Government of Malawi:

"When making the declaration under Section B of article 1 of the Convention, the Government of the Republic of Malawi intended and intends to apply the Convention and the Protocol thereto liberally in the lines of article 1 of the Protocol without being bounded by the geographic limitation or the dateline specified in the Convention.

"In the view of the Government of the Republic of Malawi the formula in the Convention is static and the Government of the Republic of Malawi's position, as stated, merely seeks to assist in the progressive development of international law in this area as epitomised by the 1967 Protocol. It is therefore the view of the Government of the Republic of Malawi that the declaration is consistent with the objects and purposes of the Convention and it entails the assumption of obligation beyond but perfectly consistent with those of the Convention and the Protocol thereto."

In view of the said declaration, Malawi remains listed among those States which, in accordance with Section B of article 1 of the Convention, will apply the said Convention to events occurring in Europe or elsewhere before 1 January 1951.

[15] In a communication received on 1 December 1967, the Government of Australia notified the Secretary-General of the withdrawal of the reservations to articles 17, 18, 19, 26 and 32, and, in a communication received by the Secretary-General on 11 March 1971, of the withdrawal of the reservation to paragraph 1 of article 28 of the Convention. For the text of those reservations, see United Nations, *Treaty Series* , vol.189, p.202.

[16] These reservations replace those made at the time of signature. For the text of reservations made on signature, see United Nations, *Treaty Series* , vol.189, p.186.

[17] On 7 April 1972, upon its accession to the Protocol relating to the Status of Refugees done at New York on 31 January 1967, the Government of Brazil withdraws its reservations excluding articles 15 and 17, paragraphs 1 and 3, from its application to the Convention. For the text of the said reservations, see United Nations, *Treaty Series* , vol. 380, p.430.

[18] On notifying its succession to the Convention, the Government of Cyprus confirmed the reservations made at the time of the extension of the Convention to its territory by the Government of the United Kingdom of Great Britain and Northern Ireland. For the text of these reservations, see *"Declarations and reservations made upon notification of territorial application"* under United Kingdom.

[19] In a communication received on 23 August 1962, the Government of Denmark informed the Secretary-General of its decision to withdraw as from 1 October 1961 the reservation to article 14 of the Convention.

In a communication received on 25 March 1968, the Government of Denmark informed the Secretary-General of its decision to withdraw as from that date the reservations made on ratification to paragraphs 1, 2 and 3 of article 24 and partially the reservation made on ratification to article 17 by rewording the said reservation. For the text of the reservations originally formulated by the Government of Denmark on ratification, see United Nations, *Treaty Series* , vol.189, p.198.

[20] On 7 October 2004, the Government of Finland informed the Secretary-General of the following:

“WHEREAS the Instrument of Accession contained reservations, inter alia, to Article 7, paragraph 2; Article 8; Article 12, paragraph 1; Article 24, paragraph 1 (b) and paragraph 3; Article 25 and Article 28, paragraph 1 in the Convention;

NOW THEREFORE the Government of the Republic of Finland do hereby withdraw the said reservations, while the general reservation concerning nationals of Denmark, Iceland, Norway and Sweden and the reservation on Article 24, paragraph 3, will remain.”

The original reservations made upon accession, read as follows:

“[S]ubject to the following reservations: (1)
A general reservation to the effect that the application of those provisions of the Convention which grant to refugees the most favourable treatment accorded to nationals of a foreign country shall not be affected by the fact that special rights and privileges are now or may in future be accorded by Finland to the nationals of Denmark, Iceland, Norway and Sweden or to the nationals of any one of those Countries;

(2) A reservation to article 7, paragraph 2, to the effect that Finland is not prepared, as a general measure, to grant refugees who fulfil the conditions of three years residence in Finland an exemption from any legislative reciprocity which Finnish law

may have stipulated as a condition governing an alien's eligibility for same right or privilege;

(3) A reservation to article 8 to the effect that that article shall not be binding on Finland;

(4) A reservation to article 12, paragraph 1, to the effect that the Convention shall not modify the rule of Finnish private international law, as now in force, under which the personal status of a refugee is governed by the law of his country of nationality;

(5) A reservation to article 24, paragraph 1 (b) and paragraph 3 to the effect that they shall not be binding on Finland;

(6) A reservation to article 25,ffect that Finland does not consider itself bound to cause a certificate to be delivered by a Finnish authority, in the place of the authorities of a foreign country, if the documentary records necessary for the delivery of such certificate do not exist in Finland;

(7) A reservation with respect to the provisions contained in paragraph 1 of article 28. Finland does not accept the obligations stipulated in the said paragraph, but is prepared to recognize travel documents issued by other Contracting States pursuant to this article."

[21] On notifying its succession to the Convention, the Government of Gambia confirmed the reservations made at the time of the extension of the Convention to its territory by the Government of the United Kingdom of Great Britain and Northern Ireland.

[22] In a communication received by the Secretary-General on 19 April 1978, the Government of Greece declared that it withdrew the reservations that it had made upon ratification pertaining to articles 8, 11, 13, 24 (3), 26, 28, 31, 32 and 34, and also the objection contained in paragraph 6 of the relevant declaration of reservations by Greece is also withdrawn.

Subsequently, in a notification received on 27 February 1995, the Government of Greece notified the Secretary-General that it had decided to withdraw its reservation to article 17 made upon ratification. For the text of the reservations and objection so withdrawn, see United Nations, *Treaty Series* , vol. 354, p.402.

[23] In a communication received on 26 April 2007, the Government of the Republic of Guatemala notified the Secretary-General that it has decided to withdraw the reservation and declaration made upon accession to the Convention. The text of the reservation and declaration withdrawn reads as follows:

The Republic of Guatemala accedes to the Convention relating to the Status of Refugees and its Protocol, with the reservation that it will not apply provisions of those instruments in respect of which the Convention allows reservations if those provisions contravene constitutional precepts in Guatemala or norms of public order under domestic law.

The expression "treatment as favourable as possible" in all articles of the Convention and of the Protocol in which the expression is used should be interpreted as not including rights which, under law or treaty, the Republic of Guatemala has accorded or is according to nationals of the Central American countries or of other countries with which it has concluded or is entering into agreements of a regional nature.

[24] On 29 May 2013, the Government of Honduras informed the Secretary-General that it had decided to withdraw the following reservations to articles 24, 26 and 31 of the Convention made upon accession:

(c) With respect to article 24:

The Government of Honduras shall apply this article to the extent that it does not violate constitutional provisions governing labour, administrative or social security legislation in force in the country;

(d) With respect to articles 26 and 31:

The Government of Honduras reserves the right to designate, change or limit the place of residence of certain refugees or groups of refugees and to restrict their freedom of movement when national or international considerations so warrant;

[25] In a communication received on 23 October 1968, the Government of Ireland notified the Secretary-General of the withdrawal of two of its reservations in respect of article 29 (1), namely those indicated at (a) and (b) of paragraph 5 of declarations and reservations contained in the instrument of accession by the Government of Ireland to the Convention; for the text of the withdrawn reservations, see United Nations, *Treaty Series* , vol. 254, p.412.

[26] In a communication received on 20 October 1964, the Government of Italy has notified the Secretary-General that "it withdraws the reservations made at the time of signature, and confirmed at the time of ratification, to articles 6, 7, 8, 19, 22, 23, 25 and 34 of the Convention [see United Nations, *Treaty Series* , vol.189, p. 192]. The above-mentioned reservations are inconsistent with the internal provisions issued by the Italian Government since the ratification of the Convention. The Italian Government also adopted in December 1963 provisions which implement the contents of paragraph 2 of article 17".

Furthermore, the Italian Government confirms that "it maintains its declaration made in accordance with section B (1) of article 1, and that it recognizes the provisions of articles 17 and 18 as recommendations only". *(See also note 12 .)*

Subsequently, in a communication received on 1 March 1990, the Government of Italy notified the Secretary-General that it had decided to withdraw the declaration by which the provisions of articles 17 and 18 were recognized by it as recommendations only. For the complete text of the reservations see United Nations, *Treaty Series* , vol. 189, p.192.

[27] On 13 October 2009, the Government of Liechtenstein informed the Secretary-General that it had decided to withdraw the reservations concerning articles 17 and 24 of the Convention made upon Ratification. The texts of the reservations withdrawn read as follows:

Ad article 17: With respect to the right to engage in wage-earning employment, refugees are treated in law on the same footing as aliens in general, on the understanding, however, that

the competent authorities shall make every effort insofar as possible, to apply to them the provisions of this article.

Ad article 24, paragraph 1(a) and (b), and paragraph 3: Provisions relating to aliens in general on training, apprenticeship, unemployment insurance, old-age and survivors insurance shall be applicable to refugees. Nevertheless, in the case of old-age and survivors insurance, refugees residing in Liechtenstein (including their survivors if the latter are considered as refugees) are already entitled to normal old-age or survivors' benefits after paying their contributions for at least one full year, provided that they have resided in Liechtenstein for ten years – of which five years without interruption have immediately preceded the occurrence of the event insured against. Moreover, the one-third reduction in benefits provided in the case of aliens and stateless persons under article 74 of the Act on Old-Age and Survivors Insurance, is not applicable to refugees. Refugees residing in Liechtenstein who, on the occurrence of the event insured against, are not entitled to old-age or survivors' benefits, are paid not only their own contributions but any contributions which may have been made by the employers.

[28] The instrument of accession deposited by the Government of Malta was accompanied by the following reservation:

"Article 7, paragraph 2, articles 14, 23, 27 and 28 shall not apply to Malta, and article 7, paragraphs 3, 4 and 5, articles 8, 9, 11, 17, 18, 31, 32 and 34 shall apply to Malta compatibly with its own special problems, its peculiar position and characteristics."

On 17 January 2002, the Secretary-General received the following communication from the Government of Malta:

"The Government of Malta.....hereby withdraws the reservations relating to article 7 (2), Articles 14, 27, 28, 7 (3)(4), (5), 8, 9, 17, 18, 31 and 32; ... and confirms that: "Article 23 shall not apply to Malta, and articles 11, and 34 shall apply to Malta compatibly and with its own special problems, its peculiar position and characteristics." Further, on 24 February 2004, the Secretary-General received from the Government of Malta, the following communication:

[The Government of Malta] "declare that the Government of Malta, having reviewed the remaining reservations and declaration, hereby withdraws the reservations relating to Article 23, and the reservations in respect of Articles 11 and 34 wherein these applied to Malta compatibly with its own special problems, its peculiar positions and characteristics."

[29] On 11 July 2014, the Government of Mexico notified the Secretary-General of the partial withdrawal of the reservation made upon accession. The portion of the reservation which has been withdrawn read as follows:

The Government of Mexico lodges an express reservation to article 32 of the Convention and, therefore refers to the application of article 33 of the Political Constitution of the United Mexican States, without prejudice to observance of the principle of *non-refoulement* set forth in article 33 of the Convention.

[30] In a communication received by the Secretary-General on 21 January 1954, the Government of Norway gave notice of the withdrawal, with immediate effect, of the reservation to article 24 of the Convention, "as the Acts mentioned in the said reservation have been amended to accord to refugees lawfully staying in the country the same treatment as is accorded to Norwegian nationals". For the text of that reservation, see United Nations, *Treaty Series* , vol.189, p.198.

[31] On 20 August 2013, the Government of the Independent State of Papua New Guinea notified the Secretary-General, in accordance with article 42 (2) of the Convention, of its decision to partially withdraw its reservation made upon accession:

"… In accordance with article 42, paragraph 2 of the Convention, I wish to communicate to you that Papua New Guinea withdraws its reservation with respect to the provisions contained in articles 17 (1), 21, 22 (1), 26, 31, 32 and 34 of the Convention in relations to refugees transferred by the Government of Australia to Papua New Guinea and accepts the obligations stipulated in these articles in relation to such persons. This withdrawal has immediate effect. The reservation remains in effect for all other persons…"

[32] The text, which was communicated in a notification received on 13 July 1976, replaces the reservations originally made by Portugal upon accession. For the text of the reservations withdrawn, see United Nations, *Treaty Series* , vol. 383, p.314.

[33] In a communication received on 1 September 2009, the Government of the Republic of Korea notified the Secretary-General that it has decided to withdraw the reservation in respect to article 7 made upon accession to the Convention as of 8 September 2009. The text of the reservation withdrawn reads as follows:

"The Republic of Korea declares pursuant to article 42 of the Convention that it is not bound by article 7 which provides for the exemption of refugees from legislative reciprocity after fulfilling the condition of three years' residence in the territory of the Contracting States."

[34] In a communication received on 20 April 1961, the Government of Sweden gave notice of the withdrawal, as from 1 July 1961, of the reservation to article 14 of the Convention.

In a communication received on 25 November 1966, the Government of Sweden has notified the Secretary-General that it has decided, in accordance with paragraph 2 of article 42 of the Convention, to withdraw some of its reservations to article 24, paragraph 1 (b), by rewording them and to withdraw the reservation to article 24, paragraph 2.

In a communication received on 5 March 1970, the Government of Sweden notified the Secretary-General of the withdrawal of its reservation to article 7, paragraph 2, of the Convention.

For the text of the reservations as originally formulated by the Government of Sweden upon ratification, see United Nations, *Treaty Series* , vol. 200, p. 336.

[35] In a communication received on 18 February 1963, the Government of Switzerland gave notice to the Secretary-General of the withdrawal of the reservation made at the time of ratification to article 24, paragraph 1 (a) and (b) and paragraph

3, of the Convention, in so far as that reservation concerns old-age and survivors' insurance.

In a communication received on 3 July 1972, the Government of Switzerland gave notice of its withdrawal of the reservation to article 17 formulated in its instrument of ratification of the Convention.

In a communication received on 17 December 1980, the Government of Switzerland gave notice of its withdrawal, in its entirety, of the subsisting reservation formulated in respect of article 24, number 1, letters a and b, which encompasses training, apprenticeship and unemployment insurance with effect from 1 January 1981, date of entry into force of the Swiss Law on Asylum of 5 October 1979. For the text of the reservations made initially, see United Nations, *Treaty Series* , vol. 202, p. 368.

[36] See succession by Jamaica.

[37] See succession by Kenya.

[38] In a letter addressed to the Secretary-General on 22 March 1968, the President of the Republic of Malawi, referring to the Convention relating to the Status of Refugees, done at Geneva on 28 July 1951, stated the following:

"In my letter to you of the 24th November 1964, concerning the disposition of Malawi's inherited treaty obligations, my Government declared that with respect to multilateral treaties which had been applied or extended to the former Nyasaland Protectorate, any Party to such a treaty could on the basis of reciprocity rely as against Malawi on the terms of such treaty until Malawi notified its depositary of what action it wished to take by way of confirmation of termination, confirmation of succession, or accession.

"I am now to inform you as depositary of this Convention that the Government of Malawi wishes to terminate any connection with this Convention which it might have inherited. The Government of Malawi considers that any legal relationship with the aforementioned Convention relating to the Status of Refugees, Geneva, 1951 which might have devolved upon it by way of succession from the ratification of the United Kingdom, is terminated as of this date."

See succession by Zambia.

[39] See succession by Botswana (formerly Bechuanaland Protectorate).

[40] On 3 October 1983, the Secretary-General received from the Government of Argentina the following objection :

[The Government of Argentina makes a] formal objection to the declaration of territorial extension issued by the United Kingdom with regard to the Malvinas Islands (and dependencies), which that country is illegally occupying and refers to as the "Falkland Islands".

The Argentine Republic rejects and considers null and void the [declaration] of territorial extension.

With reference to the above-mentioned objection the Secretary-General received, on 28 February 1985, from the Government of the United Kingdom of Great Britain and Northern Ireland the following declaration:

"The Government of the United Kingdom of Great Britain and Northern Ireland have no doubt as to their right, by notification to the Depositary under the relevant provisions of the above-mentioned Convention, to extend the application of the Convention in question to the Falkland Islands or to the Falkland Islands Dependencies, as the case may be.

For this reason alone, the Government of the United Kingdom are unable to regard the Argentine [communication] under reference as having any legal effect."

[41] See note 1 under “United Kingdom of Great Britain and Northern Ireland” in the “Historical Information” section in the front matter of this volume.

[42] See succession by Fiji.

UNHCR
United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

Submission by the United Nations High Commissioner for Refugees

For the Office of the High Commissioner for Human Rights' Compilation Report

Universal Periodic Review: *3rd Cycle, 31st Session*

MEXICO

I. BACKGROUND INFORMATION

Mexico acceded to both the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* (hereinafter jointly referred to as the "*1951 Convention*") in 2000, making reservations to articles 17, 26, 31.2 and 32 of the *1951 Convention* as well as an interpretative declaration to article 1 and the *1967 Protocol*; in 2014, Mexico withdrew its reservation to article 32. Mexico also acceded to the *1954 Convention relating to the Status of Stateless persons* (the "*1954 Convention*") in 2000 with reservations to articles 17, 31 and 32. Reservation to article 31 was subsequently withdrawn in 2014. The State is not a party to the *1961 Convention in the Reduction of Statelessness* (the "*1961 Convention*").

The *2011 Refugees, Complementary Protection and Political Asylum Act* and its *Regulatory Framework* together with the *Migration Act* constitute the domestic legal framework governing asylum. Further guarantees related to the principle of *non-refoulement*, upholding the best interests of the child, and due process during migration procedures are enshrined in the *General Law on the Rights of Children and Adolescents* published in 2014, along with its *Regulatory Framework.* The principal government body responsible for refugee issues, including refugee status determination, is the Mexican Commission for Refugees (COMAR), created by Presidential decree in 1980 under the Ministry of Interior. In 2011, Mexico adopted its Migration Law, creating a formal statelessness determination procedure which began functioning in 2012. The statelessness determination procedure (SDP) is mainly regulated by Article 150 of the Regulations to the Migration Law. Applications for statelessness status are received by the National Migration Institute, which requests a legal opinion from COMAR.

Violence and persecution inflicted mostly by criminal actors in the North of Central America (NCA)[1] triggers forced displacement with increasing numbers of unaccompanied children and adolescents, families, as well as persons discriminated against on the basis of sexual orientation and gender identity. While more than 400,000 people were estimated to have crossed Mexico's southern border in 2016, only approximately 2 percent of those applied for asylum, representing nevertheless an increase of 156 per cent from claims submitted in 2015. Out of the total asylum applications in 2016, 5,954 persons completed their process (3,076 persons were recognized as refugees and 641 were given complementary protection). From January to December 2017, 14,596 people applied for asylum (1,907 persons were recognized as refugees, 918 given complementary protection, and 7,719 cases remain pending).[2] Statistics indicate that for the period January-December 2017, 29% asylum-seekers were from Honduras, 25% from El Salvador, 4.6% from Guatemala, and 27% from Venezuela.

Regarding unaccompanied children from North of Central America (El Salvador, Honduras and Guatemala), approximately 35% of them expressed fear of returning to their country of origin due

[1] Mexico is also a country of transit for refugees and migrants from Asia and Africa seeking to reach the United States and Canada.
[2] Government of Mexico, *COMAR Statistics*, available at: https://www.gob.mx/comar/articulos/estadisticas-2013-2017?idiom=es Last visited: 12 March 2018.

to social violence or domestic violence.[3] UNHCR conducted interviews with unaccompanied and separated children (UASC) and determined that violence led more than 48.6% of them to leave their countries of origin, thus meaning they had potential international protection needs.[4] However, in 2016 only 242 UASC applied for asylum (103 were recognized, 28 granted complementary protection, 44 rejected, and 67 formally withdrew or abandoned their claims).

It should be noted that Mexico is playing a key role internationally and in the region with regards to advancing the protection of asylum-seekers and refugees. The Mexican Government is one of the leading States of an initiative to develop a regional application of the Comprehensive Refugee Response Framework, which will contribute to the adoption of the Global Compact on Refugees in 2018. This regional initiative, known as the Comprehensive Regional Protection and Solutions Framework (MIRPS, in Spanish) has been undertaken with the support of UNHCR.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Positive developments linked to the 2nd cycle UPR recommendations

Linked to 2nd cycle UPR recommendation no. 148.173: "Continue to work towards the protection and defence of the rights of migrants (Argentina and Bolivia)."

UNHCR commends Mexico's active participation and leadership in the San José Action Statement, the New York Declaration on Refugees and Migrants, the Leadership Summit on Refugees, and the CRPSF process in October 2017. Mexico undertook a number of laudable commitments in the framework of MIRPS. In particular, Mexico committed to: (a) expand the scope of programmes on alternative measures to detention to asylum-seekers, specifically unaccompanied children and adolescents, persons in situations of vulnerability, families, older persons, and persons with medical needs; (b) expand access to basic services and rights for asylum-seekers and refugees, such as through the incorporation in the public health-care system (Seguro Popular) and in other social programs through the Social Development Ministry (SEDESOL) and, (c) carry out information and awareness-raising campaigns on the asylum procedure for government officials as well as persons with international protection needs.

UNHCR commends Mexico for its undertaking to strengthen the Mexican Refugee Agency (COMAR) and the establishment in 2015 of the Special Unit for the Investigation of Crimes Against Migrant Persons within the Attorney General's Office (PGR).

Linked to 2nd cycle UPR recommendation no. 148.154: "Intensify efforts to guarantee universal access to health services, information and education on health and sexual and reproductive rights, particularly for adolescents (Uruguay)."

UNHCR is pleased to note that Mexico has 76 Ambulatory Centres for the Prevention and Attention of AIDS and Sexually Transmitted Infections (CAPASITS, in Spanish) throughout all 32 states in the country – 15 of those along the migration route - which offer medical attention and psycho-social attention, as well as free antiretroviral treatment. Migrants, asylum-seekers, and refugees can receive medical treatment and HIV and ITS medication at CAPASITS at no cost and regardless of immigration status after persons have registered with the *Seguro Popular*.[5]

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Challenges linked to outstanding 2nd cycle UPR recommendations

[3] CONAPO, "Características, tendencias y causas de la migración de niñas, niños y adolescentes desde, hacia y en tránsito por México, 2011-2016" en *La situación demográfica de México 2016*, https://www.gob.mx/conapo/documentos/la-situacion-demografica-de-mexico-2016.
[4] ACNUR, "Arrancados de Raíz: Causas que originan el desplazamiento transfronterizo de niños, niñas y adolescentes no acompañados y/o separados de Centroamérica y su necesidad de protección internacional", 2014, http://www.acnur.org/fileadmin/scripts/doc.php?file=fileadmin/Documentos/Publicaciones/2014/9828.
[5] UNHCHR has not received any information indicating that asylum-seekers or refugees have been refused medical attention at CAPASITS, regardless of immigration status or registration with Seguro Popular.

Issue 1: Ratification of international instruments

Linked to 2nd cycle UPR recommendation no. 148.7: "Ratify the *1961 Convention on the Reduction of Statelessness* (Paraguay)."

Mexico is a party to the *1954 Convention Relating to the Status of Stateless Persons* having made reservations to articles 17 and 32, and has not yet acceded to the *1961 Convention on the Reduction on Statelessness*. UNHCR appreciates that Mexico has been a key promoter in international fora of the right of all persons to be registered at birth and to be recognized everywhere as a person before the law. In this regard, efforts should be made to reform national legislation in ways that permit accession to the *1961 Convention* and also to withdraw the reservations made to the *1954 Convention*.

Recommendations:
UNHCR recommends that the Government of Mexico:
(a) Consider acceding to the *1961 Convention on the Reduction of Statelessness*;
(b) Consider withdrawing the reservations made to the *1954 Convention Relating to the Status of Stateless Persons*;
(c) Strengthen the implementation of the statelessness determination procedure; and
(d) Ensure Mexican legislation is in line with the *1961 Convention on the Reduction of Statelessness*.

Issue 2: Protection of human rights of asylum-seekers and refugees

Linked to 2nd cycle UPR recommendation no. 148.175: "Effectively protect and guarantee the safety and human rights of migrants, especially women and children, including those that are in transit in the national territory, ensuring their access to justice, education, health and civil registry, incorporating the principle of the best interest of the child and the family unit (Holy See)."

In addition to ensuring respect for migrants' human rights, the *2011 Migration Act* also has the merit of establishing mechanisms for preventing crimes against migrants and procedures leading to regularization of immigration status, as well as for the issuance of "temporary visitor for humanitarian reasons" cards to migrants who are victims of serious crimes, unaccompanied children and asylum-seekers, which allow freedom of movement and access to formal employment in principle, but in practice individuals also require a Unique Population Code to be hired (CURP, in Spanish) and existing administrative arrangements do not allow for this code to be issued to asylum-seekers (see Issue 5, below).

Additionally, concerns persist regarding the rise in crimes and the increased risk towards migrants throughout the country, the high levels of impunity for crimes committed against migrants, and the difficulties that migrants who are victims of crime and asylum-seekers continue to face in accessing justice and obtaining regularization for humanitarian reasons under article 52 of the *2011 Migration Act*. These concerns were also raised recently by the United Nations Committee on the Rights of Migrant Workers (27 September 2017, CMW/C/MEX/CO/3)

Recommendations:
UNHCR recommends that the Government of Mexico:
(a) Ensure access to justice for migrants, asylum-seekers and refugees by strengthening the Special Unit for the Investigation of Crimes against Migrant Persons within the Attorney General's Office (PGR), and the State-level Special Prosecutor Offices for the Attention of Crimes against Migrants; and
(b) Standardize administrative practices in the National Institute of Migration (INM) to ensure that all migrants who fall within the scope of article 52 of the *2011 Migration Act* and all asylum-seekers are duly granted the "temporary visitor for humanitarian reasons" card.

Issue 3: Sexual and gender-based violence against migrants, asylum-seekers and refugees

Linked to 2nd cycle UPR recommendation no. 148.79: "Continue to take the necessary measures to prevent violence against women, particularly migrant women and penalise those who commit these acts of violence (Nicaragua)."

The *2007 General Act for Access for Women to a Life Without Violence* and its *2008 Regulations* together with the 2014-2018 Comprehensive Programme to Prevent, Punish and Eradicate Violence against Women establish the obligations of the Mexican state to punish and eradicate violence against women under its national framework. The National Human Rights Commission (CNDH) recognized violence against women as an extremely serious problem in Mexico noting that almost 7 out of 10 women in Mexico have suffered violence.[6] In this context, migrant, asylum-seeking, and refugee women are particularly vulnerable due to their national origin and their legal status in Mexico, due to discrimination, lack of generalized knowledge by public officials – particularly at the local level - regarding the rights of migrants, asylum-seekers and refugees, and due to a lack of specialized services. The application of administrative detention measures for persons submitting asylum claims at the border exacerbates the risk of violence for women, girls, and LGBTI persons because to avoid detention almost all enter the country irregularly. Asylum-seekers generally then travel to towns located 20 to 160 km from the border to make asylum claims, but to do so they often travel along remote routes and are exposed to significant risks of assault and sexual and gender-based violence. Additional obstacles hamper migrant, asylum-seeking and refugee women's access to services and justice, such as lack of access to services due to irregular migration status, lack of awareness by justice and public health authorities regarding the rights that asylum-seeking and refugee women and girls are entitled to in Mexico, lack of access to legal representation to file criminal complaints, among others.

Recommendations:
UNHCR recommends that the Government of Mexico:

(a) Implement programmes aimed at the prevention, punishment and eradication of sexual and gender-based violence faced by women migrants, asylum-seekers and refugees, which include adequate training for relevant government and health officials; and
(b) End the administrative detention of asylum-seekers who submit international protection claims at the border.

Additional protection challenges

Issue 4: Detention of migrants and asylum seekers, particularly children and other vulnerable persons

The *2011 Migration Act* provides for the automatic administrative detention of all persons in an irregular immigration situation in the country. This law prescribes a time limit of maximum 15 working days for immigration detention which can be extended up to 60 working days in exceptional cases. However, the *2011 Migration Act* does not specify a time limit for detention for those who initiate an administrative procedure or judicial remedy, with the consequence that in practice there is no maximum period for immigration detention for asylum-seekers who initiate a legal remedy. Furthermore, although national law prohibits the detention of children and the Government of Mexico committed to fully ending the administrative detention of children under 11 years of age during the 2016 Leaders' Summit on Refugees, many children detected by migration authorities are referred to Immigration Stations (detention centers) or to closed-door shelters. During 2016, more than 186,216 detentions for immigration-related purposes took place, including 40,144 children, of whom 17,557 were unaccompanied. Concerns have been expressed by the Inter-American Commission on Human Rights on the deterrent effect that detention has on persons

[6] Comisión Nacional de los Derechos Humanos, *Diagnóstico de la Comisión Nacional de los Derechos Humanos como integrante de los grupos de trabajo que dan seguimiento a los procedimientos de Alerta de Violencia de Género contra las Mujeres (AVGM),* 2017, p. 50

with international protection needs, who may choose not to apply for asylum in detention centres or to make a claim but later abandon or withdraw it.[7]

In 2016, the Government established a program to release asylum-seekers from detention to continue their asylum procedures in civil society shelters. From July 2016 until December 2017, over 1,900 asylum-seekers were released from detention to shelters. However, this release programme has not been regulated through the issuance of an administrative directive or a legal reform, which generates uncertainty and protection gaps.

Recommendations:
UNHCR recommends that the Government of Mexico:

(a) Ensure that the legal framework on migration and asylum is fully harmonized with the *General Law on the Rights of Children and Adolescents* and with relevant international standards on the rights of the child, to ensure that no child is subject to administrative detention and that all children shelters have an adequate comprehensive attention model;
(b) Ensure that the migration authority implements measures to identify international protection needs during the initial appearance at the Immigration Stations, thus facilitating access to the asylum system and the alternatives to administrative detention programs;
(c) Consider amending the *2011 Migration Act* to remove those provisions that authorize the automatic administrative detention of all persons in an irregular migratory situation, particularly asylum-seekers; and
(d) Consider amending relevant legislation or issuing an executive or administrative order to ensure that the alternative to administrative detention program for asylum-seekers is fully enforceable, transparent, and applicable throughout the country.

Issue 5: Access to economic, social and cultural rights for asylum-seekers and refugees

The *2011 Refugees, Complementary Protection and Political Asylum Act* establishes that refugees should have all possible means to access the rights and guarantees established in the Mexican Constitution, including the right to work, housing, health, education, and other relevant economic, social and cultural rights.

Nevertheless, asylum-seekers and refugees continue to face several obstacles in fully enjoying economic, social, and cultural rights due to obstacles in obtaining the Unique Population Code (CURP). The lack of knowledge of asylum-seekers and refugees' rights and related documentation by public service providers constitutes an additional barrier. In some instances, discriminatory patterns further complicate effective access to rights.

Recommendations:
UNHCR recommends that the Government of Mexico:

(a) Continue strengthening efforts to ensure full enjoyment of economic, social, and cultural rights for asylum-seekers and refugees, including by removing administrative barriers or by facilitating access to social programs;
(b) Ensure that asylum-seekers have access to the *Seguro Popular* national health insurance scheme for a period of at least one year;
(c) Ensure that banking and financial institutions fully comply with the CNBV directive so that all identity documents issued by the National Institute of Migration are duly accepted to open bank accounts and access financial services; and
(d) Consider facilitating access to the CURP identification number for asylum-seekers.

UNHCR
March 2018

[7] Inter-American Commission on Human Rights, *Human Rights of Migrants and other Persons in the Context of Human Mobility in Mexico* (2013), available at:
http://www.oas.org/en/iachr/migrants/docs/pdf/Report-Migrants-Mexico-2013.pdf.

ANNEX

Excerpts of relevant Recommendations from the 2nd cycle Universal Periodic Review, Concluding Observations from UN Treaty Bodies and Recommendations of Special Procedures mandate holders

MEXICO

We would like to bring your attention to the following excerpts from the 2nd cycle UPR recommendations, UN Treaty Monitoring Bodies' Concluding Observations, and recommendations from UN Special Procedures mandate holders' reports relating to issues of interest and persons of concern to UNHCR with regards to Mexico.

I. Universal Periodic Review (Second Cycle – 2013)

Recommendation[8]	Recommending State/s	Position[9]
Ratification of international instruments		
148.7. Ratify the 1961 Convention on the Reduction of Statelessness.	Paraguay	Noted[10]
Migrants and refugees		
148.146. Further enhance institutions and infrastructure for human rights, policies and measures toward enhancing the social inclusion, gender equality and non-discrimination, favourable conditions for vulnerable groups of women, children, indigenous people, migrants and refugees.	Viet Nam	Supported
148.58. Create a database of disappeared and missing migrants, and that all authorities cooperate to prevent and punish crimes against this group.	Norway	Supported
148.173. Continue to work towards the protection and defence of the rights of migrants.	Argentina and Bolivia	Supported
148.174. Continue to work with the countries of the region in special programs that address the situation of criminality against migrants.	Nicaragua	Supported
148.175. Effectively protect and guarantee the safety and human rights of migrants, especially women and children, including those that are in transit in the national territory, ensuring their access to justice, education, health and civil registry, incorporating the principle of the best interest of the child and the family unit.	Holy See	Supported
148.176. Maintain the humane policy that ensures the protection of the rights of migrants, and guarantee them access to justice, education and healthcare, regardless of their status.	Nigeria	Supported
Gender Discrimination and SGBV		
148.66. Enact and enforce laws to reduce incidences of violence against women and girls.	Sierra Leone	Supported

[8] All recommendations made to Mexico during its 2nd cycle UPR can be found in: "Report of the Working Group on the Universal Periodic Review of Mexico" (11 December 2013), A/HRC/25/7, available at: http://www.ohchr.org/EN/HRBodies/UPR/Pages/MXindex.aspx.

[9] Mexico's views and replies, in Spanish, can be found in: *Addendum* (14 March 2014), A/HRC/25/7/Add.1, available at: http://www.ohchr.org/EN/HRBodies/UPR/Pages/MXindex.aspx.

[10] ***Addendum***: "Las disposiciones de la Convención no son compatibles con el artículo 37 apartado B, fracción II de la Constitución Política de los Estados Unidos Mexicanos (CPEUM), que indica que la nacionalidad mexicana por naturalización se perderá por residir durante cinco años continuos en el extranjero. Tampoco es compatible con la Ley de Nacionalidad, ya que ésta establece en su artículo 20 que el extranjero que pretenda naturalizarse mexicano deberá acreditar que ha residido en territorio nacional cuando menos durante los últimos cinco años inmediatos anteriores a la fecha de solicitud."

148.67. Implement the designed public policy and launch a comprehensive awareness-raising campaign to end gender-based violence that includes sexual violence and feminicide.	Slovenia	Supported
148.70. Continue to prevent and combat violence against women, guaranteeing women's access to justice and continue to improve support services.	State of Palestine	Supported
148.71. Ensure investigations of violence against women, and establish victim support programmes for affected women.	Maldives	Supported
148.76. Make a priority the prevention and punishment of all forms of violence against women.	France	Supported
148.79. Continue to take the necessary measures to prevent violence against women, particularly migrant women and penalise those who commit these acts of violence.	Nicaragua	Supported
148.102. Reinforce training of police and justice officials on the issue of violence against women in order to improve the response by the Mexican authorities	Portugal	Supported
Children		
148.81. Set up a comprehensive system to protect children's rights and develop a national strategy to prevent and address all forms of violence.	Iran (Islamic Republic of)	Supported
148.82. Ensure a better protection for children and adolescents against violence related to organized crime.	Algeria	Supported
148.83. Enhance the dissemination of information and figures regarding children and young persons who fall victims to the struggle against drug trafficking.	Italy	Supported
148.110. Continue its efforts to ensure the protection of children's rights, including by fully implementing the 2012 federal justice for adolescents act and considering implementing of restorative justice system.	Indonesia	Supported
Access to rights		
148.144. Focus on marginalised groups or disadvantaged sections of society. Of particular relevance would be measures to improve health and education.	India	Supported
148.145. Continue strengthening its social policies with a view of increasing the standard of living of its people, especially the most vulnerable.	Venezuela and Trinidad and Tobago	Supported
148.151. Continue efforts to design housing financing schemes for the care of the population working within the informal market economy.	Ecuador	Supported
148.154. Intensify efforts to guarantee universal access to health services, information and education on health and sexual and reproductive rights, particularly for adolescents.	Uruguay	Supported
148.163. Allocate more resources to education for vulnerable students and the disabled.	South Sudan	Supported
Torture, arbitrary detention and enforced disappearances		
148.52. Pursue efforts to ensure that complaints in cases of torture, arbitrary detention and disappearances are duly investigated.	Turkey	Supported
148.58. Create a database of disappeared and missing migrants, and that all authorities cooperate to prevent and punish crimes against this group.	Norway	Supported
148.103. Further pursue the full investigation of alleged incidents of human rights violations by the police force, especially within detention centres.	Cyprus	Supported
Trafficking		
148.84. Consider establishing mechanisms aimed at early identification, referral, assistance and support for victims of trafficking.	Egypt	Supported
148.85. Increase funding for federal human trafficking prosecutors and take steps to end the impunity for public officials complicit in trafficking.	Norway	Supported
148.86. Continue its policies and efforts to combat human trafficking especially those of women and children.	Bolivia, Singapore and Costa Rica	Supported

148.89. Strengthen measures to combat human trafficking, including violence against migrants.	Algeria and Sri Lanka	Supported

II. Treaty Bodies

Committee on Enforced Disappearances

Concluding Observations, (5 March 2015), CED/C/MEX/CO/1

Disappearances of migrants

23. The Committee is concerned by reports that there have been numerous cases of disappearances of migrants, including migrant children, and that these cases include cases of enforced disappearance. It also notes with concern the challenges that this dramatic situation poses for full observance of the rights to justice and truth embodied in the Convention, particularly since the relatives of the disappeared persons are not normally resident in the State party. In this regard, the Committee notes the information provided by the State party in relation to the investigation of disappearances of migrants and its efforts to locate them and provide support and protection. It also notes that the State party is working on the design of a transnational search and access to justice mechanism for such persons (arts. 1, 3, 12, 15 and 24).

24. **In conjunction with countries of origin and countries of destination, and with input from victims and civil society, the State party should redouble its efforts to prevent and investigate disappearances of migrants, to prosecute those responsible and to provide adequate protection for complainants, experts, witnesses and defence counsels. The transnational search and access to justice mechanism should guarantee: (a) that searches are conducted for disappeared migrants and that, if human remains are found, they are identified and returned; (b) that ante-mortem information is compiled and entered into the ante-mortem/post-mortem database; and (c) that the relatives of the disappeared persons, irrespective of where they reside, have the opportunity to obtain information and take part in the investigations and the search for the disappeared persons.**

Register of persons deprived of their liberty

34. The Committee takes note of the information provided by the State party regarding the information that should be entered in the Detention Registry System and the administrative arrest log. However, the Committee regrets that it has not received detailed information about the records kept in all places in which persons might be deprived of their liberty, such as migrant holding facilities or military detention centres (arts. 17 and 22).

35. **The State party should adopt the necessary measures to guarantee that:**

(a) **All deprivations of liberty are entered in uniform registers and/or records which include, as a minimum, the information required under article 17, paragraph 3, of the Convention;**

(b) **All registers and/or records of persons deprived of liberty are filled out and updated promptly and accurately;**

(c) **All registers and/or records of persons deprived of liberty are subject to periodic checks and, in the event of irregularities, the officers responsible are disciplined.**

Committee on Migrants Workers

Concluding Observations, (27 September 2017), CMW/C/MEX/CO/3

Participación de la sociedad civil

21. El Comité mantiene su especial preocupación ante la vulneración de derechos humanos de los defensores de los migrantes. Observa que son objeto de violencia y amenazas por parte del crimen organizado y redes de tráfico de personas, incluso en connivencia con autoridades, así como de actos de hostigamiento y deslegitimación del trabajo de esas organizaciones por parte de agentes migratorios, distintos cuerpos de seguridad gubernamentales y empresas privadas que

gestionan acciones de control migratorio o prestan servicios de vigilancia de transporte en rutas migratorias.

22. El Comité reitera su recomendación anterior (véase CMW/C/MEX/CO/2, párr. 52), e invita al Estado parte a que adopte medidas efectivas, agiles e integrals para:

(a) **Garantizar la vida, libertad e integridad de defensores de derechos humanos de la población migrante, incluyendo medidas para prevenir, investigar y sancionar adecuadamente las agresiones y abusos en su contra;**

(b) **Reconocer públicamente su labor, incluyendo el establecimiento de un registro de casos de denuncias, investigaciones realizadas y casos resueltos para ser presentados en el siguiente informe periódico; c) Facilitar el ejercicio de su labor, incluyendo su acceso amplio a los centros de detención migratoria, los albergues y otros establecimientos afines.**

No discriminación

25. El Comité toma nota del marco jurídico del Estado parte para asegurar la no discriminación. Sin embargo, le preocupan informes sobre el aumento de la xenofobia a nivel social e institucional y el rol de los medios de comunicación en crear y mantener estereotipos contra los migrantes. También le preocupa la información recibida sobre procedimientos de control y verificación migratoria que se realizan con base en el perfil étnico de las personas.

26. **El Comité reitera su recomendación anterior (véase CMW/C/MEX/CO/2, párr. 24), y asimismo alienta al Estado parte a que establezca medidas de prevención y sanción ante la criminalización de las personas migrantes en mensajes de diferentes actores sociales y políticos. Recomienda la realización de campañas de educación, comunicación e información social, así como que se detecten y eliminen las practices discriminatorias en las instituciones públicas y privadas, incluyendo los procedimientos migratorios de control y verificación**.

27. Preocupan al Comité informes según los cuales los migrantes con estancias por razones humanitarias enfrentan obstáculos para recibir la Clave Única de Registro de Población, que es un requerimiento para acceder a derechos y beneficios sociales.

28. **El Comité recomienda que el Estado parte tome medidas inmediatas para facilitar el acceso de los migrantes y solicitantes del estatuto de refugiado con estancias por razones humanitarias a la Clave Única de Registro de Población, en línea con los artículos 25 y 27 de la Convención.**

Protección de violencia, lesión física, amenaza e intimidación

33. El Comité expresa su profunda preocupación por las graves irregularidades en las investigaciones para identificar a los responsables y las víctimas de las masacres en los estados de Tamaulipas y Nuevo León entre 2010 y 2012, por las que no hay personas sancionadas, por el impacto extremamente grave de la desaparición forzada de personas en los migrantes y mexicanos en tránsito y por los altos niveles de violencia de género, especialmente en la frontera sur. Al Comité le preocupan mucho las alegaciones sobre la participación de autoridades públicas, particularmente policías federales, estatales y municipales, la alta impunidad que suele afectar a estos crímenes y los bajos niveles de denuncias. Asimismo, expresa su preocupación por los obstáculos que enfrentan los sobrevivientes de esos crímenes para la regularización por razones humanitarias.

34. **El Comité reitera su recomendación anterior (véase CMW/C/MEX/CO/2, párr. 30) y asimismo urge al Estado parte a que:**

(a) **Asegure que se investiguen seria y diligentemente esos actos, incluyendo la relación de agentes estatales con estructuras criminales y delitos como la corrupción y la impunidad, y se adopten sanciones proporcionales a la gravedad del delito cometido;**

(b) **Investigue exhaustiva y ágilmente las masacres en los estados de Tamaulipas y Nuevo León bajo la clasificación de graves violaciones a los derechos humanos;**

(c) **Gestione la ampliación del mandato y el financiamiento de la Comisión Forense a efecto de garantizar un cruce gradual de información forense de personas migrantes desaparecidas de otros casos además de las tres masacres;**
(d) **Garantice la implementación del Mecanismo de Apoyo Exterior Mexicano de Búsqueda e Investigación en los diferentes países de América Central, asegurando que las personas migrantes y sus familiares tengan acceso fácil a las instituciones federales estatales e información sobre las investigaciones y participen en el proceso, incluyendo a través de la creación de unidades permanentes en embajadas y consulados del Estado parte;**
(e) **Asegure la cooperación efectiva con comisiones de expertos y grupos multidisciplinarios de los países de origen y destino para asistir a las personas migrantes víctimas de delitos graves, incluyendo desapariciones forzadas, así como en la búsqueda, localización y liberación de las personas desaparecidas y, en caso de fallecimiento, en la exhumación, la identificación y la restitución digna de sus restos;**
(f) **Garantice que las víctimas sean identificadas y remitidas a los servicios apropiados y sensibles a sus circunstancias, incluyendo servicios médicos y psicosociales, y que a petición de las víctimas se solicite la cooperación de las organizaciones sociales;**
(g) **Garantice que los sobrevivientes de esos crímenes tengan acceso a la regularización por razones humanitarias;**
(h) **Sancione a los responsables, con penas adecuadas a la gravedad del delito, incluyendo a los funcionarios del Estado involucrados.**

Gestión de las fronteras y protección de migrantes en tránsito

35. El Comité toma nota del esfuerzo que realiza el Estado parte para enfrentar al crimen organizado y brindar seguridad integral a las personas en su territorio. Observa con preocupación, sin embargo, el aumento significativo de los crímenes contra migrantes y de los riesgos a lo largo del tránsito por el territorio mexicano, en rutas alternativas usadas por los migrantes y sus familiares a fin de evitar los múltiples dispositivos de control migratorio desplegados por el Estado.

36. **El Comité recomienda al Estado parte que evalúe de manera exhaustiva y en diálogo con todos los actores concernidos el impacto de los operativos de verificación migratoria en el aumento de los riesgos del derecho a la vida y la integridad física de la población migrante en tránsito y que se adopten las medidas necesarias para prevenir esos riesgos, proteger a esta población y, en particular, promover que las políticas y prácticas migratorias estén centradas en el enfoque de derechos humanos y de seguridad humana, incluyendo la creación de vías seguras y regulares.**

Privación de la libertad

37. El Comité expresa su profunda preocupación respecto del elevado número de medidas privativas de la libertad de migrantes en las 58 estaciones migratorias desplegadas a lo largo del país. Le preocupan las alegaciones de la delegación de que estas detenciones (llamadas “aseguramiento” o “presentación”) no constituirían una privación de la libertad, o son descritas como una medida de protección o un beneficio. También le preocupa la presencia en esos centros de familias, mujeres embarazadas, víctimas de la trata, solicitantes de asilo y otras personas en situaciones de mayor vulnerabilidad y con necesidades especiales de protección. Asimismo, nota con especial preocupación la detención de niños, niñas y adolescentes —que aumentó en un 900% entre 2011 y 2016—, muchos de ellos no acompañados, así como de muy baja edad. Esa medida constituye, sin excepción, una violación de los derechos del niño y de su interés superior.

38. **El Comité recomienda al Estado parte, con carácter de urgencia, que:**
(a) **Adopte con carácter de urgencia todas las medidas necesarias para poner fin inmediato a la privación de libertad de niños, niñas y adolescentes, así como de familias migrantes, garantizando en la ley y la práctica medidas alternativas adecuadas, centradas exclusivamente en la protección de los derechos bajo la Ley General de los Derechos de Niñas, Niños y Adolescentes;**
(b) **Garantice la aplicación efectiva e inmediata de procesos de identificación y referencia de personas en situaciones de vulnerabilidad y su traslado a alojamientos**

alternativos;

(c) **Elabore un plan de acción dirigido a garantizar que la privación de libertad por razones migratorias de trabajadores migratorios adultos únicamente se aplica como medida de último recurso y por el menor tiempo posible, sobre la base de los principios de excepcionalidad, proporcionalidad, necesidad y razonabilidad;**

(d) **Garantice en la ley y en la práctica la existencia de medidas alternativas a la privación de la libertad para trabajadores migratorios en situación irregular, las cuales deben aplicarse de manera prioritaria y con base en las circunstancias de cada persona, por las autoridades administrativas y/o judiciales correspondientes;**

(e) **Asegure que los trabajadores migrantes sean informados sobre los procedimientos y derechos en un idioma que entienden.**

Garantías procesales en casos de privación de la libertad

39. El Comité nota con preocupación que las detenciones llevadas adelante por el INM se realizan a través de una modalidad automática, sin una adecuada fundamentación individualizada sobre su necesidad y razonabilidad. Observa que la detención sin debidas garantías procesales, como la obligación de remisión inmediata ante un juez independiente e imparcial y el derecho a la asistencia jurídica gratuita, es considerada arbitraria, en línea con la Convención y otros tratados. Le preocupan también los datos sobre la falta de información brindada a migrantes sobre las razones de su detención, los derechos y recursos disponibles, incluyendo el derecho a solicitar asilo, protección complementaria o una estancia por razones humanitarias. Se inquieta asimismo de que el ejercicio de los recursos disponibles puede llevar a una detención sin plazo máximo, y sobre el acceso restringido que tienen los abogados de organizaciones sociales para brindar asistencia y representación legal.

40. **El Comité urge al Estado parte a que:**

(a) **Asegure en los procedimientos de detención migratoria las debidas garantías procesales, incluyendo el derecho a un intérprete;**

(b) **Adopte todas las medidas dirigidas a garantizar el derecho a la asistencia y representación jurídica gratuita en procedimientos de detención migratoria, incluyendo la provisión de recursos y capacitación al Instituto Federal de Defensoría Pública. De forma complementaria, se recomienda la realización de convenios con organizaciones de la sociedad civil especializadas en dicha asistencia;**

(c) **Garantice que la detención migratoria sea una medida excepcional, de último recurso y limitada al menor tiempo posible, que esté fundamentada en el caso concreto, incluyendo las razones por las cuales no pueden ser aplicadas las medidas alternativas, y sea revisada en menos de 24 horas por una autoridad judicial independiente e imparcial; d) Garantice el derecho al acceso a justicia, sin que ello redunde en una extensión de la detención en aplicación del artículo 111.V de la Ley de Migración, para evitar que la persona que accede a una medida alternativa o solicite asilo tenga plazo indefinido de detención mientras se resuelve su petición.**

Condiciones de detención

41. Al Comité le preocupan las condiciones de detención de la población migrante en el Estado parte. Observa con mucha preocupación que, en ocasiones, constituyen un tratamiento cruel, inhumano y degradante.

42. **El Comité reitera su recomendación anterior (véase CMW/C/MEX/CO/2, párr. 34), e insta al Estado parte a garantizar condiciones dignas y adecuadas en los centros de detención migratoria, los cuales no pueden tener similares características y finalidades que un ámbito penitenciario. En particular, el Comité le recomienda que:**

(a) **Brinde servicios adecuados de salud y sensibles al género, incluyendo salud sexual y reproductiva, asistencia psicológica, agua, saneamiento e higiene, alimentación, actividades recreativas y de ocio;**

(b) **Erradique de forma inmediata el uso de celdas de castigo;**

(c) **Ponga fin a cualquier situación de sobrepoblación y hacinamiento;**

(d) **Investigue y sancione adecuadamente a los agentes estatales que violen los derechos**

de migrantes en esos centros;

(e) **Capacite a los agentes estatales en los centros de detención, sobre derechos humanos, igualdad de género, el interés superior de los niños, niñas y adolescentes, y no discriminación;**

(f) **Implemente las recomendaciones de la Comisión Nacional de Derechos Humanos y garantice la plena aplicación del Mecanismo Nacional de Prevención de la Tortura.**

Expulsión

43. El Comité está muy preocupado por el aumento significativo de expulsiones de personas de El Salvador, Guatemala y Honduras. Se inquieta profundamente por que el llamado "retorno voluntario y asistido" se aplica mientras las personas están privadas de libertad, sin asistencia jurídica e información adecuada, y sin alternativas para su regularización. Observa con preocupación el elevado número de personas que desisten de la solicitud del estatuto de refugiado y que las medidas de retorno puedan disponerse sin indagar adecuadamente sobre posibles riesgos para la vida y la integridad física de la persona en el país de origen.

44. **El Comité recomienda al Estado parte que:**

(a) **Vele por que las personas sujetas a una orden administrativa de expulsión o retorno, o que soliciten el estatuto de refugiado, gocen de servicios de asistencia y representación jurídica gratuita, y conozcan y puedan ejercer su derecho a interponer recursos efectivos;**

(b) **Elabore mecanismos para impedir la expulsión de los migrantes hasta tanto se haya evaluado de manera adecuada cada situación individual, a fin, entre otras cosas, de asegurarse de que no se afecte el principio de no devolución ni la prohibición de expulsiones arbitrarias o colectivas;**

(c) **Refuerce la implementación de políticas y mecanismos dirigidos a brindar alternativas a la expulsión o retorno, incluyendo el derecho al asilo, la protección complementaria, la estancia por razones humanitarias y otras formas de regularización.**

Atención médica

49. El Comité toma nota de que el Estado parte permite la afiliación al Seguro Popular de toda persona, sin presentar documentación alguna, pero le preocupa que este seguro sea válido solamente por 90 días. Asimismo, está preocupado porque muchos trabajadores migrantes indocumentados no acceden a los servicios de salud porque temen su detención y deportación.

50. **El Comité recomienda que se reforme el artículo 42 del reglamento de la Ley General de Salud en Materia de Protección Social en Salud, para asegurar la afiliación ilimitada de los trabajadores migrantes y sus familiares al Seguro Popular. Asimismo, recomienda que se adopten medidas para asegurar que los migrantes indocumentados accedan a servicios médicos de atención a la salud y no sean denunciados a las autoridades de inmigración.**

Registro de nacimiento y nacionalidad

51. El Comité toma nota del gran incremento del registro de nacionalidad mexicana de niños nacidos en los Estados Unidos. Sin embargo, le preocupan los problemas que enfrentan los mexicanos indocumentados en ese país para registrar el nacimiento de sus hijos, por los obstáculos que tienen para validar el acta de nacimiento en territorio mexicano debido a la exigencia de traducción y legalización, y por la insuficiente información para que los padres registren en consulados mexicanos el nacimiento de sus hijos. Todo ello deriva en barreras para obtener un documento de identidad y su nacionalidad, así como para acceder a la educación y otros servicios sociales una vez que las familias retornan a México.

52. **El Comité recomienda fomentar la inscripción de nacimiento en los consulados mexicanos y sensibilizar a las madres sobre la importancia del registro oportuno de la doble nacionalidad. Asimismo, recomienda que se brinde información y asistencia a padres indocumentados para que puedan registrar los nacimientos ante autoridades de los Estados Unidos. Sugiere que se establezca en México un procedimiento simplificado de registro de la nacionalidad mexicana de niños con padres mexicanos, evitando requisitos**

inaccesibles como la traducción y notarización del documento en los Estados Unidos cuando la familia ya ha salido de ese país. En cualquier caso, se recomienda garantizar el acceso a la educación y otros servicios sociales a los hijos de mexicanos que retornan, sin perjuicio de su documentación o nacionalidad.

Educación

53. El Comité toma nota de los esfuerzos del Estado parte para eliminar las barreras administrativas para el acceso a la educación de la niñez migrante. También observa que muchos niños, niñas y adolescentes migrantes sin documentos no acceden a los servicios de educación por discriminación o por temor a su detención y deportación.

54. **El Comité urge al Estado parte a que tome medidas legislativas y práctica para asegurar que se adopten e implementen de manera efectiva las nuevas normas al nivel estatal y local, y que se incluyan medidas para asegurar que la niñez migrante sin documentos no sea discriminada ni denunciada a las autoridades de inmigración.**

Niños, niñas y adolescentes en el contexto de migración internacional

55. El Comité observa con mucha preocupación que aún restan numerosos desafíos pendientes para la plena implementación de la Ley General de los Derechos de Niñas, Niños y Adolescentes. Junto a la preocupación por la detención de decenas de miles de niños, niñas y adolescentes en estaciones migratorias, le preocupa especialmente lo siguiente:

(a) La falta de implementación de los procedimientos de determinación del interés superior del niño previstos en la Ley de Migración y la Ley General de los Derechos de Niñas, Niños y Adolescentes;
(b) La insuficiente creación o adecuación a la Ley General de los Derechos de Niñas, Niños y Adolescentes de procuradurías locales de protección de niños, niñas y adolescentes y autoridades competentes;
(c) La ausencia de mecanismos para garantizar la asistencia jurídica a niños, niñas y adolescentes en procedimientos migratorios, así como la falta de un tutor para niños no acompañados;
(d) La ausencia de mecanismos que garanticen la participación efectiva y el derecho a ser oído de los niños, niñas y adolescentes en todos los procedimientos que les afecten, y a ser debidamente tenidos en cuenta;
(e) El impacto grave que tienen la violencia y la persecución a los niños, niñas y adolescentes de El Salvador, Guatemala y Honduras, los abusos que sufren en su tránsito por el territorio mexicano, y las situaciones de explotación laboral de niños, niñas y adolescentes en el sur del país;
(f) El retorno de niños, niñas y adolescentes a sus países de origen sin una previa evaluación y determinación de su interés superior que permita aplicar otras medidas de protección inmediatas y sostenibles;
(g) La escasa proporción de niños, niñas y adolescentes que acceden a los procedimientos de solicitud del estatuto de refugiado, y la alta incidencia del desistimiento de esas solicitudes.

56. **El Comité recomienda al Estado parte que:**

(a) **Implemente a la mayor brevedad posible un procedimiento interinstitucional de determinación del interés superior del niño, coordinado por la Procuraduría Federal de Protección de Niñas, Niños y Adolescentes en el marco del Sistema de Protección Integral de Niños Niñas y Adolescentes y de la Ley General de los Derechos de Niñas, Niños y Adolescentes, asegurando las debidas garantías procesales, incluyendo el derecho a la información y asistencia jurídica gratuita por parte de profesionales especializados en derechos de niños, niñas y adolescentes, y en caso de niños no acompañados, de un tutor, el cual debe velar por el interés superior de los niños, niñas y adolescentes en todo el proceso;**
(b) **Asegure que los sistemas e instituciones de protección de niños, niñas y adolescentes funcionen independientemente del INM y cuenten con las capacidades necesarias para aplicar el principio del interés superior de los niños, niñas y adolescentes, y que esas decisiones tengan prioridad respecto de otras**

consideraciones relativas a la condición migratoria;

(c) **Redoble los esfuerzos para prevenir la violencia, abuso y explotación de los niños, niñas y adolescentes migrantes, protegerlos frente a esos crímenes, e investigue, juzgue y sancione a los responsables, incluyendo agentes estatales;**

(d) **Asegure que los niños, niñas y adolescentes tengan acceso inmediato a procedimientos relacionados a la regularización y protección internacional, y que las políticas migratorias respeten los derechos de los niños, niñas y adolescentes en línea con los instrumentos internacionales, incluyendo el principio de no devolución;**

(e) **Continúe desarrollando y finalice el sistema de datos desglosados sobre la protección de niños, niñas y adolescentes migrantes, refugiados y solicitantes de asilo;**

(f) **Asegure su acceso a la educación y salud;**

(g) **Adopte medidas de protección integral para atender la situación de niños, niñas y adolescentes migrantes que viven en la calle, así como en situaciones de explotación laboral en plantaciones de café, explotación por el crimen organizado y explotación sexual, entre otras;**

(h) **Implemente las recomendaciones de la Comisión Nacional de Derechos Humanos.**

Cooperación internacional con países de tránsito y destino

59. El Comité toma nota de los procesos regionales existentes en materia migratoria, en particular la Conferencia Regional sobre Migración. Le preocupan sin embargo los desafíos existentes en la región en materia de las causas de la migración (violencia, pobreza, entre otros), así como para la protección de los derechos de migrantes y sus familias.

60. **El Comité alienta al Estado parte a promover acuerdos y planes de acción regionales, desde un enfoque de derechos, dirigidos a abordar las causas estructurales de la migración (violencia, pobreza, entre otros) y a garantizar los derechos de toda la población migrante y sus familias, sin perjuicio de su condición migratoria.**

Committee on the Rights of the Child

Concluding Observations, (3 July 2015), CRC/C/MEX/CO/4-5

Non-discrimination

15. While taking note of the National Programme for Equality and Non-Discrimination (2014–2018), the Committee is concerned about the prevalence of discrimination against indigenous, Afro-Mexican and migrant children, children with disabilities, lesbian, gay, bisexual, transgender and intersex children, children in street situations and children living in poverty and in rural areas.

16. **The Committee recommends that the State party:**

(a) **Adopt a road map that includes adequate resources, a timeline and measurable targets requiring authorities at the federal, state and local levels to take measures, including affirmative measures, to prevent and eliminate all forms of de facto discrimination against indigenous, Afro-Mexican and migrant children, children with disabilities, lesbian, gay, bisexual, transgender and intersex children, children in street situations and children living in poverty and in rural areas;**

(b) **Ensure that the authorities, civil servants, the media, teachers, children and the general public are sensitized to the negative impact of stereotypes on children's rights and take all necessary measures to prevent these negative stereotypes, notably by encouraging the media to adopt codes of conduct;**

(c) **Facilitate child-friendly complaint mechanisms in educational establishments, health centres, juvenile detention centres, alternative-care institutions and any other setting and ensure that perpetrators of discrimination are adequately sanctioned.**

17. The Committee expresses deep concern about the persistent patriarchal attitudes and gender stereotypes that discriminate against girls and women, resulting in an extremely high prevalence of violence against women and girls in the State party.

18. **The Committee urges the State party to accord the utmost priority to the elimination of patriarchal attitudes and gender stereotypes that discriminate against girls and women, including through educational and awareness-raising programmes.**

Best interests of the child

19. While noting the constitutional recognition of the right of the child to have his or her best interests taken into account as a primary consideration, the Committee is concerned at reports that this right has not been consistently applied in practice.

20. **In the light of its general comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, the Committee recommends that the State party strengthen its efforts to ensure that this right is appropriately integrated and consistently applied in all legislative, administrative and judicial proceedings and decisions as well as in all policies, programmes and projects that are relevant to and have an impact on children. In this regard, the State party is encouraged to develop procedures and criteria to provide guidance to all relevant persons in authority for determining the best interests of the child in every area and for giving them due weight as a primary consideration.**

Respect for the views of the child

25. While noting the initiatives taken to foster child participation, such as the annual organization of the "parliament of the girls and boys of Mexico", the Committee regrets the lack of permanent forums aimed at promoting child participation. It is also concerned at reports that children's opinions are not consistently heard in judicial and administrative proceedings.

26. **In the light of its general comment No. 12 (2009) on the right of the child to be heard, the Committee recommends that the State party:**

[…]

(b) **Effectively implement legislation recognizing the right of the child to be heard in relevant judicial and administrative proceedings, including by monitoring the implementation of the protocol for the administration of justice in cases involving children.**

Birth registration

27. While welcoming the constitutional reform of 2014 recognizing the right to birth registration, the Committee is concerned that the number of indigenous, Afro-Mexican and migrant children and children living in remote areas who are registered at birth remains low.

28. **The Committee recommends that the State party strengthen efforts to ensure universal birth registration, including by undertaking the necessary legal reforms and adopting the required procedures at the state and municipal levels. Registry offices or mobile units should be available in all maternity units, in the main points of transit or destination of migrants and in communities where children are born with traditional birth attendants.**

Sexual exploitation and abuse

33. While noting the adoption of a protocol to assist child victims of sexual abuse, the Committee is concerned about the high prevalence of sexual violence against children, in particular girls. The Committee is seriously concerned that perpetrators of rape can escape punishment if they marry the victim. It is also concerned that the current proposal to reform the Federal Penal Code with regard to the statute of limitation for crimes of sexual abuse against children does not adequately protect the rights of children. It is also concerned that insufficient efforts are being made to identify, protect and rehabilitate child victims and about the increasing number of cases of sexual violence in education centres.

34. **The Committee urges the State party to:**

(a) **Review legislation at the federal and state levels to ensure that rape is criminalized in line with international standards and remove all legal provisions that can be used to excuse perpetrators of child sexual abuse;**

(b) **Ensure that the reform of the Federal Penal Code provides for no statute of limitation regarding both the sanctions and the criminal action in relation to crimes of sexual abuse against children, and that sanctions cover both the perpetrators and the abettors. Similar provisions should be adopted in all state penal codes;**
(c) **Establish mechanisms, procedures and guidelines to make it mandatory to report cases of child sexual abuse and exploitation and ensure the availability of child-friendly complaints mechanisms, in particular in schools;**
(d) **Prevent, investigate and prosecute all cases of sexual abuse of children and adequately punish those convicted;**
(e) **Provide training for judges, lawyers, prosecutors, the police and other relevant persons on how to deal with child victims of sexual violence and on how gender stereotyping by the judiciary affects girls' right to a fair trial in cases of sexual violence, and closely monitor trials in which children are involved;**
(f) **Effectively implement the protocol to assist child victims of sexual abuse and ensure quality services and resources to protect them, provide them with physical and psychological recovery and social reintegration and compensate them;**
(g) **Raise awareness to prevent child sexual abuse, inform the general public that such abuse is a crime and address victim stigmatization, particularly when the alleged perpetrators are relatives.**

Standard of living

53. The Committee remains deeply concerned about the prevalence of child poverty, which affects more than half of the child population, a higher rate than affects the adult population. It is concerned that indigenous, Afro-Mexican, migrant and displaced children, children in single-parent households and children living in rural areas are particularly affected by poverty and extreme poverty.

54. **The Committee recommends that the State party strengthen its efforts to eliminate child poverty by adopting a public policy developed in consultation with families, children and civil society organizations, including those from indigenous, Afro-Mexican, displaced, migrant and rural communities, and by allocating adequate resources for its implementation. Measures to promote early childhood development and further support families should be part of the policy.**

Education, including vocational training and guidance

55. The Committee notes the educational reform undertaken in 2013 aimed at ensuring quality education from preschool to senior high school. However, it is concerned about:
(a) Millions of children between 3 and 17 years of age who do not attend school;
(b) Persistent challenges for children in vulnerable situations in accessing quality education;
(c) High rates of school dropouts, particularly among students in secondary education, pregnant adolescents and adolescent mothers;
(d) The low coverage of early childhood education and the lack of public policies in this regard.

56. **In the light of its general comment No. 1 (2001) on the aims of education, the Committee reiterates its recommendations (see CRC/C/MEX/CO/3, para. 57 (a–e)) and recommends that the State party:**
(a) **Increase its efforts to improve the quality of education and its availability and accessibility to girls, indigenous, Afro-Mexican and displaced children, children in rural areas, children living in poverty, children in street situations, national and international migrant children and children with disabilities, by substantially increasing the education budget and reviewing relevant policies;**
(b) **Strengthen its efforts to ensure education in Spanish and in indigenous languages for indigenous children and ensure the availability of trained teachers;**
(c) **Strengthen measures to address school dropouts, taking into consideration the particular reasons why boys and girls drop out;**
(d) **Step up its efforts to ensure that pregnant adolescents and adolescent mothers are**

supported and assisted in continuing their education in mainstream schools;

(e) **Develop and expand early childhood education from birth, on the basis of a comprehensive and holistic policy of early childhood care and development.**

Asylum-seeking and refugee children

57. The Committee is concerned about:

(a) The lack of adequate measures to identify, assist and protect asylum-seeking and refugee children, including the lack of legal representation for unaccompanied children;

(b) The prolonged detention of asylum-seeking children;

(c) The lack of data on the number of asylum claims made by children and the information by the State party that only 18 children were granted refugee status in 2014.

58. **The Committee recommends that the State party:**

(a) **Increase its efforts to identify, assist and protect asylum-seeking and refugee children, including by adopting the necessary legislative, administrative and logistical measures. Legal guardians, free legal representation, interpretation and consular assistance should be ensured for them;**

(b) **Take the measures necessary to end the administrative detention of asylum-seeking children and expeditiously place unaccompanied children in community-based shelters, and accompanied children in appropriate facilities that ensure family unity and are compliant with the Convention;**

(c) **Collect disaggregated data on asylum-seeking and refugee children;**

(d) **Complete the withdrawal of the remaining reservations to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.**

Children in situations of migration

59. The Committee welcomes the adoption of a protocol on consular assistance for unaccompanied migrant children as well as the attention given by the State party to the plight of unaccompanied children on its territory, in particular its increasing collaboration with countries in the region to assist those children and protect them from violence. It is nevertheless concerned about:

(a) Migrant children being kept in detention centres for migrants and reports of violence and abuse against children in those centres;

(b) Migrant children being subjected to killings, kidnappings, disappearances, sexual violence, exploitation and abuse, and about the lack of official disaggregated data in this regard;

(c) Reports that many migrant children are deported without a preliminary process to determine their best interests, in spite of the legal recognition of the principle in the law on migration and the General Act on the Rights of Children and Adolescents;

(d) The insufficient measures taken to ensure the rights of national migrants as well as the rights of the many children displaced as a result of armed violence.

60. **The Committee recommends that the State party:**

(a) **Take all measures necessary to end the administrative detention of migrant children and continue to establish community-based shelters for them, in accordance with articles 94 and 95 of the General Act on the Rights of Children and Adolescents, ensuring that these shelters comply with the Convention and are regularly monitored. The protocol for assisting unaccompanied migrant children in shelters should be effectively implemented and regularly evaluated;**

(b) **Increase efforts to prevent killings, kidnappings, disappearances, sexual violence, exploitation and abuse of migrant children, and investigate, prosecute and punish perpetrators, including when the perpetrator is an agent of the State;**

(c) **Establish a best interests determination process for decisions relating to migrant children and always carry out due process with procedural safeguards to determine the individual circumstances, needs and best interests of the child prior to making a decision on his or her deportation. Special attention should be given to family reunification;**

(d) **Ensure that migrant children are informed about their legal status, ensuring that they fully understand their situation, and provide public defence services and/or guardians throughout the process. Children should also be informed that they can contact their consular services;**
(e) **Ensure that all relevant professionals working with or for migrant children, in particular border and immigration personnel, social workers, defence lawyers, guardians and police officers, are adequately trained and speak the native language of the children;**
(f) **Adopt comprehensive measures to provide assistance to national migrant and displaced children and ensure their access to education and health services and their protection from violence;**
(g) **Collect disaggregated data related to cases of violence against migrant and displaced children, including disappearances and enforced disappearances.**

Committee on the Rights of Persons with Disabilities

Concluding Observations, (27 October 2014), CRPD/C/MEX/CO/1

Liberty of movement and nationality (art. 18)
39. The Committee is concerned that migrants with intellectual or psychosocial disabilities are detained in migrant holding centres, that the authorities set stricter requirements for entry into the country for persons with disabilities and that persons injured as a result of falling from the train known as “La Bestia” (“The Beast”) receive inadequate care.

40. **The Committee urges the State party to:**
(a) **Designate appropriate and accessible areas and appoint trained staff to assist persons with disabilities in migrant holding centres;**
(b) **Review and harmonize the operational guidelines under the Migration Act to ensure that persons with disabilities are treated equally in the issuance of visas and entry permits;**
(c) **Review and harmonize care protocols for migrants who are injured while in transit in Mexico, so that they are provided with not only emergency medical care but also sufficient recovery time and basic rehabilitation.**

41. The Committee notes that the steps taken to promote the registration of children with the civil registry have not led to the universal registration of children with disabilities.

42. **The Committee urges the State party to ensure that all children with disabilities are immediately registered at birth and are provided with an identity document.**

III. Special Procedures Mandate Holders

Report by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Mexico

Addendum: Mission to Mexico (29 December 2014) A/HRC/28/68/Add.3

Assessment of the situation

Migrants
72. Because of its location, Mexico is one of the main countries of origin, destination, transit and return of migrants. Migrants are extremely vulnerable to acts of violence by private individuals. The Special Rapporteur is concerned about the impunity that usually surrounds such crimes and the information he received that public employees collude in or tolerate such practices. Moreover, migrant arrests by public employees tend to be violent and accompanied by insults, threats and humiliation.

73. The conditions observed at the Siglo XXI migrant holding centre in Tapachula (Chiapas) are generally adequate for short periods of detention. However, detainees who lodge appeals generally spend long periods in detention. The Government should restrict the use of detention to exceptional cases, improve conditions of detention and avoid prolonged periods of detention. Unaccompanied boys are housed in the holding centre, while unaccompanied girls are taken to public and private hostels where conditions are generally poor and there is no proper supervision to detect trafficking and identify needs. The Special Rapporteur notes that, while he received no complaints or ill-treatment or torture at the Siglo XXI centre, he did receive complaints about incidents at several of the country's migrant holding centres, in which migrants were insulted, threatened, humiliated and beaten. The Special Rapporteur is concerned that lawyers and civil society organizations have limited access to holding centres to monitor and assist migrants.

Recommendations

87. **With regard to migrants:**

(a) **Take steps to reduce the violence to which they are exposed, including due investigation and punishment of those responsible;**

(b) **Facilitate access by civil society organizations and lawyers to migrant holding centres and to confidential interviews with migrants.**

Report by the Special Rapporteur on extrajudicial, summary or arbitrary executions on his mission to Mexico,

Addendum: Mission to Mexico (28 April 2014) A/HRC/26/36/Add.1

Vulnerable persons

Migrants

74. Undocumented migrants who transit through Mexico put their lives at serious risk, although it is difficult to obtain reliable figures on the numbers killed.6 Reportedly, there is a direct link between disappearances and killings of migrants, organized crime, and complicity of law enforcement, investigative and other authorities. Migrant shelters have been subject to multiple attacks by organized criminal groups and insufficient preventative and accountability measures have been inadequately mobilized.7 Moreover, migrants are afraid to bring cases to the police. Chronic impunity therefore persists. The Special Rapporteur urges prompt investigation of killings of migrants in order to punish those responsible and provide compensation to victims or families of victims. He also calls for strengthening of the protection framework, including ensuring the safe operation of shelters.

Recommendations

B. Vulnerable Persons

111. **Full, prompt, effective, impartial and diligent investigation of homicides perpetrated against women, migrants, journalists and human rights defenders, children, inmates and detainees and LGBT individuals should be ensured.**

113. **A safe corridor should be created for migrants in transit, including better protection while in transit; a package of protection and accountability measures should be adopted to prevent attacks in migrant shelters; cooperation should be strengthened between state departments and community organizations that provide humanitarian assistance to migrants; adequate redress should be provided to victims of violence committed in the country; consideration should be given to following an approach whereby undocumented migrants can exercise rights such as the right to report crimes to the authorities without fearing arrest; and the dignified repatriation of corpses should be ensured in coordination with the State of origin.**

118. **Conditions for all detainees should be improved in compliance with the Standard Minimum Rules for the Treatment of Prisoners and the right to life of all inmates should be ensured.**

119. **Police and other authorities should be trained on gender-identity and sexual orientation awareness; protective and precautionary measures should be ensured; and societal tolerance should be encouraged.**

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FACT SHEET: NOVEMBER 2018

Is Mexico Safe for Refugees and Asylum Seekers?

President Trump has repeatedly falsely asserted that the United States can turn away asylum seekers who have crossed through Mexico without seeking asylum there first—even though there is no legal basis for this claim. Secretary of Homeland Security Kirstjen M. Nielsen has also incorrectly stated that asylum seekers must "seek protections in the first safe country they enter, including Mexico."

Despite this rhetoric, **many refugees face deadly dangers in Mexico. For many, the country is not at all safe.** Mexico falls far short of meeting the legal requirements that would permit U.S. officials to treat it as a "safe third country" for the purpose of turning back asylum seekers. And since there is no safe third country agreement in place, the president and members of his administration have no legal basis to state that asylum seekers must apply for asylum in Mexico.

Rather than returning refugees to a country that is currently unable to provide them safety, the United States should strengthen support to build an effective refugee protection system in Mexico. This factsheet explains the concept of safe third country agreements under U.S. law and why Mexico does not meet the legal requirements.

What is a "safe third country"?

Under a "safe third country" agreement, the United States and another country recognize that both countries effectively protect refugees seeking asylum. With an agreement in place, asylum seekers who request protection in the United States after first passing through the "safe" country may be returned there and given an opportunity to request protection in that other country.

Canada is the only country that has a safe third country agreement with the United States. The Canada-U.S. Safe Third Country Agreement was signed on December 5, 2002 and came into effect on December 29, 2004. As a result, asylum seekers who enter the United States after passing through Canada will be returned and permitted to request asylum there unless they qualify for an exception to the agreement.

Congress has spelled out three requirements that must be met before U.S. officials and agencies can block refugees from asylum on these grounds. **Specifically, to be a safe third country, the Immigration and Nationality Act requires that the country must:**

- ☑ **Guarantee asylum seekers protection from persecution:** The country must be a place where the refugee's "life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion."
- ☑ **Provide access to "full and fair" procedures to assess asylum requests:** The country must afford "access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection."
- ☑ **Agree to be designated a safe third country:** The country must have entered into a bilateral or multilateral safe third country agreement with the United States.

Mexico does not meet "safe third country" legal requirements

As Human Rights First has long documented, given the deadly dangers in Mexico and the deficiencies in its refugee protection system, Mexico falls far short of meeting "safe" country standards under U.S. law:

Refugees are not adequately protected in Mexico.

As detailed in Human Rights First's 2017 report and updated in a 2018 fact sheet, **refugees and migrants face acute risks of kidnapping, disappearance, sexual assault, trafficking, and other grave harms in Mexico**. Refugees in Mexico are targeted due to their inherent vulnerabilities as refugees but also on account of their race, nationality, gender, sexual orientation, gender identity, and other reasons. Certain groups—"including the LGBTQ community, people with indigenous heritage, and foreigners in general"—face consistent persecution in Mexico and are often forced to seek protection outside of the country. Gay men and transgender women, for example, flee discrimination, beatings, attacks, and a lack of protection by police in Mexico. **Some refugees have been trafficked into forced labor**, while women and girls have been trafficked to Mexico's southern border where they have been exploited in bars and night clubs that cater to police, military, and other forces. Doctors Without Borders reported that 68% of refugees and migrants it interviewed had been exposed to violence and almost one third of refugee and migrant women had been sexually assaulted. Additionally, Amnesty International reports that criminal investigations of massacres and crimes against migrants remain "shrouded by impunity."

Many refugees are left unprotected due to lack of access to full and fair procedures

Deficiencies, barriers, and flaws in Mexico's asylum system leave many refugees unprotected and Mexican authorities continue to improperly return asylum seekers to their countries of persecution. A 2018 Amnesty International report found that Mexican migration officials routinely turn back Central American asylum seekers and that **75 percent of migrants and asylum seekers surveyed were not informed of their right to seek asylum** by migration officers in detention facilities, even though this is required by Mexican law. Less than one percent of unaccompanied children apprehended in Mexico receive international protection, as detailed by Human Rights Watch.

Despite progress since launching an asylum system, barriers persist, leaving many refugees unprotected. The system for seeking legal protection lacks national reach and capacity. COMAR—"The Mexican Commission for Refugee Aid"—has only four offices around the country, leaving many refugees without access to the system. After halting its processing of asylum applications in 2017, Mexico only reopened its system in 2018 after a successful lawsuit by the Mexican Commission for the Defense and Protection of Human Rights. Refugee processing in Mexico remains plagued by backlogs and understaffing. In addition, **refugees are blocked from protection under an untenable 30-day filing deadline, denied protection by COMAR officers who claim that refugees targeted by groups with national reach can safely relocate within their countries, and lack an effective appeal process** to correct wrongful denials of protection. Finally, declining and disparate asylum recognition rates for Central Americans raise concerns that individuals from those countries remain unprotected.

Mexico has not agreed to be a safe third country.

Mexico and the United States do not have a "safe third country" agreement.

OVERLOOKED, UNDER-PROTECTED

MEXICO'S DEADLY *REFOULEMENT* OF CENTRAL AMERICANS SEEKING ASYLUM

I WELCOME

AMNESTY INTERNATIONAL

Amnesty International is a global movement of more than 7 million people who campaign for a world where human rights are enjoyed by all.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

First published in 2018 by Amnesty International Ltd
Peter Benenson House, 1 Easton Street, London WC1X 0DW, UK

Index: AMR 41/7602/2018
Original language: English
amnesty.org

Cover photo:
Illustration by Joaquín Castro Caceres for Amnistía Internacional
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GLOSSARY

TERM	DESCRIPTION
REFUGEE	A refugee is a person who has fled from their own country because they have a well-founded fear of persecution and their government cannot or will not protect them. Asylum procedures are designed to determine whether someone meets the legal definition of a refugee. When a country recognizes someone as a refugee, it gives them international protection as a substitute for the protection of their home country.
ASYLUM-SEEKER	An asylum-seeker is someone who has left their country seeking protection but has yet to be recognized as a refugee. During the time that their asylum claim is being examined, the asylum-seeker must not be forced to return to their country of origin. Under international law, being a refugee is a fact-based status, and arises before the official, legal grant of asylum.
MIGRANT	A migrant is a person who moves from one country to another to live and usually to work, either temporarily or permanently, or to be reunited with family members. **Regular migrants** are foreign nationals who, under domestic law, are entitled to stay in the country. **Irregular migrants** are foreign nationals whose migration status does not comply with the requirements of domestic immigration legislation and rules. They are also called "undocumented migrants". The term "irregular" refers only to a person's entry or stay. **Amnesty International does not use the term "illegal migrant."**
UN REFUGEE CONVENTION AND PROTOCOL	The 1951 Convention Relating to the Status of Refugees is the core binding international treaty that serves as the basis for international refugee law. The 1967 Protocol relating to the Status of Refugees retakes the entire content of the 1951 Convention and simply adds an extension on its application to all refugees, not just those arising from specific time bound conflicts in the 1940s and 50s. Mexico has ratified both the Convention and the Protocol while the USA has ratified the Protocol, which gives it identical obligations. This treaty, along with the International Covenant on Civil and Political Rights of 1966, ratified by both USA and Mexico, provide a series of fundamental rights to be enjoyed by all humans.
REFOULEMENT	*Refoulement* is the forcible return of an individual to a country where they would be at real risk of serious human rights violations (the terms "persecution" and "serious harm" are alternatively used). Individuals in this situation are entitled to international protection; it is prohibited by international law to return refugees and asylum-seekers to the country they fled – this is known as the principle of non-*refoulement*. The principle also applies to other people (including irregular migrants) who risk serious human rights violations such as torture, even if they do not meet the legal definition of a refugee. Indirect *refoulement* occurs when one country forcibly sends them to a place where they at risk of onwards *refoulement*; this is also prohibited under international law.
MARAS	Colloquial name commonly given to organized groups from the Northern Triangle of Central America that are characterized by violent criminal activities and generally associated with territorial control.

1. EXECUTIVE SUMMARY

Mexico is witnessing a hidden refugee crisis on its doorstep. For a number of years, citizens from nearby countries who formerly passed through Mexico in search of economic opportunities have been leaving their countries due to fear for their lives and personal liberty. This briefing analyses the results of a survey carried out by Amnesty International with 500 responses from migrants and people seeking asylum travelling through Mexico. The information presented demonstrates that the Mexican government is routinely failing in its obligations under international law to protect those who are in need of international protection, as well as repeatedly violating the *non-refoulement* principle[1], a binding pillar of international law that prohibits the return of people to a real risk of persecution or other serious human rights violations. These failures by the Mexican government in many cases can cost the lives of those returned to the country from which they fled.

The so-called "Northern Triangle" countries of Guatemala, El Salvador and Honduras continue to experience generalized violence, with homicide rates four to eight times higher than what the World Health Organization considers "epidemic" homicide levels.[2] Nearly all of the respondents to Amnesty International's survey came from these three Central American countries.[3] Of those detained by Mexican authorities, 84% (263 out of 310 that answered the question) did not desire to be returned to their country. Of these, 54% (167 out of 310) identified violence and fear as a principal reason for not wanting to go back to their country, and 35% (108 out of 310) identified direct personal threats to their life back home as the reason for not wanting to return.

Violations by Mexican authorities of the *non-refoulement* principle directly affect human lives and deny protection to those most at need. One man who came to Mexico seeking asylum after fleeing death threats in Honduras told Amnesty International he wept in desperation to try to stop his deportation, yet officials did not listen to him or inform him of his right to lodge an asylum claim, and simply deported him back to his country. This testimony echoes dozens collected by Amnesty International and contrasts with the official responses received from Mexican authorities, who informed Amnesty International that *refoulement* cases were rare.

Amnesty International analysed the 500 responses received and found 120 testimonies that gave solid indications that a *refoulement* had occurred, which is 24% of the total set of responses, and equates to 40% of the responses provided by those individuals who had been detained by the National Institute of Migration (INM). These testimonies involved people explicitly seeking asylum or expressing fear for their lives in their country of origin, yet nevertheless being ignored by the INM and deported to their country.

In addition, Amnesty International found that 75% of those people detained by the INM were not informed of their right to seek asylum in Mexico, despite the fact that Mexican law expressly requires this and public officials assured Amnesty International that the requirement is complied with. Amnesty International also found evidence of a number of procedural violations of the rights that people seeking asylum should be afforded in line with international human rights law. These violations effectively deny them the possibility to challenge their deportation and to obtain protection in Mexico.

1. Article 33 of the 1951 UN Convention Relating to the Status of Refugees provides that states must not return persons to territories where their "life or freedom" would be threatened. The *non-refoulement* principle is also considered a binding principle of international customary law.
2. The World Health Organization (WHO) considers a murder rate of more than 10 per 100,000 inhabitants to be an epidemic level. However, in 2016, the murder rate in El Salvador was recorded as 81.2 per 100,000 inhabitants (National Civil Police), in Honduras 58.9 per 100,000 (SEPOL) and in Guatemala 27.3 per 100,000 (National Civil Police). 2017 figures from these same sources noted 60 per 100,000 for El Salvador, 42.8 per 100,000 for Honduras, and 26.1 per 100,000 for Guatemala.
3. Of the 385 people interviewed, 208 people were from Honduras, 97 from El Salvador, 59 from Guatemala, and a series of other countries represented less than five cases each

1.1 METHODOLOGY

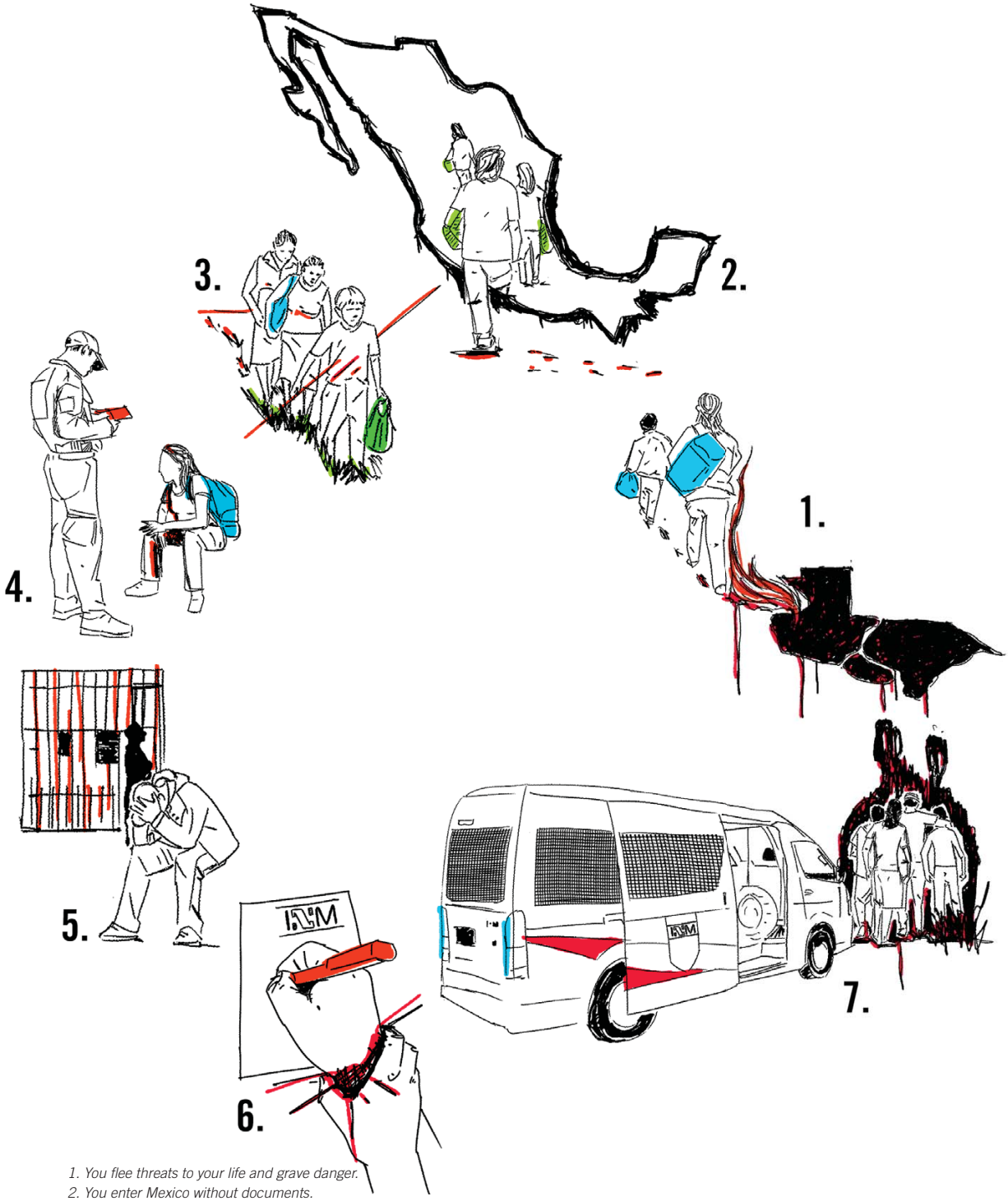
Between May and September 2017 Amnesty International carried out a survey of irregular migrants and asylum seekers with the aim of understanding how Mexican authorities are implementing their obligations to ensure the effective enjoyment of the right to seek asylum in Mexico. Surveys were carried out in queues for government offices, lawyers and UN offices, as well as in migrant shelters, in the southern states of Chiapas, Tabasco and the northern state of Coahuila. Surveys were also carried out in a reception centre for deportees in Guatemala. Three hundred and eighty-five people were surveyed in individual interviews responding to a standardized questionnaire that was read out to them.[4] Many of these people detailed multiple experiences of entering Mexico, giving a total of 500 responses to the questionnaire based on 500 discrete episodes of leaving one's country. Many migrants and people seeking asylum cross by land into Mexico more than once, which means that the data set for this survey was based on each separate experience of crossing into Mexico. At times, one interviewee filled out a number of survey responses, based on separate journeys they had made over the years.

Eighty-two per cent of the interviewees were men, 17% were women, 1% did not wish to specify their gender and 2 cases identified as transgender. The over-representation of males is reflected in the migratory flow as noted by officials statistics, with females accounting for approximately a quarter of the apprehensions of irregular migrants carried out in 2017.[5] Nevertheless, this official data does not take into account other routes that may be more precarious or clandestine that women may be forced to make and precise assessments of women-led migration routes are not readily available.

Of the 500 survey responses collected by Amnesty International, 297 pertained to migrants or people seeking asylum that had been at one point apprehended by the INM. The rest had either never been apprehended by Mexican officials, or had been apprehended by police (116 responses) the Army (11 responses) or the Navy (4 responses). Further detail on the role of the police in apprehending migrants (mostly illegally), will be outlined briefly below, however the focus of this briefing is the role of migration authorities. Survey responses were anonymous and participants were offered no benefit in their individual cases in return. The data set gathered is not a randomized sample of the estimated 500,000 irregular migrants that cross Mexico's southern border annually.[6] As such, the percentages presented here in graphs, while an indication of wider trends, are not a statistical sample of the hundreds of thousands of people that pass through Mexico each year. Nevertheless, the data obtained from the survey provides important information on the common practices of Mexican authorities in order to inform Amnesty International's recommendations.

4. Of the 385 people surveyed, 208 people were from Honduras, 97 from El Salvador, 59 from Guatemala, and a series of other countries represented less than five cases each.
5. From January to November 2017, females accounted for 29% of irregular migrants aprehended by the INM:See: Unit for Migratory Policy, Ministry of the Interior, Unidad de Política Migratoria, Secretaría de Gobernación, Extranjeros Presentados y Devueltos, 2017 Cuadro 3.1.3: Eventos de extranjeros presentados ante la autoridad migratoria, según grupos de edad, condición de viaje y sexo, available at: http://www.politicamigratoria.gob.mx/es_mx/SEGOB/Extranjeros_presentados_y_devueltos. Last accessed XX January 2018
6. United Nations High Commissioner for Refugees, "Factsheet – Mexico" February 2017 - Available at: http://reporting.unhcr.org/sites/default/files/Mexico%20Fact%20Sheet%20-%20Februrary%202017.pdf

THE HUMAN EXPERIENCE OF REFOULEMENT



1. You flee threats to your life and grave danger.
2. You enter Mexico without documents.
3. Tired and hungry, you travel by foot or bus.
4. Migration agents (INM) detain you without explaining anything to you.
5. They lock you up without explaining your right to seek protection in Mexico.
6. They pressure you to sign a deportation paper.
7. They deport you by bus to your possible death back in your country.

2. FALLING THROUGH THE CRACKS: FAILURES IN SCREENING PROCESSES

> ***"Here we are not interested in your lives. Our job is to deport you."***
>
> Mexican INM agent in response to a 27 year old Honduran man who expressed fear of returning to his country.[7]

The National Institute of Migration (INM) is the federal government body responsible for regulating borders, travel and residence documents and the flow of regular and irregular migration throughout the country. The INM is also responsible for apprehending and deporting irregular migrants. It pertains to the Interior Ministry and has a staff of close to 6,000.[8] The officials of the INM that have direct contact with people seeking asylum generally fall into two categories: INM field agents who carry out a first stage of interception and apprehensions in field activities such as highways or checkpoints; and INM officials assigned to migration detention centres, of which the INM has 54 throughout the country.

Amnesty International analysed the 500 survey responses received and found 120 testimonies that gave solid indications that a *refoulement* had occurred, which is 24% of the total set of responses, and equates to 40% of the responses provided by those individuals that had specifically been detained by the INM. These testimonies involved people seeking asylum more specifically expressing fear for their lives in their country of origin, yet despite this being ignored by the INM and deported to their country of origin.

These failures are more than simply negligent practices, and each case of *refoulement* is a human rights violation that risks costing the lives of people seeking asylum. The practical experience of an illegal deportation or *refoulement* involves the return of a person seeking asylum by land to Guatemala, Honduras and El Salvador. In the case of El Salvador and Honduras, these countries comprise limited amounts of territory where *mara* networks stretch across nearly all regions. Deportation centres and highway drop-off points for deportees are easily trackable places for these powerful and violent networks to operate and persecute deportees from different parts of the country.

7. Anonymous survey response from a 27 year old Honduran man interviewed by Amnesty International in the city of Saltillo on 18 September 2017
8. According to the Federal Budget of 2017 (*Presupuesto de Egresos de la Federación*, 2017), the INM had a staff of 5,809 employees.

Amnesty International interviewed Saúl just days before he was murdered. [An asterisk next to his name indicates Amnesty International has changed the name in order to protect his identity.] ©Amnesty International/Encarni Pindado*

SAÚL*: MURDERED THREE WEEKS AFTER BEING ILLEGALY DEPORTED BACK TO HONDURAS BY THE INM

Saúl worked in the transport industry as a bus driver in Honduras. The transport industry has been specifically outlined by the UNHCR as one of five specific categories of at-risk profiles within the context of widespread violence in Honduras, given the grip that *maras* have through demanding bus drivers extortions or "war taxes." In November 2015 Saúl suffered an armed attack in which two of his sons were seriously wounded. Fearing for his life, Saúl fled to Mexico and applied for asylum. The COMAR denied him asylum arguing that he had options for security in his country, and the INM subsequently violated the *non-refoulement* principle by deporting him within the 15 day legal window in which he had the right to appeal his claim. Amnesty International researchers interviewed Saúl in Honduras in July 2016, three weeks after he had been deported. He expressed an acute fear for his life and had already suffered an attack in his house on arriving home. A few days later, Saul was murdered.

Officials of the INM are required by domestic law to "detect foreigners that, based on their expressions to the authority, or indeed based on their personal condition, can be presumed to be possible asylum seekers, informing them of their right to request asylum."[9] They are also required to channel those people that express their intention to seek asylum to Mexico's refugee agency, the *Comisión Mexicana de Ayuda a Refugiados* (COMAR).[10] The law and regulations do not distinguish between different categories of INM officials in relation to this obligation, as all are required to comply with these requirements, whether they are field agents or officials in detention centres. A representative of the INM informed Amnesty International that regardless of whether INM officials carry out activities related to interception and apprehensions in field operations, or whether they are in migration detention centres, they are all given uniform training on human rights and international refugee law.[11] Indeed, authorities should be capable of screening for protection needs in a variety of settings.[12]

9. Article 16 of the Reglamento de la Ley sobre Refugiados y Protección Complementaria, available at: http://www.diputados.gob.mx/LeyesBiblio/regley/Reg_LRPC.pdf
10. Article 21 of Mexico´s Refugee Law (*Ley de Refugiados y Protección Complementaria*) outlines that: "Any authority that becomes aware of the intention of a foreigner to seek refugee status, must immediately advise in writing to the Ministry of the Interior [to which the COMAR pertains.] The failure to comply with the requirement will be sanctioned in line with the legal stipulations on responsibility of public servants. [Own translation].
11. Amnesty International interview with INM delegation in Chiapas, southern Mexico, 16 August 2017
12. The United Nations High Commissioner for Refugees (UNHCR) outlines that "Screening and referral can be conducted at border or coastal entry points, in group reception facilities or in places where detention takes place (including detention centres). See: United Nations High Commissioner for Refugees, "The 10-point action plan: Mechanisms for Screening and Referral", available at: http://www.refworld.org/pdfid/5804e0f44.pdf, page 119.

2.1. FIRST STAGE OF SCREENING BY INM FIELD AGENTS

"The INM agent said to me: now that you've been detained, you're screwed and you're gonna get deported to your country."

Comments from a Honduran man[13] who had fled death threats, describing the response he received from an INM field agent when he expressed his fear of returning.

The field agents of the INM are often the very first point of contact with Mexican authorities for a number of migrants and people seeking asylum. Yet, they do not have their names on their official uniforms, and in many cases function as a faceless force dedicated to apprehending migrants and asylum seekers and turning them over to migration detention centres without an individualized assessment of each detainee's personal circumstances and protection needs.

Amnesty International analysed the conduct of INM field agents and found that this first stage of screening during interception and apprehension of migrants displays overt failures to detect people seeking asylum and act accordingly. Amnesty International noted just 10 cases out of 297 people apprehended by the INM where field agents responded according to the law, by explaining asylum seekers their right to seek protection in Mexico and informing them of the procedure they could undergo in the COMAR. While these are promising practices from public officials, the fact that this was the minority of cases is extremely concerning and points to grave and systemic failures by the INM to comply with law and international human rights obligations. The vast majority of cases involved INM field agents ignoring or at times humiliating people seeking asylum in response to their expressions of fear of return to their country.

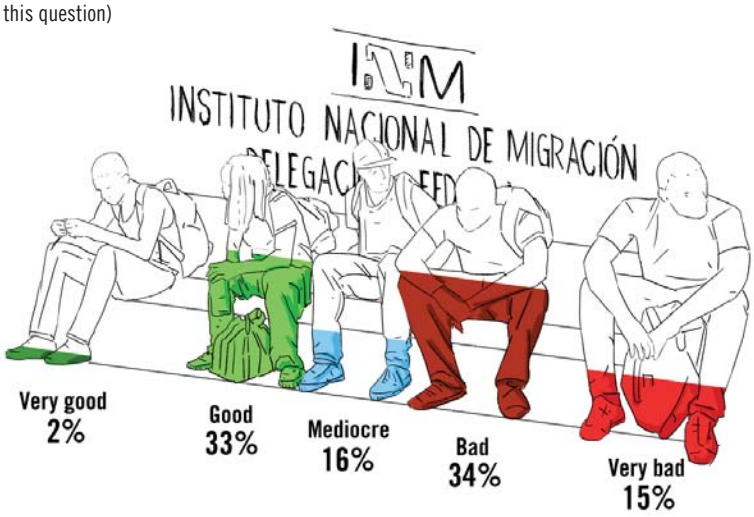
Amnesty International found that 69% of those that had been apprehended by INM noted that the field agent never asked them their reasons for having left their country. This is despite the fact that in the Latin American Regional Guidelines for the preliminary identification and referral mechanisms for Migrant Populations,[14] one of the preliminary questions that should be asked to irregular migrants is why the person left their country. While this is one of a series of questions that can be asked during the first stages of identification of asylum-seekers and refugees, and Amnesty International recommends more precise questions,[15] the fact that field agents did not pose even such entry-level questions reveals a lack of adequate attention to their legal obligations to screen for people seeking asylum. Many responses to Amnesty International's questionnaire noted that INM field agents did not allow migrants and people seeking asylum to speak and simply shouted orders at them and loaded them into vans.

A number of survey responses pointed to the indifference of INM field agents to the comments from people seeking asylum as to their fear of returning to their country; comments that by law should detonate a response from the agent that informs asylum authorities of the intention of the person to seek asylum.[16] A number of responses to Amnesty International's survey outlined a rude or teasing attitude from INM agents. INM field agents routinely ignored asylum seekers' concerns, and told asylum seekers they could not do anything and that they should talk to their colleagues once they arrived at the migration detention centre. This response, as will be seen below, is inadequate, given the fact that the processes in the migration detention centres also routinely fail to detect people seeking asylum.

13. Interview response to survey carried out with Honduran man in Tapachula, Chiapas state, 14 August 2017
14. These guidelines were agreed upon in an IOM and UNHCR sanctioned process that produced this document in 2013: http://rosanjose.iom.int/site/sites/default/files/LINEAMIENTOS%20ingles.pdf Page 19.
15. See Amnesty International discussion of screening procedures in Italy: *Hotspot Italy: How EU's flagship approach leads to violations of refugee and migrant rights*, 3 November 2016, Index number: EUR 30/5004/2016, p34ff.
16. Op Cit. See footnote 9.

One person seeking asylum told Amnesty International "I asked [the INM field agents] for asylum, and they told me that it didn't exist, and that in Mexico they didn't like Hondurans because we commit mischief."Another migrant told Amnesty International "the field agents know that you don't know your rights. They say whatever they want."

WHAT WAS THE INM FIELD AGENT´S ATTITUDE WHEN YOU EXPRESSED YOUR REASONS FOR NOT WANTING TO RETURN TO YOUR COUNTRY?
(171 responses to this question)



2.2 FALLING THROUGH THE CRACKS: SECOND STAGE OF SCREENING IN DETENTION CENTRES

Mexico has 54 migration detention centres, many of which are highly securitized and controlled facilities resembling prison-style conditions.[17] These detention centres are the second stage of processing for irregular migrants and asylum seekers and are run by a different category of INM officials that interview detainees, prepare a casefile for each, and determine whether they are to be deported, which in the case of Central Americans, involves loading them onto buses that leave from the migration detention centres on Mexico's southern border. In the case of people seeking asylum, the law requires that these persons are channelled to COMAR without delay and are shielded from deportation.[18]

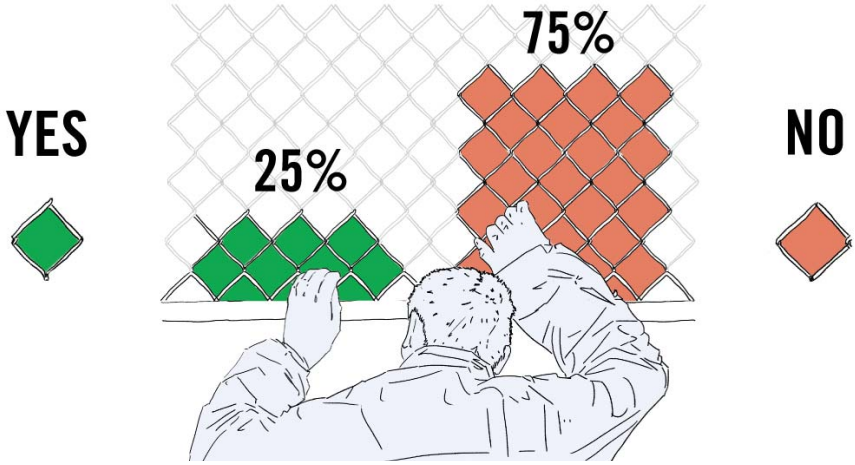
The INM informed Amnesty International that each migrant or asylum seeker that enters a detention centre is given at least an hour individually where they are interviewed and explained their rights.[19] Nevertheless, only 203 of 297 (68%) of responses from people that passed through detention centres indicated to Amnesty International they were given an interview when they entered. Of those that said they were given an interview, 57% said that it lasted less than ten minutes. Thirty-five percent said their interview lasted less than 30 minutes, and only 8% noted that it lasted more than half an hour. The UNHCR notes that the recommended time for screening interviews is between 30 minutes and a few hours per person.[20]

17. The UN Special Rapporteur on Torture and other cruel, inhuman and degrading punishment noted having received reports of beatings, threats, humiliation and insults experienced by migrants in Mexico's migration detention centres in his visit to Mexico in 2014
18. Op. cit. see footnote 9.
19. Representative of the General Directorate for Control and Verification of the INM in an Interview with Amnesty International, Mexico City, 2 May 2017.
20. United Nations High Commissioner for Refugees, December 2016: "The 10-point action plan: Mechanisms for Screening and Referral", available at: http://www.refworld.org/pdfid/5804e0f44.pdf, page 119

The data collected by Amnesty International demonstrates a systematic failure to properly inform detained migrants and people seeking asylum of their rights. This is a violation of the law by the INM, which aims to ensure proper protection for asylum seekers and guard against illegal *refoulement* of people whose lives are at risk. It is extremely concerning that 75% of responses from people who passed through detention centres noted that they were not informed of their right to seek asylum in Mexico.

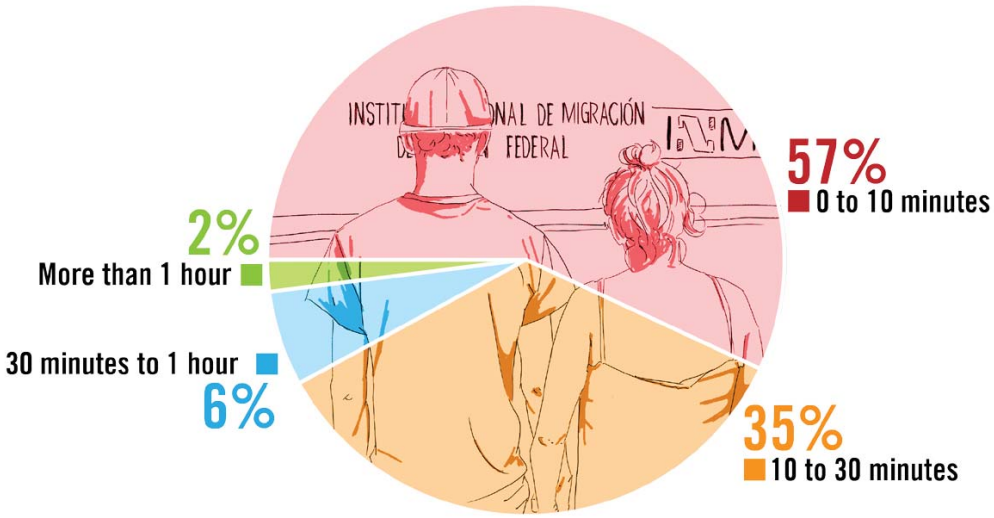
WERE YOU INFORMED OF YOUR RIGHT TO SEEK ASYLUM?

(297 responses of people that passed through migration detention centres)



DURATION OF THE INTERVIEW IN THE MIGRATION DETENTION CENTRE

(297 responses of people that passed through a migration center)



> ***"The INM has not improved in informing people about asylum. People get the information by word of mouth."***
>
> Lawyer working on asylum and migration cases in Chiapas in the south of Mexico

Also of concern is the fact that in numerous cases, INM officers told people seeking asylum that their consul was the person in charge of explaining to them their rights to asylum in Mexico, thereby indirectly pushing them to contact their consular authorities. International practice tends to shield asylum-seekers from contact with their consular authorities, as a form of protection against the risk of identification, retaliation and human rights violations at the hands of state agents.[21]

GIVEN THE RUN-AROUND IN THREE MIGRATION DETENTION CENTERS:

"The people in the migration detention centre did not advise or direct me well. They told me that it would be better to return to my country, ...They gave me lots of pretexts, "buts". They said there was no COMAR office in the state I was in, so it was going to take months for my claim, so it was better to go back to my country. At first I was in the migration detention centre [in a northern state of the country]. From that place, and from the very first moment, I said I wanted asylum. They told me they couldn't do anything. On arrival at the next migration detention centre in Mexico City, the official said to me: "I can't do anything, you are already on the list to be returned to your country." It was not until Tapachula, after speaking to my consul, that I was able to speak to the COMAR!"

Comments from an El Salvadorian woman interviewed by Amnesty International who passed through three different detention centres: One in a state of northern Mexico [location has been omitted to protect the identity of the interviewee], then Mexico City and then Tapachula, Chiapas, on the southern border. In none of these did the INM properly inform her and it was only by chance that her consul informed her of the asylum procedure.

21. Article 21 of Mexico´s Refugee Law (*Ley de Refugiados y Protección Complementaria*) outlines that consuls must not be informed of their citizens´ asylum claim, only unless the person gives express consent.

3. LEGAL LIMBO AND HASTY RETURNS

> ***"I can't do anything for you – you are already on the list for the deportation bus."***
>
> Comments by an INM official to a 25-year-old man from El Salvador who expressed fear for his life if he was returned to his country. He told Amnesty International that INM officials did not let him read his return papers, and simply loaded him onto the bus to be deported.[22]

The detention and return of an irregular migrant or asylum seeker to their country of origin is the default response that the INM takes in relation to Central Americans arriving in Mexico. The INM opens a casefile for each person detained, taking the form of an administrative legal procedure, in which the person detained has 15 days to present arguments in their favour and seek legal counsel.[23] Once all of these stages are completed, or once the person signs papers withdrawing their intention to present arguments within the 15 day window, the INM prepares a resolution concluding the casefile and places the irregular migrant on a list to board a bus headed for their country of origin. The names on this list are checked off by the consul of the country of origin who verifies the nationality of each person.

3.1 VOLUNTARY RETURN PAPERS

An alarming aspect of the way the administrative migratory procedure is implemented in practice is that one of the very first steps in putting together a casefile involves detainees signing a number of papers, accepting their "voluntary return"[24] to their country and waiving their rights to present legal arguments in their favour within the stipulated 15-day procedural window. This is the default process that is carried out in the first interview or "declaration" (*comparacencia*) of the migrant or asylum-seeker before an INM official in the detention centre. This *comparecencia* takes place within the first 24 hours of a migrant or asylum-seeker entering the detention centre, and it is at this time that the INM official is by law required to comprehensively explain to them their right to asylum, among other rights. In practice, this process often involves the INM official asking the detainee to sign a number of papers, often without explaining their contents. It is extremely concerning that the signing of return papers and the waiving of very important procedural rights are the default steps in this process. Rather than being informed in detail of the different avenues available to them, including seeking asylum, thereby allowing an informed decision by each person, migrants are routinely asked to sign "voluntary return"

22. Anonymous survey responses from an interview carried out with an El Salvadoran man seeking asylum in Mexico, interviewed in Tapachula, Chiapas state, 8 August 2017
23. Article 56 of the Federal Law on Administrative Procedures (*Ley Federal de Procedimiento Administrativo*) outlines that each party in an administrative legal process must be formerly notified with the lodging of a deed as to the opening of the period for arguments and responses. Nevertheless, this does not occur in relation to the Migratory Administrative Process [Procedimiento Administrativo Migratorio].
24. "Voluntary return" refers to deportations which do not imply administrative sanctions on re-entry in Mexico, as opposed to official deportations, which have punitive implications upon re-entry.

papers, which effectively allow for their deportation. Since the signing of the "voluntary return" paper is a default step on arriving at a migration detention centre, in order not to be returned to their country detainees must actively desist from this return, and only then will it be reversed. Reasons for desisting on "voluntary return" papers may include the decision to request asylum, or the decision to open a judicial proceeding to stop one's deportation. However, many irregular migrants and asylum seekers are also asked to sign a paper waiving their rights to present legal arguments in their favour within the stipulated 15 day procedural window.

> ***"The INM official in the detention centre said ´if you don't sign here [my voluntary return paper], we won't give you food, you won't be able to have a shower. We will treat you like you don't exist.' "***
>
> Comments from a 23 year old Honduran man[25] to Amnesty International regarding his experience in the detention centre in Acayucan, Veracruz, in 2017.

According to the testimonies collected by Amnesty International, people seeking asylum whose lives are at risk in Central America are very frequently pressured into signing "voluntary return" deportation papers. Amnesty International received numerous testimonies of people in detention centres being hastily asked to sign voluntary return papers without being explained what they were, as well as a number of cases where people desired to seek asylum yet were ignored and told to sign their return papers. In some cases, INM officials in immigration detention centres were verbally forceful with asylum seekers or even pressured them into signing papers through coercive tactics. These overt displays of illegality on the part of INM officials are demonstrative of an institutional culture that enables systematic failures in complying with the *non-refoulement* principle.

> ***"The lady from INM told me 'I'm not even going to talk with you.' She got angry with me because I didn't sign my deportation."***
>
> Comments from a Guatemalan woman who had asked for asylum but was refused access to the procedure while in immigration detention

25. Anonymous survey interview carried out in Saltillo, Coahuila state, 19 September 2017

3.2 THE FAILURE TO FULLY INFORM INDIVIDUALS ABOUT THEIR CASEFILE

People seeking asylum and migrants are made even more vulnerable by the fact that they are never given a copy of their "voluntary return" paper or the casefile that pertains to them. This undermines their ability to understand the process they are being subjected to or to oppose any of the decisions made about their case. In the case of "voluntary return" papers, a public official co-signs each of these papers alongside the detainee. Denying rights-holders a copy of these papers strips them of any possibility for redress in light of arbitrary or illegal actions by authorities.

A lawyer working on dozens of cases of detained migrants and asylum seekers in the state of Chiapas told Amnesty International it is even very difficult for her to access casefiles. The fact that legal representatives also battle to access such information gravely undermines asylum seekers' rights to effective legal counsel.[26]

3.3 FAILURES OF INM INFORMATION SYSTEMS

In addition, internal systems within the INM enable repeated breaches of the *non-refoulement* principle. In an interview with Amnesty International, an INM chief in the southern state of Chiapas[27] admitted that the internal INM computer registries do not have a field on each person's individual file as to whether they are an asylum seeker or not. This is a grave oversight from the INM, the very same body that is able to control a sophisticated system of biodata, travel permissions and entry permits for each passport holder on its computer database. The fact that no unified system exists within INM databases that indicates whether a person is an asylum seeker or not is extremely concerning and leaves open the possibility that these at risk populations fall through the cracks. Amnesty International has received a number of reports of people seeking asylum being deported despite being in a current process of an asylum claim before the COMAR. Amnesty International has also received a number of reports of INM field agents apprehending asylum seekers and then ripping up their official paper from COMAR. This paper specifically calls on the INM to refrain from deporting them and asylum seekers carry it on them with their name and photo.

26. In line with article 8 (1) and (2) of the American Convention of Human Rights, those people before an administrative legal process, as is the case with detained migrants and asylum seekers subject to deportation, have the right to be heard before competent authority; to have access to a legal representative and interpreter at no charge; and the right to appeal the decision that affects them (including deportation or "voluntary return").
27. Amnesty International interview with INM delegation in Chiapas, southern Mexico, 16 August 2017

Emilia and one of her younger sons
©Amnesty International/Benjamín Alfaro Velázquez

EMILIA* AND FAMILY: FINDING SAFETY AND A NEW LIFE IN MEXICO AFTER FORMERLY BEING DEPORTED

Emilia fled El Salvador and arrived in Mexico in late 2016 with her seven children,[28] after two of her other children and her brother had been killed by the *mara* in El Salvador. Her teenage daughter had also been attacked by the *mara* and the family couldn't take it anymore and fled the country. On arrival to Mexico, Emilia's eldest daughter went in to labor and had to be rushed to a hospital on entry into Mexico in order to give birth to Emilia's first grandchild, a baby girl. The family rented a small hotel room in southern Mexico in the days following, and soon afterwards Emilia had to take a bus back to the hospital to carry out paperwork for the vaccinations of the newborn baby. On her way to the regional hospital in Tapachula, Chiapas state, Emilia was stopped at an INM checkpoint alongside her teenage son who was accompanying her. Emilia pleaded with the INM agents not to return her to El Salvador where her life was at risk, and through tears, told them that she was on her way to the hospital for the paperwork for her newborn granddaughter. INM agents ignored her pleas, and detained her and her son in the nearby detention centre where they were separated and deported a few days later. By sheer luck, on arriving in El Salvador, Emilia was able to find her son and a willing citizen lent her some money to quickly return to Mexico. She found the rest of her family on return to Mexico, and remained living in a cramped room on the border, all together, for months on end while they awaited their asylum claim outcome. Emilia and her family were granted international protection in Mexico in April 2017. After a few months, the family organized themselves to move to northern Mexico where they currently live. Emilia's children are now attending school and her baby granddaughter is now walking. Her eldest daughter is working in a local shop and the elder sons have obtained agricultural work. The family told Amnesty International they feel safe and out of harm's way.

28. For the full story of threats and persecution against Emilia and her family, see: Amnesty International Facing Walls: USA and Mexico´s Violation of the Rights of Asylum Seekers. June 15, 2017. AMR 01/6426/2017. Available at: https://www.amnesty.org/es/documents/amr01/6426/2017/en/

4. ILL-TREATMENT OF MIGRANTS AS PART OF THE DEPORTATION MACHINE

The almost automatic response by federal authorities to irregular migrants is to apprehend them and turn them over to migration detention centres. As outlined above, the INM is the authority responsible for this function, nevertheless Mexico's Migration Law specifically allows for the Federal Police to act in an auxiliary function alongside the INM in migratory verification exercises.[29] Notwithstanding this stipulation, the involvement of the Federal Police must respond to an express request by the INM, and police cannot simply pick up migrants in different parts of the country as part of their daily functions.[30] Unfortunately, irregular migrants and people seeking asylum are often subjected to arbitrary detentions by federal, state and municipal police.

POLICE VIOLENCE AND ILL-TREATMENT

A total of 68% of those 116 responses that detailed a detention by the police described their treatment as "bad" or "very bad".

Federal and municipal police were most commonly mentioned as being involved in apprehensions that very frequently involved robbery or extortion of migrants by police. On a limited number of occasions police handed migrants over to migration detention centres.

Some testimonies noted torture or ill-treatment by police: One migrant told Amnesty International:

"They beat me and applied electric shocks to me and they took my money. I told them I had rights, but they tortured me with a pistol that they had on their waist. They gave me electric shocks for 10 minutes" [31]

The treatment by INM agents in apprehensions did not rate as poorly as the police in the response to Amnesty International's survey. While this is promising to note, the fact that the INM did not present such overwhelmingly poor ratings as police does not mean there is no cause for concern.

29. Mexico´s Migration Law (*Ley de Migración*) outlines in its Article 81: The revision of documents of people entering and leaving the country, as well as the inspection of transport lines entering and leaving the country, are considered actions of migratory control. In these actions, the Federal Police will act in an auxiliary function, in coordination with the National Institute of Migration.
30. Mexico´s Migration Law (*Ley de Migración*) outlines in its Article 96: Authorities will collaborate with the National Institute of Migration in the exercise of its functions, when the Institute requests it, without this implying that authorities can independently carry out functions of migratory control, verification and revision.
31. Amnesty International has received a number of reports about the use of Tasers against migrants and asylum seekers throughout Mexico. The reports focus on the use of these instruments by federal agents, yet it is not clear in testimonies whether the INM also carries these instruments.

Amnesty International received a number of reports of grave human rights violations committed by INM officials during the moments of apprehension as well as in detention centres. One Honduran man[32] told Amnesty International that on entering Mexico in the southern state of Tabasco, he was apprehended by INM agents who tied him up and beat him with a tennis ball wrapped inside a wet sock in order to avoid leaving marks on his body. A number of other migrants and asylum seekers mentioned beatings and forceful treatment during their apprehension by INM agents, as well as racist and humiliating remarks. One young Honduran man told Amnesty International that an INM agent offered to let him go free in return for sexual favours.[33]This chain of ill treatment against people seeking asylum and migrants is replicated during the time in immigration detention. While a number of migrants and asylum seekers told Amnesty International that the treatment in immigration detention centers was "fine", a number of responses pointed to ill- treatment. In addition, Amnesty International has documented a number of instances of prolonged detentions for months or even up to a year, including the detention of small children and babies in detention centers. A citizen advisory body of the INM recently released a comprehensive report based on site visits and inspections of migration detention centres, which signalled the commonplace use of practices that undermine the physical and mental health of detainees and go against international standards that call for the non-detention of people seeking asylum.[34]

In addition, Amnesty International has received a number or reports from lawyers and civil society organizations of solitary confinement in "punishment cells" in migration detention centres, where detainees can be kept for weeks on end. In at least three testimonies, Amnesty International was informed by detainees that they had been separated and placed in a small cell with very little light, where they remained all day and were not able to join other detainees during meal times. The reasons for placing detainees in these cells were in two cases in response to a fight or scuffle that guards claimed the detainee had been part of, and in the third case the confinement was a response to a woman who had experienced a psychotic episode while inside the detention centre.

Amnesty International questioned the INM on the existence of these solitary confinement cells. After an initial denial of their existence, officials admitted that their installations did in fact allow for this sort of imposed segregation of certain individuals.[35] While there are no doubt security concerns inside migration detention centres that may warrant limited disciplinary measures, the conditions reported in these "punishment cells" appear disproportionate in relation to international standards on the deprivation of liberty and rights of detainees.[36] In addition, it is important to emphasize that irregular migrants and asylum seekers have not committed a crime and are not being detained on criminal charges, as would be the case in prisons.

32. Honduran man interviewed in an anonymous survey response in the city of Saltillo, Coahuila state, on 18 September 2017
33. Survey interview - anonymous response from a 20 year old man from Honduras interviewed in Tenosique, Tabasco State, 29 May 2017
34. Citizen Council of the National Institute of Migration, (Consejo Ciudadano del Instituto Nacional de Migración). Personas en detención migratoria en México: Misión de Monitoreo de Estaciones Migratorias y Estancias Provisionales del Instituto Nacional de Migración, July 2017
35. Amnesty International interview with INM delegation in Chiapas, southern Mexico, 16 August 2017.
36. The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) prohibits solitary confinement under a variety of circumstances. For more information, see: https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf

4.1 ARBITRARY DETENTION OF ASYLUM SEEKERS AND ITS IMPACT ON *REFOULEMENT*

The entry point for men at a migration detention centre in the southern state of Chiapas
©Amnesty International

Migrants, asylum seekers and refugees should not suffer any restriction on their liberty or other rights (either detention or so-called alternatives to detention) unless such a restriction is (a) prescribed by law; (b) necessary in the specific circumstances; and (c) proportionate to the legitimate aim pursued. In particular, any measure (either custodial or non-custodial) restricting the right to liberty of migrants, asylum-seekers and refugees must be exceptional and based on a case-by-case assessment of the personal situation of the individual concerned, including their age, history, need for identification and risk of absconding, if any. The individual concerned should be provided with a reasoned decision in a language they understand. Children, both those unaccompanied and those who migrate with their family, should never be detained, as detention is never in their best interests.[37]

In the case of Mexico, the decision to detain an irregular migrant or asylum seeker is almost completely devoid of any individualized assessment. Detention is the automatic response, and all irregular migrants apprehended by INM are detained, even if they express a wish to seek asylum. This flies in the face of international law under Article 9 of the International Covenant on Civil and Political Rights (ICCPR) which prohibits arbitrary detention.[38] In addition, due to the failures in the screening system discussed above, asylum-seekers end up being unlawfully detained together with the migrants.

Under the UN Refugee Convention and its 1967 Protocol, states are not allowed to apply punitive measures to those seeking asylum.[39] The detention of people seeking asylum can be seen as a punitive measure that undermines their intention to seek protection. In Mexico, the prospect of being unlawfully detained often pushes asylum-seekers to return to their country of origin, despite the risks they face upon return.

37. See also:"UNHCR's position regarding the detention of refugee and migrant children in the migration context" (January 2017) clarifying that "children should not be detained for immigration purposes, irrespective of their legal/migratory status or that of their parents, and detention is never in their best interests.: http://www.refworld.org/docid/503489533b8.html
38. In addition, The UN Working Group on Arbitrary Detention has explicitly stated that where the detention of unauthorized immigrants is mandatory, regardless of their personal circumstances, it violates the prohibition of arbitrary detention in Article 9 of the UDHR and Article 9 of the ICCPR. See Report of the Working Group on Arbitrary Detention on its visit to the United Kingdom, E/ CN.4/1999/63/Add.3, 18 December 1998, Paragraph33
39. 1951 UN Convention on Refugees, Article 31. Full text of the Convention available at: http://www.unhcr.org/3b66c2aa10

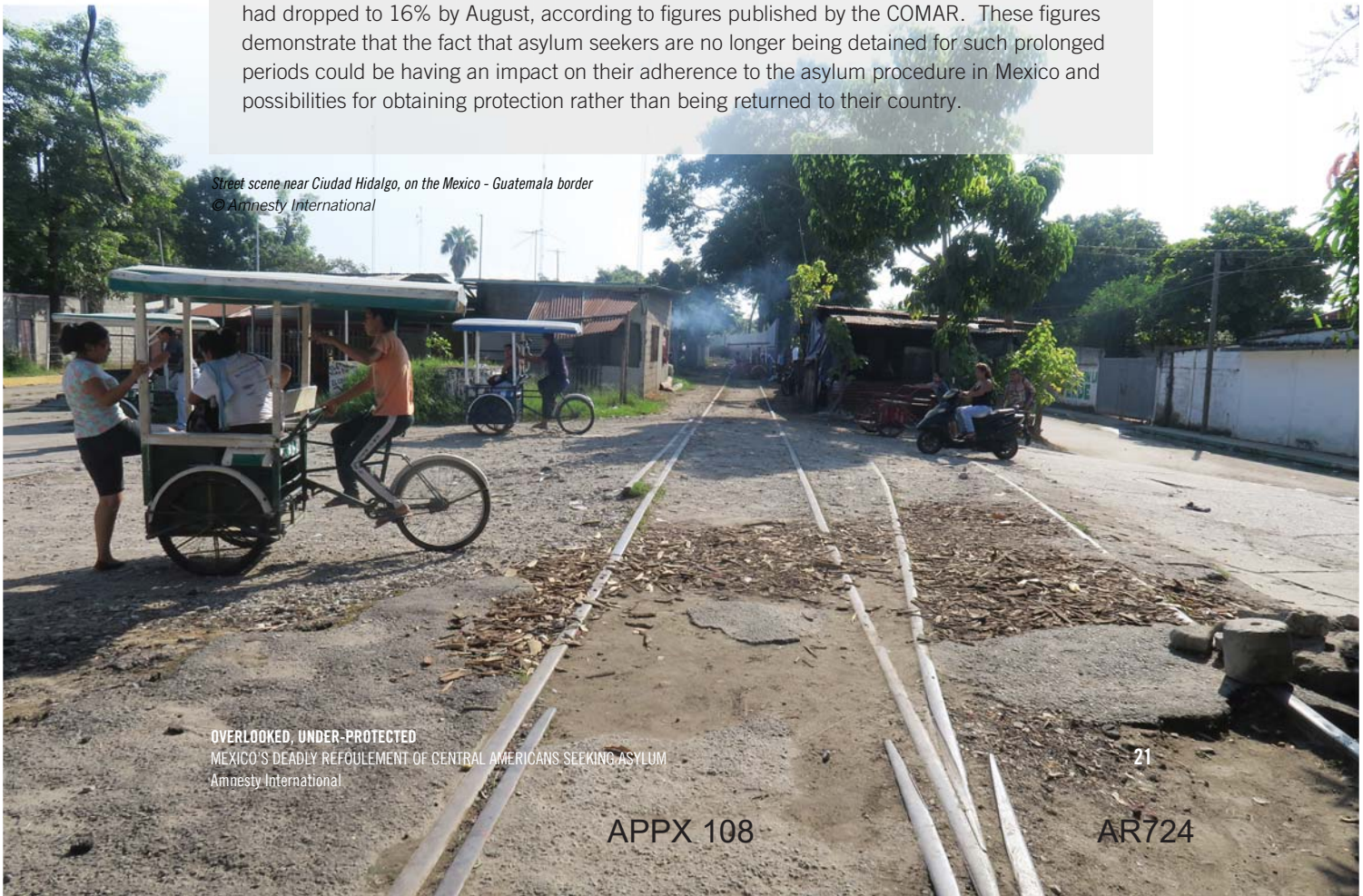
There may be a correlation between periods in migration detention and *refoulement* of asylum seekers from Mexico. Of 49 responses that noted that they wished to return to their country, eight that had been apprehended by INM said that the reason they wanted to return to their country was because they did not want to remain in migration detention. In the case of Emilia* (see Section 3), despite the fact that her life was at grave risk in El Salvador, she told Amnesty International that she could not bear to be locked up and separated from her son in detention, so she decided to risk her life and sign her voluntary return paper that would allow her to get out of detention, yet at the same time risk her life in the hope of being released and reunited with her son and family.

Such examples demonstrate that the failures in screening processes for asylum seekers, coupled with the failures of the migration detention system, end up enabling further violations by Mexico of the *non-refoulement* principle.

A recent promising development from the INM has been the implementation of the Programme of Alternatives to Detention (*Programa de Alternativas a la Detención*) since August 2016, as a result of an agreement between COMAR, INM and the UNCHR. Amnesty has observed that a number of asylum seekers are being released as a result of this programme, yet many failures remain. Before August 2016, asylum seekers making claims from inside a migration detention centre remained in detention for up to 3 months or more. Since late 2016, the majority of asylum seekers in detention centres are now being released within a matter of weeks due to the Programme of Alternatives to Detention that places them in migrant shelters run by civil society organizations.

Nevertheless, it is concerning that this programme is not institutionalized or published officially and thus risks being simply an act of good faith that could disappear at any moment.

In 2016, 24% of asylum claims commenced with COMAR were abandoned by the asylum seeker before the procedure was concluded. The 2017 rate of abandonment of asylum claims had dropped to 16% by August, according to figures published by the COMAR. These figures demonstrate that the fact that asylum seekers are no longer being detained for such prolonged periods could be having an impact on their adherence to the asylum procedure in Mexico and possibilities for obtaining protection rather than being returned to their country.



Street scene near Ciudad Hidalgo, on the Mexico - Guatemala border
© Amnesty International

5. RECOMMENDATIONS

TO THE PRESIDENT:

- Urgently order a review of screening processes implemented by the National Institute of Migration (INM). This review must have the aim of:
    - Ensuring irregular migrants who are apprehended and detained are properly informed of their right to seek asylum in Mexico;
    - Guaranteeing that their access to asylum procedures faces no obstacles; and
    - Curbing illegal practices of *refoulement* and ensuring they are met with administrative sanction.

TO THE NATIONAL INSTITUTE OF MIGRATION (INM):

- Urgently implement a review of screening processes implemented by the National Institute of Migration (INM). This review must have the aim of:
    - Implementing a pro-active screening system that improves identification of potential asylum seekers within the first moments of contact with the INM;
    - Ensuring irregular migrants who are apprehended and detained are properly informed of their right to seek asylum in Mexico;
    - Guaranteeing their access to asylum procedures faces no obstacles;
    - Curbing illegal practices of *refoulement* and ensure they are met with administrative sanction.
- Improve internal coordination databases and processes to ensure that asylum seekers are clearly identified in official registries to avoid oversights that enable unlawful deportations.
- Publish and institutionalize the Programa de Alternativas a la Detención in the Official Gazette (Diario Official de la Federacion).
- Provide all detained migrants and asylum seekers, as well as their legal representatives, with a full photocopy of their casefile papers on entry to a detention centre as well as a copy of their voluntary return paper and resolution in their administrative migratory procedure.

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OVERLOOKED, UNDER-PROTECTED

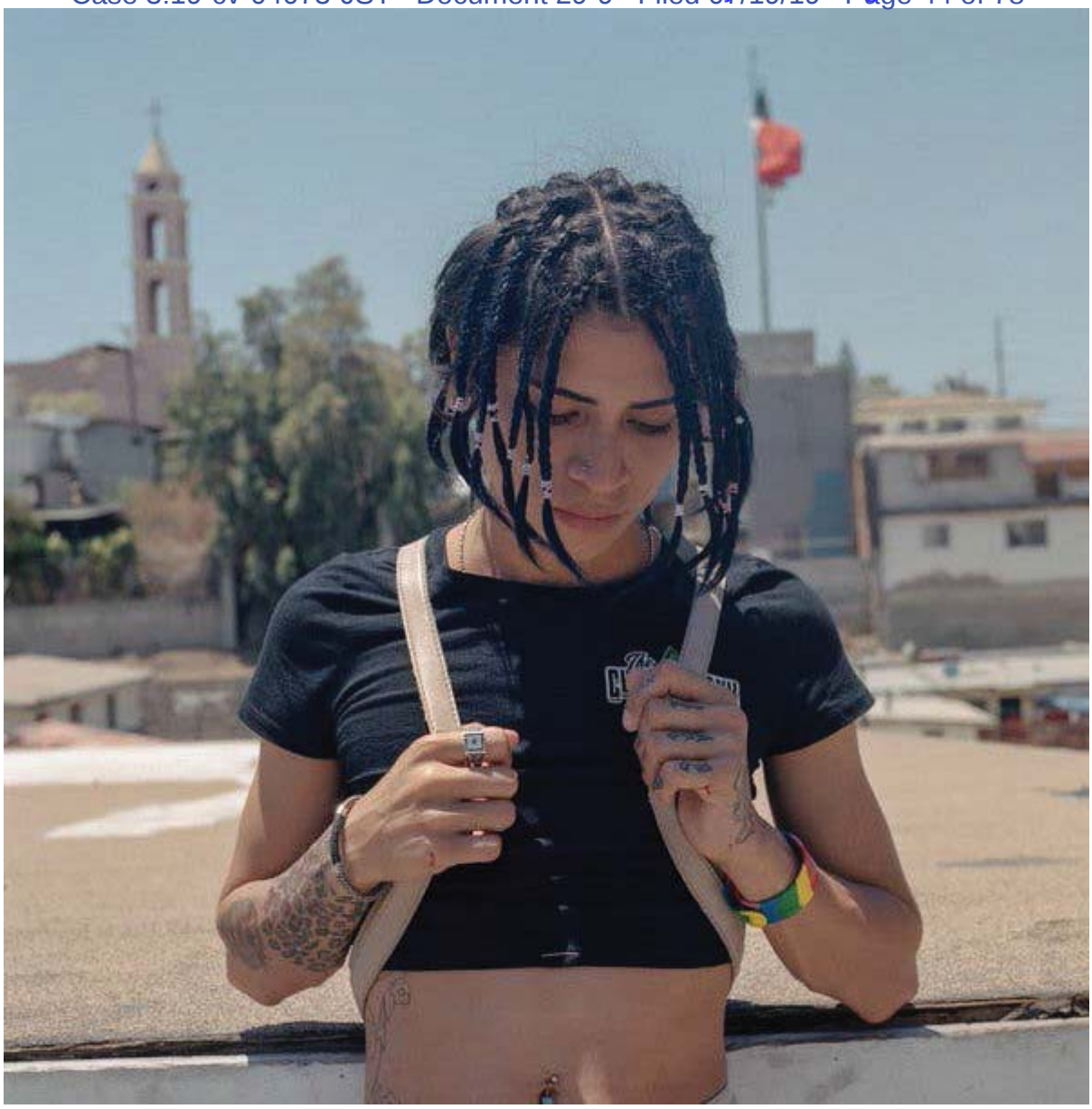
MEXICO'S DEADLY *REFOULEMENT* OF CENTRAL AMERICANS SEEKING ASYLUM

Mexico is witnessing a hidden refugee crisis on its doorstep. Citizens from nearby countries who formerly left Guatemala, Honduras and El Salvador and passed through Mexico in search of economic opportunities have for a number of years been leaving their countries due to fear for their lives and personal liberty. This briefing outlines the results of a questionnaire carried out by Amnesty International with 500 responses from migrants and people seeking asylum travelling through Mexico. The information presented demonstrates that the Mexican government is routinely failing in its treaty obligations under international law to protect those who are in need of international protection, as well as repeatedly violating the *non-refoulement* principle, a binding pillar of international law that prohibits the return of people to life-threatening situations.

Index: AMR 41/7602/2018
January 2018
amnesty.org

AMNESTY INTERNATIONAL

'They Were Abusing Us the Whole Way': A Tough Path for Gay and Trans Migrants



Jade Quintanilla, a transgender woman from El Salvador, says she was robbed, exploited and abused on the trip to seek asylum in the United States. Kayla Reefer for The New York Times

By Jose A. Del Real

July 11, 2018

TIJUANA, Mexico — Jade Quintanilla had come to the northernmost edge of Mexico from El Salvador looking for help and safety, but five months had passed since she had arrived in this border town, and she was still too scared to cross into the United States and make her request for asylum.

Violence and persecution in Central America had brought many transgender women such as Ms. Quintanilla to this crossroads, along with

countless other L.G.B.T. migrants. They are desperate to escape an unstable region where they are distinct targets.

Friends in San Salvador, Ms. Quintanilla said, were killed outright or humiliated in myriad ways: They were forced to cut their long hair and live as men; they were beaten; they were coerced into sex work; they were threatened into servitude as drug mules and gun traffickers.

Still, just a few miles from the border, Ms. Quintanilla, 22, hesitated. "I've gone up to the border many times and turned back," she said in a bare concrete room at the group home where she was living, holding her thin arms at the elbows. "What if they ask, 'Why would we accept a person like you in our country?' I think about that a lot. It would be like putting a bullet to my head, if I arrive and they say no."

While the Trump administration has tightened regulations on asylum qualifications related to gang violence and domestic abuse, migrants still can request asylum on the basis of persecution for their L.G.B.T. identity. But their chances of success are far from certain, and the journey to even reach the American border is especially risky for L.G.B.T. migrants.

Trans women in particular encounter persistent abuse and harassment in Mexico at the hands of drug traffickers, rogue immigration agents and other migrants, according to lawyers and activists. Once they reach the United States, they regularly face hardship, as well.

There are no numbers available disclosing how many L.G.B.T. migrants seek asylum at the border each year or their success rate, but lawyers and activists say that the number of gay, lesbian and trans people seeking asylum each year is at least in the hundreds.

In weighing whether to risk the journey north, many L.G.B.T. migrants from Central America gamble that the road ahead cannot be worse than what they are leaving behind.

Victor Clark-Alfaro, an immigration expert at San Diego State University who is based in Tijuana, said that he has noticed more openly L.G.B.T. people in recent years making the journey to the border with hopes of seeking asylum. He said they are often the victims of powerful criminal gangs in Central America and Mexico — but also of bigoted neighbors, police officers and strangers.

"The ones who can't hide their sexuality and gender, there's a huge aggression toward them. And of them, trans women are the ones who are most heavily targeted," Mr. Clark-Alfaro said. In Central America and Mexico, "almost everyone is Catholic, and so the machismo and religious sensibilities provoke attacks against people who break gender norms."

The Inter-American Commission on Human Rights, an arm of the Organization of American States, has spoken out against the high rates of violence against L.G.B.T. people in Central American countries and Mexico and has noted that the crimes against them are often committed with impunity.

A Frida Kahlo mural inside Jardin de las Mariposas, an L.G.B.T.-focused drug rehabilitation home in Tijuana, Mexico, that has hosted dozens of Central American migrants in recent months.

Kayla Reefer for The New York Times

Shortly after Ms. Quintanilla and two friends began their journey north to Tijuana from Tapachula, in the southern Mexican state of Chiapas, in January, they were robbed. With no more money, they walked along the highway for long stretches of time in between rides, about 13 days altogether, Ms. Quintanilla said.

In Veracruz, the group boarded the so-called Beast, a train in Mexico often used by migrants to travel north; there, she said, she was sexually exploited.

"They say you can ride on top of the train," Ms. Quintanilla said. "But the reality is different. We had to give our services so that they'd let us on. They were abusing us the whole way through. And if we refused, they'd threaten to push us off."

She reached Tijuana in February and was taken in by Jardin de las Mariposas, an L.G.B.T.-focused drug rehabilitation home that has hosted dozens of Central American migrants in recent months. The director of the Mariposas, Yolanda Rocha, with whom Ms. Quintanilla has spoken about the journey, vouched for the account Ms. Quintanilla shared with The New York Times. She said that Ms. Quintanilla had appeared traumatized and exhausted when she arrived at Mariposas.

Warnings about trans migrants being neglected and abused in United States custody have amplified fears for Ms. Quintanilla and other trans migrants. A 2016 report by Human Rights Watch detailed pervasive sexual harassment and assault at detention facilities, based on interviews with dozens of transgender women.

In May, a transgender woman named Roxana Hernandez died in New Mexico, while held in custody by U.S. Immigration and Customs

Enforcement, after experiencing cardiac arrest and H.I.V.-related complications.

In interviews with The Times, several trans women described humiliation by guards and said they had been sexually assaulted by other detainees.

Seventy-two migrants who identify as transgender were being held in custody by ICE as of June 30, according to data provided by the agency. The vast majority are from Central America and Mexico. It is difficult to pinpoint how many L.G.B.T. people might be in detention because they often choose not to disclose their sexual orientation or gender identity, for fear of discrimination, even though it could help their asylum case.

"A lot of the queer men experience threats and physical assault and sometimes sexual assault. The trans women who are put into men's facilities experience sexual assault at remarkably high numbers," said Aaron Morris, a lawyer and the executive director of Immigration Equality, which provides legal assistance related to immigration and asylum to L.G.B.T. people.

ICE operates a housing unit specifically for transgender detainees at the Cibola County Correctional Center in New Mexico. Activists say that the center is far better than others, where trans women are held alongside men. But many trans women are reluctant to relocate to the Cibola center, Mr. Morris said, if it is far away from their lawyers or networks of family members.

Reports of abuse at detention centers range from guards making fun of natural facial hair that grows in between grooming to other inmates threatening violence. Of 237 allegations of sexual abuse or assault filed by ICE detainees in 2017, the agency's records show that 11 were filed by transgender people.

In some cases, migrants say they are not taken seriously when they report attacks.

One trans woman from Honduras said she had been harassed and sexually assaulted several times by men while in custody at the Otay Mesa Detention Center in San Diego, which is operated by CoreCivic. The woman requested anonymity because her asylum request is currently under review.

A Pride Flag covered the main entrance of the shelter in Tijuana. Kayla Reefer for The New York Times

Speaking in an interview with her lawyer present in Los Angeles, she described several safety issues that stem from the center grouping trans women with men and having them share bathrooms. At one point, she said, she awoke to a man forcing himself onto her and shoving his tongue into her mouth; she said she was told to ignore it by the guards, even though she was afraid that she would get in trouble because of rules against physical contact.

In other instances, she said, men would pull back the curtains in the shower to masturbate in front of her and other trans women.

"They say we have support and protection in there, but the reality is different," the woman said. "I'm not the only one. Ask any trans woman, they will each have a bad story about something that happened to them in detention."

In a statement, ICE spokeswoman Danielle Bennett said that the agency has "zero tolerance for all forms of sexual abuse or assault" and that it investigates every allegation reported.

Activists have demanded that the government avoid holding trans women and other L.G.B.T. migrants in detention altogether. Just over half of trans people are held at the specialized unit at the Cibola center, the ICE spokeswoman said, whereas the dozens spread across other facilities are "housed in units at the facility based on their physical gender."

The Honduran woman said she was disappointed to find the guards at the center where she was held to be so dismissive. In her hometown, she said, she had been viciously attacked by a man who struck her with a machete. She never reported the crime, though he had targeted her several times before, she said. "In Honduras, it's better not to go to the police, because that just makes it worse. If they don't kill me, they'll kill one of my family members."

Raiza Daniela Aparicio Hernandez, 33, a transgender human-rights activist from El Salvador, said she was physically assaulted in 2016 by four police officers in her home in San Salvador, which she shared with her boyfriend. The officers had harassed and threatened her before, arriving at their home without a warrant and demanding to be let in, before barging in and assaulting them. "They beat me. They beat me a long time," she said.

Ms. Aparicio Hernandez and her partner tried to file a formal complaint about the abuse in El Salvador she said, but they ran into obstacles along the way. She left El Salvador in June 2017 and arrived at the San Ysidro point of entry, on the border between Tijuana and San Diego, to request asylum.

Before speaking to The Times, Ms. Aparacio Hernandez shared her account with her lawyer. She won asylum through the courts on the merits of her case.

"Leaving my country was such a hard decision," she said. "I've seen a lot of friends die in this fight, at the hands of the government, and people being beat and tortured. And this is happening at the hands of police officers. It's sad, and it's difficult, but you have to fight."

Marcos Williamson, the detention relief coordinator for Transcend Arizona, a Phoenix-based nonprofit group that helps L.G.B.T. migrants, said asylum seekers who are released from detention on bond often struggle to make ends meet because they are given neither benefits nor work permits. L.G.B.T. people, who often do not have the support of family members, are particularly alone.

For now, Ms. Quintanilla feels safe at Mariposas, though she has been accosted on the streets of Tijuana and harassed, she said. She is grateful to the center for taking her in. And she is not yet ready for what comes next in her long journey.

"I decided to leave because I didn't want to die. It would just be too much for them to reject me," she said. "What good would it have been to flee my country?"

Ms. Quintanilla, standing on the roof of Jardin de las Mariposas. Kayla Reefer for The New York Times

A version of this article appears in print on , Section A, Page 12 of the New York edition with the headline: For Some Migrants, North Is No Refuge. Order Reprints | Today's Paper | Subscribe

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SAFE THIRD COUNTRIES FOR ASYLUM-SEEKERS

Why Mexico Does Not Qualify as a Safe Third Country

It has been argued that refugees or asylum-seekers passing through Mexico to request asylum in the United States should be denied entry to the U.S. based on the availability of protection in Mexico as a signatory to the 1951 Convention on the Status of Refugees ("1951 Convention" or "Refugee Convention"). In some cases, this is referred to a "safe third country" option. The term "safe third country" applies to countries determined as being non-refugee-producing or as being places where refugees can receive asylum without any danger.[1] Following this concept, asylum-seekers/refugees may be denied entry or returned to countries where they have, or could have, sought asylum and where their safety would not be jeopardized. Despite important steps taken by Mexico in recent years to strengthen its asylum system, the system is still squarely within the development phase and has extremely limited resources and capacity (it currently processes a small fraction of the asylum applications received by the U.S.). **Mexico is clearly not a safe, or in many cases viable, alternative for many refugees and vulnerable migrants seeking international protection.**

Part I. "Safe third country" concept in international refugee law

The right to seek asylum is well-established in international law, under the 1948 Universal Declaration of Human Rights and the binding 1951 Convention on the Status of Refugees. The latter establishes who qualifies as a refugee, the rights of persons recognized as refugees or granted asylum, and the obligations of States towards these persons. The U.S. acceded to the 1967 Protocol Relating to the Status of Refugees, which modified the 1951 Convention by removing the temporal and geographic limits (originally it was restricted to those persons who fled, within Europe, prior to January 1, 1951).
The position of the UNHCR – the UN entity in charge of supervising the application of the 1951 and 1967 instruments – is that "burden-sharing" arrangements allowing for readmission and determination of status elsewhere, such as the safe third country principle, are reasonable, provided they always ensure protection of refugees first and foremost.[2] This means that refugees, asylum-seekers, and other persons forcibly displaced from their homes must be safe in the third country from being removed to their home country (the *non-refoulement* principle), and that they must have access to basic social services in this third country, such as healthcare, education, and employment.

There are numerous ways this "safe third country" concept could be implemented, some of which are legal and some not.

Part II. Origin of the "safe third country" concept in U.S. immigration law

One way this concept could be implemented is through a bar on certain asylum applications. The Illegal Immigration Reform and Responsibility Act (IIRIRA) of 1996 amended section 208 (a)(2)(A) of the Immigration and Naturalization Act (INA) to bar asylum to those aliens who can be returned to a "safe-third country."
In order to invoke this bar, however, the INA requires the U.S. to have a "bilateral or multilateral agreement" in place with the third country.[3]

The U.S. only has one safe third country agreement in place, with Canada, which entered force in 2004. One important exception embedded in the U.S.-Canada agreement regards family reunification. Family unity is a fundamental principle of international law and is enshrined not only in the Refugee Convention but also in several other international legal instruments, such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the American Declaration on the Rights and Duties of Man, and the American Convention on Human Rights, among others.

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1 Not to be confused with the 'first country of asylum' principle, which is used to justify the decision to return an asylum-seeker to another country where s/he has already been granted protection.
2 UNHCR, Background Note on the Safe Country Concept and Refugee Status, EC/SCP/68, July 26, 1991.
3 Section 608 of IIRIRA amended the INA as follows:

> INA §208 (a)(2)(A) SAFE THIRD COUNTRY.-Paragraph (1) [stating that any alien physically present in the United States or who arrives in the United States, irrespective of status, may apply for asylum in accordance with the provisions of § 208] shall not apply to an alien if the Attorney General determines that the alien may be removed, pursuant to a bilateral or multilateral agreement, to a country (other than the country of the alien's nationality or, in the case of an alien having no nationality, the country of the alien's last habitual residence) in which the alien's life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien would have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection, unless the Attorney General finds that it is in the public interest for the alien to receive asylum in the United States.

The U.S.-Canada agreement provides that an asylum-seeker with a family member in the destination country, who is either in lawful immigration status or is 18 years or older and has an asylum application pending, will be allowed to enter that country (whether it be the U.S. or Canada) to join this relative. The range of eligible family members under the agreement includes spouses, sons, daughters, parents, legal guardians, siblings, grandparents, grandchildren, aunts, uncles, nieces, and nephews.[4]
The U.S. does not currently have a formal agreement with Mexico but may choose to pursue one. If they do, it is essential to remember that:

- Mexico is not a safe option for many migrants.
- Family ties and reunification are a major factor driving current migrant and refugee flows. Many child migrants, particularly unaccompanied children, are traveling through Mexico to reach the United States, where other family members are located. Including an exception for family reunification in any such agreement would be essential to protecting children's rights and the right to family life.
- Mexico's asylum system is still evolving and a large increase in the already overburdened asylum system is likely to cause further instability and delay or prevent the consolidation of an effective protection system.

Part III. Mexico is not a safe third country

A. Mexico is not safe for most migrants, particularly vulnerable ones

While Mexico has made commitments to strengthen its capacity to provide asylum to Central Americans, particularly those coming from the Northern Triangle countries of El Salvador, Guatemala, and Honduras, it has yet to make demonstrable progress in screening individuals for protection needs and ceasing to return families and children to danger. Significant barriers prevent migrants, including children, from accessing the right to seek and enjoy asylum in Mexico:

- Many migrants are arbitrarily detained in poor conditions in processing facilities upon apprehension. In these facilities, migrants lack access to legal counsel and opportunities to have their cases heard. Child migrants are being systematically detained, which violates their basic human rights. Between 2014 and 2015, the number of detained unaccompanied children migrants in Mexico doubled, from 10,943 to 20,368.[5] Particularly for children, the length and conditions of detention deter them from seeking asylum.[6]

- Adult and child migrants in need of international protection are not routinely informed about their rights or screened for international protection concerns as is required by Mexican law.[7] This is especially concerning as persons only have thirty business days upon entering Mexican territory to file an asylum application. Further, Mexico's Commission for Refugee Assistance (or COMAR, by its initials in Spanish) is understaffed, having only 15 agents as of June 2015, to conduct asylum interviews throughout the entire country;[8] under resourced,[9] in comparison to the large increase in asylum applications over the past few years[10]; and limited geographically, as it only has three offices - Tapachula (Chiapas), Acayucan (Veracuz), and Mexico City.[11]

4 U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS), Press Release: United States and Canada Implement Safe Third Country Agreement on Asylum (Dec. 29, 2004), p. 2.
5 José Antonio Román, "Se duplicó la detención de menores centroamericanos no acompañados" [Detention of unaccompanied children from Central America doubled], La Jornada, Oct. 25, 2016.
6 Georgetown Law Human Rights Institute (HRI), The Cost of Stemming the Tide: How Immigration Enforcement practices in Southern Mexico Limit Migrant Children's Access to International Protection (Apr. 2015), p. 25.
7 Amnesty International, Overlooked, Under-Protected: Mexico's Deadly Refoulement of Central Americans Seeking Asylum (Jan. 2018), p. 12 (in a survey of 297 migrants who passed through an immigration detention center in Mexico, 75% were not informed of their right to seek asylum in Mexico); HRI, The Cost of Stemming the Tide, p. 25, 48-50 (concerning child migrants) ; IACHR, Human Rights Situation of Migrants and Other Persons in the Context of Human Mobility in Mexico (2014), para 534 (concerning adult migrants).
8 Manu Ureate, México recibe 67% más solicitudes de refugio, pero sólo tiene 15 oficiales para atender 2 mil casos [Mexico receives 67% more requests for asylum, but only has 15 agents to deal with 2,000 cases], Animal Político, June 19, 2015.
9 Ximena Suarez Enriquez, Jose Knippen, Maureen Meyer, A Trail of Impunity: Thousands of Migrants in Transit Face Abuses amid Mexico's Crackdown, WOLA (Oct. 20, 2016).
10 COMAR currently has a backlog of thousands of cases; according to a press release by Mexico's National Human Rights Commission (CNDH), as of February 2018, close to 60% of asylum applications filed in 2017 have not been processed yet. The CNDH made an urgent appeal to Mexico's national government to act "in the face of a possible collapse of Mexico's refugee protection system" ["ante el posible colapso del sistema de protección de refugiados en México"].
11 COMAR, ¿Dónde está COMAR? [Where is the COMAR located?] (last accessed on May 17, 2018).

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- *[CONTINUED]* These factors are reflected in the low number of asylum applications in contrast with the high number of apprehended migrants and despite numerous studies showing an increase in flows of asylum-seekers from the Northern Triangle countries, due to high levels of violence and crime.[12] Further, there is a low rate of success on asylum applications in Mexico, as illustrated by the charts below.

Adult Migrants in Mexico: Apprehensions, Asylum Applications, and Grants of Asylum, 2013-2017[13]

Year	Total apprehensions	Asylum applicants (applicants from Northern Triangle, NT)	Granted protection* (#NT)
2013	**76,668**	**1,296** (887)	**313** (242)
2014	**104,053**	**2,137** (1,769)	**536** (477)
2015	**159,627**	**3,424** (3,138)	**1,102 (**1,015)
2016	**146,102**	**8,796** (8,059)	**3,205** (2,808)
2017	**77,197**	**14,596** (8,656)	**1,907** (958)
Total	**563,647**	**30,249** (22,509)	**7,063** (5,500)

** Figure in chart encompasses grants of asylum and complementary protection.*

12 See Latin American Working Group (LAWG), Central American Families & Children Arriving at U.S.-Mexico Border Demonstrate Need for Urgent Protection Mechanisms, Oct. 19, 2016. See also, UNHCR, Children on the Run, Apr. 2014, p. 6 (finding that of the 404 unaccompanied and separated children, ages 12-17, from Mexico, El Salvador, Guatemala, and Honduras that UNHCR interviewed, 58% raised potential international protection needs. The sample size was designed to be representative of other similarly-situated children from these four countries); UNHCR, Arrancados de Raíz [Uprooted], 2014 (finding that of 200 migrant children from El Salvador, Guatemala, and Honduras who were interviewed in Mexico, 48.6% had cited violence as a principal factor in leaving their homes).
13 Mexican Commission for the Assistance of Refugees (COMAR), Statistics 2013 to 2016 (last accessed on May 17, 2018). For apprehension numbers, please consult: National Institute on Migration of Mexico (INM), Annual Statistics Bulletins (last accessed on May 17, 2018).

Child Migrants in Mexico: Apprehensions, Asylum Applications, and Grants of Asylum, 2013-2017[14]

Year	Total apprehensions of children	Child applicants for asylum (applicants from the Northern Triangle, NT)	Children granted protection* (#NT)
2013	**9,630**	**63** (55)	**18** (15)
2014	**23,096**	**78** (75)	**22** (22)
2015	**38,514**	**142** (139)	**44** (44)
2016	**40,114**	**242** (229)	**102** (102)
2017	**18,300**	**259** (236)	**36** (31)
Total	**129,654**	**784** (734)	**222** (214)

** Figure in chart encompasses grants of asylum and complementary protection.*

- Mexican authorities, with U.S. support, have been steadily ramping up deportations of all irregular migrants, including children, from the Northern Triangle countries with little regard for due process, which increases the potential for *refoulement*.[15]

Deportations from Mexico, 2013-2017[16]

Year	Total persons deported	Deported migrants from Northern Triangle (% of total deportations)	Total children deported	Deported children from Northern Triangle (% of total children deported)
2013	**80,902**	**77,896** (96%)	**8,577**	**8,401** (98%)
2014	**107,814**	**104,269** (97%)	**18,169**	**17,921** (99%)
2015	**181,163**	**175,136** (97%)	**36,921**	**36,497** (99%)
2016	**159,872**	**149,540** (94%)	**38,555**	**37,759** (98%)
2017	**80,353**	**75,677** (94%)	**16,162**	**15,821** (98%)
Total	**610,104**	**582,518** (95%)	**118,384**	**116,399** (98%)

14 Id.
15 HRI, The Cost of Stemming the Tide, p. 14-15, 18; see also, Adam Isacson, Maureen Meyer, and Hannah Smith, Increased Enforcement at Mexico's Southern Border, WOLA (Nov. 2015) (presenting findings on research into the impacts of Mexico's Plan Frontera Sur).
16 INM, Annual Statistics Bulletins (last accessed on Oct. 28, 2016).

- Migrants often lack sufficient protections while in Mexico: in transiting through the country to arrive at the U.S.-Mexico border, they suffer violence and other abuses at the hands of organized crime and corrupt migration authorities.[17] Further, there is a lack of justice for crimes against migrants, which allows for crimes to remain in impunity and only serves to foster their repetition: between 2014 and 2016, "of the 5,284 crimes against migrants reported in Chiapas, Oaxaca, Tabasco, Sonora, Coahuila, and at the federal level, there is evidence of only 49 sentences, leaving 99 percent of the cases in impunity."[18]

- Attention may be called to Mexico's issuance of "passes" to certain migrants. If referring to the "oficios de salida" [exit passes], it is important to know that these only allow for a person in an irregular migratory situation to transit Mexico for the duration of the pass (approximately 20 days). Further, they are not uniformly granted to all migrants by Mexico's National Institute on Migration (INM or INAMI), nor do they confer any special protection to the holder or grant him or her a stable or renewable immigration status in Mexico.

B. Mexico is not safe for certain Mexicans

- In addition to migrants from other countries, certain Mexican nationals face higher risks of having their human rights violated. These include human rights defenders and journalists, particularly women and indigenous persons; LGBTI persons; children and adolescents, particularly those being recruited for organized criminal groups; and internally-displaced persons. Mexican women continue to remain more likely than men to experience sexual crimes or be the victim of human trafficking.[19]

Part IV. Implementation of a safe third country-like provision with Mexico

In lieu of a binational agreement[20], we may see the U.S. implement a safe third country-like approach in the following ways:

- Turning persons seeking international protection back at Ports of Entry along the U.S. southern border with Mexico with no explanation, telling them there is no space and to return later, or having them go through Mexican officials to get an appointment for a future date to come back to the Port;
- Returning persons to Mexico after placing them into removal proceedings, pursuant to INA section 240[21];
- Placing persons seeking international protection into expedited removal, returning them to Mexico, and conducting credible fear interviews in Mexico[22];
- Denying a credible fear interview based on the argument that the person (if not a Mexican citizen) could have sought protection in Mexico; or
- Denying asylum based on this same argument.

The extent to which each of these is legal varies and may depend on details of implementation. Some may require legislation but much of this could be implemented administratively.

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17 Ximena Suárez, Andrés Díaz, José Knippen, and Maureen Meyer, Access to Justice for Migrants in Mexico: A Right that Exists Only on the Books, WOLA (July 2017); Latin American Working Group (LAWG), Central American Families & Children Arriving at U.S.-Mexico Border Demonstrate Need for Urgent Protection Mechanisms, Oct. 19, 2016; Ximena Suarez Enriquez, Jose Knippen, Maureen Meyer, A Trail of Impunity: Thousands of Migrants in Transit Face Abuses amid Mexico's Crackdown, WOLA (Oct. 20, 2016).

18 Access to Justice for Migrants in Mexico: A Right that Exists Only on the Books, WOLA (July 2017), p. 4; see also, Ximena Suarez Enriquez, Jose Knippen, Maureen Meyer, A Trail of Impunity: Thousands of Migrants in Transit Face Abuses amid Mexico's Crackdown, WOLA (Oct. 20, 2016).

19 See, e.g., Inter-American Commission on Human Rights, Human Rights Situation in Mexico, OEA/Ser.L/V/II., Dec. 31, 2015, p. 112-135.

20 Although it appears the U.S. and Mexico are or have been in discussions around such an agreement, see Ted Hesson, "U.S., Mexican officials to discuss asylum pact," Politico (May 16, 2018).

21 Section 235(b)(2)(C) of the INA provides the following: Treatment of aliens arriving from contiguous territory.-In the case of an alien described in subparagraph (A) [referring to an alien who is not clearly and beyond a doubt entitled to be admitted] who is arriving on land (whether or not at a designated port of arrival) from a foreign territory contiguous to the United States, the Attorney General may return the alien to that territory pending a proceeding under section 240." As of May 2018 and according to the Office of Information and Regulatory Affairs of the Office of Management and Budget, the Department of Homeland Security is engaging in regulatory rulemaking on this provision. See the "Return to Territory" entry in the Unified Agenda [last accessed on May 17, 2018].

22 INA Section 235 (b)(1)(B)(i) establishes that "an asylum officer shall conduct [credible fear of persecution] interviews of aliens . . . either at a port of entry or at such other place designated by the Attorney General (emphasis added)."

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Additionally, proposed legislation, such as section 12 of HR 391 (proposed by Rep. Jason Chaffetz, R-Utah, in the 114th Congress and 115th Congress), has called for modifying the INA to eliminate the requirement of a safe third country (bilateral) agreement altogether. This bill was introduced in the House of Representatives in January 2017. The practical effect of such a change would be to bar persons from submitting asylum applications in the U.S. if they can be removed to another country where their life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion and where the person would have access to a full and fair procedure for determining a claim to asylum or equivalent protection. However, the U.S. has no guarantees that an asylum-seeker's claim will be addressed in that third country. Further, as the law currently stands, the Attorney General may decide to waive the safe third country exception, if s/he finds that it is in the public interest for the asylum-seeker to receive asylum in the United States. Section 12 of HR 391 would replace the Attorney General with the Secretary of Homeland Security, which suggests that a decision to bar an asylum application would not be subject to a hearing before an immigration judge, as is currently the process; thus, the asylum-seeker would potentially have no means to challenge this decision.

For more information, please contact:

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Exhibit D

Declaration of Frydman,

Declaration of Anker & Hathatway

DECLARATION OF LISA FRYDMAN

I, Lisa Frydman, hereby declare as follows:

1. I submit this declaration in support of Plaintiffs' Motion for a Temporary Restraining Order. If called as a witness, I could and would testify competently as follows.

Professional Experience with Central American Children Seeking Asylum

2. I am an attorney and have been, since 2017, Vice President for Regional Policy and Initiatives ("Regional Team") at Kids in Need of Defense ("KIND"), a nonprofit advocacy and legal services organization based in the United States. From 2015-2017 I served as KIND's Director for Regional Policy and Initiatives. In this capacity, I supervise KIND's Regional Team and regularly visit Honduras, Guatemala, and El Salvador (the "Northern Triangle" countries) and Mexico to carry out the organization's work described here.

3. KIND's Regional Team offers direct programming with children and adolescents in Central America (sometimes referred to herein as "the Region"). Currently, the Regional Team, through civil society partner organizations, provides reintegration support services for unaccompanied and separated children repatriating to Guatemala and Honduras, as well as sexual and gender-based violence prevention programming for children in certain high migration communities in Guatemala and Honduras. Through its Reintegration Program and other Regional programming and visits, KIND's Regional Team has communicated with approximately 350 Central American unaccompanied and children in the past year. From 2015-2017, the Regional Team provided support services to children in Honduras and El Salvador with pending cases for refugee resettlement in the United States under an in-country refugee processing and parole effort known as the Central American Minors ("CAM") Program. In 2018 the Regional Team,

through civil society partners, conducted a project in the Region to empower adolescent refugees and migrants, as well as internally displaced adolescents from El Salvador, Guatemala, and Honduras, to tell their stories related to immigration and internal displacement.

4. In addition to direct programming, the Regional Team engages in research and fact finding related to the root causes of child migration from Central America and develops recommendations on how to resolve the problems forcing children to leave their homes. In 2017, I coauthored and KIND published two reports focused on sexual and gender-based violence and children migration.[1] These reports were based on extensive interviews with unaccompanied children from Honduras, El Salvador, and Guatemala; with government agencies; and with civil society organizations. KIND's Regional Team regularly collects information regarding country conditions and the root causes of migration and uses this information to inform our plans for work in the region, to update KIND's Legal Services Team about developing trends in the region that may impact claims for immigration relief, and to inform advocacy.

5. The team, myself included, travels to the Region regularly to conduct fact finding, as well as to participate in training and capacity building sessions for government and civil society organizations; in regional conferences on child migration attended by civil society experts, international organizations involved in migration and refugee protection, and governments of the region; and in regional advocacy networks and forums. Since December

[1] Rachel Dotson and Lisa Frydman, Kids in Need of Defense, "Neither Security nor Justice: Sexual and Gender-based Violence and Gang Violence in El Salvador, Honduras, and Guatemala" (2017), at https://supportkind.org/wp-content/uploads/2017/05/Neither-Security-nor-Justice_SGBV-Gang-Report-FINAL.pdf; Rachel Dotson and Lisa Frydman, Kids in Need of Defense and CDH Fray Matías, "Childhood Cut Short: Sexual and Gender-based Violence Against Central American Migrant and Refugee Children" (June 2017), at https://supportkind.org/wp-content/uploads/2017/06/Childhood-Cut-Short-KIND-SGBV-Report_June2017.pdf.

2018, the Regional Team has traveled to Mexico nine times to engage in fact finding and to participate in human rights monitoring along the northern and southern borders of Mexico, to provide training, and to meet with government agencies and civil society organizations with expertise in children's rights, migrants' rights, and refugee protection.

6. The statements in this Declaration are based on (1) conversations with civil society organizations in Honduras, El Salvador, Guatemala and Mexico working directly with children and youth, (2) interviews with government agencies in the Region, (3) participation in fact finding trips and/or supervision of Regional Team staff participating in fact finding trips, (4) conversations with unaccompanied children in Tijuana, Mexico, (5) conversations with repatriated unaccompanied children and/or their parents, (6) conversations with children who had pending claims in the CAM program, including current cases with pending Requests for Review, (7) extensive tracking of news articles from the Region and extensive research into country conditions throughout the Region, and (8) calls for help from unaccompanied children and/or their family members during migration, or from civil society organizations providing support to unaccompanied children.

Causes of Child Migration from Central America

7. In KIND's research into the root causes of child migration from Central America we have found that violence, in combination with impunity and a failure of protection in the children's home countries, causes children to flee their homes and seek safety in the United States. The main forms of violence that we have found unaccompanied children from the Northern Triangle seek to escape are violence inflicted by criminal gangs or other organized crime, for example by drug cartels; sexual and gender-based violence, including violence and

extreme discrimination based on sexual orientation and/or gender identity; and child abuse. KIND has found through its research that lesbian, gay, bisexual, transgender, and intersex (LGBTI) children and youth also face very high level of sexual and gender-based violence in the Northern Triangle; human trafficking of children is also common there. Children are trafficked from rural to urban areas and across borders or to border areas, where they are sexually exploited or subject to exploitative labor, in many cases in agricultural or domestic work. Femicide, or the gender-motivated killing of women and girls, is pervasive in the Northern Triangle countries, and Honduras, El Salvador, and Guatemala are among the ten countries with the highest homicide rates globally.[2]

8. Based on our interviews and research, KIND has found that children targeted by gangs and cartels, LGBTI children, and children targeted for other sexual and gender-based violence cannot rely on the governments of Honduras, El Salvador, or Guatemala to protect them, and that children from these countries accordingly have no faith in their governments' ability to protect them. As a result, violence against children is highly underreported in each of these countries, and even those crimes that do get reported rarely result in justice. In the vast majority of cases the perpetrator is never punished. Over 90% of homicide cases in the Northern Triangle end in impunity, and in cases involving sexual and gender-based violence the impunity rate is even higher—at 95%. LGBTI rights organizations in the Region have informed KIND that law enforcement officers sometimes target LGBTI individuals precisely when they come in to report violence.

[2] This understanding is informed by the United Nations Office on Drugs and Crime (UNODC), *Global Study on Homicide* (2019), at https://www.unodc.org/unodc/en/data-and-analysis/global-study-on-homicide.html.

9. Closely related to impunity is also the significant problem of corruption in the region. Corruption is well documented, but KIND's Regional Team has also been told in particular by women's rights organizations of numerous cases involving domestic violence or sexual violence perpetrated by a male involved in organized crime who was able to "buy off" law enforcement. We have heard examples of police officers as well as judges being bought off. I personally have spoken with numerous women who fled abusive domestic partners in Central America whose partners had either money or family connections that protected them from prosecution. Severely repressive measures by state security forces, including military police, army, and other security forces in the region have frequently targeted adolescent boys from neighborhoods under control of organized crime. Extrajudicial killings of youth by security forces in Honduras and El Salvador have been well-documented, but other measures including mass arrests or threats against the young males of a particular neighborhood erodes public trust in law enforcement or security forces in the region. Experts at the Salvadoran Women's Organization for Peace (ORMUSA), for example, have explained to KIND that one reason girls who are victims of sexual and gender-based violence in El Salvador underreport is their worry that contacting the police or other law enforcement could lead to broad scale repression or violence against all of the young males in the neighborhood, i.e. including against their brothers and other male family members.

10. In addition to impunity, corruption, and repression, children from the Northern Triangle in need of protection cannot rely on the child welfare system for help. Child welfare agencies throughout the region are underfunded, highly centralized (meaning no shelters outside of the capital city), and weak, and often have inappropriate conditions for children. For example, in March 2017 a fire broke out at a Guatemalan shelter for abused, abandoned, and neglected

children that led to the death of 40 teenagers. Following the incident numerous media articles came out detailing accounts of physical, psychological, and sexual abuse of children in the shelter that had never been investigated despite repeated complaints by children. When conducting research for one of the reports referenced in footnote 1 above, KIND's Regional Team heard from child welfare officials in the Northern Triangle countries they could not take children fleeing gang violence into shelters because they could not protect those children.

11. Based on KIND's research we found that sexual violence perpetrated by gangs is one of the most common forms of violence that migrant children face. Gangs now dominate much of the urban areas of Guatemala, El Salvador, and Honduras, and their control has increasingly spread to rural areas as well. Where gangs dominate, women and girls are in constant danger of being targeted for sexual violence. Gangs use rape and the threat of rape as a tactic of control in the areas where they operate. Girls are also targeted for forced sexual relationships with gang members and those who resist these advances face violence or even death. Boys and increasingly girls are forcibly recruited by gangs and once invited to join a gang, those who resist face threats, torture, and ultimately death. Civil society organizations working directly with children and families living in gang-controlled areas in Honduras, El Salvador, and Guatemala told KIND's Regional Team that when victims attempt to escape by relocating within their countries gangs often track them down and ruthlessly punish them.

Common Risks and Inadequate Institutions Preclude Children from Obtaining Protection in Another Northern Triangle Country

12. From the conversations KIND's Regional Team has had with repatriated unaccompanied children in Guatemala and Honduras, and from our project working with Central

American children to document their migration related stories, it is clear to me that children from the Northern Triangle who are seeking protection from violence do not believe that a different Northern Triangle country would be able to provide more protection than their own country, and the data proves them right. The problems of sexual and gender-based violence, forced gang recruitment, cartel violence, violence against LGBTI children and youth, and human trafficking exist throughout the Northern Triangle of Central America, as do the staggering rates of impunity and the weak child welfare systems mentioned above. Consequently, a teenager seeking to escape threats from a drug cartel in El Salvador, for example, would not be safe and would not feel safe to seek asylum in Honduras or Guatemala. An LGBTI teenager escaping persecution in Honduras would be no safer in Guatemala or El Salvador, and vice versa, as LGBTI individuals from the Northern Triangle are at risk of suffering violence at the hands of private actors, as well as the state.

13. Experts on organized crime in the region have repeatedly told us that gangs and cartels have region-wide reach and can locate individuals throughout the region. Thus, fleeing a gang in El Salvador or Honduras means one is also unsafe in Guatemala.

14. Guatemala's asylum system is brand new and is barely functioning. In May 2017, Guatemala's new migration code went into effect, with provisions for Guatemala's asylum system. The law, however, requires implementing regulations that were only issued in April 2019 and which have not yet been made public. In the past two years Guatemala has received about 350 applications for asylum and has only decided 20-30 of these cases. Immigration-focused organizations in Guatemala have informed KIND's Regional Team that between March 2018 and May 2019, Guatemala decided zero asylum cases and that the country only has three officers to interview asylum seekers.

15. More generally, children traveling alone, without the protection of a parent or legal guardian, face significant difficulty in understanding the complex immigration laws and procedures in the countries they are transiting, even if those procedures are more effective than those of the Northern Triangle countries or Mexico.

Risks to Unaccompanied Children in Mexico

16. I believe based on KIND Regional's research, numerous trips to Mexico, and interviews with unaccompanied children and with civil society organizations in Mexico, that unaccompanied children face significant risk of suffering harm in Mexico. Mexican crime data is to the same effect: Migrants and refugees are targets of violence in Mexico. Children in particular are at risk of robbery, sexual violence, kidnapping, falling prey to human traffickers, and femicide, as well as extortion, threats, and sexual violence, and the overwhelming majority these crimes result in impunity. Violence against LGBTI individuals and violence against women are also pervasive problems in Mexico, often making unaccompanied children fleeing these forms of harm no safer there than in Central America. While in Mexico in February 2019, KIND met a Honduran teenager who, fleeing abuse in his own country, had been kidnapped and tortured in Mexico, and forced to watch as two of his friends—also unaccompanied children—were murdered. There have also been documented cases in which police, military, and other Mexican government officials have been directly and indirectly involved in violence against migrants and refugees, including kidnapping and extortion. These incidents increase migrants' mistrust of authorities in Mexico and their feeling of insecurity there, and they especially increase children's fear and mistrust.

17. Mexico's proximity to the Northern Triangle countries from which many children have fled—and the presence of the same, and related, gangs and other organized criminal groups

in Mexico—expose children to risk of being located and targeted by their persecutors. I recently spoke with a young man from El Salvador who fled gang violence there only to be beaten while in immigration custody in Mexico. He noted the presence of gang members in immigration custody and how terrified he felt the entire time he was in detention in Mexico. He decided he would be safer going back to El Salvador and trying again to reach the United States rather than remaining in custody in Mexico, where he felt he had no protection and where officials did not care if he was safe. During a visit to Mexico's northern border in March 2019, a human rights organization that assists migrants and refugees told me of a case involving a teenager from El Salvador who had fled violence and death threats by organized crime and had been placed in the custody of Mexico's child protection agency (Sistema Nacional para el Desarollo Integral de la Familia, known as "DIF"), and for whom DIF had determined that the child could not safely remain in Mexico because his persecutors were pursuing him there.

18. In Tijuana, Mexico in February 2019, a civil society shelter that cares for unaccompanied children asked KIND to meet with a Central American teenage girl who had become increasingly anxious upon learning that her persecutor, a gang member, had tracked her down and was making his way to Mexico to find her. The organization Human Rights Center of Fray Matias de Córdoba (Centro de Derechos Humanos Fray Matías de Córdoba, "Fray Matías"), based in Tapachula, Mexico, conducts monitoring of unaccompanied children in DIF shelters there and has engaged in monitoring in of children detained in centers run by Mexico's immigration agency (Instituto Nacional de Migración, or "INM") in the past. Fray Matías also provides legal representation to migrants, including families and children in Tapachula, Mexico. Fray Matías staff have told KIND during more than one visit to Tapachula that they are aware of

cases in which unaccompanied children detained in Tapachula are terrified because they have been threatened by gang members who are held in the same INM detention center or DIF shelter.

Mexico Does Not Provide Meaningful Access to Asylum or Protection to Unaccompanied Children

19. For the past three years KIND has been observing and researching Mexico's asylum system and the availability of international protection for unaccompanied children in Mexico. We have conducted interviews with child protection officials, with Mexico's refugee agency (Comisión Mexicana de Ayuda a Refugiados, or "COMAR"), children's rights organizations, immigrant and refugee rights organizations, immigrants and refugees, and international organizations.

20. It is my belief that while COMAR has made some important progress, Mexico has a long way to go to provide meaningful protection, particularly when it comes to unaccompanied children. Despite Mexican law prohibiting the detention of children for migration control purposes, many children continue to be detained by INM. Conditions in INM detention centers have been widely reported to be harmful to children and in violation of international law. They include overcrowding, unhygienic conditions, mixing of unaccompanied children with unrelated adults, lack of education and recreation, and the use of isolation cells as punishment for misbehavior. Even children placed in DIF (child welfare) shelters endure inappropriate conditions for long term care of children. These conditions deter children from seeking asylum in Mexico. Unaccompanied children have confided this directly to KIND, and repeatedly have told this to Fray Matías staff. During a trip to Mexico in February 2019, unaccompanied teenage girls

told KIND that they had previously been in Mexico in DIF custody and that they had been treated so terribly that they did not apply for asylum in Mexico.

21. Mexico's child protection officers (OPIs), charged with identifying international protection needs and protecting children in custody, work for INM—the very agency detaining and seeking to deport them. This is an inherent conflict of interest, and very different from the system Congress created for protecting unaccompanied children under U.S. law. OPIs and officials from Mexico's child welfare agency, DIF, fail to inform children of their right to seek asylum and to identify children with protection needs in some cases; in others they fail to provide children with child-appropriate or clear information about the right to seek asylum. Officials frequently discourage children from seeking asylum, warning that they will face long-term detention if they do. Children are also often told that even if they are granted asylum, they will be institutionalized until their 18th birthday, dissuading them from seeking asylum.

22. Unaccompanied children who do seek asylum in Mexico face significant barriers to protection. Mexico's child protection law provides for representation of migrant children by the Child Protection Authority (Procuraduría de Derechos de Niños, Niñas, y Adolescentes), the agency within the child protection system that is charged with determining children's best interests and guaranteeing their rights[3]; in reality, however, attorneys of the Child Protection Authority offices lack capacity to represent them and rarely represent them during asylum interviews with COMAR or seek other immigration relief for them. Civil society organizations in Mexico cannot provide legal consultation or representation to the vast majority of unaccompanied children in custody because Mexico limits the access that attorneys from civil

[3] In Mexico, DIF provides services such as shelter to children in the child protection system, while the Child Protection Authority is responsible for providing legal representation to children in the system and for protecting their rights.

society organizations have to children in INM and DIF facilities, and because a number of the Child Protection Authority offices refuse to permit these organizations to represent children. KIND recently documented discriminatory attitudes against unaccompanied children on the part of staff from the Child Protection Authority in Tapachula, (the office that sees the highest number of unaccompanied children) who described "all" Honduran youth as "aggressive."

23. Although COMAR has had a nearly 200% increase in the filing of asylum applications in 2019, the agency has not grown to meet the need or number of claims being filed. Rather than increase COMAR's budget to grow the agency and meet the need, Mexico actually reduced the agency's budget by 20 percent. COMAR currently has only 4 offices and fewer than 30 Asylum Officers in the entire country that are qualified to interview and adjudicate asylum cases. Only 5-6 of these officers interview children seeking asylum. During a May 2019 trip, KIND's Regional Team documented that the COMAR office in Tapachula—the COMAR office that receives the highest number of claims—was completely overwhelmed by cases and lacked the staffing and resources needed to meet the demand. The Director of the office explained that staff had to use their own personal money to pay for gas needed to conduct their work. During this visit KIND observed about 100 families and unaccompanied children camping out on the street outside of COMAR's Tapachula office, exposing themselves to danger, in the hope that COMAR would receive them the next day.

24. Mexico deports unaccompanied children to danger, in many cases in violation of Mexico's own child protection laws. Mexico's general children's law and migration law require consideration of the best interests of the child in all proceedings affecting them, and require best interests determinations (BIDs) prior to the deportation of a child. BIDs, which Mexico began in 2016, are conducted on a very limited basis due to lack of resources, capacity, and in some cases,

will by Child Protection Authority offices. Very few children have BIDs prior to deportation decisions, and in some cases, children have been deported during the BID process.

The U.S. Protection System Is Designed To Care for Unaccompanied Children Who Transit Mexico

25. Many unaccompanied children from the Northern Triangle have a close family member living in the United States, including a parent or stepparent, grandparent, aunt or uncle, or adult sibling. Even if children with close family in the United States could reasonably access protection in Mexico or in Guatemala, they often long to receive the love and support of a family member. If they were able to receive asylum in Mexico or in Guatemala they would face long term institutionalization, rather than the ability to reunify with close family as they seek protection.

26. Congress has recognized that unaccompanied children are an especially vulnerable population and have extended extra procedural protections in U.S. immigration law to ensure they have safety from persecution, human trafficking, and *refoulment* (return to the country where they were persecuted). In 2008, Congress unanimously passed the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) to create critical protective measures for these unaccompanied children.[4] The protections include referral to the Department of Health and Human Services' Office of Refugee Resettlement (ORR), which provides care and custody for unaccompanied children and in whose care children can be screened by child welfare professionals and legal professionals for any protection needs or particular vulnerabilities. These provisions reflect Congress' recognition of the difficulties

[4] Pub. L. 110-457, 122 Stat. 5044, *codified in part at* 8 U.S.C. §§ 1158, 1232.

children might face in understanding their rights or the legal procedures governing their cases without a government funded attorney to assist them while in CBP custody. Once in ORR custody, children receive legal orientation presentations, legal screenings, and in some cases, an appointed child advocate to help them navigate a complex system, remain safe from exploitation in the process, and safeguard their best interests.

27. The TVPRA also ensures that children will not be subjected to expedited removal by directing their placement in full immigration proceedings under Section 240 of the INA. 8 U.S.C. 1232(a)(5)(D). These provisions recognize the difficulty of ascertaining the full scope of a child's situation and needs in an expedited manner at the border and through a cursory interview by a CBP officer. As such, children are afforded the ability to tell their story and have their case heard before a trained adjudicator—an immigration judge—rather than having to make their case before a CBP agent shortly after apprehension.

28. The TVPRA also explicitly exempts unaccompanied children from the safe third country bar to asylum (8 U.S.C. §1158(a)(2)(E)) in further recognition that children traveling alone would have no one to explain complex international agreements governing immigration and international protection, and the risks of foreclosing access to protection under such circumstances. These concerns are echoed in the TVPRA's provisions on the safe repatriation and reintegration of unaccompanied children, which provide further evidence of congressional intent to ensure heightened protections for unaccompanied children to ensure they are not returned to harm. Among other requirements, these provisions direct the Secretary of Homeland Security to "consult the Department of State's Country Reports on Human Rights Practices and the Trafficking in Persons Report in assessing whether to repatriate an unaccompanied alien child to a particular country." 8 USC § 1232(a)(5)(B).

29. Finally, while TVPRA broadly limits the ability of the government to directly return unaccompanied children to their home countries, Congress did allow more direct procedures for immediate repatriation of some children from "contiguous countries"—Mexico and Canada (8 U.S.C. § 1232(a)(2)). In differentiating so sharply between children from contiguous and non-contiguous countries, Congress acted with clear recognition that children with fear of return would transit the southern border with Mexico and need to be processed for protection. It then provided the range of procedural protections for those children noted above. These TVPRA protections provide unaccompanied children who transit Mexico, reach our southern border, and seek protection substantially more safety than do the limited protection systems in Mexico, Guatemala, and other possible transit countries. Barring such children from accessing the TVPRA protections would deprive them of the only meaningful protection system that is available to them.

30. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed: July 16, 2019

Lisa Frydman

DECLARATION OF PROFESSORS DEBORAH ANKER, HARVARD LAW SCHOOL, AND JAMES C. HATHAWAY, UNIVERSITY OF MICHIGAN LAW SCHOOL

We, James C. Hathaway and Deborah Anker, declare under the penalty of perjury pursuant to 28 U.S.C. § 1746:

1. We make this declaration based on our expert professional knowledge. If called as witnesses, we would testify competently and truthfully to these matters.

2. James C. Hathaway has been engaged in research, scholarship and teaching of international and comparative refugee law for more than thirty-five years. He is presently the James E. and Sarah A. Degan Professor of Law at the University of Michigan, where he serves as Director of the Program in Refugee and Asylum Law. He is also Distinguished Visiting Professor of International Refugee Law at the University of Amsterdam. He regularly provides training on refugee law to academic, nongovernmental, and official audiences around the world. He is the author of two leading treatises on international refugee law, *The Rights of Refugees under International Law* (2005) and *The Law of Refugee Status* (2nd edition 2014, with Michelle Foster). His work has been cited by leading courts around the world, including the British House of Lords and Supreme Court, the High Court of Australia, and the Supreme Court of Canada.

3. Deborah Anker has been engaged in the practice, research, scholarship and teaching of U.S. asylum and refugee law for more than thirty years. She is Clinical Professor of Law and Founder and Director of the Harvard Law School Immigration and Refugee Clinical Program. She is the author of a leading treatise, *Law of Asylum in the United States* (2016), as well as numerous law review articles and amicus curiae briefs. Her work has been cited frequently by international and domestic courts and tribunals,

including the U.S. Supreme Court.

4. The principal international agreement governing States' legal obligations to protect refugees is the 1951 United Nations Convention relating to the Status of Refugees ("Refugee Convention"). The mandatory scope of the Refugee Convention was originally limited to persons fleeing events in Europe prior to January 1, 1951.

5. A State may accede to the Refugee Convention by depositing an instrument of accession with the United Nations Secretary-General. The instrument must be signed by the Foreign Minister or the Head of State or Government.

6. Most States accede simultaneously to both the Refugee Convention and the 1967 United Nations Protocol relating to the Status of Refugees ("1967 Protocol"), which prospectively removed the temporal and geographic restrictions in the Refugee Convention.

7. A State Party's accession to the Refugee Convention and/or the 1967 Protocol does not require it to submit to any meaningful international procedure to ensure that its obligations are in fact discharged. Article 38 of the Refugee Convention permits a State Party to refer a dispute with another State Party regarding interpretation or application of the Refugee Convention to the International Court of Justice, but no country has ever done so. Similarly, while under Article 35, the Office of the United Nations High Commissioner for Refugees ("UNHCR") has the "duty of supervising the application of the provisions of the Convention," UNHCR has no authority to define a breach of international refugee law, to order a State Party to change its practice, or to expel a signatory.

8. The Refugee Convention neither permits nor prohibits State Parties from sharing protective responsibility for refugees among themselves through bilateral or multilateral agreements. However, the prerogative of State Parties to share protective

responsibility may not be pursued at the cost of depriving refugees of their rights under the Refugee Convention.

9. Article 33 of the Refugee Convention provides:

> No Contracting State shall expel or return ("*refouler*") a refugee 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.

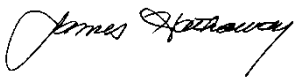
10. According to the principle of *non-refoulement*, State Parties are prohibited from removing a refugee – that is, a person who faces a real chance or a reasonable possibility of being persecuted in his or her country to his or her country of origin. Because *refoulement* is prohibited in "any manner whatsoever," a State Party is bound to refrain not only from the direct removal of a refugee to a place in which the risk of being persecuted exists, but also to any country from which there is a foreseeable risk of a chain of transfers that would ultimately expose the refugee to the risk of being persecuted (indirect *refoulement*).

11. In order to know whether a State Party to the Refugee Convention and/or 1967 Protocol is in compliance with its obligations, a review of the country's actual practices on the ground is required. Moreover, because a given State may offer meaningful protection to some but not all categories of refugees, a particularized and claimant-specific (rather than generic) assessment of compliance with duties under international refugee law is required.

12. The interim final rule proposed by the Department of Justice and the Department of Homeland Security ("Rule") will effectively deprive many asylum seekers from Central America and elsewhere of access to asylum under U.S. law. If such individuals are unable to meet the higher standard under U.S. law for withholding of removal or relief under the Convention Against Torture, they could be deported to their home countries, in violation of the United States' *non-refoulement* obligations under Article 33 of the Refugee Convention.

14. It is also noteworthy that the rule seems not to require that a transit country be a party to each of the 1951 Refugee Convention, 1967 Protocol, and the Convention Against Torture for the asylum seeker to be deemed ineligible for asylum in the United States. Rather, it applies even if the transit country has signed only one of those three treaties. An individual thus will be denied asylum for transiting through a country that signed the Convention Against Torture but not the 1951 Refugee Convention without applying for protection, even if the individual had a claim for asylum but not relief under the Convention Against Torture.

We hereby declare under the penalty of perjury pursuant to the laws of the United States that the above is true and correct to the best of our knowledge.



James C. Hathaway

Deborah Anker

EXECUTED this 16th day of July 2019