



**TRANSNATIONAL LEGAL CLINIC
GITTIS CENTER FOR CLINICAL LEGAL STUDIES
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Philadelphia, PA 19104-6204**

February 14, 2017

Mr. Paolo Abrão
Executive Secretary
Inter-American Commission on Human Rights
1889 F St., N. W.
Washington, D.C. 20006

Re: Follow-up submission on the request for a thematic hearing on measures taken by or at the request of the United States that impede access to asylum in the United States and interfere with the right to family life and other core human rights protections

Distinguished Secretary Abrão:

We, the undersigned, respectfully submit to the Inter-American Commission on Human Rights (IACHR) this updating communication on the aggravating effect the United States (U.S.) government's recently-issued immigration executive order, "Border Security and Immigration Enforcement Improvements" is likely to have upon pre-existing measures impeding access to asylum in the U.S. and interfering with the right to family life and other core human rights protections. In light of this likely effect, and with new urgency, we ask the IACHR to grant our request, submitted January 16, 2017, for a thematic hearing on these measures.

Our hearing request identified four measures taken by or at the request of the U.S. that are violating the human rights of migrants seeking asylum at the U.S.-Mexico border: 1) turnarounds to Mexico of Central American and other asylum seekers; 2) the separation of members of asylum-seeking families; 3) abusive conditions and treatment of asylum seekers within Customs and Border Protection (CBP); and 4) the expansion of immigration detention of asylum seekers after processing by CBP. By seeking to block access to asylum on the U.S.-Mexican border, increase immigrant detention and prosecution, and expedite claim determinations, "Border Security and Immigration Enforcement Improvements" threatens to exacerbate the impact of each of these injurious measures.

We understand that the IACHR has received a communication from the International Justice Resource Center and the American Civil Liberties Union requesting the convening of a public hearing on the third of U.S. President Trump's immigration executive orders, "Protecting the Nation from Foreign

**Follow-up submission to Thematic Hearing Request:
Impeded access to asylum in the United States and interference with the
right to family life and other core human rights protections**

Terrorist Entry into the United States.” We believe the executive order on border security and immigration enforcement, which involves violations of the human rights of asylum seekers, presents substantial issues that are distinct from the rights violations implicated by the third executive order banning certain entries into the United States. We therefore respectfully request that the IACHR ensure that it has an opportunity to consider fully the two independent sets of concerns.

Background on the Executive Order “Border Security and Immigration Enforcement Improvements”

On January 25, 2017, nine days after the undersigned organizations filed the thematic hearing request with the IACHR, President Trump signed the executive order, “Border Security and Immigration Enforcement Improvements,” which went into immediate effect. Its stated purpose is to “direct executive departments and agencies...to deploy all lawful means to secure the Nation’s southern border, to prevent further illegal immigration into the United States, and to repatriate illegal aliens swiftly, consistently, and humanely.” To this end, it provides for: the construction of a physical border wall along the U.S.-Mexico border; a massive expansion of immigration detention, including detention of asylum seekers; the construction of additional immigration detention facilities at or near the southern border; the expansion of expedited removal proceedings; the conduct of removal proceedings outside of the U.S.; the criminal prosecution of unlawful entry; and an increase in the number of agents with immigration functions.

“Border Security and Immigration Enforcement Improvements” is one of three Trump administration executive orders on immigration to-date. “Enhancing Public Safety in the Interior of the United States”, also signed on January 25, 2017, inter alia, provides for the cancellation of federal funds to “sanctuary” cities. “Protecting the Nation from Foreign Terrorist Entry into the United States”, signed on January 27, 2017, imposes a 90-day ban on entry by citizens of seven Muslim-majority countries; a 120-day suspension of all refugee admissions; and an indefinite suspension of the admission of Syrian refugees. In combination, these executive orders set out an immigration policy that, as the IACHR has recognized, is “designed to stigmatize and criminalize migrants or anyone perceived as a migrant”¹ and breaches the United States’ international human rights obligations.²

A. Blocking Asylum Seekers Arriving at the U.S. Southwestern Border

¹ Inter-American Commission on Human Rights press release, *IACHR Expresses Concern over Executive Orders on Immigration and Refugees in the United States* (February 1, 2017), http://www.oas.org/en/iachr/media_center/PReleases/2017/008.asp.

² *Id*; United Nations Office of the High Commissioner of Human Rights press release, *US travel ban: “New policy breaches Washington’s human rights obligations – UN experts* (February 1, 2017), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21136&LangID=E>.

**Follow-up submission to Thematic Hearing Request:
Impeded access to asylum in the United States and interference with the
right to family life and other core human rights protections**

a. A Pattern of Blocking Asylum Seekers at the Border Arising in 2016

As noted in our initial hearing request, advocacy organizations have observed Customs and Border Protection (CBP) officials turning away asylum seekers at certain Ports of Entry (POE) along the United States/Mexico border, thus wholly denying individuals the opportunity to avail themselves of protections guaranteed by U.S. law. Our concern is that the broad language used in various provisions of the Executive Order, “Border Security and Immigration Enforcement Improvements” (hereinafter “Border Security EO”), will not just sustain but embolden such practices. The Border Security EO seeks to “secure” the southern border via construction of a “physical wall,” detention of all suspected of violating the law, expedited determination of individuals’ claims, and prompt removal of those who have been rejected (Section 2(a)-(d)). While many of these provisions do not formally alter baseline requirements under U.S. federal law, the intent of the EO is clear—to prioritize a security and law enforcement-based approach rather than an approach that recognizes the humanitarian concerns presented by asylum seekers and the importance of due process protections.

Section 4 of the EO mandates the immediate allocation of funds for the construction of a “physical wall” to ensure “complete operational control” of the southern border. “Operational control” is defined as “the prevention of all unlawful entries” (emphasis added) (Section 3).

The scope of Section 7 is equally concerning. It requires that the Department of Homeland Security (DHS) take “appropriate action” to ensure that migrants approaching U.S. borders by land be “returned to the territory from which they came pending a formal removal proceeding.” In the case of the southern border, this would mean a return to Mexico. Without further actions to coordinate such policies with the Mexican government, it is unclear how such removals would take place. What is clear, however, is that the return to Mexico of asylum-seekers arriving on the southern border would violate U.S. obligations under the 1951 Refugee Convention and its Protocol and the American Declaration on the Rights and Duties of Man.

b. Variations in the Pattern and the Use of Metering System

Varied and inconsistent practices at ports of entry along the southern border will continue, if not increase, due to the Border Security EO’s breadth and ambiguity. Section 8, for example, calls for the hiring of 5,000 additional CBP agents and requires that all “are assigned to duty stations as soon as is practicable” (Section 8). This is particularly troubling in light of the broadened scope of authority in which CBP agents can now operate.

c. United States Collaboration with Mexican Officials and the Use of Private Security Firms

**Follow-up submission to Thematic Hearing Request:
Impeded access to asylum in the United States and interference with the
right to family life and other core human rights protections**

Under Section 1, the Border Security EO remarks that illegal entry has caused “significant strain on federal resources.” It attempts to address this issue under Sections 4 and 8 through the construction of a wall and the hiring of 5,000 additional CBP agents. First, it is presumed that any construction will be contracted out to private firms who may also be involved in the wall’s maintenance and security. Second, the executive department may determine that, to expand human resources along the border it must rely on the additional hiring of private security guards. The agency has been unable to meet its current quota of 21,370 and may find that expanding southern border protection via private delegation would be more efficient. This would, we fear, further limit access of asylum seekers to actual CBP officials and thus deny them opportunity to make their claims.

d. Dangers for Migrants in Mexico’s Northern Border and Other Impacts of the Effects to Block Access to Asylum at the U.S. Southern Border

Section 1, para. 2 asserts that “transnational criminal organizations” along the southern border have had a significant impact on violent crime in the U.S.; it further asserts that “those who illegally enter are those who seek to harm Americans through acts of terror or criminal conduct.” Such wide-reaching and prejudicial conclusions are alarming, as they wrongly presume that all individuals who approach the southern border are criminals unworthy of protection.

This is particularly unsettling given that the rejection of migrants and asylum seekers may preclude them from joining family members already living in the U.S., as noted in our hearing request. Individuals placed in expedited removal proceedings may be deported within as little as 24 hours, providing little to no possibility of legal counsel or representation. Curtailing safeguarding mechanisms surely paves the way for practices that are both arbitrary and indiscriminate.

B. Other Interferences with the Right to Seek and Receive Asylum

a. CBP Mistreatment and Abuse of Migrants

In our hearing request we noted repeated reports from advocacy organizations of CBP officials mocking and humiliating migrants arriving at the U.S. southern border in order to dissuade or prevent them from exercising their right to seek asylum. CBP officials have told migrants that they are not wanted in the U.S. and, in so doing, have on occasion referred to the presidential transition in the country. We fear that the EO, which in tone and substance concretizes anti-immigrant rhetoric in governmental policy, is likely to further embolden CBP officials. The provisions of particular concern in this regard are: section 1, para. 2

**Follow-up submission to Thematic Hearing Request:
Impeded access to asylum in the United States and interference with the
right to family life and other core human rights protections**

which, as previously mentioned, mischaracterizes all those entering the U.S. illegally as a national security threat; section 13, which prioritizes the prosecution of any offense with a nexus to the southern border; section 6, which directs the Department of Homeland Security to detain non-citizens for violations of immigration law; and section 4, which provides for the construction of the symbolic border wall.

The potential training implications of the directive under section 8 to assign new CBP officers to duty stations “as soon as possible” are also a concern in the context of CBP mistreatment and abuse of migrants. This because it is likely that officers receiving insufficient training would be more amenable to the behaviour described in our hearing request.

b. Separation of Families at the Border and in Detention

The past two years have witnessed an increase in the separation of migrant family members after entering into the U.S. immigration custody. Inadequate government protections for families and an intentional focus on enforcement, deterrence, and punishment have resulted in the incarceration of fathers and adult children in different facilities to wives, children, and younger siblings, and the separation and transfer of minor children away from their accompanying immediate family members.

The EO threatens to exacerbate the problem of familial separation by detaining a greater number of families and by establishing an immigration policy that appears to place an even greater emphasis on enforcement, deterrence, and punishment. Section 6 prescribes an indiscriminate detention policy of which many asylum-seeking families are likely to fall foul. It directs the DHS to “ensure the detention of aliens apprehended for violation of immigration law pending the outcome of their removal proceedings or their removal...to the extent of the law” (section 6). The authoritarian kernel of the EO is laid out in its stated purpose: securing the southern border, preventing illegal immigration, and repatriating illegal aliens (section 1, para. 3). Nowhere in the document is the issue of family protection addressed.

c. Immigration Detention of Asylum Seekers on the Rise

As we mentioned in the initial hearing request, the United States has already suggested that the increasing use of detention is intended to deter future arrivals of asylum seekers, and the likelihood of an asylum seeker to be detained has been increasing since 2014, when the United States defined recent border crossers a priority enforcement category.

Session 2(b) brings detention to a new level by explicitly defining as executive branch’s policy to detain individuals on suspicion of violating Federal or State law. If before the EO there was already an intent to use detention to prevent

**Follow-up submission to Thematic Hearing Request:
Impeded access to asylum in the United States and interference with the
right to family life and other core human rights protections**

asylum seeker to reach the border, now there is a legal document that authorizes the practice to be used in a systematic way.

Further, the EO under Section 11 requires an “end to the abuse of parole” and demands that other mechanisms not be “exploited.” However, parole has been used in the past to allow for release of asylum seekers from detention so that they can reunite with families as they participate in ongoing asylum proceedings.

In addition, under the CEO, newly hired CBP agents may be able to detain individuals merely on “suspicion” of violating immigration law and deport them through expedited removal proceedings, raising not only significant due process and other rights concerns but also questions as to whether such agents would receive sufficient training or supervision prior to deployment.

Section 6 of the Border Security EO defines rules for “detention for illegal entry”, determining that: “The Secretary shall immediately take all appropriate actions to ensure the detention of aliens apprehended for violations of immigration law pending the outcome of their removal proceedings or their removal from the country to the extent permitted by law”. Indiscriminate detention of all individuals approaching the southern border would only work towards further deterring those with legitimate asylum claims, implicating human rights violations. This section might suggest that detention should be the main procedure to handle violations of immigration law on the southern border; this would represent further enlargement of the already expansive detention system, and is in direct contravention of this honorable Commission’s recommendations set forth in its 2011 Report on Immigration in the United States: Detention and Due Process, as well as the 2014 Report, Refugees and Migrants in the United States: Families and Unaccompanied Children.

Moreover, Section 5(b) and (c) define standards on how asylum cases should be handled inside detention facilities. This Section promotes detention for all asylum seekers arriving at U.S. ports of entry throughout their proceedings, aggravating the barrier that detention already represents to asylum process access.

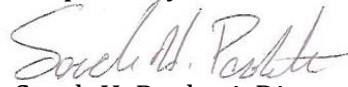
Request

In light of the detrimental effect that the U.S. government’s executive order “Border Security and Immigration Enforcement Improvements” is likely to have upon the four measures that were the subject of our hearing request of January 18, 2015, the undersigned organizations respectfully re-urge the IACHR to grant a thematic hearing on these measures during its 161 Period of Sessions.

We appreciate your consideration of our updating submission and look forward to hearing from you.

**Follow-up submission to Thematic Hearing Request:
Impeded access to asylum in the United States and interference with the
right to family life and other core human rights protections**

Respectfully submitted,



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Human Rights First

IMUMI

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Latin America Working Group (LAWG)

Southern Border Communities Coalition

Washington Office on Latin America (WOLA)

Women's Refugee Commission