

OVERSIGHT OF THE TRUMP ADMINISTRATION'S  
BORDER POLICIES AND THE RELATIONSHIP  
BETWEEN ANTI-IMMIGRANT RHETORIC AND  
DOMESTIC TERRORISM

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HEARING  
BEFORE THE  
SUBCOMMITTEE ON  
IMMIGRATION AND CITIZENSHIP  
OF THE  
COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTEENTH CONGRESS

FIRST SESSION

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# CONTENTS

SEPTEMBER 6, 2019

## OPENING STATEMENTS

	Page
The Honorable Veronica Escobar, Texas, Subcommittee on Immigration and Citizenship, House Committee on the Judiciary .....	1
The Honorable Jerrold Nadler, New York, Chairman, House Committee on the Judiciary .....	3

## WITNESSES

Panel One	
Ms. Jo Anne Bernal, County Attorney, El Paso County Attorney's Office	
Oral Testimony .....	6
Prepared Statement .....	9
Ms. Monica Muñoz Martinez, Stanley J. Bernstein Assistant Professor of American and Ethnic Studies, Brown University	
Oral Testimony .....	17
Prepared Statement .....	19
Ms. Alejandra Y. Castillo, Chief Executive Officer, YWCA USA	
Oral Testimony .....	36
Prepared Statement .....	38
Panel Two	
Mr. Shaw Drake, Policy Counsel, American Civil Liberties Union of Texas, Border Rights Center	
Oral Testimony .....	71
Prepared Statement .....	74
Ms. Linda Y. Rivas, Executive Director, Las Americas Immigrant Advocacy Center	
Oral Testimony .....	88
Prepared Statement .....	90
Mr. Fernando Garcia, Executive Director, Border Network for Human Rights	
Oral Testimony .....	91
Prepared Statement .....	93

## LETTERS, STATEMENTS, ETC., SUBMITTED FOR THE HEARING

TIME Magazine article entitled, "‘We Are Being Eaten From Within.’ Why America Is Losing the Battle Against White Nationalist Terrorism," Sub- mitted by the Honorable Sheila Jackson Lee .....	60
Articles for the record entitled, "‘I’m in Danger’: Migrant Parents Face Vio- lence in Mexico Under New Trump Policy"; "Trump’s ‘Remain in Mexico’ Policy Exposes Migrants to Rape, Kidnapping, and Murder in Dangerous Border Cities"; and; "Central American migrants plead to seek asylum in U.S., not Mexico"; Submitted by the Honorable Veronica Escobar .....	101
Articles for the record entitled, "Trump Faces Long-Shot Bid to Jail Migrant Families Indefinitely"; "3 Reasons Why the New Flores Rule Does Not Pass Legal Muster"; and; "Immigrant Advocate Weighs In On Trump Ad- ministration’s Move To End Flores Agreement"; Submitted by the Hon- orable Veronica Escobar .....	126
Report from the Women’s Refugee Commissions, Submitted by the Honorable Pramila Jayapal .....	143

# IV

## APPENDIX

	Page
Statement of the Honorable Sheila Jackson Lee .....	168
Supporting Documents for the Testimony of Mr. Fernando Garcia, Executive Director, Border Network for Human Rights .....	173
United States Senators letter to the Honorable Mike Pompeo and the Hon- orable Kevin McAleenan regarding the Remain in Mexico Policy, Submitted by Shaw Drake, Policy Counsel, American Civil Liberties Union of Texas, Border Rights Center .....	174
Human Rights Watch report entitled, “‘We Can’t Help You Here’: US Returns of Asylum Seekers to Mexico,” Submitted by Shaw Drake, Policy Counsel, American Civil Liberties Union of Texas, Border Rights Center .....	178
Human Rights Watch report entitled, “Delivered to Danger: Illegal Remain in Mexico Policy Imperils Asylum Seekers’ Lives and Denies Due Process,” Submitted by Shaw Drake, Policy Counsel, American Civil Liberties Union of Texas, Border Rights Center .....	178
Intercept article entitled, “An Asylum Officer Speaks Out Against the Trump Administration’s ‘Supervillain’ Attacks on Immigrants,” Submitted by Shaw Drake, Policy Counsel, American Civil Liberties Union of Texas, Border Rights Center .....	179
VICE News article entitled, “Trump’s Asylum Policies Sent Him Back to Mexico. He was Kidnapped Five Hours Later By a Cartel,” Submitted by Shaw Drake, Policy Counsel, American Civil Liberties Union of Texas, Border Rights Center .....	186



# **OVERSIGHT OF THE TRUMP ADMINISTRATION'S BORDER POLICIES AND THE RELATIONSHIP BETWEEN ANTI-IMMIGRANT RHETORIC AND DOMESTIC TERRORISM**

**FRIDAY, SEPTEMBER 6, 2019**

HOUSE OF REPRESENTATIVES  
SUBCOMMITTEE ON IMMIGRATION AND CITIZENSHIP  
COMMITTEE ON THE JUDICIARY  
*El Paso, TX.*

The subcommittee met, pursuant to call, at 10:04 a.m., in the El Paso Natural Gas Conference Center, University of Texas at El Paso, 2051 Wiggins Way, El Paso, Texas, Hon. Veronica Escobar presiding.

Present: Representatives Escobar, Nadler, Jayapal, Garcia, Neguse, and Jackson Lee.

Staff Present: Madeline Strasser, Chief Clerk; Joshua Breisblatt, Counsel; and Rachel Calanni, Professional Staff Member.

Ms. ESCOBAR. The Subcommittee on Immigration and Citizenship will come to order. Without objection, I will serve as the substitute subcommittee chair in the absence of Chair Zoe Lofgren.

In addition, without objection, the chair is authorized to declare recesses of the subcommittee at any time.

We welcome everyone to this morning's hearing on Oversight of the Trump Administration's Border Policies and the Relationship Between Anti-Immigrant Rhetoric and Domestic Terrorism. We especially welcome all of our visitors who are in El Paso from out of town. Welcome to the safe and secure U.S.-Mexico border.

Before we begin, I would like to thank President Heather Wilson and the University of Texas at El Paso for the warm welcome and for allowing us to use this space for this very important hearing. Dr. Wilson, did you want to say a few words?

Ms. WILSON. Please. Madam Chairman and Mr. Chairman, Chairman Nadler, members of the committee, welcome to UTEP. [Speaking foreign language.] UTEP is one of only 10 high-level research universities in Texas. We are the only Research I University in America that is predominantly Hispanic. But that is not all. Over 23,000<sup>1</sup> students study on our beautiful campus every day. [Speaking foreign language.] And with an annual tuition of about \$9,000 a year, we are one of the most affordable universities in

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<sup>1</sup>Ms. Wilson requested this be changed to "25,000."

America. [Speaking foreign language.] We change lives and provide opportunity.

Despite the recent events, we do this in one of the safest cities in America: El Paso, Texas. I hope you take time to enjoy our beautiful campus. We are very happy that you are here. Welcome to the University of Texas at El Paso.

Ms. ESCOBAR. Thank you for your hospitality, Dr. Wilson. We are very grateful for it.

I would also like to thank Judiciary Committee Chairman Jerrold Nadler and Immigration and Citizenship Subcommittee Chair Zoe Lofgren for agreeing to hold this very important hearing here in El Paso and for allowing me the tremendous privilege of chairing it. It is my honor. And many thanks to my colleagues for making the journey to my hometown to be here with us today.

I would like to recognize a special guest in the audience, one of the heroes and survivors of the Walmart massacre, Chris Grant, who tried to distract the killer and, as a result, was shot twice. We are very lucky that he is alive, and we are so happy that you are here with us, Chris. Would you mind standing up so that we can recognize you?

And finally, to the panelists, thank you so much for joining us and sharing your wisdom with us today. We look forward to your testimony.

I will now recognize myself for an opening statement.

Unfortunately, it is only too fitting that this hearing is being held in El Paso, a place that has had to endure the target painted on our backs because of anti-immigrant rhetoric and a community that has been ground zero for the Trump administration's cruel immigration policies.

Anti-immigrant rhetoric is on the rise today, and it is inflamed by President Trump. Criminals, rapists, drug dealers, that is how then-Candidate Trump described Mexicans when he launched his campaign. The rhetoric continued into his Presidency. In a meeting in the Oval Office, he described some African nations as, quote, "shithole countries" when discussing whether those nationals were worthy of immigration relief. He has called immigrants animals, and the rhetoric has only escalated over time. One study found that President Trump has used words like invasion and killer more than 500 times to describe immigrants.

And the President's rhetoric influences public opinion. Recent polling from the Pew Research Center found that 57 percent of Republicans and Republican-leaning independents say that the U.S. risks losing its identity if America is too open to foreigners. This number is up 13 percent since last year.

Even more frightening is the xenophobic mania that is whipped up at the President's rallies when he uses the words that dehumanize. Many of us were absolutely stunned when, at a Florida rally in May, the President rhetorically asked the crowd what he should do with migrants who cross the border. One of the President's supporters yelled "shoot them," and the President laughed.

Research indicates that counties that hosted a Trump campaign rally saw a 226 percent increase in reported hate crimes over counties that didn't host those rallies. Well, President Trump hosted a rally in El Paso in February, and on August 3, a domestic terrorist

drove over 600 miles to this safe and secure community where people of color are the majority—80 percent of us are Latino—and where immigrants make up a quarter of our population.

The terrorist confessed that he came to El Paso to, quote, “target Mexicans and immigrants.” He killed 22 people, injured dozens, and left an entire community in mourning. El Paso has a long journey ahead of her. Minutes before his attack, the terrorist posted a racist screed on the internet decrying, quote, “an Hispanic invasion.” Those words echo words President Trump has used in the past.

Words have consequences. Policies have consequences. It should be no surprise that a President who calls immigrants animals can justify treating them as such. Children have died in U.S. custody. There has been horrific overcrowding in Border Patrol facilities. There has been force-feeding of adults in custody in fact happening now, happening today in El Paso at the ICE processing center. And there has been continued traumatic family separation.

This administration has admitted to using cruelty as a deterrent, and that includes forcing migrants to wait their turn to apply for asylum in Mexico, a country that is not their own in what is called metering. And once they request asylum, they are forced back under the so-called migrant protection protocols, or MPP, to wait for their day in an American court. In the El Paso sector, migrants are left to defend for themselves in Ciudad Juarez.

Through the casework assistance my office provides, we are aware of abuses with MPP. Vulnerable populations who should ostensibly not be subjected to MPP are being sent back, including Mexican nationals, pregnant women, and migrants with severe mental disabilities. Those sent back suffer harassment and danger. One father of a young family was kidnapped and beaten while trying to find diapers. Another young woman was kidnapped and raped by Mexican Federal police.

In my eight and a half months in Congress, it is clearer than ever that this administration governs with cruelty. We must understand the human toll of these policies, the inhumanity and the indignities that immigrants suffer as we consider funding for the departments that execute those policies. And as for the anti-immigrant rhetoric, for many of us those words have become a matter of life and death.

It is now my pleasure to recognize the chairman of the Judiciary Committee, the gentleman from New York, Mr. Nadler, for his opening statement.

Chairman NADLER. Well, thank you very much.

I want to begin thanking my esteemed colleague, Representative Escobar, for welcoming us to El Paso, for her commendable service on the Judiciary Committee, and for her deep commitment to representing the people of El Paso with strength and integrity and compassion.

I also want to thank the University of Texas at El Paso for hosting us today for this very important hearing.

For two and half years the Trump administration has issued an endless series of draconian immigration policies, some of which have been implemented, and some of which rightfully have been enjoined by the courts as contrary to our laws. These policies have

had a devastating impact on immigrants here in the United States and also on those fleeing for their lives and seeking protection along our southern border.

At the same time, this administration has used racist and inflammatory language against immigrants. The President has referred to immigrants as rapists, thugs, and animals, and has described the arrival of asylum-seekers as, quote, “an invasion of our country,” unquote. Language such as this is dangerous and can have tragic consequences. The perpetrator of the horrible mass shooting here in El Paso last month used the term invasion in his hate-filled manifesto and later told law enforcement officials that he was targeting Mexicans. I wonder what one of the sources of his ideas was?

This community has not only borne the brunt of the administration’s chaotic border policies, it is also grieving from the violent consequences of pervasive anti-immigrant rhetoric. Although I regret that we must continue to confront these issues, I cannot think of a more appropriate venue for this important hearing.

When I was in El Paso earlier this year, I toured several points of entry, observed overcrowded Border Patrol facilities, and visited Immigration and Customs Enforcement detention centers. I also talked with several nonprofit organizations in the area and heard firsthand accounts as to how the humanitarian crisis is unfolding.

Instead of addressing the root causes of migration, the violence that is going on in a few Central American countries, the threats, and competently managing the challenges at our border, the Trump administration has chosen to dehumanize immigrants and to exploit this crisis for political gain. In doing so, it has violated American laws and undermined American values. It has emotionally traumatized many children who have been torn from their families and held in unconscionable conditions. And it has promoted dangerous rhetoric that contributes to a climate of fear among immigrant communities and that at times has served as inspiration for violent attacks against immigrants.

The administration’s inhumane treatment of migrants must be viewed in the context of broader problems deep within the culture of our immigration enforcement system. These problems were aptly illustrated when racist and misogynist posts in a closed Facebook group of nearly 10,000 current and former Customs and Border Protection officers were recently exposed, posts that joke about migrant deaths and that disparage Congresswomen.

The sheer size of this group and the fact that the chief of the Border Patrol Carla Provost was a member at one time of this group, indicates a culture of disdain and cruelty to immigrants that has deeply infected the agency that can only be exacerbated by the bigoted and hateful rhetoric emanating from the White House. When coupled with this rhetoric, it puts the safety of immigrant communities and those who are perceived as immigrants at even greater risk.

This all reminds us of the anti-Semitic, anti-Italian, anti-Irish, anti-Catholic, and anti-Asian rhetoric that has stained our country at times in the past and gave rise to racist immigration laws in the late 19th and early 20th centuries. There must be accountability for the policy choices that got us here.

The Trump administration has repeatedly claimed that the abhorrent conditions and policies at the border are necessary to manage increased numbers of asylum-seekers. But let us be very clear about this. We have the capability to safely process these migrants and to manage the situation with compassion rather than with cruelty and racism and illegal actions.

Instead, the administration has opted for policies that compromise human safety and that exacerbate the crisis, policies such as locking up asylums-seekers and denying them bond hearings; policies such as the so-called migrant protection, in quotes, protocols, which have forced tens of thousands of asylum-seekers into unfamiliar and often dangerous communities in Mexico; and metering, which arbitrarily limits the number of people who can apply for asylum at official ports of entry each day and forces them to enter irregularly between these ports, subjecting them to further danger.

I am eager to hear from each of our witnesses today, and I thank them for offering their perspectives on the administration's border policies and the disturbing rise in anti-immigrant rhetoric in this country, including from this administration.

I thank the chair for arranging to hold this important hearing, and I yield back the balance of my time.

Ms. ESCOBAR. Thank you, Chairman Nadler.

Without objection, all other opening statements will be included in the record.

There will be two panels of witnesses for today's hearing. The first panel will discuss the relationship between the rise of anti-immigrant rhetoric and domestic terrorism. The second panel will focus on the Trump administration's border policies. I will now introduce the first panel of witnesses.

Jo Anne Bernal joined the El Paso County Attorney's Office in 1993. In 2009 she was appointed as the first female county attorney in El Paso's history and is currently the only female attorney board-certified in civil trial law in El Paso. Prior to joining the El Paso County Attorney's Office, she served as an assistant attorney general in the Law Enforcement Division of the Texas Attorney General's Office for six years. As county attorney, Ms. Bernal supervises approximately 100 employees, including 44 attorneys who practice both civil and criminal law.

Over the course of her career, she has demonstrated her commitment to ensuring that all victims of crime, including undocumented victims, are treated with dignity and respect and protected with the full force of law. Ms. Bernal was born and raised in El Paso and received her undergraduate and law degrees from the University of Texas at Austin.

Next, we have Dr. Monica Muñoz Martinez. Dr. Muñoz Martinez is an award-winning author, educator, and historian. An Andrew Carnegie fellow, Ms. Martinez is the Stanley J. Bernstein assistant professor of American studies and ethnic studies at Brown University where she is also a faculty fellow at the John Nicholas Brown Center for Public Humanities and the First-Generation College and Low-Income Students Center. Her research specializes in histories of violence and policing on the U.S.-Mexico border, among other subjects.

Last year, she published a book entitled *The Injustice Never Leaves You: Anti-Mexican Violence in Texas*, which analyzes many of the trends we will be discussing in this first panel. Professor Martinez is also a founding member of the nonprofit organization *Refusing to Forget* that calls for public commemorations of anti-Mexican violence in Texas. She received her B.A. from Brown University and her Ph.D. from Yale University.

And we have Alejandra Castillo, who has served as the chief executive officer at the YWCA USA since August of 2017. Previously, she served in senior leadership positions in two Presidential administrations and is an experienced attorney working in the public, private, and nonprofit sectors. Ms. Castillo served as senior White House advisor for the Office of National Drug Control Policy under the Clinton Administration. In 2014 she was appointed by the Obama administration to serve as the national director of the Minority Business Development Agency, becoming the first Hispanic-American woman to lead the agency. Ms. Castillo received her B.A. from the State University of New York at Stony Brook, her M.A. from the University of Texas at Austin, and her J.D. from American University.

We welcome all of our distinguished witnesses and thank them for participating in today's hearing. Now, if you would please rise, I will begin by swearing you in.

Do you swear or affirm under penalty of perjury that the testimony you are about to give is true and correct to the best of your knowledge, information, and belief, so help you God?

Let the record show the witnesses answered in the affirmative. Thank you, and please be seated.

Please note that each of your written statements will be entered into the record in its entirety. Accordingly, I ask that you summarize your testimony in five minutes. To help you stay within that time, our staff will be timing you on an iPad and will raise the iPad when you have one minute remaining.

Ms. Bernal, you may begin.

**TESTIMONIES OF JO ANNE BERNAL, COUNTY ATTORNEY, EL PASO COUNTY ATTORNEY'S OFFICE; MONICA MUÑOZ MARTINEZ, STANLEY J. BERNSTEIN ASSISTANT PROFESSOR OF AMERICAN STUDIES AND ETHNIC STUDIES, BROWN UNIVERSITY; AND ALEJANDRA Y. CASTILLO, CHIEF EXECUTIVE OFFICER, YWCA USA**

#### **TESTIMONY OF JO ANNE BERNAL**

Ms. BERNAL. Thank you. Good morning, Honorable Chair Escobar, Honorable Chair Nadler, and members of the Judiciary Committee. Welcome to El Paso. We are very honored to have each of you here today.

El Paso has found itself in the midst of a perfect and terrible storm. As you know, a little over a month ago a man drove into our city to kill our citizens because of the color of our skin. The hatred that motivated that man did not start that day. There has been a confluence of factors that precipitated the hostility that we saw in our community. This is a hostility towards immigrants and

towards brown people, but that hostility must be viewed through the prism frankly of governmental conduct.

We are all familiar with the hateful rhetoric discussed somewhat this morning that permeated the 2016 Presidential campaign, beginning with the declaration that Mexico was sending criminals, rapists, and drug smugglers to the United States and proceeding with a constant barrage of rhetoric about the need for the border wall. The reference to an invasion from the south can only make people fearful.

Trump administration's actions—putting children in cages, separating children from their parents, holding immigrants in conditions that are inhumane—reinforces his dehumanization of brown people. A common thread is that brown people, Mexicans, central Americans, are bad, are to be feared, are to be hated, are to be caged and to be sent back where they came from.

In February 2017, barely a month after the President took office, Federal immigration officials entered the El Paso County courthouse, proceeded to a court specifically designated as the protective order court, and detained an undocumented victim of domestic violence who was seeking protection from her abuser. The victim was removed from our courthouse by Federal officials and detained initially on immigration violations.

The very public and aggressive arrest is consistent with this President's urgency to treat immigrants like criminals and justify the need for the border wall and the detention of immigrant families. It was a stunning and unprecedented event in El Paso. A victim is deserving of protection regardless of her legal status, and a criminal is deserving of prosecution regardless of whether he has abused a citizen or a noncitizen in our community.

The incident went viral, and immediately, victims who were scheduled for a protective order hearing began to cancel their hearing dates because they were afraid to come into our courthouse. The incident has had a real and demonstrable chilling effect in El Paso. What we experienced in El Paso were Federal agents with a perceived license to take any steps they deemed necessary to round up undocumented victims. This perceived license for aggression comes from the top.

And while Federal authorities were ramping up the rhetoric and conduct against immigrants and Mexicans, the anti-immigrant rhetoric on the stateside was similarly front and center. Only months after Trump took office, the Governor of Texas signed a bill into law that is commonly referred to as S.B. 4. At the time, S.B. 4 was considered the most dramatic State crackdown yet on so-called sanctuary cities, and it came in a moment when the Trump administration had sought to do the same at the Federal level. S.B. 4 essentially prohibited local governments from doing anything that limited local law enforcement officers to enforce immigration laws. S.B. 4 contained provisions that criminalized a public official's actions in interfering with the enforcement of immigration laws.

It was marred by hateful rhetoric from the start. One of the authors of S.B. 4 is on record saying that one of the reasons and the need for the law was to get bad people. The author of the bill explained on the record that bad people were the illegals who needed

to go home. The law was not directed at felons and drug traffickers and human smugglers. It was directed generally at illegals.

El Paso has been ground zero in the immigration battle. Thousands of refugees from Central America have found their way to the United States through El Paso. Both State and Federal governments have sent an influx of military and law enforcement into our region, and the militarization of our border is our new normal.

It has been publicly reported that the shooter in El Paso complained about the Hispanic invasion. Note, please, that it was not an immigration invasion. It was not an illegal invasion or an undocumented invasion. It was not a complaint about drug dealers or human traffickers. It was reference to Hispanics. The bigotry and hate in the form of speech and government conduct have fueled the flames of violence, and we unfortunately are the targets. And this simply should not be the role of government in our country. Thank you.

[The statement of Ms. Bernal follows:]



United States House of Representatives  
Judiciary Committee  
September 6, 2019  
El Paso Texas  
Testimony: Jo Anne Bernal  
El Paso County Attorney

I. Intro:

Honorable Chairman Nadler and members of the Judiciary Committee. My name is Jo Anne Bernal and I am the El Paso County Attorney. Welcome to El Paso, we are honored to have you here in our community.

El Paso has found itself in the midst of a perfect and terrible storm. A little over a month ago a man drove into our city to kill our citizens because of the color of our skin. The hatred that motivated the shooter did not start that day. There has been a confluence of factors that precipitated the hostility we saw in our community. Underlying all these factors is the repeated speech directed at Latinos in this country. Sometimes the speech is subtle and other times not so subtle; but each time hateful speech is uttered or inferred, it reinforces the strong negative feelings against Latinos in this country and makes them less safe.

In El Paso, the hostility toward immigrants must be viewed through the prism of governmental conduct over the last several years. There has been a consistent pattern of governmental conduct on both the state and federal level that is, unfortunately, fueling hate and violence. It is time for government to put away the politics of hate and acknowledge that its actions have dire consequences for communities such as ours.

#### A. Presidential Campaign Rhetoric

We are all familiar with the hateful rhetoric that permeated the 2016 campaign. Beginning with Donald Trump's declaration that Mexico was sending criminals, rapists and drug smugglers to the United States and proceeding with the constant barrage of rhetoric about the need for the border wall. Trump has promoted hateful ideas designed to make Americans fear and despise immigrants from the South. Trump's reference to an "invasion" from the South can only make people fearful. His speech dehumanizes brown people. His administration's actions – putting children in cages, separating children from their parents and holding asylum applicants in inhumane conditions – reinforces his dehumanization of brown people. The repeated rhetoric implies or outright alleges, that brown people come

to our country to take advantage of public assistance, take jobs from US citizens, don't pay taxes and crowd our schools. The one common thread is that brown people, Mexicans, Central Americans are bad and are to be feared, hated and caged and sent back to where they came from.

B. ICE in the Courthouse;

In February 2017, barely a month after President Trump took office, federal immigration agents entered the El Paso County Courthouse, proceeded to a court specifically designated as the Protective Order Court and detained an undocumented victim of domestic violence who was seeking protection from an abusive partner. The victim was removed from the courthouse by federal officials and detained on immigration violations. The very public and aggressive arrest is consistent with Trump's urgency to treat immigrants like criminals and justify the need for the border wall and the detention of immigrant families.

It was a stunning and unprecedented event in El Paso. One of my duties of office is to obtain protective orders for victims of domestic violence, stalking and sexual assault. It is the County Attorney's policy to never ask a victim of violence about

her citizenship or immigration status. A victim is deserving of protection regardless of her legal status and a criminal is deserving of prosecution regardless of whether he has abused a citizen or non-citizen in our community.

The incident within the Courthouse went viral and immediately, victims scheduled for a protective order hearings began to cancel their hearing dates expressing fear of entering the Courthouse. In violating the sanctity of the courthouse, there was an immediate consequence. Victims were not protected and abusers were not deterred. U.S. citizens in need of a protective order had to think twice about seeking protection if any member of their family – a witness or relative – might face immigration authorities in the state courthouse.

Despite the assurances and feedback we received from federal agencies indicating this was an isolated and extraordinary event, the incident has had a real and demonstrable chilling effect on the rights of undocumented immigrant victims in our community.

For example, within days of the incident being made public, an undocumented mother of three U.S. citizen children who had sought a protective order to protect

her from stalking asked to withdraw her protective order because of threats by her former partner to report her to immigration authorities. Similarly, an undocumented mother who sought protection for her 17-year-old daughter who was the victim of dating violence and stalking asked to withdraw the request for the protective order because of her fear of ICE officials in the courthouse.

Following the ICE arrest in the courthouse, we have witnessed in El Paso a steady decrease in the number of domestic violence victims who seek protective orders. What we experienced in El Paso were federal agents with a perceived license to take any steps they deemed necessary to round up undocumented victims. This perceived license comes from the top.

C. SB 4:

While federal authorities were ramping up the rhetoric and conduct against immigrants and Mexicans, the anti-immigrant rhetoric on the state side was similarly front and center. Only months after Trump took office, the Governor of Texas signed a bill into law that is commonly referred to as SB4. At the time, SB 4 was considered “the most dramatic state crackdown yet on so-called “sanctuary

cities,” and came right at a moment when the Trump administration has sought to do the same at the federal level.” The Nation, *“Texas’ SB4 is the Most Dramatic State Crackdown Yet on Sanctuary Cities,”* June 1, 2017.

In a complicated statutory scheme, SB4 prohibited local governments from doing anything that limited local law enforcement officers’ ability to enforce federal immigration laws. Senate Bill 4 contained provisions that criminalized a public official’s actions in interfering with the enforcement of immigration laws. Indeed, the law originally contained sanctions against public officials for even making public statements against the local enforcement of immigration laws.

Make no mistake that SB 4 was marred by hateful rhetoric from the start. The author of SB 4 advanced four reasons for the need for SB4. One of those reasons was to “get at bad people.” 85 H.J. S8 Supplement (57th Legislative Day) at S8. One of the authors of the bill, Chairman Geren, explained that the “bad people” were the “illegals” who “need to go home.” 85 H.J. S15 (57th Legislative Day). The law was not directed at felons, drug traffickers or human smugglers, it was directed generally at “illegals” who were characterized as bad people.

Setting aside the questionable mandate that local law enforcement officials should have any role in enforcing federal immigration laws, the effect of these laws on minority communities continues to be felt. To allow, much less mandate, that local law enforcement be empowered to question a United States citizen about his citizenship solely on the basis of his skin color and a belief that he may have committed a non-violent crime puts all Latinos in our community at risk of being subject to racial profiling.

What was clear from this controversial law was that government was using anti-immigrant rhetoric to advance a political objective. In a city with a large immigrant community; these types of law makes our community less safe. Victims are less likely to report crimes, seek protection or interact with police.

El Paso County was one of the first entities to sue the State of Texas to challenge the constitutionality of SB4. Although we were successful at the district court level, the majority of the statute was upheld as facially valid by the Fifth Circuit. There remains a constitutional challenge in federal court regarding whether SB 4 was impermissibly enacted due to a racial animus.

#### D. Culmination of Hate

El Paso has been ground zero in the immigration battle. Thousands of refugees from Central America have found their way to the US through El Paso. And yet politicians use this fact to solicit donations from their base. Both state and federal governments have sent an influx of military and law enforcement into our region. The militarization of the border is our new normal. Does anyone really think that the images portrayed around the country and indeed the world, do not shape the world's view of Latinos in EP? The anti-immigrant rhetoric has spilled over to anti-Hispanic or anti-Latino rhetoric. Every time hate speech is left unchallenged, the hate is accepted as the new normal. Hate speech not only dehumanizes Latinos, it subtly suggests that we are somehow not quite as American as other Americans. It gives license for those filled with hate to treat us as "others."

It has been publicly reported that the shooter in EP complained about the "Hispanic Invasion". Note, it was not the immigrant invasion or illegal invasion or undocumented invasion. It was not a complaint about drug dealers or human traffickers. It was a reference to Hispanics. Bigotry and hate – in the form of speech and government conduct – have fueled the flames of violence and we are the target. This simply should not be the role of government or its leaders.



Ms. ESCOBAR. Thank you, Ms. Bernal.  
Dr. Muñoz Martinez.

### **TESTIMONY OF MONICA MUÑOZ MARTINEZ**

Ms. MUÑOZ MARTINEZ. Good morning. Honorable Chair Escobar, Chair Nadler, and members of the committee, I am so honored to be with you here today. Thank you for holding this urgent hearing. I am a historian, author, and a professor. My book *The Injustice Never Leaves You* recovers a period of racial terror between 1910 and 1920 when Mexican Americans and Mexican nationals were targeted with racial violence. Hundreds of people were killed, men, women, and children. People who witnessed this era frequently referred to it as *La Matanza*, the massacre.

There were three urgent historical lessons for today. First, 100 years ago, anti-immigrant and anti-Mexican rhetoric fueled an era of racial violence by law enforcement and vigilantes. Second, racist rhetoric shaped immigration policies and Jim Crow laws targeting Mexican Americans. And third, legislators and the judicial system failed to correct the course of history, and violence continued throughout the 20th century.

This was an era of State-sanctioned racial violence. Politicians and law enforcement used anti-Mexican rhetoric to fuel fear of the border and fear of border communities. People who looked Mexican were described as inherently violent, un-American, as bandits, and murderers. Even in death, victims were criminalized by police reports and in the media.

In 1919, U.S. Congressman Claude Hudspeth of west Texas described hordes of Mexican bandits just south of the border as an ever-present threat. He publicly justified State police officers shooting Mexicans on site. He testified under oath, quote, "You have got to kill those Mexicans when you find them or they will kill you."

But politicians went beyond rhetoric. They funded the militarization of the border and Texas Governors offered their pardoning power to State police who committed crimes. Law enforcement and vigilantes enjoyed a culture of impunity. Three cases showed that either class, age, gender, or citizenship protected people who looked Mexican.

In September 1915 in south Texas two landowning American citizens, Antonio Longoria and Jesus Bazan, met with State police to report that they had been robbed. While returning home, the two men were shot in the back by a posse that included a State police captain. There were no investigations. No one was ever prosecuted.

In January 1918 a group of Texas Rangers, U.S. soldiers, and civilians traveled to Porvenir in west Texas and arrested 15 men and boys. The Texas Rangers then massacred the 15 prisoners in cold blood. Despite investigations by Mexican and U.S. Governments, no civilians or officers were ever prosecuted.

In April 1919, Concepcion Garcia was shot by a U.S. soldier when she crossed the Rio Grande into Mexico to return home. A military court found the soldier guilty of manslaughter, but months later President Woodrow Wilson ordered that the soldier be freed and reinstated for military duty. Concepcion was nine years old.

There are thousands of records that shed light on this history thanks to politicians, sheriffs, diplomats, and attorneys, Anglos and

Mexicans that tried to end this violence. Sheriff William Vann, for example, publicly testified to the murder of innocent people and tried to have the State police removed from Cameron County. Many of the leaders were surveilled and intimidated.

In 1919 State Representative Jose T. Canales, the sole Mexican American elected to State office in Texas, led a congressional investigation into abuse by the State police. He himself received death threats from law enforcement. That legislative committee concluded that the officers were, quote, “guilty of and are responsible for the gross violation of both civil and criminal laws of the State.” And yet officers were not prosecuted for crimes, and there was no admission of guilt or wrongdoing by the State.

One hundred years ago, elected officials heard accounts of injustice taking place in the name of national security, and they heard calls for change. They could have heeded the calls for justice. Instead, they chose to maintain the status quo, ensuring that racial violence and hate would continue. Moreover, racism took shape in Jim Crow laws that segregated and disenfranchised Mexican-Americans and in restrictive immigration policies.

Today, I urge you to learn from these lessons of history, to heed the ongoing calls for social justice. History teaches us that failing to act will ensure that suffering, violence, and death will continue, patterns of violence will persist, and the impact will be felt for generations to come. Thank you for your time.

[The statement of Ms. Muñoz Martinez follows:]

TESTIMONY OF

**MONICA MUÑOZ MARTINEZ, PHD**

STANLEY J. BERNSTEIN ASSISTANT PROFESSOR OF AMERICAN STUDIES AND  
ETHNIC STUDIES,  
BROWN UNIVERSITY

BEFORE

COMMITTEE ON THE JUDICIARY  
SUBCOMMITTEE ON THE IMMIGRATION AND CITIZENSHIP

HEARING ON

**“OVERSIGHT OF THE TRUMP ADMINISTRATION’S BORDER POLICIES AND  
THE RELATIONSHIP BETWEEN ANTI-IMMIGRANT RHETORIC AND  
DOMESTIC TERRORISM”**

FRIDAY, SEPTEMBER 6, 2019

Chair Escobar, Chair Nadler, Ranking Member Buck, and Members of the Subcommittee:

Thank you for holding this hearing. I am glad to speak today on the history of anti-immigrant and anti-Mexican rhetoric and its role in inspiring state sanctioned and vigilante violence in Texas. The historical lessons for today, I believe, are urgent.

In the early 1900s bridges crossed the Rio Grande connecting families and friends living in U.S. towns, like Brownsville and El Paso, with families and friends living in neighboring Mexican towns, like Matamoros and Ciudad Juárez. The life source of the river connected these border communities. People moved back and forth across the border for work, for school, and for social gatherings. They were interwoven, connected socially, culturally, and economically. U.S. towns developed into cities in tandem with their Mexican neighbors, thanks to the innovation and labor of Mexican Americans and Mexican nationals who built and powered agricultural, mining, and railroad industries. Yet, during this same era, these communities became increasingly militarized and residents, regardless of citizenship or legal immigration, suffered abuse by police.<sup>1</sup>

Mexican Americans and Mexican nationals had long been targets of racial violence. Historians have recorded at least 547 lynchings of Mexican Americans and Mexican nationals between 1848 and 1928. Nearly half of these tragedies, approximately 232, took place in Texas.<sup>2</sup> For a fuller understanding of what it meant to live in a period of racial terror, historians agree that we must also consider the victims of all state sanctioned violence, including people who were denied due process, abused, killed in police custody, or left vulnerable to suffer from vigilante violence. The decade between 1910 and 1920 proved particularly brutal, as Mexican Americans and Mexican nationals were criminalized and harshly policed by vigilantes, law enforcement, and U.S. soldiers who claimed the lives of hundreds of victims. Violence took many forms. Victims were intimidated, tortured, and killed by hanging, shooting, beating, and some were burned alive. Hundreds were murdered. Nearly all the known victims were adult men, though women and children also suffered.

Presidents, governors, congressmen, and journalists in the English language press played particularly important roles in shaping public perceptions of this violence. Many celebrated this era of brutality; more dead Mexican bodies were presented to the American public as progress, as a way to secure the border, and controlling a racial menace. Mexican Americans and Mexican nationals were racially profiled as bandits, revolutionaries, rapists, and murderers. In death, victims of racial violence were criminalized in media headlines and photographers captured police and soldiers posing next to Mexican corpses as if the bodies were trophies. Some used violence to try to eliminate the Mexican population all together, others used violence as a measure to control a much needed labor force.

There are three urgent historical lessons we should heed for today:

<sup>1</sup> For more on this history see the recent book by the author Monica Muñoz Martínez, *The Injustice Never Leaves You: Anti-Mexican Violence in Texas* (Cambridge, MA: Harvard University Press, 2018) and the works of David Montejano, *Anglos and Mexicans in the Making of Texas, 1836–1986* (Austin: University of Texas Press, 1987); Miguel Levano, *Militarizing the Border: When Mexicans Became the Enemy* (College Station: Texas A&M University Press, 2012); Elliott Young, *Catarino Garza's Revolution on the Texas–Mexico Border* (Durham, NC: Duke University Press, 2004); Richard R. Flores, *Remembering the Alamo: Memory, Modernity, and the Master Symbol* (Austin: University of Texas Press, 2002); Patricia Nelson Limerick, *Legacy of Conquest: The Unbroken Past of the American West* (New York: Norton, 1987); Mario T. García, *Desert Immigrants: The Mexicans of El Paso, 1880–1920* (New Haven, CT: Yale University Press, 1982); Monica Perales, *Smeltertown: Making and Remembering a Southwest Border Community* (Chapel Hill: University of North Carolina Press, 2010); Arnoldo De León, *War along the Border: The Mexican Revolution and Tejano Communities* (College Station: Texas A&M University Press, 2012); James Sandos, *Rebellion in the Borderlands: Anarchism and the Plan de San Diego* (Norman: University of Oklahoma Press, 1992); Benjamin Heber Johnson, *Revolution in Texas: How a Forgotten Rebellion and Its Bloody Suppression Turned Mexicans into Americans* (New Haven, CT: Yale University Press, 2003).

<sup>2</sup> William D. Carrigan and Clive Webb, *Forgotten Dead: Mob Violence against Mexicans in the United States, 1848–1928* (Oxford: Oxford University Press, 2013).

- 1) Anti-immigrant and anti-Mexican rhetoric fueled an era of state sanctioned racial violence that denied the civil rights of American citizens and Mexican nationals.
- 2) Anti-immigrant and anti-Mexican violence continued despite efforts by advocates working to end racial violence. Instead of correcting the course of history, the state and judicial systems failed to hold accountable elected officials who called for violence or to prosecute law enforcement officers who committed crimes.
- 3) Racist rhetoric shaped immigration policies, brutal policing practices, Jim Crow style laws aimed at segregating and disenfranchising Mexican Americans, and resulted in the militarization of the U.S.-Mexico border.

### HISTORICAL CONTEXT

This history of violence takes shape around the contested creation of the U.S.–Mexico border and efforts for economic control by new Anglo settlers. In 1821, Mexico gained its independence from Spain. But within 40 years of independence, a tangled series of conflicts—the Texas Revolution (1836) and the U.S.–Mexico War (1846–1848)—resulted in the United States acquiring half of Mexico’s territory. As a result, the political border of the region now known as Texas was continually shifting. Native American nations, especially the Comanche, continued to contest outside governance— Spanish, Mexican, Texan, and ultimately American—in the region. Anglo migration into the region meant that settlers had to interact with Native Americans and Mexicans, two groups that struggled throughout the nineteenth century to maintain their place in the region as the colonial powers shifted.

These constructed and changing boundaries required constant surveillance and enforcement. In 1823 Stephen F. Austin, an early Anglo settler who lived in the region soon to be Texas, organized a small group of men, called rangers, to protect settlers and their property. After Texas claimed independence from Mexico in 1836, these men worked to ensure that Anglo settlers succeeded in the new Republic of Texas. That success, however, came at the expense of groups identified as enemies. The Texas Rangers were described as a “fighting force” created by Anglo settlers to fight in the ongoing war for racial supremacy, battling Mexican landowners and indigenous nations, including the Tonkawas, Lipan Apache, Waco, Karankawa, Kiowa, and Comanche. The Texas Rangers targeted both the “Indian warrior” and the Mexican *vaquero* as enemies of white supremacy.<sup>3</sup>

The Rangers also helped preserve a slave-based agriculture by violently policing enslaved African men and women. During the state’s long history of chattel slavery, the Rangers tracked and punished enslaved people trying to cross the Rio Grande to freedom in Mexico. Rangers frequently broke the neutrality laws that forbade their trips across the border. They also terrorized ethnic Mexicans accused of harboring runaway slaves.<sup>4</sup>

In the early nineteenth century, Texas Rangers blurred the lines between enforcing state laws, practicing vigilantism, and inciting racial terror. Historians now view the Texas Rangers as the first prominent Western vigilantes to be endowed with legal authority.<sup>5</sup> The most frequent complaints of Texas Rangers abusing their power came through what some referred to as *la ley de fuga*, or the law of flight or escape. Under this morbid legal regime, Rangers released prisoners and ordered them to run.

<sup>3</sup> Matia Josefina Saldaña, *Indian Given: Racial Geographies across Mexico and the United States* (Durham, NC: Duke University Press, 2016) 7. Walter Prescott Webb, *The Texas Rangers: A Century of Frontier Defense* (Austin: University of Texas Press, 1995); Karl Jacoby, *Shadows at Dawn: An Apache Massacre and the Violence of History* (New York: Penguin, 2008); Ned Blackhawk, *Violence over the Land: Indians and Empires in the Early American West* (Cambridge, MA: Harvard University Press, 2008).

<sup>4</sup> Robert Perkinson, *Texas Tough: The Rise of America’s Prison Empire* (New York: Picador, 2010), 52–55;

<sup>5</sup> Linda Gordon, *The Great Arizona Orphan Abduction* (Cambridge, MA: Harvard University Press, 1999), 262, 266; Kelly Lytle Hernández, *Migrant: A History of the U.S. Border Patrol* (Berkeley: University of California Press, 2010).

Officers then proceeded to shoot the prisoner while in flight, later filing reports that they had killed the prisoner to prevent escape or because the prisoner resisted arrest. As early as 1870, a newspaper editor from west Texas reported disgust at the frequency with which Texas Rangers used the expressions “killed while attempting to escape” and “killed while resisting arrest.” The editorial alleged that these expressions had dire resonances “that are fast coming to have a melancholy and terrible significance to the people of Western Texas. They furnish the brief epitaph to the scores who have fallen and are falling victims to the ignorance, the arrogance, or the brutality of those charged with the execution of the law.”<sup>6</sup>

New American property laws and taxation ignored Mexican property rights under the 1848 Treaty of Guadalupe Hidalgo. The treaty culminated in a sweeping reorganization of Anglo-Mexican relations in Texas.<sup>7</sup> Taxation, court-ordered surveys of land boundaries, and challenges to the validity of Spanish land grants saw Mexican landowners depleting their cash to pay legal fees.<sup>8</sup> This agricultural revolution brought skyrocketing land values and inspired outside land developers and commercial farmers to migrate to south Texas. Historian David Montejano explains that land promoters worked to “convert pastures into plow fields” and so helped replace ranching with farming. Montejano describes this as “one of the most phenomenal land movements in the history of the United States.”<sup>9</sup>

Media coverage portrayed south Texas as having infinite economic potential that was wasted in the hands of inferior ethnic Mexicans. Yet, employers relied on Mexican wage labor to cultivate the land for the coming agricultural revolution. Teams of men and boys cleared dense countryside of mesquite trees and cacti covered in barbs and thorns, which choked the landscape and made farming difficult. Rows of crops soon replaced brush country.<sup>10</sup> Ethnic Mexicans in the Southwest found themselves assigned as manual agricultural labor in this new economy, giving rise to the popular Mexican saying “*con el alambre vino el hambre*”—with the barbed wire came hunger.<sup>11</sup>

<sup>6</sup> As quoted in Webb, *The Texas Rangers*, 227; editorial in the *Victoria Advocate* reprinted in the *Austin Daily Republican*, October 10, 1870.

<sup>7</sup> For more on the American property laws and the denial of property rights of Mexicans throughout the southwestern United States, see Richard White, “It’s Your Misfortune and None of My Own”: *A New History of the American West* (New York: Norton, 1993); Patricia Nelson Limerick, *Legacy of Conquest: The Unbroken Past of the American West* (New York: Norton, 1987); Montejano, *Anglos and Mexicans*; David Weber, ed., *Foreigners in Their Native Land: Historical Roots of Mexican Americans* (Albuquerque: University of New Mexico Press, 1973); Maria Montoya, *Translating Property: The Maxwell Land Grant and Conflict over Land in the American West, 1840 to 1920* (Berkeley: University of California Press, 2002); Audrey Smedley, *Race in North America: Origin and Evolution of a Worldview* (Boulder, CO: Westview Press, 2007).

<sup>8</sup> When landowners came up short on paying taxes or private debts, county sheriffs and county courts would coordinate auctions at which thousands of acres could be purchased for less than a penny an acre. Texas laws targeted Mexican property owners in the state. Walter Prescott Webb wrote that Mexicans became “victimized by the law” in their person and property. Webb, *The Texas Rangers: A Century of Frontier Defense* (Austin: University of Texas Press, 1995), 175–176; Montejano, *Anglos and Mexicans*, 51–53.

<sup>9</sup> By the 1920s, the number of farms increased dramatically while their size decreased. Land developers recruited Anglo buyers from the Mississippi Valley to settle in the region and take part in the “farm revolution.” In Hidalgo County, for example, the 1910 census records showed 677 farms averaging 969.5 acres, but by 1930 the numbers jumped to 4,327 farms averaging 126.9 acres. Successful recruitment efforts resulted in rapid population growth in the region as well. In the early 1900s the population in deep south Texas counties totaled 79,934, but by 1920 the population rose to 159,842, and in 1930 the number doubled to 322,845. With the completion of the railroad in 1904, produce grown in south Texas could be shipped from Brownsville to Corpus Christi and on to national markets via the Missouri-Pacific railroad system. By 1907 the railway hauled approximately 500 carloads of farm products daily. A new wave of Anglo migration came to the Texas–Mexico border region. Montejano, *Anglos and Mexicans*, 106–109.

<sup>10</sup> Elliott Young, *Catarino Garza’s Revolution on the Texas–Mexico Border* (Durham, NC: Duke University Press, 2004), 7, 209–211, 215.

<sup>11</sup> Richard R. Flores, *Remembering the Alamo: Memory, Modernity, and the Master Symbol* (Austin: University of Texas Press, 2002), 46; Gerardo Cadava argues convincingly that the border continued to remain permeable through the mid-

New Anglo settlers transformed the social and political landscape as well as the physical one. The newcomers disenfranchised Mexican Americans and minimized their social, economic, or political influence. Despite their legal status as citizens and their long history in the region, Anglo settlers did not believe Mexican Americans deserved the rights and privileges of Americans. They insisted on a new code of social relations, which in turn initiated a new racial order. They passed Jim Crow segregation laws that prohibited interracial marriages and racially segregated neighborhoods, schools, churches, and restaurants. New arrivals described Mexican Americans seen as ignorant and unfit for participation in elections. One newspaper demeaned local Mexican residents as a “class of foreigners who claim American citizenship but who are as ignorant of things American as the mule.”<sup>12</sup>

In contrast to dehumanizing characterizations of Mexican Americans, several articles published in the Spanish-language newspaper *La Cronica* challenged the racism sweeping across south Texas. Journalists like Jovita Idar, writing in the midst of the social upheaval, criticized Anglo politicians and landowners for denying civil rights to ethnic Mexican residents in Texas and for relegating them to cheap labor. One article in 1910 described Mexican American exclusion from schools as a grave attempt to create an ignorant class. Moreover, some journalists wrote against the frequent use of vigilante violence to create a docile labor force. The article charged that through violence Anglos attempted to “condemn the Mexicans to a condition of beasts of burden.”<sup>13</sup>

Although the farm colonization in the region was well under way, proximity to Mexico left many new settlers feeling vulnerable. Politicians, military leaders, and local residents increasingly portrayed residents of the Mexican nation as a threat to American capitalist interests in the Southwest. The ethnic Mexican population was growing, too. Mexican nationals migrated north to escape an economic depression in 1880 and a recession in 1906. These new arrivals were largely recruited to work in agriculture, mining, and in railroad construction. Between 1910 and 1920 even more Mexicans crossed over into the United States to escape the Mexican Revolution. During the civil war in Mexico as many as one million Mexicans sought refuge in the United States. Most of them came via the Texas–Mexico border. Although many refugees soon returned to Mexico, the number of ethnic Mexicans in the United States tripled during the decade of the 1910s.<sup>14</sup>

Beyond proximity and population growth, the turbulence of the Mexican Revolution in Northern Mexico catalyzed more propaganda stoking fear of the U.S.–Mexico border. Some residents worried that the revolutionary plots to overthrow the Porfirio Díaz presidency and redistribute land in Mexico could spill across the border and threaten Anglo property ownership and U.S. control. Texas responded with violence directed and carried out by state agencies. In 1913, Governor Oscar Colquitt dispatched over 1,000 state militiamen and the Texas National Guard to appease residents of Brownsville and El Paso. As U.S. soldiers trained for World War I deployment and now stationed on the Texas–Mexico border, they transformed the region into a militarized zone. These troops used the newest advances in military technology, including barbed wire, spotlights, tanks, machine guns, and airplanes to keep watch on Mexican residents.

Between 1914 and 1919, Texas and the U.S. government created the conditions for a dramatic increase in violent policing. By 1916 the Wilson administration had deployed approximately 100,000 National Guard troops along the border between Yuma, Arizona, and Brownsville, Texas.<sup>15</sup> In 1915

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twentieth century. Cadava, *Standing on Common Ground: The Making of a Sunbelt Borderland* (Cambridge, MA: Harvard University Press, 2013).

<sup>12</sup> *Cariño Springs Javelin*, August 5, 1911, quoted in Montejano, *Anglos and Mexicans*, 131.

<sup>13</sup> Los Mexicanos de San Angelo Demandan a Los Sindicos de las Escuelas Públicas,” *La Cronica*, June 25, 1910.

<sup>14</sup> See Mario T. García, *Desert Immigrants: The Mexicans of El Paso, 1880–1920* (New Haven, CT: Yale University Press, 1981); Johnson, *Revolution in Texas*, 59.

<sup>15</sup> Dunn, *The Militarization of the U.S.–Mexico Border*, 9; Evan Anders, *Boss Rule in South Texas: The Progressive Era* (Austin: University of Texas Press, 1982), 215–218; Arnoldo De León, *War along the Border: The Mexican Revolution and Tejano*

the state police included only twenty-six men, so the Texas legislature increased the state budget and the governor expedited the hiring process. In 1916 hundreds of new Texas Rangers patrolled the region; by 1918 the force swelled to approximately 1,350 Rangers. By decade's end, the intersecting regimes of vigilante, state, and military policing took hold of the broader social landscape, declaring all Mexicans enemies of the state.<sup>16</sup>

Refugees fleeing the Mexican Revolution encountered these militarized zones. Nativist Anglo Americans saw the refugees as a threat, denied them humanitarian aid, and imprisoned them. In 1914, for example, defeated Mexican federal soldiers and panicked civilians crossed into west Texas to escape the devastations of civil war. Mexican soldiers and Mexican women and children walked on foot across the unforgiving desert from the border town of Presidio seventy miles to Marfa, where a train transported them to a camp in Fort Bliss, near El Paso. While detained, Mexican prisoners were forced to build a prison camp that stretched across forty-eight acres of land. An intimidating barbed wire fence, stacked ten strands high and secured to the ground by hog-wire fence, surrounded the camp. Some reported that electricity charged the barbed wire fence with a lethal current. Exposed to the harsh desert elements, prisoners, including children, died while in U.S. custody.<sup>17</sup>

Relations continued to worsen. The late summer months of 1915 proved to be exceptionally violent. Vigilante groups formed with euphemistic names, like "Home Guard" and "Law and Justice League" formed to inflict fear and violence. Rangers similarly initiated a revenge-by-proxy policy, killing ethnic Mexicans, regardless of evidence of guilt, merely for being near the location of a crime. They profiled any ethnic Mexican as a Mexican bandit, made arrests, and then left prisoners vulnerable to mob violence. Historian Benjamin Johnson describes the Rangers' methods as ethnic cleansing: an attempt to remove Mexicans, whether citizens of Mexico or the United States, from Texas.<sup>18</sup>

Some described the violent period as an "orgy of bloodshed." Living in terror, many remember an "exodus" of ethnic Mexicans—families who fled to Mexico to escape state terror in Texas. Lon C. Hill, appointed to the Texas Rangers as a special Ranger in August 1915, noted that the exodus became so widespread that farmers raised concerns because their field laborers were fleeing to Mexico. The workforce, according to Hill, seemingly "evaporated." Hill noted that even landowners fled to Mexico, some leaving thousands of head of cattle behind.<sup>19</sup>

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*Communities* (College Station: Texas A&M University Press, 2012). Texas Rangers enlistment papers and rolls available at the Texas Adjutant General's Department Service Records (TAGDSR), Archives and Information Services Division (AISD), Texas State Library and Archives Commission (TSLAC), Austin, TX.

<sup>16</sup> José T. Canales, testimony, "Proceedings of the Joint Committee of the Senate and the House in the Investigation of the Texas State Ranger Force," Adjutant General Records, Texas State Library and Archives Division, 678; E. M. Sorrenson, testimony, "Proceedings," 1034.

<sup>17</sup> John McKiernan-González reminds us that a mounted medical guard preceded the Border Patrol by forty years. In 1882 the U.S. Marine Hospital Service drew a 146 mile-long line from Laredo to Corpus Christi and quarantined residents south of that line. McKiernan-González, *Fevered Measures: Public Health and Race at the Texas Mexico Border, 1848–1942* (Durham, NC: Duke University Press, 2012) 10; "Prison Camp Is a Real Showground," *El Paso Herald*, March 18, 1914; "Mexican Refugees Won't Be Sent Back," *New York Times*, January 13, 1914; "Soldiers Shoot Mexican at Marfa," *El Paso Herald*, January 12, 1914; "Vaccinations Are Blamed for Deaths," *El Paso Herald*, February 14, 1914; Lona Whittington, "Road of Sorrow: Mexican Refugees Who Fled Pancho Villa through Presidio, Texas, 1913–1914" (master's thesis, Sul Ross State University, Alpine, Texas, 1976), 3, 21, 57, 72–73.

<sup>18</sup> For more on the practice of ethnic cleansing, see Johnson's chapter "Repression," in *Revolution in Texas*, 108–143; Elliott Young, *Catarino Garza's Revolution on the Texas–Mexico Border* (Durham, NC: Duke University Press, 2004), 311; Webb, *The Texas Rangers*, 478; David Montejano, *Anglos and Mexicans in the Making of Texas, 1836–1986* (Austin: University of Texas Press, 1987); Arnoldo De León, ed., *War along the Border: The Mexican Revolution and Tejano Communities* (College Station: Texas A&M University Press, 2012).

<sup>19</sup> Texas judge James Wells estimated that in Hidalgo and Cameron Counties alone Texas officers and vigilantes executed between 250 and 300 Mexican men in less than a year. Trinidad Gonzales, "The Mexican Revolution, *Revolución de Texas, and Matanza de 1915*," in *War along the Border: The Mexican Revolution and Tejano Communities*, ed. Arnoldo De León (College



Entire communities abandoning their homes, jobs, land, and livestock to flee to a country in the throes of a civil war reveals the danger of being Mexican in Texas. Ethnic Mexicans made difficult decisions on a daily basis. They had to evaluate when to travel, how to interact with law enforcement agents, and how to protect their families from state and vigilante violence. Residents of south Texas have remembered this period as *la matanza*, the massacre, a period of indiscriminate murder of ethnic Mexicans without fear of prosecution.

#### ANTI-IMMIGRANT AND ANTI-MEXICAN RHETORIC

While Mexican federal soldiers and civilian refugees were treated as national threats and placed in prison camps, civilians in Texas accused of being revolutionaries or bandits could expect far worse treatment. In 1915, for example, the *New York Evening Telegram* published a cartoon by Nelson Green depicting a grinning Uncle Sam using a shovel to toss piles of dead Mexican revolutionaries wearing sombreros into an “international rubbish can.”<sup>20</sup> In the 1910s, English-language newspapers popularly justified the murders of men described as Mexican bandits as a necessary defense of Anglo livestock, property, and finances. In 1915 one article explained, “Lynch law is never a pleasant thing to contemplate, but it is not to be denied that it is sometimes the only means of administering justice.”<sup>21</sup> Criminalizing and dehumanizing ethnic Mexicans, depicting them as waste or as deserving of vigilante violence, made people profiled as “Mexican” vulnerable to violence as it supported demands to police the border. The press publicized racial violence through the retelling of mob acts.

Politicians led the calls for the border militarization and justified extralegal violence at the hands of police. Despite growing abuses, state law enforcement received wide support from the Texas governor’s office to use any means necessary to exert control over the border region. Successive Texas governors, first Oscar Colquitt and then James Ferguson, gave the state officers clear instructions to use their authority without hesitation. During his administration, Colquitt wrote to Captain John R. Hughes, “I instruct you and your men to keep them [Mexican raiders] off of Texas territory if possible, and if they invade the State let them understand they do so at the risk of their lives.”<sup>22</sup>

When Governor Ferguson took office in 1914, he offered similar instructions to his captains and even assured the men he would protect them from future prosecutions. One Anglo rancher from Monte Cristo, near San Guadalupe del Torero Ranch, later explained that the governor told him that he “had given [Captain Henry] Ransom instructions to go down there and clean it up if he had to kill every damned man connected with it.” According to the rancher, the governor explained: “I firmly told Ransom that if he didn’t do it—if he didn’t clean that nest up down there that I would put a man

Station: Texas A&M University Press, 2012) 107–133; Pierce, *A Brief History*, 103; Judge James B. Wells, testimony, “Proceedings,” 676; Lon C. Hill, testimony, “Proceedings,” 1145–1146.

<sup>20</sup> Nelson Greene, artist, *Uncle Sam Picking Up Mexican Revolutionists with Shovel for the International Rubbish Can*, Mexico, 1915, Cartoon Drawings Collection, LC-DIG-acd-2a08860, Library of Congress Prints and Photographs Division, Washington, D.C.

<sup>21</sup> “Necktie Party,” *Lynchford Courier*, August 6, 1915. The article responded to the vigilante lynching near San Benito, Texas, of a man they identified as Adolfo Muñoz; “Masked Men Hold Up Officer, Take Prisoner, Lynch Him,” *Brownsville Herald*, July 29, 1915; José T. Canales, testimony, “Proceedings,” 945. In the state investigation, Representative Canales refers to the lynched victim as “Rodolpho Muñoz.” In other historical documents Muñoz is identified as Rudolfo Muñoz, Rudolpho Muñoz, and Adolfo Muñoz, and that he was lynched on July 29, 1915. This is the same event that the NAACP referred to as the lynching of “Adolfo Muñoz.” See Trinidad Gonzales, “The Mexican Revolution, Revolución de Texas, and Matanza de 1915,” in *War along the Border: The Mexican Revolution and Tejano Communities*, ed. Arnoldo De León (College Station: Texas A&M University Press, 2012), 118; Johnson, *Revolution in Texas*, 86–87.

<sup>22</sup> See Johnson’s chapter “Repression,” in *Revolution in Texas*, 108–143; Trinidad Gonzales, “The Mexican Revolution, Revolución de Texas, and Matanza de 1915,” in *War along the Border: The Mexican Revolution and Tejano Communities*, ed. Arnoldo De León (College Station: Texas A&M University Press, 2012) 107–133; Mike Cox, “A Brief History of the Texas Rangers,” <http://www.texasranger.org/texas-ranger-museum/history/brief-history/>.

down there that would. . . . I have the pardoning power and we will stand by those men, and I want that bunch—that gang cleaned up.”<sup>23</sup>

During a Texas congressional investigation into abuse at the hands of the Texas Rangers in 1919, U.S. congressman Claude Benton Hudspeth endorsed a revenge-by-proxy form of policing. Representing the Sixteenth District of west Texas, he stated, “a Ranger cannot wait until a Mexican bandit behind a rock on the other side shoots at him three or four times. . . . [Y]ou have got to kill those Mexicans when you find them, or they will kill you... I don’t believe in this, Mr. Chairman, in extending very much clemency to men who come across the River and murder our wives and children.”<sup>24</sup> The Congressman went further to endorse vigilante violence. He continued, “Now I am going to be candid with you, talk about the mob law, if I had it in my power I would lead a mob in a minute against them, and if you reduce these Rangers or curtail them to the extent that they cannot cope with the situation....,there will be people that will respond, and I will come back from Washington to lead them if I am needed. We are going to protect our property.”<sup>25</sup>

Hudspeth helped to entice panic. When it was reported that Mexican bandits raided an Anglo ranch, or worse, murdered an Anglo Texan, any ethnic Mexican in the region could be suspected and targeted with violence. He described hordes of Mexican bandits just south of the border as an ever-present threat, waiting for the right moment to attack. If the state reduced the number of agents, he believed, the consequences would be swift and violent. His account proved vital in convincing legislators from other regions of Texas that the criminal nature of Mexicans necessitated extralegal violence to maintain peace. To the congressmen, any Mexican, on either side of the border, posed a dangerous threat. The congressman’s sweeping criminalization of an entire population sanctioned the use of violence as a strategy for policing the border region. His voice is merely one of many others that called for and sanctioned anti-Mexican violence.<sup>26</sup>

#### ANTI-MEXICAN VIOLENCE AND CULTURES OF IMPUNITY

Anti-immigrant and anti-Mexican rhetoric fueled further violence and left Mexican Americans and Mexican nationals to suffer violence from an intersecting regime of vigilantes, law enforcement, and U.S. soldiers who claimed the lives of hundreds of victims. The failure of federal and state governments to prosecute crimes meant that members of law enforcement and vigilantes could rely on a culture of impunity. Assailants rarely faced arrest, grand juries regularly failed to indict the accused, and as a result, crimes were not prosecuted. Police abuse and collusion with vigilante mobs, followed by state cover-ups, set a pattern for sanctioned abuse. When presidents and governors offered pardoning power to law enforcement, violence by police and vigilantes became pervasive. Instead of correcting the course of history, the state and judicial systems failed to hold accountable elected officials that called for violence or to prosecute law enforcement officers that committed crimes.

Four examples below provide insight into this reign of terror and the culture of impunity that prevailed:

<sup>23</sup> Utley, *Lone Star Lawmen*, 27, 28, 260.

<sup>24</sup> U.S. Congressman Claude Benton Hudspeth, testimony, “Proceedings,” 969–970, 977, 992–994.

<sup>25</sup> Ibid.

<sup>26</sup> For more on the long history of politicians, military officials, and doctors justifying inhumane treatment and extralegal violence see: Martínez, *The Injustice Never Leaves You*; John McKiernan-González, *Fevered Measures: Public Health and Race at the Texas-Mexico Border, 1848–1942* (Durham, NC: Duke University Press, 2012); William D. Carrigan and Clive Webb, *Forgotten Dead: Mob Violence against Mexicans in the United States, 1848–1928* (Oxford: Oxford University Press, 2013); Elliott Young, *Catarino Garza’s Revolution on the Texas–Mexico Border* (Durham, NC: Duke University Press, 2004); Arnoldo De León, ed., *War along the Border: The Mexican Revolution and Tejano Communities* (College Station: Texas A&M University Press, 2012).

*Lynching of Antonio Rodríguez in Rocksprings, 1910*

In November 1910, a mob in Rocksprings, Texas removed twenty-year-old Antonio Rodríguez from a county jail, where he stood accused of murdering a local resident Effie Greer Henderson. A local mob formed, took Rodríguez from police custody, marched him to the edge of town, bound him to a mesquite tree, saturated kindling with kerosene, and burned Rodríguez alive at the stake. Newspapers reported that thousands of local residents attended the lynching. The brutality of the lynching captured international media coverage. Over the next days, weeks, and months, reporters, diplomats, and Texas Rangers would descend on Rocksprings to investigate the lynching. The English-language press stoked fear by circulating rumors that Mexican mobs planned revenge. On November 14 the *El Paso Times* published an article that claimed a Mexican mob had been sighted marching toward Rocksprings to seek revenge. Although such a march through rough and unforgiving terrain was unlikely, the rumors caught national attention. The *New York Times* reported that more than 2,000 “Texas cowboys” descended on Rocksprings to defend the rural community from the oncoming Mexican demonstrators. Only two days later the *El Paso Times* confessed that the claims of encroaching Mexican demonstrators proved to be mere rumor, but the media portrayals of savage Mexicans and a dangerous international border had done their part to shape public opinion. No civilians or officers were ever prosecuted for the lynching in Rocksprings.<sup>27</sup>

*Double Murder of Jesus Bazán and Antonio Longoria in Hidalgo County, 1915*

In September 1915 in Hidalgo County, Antonio Longoria and Jesus Bazán, both longstanding landowners and one a county official, faced a difficult decision. When a group of armed men rode onto their ranch and stole horses, Bazán and Longoria had to decide whether or not to report the robbery to local police. On the one hand, they knew that if they reported the robbery to authorities, they could face the wrath of the group that had raided the ranch and become targets for ongoing robberies, or worse. On the other hand, if Bazán and Longoria did not inform local authorities and the assailants were later arrested in possession of the stolen horses, the family could be accused of supporting banditry.

Weighing the risks, on September 27, Bazán and Longoria reported the robbery to Texas Rangers camping nearby. Laborers witnessed what looked like an uneventful conversation between the two men and Texas Ranger captain Henry Ransom. Bazán and Longoria then left and made their way home on horseback. Witnesses recalled that when they were about 300 yards away, Texas Ranger Captain Henry Ransom and two civilians, William Sterling and Paul West, climbed into a Model T Ford and followed the men. As the vehicle approached, one of the passengers reached outside the passenger-side window and shot both men in the back. Bazán and Longoria fell from their horses and died on the side of the road. Witnesses reported that Captain Ransom warned

<sup>27</sup> For more on the Rocksprings lynching see chapter one of Martínez, *The Injustice Never Leaves You*; William D. Carrigan and Clive Webb, *Forgotten Dead: Mob Violence against Mexicans in the United States, 1848–1928* (Oxford: Oxford University Press, 2013), 81–82; Nicholas Villanueva Jr., *The Lynching of Mexicans in the Texas Borderlands* (University of New Mexico Press, 2017); Gerald Raun, “Seventeen Days in November: The Lynching of Antonio Rodríguez and American-Mexican Relations, November 3–19, 1910,” *Journal of Big Bend Studies* 7 (1995) 62.

“Armed Mexicans Marching on Town of Rock Springs,” *El Paso Times*, November 14, 1910. Articles circulating similar ideas about fear include the following: “Mexicans on Warpath,” *Advocate*, November 19, 1910; “Fear Fight at Rock Springs,” *Laredo Times*, November 20, 1910; “Americans Are Warned,” *Dallas Morning News*, November 12, 1910; “Trouble at Guadalajara,” *Dallas Morning News*, November 12, 1910; “Quemado Vivo,” *El Regidor*, November 10, 1910; *San Antonio Daily Express*, November 14, 1910, and *El Paso Times*, November 4, 1910; Arnoldo De León, *Mexican Americans in Texas: A Brief History* (New York: Harlan Davidson, 1999), 50.

witnesses no to bury or move the bodies. Seemingly unfazed, he returned to his campsite and took a nap. Days later neighbors took a risk and buried their remains.

Despite the social prominence of both men, there were no investigations into the shooting of these two American citizens, no death certificates were issued, and Captain Ransom made no mention of the shooting in his monthly report. No civilians or officers were prosecuted for the double murder of Jesus Bazán and Antonio Longoria.<sup>28</sup>

*Porvenir Massacre in Presidio County, 1918*

In January 1918, a group of Texas Rangers, U.S. soldiers, and local residents traveled to a rural farming community called Porvenir, woke residents from their beds in the middle of the night, and separated fifteen men and boys from their families and neighbors. The unarmed group was taken into custody, denied due process, and executed in cold blood. The victims included Antonio Castañeda, Longino Flores, Pedro Herrera, Vivian Herrera, Severiano Herrera, Manuel Moralez, Eutimio Gonzalez, Ambrosio Hernandez, Alberto Garcia, Tiburcio Jáques, Roman Nieves, Serapio Jimenez, Pedro Jimenez, Juan Jiménez, and Macedonio Huertas. The massacre triggered an investigation by the Mexican government. The survivors provided sworn statements, including that of Juan Méndez, who wrote an official testimony of the massacre for Gen. J. C. Murguía in Ojinaga. By February 15 the Mexican embassy filed a formal protest with Secretary of State Robert Lansing and asked that the State Department charge assailants with responsibility and “to apply to them a well earned punishment.”<sup>29</sup>

Investigations by Mexican consuls, U.S. soldiers, and the United States State Department found that the victims of Porvenir were killed while they were unarmed and in Texas Ranger custody. U.S. soldiers who witnessed the Porvenir massacre, for example, wrote to Governor Hobby with information. Captain Harry Anderson of the Eighth Cavalry provided an account of what he described as the “midnight murder” when Rangers and ranchmen “took out the owner of the ranch and fourteen others—all farmers and small stock owners and shot them to death. *There was not a single bandit in the fifteen men slain . . . two of them were boys.*” Panicked, Anderson pleaded with the Governor. “The object of this appeal is to call your attention to this unprovoked and wholesale murder by Texas Rangers in conjunction with ranchmen—Rangers who instead of maintaining peace are committing murder by the wholesale and to request Your Excellency to have these Rangers removed at once. . . .”<sup>30</sup> With growing federal and diplomatic pressure, the Texas governor responded to the mounting evidence. On June 4, 1918, Governor William Hobby disbanded Company B of the Texas Rangers, fired five Texas Rangers and pressured the captain of Company B, James Monroe Fox, to resign. This proved a rare occasion when state police faced reprimand and dismissal for extralegal violence.

The survivors of the Porvenir massacre continued to seek redress years after the initial tragedy. They turned to diplomatic procedures and filed claims through the U.S.–Mexico General Claims Commission of September 8, 1923. The Mexican and U.S. governments bilaterally created the commission to settle the majority of claims of both Mexican and U.S. nationals arising between July 4, 1868, and the start of the commission. After collecting more than 100 pieces of evidence on behalf of the survivors, on February 15, 1935, Mexican attorney Oscar Rebasa filed *Concepción Carrasco de González, et al. (United Mexican States) v. the United States of America*, on behalf of the surviving relatives.

<sup>28</sup> For more on the double murder see chapter two of Martínez, *The Injustice Never Leaves You*.

<sup>29</sup> For more on the Porvenir massacre see chapter three of Martínez, *The Injustice Never Leaves You*; Handbook of Texas Online, Monica Muñoz Martínez, “PORVENIR MASSACRE,” accessed September 02, 2019, <http://www.tshaonline.org/handbook/online/articles/jcp02>. Published by the Texas State Historical Association.

<sup>30</sup> Army Captain Harry Anderson to Governor William P. Hobby, undated, evidence, “Proceedings,” 849–851; emphasis in original.

The Mexican attorneys made three charges: Texas authorities did not give due protection to the men arrested by the Texas Rangers; the local authorities were the material authors and accomplices of the crimes committed at Porvenir; and the state authorities denied justice by failing to apprehend, prosecute, and punish the persons responsible for the murders.<sup>31</sup>

No law enforcement or civilians were prosecuted for their involvement in the Porvenir massacre. Some Rangers, like Captain Fox, worked in local law enforcement and even rejoined the Texas Ranger force years later.<sup>32</sup>

*Concepción García (9-years-old) Shot and Killed by U.S. Soldier, 1919*

In April 1919, nine-year-old Concepción García lived in Texas to attend school. In April she became ill and with the help of her mother and aunt attempted to return back to Mexico to recover at home with family. While crossing the Rio Grande into Mexico, the group came under fire from a U.S. soldier, leaving Concepción dead. A court martial investigated the shooting and found that the U.S. soldier was guilty of manslaughter for firing on unarmed persons. Despite the court finding, and acting on the advice of the board of review, the judge advocate general, and the secretary of war, U.S. President Woodrow Wilson ordered the lieutenant freed. The soldier was restored to military duty in September 1919.

Concepción García's parents also filed a claim through the 1923 U.S.–Mexico General Claims Commission charging the U.S. government with the wrongful death of their daughter and denial of justice for failing to punish a U.S. border agent. Hearing the case on December 3, 1926, the General Claims Commission discussed the duty not only of municipal and federal authorities but also of soldiers to eliminate any reckless use of firearms. For U.S. soldiers on the U.S.–Mexico border, the commissioners referred to U.S. Military Bulletin No. 4 of February 11, 1919, stating that “firing on unarmed persons supposed to be engaged in smuggling or crossing the river at unauthorized places, is not authorized.” Moreover, General Order No. 3 dated March 21, 1919, outlined that “Troop commanders will be held responsible that the provisions of Bulletin No. 4 . . . is carefully explained to all men.”

The commissioners found that states should be punished for “such offenses as unnecessary shooting across the border without authority.” The commission obligated the U.S. government to pay an indemnity on behalf of Teodoro García and Maria Apolinar Garza. The tribunal decided, “An amount of \$2,000 without interest, would seem to express best the personal damage caused the claimants by their killing of their daughter by an American officer.”<sup>33</sup>

<sup>31</sup> Unfortunately, the general claims commission closed before hearing the claims filed by the Porvenir survivors. *Concepción Carrasco de González, et al. (United Mexican States) v. the United States of America*, Annex 97-A, Docket 561, Mexican Claims, RG 76, NACP.

<sup>32</sup> General Order No. 5, June 4, 1918, evidence, “Proceedings,” 836–837; James M. Fox to Governor William P. Hobby, June 11, 1918, evidence, “Proceedings,” 839–840; Jas. A. Hailey to James M. Fox, July 3, 1918; letter published in the *E/ Paso Herald*, July 3, 1918, and in the *Brownsville Herald*, July 12, 1918; Ignacio Bonillas, Mexican Ambassador, to Robert Lansing, Secretary of State, July 19, 1918, Annex 97-A, Docket 561, Mexican Claims, RG 76, NACP. United States Reply Brief, Docket 561, Mexican Claims, (Mexican Claims), Records of Boundary and Claims Commission and Arbitrations, 1716–1994, Record Group 76, National Archives at College Park (NACP), College Park, MD; “Memorial,” February 15, 1935, Docket 561, Mexican Claims, RG 76, NACP; “Oath of Members Ranger Force, James M. Fox, June 6, 1925,” and “Oath of Members Ranger Force, James M. Fox, February 19, 1934,” Texas Adjutant General’s Department service records (TAGDSR), Archives and Information Services Division (AISD), Texas State Library and Archives Commission (TSLAC), Austin, TX.

<sup>33</sup> *Teodoro García and M. A. Garza (United Mexican States) v. United States of America* (1926). For more on this case and others see the third chapter of Martínez, *The Injustice Never Leaves You*. Mexican nationals that fell victims to state and federal policing and vigilante violence often had more judicial recourse than American citizens. When judicial systems failed to prosecute assailants that murdered American citizens, most were left without other forms of recourse. Mexican

While the commission helped the claimants that received indemnities, the ruling was delivered years too late to curb the widespread violent policing methods.

Separated by time, location, and outcome, these cases give a glimpse into the far-reaching practices of anti-Mexican violence. They show that neither class, citizenship, nor social influence protected victims in this decade. Studied together, these cases expose the linked practices of racial violence that created a long-lasting, pervasive atmosphere of terror. Mobs lynched ethnic Mexicans with impunity, state and local police colluded with vigilantes, and the militarization of the border fed anti-Mexican sentiment, making racial violence all the more lethal. These events were also linked in a broadly felt injustice. In the midst of a reign of terror, relatives protested the ongoing murders for months and years and decades.

#### STATE AUTHORITIES UNDERMINED EFFORTS TO END RACIAL VIOLENCE

Thousands of federal, state, legal, and local records shed light on this history. Most still exist thanks to the witnesses and surviving relatives who worked for decades to seek justice for those murdered. Some politicians, sheriffs, attorneys, journalists, and U.S. soldiers reported the injustices they witnessed and tried to end the brutality. They pleaded with U.S. presidents, Texas governors, and law enforcement officers to end the reign of terror. For the most part, these leaders were ignored.

Some Texas sheriffs and law enforcement agents protested injustices they witnessed and called for police reform. Cameron County Sheriff William T. Vann, for example, pleaded with state officials and publicly testified to the murder of innocent men by the state police. In 1915 he expressed his concern directly to Texas Governor Ferguson warning that Texas Ranger Captain Henry Ransom's policing would incite more racial violence. He asked that Ransom and his supervised Rangers be removed from Cameron County. Ferguson replied, "Ransom will make you a good man if you warm up to him."<sup>34</sup>

In 1915 Emilio Forto, a former county judge, mayor, and sheriff in Cameron County, also attributed violence in the border region to "the reckless manner in which undisciplined 'pistol toters' Rangers and other civil officers, have been permitted to act as trial judge, jury, and executioners."<sup>35</sup> The systematic killing of ethnic Mexicans without criminal trials signaled the collapse of the Texas judiciary into the "reckless" collaboration of civilians and state officers, who executed subjects at will.

#### *1919 State Legislative Investigation in to Texas Ranger Abuse*

Other civil rights pioneers who worked to end racial violence by law enforcement and vigilantes faced daunting barriers. State Representative José Tomás Canales, the sole Mexican American elected to state office in 1919, suffered death threats and intimidation by law enforcement for leading an investigation into abuse by Texas Rangers. He introduced state legislation that aimed to reform the state police force by reducing its size, increasing agent salaries, and placing agents under bond. House Bill 5, or the Canales Bill as it was known, called for an extensive investigation into Ranger conduct going back to the peak of anti-Mexican violence in 1915 and sought to document acts of extralegal violence by the state police. In the span of two weeks, 83 witnesses testified. The

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nationals, on the other hand, could turn to Mexican consuls in the aftermath, for help in demanding investigations, and in the case of the U.S.-Mexico General Claims Commission of 1923, to actually file claims against the U.S. government. In at least five cases, Mexican nationals successfully filed charges against the United States government for failing to prosecute assailants, for the denial of justice, and for wrongful death.

<sup>34</sup> William T. Vann, testimony, "Proceedings," 547, 574-574; "Sheriff Vann Explains to Ranger Committee How to 'Ransomize,'" *Austin American Statesman*, February 8, 1919.

<sup>35</sup> Sheriff Emilio Forto quoted in David Montejano, *Anglos and Mexicans in the Making of Texas, 1836-1986* (Austin: University of Texas Press, 1987), 116.

transcriptions for the hearings resulted in three volumes totaling nearly 1600 pages, currently preserved by the Texas State Archives.

During the hearing Representative Canales filed nineteen charges of Texas Ranger abuse: denying residents due process, torturing prisoners, murdering unarmed prisoners and coordinating massacres. Moreover, Canales showed that state administrators called for and sanctioned these acts of violence. Convinced that the adjutant general's office justified Ranger actions rather than discharging agents for extralegal actions and excessive uses of force, Canales led the charge specifically against Adjutant General James Harley and investigating officer Captain William M. Hanson. Each, Canales argued, were "wholly incompetent to discharge the duties of his office."<sup>36</sup> Representative Canales argued that AG Harley kept agents who were "notoriously bad men" on the force. Captain Hanson, he suggested, routinely investigated Ranger activities with the sole purpose of defending and justifying their violence. Denial of the civil rights of ethnic and racial minorities, in other words, was not the work of a few unrestrained or rogue agents. This was a key characteristic of state policing. The pattern of abuse by state police led to a widespread mistrust of the state government in general.

Dallas attorney Robert E. Lee Knight helped to defend the Texas Rangers during the hearings. He relied on anti-Mexican rhetoric. Knight's witnesses described the Texas-Mexico border region as a harsh and foreign terrain inhabited by desperate Mexicans, a class of criminals who roamed the region posing an ever-present threat to Americans and their property. Knight even cast suspicion on the motives of Representative Canales for bringing charges because of the representatives "Mexican blood." Knight echoed eugenic anxieties about blood purity and asked Canales, "Now Mr. Canales, you are by blood a Mexican are you not?" The representative rebuffed Knight, "I am not a Mexican I am an American citizen."<sup>37</sup> The suspicion aimed at Canales for his "Mexican blood" was on full display throughout the proceedings. Knight insulted the representatives and his family, describing Canales as disloyal, as sympathizing with bandits, and compared his family to animals. Being criminalized and racialized as a foreign threat—an American citizen with Mexican blood in his veins—did not dissuade Canales from continuing the hearings.<sup>38</sup>

Outside of the legislative hearing Canales faced threats and intimidation for bringing charges against Texas Rangers. In December 1918 in San Benito, Texas Ranger Captain Francis Augustus "Frank" Hamer threatened Canales, "You are hot-footing it here, between here and Austin and complaining to the Governor and the Adjutant General about the Rangers and I am going to tell you if you don't stop that you are going to get hurt."<sup>39</sup> Canales sent a telegram to Texas Governor William P. Hobby reporting the threat. Apparently threatening the life of a sitting state representative did not require disciplinary action. Adjutant General James Harley merely wired Hamer: "Under Governor's orders you are instructed not to make any threats against the lives of any citizens especially J. T. Canales."<sup>40</sup> The telegram, however, served two purposes. By instructing Hamer not to intimidate citizens, the adjutant general technically followed the governor's instructions. The telegram also subtly provided Hamer with the name of the citizen who had filed the complaint.

<sup>36</sup> José T. Canales, introduction of charges, "Proceedings," 149.

<sup>37</sup> José T. Canales, testimony, "Proceedings," 1010-1020.

<sup>38</sup> Although Mexican Americans were legally recorded as white, being ethnically Mexican socially distinguished one as being perceived as belonging to a different, inferior race to Anglo Americans, subjected to segregation and discrimination. Some members of longstanding Tejano families, like Canales, were landed, educated, influential in politics in the border region—had been able to continue to operate in to operate at the top of social hierarchies well into the twentieth century. But by 1915 class and privilege did not protect one from being a target of violence and discrimination.

<sup>39</sup> José T. Canales, testimony, "Proceedings," 886-891.

<sup>40</sup> Telegram from Adjutant General Harley to Ranger Frank Hamer, December 23, 1918, submitted to evidence for "Proceedings."

*Outcomes of the 1919 Investigation*

The records of the 1919 investigation of the Texas Rangers leave not only a clear record of state crimes but also a record of state agents who justified violence. There was no admission of guilt or wrongdoing by the state. To the contrary, during the investigation, lawyers for the Rangers and their witnesses defended Ranger abuse and supported the brutal methods of policing that denied both American citizens and foreign nationals in Texas their civil right to judicial procedures.

The state legislature would sanction the policing practices in an opinion delivered in the thirty-sixth legislative session. On February 19, nearly a month after the investigation began, Chairman Bledsoe presented the investigating committee's findings to the Texas House of Representatives. The committee delivered a unanimous opinion, finding charges of misconduct and "unwarranted disregard of the rights of citizenship" to be "established by sufficient and competent evidence." But, the committee also found that the ongoing conflicts along the border region required the state police force to continue their activities with widespread support.

The committee thanked the Rangers for their service and declared that the agents could not receive credit enough for the discharge of duties under dangerous and "trying conditions." The committee specifically thanked Adjutant General Harley in its report to the legislature. Far from Canales's calls for Harley to be replaced, the committee found that he deserved "commendation" for the "able, efficient, impartial, and fearless" manner in which he commanded the Ranger force during a time of great turbulence. The committee similarly praised Captain Hanson, the investigating officer who had actively decided not to prosecute or dismiss Rangers accused of murder or prisoner abuse. The adjutant general's office was elated with the opinion. Captain Hanson wrote to Ranger C. J. Blackwell and declared, "Vindication complete."<sup>41</sup>

The Texas Ranger investigation ended in late February, but—no surprise—racial tensions continued. The National Association for the Advancement of Colored People grew alarmed at the increasingly brutal lynchings in Texas. Moreover, the NAACP documented the wide-spread lynching culture and abuse by local and state police toward anti-lynching activists trying to curb the practice. The summer of 1919 proved tumultuous around the nation, as racial conflicts erupted in places like Elaine, Arkansas, and Omaha, Nebraska. Approximately thirty riots nationwide were reported. This led to the months from May to October 1919 being called the Red Summer.

In July the east Texas town of Longview erupted in conflict as an Anglo mob terrorized African American residents, burning homes and attempting to lynch prominent African American citizens. Longview had recently demonstrated a dark reputation for policing interracial relationships with violence, when on June 17, 1919, a white mob removed Lemuel Walters from the Gregg County Jail and lynched him for allegedly having a relationship with a white woman from nearby Kilgore.<sup>42</sup> On July 12, the local sheriff, E. M. Meredith, instigated more violence when he shot and killed Marion Bush, father-in-law of the local black physician who also helped organize African American farmers. Anticipating a backlash, the town mayor requested an additional 150 guardsmen from Governor Hobby. When the additional guardsmen arrived, they placed the town under martial law.

<sup>41</sup> See Richard Ribb, "La Rinchada: Revolution, Revenge, and the Rangers, 1910–1920," in De León, *War along the Border*, 87–90.

<sup>42</sup> Tenth Annual Report of the National Association for the Advancement of Colored People for the Year 1919, 34; Kenneth R. Durham, "The Longview Race Riot of 1919," *East Texas Historical Journal* 18 (1980): 13–24; "More Troops Ordered Sent to Longview," *Dallas Morning News*, July 13, 1919; "Gregg County Now under Martial Law," *Dallas Morning News*, July 14, 1919; "16 White Men under Arrest at Longview," *Dallas Morning News*, July 15, 1919; "Longview Blacks Held in County Jail in Austin," *Austin American*, July 17, 1919; "More Race Riots Break Out Now at Longview," *Austin American*, July 13, 1919.



The death of Marion Bush, brought calls to curb police violence. Instead, early in August 1919, Governor Hobby directed Texas Rangers to investigate the local branches of the NAACP, under the charge that the organization might be circulating Bolshevik propaganda. The agents' effort to help the governor and slow NAACP progress proved successful. The Rangers found no ties to communism, but they claimed that the NAACP branches did not have the proper state charters. The Rangers argued that NAACP chapters were advocating racial equality and had incited racial tensions in Texas and pressured the branches in Texas to disband.<sup>43</sup>

Texas Governor Hobby himself met the NAACP with open hostility. On August 21, John Shillady, the National Secretary of the NAACP, traveled to Austin to meet with state authorities. Upon his arrival in Austin on August 21, Shillady was hauled before County Judge Dave J. Pickle in the Travis County Court. Pickle warned the NAACP secretary to leave the state. Shillady stayed and held a meeting with local residents. Upon returning to his hotel, Judge Pickle, Constable Charles Hamby, and Ben Pierce accosted and severely beat the NAACP secretary, forced him onto a train, and threatened him not to get off until he was outside of Texas.<sup>44</sup> Rather than denouncing the participation of members of the court and local police in beating Shillady, the governor rebuked the NAACP for interfering in state matters in a telegram: "Shillady was the only offender in connection with the matter referred to in your telegram and he was punished before your inquiry came. Your organization can contribute more to the advancement of both races by keeping your representatives and their propaganda out of this State than in any other way."<sup>45</sup> The agents of the state who sought to dismantle the growing strength of the NAACP in Texas did their work well. By the end of 1921, all but seven of the original thirty-three NAACP branches in Texas had disbanded.<sup>46</sup>

Contrary to popular notions that mob violence took place at the hands of marginal populations under cloak of night, in Texas violent crimes took place in broad daylight, with witnesses, and were carried out by prominent citizens. Indeed, the governor himself, as well as a variety of men charged with upholding the law, played key roles in creating a climate of fear. Rather than help turn the tide, authorities turned a blind eye to the Texas tradition of state-sanctioned violence. The frequency with which victims were taken from police custody and lynched highlights the role of local and state police in allowing acts of vigilantism to occur. It also provides the deeper history of the forces that have shaped the long-standing mistrust of local and state police by racial minorities.

#### ONGOING RACIAL VIOLENCE IN TEXAS AND THE UNITED STATES

The new decade of the 1920s began with a bloody start. Texans witnessed continued lynchings, and more residents lost their lives to mobs, local police, state agents, and border enforcement officers. The 1920s saw the reemergence of the Ku Klux Klan and its move into state and federal administration. In 1922 Texans elected Earl Bradford Mayfield, a card-carrying member of the Ku Klux Klan, to the U.S. Senate. The board of the Texas State Fair, which officially declared October 23, 1923, Ku Klux Klan Day, encouraged all Texans to honor the racist and xenophobic organization.

During this decade legislators also passed anti-miscegenation laws, forced sterilization laws, and restrictive immigration policies. These gained further momentum in the wake of popularized forms of now debunked racist sciences such as phrenology, hereditarianism, and eugenics. Nativist

<sup>43</sup> Mark Robert Schneider, *We Return Fighting: The Civil Rights Movement in the Age of Jaxx* (Boston: Northeastern University Press, 2002), 30-34;

<sup>44</sup> Pamphlet, "The Mobbing of John R. Shillady," National Association for the Advancement of Colored People, 1919; "Texas Judge Whips John R. Shillady," *New York Times*, August 23, 1919; Schneider, *We Return Fighting*, 30-34.

<sup>45</sup> "Mob Attack on the Association's Secretary," in Tenth Annual Report of the National Association for the Advancement of Colored People for the Year 1919, 58.

<sup>46</sup> Schneider, *We Return Fighting*, 32; Steven Reich, "Soldiers of Democracy: Black Texans and the Fight for Citizenship, 1917-1921," *Journal of American History* 82, no. 4 (1996): 1478-1502.

lobbyists increasingly relied on the seemingly “rationale” language of scientific “race-betterment” to promote their prejudices.<sup>47</sup>

Despite the proliferation of reportage on the “invasion” of immigrants from both Asia and Mexico, in the 1920 census over 85% of the U.S. foreign born population identified Europe as their place of birth.<sup>48</sup> In 1924 Congress passed the Johnson-Reed Immigration Act of 1924, the first comprehensive restrictive immigration law in the United States. Designed by eugenicists, the act excluded Chinese, Japanese, Indians, and other Asians from immigration. It also established numerical limits on immigration from European nations and created a national origin quota system. Senator Ellison Durant Smith took the Senate floor to offer Madison Grant’s 1916 publication, *The Passing of the Great Race: Or, the Racial Basis of European History*, as evidence of the “threat” of immigrants’ equipped with “inferior Non-Nordic racial stock.” He likewise urged his colleagues to approve the most aggressive immigrant restrictions to avoid turning the nation into an “asylum for the oppressed of all countries.”<sup>49</sup>

The act did not, however, place numerical restrictions on migration from Mexico, but policing policies were implemented. According to historian Mae Ngai, during the 1920s “immigration policy rearticulated the U.S.-Mexico border as a cultural and racial boundary, as a creator of illegal immigration.”<sup>50</sup> Representative John C. Box of Texas openly lamented that he could not have “Mexicans and other undesirables” excluded entirely. Representative Claude B. Hudspeth, the same congressman that in 1919 criminalized Mexicans justified extralegal violence and moved to establish the U.S. Border Patrol. He pushed for a rider to the 1924 Immigration Act appropriations bill providing \$1 million to establish a “land border patrol” to police the U.S. borders with Mexico and Canada.<sup>51</sup>

The first border patrol agents grew up with the violence of the Texas Rangers and witnessed the culture of impunity that protected agents of the state. According to historian Kelly Lytle Hernández, the agents were primarily working-class Anglo Americans “who often used law enforcement as a strategy of economic survival and social uplift in the agricultural-based societies of the borderlands.” “And they had grown up,” she continues, “with white violence toward *Mexicanos*. . . early officers of the Border Patrol enforced U.S. immigration restrictions according to the customs, interests, and histories of the borderland communities where they lived and worked.”<sup>52</sup>

The influence of anti-immigrant and anti-Mexican rhetoric was not limited to the creation of federal policies such as the Johnson-Reed Act of 1924. Mexican migrations were forced to undergo degrading and inhumane medical inspections, bathing, delousing, and interrogations. In 1929,

<sup>47</sup> Alexandra Minna Stern, *Eugenic Nation: Faults and Frontiers of Better Breeding in America* (Berkeley: University of California Press, 2002); Dorothy Roberts, *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty* (New York: Vintage, 1998).

<sup>48</sup> 11,916,048 people reported their place of birth as within Europe out of an estimated total population of 13,920,692 foreign born peoples. Table II. “Region of Birth of the Foreign-Born Population: 1850-1930 and 1960 to 1990,” U.S. Census Bureau, Population Division, accessed September 1, 2019.

<https://www.census.gov/population/www/documentation/twps0029/tab02.html>

<sup>49</sup> Testimony by Ellison DuRant Smith, April 9, 1924, *Congressional Record*, 68th Congress, 1st Session (Washington DC: Government Printing Office, 1924), vol. 65, 5961–5962. Accessed August 28, 2019.

[https://www.govinfo.gov/app/collection/crcrb/crcrb/Volume%20065%20\(1924\)](https://www.govinfo.gov/app/collection/crcrb/crcrb/Volume%20065%20(1924))

<sup>50</sup> Mae Ngai, *Impossible Subjects*, 67.

<sup>51</sup> Testimony by John C. Box, April 9, 1924, *Congressional Record*, 68th Congress, 1st Session (Washington DC: Government Printing Office, 1924), vol. 65, 5874–5875; See Miguel Levario, *Militarizing the Border: When Mexicans Became the Enemy* (College Station: Texas A&M University Press, 2012), 98.

For more on the Johnson-Reed Immigration Act of 1924, see Mae Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton, NJ: Princeton University Press, 2004).

<sup>52</sup> Kelly Lytle Hernández, *Migrant! A History of the U.S. Border Patrol* (Berkeley: University of California Press, 2010), 20–23.

Congress passed Senator Coleman Livingston Blease's bill, that made "unlawfully entering the country" a misdemeanor punishable by a \$1,000 fine and/or up to one year in prison. The bill also made returning to the United States after deportation a felony, punishable by a \$1,000 fine and/or up to one year in prison. Kelly Lytle Hernández wrote, "within one year, Blease's law dramatically altered the story of race and imprisonment in the U.S.-Mexico borderlands."<sup>53</sup> That same year deportation campaigns started targeting ethnic Mexicans. During the Great Depression, Mexican nationals and Mexican Americans were scapegoated as a drain on dwindling public resources and targeted for deportation. In the Southwest and Midwest over 400,000 Mexicans were repatriated in the early 1930s. An estimated 60% of those were children or American citizens by native birth, spoke English, and had lived in the United States for approximately ten years.<sup>54</sup> Similar histories of deportations and injustice continued throughout the twentieth century.

## CONCLUSION

Current federal and state policing regimes have deep roots in the violence of the borderlands—the regime of terror practiced a century ago on the Texas–Mexico border is crucial to ongoing conversations about police brutality, immigration, and the carceral state. For too long state sanctioned violence at our nation's borders has been normalized. History reveals that racist representations of people, and mischaracterizations of the U.S.-Mexico border, helped to incite violence, led to racial and ethnic minorities being denied their most basic rights, led to the militarization of the border, and inspired nativist immigration policies. Moreover, this era of racial violence influenced public perceptions of Mexican Americans, immigrants, the U.S.-Mexico border, U.S. democracy, and justice for generations.

A century ago there were also politicians, journalists, law enforcement officers, and everyday civilians that tried to end racial violence. People protested, documented what they witnessed, and pleaded with elected officials. These calls were largely ignored. In the 1919 Texas congressional investigation into Texas Ranger abuse, the state legislature sanctioned racial violence. Witnesses, including state authorities, also denied the humanity of victims and the suffering of their surviving relatives.

When I consider how long it will take for families, advocates, and communities to recover from the injustices they are witnessing today, I think about descendants of racial violence who carry sentiments of loss 100 years after their relatives were murdered by state police in Texas. Norma Longoria Rodríguez, a resident of San Antonio, described the weight of the double murder of Jesús Bazán and Antonio Longoria on her family. She explained, "It's an injustice. It never leaves you. It's inherited loss."<sup>55</sup> Recounting this history disrupts popular assumptions that violence is followed by reconciliation and that the mere passage of time can heal wounds. Answering calls for justice requires confronting disavowed histories and changing laws and policies inspired by nativism and racism. It also requires acknowledging the lives lost and seeking justice for those impacted by violence today.

<sup>53</sup> Senator Blease was a known white supremacist who supported segregation, endorsed lynching culture, and who targeted Mexican migration in particular. For more see Kelly Lytle Hernández, *City of Inmates: Conquest, Rebellion, and the Rise of Human Caging in Los Angeles, 1771-1965* (Chapel Hill: University of North Carolina Press, 2017) 136-138; Mae Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton: Princeton University Press, 2004), 55, 70-71.

<sup>54</sup> Ngai, *Impossible Subjects*, 71-73. For more on the history of deportations of Mexican nationals and Mexican American see: Kelly Lytle Hernández, *City of Inmates*; Ana Minian, *Undocumented Lives: The Untold Story of Mexican Migration* (Cambridge, MA: Harvard University Press, 2018); Francisco E. Balderrama, *Decade of Betrayal: Mexican Repatriation in the 1930s* (University of New Mexico Press, 2006).

<sup>55</sup> Norma Longoria Rodríguez, interview by author, September 22, 2010, San Antonio, TX, digital recording.

Ms. ESCOBAR. Thank you so much. Ms. Castillo.

**TESTIMONY OF ALEJANDRA Y. CASTILLO**

Ms. CASTILLO. Good morning. Buenos dias. Chairwoman Escobar, Chairman Nadler, and members of this esteemed committee, thank you for the introduction.

As CEO of YWCA USA, I represent the oldest and largest women's organization in the country. We are on the ground in El Paso, Texas; in Dayton, Ohio; and in some 1,300 communities across the Nation. We have been at the forefront of the most pressing social movements for more than 160 years.

Today, I appear before you to testify about the critical issue of anti-immigrant rhetoric and its link to domestic terrorism. I would especially like to thank Chairwoman Escobar and her dedicated staff for their leadership and service to the people of El Paso.

I am pleased to be joined here today by Dr. Sylvia Acosta, CEO of YWCA El Paso, El Paso del Norte Region, as well as members of her board and staff.

YWCA El Paso has been part of this community since 1909. Dr. Acosta and her team have been working with numerous partners as this community struggles to provide respite and return of dignity to migrants caught up in this immigration crisis, as well as to help heal an entire community after the aftermath of August 3 massive shooting. I am forever grateful for their deep commitment in advancing YWCA's mission of eliminating racism and empowering women.

Just this week, Dr. Acosta shared with me that increased anti-immigrant rhetoric is directly impacting our youngest generations. She shared that children attending YWCA El Paso's afterschool and early-learning academies are afraid of going to jail or being killed because of their Mexican ancestry. Many also express anxiety about their potential deportation of their parents, regardless of their immigration status. These are children as young as four years old. And across the country in our YWCA Seattle King Snohomish County Maria Wilcox tells us kids are afraid to go to school because of gun violence. No child, I repeat none, no matter their race, age, or gender, should go to school and live in a climate with these growing fears.

Each day across this great Nation, across this country that I love, YWCAs get up and do the work of supporting those most impacted by racial and gender-based violence. Given our expertise and extensive work in communities, I want to highlight three critical areas this morning that are further detailed in my written statement.

First, words that we utter do matter, and the acts of hate, terror, and dehumanization are fueling an epidemic of domestic terrorism that is linked to a deep history of racial violence in our Nation. Today, the vitriolic anti-immigrant rhetoric is unfortunately not new. We have a long history of creating walls to push out those that we deem "other." To demonize, stereotype, and marginalize waves of European immigrants in the 19th and 20th century experienced this, and today, we are singling out people seeking refuge and asylum by calling them names and putting them in cages. We

have been down this road before, and yet we find ourselves repeating history. We can do better.

Second, our communities are reeling from the trauma inflicted by a confluence of gun violence, racist rhetoric, misogyny, and gender-based violence. These are the interrelated issues that lie at the heart of America's surge in domestic terrorism. Make no mistake, El Paso, Dayton, and so many other mass shootings are acts of domestic terrorism propelled by racism, misogyny, and easy access to weapons of war. These correlations are a key aspect of the crisis that can and must be addressed.

Third, when communities are traumatized by racist rhetoric and the violence of domestic terrorism, community healing is imperative. Acts of violence both cause and compound trauma, particularly when communities are already grappling with racism and social economic challenges. YWCAs are part of the fabric of communities hardest hit by domestic terrorism, and we stand in lockstep with many nonprofit organizations throughout the country who are picking up the shattered pieces.

In El Paso YWCA is working with Hispanics and philanthropy, Las Americas, and many other partners. Together, we are all bringing our collective resources and expertise to bear to address this crisis. Our hope with this strong collaboration is to model strength in numbers, to show our country how the partnership of many not only brings us together but also makes a difference in how the community is prepared and able to respond to tragedy and human crisis with compassion, dignity, and with a focus on improving outcomes for all.

Madam Chairwoman and Mr. Chairman, today, we find ourselves at a pivotal juncture as we search to define and defend the values that constitute the soul of our Nation. Through education, accountability, and swift action by Congress, we can take steps towards ending these systemic acts of violence in our communities and give true meaning to our Nation's motto *e pluribus unum*.

Thank you for the opportunity to testify today on behalf of YWCA, and I look forward to your questions.

[The statement of Ms. Castillo follows:]



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Testimony of

**Alejandra Y. Castillo**  
Chief Executive Officer  
YWCA USA

to the

**Subcommittee on Immigration and Citizenship**  
**U.S. House Committee on the Judiciary**

regarding

**The Oversight of the Trump Administration's Border Policies and the**  
**Relationship Between Anti-Immigrant Rhetoric and Domestic**  
**Terrorism**

September 6, 2019

Chairman Nadler and Members of the Committee:

Thank you for the opportunity to testify on behalf of YWCA USA and speak about the critical issue of anti-immigrant rhetoric and its link to domestic terrorism. YWCA appreciates the Committee's commitment to addressing the ongoing humanitarian crisis at the southern border and the confluence of hate and violence that currently plagues our nation.



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Each day across this great nation, YWCAs get up and do the work of leading in our communities, collaborating with partners, and supporting those most impacted by racial and gender-based violence. Our communities are reeling from the trauma inflicted by an epidemic of gun violence, racist rhetoric, misogyny, and gender-based violence that lies at the heart of America's surge in domestic terrorism. Our extensive work in providing trauma-services and our perspective as a community-based organization enable YWCA to provide critical insights into the growing hate and violence throughout our nation--and the solutions that this committee must act upon immediately.

#### **YWCA's History and Expertise**

My testimony today is informed by YWCA's nation-wide network of direct service providers. YWCA is on the ground in El Paso, Texas, in Dayton, Ohio, and in some 1300 communities across the nation. YWCA is one of the oldest and largest women's organizations in the country, serving over 2 million women, girls, and their families. We have been at the forefront of the most pressing social movements for more than 160 years - from voting rights to civil rights, from affordable housing to pay equity, from violence prevention to health care reform. Today, we combine programming and advocacy in order to generate institutional change in three key areas: racial justice and civil rights, women's empowerment and economic advancement, and health and safety of women and girls.

YWCA's significant expertise in working with children, survivors of domestic and sexual violence, as well as immigrant communities, is of particular relevance to my testimony today. Each year, across our vibrant network of more than 200 local associations, YWCA is proud to provide:

- 535,000 women, children, and families with gender-based violence support services that are trauma-informed, and which include domestic violence and sexual assault programs and services (such as: emergency shelter, crisis hotlines, counseling and court assistance, and other community safety programs)
- More than 170,000 children and parents with child care, teen, and parenting programs, which include programs that specifically integrate trauma-informed practices to meet the needs of homeless



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children, and children who have witnessed and experienced domestic violence and other trauma

- 145,000 women, children, and families with housing, food assistance, and immigrant assistance programs
- Since 1906, YWCA has provided health and wellness programs to promote and protect women's health

Moreover, YWCA has a long history of providing support and services to immigrant women, children, and families, dating back to 1885, when YWCA provided safe haven, shelter, and employment services for immigrant women arriving on Ellis Island. Today, YWCAs serve more than 40,000 immigrants and refugees across the U.S. annually through the following<sup>1</sup>:

- 37 YWCAs have dedicated immigrant and refugee service programs, while more than a quarter of YWCAs have specific immigrant and refugee services, a coordinated response to the community's need for immigrant and refugee services, or report serving a significant group of immigrants and refugees.<sup>2</sup>
- YWCAs in 27 states support programming and services for immigrants and refugees. These states are in all 4 Census Bureau-designated regions and all 10 standard federal regions, spanning the United States of America and serving diverse communities and populations across the country.<sup>3</sup>
- YWCAs provide domestic violence and sexual assault services specifically tailored to the needs and vulnerabilities of immigrant and refugee survivors. For example, YWCA Greater Cincinnati's Immigrant Survivors of Partner Violence program (ISPV) provides specialized services, including connection to legal assistance.<sup>4</sup> Meanwhile, YWCA Tulsa's legal services program staff includes a full-time immigration attorney and bilingual Department of Justice-accredited immigration representatives.<sup>5</sup> They specialize in naturalization and family-based cases, and offer assistance with adjustment of status, Violence Against Women Act (VAWA) self-petitions, U and T visas, and many other legal issues faced by immigrant survivors.

YWCA's recent travels to the U.S. / Mexico border have deepened our understanding of the on-going humanitarian crisis, and the ways in which anti-immigrant rhetoric impact communities as well as individuals who are seeking safety and asylum in the U.S. Over the past 15 months, YWCA has:

- Led a delegation to visit McAllen, Texas, where we observed and interacted with families and children immediately after their release from U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP) detention, and with community service providers who are tending to their





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medical, emotional, housing, nutrition, and other needs such as the work done by Catholic Charities through Sister Norma Pimentel (June 2018)

- Visited the border crossing where the Tornillo tent city is located and marched to call for an end to family separation and better conditions for children detained in tent facilities (June 2018)
- Participated in a delegation visit to San Diego, California led by Hispanics in Philanthropy where we spoke with service providers who work with migrant children and families, and where we observed “Operation Streamline” detention proceedings at the U.S. District Court, and asylum claim proceedings at Otay Mesa Detention Center (August 2018)
- Participated in a delegation to El Paso, Texas with Hispanics in Philanthropy where, just 36 hours before a lone gunman began yet another mass shooting, YWCA CEOs and staff joined other nonprofit advocates and philanthropic leaders in a site visit to El Paso and Juarez, Mexico. We observed first-hand the implementation of the Administration’s new “remain in Mexico” policy and heard from advocates and service providers about the impact of the crisis on individuals seeking refuge in the U.S. as well as on the broader El Paso community. (August 2019)
- Hosted Congressional briefings along with other community-based organizations to share our observations and findings (June 2018 and April 2019)

### **Overcoming Our Nation’s History of Racial Violence**

As many have noted in recent days, words and acts of hate, terror, and dehumanization fuel an epidemic of domestic terrorism which we cannot separate from our nation’s long history of racial fear and violence. The recent manifestations of hate and violence in our communities -- particularly those fueled by anti-immigrant rhetoric-- are yet another chapter in a history of political, cultural, and economic assaults on people of color, women, and other marginalized groups. From the colonization of indigenous peoples to the arrival of the first ship of enslaved Africans, our country’s history is rooted in systemic acts of racial discrimination, fear, and racist rhetoric. Throughout its ascendance, our nation has perpetuated state-sanctioned hate and violence: from Jim Crow to the internment of Japanese Americans during World War II to emboldened white supremacists rallying in Charlottesville, Virginia. The social fabric of our nation is torn and tainted by systematic attempts at silencing, suppressing, and victimizing underrepresented communities.

Today, vitriolic anti-immigrant rhetoric as well as acts of violence motivated by hate continue this troubled history. The humanitarian crisis that continues to unfold here in El Paso, as well as the mass shootings that

are emblematic of the domestic terrorism that is on the rise in the U.S., build upon this tainted history of racism, bias, and bigotry. Any meaningful attempt by this Congress to address these current domestic crises requires an introspective look at our country's historical evolution of hate and its dehumanization of people of color.

### Current Manifestations of Hate-Inspired Violence



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El Paso and Dayton have joined Sandy Hook, Orlando, Stoneman Douglas, Las Vegas, Oak Creek, Pittsburgh, Charleston, and a litany of cities, schools, and churches as scenes of mass violence in America. Make no mistake: these are acts of domestic terrorism propelled by racism, misogyny, and easy access to weapons of war, and they have come to define this moment in our nation's history.

The statistics are alarming. According to recent FBI reports, the United States has seen a 30% increase in hate crimes in the three-year period ending in 2017.<sup>6</sup> Similarly, according to the Southern Poverty Law Center's 2019 *Intelligence Report*, the number of hate groups operating across America rose to a record high 1,020 in 2018, a 7% increase over the 954 counted in 2017.<sup>7</sup> This measurement tops the previous high of 1018 hate groups reached in 2011. Currently, the federal government as well as 45 states and the District of Columbia have enacted hate crime laws.<sup>8</sup> While considerable progress has been made, hate-motivated violence in our nation still exists.<sup>9</sup>

In addition to the rise in hate crimes, there has also been a rise in the frequency and deadliness of public mass shootings like those that occurred in El Paso and Dayton on August 3rd and 4th. An analysis of public mass shootings over the past 50 years, funded by the National Institute of Justice, found that eight of the 20 most deadly mass shootings have occurred in the last five years, and 2017 and 2018 were the deadliest years, with 2019 on track to overtake both those years.<sup>10</sup> Moreover, it is not uncommon for mass shooters to have experienced childhood trauma (including domestic violence).

Further, the connections between domestic violence, misogyny, and mass shootings are alarming. Most mass shootings in the U.S. are related to domestic or family violence. In a review of 22 mass shootings between 2011 and 2019, 86% of shooters had a history of domestic abuse, 32% had a history of stalking and harassment, and 50% specifically targeted women.<sup>11</sup> Moreover, in more than 40% of mass shootings between 2009 and 2017, the shooter exhibited warning signs that they posed a danger to themselves or others, and one-third of mass shooters were prohibited from possessing a firearm.<sup>12</sup> Among these gender-based violence massacres are the mass shootings in Orlando, Florida in 2016; Sutherland Springs, Texas



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in 2017; and Dayton, Ohio in 2019. In Orlando, the shooter's wife shared that he had repeatedly beaten her, including while she was pregnant;<sup>13</sup> in Sutherland Springs, the shooter was court-martialed over charges he assaulted his then-wife and hit her child hard enough to fracture the child's skull;<sup>14</sup> and in Dayton, classmates of the gunman who killed nine people say he was suspended for compiling a "hit list" of people he wanted to kill and "rape list" of girls he wanted to sexually assault.<sup>15</sup> With one in three women estimated to experience domestic violence and more than three women murdered by their partners each day,<sup>16</sup> the implications of these intersections between gender-based violence and mass shootings are particularly alarming.

Recent hate-motivated violence has further illuminated the tragic consequences that result when misogyny intertwines with racist rhetoric. Some shooters explicitly describe their hatred for women in their manifestos; others describe discontentment arising from male entitlement. Particularly important to note is how often this is interwoven with racism and white supremacy. For instance, on the day of the shooting in Gilroy, California, the shooter posted on Instagram recommending a 19-century book called, "Might is Right," filled with racist and misogynistic rhetoric.<sup>17</sup> In Tallahassee, Florida, the shooter posted online videos and songs proclaiming himself to be a misogynist and highlighting a hatred for women, Black people, and immigrants.<sup>18</sup> Several shooters have actively linked their hatred for women to racist sentiments,<sup>19</sup> including in El Paso, Texas, where the shooter's racist manifesto suggested that "race mixing" was destroying the nation.<sup>20</sup> Though not all misogynists are racist and not every white supremacist is misogynistic, a thread of hatred and disdain for women connects many white supremacists.

### **The Imperative of Community Healing**

Incidents of hate and violence have a long-lasting and intergenerational impact on people and communities. Particularly when communities are already grappling with racist rhetoric, acts of violence both cause and compound trauma. Personal stories from El Paso and Dayton make clear the depth of trauma that these communities are dealing with:

- "Jane Doe" is a single mother of two young children who was recently diagnosed with breast cancer. Undocumented, afraid of deportation, and afraid for the well-being of her children, she avoided seeking timely and critical cancer treatment. The growing anti-immigrant rhetoric and compounding fear also led "Jane" to resign from school related activities and community events, and to purchase groceries at off-peak hours to avoid the attention of immigration enforcement officials. Jane's complex decision to forego medical treatment ultimately led her to receive a double mastectomy as the severity of her condition increased.



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- The increased anti-immigrant rhetoric and hate-filled climate has a direct effect on the Mexican-American children attending YWCA El Paso's after-school and early learning academies. The children, between the ages of 4-12 years old, recently expressed concerns and fears of going to jail or being killed because of their Mexican identities and the increased targeting of people of color at the Southwest border. Many children also expressed anxiety about the potential deportation of their parents.
- The August 4th shooting in Dayton, Ohio, took place in one of the few spaces that bridge long-standing racial divides, and compounded trauma the community was already experiencing from a series of events in the preceding months, including: the KKK publicly choosing Dayton as the site of a Klan rally; a major hospital closing down and being demolished, leaving a medical and physical hole in the community; the economic reality of redlining by banks, high eviction rates, and food and book deserts across Black neighborhoods; and a Memorial Day tornado which demolished thousands of low and moderate income homes.

Where communities are traumatized by the racist rhetoric and violence of domestic terrorism, community healing is imperative. YWCA stands in lock-step with so many of our partners across the nonprofit and philanthropic sectors: we are all bringing our collective resources and expertise to bear to promote community healing. As many of the witnesses the Committee hears from today will share, there is much to be done and no one group can do this alone.

The ongoing humanitarian crisis at the southern border as well as the recent shootings in El Paso and Dayton have served as pivotal moments for YWCA leadership across the country. YWCAs are part of the fabric of communities hardest hit by domestic terrorism, and we are committed to the hard work of community healing:

- YWCA El Paso collected clothes and toiletry items for refugees and migrants, provided showers, and garnered a volunteer coalition that has provided on-site support at makeshift shelters, made and delivered food, and other supportive services--joining with partners to serve thousands of women, children, and families in need
- YWCA Northwest Ohio recently organized and directed a community drive, collecting over 250 pounds of toiletries, gift cards, and other non-perishable goods that were later delivered to migrants in El Paso
- Just last night, YWCA El Paso in conjunction with The El Paso Holocaust Museum and Study Center and City of El Paso's Office of Resilience and Sustainability, hosted a healing round-table discussion to focus on El Pasoans' response to the recent terrorist

attack on the city and the language of hate and its impact. The event focused on hearing individual voices, to share experiences, to explore how our community can heal, and discuss how we can counter systemic racism as well as dangerous and negative language and narratives.

- Earlier this week, the CEO of YWCA Dayton joined the Dayton police chief, the Dayton mayor, and the Ohio governor in a community forum, where she specifically addressed the correlations and intersections between domestic violence, misogyny, racist rhetoric, and gun violence



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### YWCA Urges Action

Just as the current situation was not created by one policy or one act but by the cumulative effect of many actors and many actions, so too the solution will require multi-prong approaches that reflect the complexity anti-immigrant rhetoric, gender-based violence and acts of domestic terror in our communities. YWCA USA urges Members of Congress to take swift action on the following recommendations:

#### 1. Stand Against Racism:

YWCA urges Members of Congress to cosponsor the bipartisan National Opposition to Hate, Assault, and Threats to Equality (NO HATE) Act (S. 2043/H.R. 3545). This bill would take important steps to improve reporting and expanding assistance by closing gaps in existing hate crime reporting laws and strengthen national response. YWCA is committed to standing in solidarity with communities of color and all immigrants, regardless of status, who face the very real threat of hate crimes as well as racist and xenophobic attacks. YWCA urges Representatives to co-sponsor this important bill and combat hate speech, threats, and attacks.

#### 2. End Gender-based Violence:

YWCA urges Members to take action to prevent gender-based violence and support survivors. While the House has already passed the Violence Against Women Reauthorization Act (VAWA) of 2019 (H.R. 1585), the Senate has not yet taken action on this bill. The women and families we serve cannot wait any more. Gender-based violence occurs across all races, ages, classes, and ethnic background. However, increasing evidence also indicates that growing numbers of immigrant and refugee women are trapped in violent relationships or lack the ability to leave an abuser or perpetrator because of immigration laws, language barriers, social isolation, and lack of financial resources. Current VAWA protections apply to immigrant women and refugees who are victims of violence. The VAWA reauthorization bill passed by the House includes critical additions to prevent firearm-related domestic violence homicide. YWCA strongly supports the full reauthorization of VAWA.

At the same time that we are experiencing an increase in racially charged, violent hate crimes, the Administration has made it dangerous for non-citizen abuse victims to seek legal protection from their abusers, the exact opposite intention of VAWA. We urge Congress to review and pass legislation to reverse all executive orders and regulatory changes that impede the ability of non-citizens who have experienced gender-based violence to secure legal protection from their abusers.



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In addition, YWCA also urges Congress to pass the reauthorization of the Family Violence Prevention and Services Act (FVPSA) (S.2259). Since it was enacted in 1984, FVPSA has addressed domestic violence through community-driven solutions and a network of programs and services to respond to domestic violence across the country. FVPSA remains the primary source of federal funding to support emergency shelter and related assistance for victims of domestic and dating violence, their families as well as individuals at risk of victimization. YWCA urges Congress to pass S. 2259 to reauthorize FVPSA and maintain practical solutions to protect survivors (including migrant women and girls), hold perpetrators accountable, and eradicate all forms of gender-based violence.

### **3. Protect Immigrant Women, Children, and Families:**

YWCA urges Members to cosponsor and pass the Humane Enforcement and Legal Protections (HELP) for Separated Children Act of 2019 (H.R.3451), the Help Separated Families Act of 2019 (H.R.3452), and the Dignity for Detained Immigrants Act (S.1242/H.R.2415) to help protect children and families impacted by immigration enforcement actions, and to set standards and guidelines for the facilities at which immigrants may be held in custody.

YWCA also urges Members to utilize their oversight powers to oppose the promulgation of the Joint U.S. Department of Homeland Security (DHS) and U.S. Department of Health and Human Services (HHS) final rule. YWCA opposes this rule because it would amend regulations relating to the apprehension, processing, care, custody, and release of noncitizen minors, which intends to terminate the Flores Settlement Agreement. The standards set forth in the Flores Settlement Agreement are essential to the health and well-being of immigrant children in the custody of the DHS and the Department of Health and Human Services Office of Refugee Resettlement (ORR), and comport with best practices in the treatment of children from medical and psychological perspectives.

### **4. Support Funding for Trauma-Informed Care and Services:**

YWCA urges Congress to pass the bipartisan RISE from Trauma Act (H.R. 3180) to support community initiatives to prevent and address this trauma. When someone experiences a significant tragedy — whether in a

mass shooting, a child separated from their parent, exposure to domestic violence or other acts of violence and abuse — the ripple effects are long-term and devastating.

Congress must also fund programs authorized in the SUPPORT for Patients and Communities Act (P.L. 115-271) that focus on child trauma, such as the Mental Health in Schools program that would increase student access to trauma-informed mental health services through programs and partnerships, including with community-based providers. It is authorized at \$20 million but has not yet received any funding.



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Finally, Congress can support national pilot programs that are based on innovative local initiatives like the successful Manchester, New Hampshire Adverse Childhood Experiences Response Team (ACERT) program to assist children who have been exposed to trauma. YWCA New Hampshire is a leading partner along with the local police department and children's hospital.

#### **5. Support Common-sense Gun-Safety Solutions:**

YWCA applauds the bipartisan passage of the Bipartisan Background Checks Act of 2019 (H.R. 8). This bill takes critical steps to require background checks on all firearm sales in the U.S. and closes loopholes in firearm sales that have previously been left open. It also begins an important movement towards protecting vulnerable communities across the country, including survivors of domestic violence, communities of color, and clients served by YWCAs everywhere. YWCA urges the Senate to follow in the leadership of the House of Representatives and swiftly take up and pass this important bill.

YWCA also urges immediate action on a range of common-sense gun safety solutions that directly relate to domestic terrorism, including: eliminating access to military style weapons and high-capacity ammunition; prohibiting those convicted of domestic violence and stalking from obtaining firearms, as well as those subject to domestic violence, sexual assault, and stalking restraining orders; ensuring that abusers and stalkers subject to a restraining order relinquish all firearms once they are prohibited; establishing mandatory licensing requirements; opposing "concealed carry reciprocity" legislation, which would enable abusers to carry firearms across state lines into states that prohibit "concealed carry"; and removing restrictions on gun data collection. The rise of gun violence in our communities is an unspeakable tragedy that must be addressed.

#### **Conclusion**

We find ourselves at a pivotal juncture as we search to define and defend the values that constitute the soul of our nation. It is imperative that we

live up to our highest ideals. Today our nation's worst self has taken the lives of many and dehumanized countless others on account of their gender, sexual orientation, religion, and immigration status. Through education, accountability, and swift action by Congress, we can take steps toward ending these systemic acts of violence in our communities and give true meaning to our nation's motto, E Pluribus Unum.

Thank you for the opportunity to submit testimony. We are pleased to continue working with you on these critical issues.



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<sup>1</sup> 2018 YWCA Metrics and Impact Report, "YWCA Performance Metrics: Immigrant and Refugee Services."

<sup>2</sup> 2019 YWCA Association Programs and Services Survey

<sup>3</sup> Id.

<sup>4</sup> <https://www.ywcacincinnati.org/what-we-do/safety/domestic-violence-sexual-assault-non-residential-services/>

<sup>5</sup> <https://www.ywcatulsa.org/immigrant-and-refugee-services/>

<sup>6</sup> Southern Poverty Law Center. "Hate Groups Reach Record High." Retrieved from: <https://www.splcenter.org/news/2019/02/19/hate-groups-reach-record-high>.

<sup>7</sup> Id.

<sup>8</sup> Anti-Defamation League. "50 States Against Hate: An Initiative for Stronger Hate Crime Laws." Retrieved from: <https://www.adl.org/50statesagainsthate>

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<sup>15</sup> Palmer, Ewan. (August 5, 2019). "Dayton Shooting: Suspect Kept 'Hit List' and 'Rape List,' Classmates Say." Newsweek. Retrieved from <https://www.newsweek.com/dayton-shooter-connor-betts-ohio-shootingrape-list-1452541>.

<sup>16</sup> Black, M.C. et al (2011). The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Summary Report. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention. Retrieved





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<sup>20</sup> Politi, Daniel. (August 3, 2019). "El Paso Suspect Reportedly a Trump Supporter Who Wrote Racist, Anti-Immigrant Manifesto." Slate. Retrieved from <https://slate.com/news-and-politics/2019/08/el-paso-suspect-shooter-trump-racist-manifesto.html>.

Ms. ESCOBAR. Thank you all so much for your testimony. We will now proceed under the five-minute rule with questions. I will begin by recognizing myself for five minutes.

And my first question is for Ms. Bernal. Ms. Bernal, you are an El Pasoan. You live here. You were born and raised here. You work here. I think what is critically important for me anyway about this hearing is that America understand the consequences of what is occurring. Would you please share with us with as much detail as you possibly can what you are hearing from your constituents and from your clients about the massacre at Walmart and the words that you talked about that did not fuel the—I don't want to give the individual an excuse. The domestic terrorist is responsible for his behavior—but that have fueled the crisis that we are in in this country?

Ms. BERNAL. Thank you, Chairwoman Escobar. There has been a real and palpable change in El Paso. For those of us that grew up here, I think anyone will tell you that El Paso is one of the least racist, least bigoted communities that you could ever live in. We don't really see skin color, and maybe it is because so many of us are so brown, right? We don't see skin color. Everyone that has grown up in El Paso has intermarried with non-Hispanics and have children and nieces and nephews who we call, you know, half Hispanic, half white. We don't see that. The point that has been driven home from the shooting is that we realize that the rest of the world sees us differently.

I am a mother of two children who are half white, and they were raised proud Latinas. For the first time in my life it occurred to me that they might be a little safer because they don't look as brown as me, and that is a really sad thing to acknowledge.

The constituents that I speak to are still—they are still frightened. They are still afraid. Many people are still afraid to go to Walmart, to crowded malls. I know people that are afraid to go to memorial sites because they feel like they are a target. You know, there are a lot of Hispanics in one place, and they are sitting ducks.

So it has changed the way we feel about our security in such a safe city, and it is unfortunate they have opened our eyes to realize that others don't see us the same way we have always seen others, that somehow the rhetoric directed at Latinos and at immigrants and at brown people implies that Hispanics are just a little less American, that we are not quite as American as others in the country, and it has been a very eye-opening and really sad, I think, experience for many of us in the community and many of my constituents who feel that this new normal is not the way—it is not the way that we used to live, and it is not the way we want to live.

Ms. ESCOBAR. There is an irony in what is happening that I would like for you to help folks understand. If there is this national fear being whipped up by the President and his enablers about immigration but really is El Paso and other border communities that have been feeling the impact of significant numbers of families who are knocking on our front door. So we are the ones who, more than any other community in the country, really feel the consequence of large numbers of immigrants knocking on that door. In the face of hysteria elsewhere, how has El Paso chosen to react?

Ms. BERNAL. As a prosecutor, I want to be clear that I don't know anyone in this border community that supports open border policies that would allow criminals and drug smugglers and people that are designed to hurt this country come into this country. So, first and foremost, I think that we need to dispel this idea that because you are Hispanic you want open borders and every criminal from any part of the country to come into our community. We want a safe country, too. And what we need is comprehensive, reasonable immigration reform.

We can't make that happen locally, but what we can do is when thousands of refugees and immigrants show up at our doorstep, we can feed them, we can clothe them. One of the untold stories I think is the incredible amount of love and support that El Pasoans stepped up when the rest of the country and frankly policymakers wouldn't change policies or wouldn't direct resources. El Pasoans stepped up. There were thousands of El Pasoans who made meals, who put packets together with toothpaste and toothbrushes, who donated clothes, who drove people to the airport to help on a humanitarian level, recognize that although we may not be able to change immigration law, we can make sure that the United States remains a humanitarian bastion where people can come and they won't be vilified. And at least in this community El Pasoans opened their wallets and their hearts and reached out to them.

Ms. ESCOBAR. Thank you so much. My time has expired. I now recognize our esteemed chairman from New York, Representative Nadler.

Chairman NADLER. Thank you, Madam Chair.

Professor Muñoz Martinez, in your testimony you gave us a very helpful history of some of the anti-immigrant and anti-Mexican violence in Texas. Can you tell us how did the political rhetoric of the time contribute to the culture and shape immigration policies and practices of that era?

Ms. ESCOBAR. And I apologize, we have to remember to keep speaking into the mic clearly and loudly so that Facebook picks us up.

Ms. MUÑOZ MARTINEZ. I agree. Well, I can give an entire lecture, teach a class on that. But really quickly, I will say that one of the—there were many features that created a context that allowed violence to continue. On the one hand, this racist rhetoric represented Mexicans to people across the country who had never encountered a Mexican before. And the misrepresentations of people by calling them criminals and by calling them un-American and presenting them as people who do not deserve the protection of American citizenship meant that a nation for the large part agreed with that.

And so there were people in communities along the border who demystified that just by the very nature of who they were. They were educated, they had been in the border regions for generations, they were active in politics, and so some of the racial violence was specifically to dismantle this border community and remove Mexican Americans from having any economic or cultural or political power.

But this violence also corrupted law enforcement and the judicial system, and so this meant that when politicians and leaders dehu-

manized people, that police also dehumanized them and didn't recognize their humanity. And during this period Texas Rangers and local law enforcement were understood to be judge, juries, and executioners.

Chairman NADLER. You said this period. What period are you referring to?

Ms. MUÑOZ MARTINEZ. In the early 20th century, so 100 years ago during the spirit of racial violence that has been referred to as massacre of anybody who looked Mexican, whether they were American citizens or Mexican nationals, and so people were denied due process, they were denied the presumption of innocence. But that racist rhetoric also shaped policy, so it wasn't just a vigilante violence; it was violence by law enforcement and violence in the law.

Jim Crow laws were passed to disenfranchise Mexican Americans from voting. Laws were passed to discourage intermarriage to make it illegal, and anti-immigrant legislation was passed to restrict immigration like the 1924 Immigration Act that was inspired by eugenicists and by nativists. And so I am horrified when I hear current administration members referring to that act as a model. It should give us all pause and call us to action to look at the immigration policies that are being enacted and the harm that is being caused.

And one of the other historical patterns that has reemerged that is important to consider is the disavowal of suffering of humans that was so pervasive in the early 20th century that was very effective in allowing the national public for these acts of racial violence to continue. People actually celebrated it and thought it was progress. And so when you have the dehumanization of people and the denial of rights of those people is quite easy to take place. And so now that we have a national conversation and awareness of the inhumanity that has taken place in our name, in the name of the U.S., we have to act.

Chairman NADLER. Thank you very much. Ms. Castillo, you have—and let me just say when you referred to the 1924 act which was racist, anti-Semitic, et cetera, I remember watching and hoping for its repeal when I was in high school, which is when it happened, 1965.

Ms. Castillo, you have frequently spoken out against various Trump immigration policies such as the zero-tolerance family separation policy and the administration's stance on access to asylum for individuals with credible fear of domestic violence or gun violence, organic violence rather. These policies that bar access to entry for vulnerable individuals have contributed clearly to anti-immigrant rhetoric in America. Can you discuss how these policies specifically target women and victims of violence and how that shapes perceptions of immigrants here in the country?

Ms. CASTILLO. Thank you for the question. Yes, so we know data that we have from the United Nations and other sources. We know particularly El Salvador, Guatemala, Honduras have first, third, and seventh place respectively in female homicide. And the reason that we as YWCA are so keen about this is because many women try to move from one village to another fleeing their domestic partners because of fear of gender-based violence. So their first ap-

proach is to flee their villages, but most of them are fleeing the country in search for a better opportunity for themselves and for their children. So the issue of domestic violence is real. We have to take it very seriously.

And I will tell you, I will draw on the history of the YWCA. We stood on Ellis Island helping immigrant women coming from Europe because we knew that even then the issue of domestic violence and gender-based violence is something that is so keen for women. So we are true to our mission then, as we are today, and that is why when we see the changes in policies, when we are seeing women fleeing from Central America looking for asylum and refugee and our country has now changed the way we treat women, we have to stand up. So these issues are critically important.

And I will take this opportunity to also ask Congress to reauthorize VAWA, the Violence Against Women Act. It is shameful that we haven't done that yet, and this permeates not just for women in the U.S. but how we treat women and how we stand up for women.

Chairman NADLER. Thank you. You know, of course, that this committee reported the reauthorization of the VAWA and that the House passed it. And we are waiting breathlessly for the Senate's breakneck pace to get to this issue.

My time is expired. I thank you.

Ms. ESCOBAR. Thank you, Chairman. I now recognize my distinguished colleague from Washington, Representative Jayapal.

Ms. JAYAPAL. Thank you, Madam Chair, and thank you all so much for being here and for your testimony.

I think it was you, Ms. Bernal, who, in your testimony, talked about the perceived license for aggression. And, Dr. Muñoz Martinez, you spoke about dehumanization. And the chairwoman in her opening comments talked about all the different ways in which this President has given that license for aggression.

I would just remind the audience that this is a President who actually selected a portrait of Andrew Jackson to grace his office. This is Andrew Jackson, proslavery President who perpetuated genocide against Native Americans, so this is the context in which we are working today.

And the threats of white nationalist terrorism have been clear really for some years since this President was elected. Hate groups have expanded. They have become more organized. We have seen the data for that directly. Perpetrators of hate crimes have routinely invoked the President's name in an uptick of hate violence so drastic that scholars have actually dubbed it the Trump effect. And recent mass shooters—obviously you know better than any—have had these racist and anti-immigrant agendas, and yet the administration has actually done nothing. They have in fact done the opposite. They have directed the FBI not to focus on countering this and rooting out this kind of white nationalist terrorism.

So I wanted to start with Ms. Castillo and also Ms. Bernal. I am going to ask both of you to weigh in on this question. Ms. Castillo, you have members and organizations in 1,300 communities across the country. You have talked about the effects of this on your members. Ms. Bernal, you have also referred to this. Can you talk about the direct ways and impact of that fear on your community members, on your organizational members in terms of, say, the services

they seek, the ability to go to school, you know, whatever impacts you are seeing? Can you help this committee understand exactly what those are?

Ms. BERNAL. Thank you, Congresswoman, for that question. In my capacity as county attorney, one of the things that is most difficult is to quantify, right, the negative, how many victims are not coming forward. Very often, I think people that don't live in predominantly—or communities with a high immigrant population don't realize that most families are mixed, right? And so very often what you see is in our situation when we had Federal authorities in the courthouse, it wasn't just undocumented immigrants who were afraid to step forward to seek protection. We had U.S. citizens who had filed for protective orders but that who were fearful to come into the courthouse because one of their children might be undocumented, one of three children.

And so what we are seeing—before the incident, we were seeing a pretty steady rise of about 15 percent annually in the number of women seeking protective orders. Immediately following the raid in the courthouse there was a sharp decrease within the next six weeks to two months. And since then over the last two years we have continued to see a steady decrease in the number of people availing themselves of protection that they are entitled to under the law.

And so what we are afraid of is that there are no national statistics that would suggest that domestic violence is on the decrease. What we know is that we have victims that are not coming into the courthouse to seek protection.

Ms. JAYAPAL. Thank you. Thank you. Ms. Castillo?

Ms. CASTILLO. Congresswoman, let me tie these two communities, El Paso and Dayton. And the Congresswoman knows I was here 36 hours before the shooting occurred, and within 24 hours of the shooting in El Paso, Dayton happened. I am going to bring the story of Dayton because Dayton had—the Ku Klux Klan targeted Dayton. A hospital shut down in an African-American community and left it without any services. A tornado hit that community and housings were—I am talking to you about how compounded issues and then you have a fear and anxiety coming from the highest level of our government, the anxiety that people are feeling. And I just told you about the youngest generations among us. How can Americans be growing up in a country with such abundance and grow up with such fear of each other and of its own government?

And I will tell you, as service providers, service providers are also facing trauma. And we need to provide them, too, because we do not have the tools or the wherewithal. The deluge is coming too fast and furious. And as someone who is pushing forward an organization of this breadth, I worry who among our YWCAs is going to break? It is too much to bear. And we need some responses. The nonprofit community is picking up the pieces, and we do not have the resources coming from our Federal government to pick these pieces up and put it together in a way that really showcases who we are as a Nation.

Ms. JAYAPAL. Thank you so much. My time is expired. I yield back, Madam Chair.

Ms. ESCOBAR. Thank you. I now recognize my esteemed colleague, the gentlelady from Texas, Representative Garcia.

Ms. GARCIA. Thank you, Madam Chair, and thank you to all of the panelists. It has really been almost heartbreaking hearing some of the testimony that you have presented this morning, and I really do appreciate the historical context and the real context on the ground. And hopefully, people across America will better understand what is really going on in our country.

The Trump administration's immigration policies have had a significant impact not only here but in migrant and border communities throughout our country, resulting in anti-immigrant rhetoric becoming common in public discourse. It is just too common in public discourse. We all acknowledge that there is a humanitarian crisis at the southern border, but many of us know that this is one in the President's own making. Migrants are enduring systemic human rights abuses. Children and adults alike are held in overcrowded processing pens, hungry and neglected. Families are being torn apart. More funds for these agencies only will fuel the perpetrators of abuse. Real change will require rescinding the policies causing the abuse, meaningful oversight, and a transformative approach to immigration law and policy.

President Trump has described immigration at our southern border as an invasion of our country. The impact of such anti-immigrant rhetoric regrettably is not limited to El Paso or border communities. At a congressional hearing in May, the FBI head of the FBI's Counterterrorism Division testified that the Bureau was investigating 850—I will repeat that—850 domestic terrorism cases and that, of those, 40 percent, almost half, involved racially motivated extremists. So this is unfortunately not news. It is not made up. It is facts.

So, Dr. Muñoz, I wanted to start with you because I really found your written testimony to be quite enlightening. I actually thought I knew a lot of our history. I am one of these people that, as the county attorney mentioned, that some of us are not as brown as others. I mean, I—look at me. [Speaking foreign language.] I could probably drive around and nobody would stop me. But that is the problem, isn't it, that it is based on color and it is based on race.

And you actually say in your paper that this started back in the era, as the Chairman asked you some questions, I mean, the number of lynchings that you cite in your paper between 1848 and 1928 was 547, half of which were in Texas almost, 232. It seems like Texas has always been like the training ground, the incubator if you will that starts a lot of this. I see my colleague, a former colleague Senator Rodriguez here, on S.B. 4. And, you know, what is it about Texas? What do we need to change?

Ms. MUÑOZ MARTINEZ. Well, Texas has a long history of white supremacy. I mean, it is a Nation that has intersecting histories of slavery, of genocide, and of colonization, and it is actually layered histories of colonization. And if we remember, for example, that the Texas Revolution was inspired in large part so that—

Ms. Garcia. Well, and then there was—

Ms. MUÑOZ MARTINEZ [continuing]. Anglo settlers could own slaves. And so the policing regime that then was developed to,

quote unquote, “protect” Anglo settlers from Mexicans who were living in Texas before——

Ms. GARCIA. We all know the——

Ms. MUÑOZ MARTINEZ [continuing]. West Texas——

Ms. GARCIA [continuing]. Texas Rangers.

Ms. MUÑOZ MARTINEZ. Right, the State police officers, they targeted Mexican residents. They allowed enslavement to continue by hunting people who tried to seek freedom by crossing into Mexico, and they participated in genocide. And so our institutions of policing in Texas have a deep history of racial violence, and that is something that as a community we have to reckon with. And one of the things that we can do is by truthfully——

Ms. GARCIA. So have we seen any change at all, or is the Trump rhetoric similar to the rhetoric in the climate back then?

Ms. MUÑOZ MARTINEZ. It is unsettling——

Ms. GARCIA. Is there any difference?

Ms. MUÑOZ MARTINEZ [continuing]. How much of the rhetoric echoes certainly from members of the administration, from the President himself, but also from elected officials in Texas. The anti-immigrant sentiment, you know, for too long, the humanitarian crisis has been represented. People who were seeking refuge in the United States, children especially, were described as terrorists——

Ms. GARCIA [continuing]. Because when you say——

Ms. MUÑOZ MARTINEZ [continuing]. And as cartel members.

Ms. GARCIA [continuing]. In your written testimony that there was public displays of the number of Mexicans murdered to show that things were in control, it kind of reminded me of the Vice President's visit to the valley where, you know, many of us as Members of Congress were even denied entry. We are certainly not in there with TV cameras. But I just saw that as a public display to show their base. Look, we are taking—look at all of them. They are caged.

Ms. MUÑOZ MARTINEZ. It is——

Ms. GARCIA. They are——

Ms. MUÑOZ MARTINEZ. Absolutely. It is a performance in nation-building.

Ms. GARCIA. It is the same thing, isn't it?

Ms. MUÑOZ MARTINEZ. You can certainly look at the patterns and say something that really alarms me is especially when I see representations of Latinos primarily of being people who are under arrest or people who are being raided by ICE. When those are the representations of Latinos in this country, it enables other people to think that that is how Latinos should be treated, that they shouldn't be trusted and that they should be fearful of them.

And so certainly when I look at the historical photographs and representations of Latinos, people in Texas who were murdered, police officers standing next to—posing next to dead bodies, I am deeply troubled by these representations.

Ms. GARCIA. Thank you. Apparently, I have run out of time. I heard her gavel me. I had a question for you, Ms. Bernal, but I will ask you after the session. Thank you, Madam Chair. I yield back.

Ms. ESCOBAR. I am so sorry to my colleague. I apologize.

I now recognize my distinguished colleague from Colorado, Representative Neguse.



Mr. NEGUSE. Thank you, Madam Chair, for holding this hearing, and thank you for your leadership. Also thank you to the El Paso community for being so welcoming to us Members from various different parts of the country. I happen to be from Colorado from the 2nd Congressional District, and it is great to be able to be here on my first trip to El Paso.

You know, being here really gives Members like myself the chance to see and hear for themselves the real-life impacts of the Trump administration's policies at the border and the effects of the anti-immigrant rhetoric coming from the White House. I think we all have an obligation and a responsibility to speak out against hatred and against bigotry and against violence in our communities.

I was moved by the testimony of each of the witnesses. Dr. Muñoz, thank you for your very thoughtful tome, you know, just a very dark chapter. You know, at the University of Colorado Boulder, my alma mater and happen to represent that institution in Congress, there is a quote on the library from George Norlin, who was president of the university long ago, that essentially says he or she who only knows his generation or her generation will always remain a child. And so the ability to learn from the past is incredibly important.

Ms. Bernal, I was very moved by your testimony. I am a son of immigrants. My parents are from East Africa. Madam Chair referenced the comment that the President made several years ago, which was an outrage to me and to many folks in my community. But I also—my wife is Hispanic, and we have a one-year-old daughter who is Latina. And your comment about your children is very profound.

And I guess what I am wondering is whether you can kind of expound on—you know, I was struck yesterday—we went, my colleagues and I went—Pramila and—Representative Jayapal and Representative Escobar went to the memorial outside of the Walmart, and I was struck by the outpouring of support in this community.

Afterwards, we went to dinner. I would be remiss if I didn't say Representative Escobar promised us that El Paso would have the best enchiladas in the country, and she was not—and they did, so that was—she was not mistaken. But, as we were driving to the restaurant, what struck me, I saw a group of children playing. It was a sports game, a baseball game. And clearly this community is rallying and, you know, is showing what we all have read about over the course of the last several weeks, which is this sort of embodiment of El Paso strong.

But I guess the question I have, Ms. Bernal, is as you talk to members of this community, you know, I—part of our challenge is to convince hearts and minds. And how do you explain the importance to someone who maybe disagrees with my worldview on immigration and the belief of the value of immigrants to this country and your worldview? How do we explain to them that the dehumanizing rhetoric that we hear from the White House and elsewhere has real consequences? How do you do that? I imagine you have many communications here in this community.

Ms. BERNAL. Right, thanks for that question. That is a really hard—I think it is a really hard question. What I try to do and

what I encourage others to do is frankly what you all are doing. And thank you, Congresswoman, for inviting this committee here. I think that we can't ever accept any kind of hateful rhetoric as just the new normal. Sometimes it happens so much that it is exhausting to constantly push back on it. It is exhausting to constantly say that is not right, that we shouldn't accept it.

So I think what we need from you all and what we need from each of us is that constantly pushing back. We can't let it go. It is not normal, and it is not right.

But what I—my frustration sometimes in speaking to people who try to generalize that it is an overreaction, right, that you can't draw the line, you can't tie the two together between violence and speech. And so what I try to do is reinforce the idea I think that with some hateful rhetoric when it started, a lot of people said, well, you know, the rhetoric was directed at drug dealers, right? Those are those bad people. That is not us. Or it was directed at undocumented immigrants. Well, we are Americans, right? That wasn't directed at us.

And so now what is the excuse, right? It was people in Walmart shopping for school supplies. And it didn't matter. There were people from other countries, but the person in looking to shoot brown people, he didn't stop to say are you undocumented. He didn't stop to say are you dangerous, right? You just happened to be there.

So I think one of the messages in pushing back is that we are not talking about others. We are talking about you and your children and your mothers that are shopping in Walmart on that Saturday morning.

Mr. NEGUSE. Thank you, Ms. Bernal. And I see my time is expired. I would just say you have my word and I think you have the word of this committee that we will continue to shine a light.

Ms. BERNAL. Thank you.

Ms. ESCOBAR. Thank you, Congressman.

I now recognize my distinguished colleague, the gentlewoman from Texas, Representative Lee. Jackson Lee, I apologize. I am sorry.

Ms. JACKSON LEE. Thank you. It is my privilege to be here again and to be here in the presence of my distinguished colleagues and particularly, as I have indicated, but I want on the official Congressional Record a powerful and effective leader in the United States Congress in Congresswoman Escobar and to again thank her for the time and time and time that I have come to El Paso that I have had to walk across the border to discern what is going on and her accommodations and her welcoming for us to be able to, again, understand the crisis that is here.

And I want to acknowledge the fantastic working relationship that she has established with all Members and her former colleague Beto O'Rourke, who was here as well, and our chairman. So thank you again for that.

Let me try to be quick in my questioning. There is so much one wants to say, but let me read from a Time article on what is the definition—what does a terrorist look like? I would ask unanimous consent to the chairwoman to put this into the record dated August 19, 2019.

Reading it, it says——  
Ms. ESCOBAR. Without objection.

REP. JACKSON LEE FOR THE RECORD

## TIME

## **‘We Are Being Eaten From Within.’ Why America Is Losing the Battle Against White Nationalist Terrorism**

BY VERA BERGENGRUEN AND W.J. HENNIGAN AUGUST 8, 2019

When you think of a terrorist, what do you see? For more than a generation, the image lurking in Americans’ nightmares has resembled the perpetrators of the 9/11 attacks: an Islamic jihadist. Not a 21-year-old white supremacist from a prosperous Dallas suburb.

But long before that young man drove to El Paso, Texas, on Aug. 3 and allegedly murdered at least 22 people at a Walmart crammed with back-to-school shoppers, it was clear that white nationalists have become the face of terrorism in America. Since 9/11, white supremacists and other far-right extremists have been responsible for almost three times as many attacks on U.S. soil as Islamic terrorists, the government reported. From 2009 through 2018, the far right has been responsible for 73% of domestic extremist-related fatalities, according to a 2019 study by the Anti-Defamation League (ADL). And the toll is growing. More people—49—were murdered by far-right extremists in the U.S. last year than in any other year since the Oklahoma City bombing in 1995. FBI Director Christopher Wray told Congress in July that a majority of the bureau’s domestic-terrorism investigations since October were linked to white supremacy.

Yet the nation’s leaders have failed to meet this menace. In more than a dozen interviews with TIME, current and former federal law-enforcement and national-security officials described a sense of bewilderment and frustration as they watched warnings go ignored and the white-supremacist terror threat grow. Over the past decade, multiple attempts to refocus federal resources on the issue have been thwarted. Entire offices meant to coordinate an interagency response to right-wing extremism were funded, staffed and then defunded in the face of legal, constitutional and political concerns.

Today, FBI officials say just 20% of the bureau’s counterterrorism field agents are focused on domestic probes. This year alone, those agents’ caseload has included an investigation into an Ohio militia allegedly stockpiling explosives to build pipe bombs; a self-professed white-supremacist Coast Guard officer who amassed an arsenal in his apartment in the greater Washington, D.C., area; an attack in April at a synagogue outside San Diego that killed one; and the July 28 assault at a garlic festival in Gilroy, Calif., that killed three. Cesar Sayoc, a 57-year-old man from Florida, was sentenced to 20 years in prison on

Aug. 5 after pleading guilty to mailing 16 pipe bombs to Democrats and critics of President Donald Trump.

The FBI has warned about the rising domestic threat for years, but has not had a receptive audience in the White House. As a result, agency leadership hasn't historically prioritized white-supremacist violence even among homegrown threats, for years listing "eco-terrorism" as the top risk, former special agent Michael German told the House Committee on Oversight and Reform in May.

Law-enforcement officials say the cancer of white nationalism has metastasized across social media and the dark corners of the Internet, creating a copycat effect in which aspiring killers draw inspiration and seek to outdo one another. The suspect in El Paso was at least the third this year to post a manifesto on the online message forum 8chan before logging off to commit mass murder. More people were killed that day in El Paso than all 14 service members killed this year on the battlefields in Afghanistan, Iraq and Syria.

"Even if there was a crackdown right now, it's going to take years for the momentum of these groups to fade," says Daryl Johnson, a former senior analyst at the Department of Homeland Security (DHS), whose 2009 report on right-wing extremism was lambasted by conservatives even before its release. "I'm afraid we've reached a tipping point where we're in for this kind of violence for a long time."

Right-wing terrorism is a global problem, resulting in devastating attacks from New Zealand to Norway. But it is particularly dangerous in the U.S., which has more guns per capita than anywhere else in the world, an epidemic of mass shootings, a bedrock tradition of free speech that protects the expression of hateful ideologies and laws that make it challenging to confront a disaggregated movement that exists largely in the shadows of cyberspace.

Law enforcement lacks many of the weapons it uses against foreign enemies like al-Qaeda. To defend America from the danger posed by Islamist terror groups, the federal government built a globe-spanning surveillance and intelligence network capable of stopping attacks before they occurred. Federal agents were granted sweeping authorities by Congress to shadow foreign terrorist suspects. No comparable system exists in domestic-terror cases. Domestic terrorism is not even a federal crime, forcing prosecutors to charge suspects under hate-crime laws.

"White supremacy is a greater threat than international terrorism right now," says David Hickton, a former U.S. Attorney who directs the University of Pittsburgh Institute for Cyber Law, Policy and Security. "We are being eaten from within." Yet Hickton says federal prosecutors are limited in how they try

domestic cases. “I’d have to pursue a white supremacist with hate crimes, unless he interfaced with al-Qaeda. Does that make any sense?”

**Read More:** *Rod Rosenstein: How to Stop White Supremacist Terrorism*

Then there is the problem of a Commander in Chief whose rhetoric appears to mirror, validate and potentially inspire that of far-right extremists. The screed posted by the suspected terrorist in El Paso said he was motivated by a perceived “Hispanic invasion of Texas.” President Trump’s campaign has run some 2,200 Facebook ads warning of an “invasion” at the border, according to a CNN analysis. It’s a term he regularly uses in tweets and interviews. “People hate the word invasion, but that’s what it is,” he said in the Oval Office in March. “It’s an invasion of drugs and criminals and people.” (The El Paso shooter said his actions were unconnected to Trump. A senior Administration official told TIME that the criticism linking the President’s rhetoric to violence was “unfortunate, unreasonable and obviously politically motivated.”)

In the wake of the El Paso attack, which was followed by a second mass shooting in Dayton, Ohio, roughly 13 hours later, Trump promised to give federal authorities “whatever they need” to combat domestic terrorism. He said law enforcement “must do a better job of identifying and acting on early warning signs” and said he was directing the Justice Department to “work in partnership with local, state and federal agencies, as well as social-media companies, to develop tools that can detect mass shooters before they strike.”

But White House officials did not specify which new authorities are needed. Nor does the Administration’s record offer much hope. In the early days of his presidency, the Trump Administration gutted the DHS office that focused on violent extremism in the U.S. and pulled funding for grants that were meant to go to organizations countering neo-Nazis, white supremacists, antigovernment militants and other like-minded groups.

The El Paso suspect was born in 1998, three years after the worst homegrown terrorist attack in American history. The bombing of Oklahoma City’s Alfred P. Murrah Federal Building was carried out by Timothy McVeigh, a Gulf War veteran who wanted to exact revenge against the federal government for the deadly sieges in Waco, Texas, and Ruby Ridge, Idaho. The sprawling investigation that followed McVeigh’s attack, which killed 168 people, foreshadowed some of the challenges facing law enforcement today.

The bombing helped call attention to the threat of domestic terrorism. But that focus dissipated in the aftermath of the 9/11 attacks, which drove the full force of the U.S. national-security system into fighting Islamic terrorism. From 2005 to 2009, according to a Justice Department audit, the number of FBI agents

assigned to domestic-terrorism probes averaged less than 330 out of a total of almost 2,000 FBI agents assigned to counterterrorism cases.

By the end of George W. Bush's presidency, however, it had become apparent to U.S. officials monitoring such threats that something serious was brewing at home. The prospect of the first black President sparked a sharp rise in far-right groups, from so-called Patriot movement adherents to antigovernment militias, according to analysts at DHS. The Secret Service took the unprecedented step of assigning Barack Obama a protective detail in May 2007, mere months into his campaign and long before candidates typically receive protection.

Johnson, who led a six-person group at DHS' Office of Intelligence and Analysis, began working on a report about the rise of right-wing extremism. It warned that white nationalists, antigovernment extremists and members of other far-right groups were seizing on the economic crisis and Obama's ascension to recruit new members. Johnson was preparing to release his report when a similar study by the Missouri Information Analysis Center, meant for law-enforcement officers, was leaked to the public in February 2009. The paper, titled "The Modern Militia Movement," linked members of these militias to fundamentalist Christian, anti-abortion or anti-immigration movements.

The report was pilloried by GOP groups and politicians for singling out conservatives as possible criminals. Missouri officials warned Johnson about the blowback he could expect for publishing a similar analysis. But Johnson, who describes himself as a conservative Republican, says he thought the DHS lawyers and editors who worked on the report would provide a layer of protection from GOP criticism. "I didn't think the whole Republican Party would basically throw a hissy fit," he recalls.

**Read More:** *David French: My Fellow Republicans Must Stand Against the Alt-Right Virus Infecting America*

But when the DHS report was leaked to conservative bloggers in April 2009, it provoked an outcry from Republicans and conservative media, who painted it as a political hit job by the Obama Administration. DHS Secretary Janet Napolitano, who originally issued a broad defense of the report, apologized to the American Legion for one of its most controversial components—a section that raised concerns about military veterans returning from Iraq and Afghanistan and subsequently being susceptible targets for recruitment by right-wing groups. Johnson's team was slowly disbanded; the number of analysts devoted to non-Islamic domestic terrorism dwindled from six to zero in 2010, he said.



The Missouri and DHS reports were early examples of how the fight against right-wing terrorism would be hamstrung by politics. For years, “there’s been a visceral response from politicians that if these groups are being labeled as ‘right wing,’ then it’s Republicans who are responsible for those groups’ activities,” says Jason Blazakis, former director of the Counterterrorism Finance and Designations Office at the U.S. State Department, who is now a professor at the Middlebury Institute in Monterey, Calif. “It’s unfortunate, but I think in many ways this has resulted and served this reluctance in the Republican side to take as strong of action as they could.”

In interviews, veterans of the FBI, DHS and other national-security agencies recalled moments during the Obama Administration when they realized the domestic-terror threat was expanding unchecked. In January 2011, local police in Spokane, Wash., narrowly averted a tragedy when they redirected a Martin Luther King Day parade away from a roadside bomb planted on the route, loaded with shrapnel coated with a substance meant to keep blood from clotting in wounds. At the time, it was one of the most sophisticated improvised explosive devices to appear in the U.S. Two months later, the FBI arrested Kevin William Harpham, 36, a former U.S. Army member linked to the neo-Nazi National Alliance. “I remember being like, ‘Wow, we have a problem,’” recalls former FBI agent Clint Watts, a fellow at the Foreign Policy Research Institute. “The belief was always that this would be al-Qaeda, not a former soldier who is a white supremacist.”

In 2011, the Obama White House released a strategy to “empower local partners” to counter violent extremism. As part of that plan, DHS official George Selim was put in charge of leading these efforts as director of an interagency task force in 2016. Selim’s office of community partnerships, which had been set up a year earlier, grew to 16 full-time employees and 25 contractors, with a total budget of \$21 million. As part of its work, it had \$10 million in grants for local programs to counter propaganda, recognize the signs of radicalization in local communities and intervene to stop attacks before they happen.

But the Obama Administration was wary of the political blowback, according to a senior government official familiar with the efforts of the FBI and DHS, and mindful of the government’s lack of legal authority to monitor domestic hate speech, obtain search or surveillance warrants, or recruit sources. Meanwhile, the threat continued to grow, fueled in online forums. In June 2015, Dylann Roof, a 21-year-old who posted on the neo-Nazi site Stormfront under the screen name “Lil Aryan,” opened fire in a black church in Charleston, S.C., killing nine parishioners.

Then Trump won the White House. In the new Administration, efforts to confront domestic extremism “came to a grinding halt,” says Selim. The new

Administration redirected federal resources on Islamist terrorism. Barely a week into his presidency, Reuters reported that Trump had tried to change the name of the Countering Violent Extremism program to Countering Radical Islamic Extremism.

The Administration's reconstituted Office for Targeted Violence and Terrorism Prevention saw its mission expand while its staffing and budget were slashed to a fraction of what it had been, according to a former DHS official. "The infrastructure we had labored over for years started to get torn down," says Selim, who also led counterterrorism efforts under George W. Bush. "It has been decimated in the past two years under this Administration."

The Justice Department has also recently reorganized its domestic-terrorism categories in a way that masks the scope of white-supremacist violence, according to former FBI officials who say the change makes it harder to track or measure the scale of these attacks, which are often haphazardly classified as hate crimes or deferred to state and local authorities. The lack of clear data impacts the resources the FBI can devote to investigating them.

A second senior government official, granted anonymity to discuss the Trump Administration's efforts, says that while FBI analysts continued to issue warnings about the alarming patterns of white-nationalist radicalization online, mid-level officials and political appointees quickly recognized that assessments that ran counter to what Trump was saying publicly would fall on deaf ears. "That could cost you a seat at the table," the official says, "although there have been fewer and fewer tables to sit at and discuss intelligence and policy."

As President, Trump has repeatedly downplayed the threat posed by white supremacists. He famously blamed "both sides" for violence at a white-nationalist rally in Charlottesville, Va., in 2017. Asked if he saw white nationalism as a rising threat in the wake of a March attack on two New Zealand mosques by an avowed racist who killed 51 people, he countered, "I don't really. It's a small group of people."

In a nation where a mass shooting occurs on average about once a day, it is easy to be cynical about the prospect of change. But following the El Paso and Dayton attacks, there are glimmers of hope, however slight.

***Read More:*** *President Bill Clinton: Reinstate the Assault Weapons Ban Now*

The crowded field of Democratic presidential candidates has jumped on the issue, ensuring that the national spotlight of the 2020 campaign will keep the debate over guns and domestic terrorism from fading away. In Congress, Democrats have rallied behind legislation that would require DHS, the FBI and

the Justice Department to address white supremacy and right-wing extremism, including training and information sharing.

Among law enforcement there has been a new push for domestic terrorism to be codified as a federal crime. “Acts of violence intended to intimidate civilian populations or to influence or affect government policy should be prosecuted as domestic terrorism regardless of the ideology behind them,” Brian O’Hare, president of the FBI Agents Association, wrote in a statement. Such a change would give prosecutors new tools to confront the threat of domestic radicalization.

There has also been a noticeable shift in how law-enforcement and government officials talk about these attacks. FBI agents, politicians and federal attorneys have become quicker to label extremist violence committed by Americans as “terrorism.” On Aug. 6, the FBI announced it was opening a domestic-terrorism investigation into the suspect in Gilroy, noting that the gunman had a “target list” of religious institutions, political organizations and federal buildings. The day after the El Paso attack, the top federal prosecutor in western Texas declared that the incident would be treated as terrorism. “We’re going to do what we do to terrorists in this country, which is deliver swift and certain justice,” said U.S. Attorney John Bash.

This language matters, experts say. If we cannot call an evil by its name, how can we hope to defeat it? “You can’t really deal with the problem unless you acknowledge it exists,” says Mark Pitcavage, senior research fellow at the ADL’s Center on Extremism, who has studied far-right extremism since the mid-1990s. “We need a consensus that this is a problem, and we need to get together, irrespective of people’s partisan beliefs or anything else, to confront this problem for the good of everybody.”

—With reporting by ALANA ABRAMSON, TESSA BERENSON and JOHN WALCOTT/WASHINGTON

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TIME

Ms. JACKSON LEE [continuing]. "White supremacy is a greater threat than international terrorism right now." This is from a former U.S. attorney. "I'd have to pursue a white supremacist with hate crimes unless he interfaced with al-Qaeda. Does that make sense?" And I asked my county attorney on that. We do not have a construct right now that allows us to deal with domestic terrorism. That is a task that the Judiciary Committee is going to take up immediately.

And I would welcome your comments on the importance of that because I loved my colleague from Colorado saying hate is too much of a burden, and he is right. We must act with love. But to prosecute properly these heinous acts of terrorism from El Paso to Mother Emanuel to the Pulse nightclub, among others, to Christchurch, which is another country, there has to be a different construct.

And I just want to remind not El Paso but the Nation of the pain. These are hardworking workers who were experiencing this heinous acts in Walmart. Of course, Walmart has done its own policies, which are corporate America can. One of the things they can do is to cease the manufacturers of guns and ammunition from funding the National Rifle Association. They can stop that right now because it is not a partisan issue that we are discussing here. It is to protect American citizens.

And I have great respect for my Republican colleagues, but I wish they had come not because it is Democrats or Republicans, not because there was a heinous action El Paso, but because we care about America's safety and security.

I want to go to the county attorney, and I ask for pithiness just because I am trying to get all three of you, but I was appalled at the scene that I could just imagine of Federal officers coming into a courtroom and dragging a domestic violence person out. Please tell me what that means, the collective body of immigration officials who I have worked with who are passionate men and women who have been reconstructed because of the policies of the Commander in Chief. What is that like? How chilling effect is that? County Attorney Bernal.

Ms. BERNAL. Thank you for the question. It was in fact quite chilling and stunning to everyone that was in the courtroom. One of the most disturbing parts of it is that, at the time, our Congresswoman was the county judge, and we did complain to Federal authorities. And we were told that a complaint or an investigation would be made by the inspector general, and we were never informed on the outcome of that investigation. So we don't know if there were any consequences.

But I think that one of the things that Congress can do to really help is exactly what you are talking about. The law has to change in accordance with our changing standards and the changing conditions of our country.

Ms. JACKSON LEE. Thank you. Let me ask both Dr. Muñoz Martinez, who is an alum, and Ms. Castillo. I have to get my questions in so you can answer them before the clock. Your concept of violence and how there was a fight on the border, you opened up that history of Mexico and border Anglos trying to retain control. But

the point is how that translates into some people's minds about continuing that schism.

And, Ms. Castillo, the YWCA has been enormously powerful in dealing with hate, with dealing with bringing communities together. What is that instruction? Both of you can answer first and second. Thank you.

Ms. MUÑOZ MARTINEZ. Well, really quickly, I will just say that this wasn't Anglos who were trying to protect the border from Mexicans who were trying to invade. It was Anglos who were trying to claim a place in the border where they were new.

Ms. JACKSON LEE. Right.

Ms. MUÑOZ MARTINEZ. And so they were actually trying to displace longstanding Mexican-American communities that had formally been a part of Mexico, Tejanos who had deep roots. But they were being portrayed, these citizens, these residents were being portrayed as the invaders, as people who were untrustworthy. And so part of the hard work is breaking through those representations to see what is actually at work in that violence.

Ms. JACKSON LEE. That is what I wanted you to clarify for me or for the record. And that carries forward sometimes in some thinking. Is that correct?

Ms. MUÑOZ MARTINEZ. Absolutely, especially when I see border communities like El Paso where people live biculturally, binationally, and they—

Ms. JACKSON LEE. Yes.

Ms. MUÑOZ MARTINEZ [continuing]. Have another imagination of what it means to live on the border. And for that to be attacked is something that is deeply troubling because it is a pattern. It is a historical pattern.

Ms. JACKSON LEE. So we needed to pierce that hatred, that kind of nationalism on the part of white nationalists and others. Ms. Castillo, thank you so very much.

Ms. CASTILLO. And, Congresswoman, you know our history well, but just to answer your question, we empower women, but we know that in order for us to empower women, we have to address race. So for us, making sure that we address racism and we uplift women of color has always been paramount to us. And as we think about how our country and the racism that is being kind of fueled and the rhetoric that is coming together particularly with regard to immigration, our focus is making sure that we address racism, we talk about racism, but we also act upon racism.

And our YWCAs are a safe place for that conversation, for that healing, and we have a multitude of programs and a multitude of activities to bring communities together. Just last night, we actually held a community healing process. We had over 200 community members here in El Paso led by our YWCA. And I have just beautiful anecdotes and conversations that members of the community brought together. So I would love to submit that to the committee.

Ms. JACKSON LEE. Please do. I would like to join you in Houston if I could on that kind of program.

Ms. CASTILLO. Absolutely.

Ms. JACKSON LEE. Then I want to thank the committee chairwoman for her indulgence, and I yield back.

Ms. ESCOBAR. Thank you so much, Congresswoman Jackson Lee.

This concludes the first panel of today's hearing. I would like to thank all of our distinguished witnesses on the first panel for participating in this hearing. We are going to take a very brief recess. We are just going to switch out a couple things. So if you have to leave the room for a health break, you will have to make a quick. And we will stand in recess for five minutes.

[Recess.]

Ms. ESCOBAR. The Committee will reconvene to hear the testimony of our second panel. I will now introduce our second panel of witnesses. Our first is Shaw Drake. Shaw joined the American Civil Liberties Union of Texas Border Rights Center as policy counsel last year. In his current role, he is responsible for developing border-related advocacy strategies working closely with other ACLU border affiliates and ACLU national. Prior to joining the ACLU, Mr. Drake served as law clerk for the Honorable James Orenstein in the Eastern District of New York and an equal justice works fellow at Human Rights First, where he authored the report "Crossing the Line: U.S. Border Agents Illegally Reject Asylum-Seekers." Mr. Drake received his B.A. from the University of North Carolina at Chapel Hill and his J.D. from the Georgetown University Law Center.

Next, we have Linda Rivas. She is the executive director at Las Americas Immigrant Advocacy Center where she serves the needs of asylum-seekers and the immigrant and refugee community in El Paso, west Texas, and New Mexico. In 2016, Ms. Rivas also helped create the Borderland Immigration Council, a local group of attorney and advocacy groups formed to help address issues in the immigration system. Ms. Rivas was born in Mexico and raised in El Paso. She received her B.A. from the University of Texas at El Paso and her J.D. from Loyola College of Law in New Orleans.

Then we have Fernando Garcia. Fernando is the founder and Executive Director of the Border Network for Human Rights, an organization that seeks to facilitate the education, the organizing, and the participation of marginalized border communities to defend and promote human and civil rights. As director, Fernando is responsible for facilitating the creation of human rights community-based committees and the training of human rights promoters in southern New Mexico, west Texas, Arizona, Houston, Dallas, San Jose, California, and New Jersey. Previously, Mr. Garcia served as the national coordinator of the National Movement for Legalization and Human Rights from 2001 to 2006. He studied political science and Mexican archaeology at the National Autonomous University of Mexico.

We welcome all of our distinguished witnesses on this second panel and thank them for participating in today's hearing.

Now, if you would please rise, I will begin by swearing you in.

Do you swear or affirm under penalty of perjury that the testimony you are about to give is true and correct to the best of your knowledge, information, and belief, so help you God?

Let the record show the witnesses answered in the affirmative. Thank you, and you may be seated.

Please note that each of your written statements will be entered into the record in its entirety. I ask that you summarize your testi-

mony in five minutes. And, just as we did with the first panel, we will have an iPad right over here helping us keep track of time. And our staff will be time you on that iPad and will raise it up when you have one minute remaining.

Mr. Shaw, you may begin.

**TESTIMONIES OF SHAW DRAKE, POLICY COUNSEL, AMERICAN CIVIL LIBERTIES UNION OF TEXAS, BORDER RIGHTS CENTER; LINDA Y. RIVAS, EXECUTIVE DIRECTOR, LAS AMERICAS IMMIGRANT ADVOCACY CENTER; AND FERNANDO GARCIA, EXECUTIVE DIRECTOR, BORDER NETWORK FOR HUMAN RIGHTS**

**TESTIMONY OF SHAW DRAKE**

Mr. DRAKE. Chair Escobar, Chairman Nadler—

Chairman NADLER. Your microphone. Try it.

Ms. ESCOBAR. Try it again.

Ms. GARCIA. No.

Ms. ESCOBAR. No?

Ms. GARCIA. It is the little red light—

Ms. ESCOBAR. The little red light is on.

Mr. DRAKE. The red light is on. There we go.

Ms. ESCOBAR. There you go.

Mr. DRAKE. Thank you. Chair Escobar, Chairman Nadler, esteemed members of the subcommittee, thank you for the honor of appearing before you today, and thank you for coming to El Paso to hear firsthand the devastating realities playing out each day for so many along our border.

I have the privilege of serving as attorney and policy counsel for the American Civil Liberties Union's Border Rights Center based here in El Paso, Texas. We at the Border Rights Center stand with border communities to defend and protect the United States constitutional guarantees of equality and justice for all to live freely, safely, and with dignity. Border communities want border policies that respect the culture and people who have lived here for generations, as well as newcomers to the region.

Since taking office, the Trump administration has attacked the border and immigrants from every angle, attempting to implement an array of policy changes under a clear goal, keep immigrants of color out of the United States and do so at all costs no matter the violation to constitutional rights or basic decency that follows.

First, it is very important to make clear the civil rights challenges along our border neither begin nor end with Trump. President Trump inherited a deterrence and enforcement-only approach to border policy and found in Customs and Border Protection or CBP a rogue agency free from accountability measures and ready to carry out his anti-immigrant agenda.

CBP's culture of cruelty has been on national display in recent months but not because of the agency's own mechanisms for accountability or transparency. It took leaked screenshots to reveal the private Facebook group where agents posted racist and sexually violent content. It took text messages revealed in court for one Border Patrol agent's lawyer to argue his client's statement that

migrants were, quote, “disgusting subhuman shit” was commonplace and part of the agency’s culture.

It took our complaints at the ACLU to the Office of Inspector General and subsequent investigations to reveal CBP was holding migrants, including children, for prolonged periods in dangerously overcrowded and inhumane conditions. It took years of ACLU litigation to reveal 30,000 pages of documents detailing shocking violence and abuse by CBP agents against children dating back to 2009.

Much of Trump administration’s policy changes along the border have focused on limiting or obstructing the ability of migrants to seek asylum in the United States. Instead of people finding safety and refuge, thousands subjected to Trump’s policies have been consequently kidnapped, extorted, raped, and even killed in Mexico. Not only are we ignoring our legal obligations, we are literally turning our backs on those seeking safety and refuge at our door.

This administration has dramatically expanded the use of metering, the practice of turning away asylum-seekers and severely limiting the number allowed to enter the United States at ports of entry. In July 2018, CBP turned away the Castro family, including their three children, leading to a six-month-long ordeal in Mexico where they experienced gang-related threats, extortion, and were later kidnapped. Only after ACLU and congressional intervention where they processed.

There are currently over 26,000 such asylum-seekers on metering lists waiting in northern Mexico. In addition, there is now 40,000 asylum-seekers, including babies and children with disabilities, returned to Mexico under the Remain in Mexico policy, officially known as the migration protection protocols. The region of Mexico to which migrants are being returned are among the most dangerous in the world, and documented cases reveal the devastating violence suffered after being returned under MPP.

The U.S. Government’s border policies are not only impacting recently arrived populations but everyday lives of those who call the border home. CBP claims exceptional authority within 100 miles of any international boundary, which encompasses two-thirds of the United States population. Agents nevertheless cannot pull anyone over without reasonable suspicion of an immigration violation or crime. Yet FOIA documents stemming from ACLU litigation reveal that Border Patrol is training its agents that facts such as, quote, “whether the passenger appeared dirty,” can be used to justify a stop. Our country should be a place where everyone can travel freely to visit loved ones or seek medical assistance.

The abuse of this administration cannot be fixed overnight, but if Congress is committed to addressing the underlying causes of Trump’s violations at the border, it must shift immigration policy away from a deterrence-based enforcement-only system to one that acknowledges humanitarian realities.

U.S. immigration and border policies must be rooted in civil liberties and civil and human rights. This includes providing due process to those arriving in the country; safeguarding access to asylum protections; bringing transparency and accountability to CBP, the Nation’s largest law enforcement agency; ending border mili-



tarization that harms border residents and migrants; and not giving DHS one more dime or detention bed.

Border communities, including El Paso, have borne the brunt of Trump's cruelty-first approach. Border residents are looking to Congress to provide critical oversight of DHS, cut funding to CBP and ICE, and pass legislation to undo and redress the damage done by this administration while making structural changes to ensure that this abuse never happens again.

Thank you, and I look forward to your questions.

[The statement of Mr. Shaw follows:]



Written Testimony of:

**Shaw Drake**

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Submitted to the

U.S. House Committee on the Judiciary  
Subcommittee on Immigration and Citizenship

For a Field Hearing on:

“Oversight of the Trump Administration’s Border Policies and the Relationship Between Anti-Immigrant Rhetoric and Domestic Terrorism”

September 6, 2019  
El Paso, TX

**President Trump's Wasteful and Illegal Border Policies Demonstrate the Urgent Need for Oversight and Reform of Customs and Border Protection (CBP)**

The American Civil Liberties Union (ACLU) thanks the U.S. House Committee on the Judiciary, Subcommittee on Immigration and Citizenship, for the opportunity to submit this statement for its field hearing addressing the Trump administration's border policies.

The ACLU is a nonpartisan public interest organization with 4 million members and supporters, and 53 affiliates nationwide—all dedicated to protecting the principles of freedom and equality set forth in the Constitution. The ACLU has a long history of defending civil liberties, including immigrants' rights. The ACLU of Texas Border Rights Center (BRC) addresses civil and human rights violations arising from border-related immigration policies. The BRC works in conjunction with the national office and ACLU affiliates in New Mexico, Arizona, and California, as well as immigrant communities and immigrants' rights advocates throughout the border region and nationwide.

**I. Overview**

The Trump administration's immigration policies have a clear end game: keep immigrants of color out of the United States by violating constitutional and human rights and basic decency.<sup>1</sup> President Trump has advanced this agenda through inhumane and often illegal border policies. My testimony focuses on four areas of concern: (1) CBP abuses, (2) the dismantling of U.S. asylum protections, (3) family separation and border prosecutions, and (4) ongoing border militarization.

Over the past two and half years, the headlines have been dizzying: family separation, deaths of migrant children, overcrowding of detention facilities, expansion of border walls, and attacks on asylum protections. The results are consistent: needless suffering, contempt for the Constitution, and billions of taxpayer dollars wasted. It is vital to appreciate that the impact of these border policies extends well into the interior of our country, with systemic violations of civil rights throughout the 100-mile zone of enhanced Border Patrol authority.

Border communities, including residents of El Paso, have borne the brunt of this cruelty-first approach. Border residents are looking to Congress to provide critical oversight of DHS, cuts in funding to CBP and ICE, and legislative plans for undoing and redressing the damage done by this administration.

At the border, to reverse course requires much more than rolling back illegal and abusive policies implemented by this administration. There are fundamental failings in the system that go back decades. As a start, Congress must shift immigration policy away from a deterrence-based, enforcement-only system to one that acknowledges humanitarian realities. U.S. immigration and border policies must be rooted in civil liberties and civil and human rights. This includes providing due process to those arriving in the United States, safeguarding access to asylum protections, ensuring that federal agencies are accountable and transparent, and ending border militarization that harms border residents and migrants.

**II. Customs and Border Protection: Abuses and Lack of Accountability**

U.S. Customs and Border Protection (CBP) is the nation's largest law enforcement agency and operates with routine impunity and lack of transparency. When President Trump took office, CBP

employed 19,437 Border Patrol agents.<sup>2</sup> Of those agents, 85 percent were tasked with patrolling the southwest border—amounting to nearly 9 agents per linear mile.<sup>3</sup> Yet despite this record high, just days after his inauguration, President Trump ordered the hiring of an *additional* 5,000 Border Patrol agents.<sup>4</sup> Today, CBP employs 19,555 Border Patrol agents.<sup>5</sup> These agents are joined by thousands of CBP officers tasked with staffing ports of entry along the southwest border,<sup>6</sup> as well as ICE agents, more military personnel, and state law enforcement in states like Texas.<sup>7</sup> Since the agency's inception in 2003, its budget has increased from \$5.9 billion to \$14.7 billion.<sup>8</sup>

Despite CBP's expanding work force, massive budget increases, and the regular accounts of abuse and corruption within its ranks, the agency lacks even the most basic structures for transparency and accountability.

#### **a. Culture of Abuse**

CBP's internal culture has most recently surfaced in widespread reports of a private Facebook group littered with racist and sexually violent postings by current and former CBP officers and agents.<sup>9</sup> Such disturbing speech is not harmless—it begets violence. For example, in 2017, one Border Patrol agent hit a Guatemalan man with his Border Patrol vehicle, and then lied about the incident in a report. Federal prosecutors uncovered dehumanizing and violent text messages. In one, the agent described migrants as “disgusting subhuman shit unworthy of being kindling for a fire.” In another message, he wrote, “PLEASE let us take the gloves off [T]rump!” The agent's attorney argued the comments about migrants were “commonplace throughout the Border Patrol's Tucson Sector” and “part of the agency's culture.”<sup>10</sup>

This culture of cruelty within CBP has long been accompanied by impunity for use of excessive and lethal force. Alarming, agents almost never face public consequences for their actions, and often the agency fails to timely report—or report at all—instances of deaths in CBP custody or misconduct by CBP agents. We only know about many of the stories shared here due to investigative reporting, independent reports by non-governmental organizations, and documents obtained through FOIA requests and litigation.

For example, on May 23, 2018, 20-year-old Claudia Patricia Gómez González was shot in the head by a Border Patrol agent shortly after she crossed into the United States. CBP only admitted the facts of this deadly encounter after the release of bystander video, withdrawing its initial statement alleging the deceased young woman had attacked that agent.<sup>11</sup> Since January 2010, at least 94 people—including some U.S. citizens—have died following encounters with CBP personnel.<sup>12</sup> Such encounters include shootings, car chases ending in deadly crashes, and CBP officers forcing a young man to drink liquid methamphetamine.<sup>13</sup> Tragically, seven individuals were shot across international borders as an escalated response to alleged rock throwing.<sup>14</sup> CBP agents almost never face consequences for their actions and some deaths go unreported all together.<sup>15</sup>

CBP abuses and cruelty extend to the deplorable conditions that migrants are forced to withstand in the agency's detention facilities. In May, the ACLU of Texas filed a complaint with the Department of Homeland Security (DHS) Office of Inspector General (OIG) regarding conditions at Border Patrol stations in the Rio Grande Valley (RGV) and El Paso, where many migrants were forced to sleep on muddy, rocky ground, and in puddles of water during thunderstorms, which were followed by extreme heat, humidity and sun exposure. Families, including children, were not provided with bedding, mats, or chairs. Reports included consistent sleep deprivation for multiple days in custody,

lack of medical examination and treatment, lack of food and water, and verbal abuse and threats by Border Patrol agents. In one case, agents made fun of one man's speech impediment and held the man and his 10-year-old son for seven days.<sup>16</sup> The OIG later found dangerous conditions in CBP facilities in the RGV and El Paso sectors, including overcrowding and prolonged detention.<sup>17</sup>

In addition to the OIG complaint, the ACLU of Texas filed an amicus brief in support of a class-action lawsuit challenging the conditions of confinement in CBP holding facilities in the RGV.<sup>18</sup> The brief focuses on CBP's unlawful practice of denying attorneys access to individuals in CBP custody and CBP's practice of holding individuals for prolonged periods of time well in excess of the 72-hour limit authorized by Congress and identified in CBP's own internal guidelines.<sup>19</sup>

At least 12 migrants have died in CBP custody in the last year, including multiple children—notably, there had not been a single death of a child in over a decade.<sup>20</sup> Members of Congress have visited the border and toured detention facilities, yet funding for CBP has continued—and even increased—without adequate protections to prevent abusive conditions.

The ACLU and partners have long challenged prolonged detention and abusive conditions in Border Patrol facilities, including via an ongoing lawsuit filed in 2014 in Arizona on inhumane conditions in CBP facilities in that state.<sup>21</sup> And last year, the ACLU and the University of Chicago International Human Rights Clinic released their review of over 30,000 pages of documents dating back to 2009 that describe shocking violence and abuse against migrant children. The documents detail federal officials' verbal, physical and sexual abuse of migrant children; the denial of clean drinking water and adequate food; failure to provide necessary medical care; detention in freezing, unsanitary facilities; and other violations of federal law and policy. The documents also demonstrate that U.S. officials were aware of these abuses as they occurred, but failed to properly investigate, much less to remedy, them.<sup>22</sup>

More recently, rare access to CBP facilities obtained by lawyers due to the 1997 *Flores* settlement revealed atrocious conditions for children in the Clint Border Patrol station (El Paso sector) and equally disturbing conditions in the RGV, including a premature baby detained without medical attention.<sup>23</sup>

Child welfare and medical professionals, including the American Academy of Pediatrics, continue to warn that the use of detention—for any period of time—is irrevocably harmful for children.<sup>24</sup> Detention under the conditions described above is inexcusable.

#### **b. Lack of Oversight and Accountability**

There is a volume of evidence that CBP imposes virtually no accountability for abuse and misconduct. A Cato Institute study found that between 2006 to 2016, CBP "misconduct and disciplinary infractions outstripped all other federal law enforcement . . . [and] it is virtually impossible to assess the extent of corruption or misconduct in U.S. Customs and Border Protection . . . because most publicly available information is incomplete or inconsistent."<sup>25</sup> Data obtained by the American Immigration Council in 2017 revealed that the agency took "no action" in 95.9 percent of complaints made against agents including verbal abuse, theft of property, and physical assault, over a three year-period.<sup>26</sup> To our knowledge, no use of force has ever been determined to violate policy, and the agency has rejected multiple expert recommendations to change its rules on shooting at vehicles.<sup>27</sup>

The lack of accountability for such abuses is largely thanks to CBP's failed disciplinary system. Despite a set of recommendations issued by an independent advisory panel in 2016, CBP has still not taken adequate steps to fix the system. For example, the panel recommended CBP hire 350 internal affairs investigators, but the agency has not done so. It also recommended the appointment of a discipline czar to coordinate internal accountability across the agency. Three years later, the agency has yet to create that position.<sup>28</sup> Worse still, six years after CBP announced that it would explore the use of body-worn cameras, there has not been a single body-worn camera deployed in field operations.<sup>29</sup>

### **III. Dismantling of Asylum Protections at the Border**

Much of the Trump administration's policy changes along the border have focused limiting the ability of migrants to seek asylum in the United States. Asylum seekers have been turned away at ports of entry through "metering" or returned to Mexico under the Migrant Protection Protocols (MPP), and consequently subjected to kidnapping, extortion, rape, and even death.<sup>30</sup> Once in U.S. custody they have been held for prolonged periods in CBP custody, including detention outdoors for days and overcrowded cells for weeks - many just to be returned to the horrors facing migrants in Mexico. The Trump administration has also tried twice to ban altogether certain categories of migrants from applying for asylum at the border.

Seeking protection in the United States is a right under both international and U.S. law.<sup>31</sup> The baseline right to apply for protection and have that claim considered fairly is fundamental to protect people fleeing persecution in their home countries.<sup>32</sup>

#### **a. Unlawful Turn-backs of Asylum Seekers at Ports of Entry, or "Metering"**

The Trump administration has dramatically expanded its use of "metering"—the practice of severely limiting the number of asylum seekers allowed to enter the U.S. each day at a port of entry, and turning everyone else away. In its current iteration, the policy includes CBP officers stationed on the exact international border at ports of entry, where they turn away arriving asylum seekers and instruct them to seek out Mexican immigration officials to be added to waiting lists. The policy illegally denies access to the U.S. asylum system and forces migrants to wait in conditions that leave them vulnerable to abuse.

In March 2019, the ACLU of Texas Border Rights Center filed a complaint with the DHS OIG on behalf of the Castro family. A family of five, two parents and three children, ages 12, 7, and 3, was denied access to asylum at a port of entry in Eagle Pass, TX, in July 2018 after fleeing El Salvador. The 12-year-old suffered from a heart arrhythmia. In Mexico, they experienced gang-related threats, extortion and were later kidnapped. They were forced to pay Mexican immigration agents \$1,000 for their release. On January 12, 2019, CBP denied the family access to asylum for a second time in Ciudad Juarez. Only after ACLU intervention and congressional advocacy was the family processed.<sup>33</sup>

By early August 2019, the number of asylum seekers on the "metering" lists was more than 26,000 along the southern border.<sup>34</sup> "Metering" has forced many migrants to forgo the wait time at ports of entry and risk dangerous crossings in between ports.<sup>35</sup> An independent investigation by the DHS OIG found in September 2018 that at the same time that the administration instituted its "zero

tolerance” policy and encouraged asylum seekers to cross at ports of entry, it had also restricted access through “metering,”—thus forcing more to cross between ports and then separating children from their parents.<sup>36</sup>

#### **b. Migrant Protection Protocols, or “Remain in Mexico”**

The “Remain in Mexico” policy, officially known as the “Migrant Protection Protocols” (MPP), has already sent over 37,500 people, including families with young children and babies, back to dangerous border regions in Mexico to await their U.S. immigration court hearings.<sup>37</sup> Reports last month indicate hundreds are returned each day, although CBP does not provide public information on daily returns.<sup>38</sup> These individuals are essentially “sitting ducks” for the cartels and other criminal gangs that largely control these areas.

In February 2019, the ACLU with partner organizations filed a lawsuit challenging the program (*Innovation Law Lab v. McAleenan*).<sup>39</sup> Although a district court enjoined the policy as illegal, a Ninth Circuit motions panel allowed the policy to continue pending the government’s appeal of the preliminary injunction -- notwithstanding that two of the three judges on the panel found the policy clearly illegal.<sup>40</sup> Since then implementation of the policy has expanded enormously. The Ninth Circuit Court of Appeals will consider the merits in October 2019.<sup>41</sup>

The regions of Mexico to which migrants are being returned --Baja California, Tamaulipas, and Chihuahua, among others -- are among the most dangerous in the world.<sup>42</sup> Tamaulipas has been referenced as “the disappearance capital of Mexico,”<sup>43</sup> and a currently effective State Department travel warning puts Tamaulipas in the same category as Syria.<sup>44</sup> As of August 26, 2019, Human Rights First had documented at least 141 publicly reported cases of rape, kidnapping, sexual exploitation, violent assault, and targeting by persecutors of individuals returned to Mexico.<sup>45</sup> This is clearly just the very tip of the iceberg since there is no systematic monitoring of such incidents; many incidents, if not most, go unreported.

#### **c. Asylum Bans**

Through two iterations of asylum bans, the White House has attempted to subvert separation of powers and rewrite asylum law from the Oval Office.

The first asylum ban, announced in November of 2018, proposed to make anyone crossing the border between ports of entry ineligible for asylum. Last month, a federal judge vacated the rule entirely, and the government’s attempts to stay the injunction were rejected by both the Ninth Circuit and the Supreme Court. The government’s appeal of the injunction is currently scheduled for argument on October 1, 2019.<sup>46</sup>

In July 2019, the administration announced its second asylum ban, attempting to block asylum eligibility for anyone at the southern border who had transited through a third country en route to the United States, with very limited exceptions.<sup>47</sup> The ACLU, with partner organizations, quickly brought suit and secured a nationwide preliminary injunction to stop the blatantly unlawful rule change.<sup>48</sup> The preliminary injunction was subsequently narrowed to the Ninth Circuit, so the ban has gone into effect in Texas and New Mexico, but the case is ongoing—and just yesterday, ACLU lawyers were in court to push for a nationwide injunction.<sup>49</sup>

Both asylum bans clearly represent the administration's intent to undermine post-World War II refugee protections by redefining who is eligible for such status in the United States. In doing so, the administration undercuts global protection norms and risks the lives of tens of thousands of asylum seekers fleeing violence in their home countries.

#### **IV. Family Separation and Border Prosecutions**

##### **a. Family Separation**

Despite claims by the administration that it had no policy of separating families at the border, public reporting as early as November 2017 confirmed a “de-facto policy of family separation.”<sup>50</sup> The ACLU filed a lawsuit in March 2018 (*Ms. L v. ICE*) before the Department of Justice (DOJ) and DHS announced their “zero tolerance” policy. By that point, hundreds of children had already been forcibly taken from their parents. By late June 2018, when the court issued an injunction, the government reported that there were around 2,700 families separated.

But that was far from the whole story. A subsequent Health and Human Services (HHS) OIG report found that there may have been “thousands” of additional unreported separated families. And just six weeks ago, on July 30, 2019, the ACLU filed a motion in *Ms. L v. ICE* challenging the government's separation of over 900 additional separations since the June 2018 injunction. CBP continues to make discretionary determinations separating families—with little to no basis in evidence or child welfare practices—predicated on the “fitness” of the parents, including because of minor traffic violations and unsubstantiated allegations of gang affiliation.<sup>51</sup>

CBP also routinely separates children from non-parental relatives they arrive with, including siblings, aunts, and grandparents<sup>52</sup> and is also separating numerous families stemming from its implementation of MPP.<sup>53</sup>

##### **b. Border Prosecutions**

DOJ relies on two provisions of federal law to criminally prosecute—rather than process through the civil immigration system—those crossing the border between official ports of entry: 8 U.S.C. §1325 and §1326. Those provisions make crossing the border without authorization a federal misdemeanor and felony, respectively. Over the past decade, these prosecutions have become a significant driver of mass incarceration, comprising 57 percent of all federal criminal cases filed nationwide in 2018.<sup>54</sup>

Border prosecutions were also a major tool for the Trump administration's family separation policy. By enforcing a “zero tolerance” policy of prosecuting migrants—including parents—the Trump administration used these laws to separate thousands of children from their parents.<sup>55</sup> Worse still, many of those families were seeking asylum; a 2018 study by Human Rights First found the government regularly referred asylum seekers for criminal prosecution, violating U.S. treaty obligations, due process, and delaying or preventing the opportunity to seek protection.<sup>56</sup>

#### **V. Impact on Border Communities**

The U.S. government's border policies are not only impacting recent arriving populations, but they are also harming quality of life for those living in border towns like Brownsville, El Paso, and San



Diego. Border Patrol's interior enforcement operations encroach deep into and across the country. Almost two-thirds of the U.S. population lives within the 100-mile zone, that is, within 100 miles of a U.S. land or coastal border.<sup>57</sup>

#### **a. Build-up of law enforcement and surveillance**

The terrorizing of border communities through the build-up of law enforcement and surveillance is deeply rooted in our nation's history of over-policing of people of color. In early 2018, President Trump authorized 4,000 National Guard troops to the border, a move the Border Patrol union itself called "a colossal waste of time."<sup>58</sup> Although far from the first military deployment to the southwest border,<sup>59</sup> the scale and the narrative promoted by the administration set apart this deployment in distinctly concerning ways. The administration increased deployments to 5,900 active-duty troops in November 2018 to the southwest border as part of a mid-term election buildup - under the false pretense of defending against a migrant "caravan" that, at the time of deployment, was over 1,000 miles away.<sup>60</sup> At a cost of over \$600 million,<sup>61</sup> the political stunt was characterized by renowned military leaders as a "profound betrayal of our military."<sup>62</sup>

Beyond personnel, the deployment of technology and substantial infrastructure has entrenched the militarized border-industrial complex. The U.S. government has invested significant resources into mobile surveillance systems, ground sensors, mobile X-ray technology, and a fleet of six Predator B unmanned aerial drones.<sup>63</sup> Moreover, the military brought Blackhawk helicopters, combat vehicles, and razor wire to the streets and skies of border communities.<sup>64</sup> With the majority of contraband entering the country at ports of entry<sup>65</sup> and the majority of border crossers actively seeking out government officials to request asylum, additional technology and increased surveillance further militarizes the region, invades privacy, and dumps even more resources into an unaccountable agency.

#### **b. Border Wall**

Now the centerpiece of President Trump's xenophobic fearmongering, border walls have long been a pawn in enforcement-focused immigration and border policy. The reality is that border walls lead to migrant deaths, devastate the environment, waste billions in taxpayer dollars, take money from accounts that Congress never contemplated would fund such construction, and inflict permanent, irreparable damage on border communities.

Decades of funding walls has only harmed, not helped the border region. In February 2019, Congress allocated \$1.375 billion to finance construction of new physical border barriers along the U.S.-Mexico border.<sup>66</sup> However, the Government Accountability Office (GAO) had previously concluded that DHS is not responsibly spending already allocated funds, finding that "DHS faces an increased risk that the Border Wall System Program will cost more than projected, take longer than planned, and not fully perform as expected."<sup>67</sup>

The wall places more than 93 endangered species at risk, including jaguars, Mexican wolves, Quino checkerspot butterflies, and several migratory birds and bats. Border barriers cut through sensitive ecosystems, disrupt animal migration patterns, create damaging floods, and divide communities and tribal nations.<sup>68</sup> The Trump administration continues to push forward with new construction plans in Texas that are likely to cause deadly flooding.<sup>69</sup> In 2018, more than 2,800 scientists from 47

countries published a paper objecting to Trump's border wall due to the catastrophic impact on biodiversity and massive blow to the environment.<sup>70</sup>

The Trump administration, like previous administrations, continues to seize private land from Texas landowners along the Rio Grande.<sup>71</sup> Recent government court submissions indicate the administration intends to continue seizing land for wall construction.<sup>72</sup> The REAL ID Act of 2005 also granted DHS unprecedented authority to waive laws to expedite wall construction, a power far exceeding that of even the president, and without any provision for a waiver to be reviewed or overturned.<sup>73</sup>

Thirty-six communities in California, Arizona, New Mexico, and Texas have already passed resolutions opposing the border wall, including 16 cities and all three border counties in the Rio Grande Valley, where wall construction proceeds without a single public meeting.<sup>74</sup> Polls show majority opposition to a border wall.<sup>75</sup> For example, a 2018 poll of Texas Latinos found 73% disapproved of a border wall.<sup>76</sup>

### c. 100-Mile Zone

CBP claims a territorial reach of 100 air miles into the United States from any international border, encompassing two-thirds of the U.S. population, or approximately 200 million people.<sup>77</sup> Yet despite this massive reach, Border Patrol agents must have "reasonable suspicion" of an immigration violation or crime (more than just a "hunch") before stopping someone within the 100-mile zone.<sup>78</sup>

Although the law is clear, FOIA documents stemming from ACLU litigation reveal the extent to which Border Patrol supplies flimsy, pretextual reasons for the "reasonable suspicion" the Fourth Amendment requires to stop or search someone in the border zone. Border Patrol's "Enforcement Law Course," the document that it uses to train its agents on the constitutional limitations to their power, says facts such as a car riding too low or too high, or when someone makes too much or not enough eye contact, can be used to justify a stop.<sup>79</sup> The result is U.S. citizens, legal permanent residents, tourists and others are consistently pulled over by Border Patrol for no reason, far from the border, without the required legal standard of "reasonable suspicion."<sup>80</sup>

Similarly, courts have determined that outside of ports of entry, Border Patrol agents cannot search vehicles in the 100-mile zone without a warrant or "probable cause" (a reasonable belief, based on the circumstances, that an immigration violation or crime has occurred).<sup>81</sup> In practice, Border Patrol agents routinely ignore or misunderstand the limits of their legal authority, violating constitutional rights.

CBP's presence throughout the 100-mile zone results in widespread violations of rights, including the Fourth Amendment's protection against unreasonable searches and seizures. For example, in Montana, Border Patrol interrogated Ana Suda and Martha "Mimi" Hernandez at a convenience store for speaking Spanish; the ACLU sued on their behalf.<sup>82</sup> In the past year, Border Patrol has intensified boarding Greyhound buses at stations, profiling and interrogating passengers about their immigration status and pulling individuals off buses. We have documented stories and experiences of Greyhound riders in Vermont, California, Washington, Arizona, and Michigan. The common thread in the reports is that CBP singles out people of color on the buses and fails to provide reasons for boarding and questioning.<sup>83</sup>

Perhaps no case best exemplifies the horrific impact of the 100-mile zone than the case of Rosa Maria Hernandez, a 10-year-old girl with cerebral palsy who was on her way to a hospital in Corpus Christi to undergo gallbladder surgery. After going through a Border Patrol checkpoint—where she was stopped and detained—she was escorted to the hospital and remained in Border Patrol custody with agents in her room, who failed to return her to her parents in Laredo and instead referred her to the Office of Refugee and Resettlement, causing her first-ever separation from her family.<sup>84</sup>

## **VI. Required Reforms**

Thanks to an established immigration enforcement regime and an agency primed for its anti-immigrant agenda, the Trump administration has taken cruelty to new levels. It has found new ways to inflict harm on arriving migrants and border communities alike, and sent a clear message to CBP and ICE agents – any level of cruelty will be excused in an effort to keep people of color out of the country. The abuses of this administration cannot be fixed overnight, but if Congress is committed to addressing the underlying causes of Trump’s violations at the border, it should start with these recommendations.

### **Instituting CBP Oversight and Accountability:**

- **CBP Detention:**
  - Congress should ensure that CBP abide by its own rules and regulations for the humane treatment of migrants in its custody and guarantee that no migrant is held in CBP custody for longer than 72 hours.
  - Congress should ensure that CBP improves the conditions of CBP facilities consistent with all requirements under applicable law, including the standards in the *Flores Settlement Agreement*, and ensure CBP provides humane treatment of individuals in its custody;
  - Congress should conduct oversight to ensure that no individual is held in CBP custody for longer than 72 hours in violation of CBP’s congressional authorization, and that all individuals have immediate access to counsel while in CBP custody.
- **Transparency and Data Collection:**
  - Congress should require DHS to collect and make public data on all use-of-force incidents.
  - Congress should require Border Patrol to collect and make public all data collection of roving patrols and secondary inspections at interior checkpoints, including recording the factual basis for and duration of the stops and searches.
  - CBP should make publicly available, at minimum, the following: policies, complaint investigations, and disciplinary records, stop data, and apprehension statistics, and data relating to use of force through annual reports to Congress.
- **Accountability Measures:**
  - CBP should require officers, including Border Patrol agents, to wear body-worn cameras, with appropriate privacy protections for officers and the public.
  - CBP should communicate openly to the public about serious incidents when they occur, respecting when the law requires confidentiality
  - CBP should require officers to identify themselves by their full name, rank, and command (as applicable) and provide that information in writing to individuals they encounter at ports or within the 100-mile zone if requested.

- Congress should establish a permanent, independent civilian oversight body that is charged with investigating and responding to complaints about CBP abuses, including authority to impose discipline.

#### **Restoring Asylum Protections:**

- DHS should end the policy of “metering” at ports of entry and return to a policy of accepting and processing migrants as they arrive.
- DHS should rescind the Migrant Protection Protocols, stop the forced return to Mexico of individuals seeking asylum in the United States and provide safe transportation back to the U.S. for returnees currently stranded in Mexico.
- DHS should revoke all rule changes that attempt to ban asylum eligibility for certain classes of border crossers.

#### **Ending Family Separation and Border Prosecutions:**

- CBP officials should not have discretion to separate families. Instead, child welfare experts should assess whether a child appears to be in danger and then determine whether separation is warranted. If a separation occurs, there must be detailed information recorded and shared across agencies (DHS, DOJ, and HHS) in order to maintain data and to facilitate reunification or release to a sponsor. Review should be required by the appropriate state court handling child welfare cases.
- Congress should repeal 8 U.S.C. §§ 1325, 1326.

#### **Demilitarizing the Border and Addressing CBP’s Bloated Budget:**

- Congress should restrict CBP’s authority to no more than 25 miles from the border, limiting incursions onto private property to no more than 10 miles, and remove all Border Patrol interior checkpoints.
- Congress should not allocate any additional funds for “border security” or border walls. It should cut funds to CBP, which has used such funds to increase border militarization.
- Congress should conduct robust oversight of existing funding and demand DHS provide a full accounting of funds previously allocated for border security infrastructure and CBP enforcement. Funding for any type of border barriers should be tied to required, ongoing community consultations that include in-person community meetings and open comment periods for all construction proposals, as well as public reporting requirements on the outcomes of such consultation.
- Congress should repeal the Real ID Act Section 102(c) waiver and pass legislation requiring that any border barrier comply with all applicable environmental laws.

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- <sup>71</sup> Bryan Logan, "The Feds Are Moving Ahead with Private-Land Seizures to Make Room for Trump's Border Wall," *Business Insider*, June 21, 2018, available at <https://www.businessinsider.com/government-seizing-private-land-for-trump-border-wall-when-where-2018-6>.
- <sup>72</sup> See Notice of Decision by the Department of Defense to Authorize Border Barrier Projects Pursuant to 10 U.S.C. § 2808, ECF No. 201, *Sierra Club v. Trump*, 4:19-cv-892 (N.D. Cal.) (Sept. 3, 2019).
- <sup>73</sup> ACLU Border Rights Center, *supra* note 68 at page 7.
- <sup>74</sup> The full list of community resolutions is as follows: Arizona: Flagstaff, Inter-Tribal Association, Pima County, Tohono O'odham Nation, Tucson; New Mexico: Las Cruces, California: Berkeley, Los Angeles, Oakland, San Diego; Texas: Alton, Alamo, Austin, Brownsville, Brewster County, Cameron County, Edinburg, El Paso, Hidalgo County, La Jova, Laguna Vista, Los Fresnos, McAllen, Mercedes, Mission, Palmview, Pharr, Port Isabel, Presidio, San Juan, Starr County, Sullivan City, and Weslaco. See list available at <https://noborderwalls.org/opposition/>.
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- <sup>76</sup> Steve Taylor, "Telemundo Poll: Texas Hispanics Oppose Border All, SB 4, and 'Zero Tolerance,'" *Rio Grande Guardian*, September 9, 2018, available at <https://riograndeguardian.com/telemundo-poll-texas-latinos-oppose-border-wall-sb-4-and-zero-tolerance/>.
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- <sup>82</sup> Ana Suda, Certified Nurse Assistant and ACLU plaintiff, "Border Patrol Detained Me for Speaking Spanish in Montana. Then My Town Turned Against Me," *ACLU*, Feb. 14, 2019, available at <https://www.aclu.org/blog/immigrants-rights/ice-and-border-patrol-abuses/border-patrol-detained-me-speaking-spanish>.
- <sup>83</sup> American Civil Liberties Union, "ACLU To Firstgroup Plc: Protect Your Customers. Tell Greyhound To Stop CBP From Racially Profiling & Deporting Riders," July 23, 2019, available at <https://www.aclu.org/letter/aclu-firstgroup-plc-protect-your-customers-tell-greyhound-stop-cbp-racially-profiling>; and Chris Rickard, "Greyhound Is Still Failing to Protect Customers from Border Patrol Abuse," *ACLU*, Sept. 26, 2018, available at <https://www.aclu.org/blog/immigrants-rights/ice-and-border-patrol-abuses/greyhound-still-failing-protect-customers-border>.
- <sup>84</sup> Barbara Campbell, "Girl Detained By Border Patrol After Emergency Surgery Released To Parents," *National Public Radio*, Nov. 3, 2017, available at <https://www.npr.org/sections/thetwo-way/2017/11/03/562003841/girl-detained-by-border-patrol-after-emergency-surgery-is-released-to-parents>.

Ms. ESCOBAR. Thank you, Mr. Shaw. Ms. Rivas.

**TESTIMONY OF LINDA Y. RIVAS**

Ms. RIVAS. Thank you, Chairwoman Escobar, Chairman Nadler. Thank you so much to this esteemed committee for traveling to El Paso, Texas.

For the past five years I have had the honor to serve at Las Americas Immigrant Advocacy Center. Las Americas is a local non-profit organization dedicated to serving the needs of migrants specializing in asylum-seekers for the past 32 years. We are unwavering in our passion and in our mission, and this year that conviction forced us to travel to Mexico in order to continue helping asylum-seekers under the harmful Remain in Mexico policy.

For years, we had worked to strengthen programs in our detention centers. We currently are helping—we currently represent the same hunger strikers that Chairwoman Escobar described today. But our resources had to be diverted to Remain in Mexico.

Less than a week after the ill-named migrant protection protocol had been rolled out, Las Americas' phone started ringing off the hook. Our inclusion on a DOJ list, which I provided the committee today, was provided by DHS. And it was through this that they were able to call Las Americas. In 23 weeks we have been able to capture over 600 phone calls. Those are only the ones that we have been able to answer and register. Eighty percent of the people who have called us report a fear of being in Mexico.

We have been able to conduct with very little resources over 300 legal intakes across the border. We have successfully released 40 people from MPP based on vulnerabilities or fear to return in Mexico, we have taken on 10 cases for full legal representation thus far.

We have witnessed nine pregnant women be subjected to be returned to Mexico, although they were over seven months' pregnant. We have witnessed three victims of rape, not raped by one but raped by multiple men. We have also represented a woman who was attempted raped—they attempted to rape her in front of her three-year-old child. That woman was sent back to Mexico despite her best efforts. She decided to give up her asylum claim and go home. I have not heard from her since.

One day, a man, U.S. citizen from Miami, came to our office frantic. He needed help for his sister, a 44-year-old deaf and nonverbal woman who had been returned to Mexico under MPP. How can we justify a deaf nonverbal woman being returned to Mexico? Border patrol confirmed to me that an interpreter was never secured for her.

Within less than 48 hours, Las Americas sprung into action. We were in Mexico, and the next day we represented her in court. While we successfully removed her from the program, we still have to consider that her brother and his family thought that she was dead for several weeks because of the inability to communicate with her.

I have now unfortunately had to meet not one but two mothers who have been returned to Mexico with children with congenital heart issues. One mother, after being sent back more than once, was eventually let out. The other that I just met the other day has



a son. When he is hyperactive, his lips turn purple. She was able to visit one doctor in Mexico, and the pastor from that same shelter paid for that medical care. They do not have a plan if the little boy were to lose consciousness.

Just yesterday, I spoke to a client. Her case is on September 30. We have been ready for trial now for several weeks. The day before trial, my client's house was raided for drugs, so her trial was continued to September 30. But yesterday we spoke and she said [Speaking foreign language.] "Attorney, I just can't anymore." She has reached her end. She has reached her breaking point.

This woman was returned to Mexico since April. She was kidnapped once for ransom. She was let go. She tried to live in a hotel. The hotel was almost robbed with her living with other single mothers and young children. And she took a nonrefoulement interview three times and did not pass. She has finally reached her wit's end.

Her child was diagnosed with childhood anorexia, but the doctor says it could be something else but there is not enough money for them to conduct more tests. It doesn't matter that I am her attorney. It doesn't matter that we are ready to go to court. She has given up. She will be leaving on a bus Tuesday of next week.

I will end with Remain in Mexico is not a representation of the beauty of this binational community. While hope does emerge from El Paso and Juarez, as it always does, the dangers that migrants face are so real that the shelter owners that help them ask migrants not to leave, not to talk in public, and to hide in order to remain safe. As we know, hiding is not acceptable under U.S. or international law. Thank you.



## Opening Statement

My name is Linda Rivas, for the past 5 years I have served at Las Americas Immigrant Advocacy Center. Las Americas is a local organization dedicated to serving the needs of asylum seekers for the past 32 years. We are unwavering in our passion and in our mission. This year this conviction forced us to travel to Mexico in order to continue our mission to help asylum seekers under the harmful Remain in Mexico policy. For years we worked to strengthen our detention center infrastructure when suddenly our resources had to be diverted to Mexico. Less than a week after the ill named Migrant Protection Protocol had been rolled out, Las Americas phones started ringing off the hook. Our inclusion on a DOJ list that DHS was providing migrants provided people stuck in Mexico with our phone number. (Please see "List of Pro Bono Legal Service Providers" Updated on July 2019.) To this day we have registered over 600 phone calls. We have conducted over 300 legal intakes across the border, we have successfully released 40 people from the MPP program based on vulnerabilities or fear to return to Mexico and we have taken on 10 cases for full legal representation thus far. Just two days ago, I visited my client, Gaby, who has an asylum hearing on September 30. She told me, "Abogada ya no puedo" "Attorney, I can't anymore" Her child, Sophia had been diagnosed with childhood anorexia. But the doctor could not be certain because Gaby did not have the money to conduct more tests. "My daughter comes first; I cannot endure this." This political asylum seeker from Honduras who had been kidnapped several times in Mexico yet failed her "Non-Refoulment Interview" (the only safety mechanism built into MPP, with an extremely high burden of proof) not once but 3 times was finally at her breaking point. She was determined to take a bus back home. Even having an attorney was not enough to keep her wanting to fight her case. She told me this must be what the US government wanted, but no one wins. Instead everyone loses. She will return to Honduras and live in a new town, a smaller town where she doesn't know anyone, except distant relatives of her husband. Meanwhile her husband will remain in New York. Although they traveled together with both their children, they were separated by Border Patrol. Gaby, my client and Sophia, her 6-year-old daughter, were sent to Juarez. Her husband and 7-year-old son were released and allowed to travel to New York. Gaby said, "I still cannot make sense of why this happened, the last time we were together was when we were sleeping on gravel, rocks and construction material under a bridge, then we were separated for no reason." Gaby has given up; she is far from the only one. Weekly, buses full of asylum seekers go back to their countries of origin. Like Gaby, some have accepted to return to live in hiding. It is easier to hide in a country you know than in a country you do not know. Gaby's story and so many others who we have accompanied for the past 23 weeks highlight just how cruel and horrific MPP is.

Ms. ESCOBAR. Thank you so much. Mr. Garcia.

**TESTIMONY OF FERNANDO GARCIA**

Mr. GARCIA. Buenos dias. Chairwoman Escobar, Chairman Nadler, and all members of the Subcommittee on Immigration and Citizenship, I thank you for coming down to El Paso. Today, I am not representing myself but more than 1,000 families that live in New Mexico and El Paso area. My testimony will touch on three points. The first on the growth of the border and immigration enforcement apparatus, the second on the impacts of such enforcement in our communities, and thirdly, our reflection on how to move forward with a good and better narrative for the future of America.

During the last thirty years since Operation Blockade in the early 1990s, our border from San Diego to Brownsville has become one of the most militarized borders in the world. Administrations of both parties have thrown our community under the bus for political gains.

By 2018, CBP alone had a budget of \$14 billion for border enforcement. Today, more than 23,000 Border Patrol agents are deployed between ports of entry and within our communities. We have more than 700 miles of fencing and walls, 12,000 underground sensors, 170 aircraft and eight drone systems in our skies, 84 water vessels, nearly 500 surveillance systems, 9,000 vision goggles, 6,000 thermal technology, dozens of immigration checkpoints and detention centers, thousands of National Guard elements and active-duty troops.

All of this enforcement, of course that has an impact in our community. As of the 2010 census, 14 million Americans live within 100 miles of the border. This is not an empty, barren place, but this is a thriving community full of life. Border patrol checkpoints entrap people in our communities.

One of our community leaders has a degenerative liver disease that can only be treated in San Antonio or Houston, but she cannot travel for surgery because she cannot pass the checkpoints. This region seems the only place in America where constitutional rights do not exist.

Immigration enforcement agencies feel that they can do anything to our community with complete disregard of our rights. We see excessive use of force, sometimes lethal, against immigrant families and border residents. Agents enter properties and search homes without proper warrants. Agents use racism and racial profiling to stop, question, and detain people. Violations of the Fourth, Fifth, and Sixth Amendment rights have become the norm.

Additionally, an average of 500 migrants die every year looking for the American dream. Since 1993, more than 10,000 immigrants have perished in the deserts, mountains, and rivers of our border region.

Today, border communities live in fear of the enforcement institutions that are supposed to protect them. We are subjected to a culture of abuse imposed by the harsh reality of detention, searches and arrests without merit.

The U.S. has built the largest domestic enforcement operations with the safeguards for effective accountability or oversight. This is not a question if we need the enforcement at the border but a

question of what type of enforcement do we want. Making agencies be accountable, respect our rights, know the Constitution, and stop separating families, all of this is the right and the just thing to do and in keeping with our Nation's values. Accountability to the community and transparency in their actions is not only a mandate but a moral obligation.

I commend Congresswoman Escobar for introducing H.R. 2203, the Homeland Security Improvement Act, which brings the necessary accountability measures to border enforcement institutions. These include an oversight commission made up of border residents that can investigate enforcement strategies and practices; an ombudsman to oversee CBP, ICE, and USCIS; improvements in the complaint process; training rooted in civil, constitutional and human rights. We know that American Government works best with checks and balances. I encourage you to review it and to support it.

In our history, border has been defined by the characters of the—have defined the character of their nation—of our nations. It was the Statue of Liberty and Ellis Island that represented the best ideals of America. This border here today is where the future of America will be shaped. We know that the U.S.-Mexico border can and must be the new Ellis Island of our era. The families that are arriving in El Paso today have the same hopes, aspirations and dreams as those teeming masses at Ellis Island a century ago.

Today, we must decide what kind of America we want, decide what our future will be. Will America incarcerate families, put children in jails, build walls, let immigration agents act with impunity? Or will America accept its destiny as a nation of immigrants that is exceptional because of its inclusivity, diversity, and commitment to each other? Thank you.

[The statement of Mr. Garcia follows:]

**House Committee on the Judiciary  
Subcommittee on Immigration and Citizenship  
Friday, September 6, 2019**

Testimony by:  
Fernando Garcia, Executive Director, Border Network for Human Rights

— — —

**Table of Contents**

**Expanded Written Testimony of Mr. Garcia to the Committee**

**Pages 2-7**

**Supporting Documents**

Appendix A—Breaking the Border-Immigration-Criminal Enforcement Nexus: A View  
From the Border

Pages 9-38

Appendix B—An Overview of Current Conditions at the U.S.-Mexico Border

Pages 39-54

Appendix C—Building a New Ellis Island Rooted in Accountability and Human Rights

Pages 55-59

Good morning.

My name is Fernando Garcia. I am the Executive Director and founder of the Border Network for Human Rights. Today, I am not here representing myself but representing more than 1,000 families who are members of our organization.

First, I would like to thank Chairman Nadler of the Judiciary Committee and all members of the Subcommittee on Immigration and Citizenship. I want to particularly thank our Congresswoman Veronica Escobar for her efforts to bring this hearing to our border region.

Today's hearing is an exercise in how democracy should look. Government must step out of its comfort zone to speak directly to our communities so impacted by policies and strategies discussed and approved in Washington, D.C., yet implemented at the border.

This is the reason we applaud the decision of the Judiciary Committee to come to El Paso, the largest border community in the nation, to listen to the issues faced by border residents in regard to immigration, racism, xenophobia, and white supremacy, and how these issues are impacting us.

My testimony is divided into three sections:

- The first discusses the growth of border and immigration enforcement apparatus.
- The second speaks to the impacts of such enforcement on our border communities.
- The third is a reflection of how to move forward with a narrative and a vision for the future of America that includes a better border, a better nation, and, more than anything, a better society that is inclusive and tolerant.

### **Growth of the Border and Immigration Enforcement Apparatus**

Let me start with the growth of border and enforcement apparatus. Sometimes, it is important to stop and to reflect historically about what we have done as a nation, what we have done to ourselves and to our communities.

During the last 30 years since Operation Blockade in the early 1990s, our border, the 1,954 miles of distance from San Diego to Brownsville, has become one of the most militarized borders in the world. Administration after administration, Republicans and Democrats, have treated our border as a pawn in a chess play where our communities are thrown under the bus for the sake of political gains.

By 2018, not counting the Immigration and Customs Enforcement (ICE) budget, \$14 billion were spent on the implementation of enforcement operations at the US-Mexico border. Today, we have more than 23,000 Border Patrol agents deployed between ports-of-entry and within our border communities. And, if that was not enough, thousands of national guard elements have been deployed time and time again to the US-Mexico border.

Moreover, we have more than 700 miles of fencing and walls already; more than 70 miles of border lighting; more than 12,000 underground sensors; more than 170 aircraft and 8 unmanned air systems "drones" in the skies; more than 84 water vessels—some of them heavily armed; 40 mobile surveillance systems; 170 video surveillance systems; 273 remote surveillance systems; more than 9,000 night vision goggles; 6,000 thermal imaging systems; dozens of immigration check points within 100 miles of the border; and, not to mention, dozens of immigration detention centers with thousands of children, mothers, and fathers that are incarcerated, mistreated, and dehumanized.

And the latest strike to our border, which sets a very bad precedent, is a national emergency declaration issued by the Trump Administration portraying immigrants as a national security threat. Such distorted declaration allowed the deployment of more than 5,000 active duty soldiers, fully armed within our communities.

So, it is not an overstatement when we have said that the United States has built the largest enforcement operation in the nation, infused with a military strategy. And, by any measure, no one today can say we have an open border; rather exactly the opposite.

[For more on this topic please see Appendix A—Breaking the Border-Immigration-Criminal Enforcement Nexus: A View From the Border.]

### **The Impacts of Enforcement on Our Border Communities**

Allow me to move to the second point, which is the impact of such enforcement on our border communities.

What is the impact of all of this in our communities? Let me remind everybody that, per the 2010 Census we have more than 13 million Americans living within 100 km of the border. This is not an isolated piece of land in the middle of the desert. This is a thriving community full of activities of everyday life from commerce traveling across the border to children going to school. Enforcement along the US-Mexico border has already created enormous damage to the lives of border residents.

First, we have an entrapped population that is limited geographically. Their mobility is limited by Border Patrol and immigration checkpoints. For example, one of our community leaders has a degenerative liver disease that can only be treated in San Antonio and Houston, but she can simply cannot travel due to these restrictive checkpoints.

Also, this region has become the only place in America where constitutional rights appear not to exist. I'm talking about the intentionally promoted false narrative that tells immigration enforcement agencies that they can do anything to members of our communities with complete disregard of their rights. I am not talking only about the borderline or ports-of-entry. I am talking about places like UTEP or downtown El Paso or downtown Brownsville and the multiple poor *colonias* and suburbs that are hit hard by these illegal practices. Using this false perception, immigration enforcement agencies have entered properties thousands of times, they have searched homes without search warrants or legal due process.

They have also used racism and racial profiling to stop, question, and detain people. Here, we have experienced collectively, to be people of color and be targeted by this ill-conceived enforcement. Violations of the fourth, fifth, and sixth amendment rights by federal immigration institutions have become the norm. If that was not problematic enough, we have experienced the excessive use of force, sometimes lethal, against immigrant families and border residents.

On top of all of that, today under Trump's Administration, these immigration enforcement agencies have rejected asylum seekers and turned away refugees massively violating the 14<sup>th</sup> Amendment of the Constitution of the United States and international law. Children are placed in jails without access to water, food, or healthcare. As we speak, more than 6 children have already died under border patrol and ICE custody because they were placed in undignified detention conditions where officers showed a great degree of disrespect, lack of professionalism, and lack of accountability.



Another crisis brewing at the border for many, many years are the unnecessary deaths of people seeking a better life. Every year, an average of 500 migrants have died while trying to cross the border looking for the American dream. Since 1993, more than 10,000 immigrants have died in the deserts, in the mountains, and in the rivers of this border region, many of them still missing and others only counted as unidentified remains.

In sum, what we see today at the border are communities living in fear of the enforcement institutions that are supposed to protect them. How can we make sense or understand the fact that high school teenagers find themselves questioned by Border Patrol or that US citizen children run away when they see them? We have been subjected to a culture of fear imposed by the harsh reality of detention, searches, and arrests without merit.

We must not neglect the long-term psychological trauma of refugees, immigrants, and border residents that have been submitted to family separation. In our case, we have the example of the detention centers in Tornillo and Clint where children and families are subject to the blow of separation and psychological trauma.

When immigrant border residents and refugees are detained, they are sent to detention centers in Border Patrol stations that are ill equipped and that do not guarantee dignified treatment. They are overcrowded and lack the legal support for the individuals and families that are detained. And, to make matters worse, detainees are exposed to harsh and unprofessional treatment by both federal enforcement officers and private security.

If all of this is not a civil and human rights crisis, then what is it?

[For more on this topic please see Appendix B—An Overview of Current Conditions at the U.S.-Mexico Border]

### **A Reflection on the Need for Accountability Checks and Balances**

But all of this could have been prevented.

Previous Administrations, especially the Trump Administration has decided to go down the dangerous path of not only threatening the democratic process but also American values.

The US has built the largest enforcement domestic operation without safeguards for effective accountability mechanisms and very little oversight. When we think of America, we think of the effectiveness of its government. At least, this is what I have thought and learned about this great nation, that American government works best with checks and balances.

We have asked for accountability of the financial markets that led this nation to an economic crisis. And Congress had to implement closer oversight of the wars in Afghanistan and Iraq. But, we have neglected to do so in a domestic enforcement policy area (border and immigration) that is affecting millions of Americans.

And, this is not a question of if we need enforcement at the border. It is a question of what type of enforcement do we want. To ask Border Patrol, ICE, and other immigration agencies to be professional, that is a true American value. To ask them to respect Constitutional rights of residents at the border, it is their duty and their obligation, not an option. To send border immigration agents through more Constitutional, civil, and human rights trainings is the right thing to do. To ask this Administration to stop the separation of families and end family detention it is the just thing to do. Moreover, for all these border and immigration agencies to be accountable to their community, to act transparently in their actions, is not only a mandate but a moral obligation.

I commend Congresswoman Escobar for introducing HR 2203, the Homeland Security Improvement Act which brings the necessary accountability measures to border enforcement institutions. Among the necessary provisions in that bill, it is the creation of oversight commissions composed by members representing the different sectors of our border community to assess, investigate, and report back to Congress on the impacts of immigration strategies on border residents. It would also create the figure the Ombudsman within DHS and CPB to revamp training, the complaint process, and the supervision of law enforcement institutions at the border. I encourage you to review it and put your support behind it.

Before I wrap up, for us it is here at the border where the future of the nation is being shaped. In our history, borders have defined the character of our nation. It was the Statue of Liberty and Ellis island that represented the best of the ideals of America. That

we were an exceptional nation because of immigrants and immigration. And today, it seems that some might want to forget that.

That is why, here, in front of you, our communities declare that the US-Mexico border is indeed the New Ellis Island. Those families, only a few miles away in our sister city of Ciudad Juarez, in refugee camps, and the ones still in the detention centers elsewhere in the United States, they have the same aspirations, hopes, and dreams as those who came a 100 years ago thru Ellis Island. They, just as those before them, will be the backbone that will fortify and bring into the future this great nation.

Today, we must decide what kind of America we want and decide what our future will be. Is it the one that incarcerates families and puts children in jails and builds walls and with immigration officers acting with impunity? Or, the one the one that accepts its destiny, that we are nation of immigrants and that is what makes us exceptional. A nation that is inclusive, diverse, and working for the wellbeing of each other.

Subcommittee Members and Congresswoman Escobar, I thank you for the opportunity to present testimony before you and I look forward to your questions.

[For more on this topic see Appendix C—Building a New Ellis Island Rooted in Accountability and Human Rights.]

Ms. ESCOBAR. Thank you so much for that very powerful testimony.

We will now proceed under the five-minute rule with questions. I will begin by recognizing myself for five minutes.

I have been shocked in listening to this administration as they have denied the horrific conditions that migrants face in Mexico and that they have championed MPP as some kind of victory in alleviating humanitarian concerns when in fact all that this country has done is take the misery that has arrived at our front door and shoved it into our neighbor's yard. Those of us here in this community, not only do we see the misery but we can hear it.

So, without objection, I would like to enter the following articles into the record as evidence for the administration that people are suffering in danger. The first is "I am in Danger: Migrant Parents Face Violence in Mexico under New Trump Policy." The next is "Trump's Remain in Mexico Policy Exposes Migrants to Rape, Kidnapping, and Murder in Dangerous Border Cities." And the third is "Central American Migrants" Plea to Seek Asylum in the U.S., Not Mexico."

[The information follows:]

REP. ESCOBAR FOR THE RECORD

**POLITICS**

## 'I'm in Danger': Migrant Parents Face Violence in Mexico Under New Trump Policy

Asylum seekers forced to stay in Mexico have been robbed, kidnapped, and beaten.

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**BY** **ROBERT MOORE**

**DATE** **APR 25, 2019**

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**NOTES** **15 COMMENTS**



**A mother and her children cross the Paso Del Norte bridge between El Paso and Ciudad Juarez to seek asylum in the U.S., January 2019.**

*Joe Raedle/Getty Images*

**O**n a chilly morning in mid-April, two Central American families piled out of an Uber and joined the long line of pedestrians waiting to cross the Paso del Norte Bridge from Ciudad Juárez into El Paso. Other folks in line were on their way to school, work, or errands in El Paso—the everyday stuff of binational cities. But these two families—each with a father, pregnant mother, and child—had a different destination: U.S. immigration court.

The day before, the two young fathers, Edwin Escobar from El Salvador and Ronaldo Garcia from Guatemala, said that after leaving their church shelter for food, they had been kidnapped by three men at gunpoint, held for three hours, beaten, and robbed. The men broke Garcia's finger and stole the five pesos—about 25 cents—that he had to his name. Now, as the parents guided their children toward the international bridge, they spotted something both familiar and alarming: a man and woman staring at them, talking on their phones, and looking around. “When we were kidnapped, we saw people acting just like that,” said Edwin. He said the suspicious man followed them into a bathroom and onto the bridge, and only left after they turned themselves into U.S. Customs and Border Protection agents. The families feel lucky to have made it to court that day.

The Garcias and Escobars, whose last names have been changed, are among the first group of asylum seekers to return to El Paso for court hearings since the Trump administration put into place a controversial new policy requiring some asylum seekers to stay in violent Mexican border cities while their cases are heard in the U.S. Immigrants, shelter operators, and human rights groups have warned that the policy, called the Migrant Protection Protocols, endangers the lives of migrants and deprives them of due process. MPP is currently in place in El Paso and California, though DHS has said it plans to expand the program across the Southwest border. Opponents are challenging the plan in court; on Wednesday, the Ninth Circuit Court of Appeals heard oral arguments on whether to issue an injunction to halt the program, at least temporarily. More than a thousand asylum seekers have been returned to Mexico under MPP, including four to five hundred from El Paso in just over two weeks.

On April 17 and 18, at court hearings in El Paso for 42 asylum seekers, including 15 children, the major concerns of critics of the “remain in Mexico” plan unfolded: migrants faced violence in Mexico and had little or no access to attorneys; the already limited humanitarian relief network was strained beyond capacity; and the court system was at times chaotic—even the judge acknowledged he didn't know all the rules of the program.

At the hearings, immigration judge Nathan Herbert explained that under MPP, the decision to send asylum seekers back to Mexico to await a ruling on their ultimate fate was up to the Department of Homeland Security, not him. His job was to decide whether they'd be deported to their home countries. He acknowledged that the MPP hearings were “uncharted territory.” Over two days, he repeatedly tried to make the asylum seekers feel at ease and encouraged them to ask questions. He wished one little girl a happy birthday after her mother told him she was turning three in a few days.

He made a Spanish interpreter available in the courtroom, and he twice phoned an interpreter of Quiché, a Mayan language spoken in Guatemala. Herbert also ensured that every asylum seeker in court had their cases reset for May to give them time to meet with an attorney, if they could find one.

Despite Herbert's accommodating style, the limitations of MPP were apparent. Of the 42 people on the docket, only the Garcias and Escobars were represented by attorneys—volunteers with Las Americas Immigrant Advocacy Center, who took mercy on the pregnant mothers.

At the first set of hearings on April 17, several parents pleaded with Herbert not to be sent back to Juarez, where many of them said they'd been robbed, or worse. "Yesterday, I stepped out [from a Ciudad Juárez shelter] to buy my lunch, and a man tried to take my son," said Riccy, a 24-year-old Honduran woman who held her 4-year-old, Binsel. She didn't provide more detail, and Herbert didn't ask. "If you leave [the shelter] to buy food or something, they tell me to hold my daughter's hand tightly because there are bad people out there," said Yessenia, 31, of her 7-year-old.

That same day, Edwin and Ronaldo relayed their kidnapping story to Herbert. "I do not want to go back to Mexico because I don't feel safe, and they broke my finger," said Ronaldo, who kept his swollen right index finger elevated throughout the three-hour hearing.

MPP guidelines call for immigration agents to provide extra screening to any asylum seeker who expresses fear of being sent to Mexico. The burden is on migrants to raise the issue, and he or she must prove that it is "more likely than not" that they will face persecution in Mexico. Prosecutors told Herbert that each person or family who appeared in court April 17 or 18 would be given a fear interview regardless of whether they had expressed fear. But when Rivas asked Herbert if her clients were allowed to have an attorney present for their fear interviews, the judge responded, "I don't know." Later, Rivas said she was allowed to call into her clients' interviews but wasn't allowed to be physically present.

During the hearings, the asylum seekers repeated a number of common concerns. Several said they couldn't possibly hire an attorney because they were limited in shelters to two three-minute calls per week. Several said they were told that their beds at the shelters wouldn't be available to them when they returned because demand is so high. Many said their sixteen-day Mexican tourist visas would soon expire, possibly subjecting them to deportation by the Mexican government. Herbert listened to the concerns but reminded them that the decision on where they would go after the hearing was out of his hands.

On Saturday, only the Garcias, Escobars, and one other family—a father and son from Guatemala who required a Quiché interpreter during the hearing—were released in El Paso. Rivas said she was given no explanation for their release. The Escobars are now with family in Maryland, the Garcias with relatives in New York, and the third family is in Boston.



As to the fate of the other families: the Escobars said that while they were in detention they witnessed six families being returned to Mexico on Good Friday. Because of confusion in Juarez, the families were then put out on the street, realizing their worst fears, Rivas said. (Shelter officials have promised to find space for any MPP families in the future.)

Homeland Security officials didn't respond to numerous questions. Instead, the agency provided a series of links to descriptions and guidelines of MPP.

The pace of MPP hearings in El Paso is expected to increase this week. Migrant advocates warn that the legal system isn't prepared for what is coming. Taylor Levy, the legal coordinator for the El Paso nonprofit Annunciation House, has been serving as a "friend of the court" during the MPP hearings, trying to make sure migrants at least get all their paperwork, and she drew parallels to the family separation crisis. "It was so incredibly difficult to try and represent people from a legal point of view when all they cared about is, 'Where's my child?' And here, trying to speak to people in more depth about their cases, so much of what they wanted to talk about is, 'Don't you understand? I have nowhere to sleep tomorrow night, and I'm in danger.'"

**15**

COMMENTS

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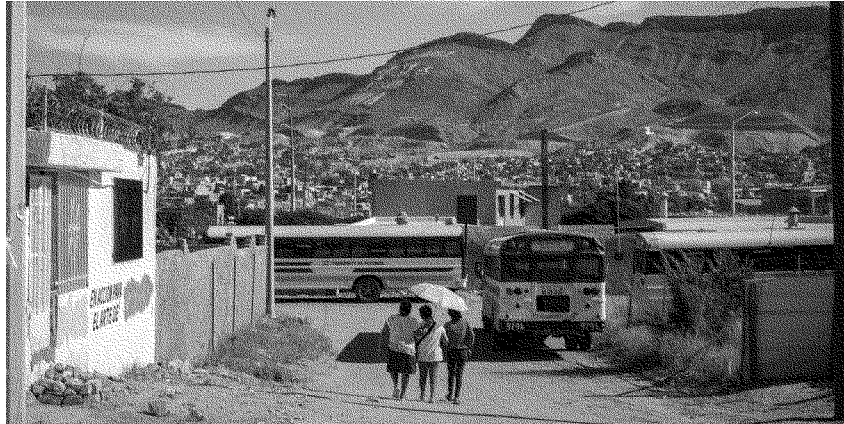
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**The  
Intercept\_**

## **TRUMP'S "REMAIN IN MEXICO" POLICY EXPOSES MIGRANTS TO RAPE, KIDNAPPING, AND MURDER IN DANGEROUS BORDER CITIES**

Debbie Nathan

July 14 2019, 7:30 a.m.



Women staying at Iglesia Metodista "El Buen Pastor," a church-run migrant shelter, take a walk in Juárez, Mexico, on June 16, 2019. Photo: Paul Ratje/AFP/Getty Images

The big man with a little mustache sat slumped in his chair at an immigrant aid office in Ciudad Juárez. The Mexican city sits a block and a half from El Paso, Texas, across the shallow trickle of the Rio Grande. But proximity to the U.S. meant nothing in his case; the office might as well have been on another

continent. The man was sobbing. “*Soy un muerto. Un muerto vivo,*” he kept saying. “I’m a dead man. The walking dead.”

The man, whom I will call Franklin to protect him from retaliation, said he was being pursued by assassins. Back in his home country months earlier, covered from head to toe to conceal his identity, he had given testimony against cartel bosses who had extorted his and his common-law wife’s businesses. The extortionists were convicted and imprisoned, but the witness’s disguise had fooled no one. Post-trial, two of the bosses’ armed underlings pursued Franklin, first in his home country in Central America. Then, after he fled, they threatened his niece back home with death if she did not say where he had gone. “Juárez, Mexico,” the terrified woman told the hit men.



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Franklin should have been able to cross the Rio Grande to the U.S. side long ago and make his asylum claim where the thugs couldn’t get him. Last year, he could have done so. He could have walked over an international bridge to a port of entry in El Paso, and Customs and Border Protection agents would have sent him to a detention center administered by Immigration and Customs Enforcement. There, an asylum officer would have interviewed him about his fears. He almost certainly would have passed the interview and been released on bond to join friends or family in the interior. He would have gotten a lawyer and begun gathering evidence to show an immigration judge why he needed safety in America.

But Franklin had arrived too late. By the time he got to the border in March, the Trump administration had months earlier enacted a policy at southern border bridges called “metering.”

The policy posted guards at the exact middle of international bridges, where the U.S. legally begins, along with its civil rights. Instead of letting Franklin cross, the guards told him to take a number and go back to Mexico until the number came up.

In Juárez, Franklin joined thousands of other migrants waiting for their own numbers to come up. His finally did, almost three months later, in early June. He eagerly went back to the bridge. But when he got there, he was devastated to learn that he still would not be allowed into the U.S. Instead, he was enrolled in a new Trump scheme for asylum-seekers. By the end of June, almost 17,000 asylum-seekers up and down the border had joined him. They have been booted out of San Diego, Calexico, and El Paso and sent to nearby Mexican border cities to wait. Juárez, across from El Paso, has received the largest number: almost 8,000 people. The new program, commonly referred to as “Remain in Mexico,” is called MPP, short for the Migrant Protection Protocols.



At the Iglesia Metodista “El Buen Pastor” shelter, migrants are allowed to stay while they either wait for their number to be called on the metered system or for their second asylum hearing. Photo: Paul Ratje/AFP/Getty Images

## Remain in Danger

To call that phrase Orwellian is a gross understatement. The MPP, rather than protect migrants, puts them in grave danger. It mandates that they remain in crime-ridden Mexican border cities for months, even years, waiting for U.S. courts to decide their asylum claims. Every few weeks, refugees enrolled in the MPP are brought into U.S. border cities such as El Paso to see an immigration judge. But after their hearings, they are sent back to Mexico, to cities so violent that the U.S. State Department recommends that Americans limit travel to them, or avoid travel entirely.

Juárez, for instance, is one of the 50 most violent cities in the world, and the State Department forbids its employees from traveling through the poverty-stricken northern and western parts of the city. Those are areas where many rented rooms and cheap hotels are located, housing migrants expelled from El Paso under the MPP. There are also charity shelters, though according to a report published this month by Human Rights Watch, they have room for only 1,000 people. An unknown number of others are living on the streets, including in the city's most dangerous sectors.

Migrants in these situations face far more danger than Americans do in Juárez, according to Jeremy Slack, a University of Texas at El Paso anthropologist. His newly released book "Deported to Death" analyzes data he has been collecting for years about what happens to immigrants, mostly Mexicans, who have been expelled from the U.S. to Mexican cities like Juárez. Because most migrants are transient, poor, and without local ties, few if any residents of the border cities will know, much less protest, if they are hurt or killed. Slack says that Central Americans and other non-Mexicans may have it even worse. They are at severe risk of being robbed, kidnapped for ransom, beaten, raped, murdered — or at the very least, traumatized by violence they witness.

Examples abound. In June, Juárez media outlets reported that a 20-year-old woman from Honduras was taken by force from a house in Juárez and sexually assaulted by men dressed as federal police officers, driving a car with federal insignia. They handed her over to three men in another house, who put tape

over her eyes and raped her repeatedly over several days. She was rescued after suspicious neighbors notified local Mexican law enforcement authorities that something seemed amiss in the house.

Also in June, two young Cuban women, and the husband of one of them, were hailing a taxi when a van drove up and men with assault rifles forced them inside. The group was taken to a house and told they could choose to carry drugs across the border in backpacks or pay \$500 a piece to be freed. The women told me, during an interview at a migrant assistance office in Juárez, that they declined both options and the husband was taken to a separate room. The women were then raped repeatedly until the victims paid their ransoms.

Some 5,000 children up and down the border are in the MPP, and they are not spared from assaults. In July, I learned from an immigration lawyer in California that a distraught client had called to report that her sister, a Salvadoran woman, with a 14-year-old, 10-year-old, and 3-year-old, were kidnapped in Juárez. The California family scraped together \$4,000 for a ransom payment, and after several days, the family was freed near a church in downtown Juárez. The mother said that she and her children had been captured after the kidnappers had spotted them wandering into Juárez disoriented, after being dumped there following their enrollment into MPP. When I met them by the church, the family told me that during their captivity they'd had almost nothing to eat, and they barely slept. After being freed, they made it to a migrant assistance organization that operates behind locked doors. A psychologist there told me that the family was suffering from shock, including the kids.

Not everyone in the MPP is assaulted, but even those who avoid such treatment are traumatized. A couple with two daughters, ages 5 and 3, told me that they are trying to live in Juárez for as long as it takes to pursue their asylum claim, but the family is freaked out by the city. "We went downtown one day to enjoy ourselves, and we passed a garbage can with a smell," the father said. "I looked inside and there was a corpse covered in blood. My kids asked what I'd seen. 'Oh, nothing,' I said."

Franklin wondered when he would end up in the garbage. He said he'd twice ridden city buses to job interviews and spotted the two hit men in the street.

“They will torture me,” he said through tears as he spoke to pro bono El Paso legal workers who had traveled to the immigrant aid office in Juárez. “They will put my body parts in bags and dump them.”

The first time I met him in the migrant assistance office, Franklin explained how he tried to stay alive. He said he moved around Juárez with his shoulders hunched and his baseball cap pulled low. His nights at the church shelter were sleepless. His stomach was so tightly wound that in place of meals, he ate antacid pills. He wanted to go to court in El Paso and ask for a non-refoulement interview, in which an asylum officer listens to a migrant’s story about fear of being sent to a dangerous third country — in this case Mexico — and decides if the person should be removed from the MPP program and allowed to stay in the U.S.

But Franklin’s first MPP court date in El Paso was over four months away. Meanwhile, he’d seen the hit men near a monument to Benito Juárez, staring intently. They’d seen Franklin, too, even though he was on a bus, and they yelled, “Get him! Kill him!” The bus driver sped away. Franklin was certain his pursuers would not give up.



People walk past a sign reading "last number entered" in Juárez on May 20, 2019. Photo: Paul Ratje/AFP/Getty Images

## The Polite Judge

The MPP court in El Paso dismays first-time visitors. The children are the biggest shock. Refugee mothers and fathers cram the spectator benches, waiting to be called to a table before the immigration judge. They are almost always accompanied by sons and daughters: teenagers, 10-year-olds, toddlers, babies. Adolescents sit stonily. Infants lie supine. Two-year-olds wriggle under the benches, calling "Mamá!" and flapping their fingers into airplanes and singing Spanish nursery songs. There is coughing from people of all ages. The din sometimes grows so loud that the judge must call a break.

And then there are the adults crying — as when Katy, a Guatemalan woman, tells Judge Nathan Herbert what happened after she was returned to Juárez from her first MPP hearing with him a few weeks ago. (The Intercept has changed the names of migrants mentioned in this article to protect them from



retaliation.) Katy describes being kidnapped by a taxi driver and his accomplices, who demanded \$1,000 from her family in the U.S. They paid most of the ransom, and she was freed. But the kidnappers said they knew where she was staying, and they gave her a warning: “If you file a report, you know how people die in Juárez.” Later, Katy tells Herbert that she was trying to sleep and saw a knife being inserted into the doorjamb of her room. She chokes up at the memory. Two other women in the courtroom, who were also kidnapped, begin to wail.

A 3-year-old boy on a bench whines that he’s hungry. A toddler sucks her thumb, while a 4-year-old treats her mother like a pony, furiously flipping and stroking her hair.

“Ma’am, I’m sorry to hear that,” says Herbert to the sobbing Katy.

Judge Herbert is always punctiliously pleasant and respectful to the refugees, calling them “sir” and “ma’am,” and asking after their children’s health before testimony begins. His politesse only underscores the Alice-in-Wonderland absurdity and cruelty of the MPP.

“Ma’am, since the last time we were together, did you use the Legal Aid list I gave you then to find a lawyer?” he asks one Central American after another as the hearing drones on.

He already knows the answer.

“I made 30 calls,” the woman says. “Half of them didn’t answer. The other half said they wouldn’t take my case.”

Representatives from Human Rights Watch observed multiple MPP hearings in El Paso in May, for a total of 54 persons. Only three had lawyers. Of the almost 8,000 people who have been kicked back into Juárez under the MPP, and most are destitute. Meanwhile, the number of pro bono lawyers in El Paso who are willing to travel to Juárez and do MPP representation for these thousands of people is well known among local immigration rights activists: three, possibly four.

Even so, Judge Herbert tells the refugees he will give them one additional continuance to “Keep calling. Maybe they’ll answer.”

At one hearing in Herbert’s court, a very young Guatemalan man named Marlon has given up on getting a lawyer and says he wants to go pro se — to represent himself — for his asylum claim. Herbert gives him a packet of papers to complete back in Juárez. He admonishes Marlon that each form and document in the filing, from Central American birth certificates and police reports to Spanish-language crime-page news clips, must be submitted with copies and in English translation, with a declaration for each document attesting to the translation’s accuracy. All this, though translators in Juárez are very expensive and very hard to come by.

Another refugee, also going pro se, protests to the judge that the translation requirement is impossible.

“People do it all the time,” Herbert says. “So can you.”

People tell him that they have been ripped from the children they are related to. Arlys talks about her 13-year-old nephew, Edgar, who was taken from her when she was put into MPP. “I know nothing about him since.”

Marlon testifies that he took legal custody of his little brother, a minor, after their dad was murdered in Guatemala. Now the murderer is about to be released from prison, “and that is why we decided to come. I have my certificate making me responsible for my brother, and my father’s death certificate.” The siblings were separated anyway, the younger one to parts unknown.

“I have raised her since she was little,” says Samuel about his stepdaughter, Nicole. She and Samuel’s common-law wife were kept in El Paso after the family was apprehended. Samuel was put into MPP and sent back to Juárez.

“My 16-year-old brother, Derik,” says Donald.

“My daughter, aged two,” says a man sitting next to Donald.

The judge tells these people to ask the government lawyers in the courtroom about their loved ones’ whereabouts, or perhaps to inquire with a CBP officer.

The judge in his black robe is unerringly kindhearted when he dispenses this counsel, but also unerringly chirpy. He might as well be a uniformed parking attendant, advising people about how to find their cars after they left them too long in the lot and were victims of the tow truck.

Nowhere, however, is the fracture between reality and rhetoric more chilling than when the migrants plead to be allowed to stay in the U.S.

When they are first interviewed by Border Patrol or CBP officers, migrants are supposed to be asked if they are afraid to return to their home countries. But nothing is asked about Mexico, and very few refugees would think to bring it up. Most have just arrived in the border cities and know nothing about life there – much less that they're about to be sent back. Their first real chance to talk about fear does not come until they walk into court in the United States, weeks or months later.

"You are afraid to go back to Mexico: Is that correct?" Herbert asks person after person.

"Very afraid."

"Totally afraid."

"My case is really serious!"

Again, there are tears, to which the judge responds nonchalantly. "Ma'am," he says (or "Sir"), "the decision on whether or not you're going to go back to Mexico is not mine to make." He assures the migrants that Christopher Chaffee, Jaime Diaz, Juan Carlos Brucelas-Vazquez, or whichever other Department of Homeland Security attorney is in court that day, has "made a note, and you and your children will all be referred for an interview with an asylum officer before any decision is made about whether or not you go back to Mexico. Do you understand that?"

"Sí," the migrants say.

Reuters recently reported that only about one in 100 migrants in the MPP receive non-refoulement interviews that get them out of Mexico. To pass the

interview, according to the rules, one must show that it is “more likely than not” that they will be subjected to violence. For the government, the fact that a migrant has already been victimized in a third country does not mean they will be hurt in the future.

Katy, for example – the woman who was kidnapped in the taxi and later saw the knife pushing through her door – described those experiences during a non-refoulement interview. She was sent back to Juárez anyway.

And after the three young Cubans were kidnapped and the two women in the group were raped for days, they got free of their kidnappers. All three went to the international bridge. The man in the group was admitted to the U.S. The women rape victims were put into the MPP and sent back to Juárez.

An asylum officer recently told Vox that the standard for prevailing on a non-refoulement claim regarding Mexico is “all but impossible for applicants to meet.” Another officer, speaking on condition of anonymity, told me that they think the standard violates the law.

It seems that the only victimized migrants who are guaranteed under the MPP to achieve relief from future harm are those who no longer need relief from anything, because they are dead.

Back in February, a few weeks after the MPP was first rolled out, the ACLU, the Southern Poverty Law Center, and other civil rights groups sued the government, arguing that the MPP violates U.S. immigration and administrative law, as well as U.S. obligations under international law not to send people back to countries where they are threatened. The plaintiffs at first won a preliminary injunction, but the government appealed. In May, the U.S. Court of Appeals for the Ninth Circuit held that the MPP could continue pending resolution of the appeal. Today the MPP remains in effect indefinitely.



El Paso Bishop Mark Seitz, right, escorts 9-year-old Celsia Palma, from Honduras, as they cross the Paso Del Norte Port of Entry bridge toward the U.S. on June 27, 2019, in Juárez. Photo: Photo by Mario Tama/Getty Images

## Political Theater

Last month, Bishop Mark Seitz of the Roman Catholic diocese of El Paso donned his black cassock with the scarlet piping, and a zucchetto — his purple-pink skullcap — and went to Juárez. There, surrounded by a crush of media, he walked several endangered migrants over an international bridge.

A week later, on July 3, New Jersey Senator and presidential candidate Cory Booker did the same thing. Fresh from his Spanish competition during the debates with El Paso native Beto O'Rourke, Booker shepherded endangered MPP migrants into the U.S., including the two Cuban women who had been kidnapped and raped.

Both attempts were successful. But at bottom, the crossings were little more than political theater. Most of the successful non-refoulement efforts have been assisted by a team of lawyers from Las Americas Immigration Advocacy Center. But according to Las Americas director Linda Rivas her agency has been able to handle only 100 cases, and has won exceptions from MPP for 29 individuals, with a few more cases pending. The successful exemptions were mostly for migrants who were ill or were in their last weeks of pregnancy. Only 10 had suffered from extreme violence.

Those 10 did not include the kidnapped and ransomed Salvadoran mother and her three psychologically traumatized children. On July 9, Rivas crossed that family into El Paso. But they did not pass their non-refoulement interviews, and on July 11 they were dumped into Juárez for a second time.

The government is now planning to vastly expand MPP. According to the new Human Rights Watch report, Mexico expects to receive 60,000 migrants by August. To ramp up hearings on the U.S. side, massive tents are slated for installation in at least three locations on the border — Yuma, Arizona, as well as Laredo and Brownsville, Texas.

Each tent will contain multiple MPP courts. Migrants will have their hearings in these tents, but judges will not be there. Instead, they will preside by video from hundreds or thousands of miles away. If a migrant manages to get a lawyer, the attorney might not be allowed in the tent, either, but instead will have to travel to the distant judge's court. Rumors among immigrant rights activists are that community observers and reporters will also be banned from the tents. The courts will run for 14 hours a day, to take advantage of judges' differing time zones across the country.

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A week after my first interview with Franklin, he was back at the immigration aid office; he'd been accepted into the entourage Bishop Seitz would be accompanying that afternoon across the bridge. I tried to speak with Franklin a

second time, but it was hard to start the conversation. He was slumped in a chair, utterly still, with his eyes shut. I called his name; no response. I tapped him – nothing. I shook his face.

Suddenly, he was back. “Oh! Sorry,” he said, and explained that he’d been awake all night, just like every night, staring at the ceiling. But at the office, knowing he was finally headed to safety, as part of Bishop Seitz’s entourage, he’d finally relaxed and fallen asleep.

A few minutes later, he started to feel scared again, and he scurried out into the street and covered his face with a lime-green bandanna. But then he joined the group of migrants with the bishop. At the middle of the bridge, CBP allowed Franklin to walk into the United States. He was soon given a non-refoulement interview. He passed, was removed from the MPP, and was sent to an ICE detention center, where he passed his credible fear interview. A Las Americas-affiliated immigration lawyer has vowed to bond Franklin out, pending resolution of his asylum claim.

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## WORLD NEWS

JUNE 27, 2019 / 2:26 PM / 2 MONTHS AGO

**Central American migrants plead to seek asylum in U.S., not Mexico**

Julio-Cesar Chavez



EL PASO, Texas (Reuters) - Several Central American migrants seeking asylum in the United States were allowed to return there on Thursday after being forced to wait in one of Mexico's most violent cities, supported by faith leaders who oppose the controversial U.S. migration policy.

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Activists hold photos of migrant children that died in U.S. custody as they protest at the Paso del Norte international border bridge, as seen from Ciudad Juarez, Mexico June 27, 2019. REUTERS/Jose Luis Gonzalez Gonzalez

A couple with three young children who fled violence in Honduras and a Salvadoran young man with cognitive disabilities crossed into El Paso from Ciudad Juarez, said Bishop of El Paso Mark Seitz, who helped plead their case with officials at the border.

Their return came on the same afternoon that the U.S. House of Representatives passed a \$4.6 billion aid package to address a migrant surge at the U.S.-Mexico border, galvanized in recent days by a photo of drowned migrants and reports of horrendous conditions for detained children.

The attention also put renewed concern on the policy that sends asylum seekers to Mexico border cities while waiting for U.S. courts to process their applications, known as Remain in Mexico or Migrant Protection Protocols (MPP).

The program started in January under the Trump administration and has drawn outrage from U.S. faith leaders, rights groups and others. It has now affected more than 15,000 asylum seekers, mainly from El Salvador, Guatemala and Honduras.

(Graphic: Trump ramps up returns of asylum seekers to Mexico)

Under a deal struck with Mexico on July 7 to stave off tariffs threatened by Trump, MPP is being expanded to more cities and applied to new nationalities including Cubans.

Although migration officials in El Paso initially said that the Honduran family and Salvadoran man had to continue to wait out the asylum process in Ciudad Juarez just opposite the border, Seitz said that he countered that the migrants had special circumstances and deserved to remain in the United States.

“Some calls were made higher up, and the word came down that they would be allowed to pass,” he said. “They’re going to have to prove their cases, but they’ll be able to do it in the loving arms of relatives.”

The Honduran family, with children ages 3, 5 and 9, had spent three months waiting in Ciudad Juarez, Seitz added.

“They are a family that has suffered beyond what most of us can imagine, the torture of children, and so

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Dylan Corbett, executive director of the Hope Border Institute that helped coordinate Seitz's visit and connects migrants with attorneys, said it was still unclear if the migrants would be able to remain in the United States for the rest of their asylum proceedings.

In an open letter to U.S. President Donald Trump and other political leaders, a coalition of evangelical churches said it was "deeply troubled" by a policy it said left children vulnerable to violence and trafficking, as well as by reports of "inhumane" conditions in U.S. federal immigration facilities.

The Catholic diocese of El Paso, Texas separately denounced a critical lack of shelter, food, legal aid and basic services for asylum seekers returned to Mexico under the program and "distressing detention conditions" in the United States before they are returned.

Their critiques echoed U.S. asylum officers who have said that MPP was contrary to America's "moral fabric."

U.S. border patrol agents say they have apprehended 664,000 people along the southern border so far this year, a 144 percent increase from last year, and the highest number in over a decade. Officials say the system is overwhelmed.

In its letter, the Evangelical Immigration Table, a coalition including nine major U.S. church groups, said the policy restricts access to U.S. legal counsel and greatly reduces the possibility that migrant families "will be able to receive a truly just and fair chance at receiving asylum."

## PILGRIMS

In court papers filed on Wednesday, a union that represents asylum officers at U.S. Citizens and Immigration Services, described the program as "fundamentally contrary to the moral fabric of our Nation," citing the American tradition of sheltering the persecuted stretching back to the arrival of "Pilgrims onto a Massachusetts shore in November 1620."

The new acting USCIS head pushed back against the union on Wednesday night on Twitter and later sent an official statement saying the court filing was a "cheap political stunt." Ken Cuccinelli, a Trump ally who was appointed on June 10, has echoed the president's line that the focus should be on weeding out fraudulent asylum claims.

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The union filed briefs in a case supporting a group challenging the legality of MPP in court. A group of 22 former senior U.S. officials also filed a brief against the policy on Wednesday, as did the United Nation's refugee agency, which concluded MPP was "at variance" with U.S. international obligations.

A U.S. appeals court has ruled that the Trump administration may continue sending asylum seekers to wait out their cases in Mexico while the government appeals a lower court ruling that found the policy violated U.S. immigration law.

Hundreds of asylum seekers are returned every day under the expanded program. They are likely to wait in Mexico for around two years because of a backlog in U.S. immigration courts.

Slideshow (5 Images)

Reporting by Julio-Cesar Chavez in El Paso; Additional reporting by Susan Cornwell and Richard Cowan in Washington and Kristina Cooke in San Francisco; Writing by Frank Jack Daniel and Daina Beth Solomon; Editing by Kim Coghill

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Ms. ESCOBAR. To our attorneys on the panel, you have detailed examples of the dangers faced by migrants when they are MPP'ed, but I think it is important for the American public to understand the challenges for due process and the challenges you face as legal advocates who have clients that have been sent to Mexico.

So, Mr. Drake and Ms. Rivas, if you wouldn't mind with the remaining three minutes and 30 seconds, sharing that time, to detail that for the American public.

Mr. DRAKE. Thank you, Chairwoman. I will start by saying the ACLU, just days after the implementation of MPP, filed a class-action nationwide lawsuit against the program in California because this program is blatantly and completely illegal. It is a program that cuts—it is meant to cut off asylum-seekers from their legal right to seek asylum in the United States. It denies them access to counsel, and it ignores a robust set of legislation passed by Congress for the handling of arriving asylum-seekers at our border. That includes a process to ensure that we are meeting our international and domestic legal obligations to ensure that we are not returning people to situations of ongoing persecution. And what MPP does is precisely that. It returns people to ongoing persecution in Mexico, and it exposes them to onward return to their home countries. So, as a baseline matter, it is completely illegal.

What we have seen through our plaintiffs and through our documentation of the program since its inception is, as those articles detail and as the Congresswoman has explained, every migrant returned to Mexico under MPP is subjected to a heightened risk of violence and abuse. There is not enough shelters to house them. The Mexican Government cannot provide protection even if they tried. Migrants are a targeted group in Mexico for kidnapping and extortion. I think it was just reported today that groups such as Cubans are at even heightened risk of being targeted because they are perceived as having money. So what the Trump administration is doing is fueling organized crime's ability to take further advantage of this population.

Ms. ESCOBAR. And, Ms. Rivas, could you tell us, how hard is it for you as a lawyer to provide legal counsel to someone in another country?

Ms. RIVAS. It is incredibly difficult. We do not have office space in Mexico. We do not have the resources to acquire office space in Mexico. We are relying on unofficial relationships that we have with NGOs that happen to be in Mexico. One NGO, DHIA, Derechos Humanos Integrales en Accion, was the first nonprofit to offer us a space. One day from walking away from a governmental State office, the CAIM, Centro Atencion Integral el Migrante, it is essentially a center for migrant services, and I walked to DHIA. Thirty minutes later, there was a shooting in the same path that me and my colleagues had walked as we were conducting intakes that day. This was prior to August 3. I will say that I was definitely not used ever having to deal with gun violence in El Paso, Texas, and being there in Ciudad Juarez, it was very chilling as an attorney to have to deal with that.

In addition to that, long wait times take me away from the office, takes me away from other clients, takes me away from court prepa-

ration to have to wait in line, one time to have to be subjected to secondary inspection. This is a huge challenge for us.

And the reason that I provided this culled list of pro bono legal service providers that actually comes from the DOJ, from EOIR, is because this is continuously given to migrants that are placed in MPP by Border Patrol, by CBP, and by the judges. Sometimes repeatedly this same list is given over and over. And the reason this is so important is because of these four people on the list for the non-detained court, we are the only nonprofit agency that is regularly traveling to Mexico to conduct legal intake and to help people that are in MPP. Others on this list are open to taking cases, but they are not actually traveling into Mexico, and I think that is just very, very important for us to realize.

Ms. ESCOBAR. Thank you so much. Before I move on, I will be entering without objection three additional articles. Just as we try to deal with and face atrocities of one Trump administration policy, another one is always right around the corner. The most recent one is the assault on the Flores Settlement Agreement, so I would like to enter into the record "Trump Faces Longshot Bid to Jail Migrant Families Indefinitely," "Three Reasons Why the New Flores Rule Does Not Pass Legal Muster," and "Immigration Advocate Weighs in on Trump Administration's Move to End Flores Agreement."

[The information follows:]

REP. ESCOBAR FOR THE RECORD

Politics

## Trump Faces Long-Shot Bid to Jail Migrant Families Indefinitely

By [Erik Larson](#)

August 22, 2019, 7:00 AM EDT

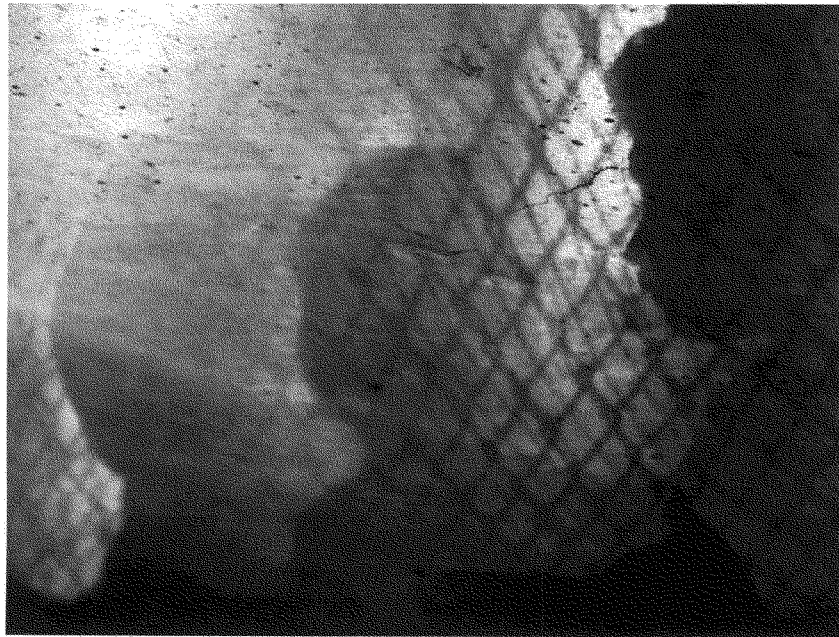
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► New rule faces immediate court challenge, migrants lawyer says

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► Flores changes to end 'incentives' for immigrants, U.S. says

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The U.S. Border Patrol Central Processing Center in McAllen, Texas. *Photographer: The Washington Post/Getty Images*

President Donald Trump's plan to scrap a 22-year-old agreement that governs the treatment of detained migrant children is doomed to fail in court but may energize his supporters as he seeks re-election, legal experts say.

The government says it expects to publish a final rule by Friday to replace the 1997 Flores settlement, which Trump has often derided. The new regulations would allow authorities to detain migrant families

indefinitely while their cases are processed instead of abiding by a current 20-day limit on detaining children.

Peter Schey, the lead lawyer representing immigrant children in the Flores case, said he'll challenge the new rule within a week of it being published, and that he expects U.S. District Judge Dolly Gee in Los Angeles to reject it.

The terms of the Flores settlement only allow for its termination if the final rule mirrors that agreement. Instead, Schey says, the new rule violates its "central pillars," which require that migrant children be treated humanely and released as quickly as possible.

"It's possible that the Trump administration is trying to set up a legal challenge that will ultimately be decided by the Supreme Court, but more likely I think this is simply a part of the president's re-election campaign," Schey said Wednesday in an interview. "I think this will become part of his anti-immigrant re-election platform more than anything else."

In a notice to the judge Wednesday, the government said it intended to post the final regulations for public inspection Thursday, and publish them on Friday. The government and lawyers representing the immigrant children would then have until Aug. 30 to file their positions on the termination of the Flores agreement, according to the filing.

### **'Address the Crisis'**

"This action by the administration is just one part of our overall effort, but it's an essential one that will do a great deal to address the crisis we are facing," acting Homeland Security Secretary Kevin McAleenan said at a news conference Wednesday. On Twitter, he added that the rule implements the commitments of the Flores agreement.

According to U.S. Customs and Border Protection statistics, more than 400,000 families have been apprehended on the southwestern border since October. McAleenan said the new rule will help address that.

Under the Flores settlement, migrant kids, unless they're deemed a threat to themselves or others, are to be sent to licensed child-care facilities within 20 days, or to family members in the U.S. -- a process Trump has criticized as failing to deter migrants from crossing the border illegally.

"From the start of this process, the Trump administration has made it clear they have no intention to implementing the settlement -- they wish to override the settlement," Schey said.

While legal experts say the new rule is likely to fail, Trump's attempt to implement it follows through on his campaign promise to crack down on the flow of undocumented immigrants crossing into the U.S. from



Mexico.

The new rule could deter some of those migrants, Stephen Yale-Loehr, a professor of immigration law at Cornell Law School, said in an interview Wednesday. And regardless how legal challenges play out, Trump can turn it to his advantage, he said.

“President Trump can claim that he tried to fix our broken asylum system, but that those liberal judges in California prevented him from doing so,” Yale-Loehr said. “This will be a win for Trump, even if he loses in court.”

Senate Minority leader Chuck Schumer called on the courts to block the rule.

Beth Werlin, executive director of the American Immigration Council, said the rule will traumatize children who were facing violence and danger at home.

Irena Sullivan, an immigration policy lawyer at the Tahirih Justice Center, agreed and said those fleeing such dangers need better care and treatment.

“Survivors of violence need access to trauma-informed care, not indefinite incarceration,” she said.

The case is *Flores v. Barr*, 85-cv-4544, U.S. District Court, Central District of California (Los Angeles).

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Center for American Progress



IMMIGRATION

## 3 Reasons Why the New *Flores* Rule Does Not Pass Legal Muster

By Philip E. Wolgin | Posted on August 22, 2019, 2:18 pm



Getty/AFP/Loren Elliott

A young migrant girl lies on the floor of a bus depot as her father, recently released from federal detention with other Central American asylum-seekers, obtains a ticket in McAllen, Texas, June 2019.

After weeks of speculation, acting Secretary of Homeland Security Kevin McAleenan announced yesterday that the Trump administration was publishing its final rule to overturn the 1997 *Flores* settlement, a long-standing legal agreement that sets out commonsense standards for the care of children in immigration detention. The

settlement came out of litigation challenging the U.S. Immigration and Naturalization Service's horrific treatment of Central American children fleeing violence and civil war.

Overturning *Flores* would allow the administration to get around the settlement's limitations on holding children in unlicensed, secure facilities and allow it to indefinitely incarcerate children and families—and do so in inadequate conditions. As the Center for American Progress has argued in the past, “Spending any amount of time in detention threatens children’s healthy development.” Put simply, this rule would harm children and families.

But beyond the basic harm that the rule would inflict on vulnerable children, it has fatal legal flaws. Here are three reasons why the *Flores* rule is unlikely to pass legal muster.

## **1. It is inconsistent with the underlying *Flores* settlement**

Under the terms of the settlement and a 2001 stipulation by the parties, the only way that the government can dissolve *Flores* is through a regulation that is “not ... inconsistent with the terms of this Agreement.” Yet in a number of key ways, the administration’s rule dramatically differs from the underlying agreement.

First and foremost, Section VI of the settlement stipulates to a “general policy favoring release.” In other words, unless detention is necessary for a child’s safety or to ensure that they make their court appearances, the government must “release a minor from its custody without unnecessary delay.” However, the administration’s new rule would grant the U.S. Department of Homeland Security (DHS) the ability to detain children with their families for prolonged periods of time. Prolonged detention is in opposition to a basic tenant of the agreement, and DHS did not adequately address this in the final rule.

Second, under the settlement, children can only be detained in facilities that are licensed by “an appropriate State agency.” The new rule would eviscerate this essential requirement by allowing DHS to set up its own self-licensing system, with no oversight from state licensing bodies. As recently as June of this year, the DHS Office of Inspector General expressed grave concerns over how U.S. Immigration and Customs Enforcement (ICE) adheres to its own current standards for detention facilities, finding “nooses in detainee cells, overly restrictive segregation, inadequate medical care, unreported security incidents, and significant food safety issues.” These violations raise serious red flags about DHS’ ability to enforce basic standards for children in detention in lieu of the *Flores* settlement.

Just last week, the 9th U.S. Circuit Court of Appeals dismissed the government’s appeal in which it argued that the *Flores* settlement’s requirement that children be held in safe and sanitary conditions should not be interpreted to specifically require children to have access to basic hygienic products such as soap and toothpaste or to receive adequate sleep. It is not credible to believe that this administration would treat children more humanely without the *Flores* requirements and the independent court oversight that it provides.

## 2. The courts have ruled against deterrence as a justification for detention

In announcing the rule, acting Secretary McAleenan argued that removing the *Flores* protections is necessary to “eliminat[e] the incentive to make the journey to the United States as a family.” CAP research has shown that neither family separation nor family detention has been, or is likely to be, a deterrent to further children and families seeking protections at U.S. borders. Likewise, CAP research has found that the 2015 ruling that confirmed the *Flores* protection applied to both unaccompanied and accompanied children did not increase the number of families coming to the border. And although DHS responded to this research in its final rule by saying that the goal of the rule was simply to codify the *Flores* settlement, given acting Secretary McAleenan’s comments, the underlying reason for putting out this rule seems clear: to deter future migration.

The idea of jailing families to deter future asylum-seekers from coming to the United States has not been looked upon kindly by the courts. In early 2015, the American Civil Liberties Union sued the Obama administration for its use of family incarceration as a deterrent to asylum-seekers. In *RILR v. Johnson*, the U.S. District Court for the District of Columbia ruled that the policy likely violated the law and thus enjoined the administration from the practice. More recently, in July 2015, Judge Dolly Gee—who is overseeing the *Flores* settlement and will ultimately be the first to decide whether the new rule is consistent with the “relevant and substantive terms” of the agreement—rejected the government’s claims that releasing families from detention provides an “incentive” for further families to come to the United States. And just last year, Judge Gee rejected this argument a second time when the administration asked her to let it out of the settlement.

## 3. Failing to account for the high costs of the rule renders it arbitrary and capricious

As CAP laid out in an October 2018 issue brief, a plain reading of the new *Flores* rule finds that DHS would incur drastic new costs—both to detain more families for longer than currently allowed under the law and to build or acquire new facilities to incarcerate these families. Over a decade, the annualized costs of the rule would range from at least \$201 million to nearly \$1.3 billion each year.

Late last year, CAP released a public comment on the proposed rule detailing the math behind these high costs. CAP also met with the U.S. Office of Management and Budget (OMB) in a 12866 consultation meeting prior to the final rule being issued to convey directly to the Trump administration why DHS should take into account these high costs in order to accurately assess the effects of the rule. Yet even following the public comment and the 12866 meeting, DHS and OMB failed to sufficiently account for the massive new governmental costs in the final rule.

In direct response to CAP’s analysis, DHS tries to discount the possibility of new costs by stating: “Expanding [family detention] capacity would require additional appropriations. This regulation alone is not sufficient.” However, over the course of the Trump administration, ICE has routinely spent more money on immigration

detention than Congress has allocated, and then simply gone back to Congress to demand more funding. This claim does not hold up.

Additionally, DHS argues in the final rule that while it may incur costs above the \$100 million threshold—which it, again, maintains it could not effectively gauge despite acknowledging that commenters made such estimates based on DHS’ own data—nothing in the rule itself forces the department to detain more people, detain people for longer, or acquire new bed space. As DHS states in the final rule, “This regulation does not represent a decision on whether and in which circumstances to detain families for longer periods of time, though it does allow for such a decision to be made.” As such, though the department—following CAP’s public comment—did deem the rule significant under the terms of Executive Order 12866, it argues that “it does not appear *likely* that this rule will result in an economic impact of \$100 million or more.”

While it is true that DHS is not compelled under the rule change to hold more families, to detain them for longer, or to acquire new bed space, the many statements of the Trump administration—including an April 9, 2018, presidential memorandum entitled “Ending ‘Catch and Release’ at the Border”—illustrate that its goal is to detain as many families as possible for as long as necessary to complete their proceedings. Accordingly, the authority granted under this rule would lead to more families being detained, for longer, and at a higher cost. Failing to properly account for and consider these probable costs likely renders this law “arbitrary and capricious,” which would mean it fails to comply with the requirements of the Administrative Procedures Act (APA).

## Conclusion

Absent legal action, the final rule is slated to go into effect in late October. Before then, Judge Gee will hear arguments on whether it meets the terms of the settlement; other lawsuits are likely to be filed as well. Given just how much the rule differs from the *Flores* settlement itself, and the serious APA issues it faces—not to mention the significant harms that would come to children and families—the courts must step in and stop it from moving forward.

*Philip E. Wolgin is the managing director for Immigration Policy at the Center for American Progress.*

*The author would like to thank Sam Berger and Tom Jawetz of the Center for American Progress, Miriam Abaya of the Young Center for Immigrant Children’s Rights, and Joann Bautista of the National Immigrant Justice Center for their contributions to this column.*





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## Immigration Advocate Weighs In On Trump Administration's Move To End Flores Agreement

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August 21, 2019 · 5:19 PM ET  
Heard on All Things Considered

NPR's Audie Cornish speaks with Wendy Young, president of the child advocacy organization KIND, about President Trump's moves to change requirements for the detention of migrant children.

AUDIE CORNISH, HOST:

The Trump administration is moving to allow the government to detain migrant families with children indefinitely. The Department of Homeland Security announced today that they plan to publish a new regulation that would eliminate the current 20-day limit on the detention of minors. That 20-day limit stems from a 1997 court settlement called the Flores Agreement that governs conditions for migrant children in federal care.

Acting DHS Secretary Kevin McAleenan blamed the Flores Settlement for the influx of hundreds of thousands of migrants at the southern border.

(SOUNDBITE OF ARCHIVED RECORDING)

KEVIN MCALEENAN: The driving factor for this crisis is weakness in our legal framework for immigration. Human smugglers advertise, and intending migrants know well that even if they cross the border illegally, arriving at our border with a child has meant that they will be released into the United States to wait for court proceedings that could take five years or more.

CORNISH: The government is set to publish the final rule on Friday. It will require approval from a federal judge before can go into effect. We're joined now by Wendy Young. She's the president of KIND, an immigration advocacy group that focuses on migrant children. Welcome to the program.

WENDY YOUNG: Thank you.

CORNISH: First, just your reaction to this change in regulation.

YOUNG: Well, these are kids that are placed into deportation proceedings, facing a very complex legal proceeding to determine whether they should stay or be returned to their home countries. And it's critical that we provide them with appropriate care pending the conclusion of that case. So for the government to be attempting to strip children and families of these protections leaves the door wide open for abuses and poor treatment during the pendency of their case.

CORNISH: Now, Acting DHS Secretary Kevin McAleenan has said that this new rule does have high standards. And he describes a facility with separate living areas for every family, with appropriate furniture, hot meals, classroom learning, medical facilities. Does this sound like a better option?

YOUNG: Well, certainly we don't see anything in place currently that meets that description. We have worked for many years to improve the treatment of children who arrive alone in the United States - unaccompanied children - to ensure that they're provided appropriate shelter care.

CORNISH: Now, I'm under the impression there are three such residential facilities. Is that not true?

YOUNG: That's correct. There are three family detention facilities, but they have proven to provide really inappropriate care to families even for the 20-day period in which the court has said that children can be detained with their parents.

CORNISH: In what way?

YOUNG: Well, for example, there have been very serious reports of very young children being held in these facilities who are actually losing weight because of the conditions in which they're being held.



CORNISH: Can you talk about this other argument that McAleenan is making about how he thinks this regulation is actually contributing to the number of people coming to the border?

YOUNG: The notion that the Flores Agreement is serving as some kind of pull factor, drawing people to the United States, is simply without basis. This agreement's been in place for more than two decades. The increase in migration is primarily coming from the so-called Northern Triangle countries of Central America - El Salvador, Guatemala and Honduras.

The reason for that flow of people to the U.S. border is very simple. It's violence in Central America that's driving people - children and families - out of their home countries because they cannot obtain safety in their own country.

CORNISH: You know, our reporters have also spoken to families in Central American countries who have said, we know if we arrive there with a child, we have a chance to stick around while we wait for our case to move through the courts. I mean, this isn't just coming from DHS.

YOUNG: But the idea that that's the motivating factor for these families is really - it's not accurate because why would you, if you were a family, make this extraordinarily difficult, arduous, dangerous trip to the United States simply because you think that's what's going to let you through the door? You have to look at what's motivating that family to move in the first place, which truly is largely violence in Central America.

CORNISH: What's your main critique of what they're doing? I mean, what would you tell the White House about this that just raises legal questions for you?

YOUNG: This regulation needs to be understood in the context of a series of actions that this administration has taken over the past couple of years to systematically gut protections that have been in place for very vulnerable children, for families and for asylum-seekers generally.

They're finding ways through regulation, through policy to basically shut the doors of the United States to refugees who need our protection. You've seen them do this in the context of the Flores Agreement currently. You've seen them do this to refugee resettlement. You've seen them do this through their increased emphasis on detention as a deterrent. They are finding whatever way they can to effect effectively bring about

the immigration policies that they've sought to bring about ever since they ran for office.

CORNISH: That's Wendy Young, president of Kids in Need of Defense, an immigration advocacy group for migrant children.

Thank you for speaking with us.

YOUNG: Thank you.

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Ms. ESCOBAR. With that, I now recognize our chairman, the gentleman from New York, Representative Nadler.

Chairman NADLER. Thank you very much. Mr. Drake, you spoke about the MPP program being illegal, and I think you have challenged it in court. What is the current legal status of that challenge?

Mr. DRAKE. So we won a nationwide injunction finding the program illegal. The Ninth Circuit has stayed that injunction, allowing the program to proceed while the Court of Appeals considers the merits of the injunction. Two out of the three judges that reviewed the initial stay request by the government actually agreed with our legal arguments that the program is illegal. Nevertheless, they have allowed it to go forward at least until the next hearing in October when the Court of Appeals will hear the merits of that injunction.

Chairman NADLER. So that is nationwide?

Mr. DRAKE. Yes.

Chairman NADLER. Okay. And the committee has been greatly concerned about CBP's attempts to restrict the number of people seeking asylum at ports of entry through metering. It obviously makes little sense to encourage people to seek asylum at ports of entry, don't use illegal entry, go to the ports of entry and then make them wait weeks or months to make their claim.

The ACLU Border Rights Center sent a letter to the El Paso port director expressing concerns about port hardening and the closure of ports of entry as a way to avoid its lawful duty to process asylum-seekers, particularly Mexican nationals. According to your letter, CBP has even closed the entire port on some days, not just needed but just close them. My question is has CBP responded? And what justifications has CBP provided to these operations?

Mr. DRAKE. The only public justification that CBP—

Chairman NADLER. Have they responded to your letter?

Mr. DRAKE. They have not.

Chairman NADLER. Okay. Go ahead.

Mr. DRAKE. We hope they do.

Chairman NADLER. And when was your letter sent?

Mr. DRAKE. Our letter was sent on Wednesday of this week.

Chairman NADLER. Oh, okay. Go ahead.

Mr. DRAKE. We will give them a few more days.

Yes, so CBP, the only public justification CBP has provided for closing ports is the arrival of, quote/unquote, "large groups of migrants." Information that we have received from at least one of those closures indicate that that supposed large group of migrants was a group of 20 Mexican families, including children, asylum-seekers, who were approaching the port of entry to assert their lawful right to seek asylum in the United States.

More broadly, we have great concern around the port hardening. Any border barrier, razor wire, walls, all stand as a symbol of the xenophobic rhetoric of this Presidency and the port hardening, as CBP calls it, is another example of that. It also spews fear in the community and can be seen as an effort to turn local populations against the arriving immigrants because it creates a great deal of hardship for those who cross our border every day.

Chairman NADLER. And what has been the impact of border communities of the border hardening, of the metering and——

Mr. DRAKE. We have seen extremely long wait lines to enter the country. Thousands of people cross these ports of entry in the El Paso sector every day to go to school and work and visit family members and now face hour-long delays because CBP has restricted traffic down to one lane or closed the ports for many hours.

The other concern is that every border crosser is crossing through what is clearly a militarized zone with razor wire, which perpetuates, again, this idea of fear and of an invasion that simply does not exist.

Chairman NADLER. Thank you. Mr. Garcia, let me turn to you. Can you describe the change in numbers of Border Patrol personnel over the past 25 years in the El Paso area? And also, have you observed any change in the character or the way they behave?

Mr. GARCIA. Well, you know, I think we had seen the members being tripled in the last 23 years, and when we say that is that every time we had an immigration reform discussion in Congress, 2006, 2013, we didn't get immigration reform but we get more enforcement. Every time, we got more Border Patrol agents at the borders. So at this point, as I mentioned, we have more than 23,000 of them.

And their behavior, it depends on the region of the border. In El Paso we have developed a good relationship with Border Patrol because we had engaged our communities and institutions with Border Patrol and make them accountable. But that accountability is gone for the last two years, so the Trump administration has destroyed any good relationship——

Chairman NADLER. By doing what?

Mr. GARCIA [continuing]. In the community—by——

Chairman NADLER. By doing what?

Mr. GARCIA. By curtailing the engagement of communities. We used to have regular meetings with Border Patrol in the past, and in the last two years, that is actually—that hasn't happened. There is more incidents of abuses being reported in our community than before to members that we didn't see for many, many, many years. So I think that is a major shift, especially in the last two years.

Chairman NADLER. And, let's see, my time is expired. Well, let me just ask one more. How did the personnel additions, the additions in numbers, impact the border communities?

Mr. GARCIA. Well, I think you have two different levels. One of them it is that you see more Border Patrol members within our communities. They used to say that Border Patrol was only to protect the borderline, but that is not happening any longer. I mean, we see them within the 100 miles of the border, and that is impacting in ways that we had seen this before. I mean, illegal entries into property, questioning children, high school children, students in numbers that we had not seen before. So I think that is—and the numbers would matter, but would matter less if they would be trained and they would have some more accountability of the process and mechanisms to be accountable to, and we don't have those at the border. There is no formal mechanisms to actually make Border Patrol responsible for their actions.

Chairman NADLER. Thank you very much.

Ms. ESCOBAR. Thank you, Chairman.

Chairman NADLER. I yield back.

Ms. ESCOBAR. I now recognize the gentlewoman from Washington, Representative Jayapal.

Ms. JAYAPAL. Thank you, Madam Chair. Thank you all for your very, very powerful testimony and, more importantly, thank you for your work. You really are on the frontlines.

Yesterday, I observed the MPP court. I was there for about an hour and a half. And I had not observed an MPP court before. I have seen lots of other immigration courtrooms. And I think it is an absolute outrage that we call it a protection protocol because there is no protection for the migrants that are there. And, you know, the judges are trying to do the best they can, but about 250 to 300 I think yesterday on the docket, Ms. Rivas. I saw them handing out these sheets. I looked at the sheets. I saw that there were four on there. Now, I know that there is only one that actually travels into Mexico. Thank you for doing that.

But I watched and listened over the course of an hour and a half as almost every single—I think there was one person in the hour and a half that we were there that we observed in two different courtrooms that had an attorney, that had representation. And there was the judge saying over and over again I can give you a continuance, can you try to find an attorney? And each person was saying I have tried. There are no attorneys, I have called, there is nobody here.

And even at the point when they were asked do you have a fear of returning to Mexico, some of them raised their hands. Many of them said—you know, at least one person said, you know, very definitively I don't even want my interview because nobody listens to me, nobody is going to believe that I have a fear of returning.

And so it is a terrible situation, not to mention we were told by the court officials that MPP has taken over the court proceedings, so they are now moving all the other cases that those courts should be considering to 2020, September of 2020. And each of these people that are coming in are coming in, potentially getting a continuance, but then they have to stay here, they have to return to Mexico, three months they are coming back, women in the courtroom with babies, crying babies.

And so I say all of that because I think it is important—this community knows, but hopefully we can get this information out beyond El Paso with this hearing.

I wanted to ask Mr. Drake because one of the arguments that is made that is absolutely false and I want you to refute it for me if you will—I hope you can, I believe you can—is that this is the surge that is coming across that has required this. And there is no other way to deal with this. And so tell us, Mr. Drake, how we used—we have had surges in the past. Tell us the process that used to happen to process people in humane ways prior to MPP. Because it is possible to do that. We don't need these policies, and I just would like you to tell us exactly what used to happen.

Mr. DRAKE. Sure. I will start by saying that although there was a surge in recent months of numbers, we are still well below historic highs of border crossers. There was well over a million border crossers annually back in the early 2000s at a time when the agen-

cy, I believe, had half the budget and one-third the personnel. And so with an agency that has more than doubled in size is now faced with handling an even smaller population than they did in the past.

What has shifted is the number of families entering, but the administration has known about that shift in numbers since 2013. And again, this is a group of people who are crossing the border seeking out U.S. agents. They are not single adults attempting to evade inspection. And in fact many, as we have heard, want to go to ports of entry and actually present themselves.

And so there is a broad set of immigration laws to process arriving asylum-seekers, including IIRIRA that was passed in 1997. There are massive due process problems with that law, but there are robust laws on the books that Congress passed with an understanding that these are an attempt at respecting our U.S. and international obligations to ensure that people aren't returned to danger.

You know, immigration courts have famously been said to be death penalty cases tried in traffic court.

Ms. JAYAPAL. Right.

Mr. DRAKE. And I would say that MPP hearings, you know, provide even a less degree of access to due process and to counsel than any other court in the Nation and certainly is not the way to handle the arriving population.

Ms. JAYAPAL. It is a bit of a sham really because you are in a courtroom but you don't get representation, incredibly complex law.

I wanted to enter, Madam Chair, into the record the Women's Refugee Commission report, actually filing of a complaint documenting 20 cases of MPP family separations. In many cases parents were reunited with their children months later after obtaining legal counsel. I would seek unanimous consent to enter that into the record.

Ms. ESCOBAR. Without objection.

[The information follows:]

REP. JAYAPAL FOR THE RECORD



August 16, 2019

**VIA ELECTRONIC MAIL**

Cameron Quinn  
Officer for Civil Rights and Civil Liberties  
Department of Homeland Security  
245 Murray Lane, SW  
Washington, DC 20528

Joseph Cuffari  
Inspector General  
Department of Homeland Security  
245 Murray Lane, SW  
Washington, DC 20528

**Re: Separation of families via the 'Migrant Protection Protocols'**

Dear Ms. Quinn and Mr. Cuffari:

The Women's Refugee Commission (WRC) files this complaint on behalf of numerous families who were separated by U.S. Customs and Border Protection (CBP) officials along the United States' southwestern border, where at least some member(s) of the family were placed into the administration's so-called 'Migrant Protection Protocols' (MPP) (hereinafter referred to as its 'Remain in Mexico' or RIM program) and sent back to Mexico. WRC, along with many partner organizations who shared cases for the purposes of filing this complaint, is extremely concerned about this practice: in addition to subjecting migrants to physical danger, it has serious, harmful consequences on the ability of asylum-seeking families to meaningfully be able to seek protection in our country as well as on the physical and mental well-being of those separated from loved ones, and in certain cases, it runs afoul of federal court orders under the *Ms. L. v. ICE* lawsuit.

WRC urges you to conduct a prompt and thorough investigation into the 20 cases described below as well as to fully investigate into any pattern or practice of separating families under the auspices of RIM as part of a broader deterrence policy at the border. WRC also asks that you report on the steps that CBP and the Department of Homeland Security (DHS) have taken to record and track these families and the reason(s) for their separation, provide information to



families in this situation about their rights and how they can communicate, reunify and present their case prior to transferring them from custody, develop and implement processes to reunify in the United States when the separation was erroneous or unnecessary, and to facilitate their cross-border communication, should the separation continue.

### I. Background

The Women's Refugee Commission, along with others, has for years and in great detail documented the immense trauma created by the separation of family members and the impact of separation on their ability to pursue legal immigration relief.<sup>1</sup> In December 2017, and together with partner organizations, WRC filed a complaint with your offices on family separations effectuated by U.S. Customs and Border Protection (CBP) officials along the United States' southern border.<sup>2</sup>

Since that time, the administration announced its 'zero tolerance' policy in April 2018, which resulted in the systematic separation of thousands of migrant families arriving to the U.S. border. After significant public outcry and backlash, as well as the federal court's orders under the *Ms. L. v. ICE* lawsuit, instances of family separation were greatly reduced. However, in the past several months, advocates and non-profit organizations operating along the border have documented an increase again in family separations. In addition to the separations at the border in which both parties are transferred within the United States, some of these separations, as is the focus of the present complaint, involve the RIM program. **Specifically, in RIM separations, one part of the family is processed into the United States to undergo their immigration proceedings, while the other part is returned to Mexico, where they must await their [separate] court proceedings.**

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<sup>1</sup> See, e.g., Women's Refugee Commission, Kids in Need of Defense, and Lutheran Immigration and Refugee Service, *Betraying Family Values: How Immigration Policy at the United States Border is Separating Families*, March 2017, <https://www.womensrefugeecommission.org/rights/gbv/resources/1450-betraying-family-values>. See also American Immigration Council, *Divided by Detention: Asylum-Seeking Families Experiences of Separation*, August 2016, <https://www.americanimmigrationcouncil.org/research/divided-by-detention-asylum-seeking-families-experience-of-separation>; Jesuit Conference of the United States and Canada & Kino Border Initiative, *Our Values on the Line: Migrant Abuse and Family Separation at the Border*, September 2015, [http://jesuits.org/Assets/Publications/File/REPORT\\_2015\\_Our\\_Values\\_on\\_the\\_Line.pdf](http://jesuits.org/Assets/Publications/File/REPORT_2015_Our_Values_on_the_Line.pdf).

<sup>2</sup> American Immigration Council (Council), the American Immigration Lawyers Association (AILA), the Women's Refugee Commission (WRC), Lutheran Immigration & Refugee Service (LIRS), the Refugee and Immigrant Center for Education and Legal Services (RAICES), Kids In Need Of Defense (KIND), AI Otro Lado, and the Florence Immigrant & Refugee Rights Project (FIRRP), "Civil and Human Rights Organizations File Joint Complaint With DHS on Behalf of Families Forcibly Separated in Customs and Border Protection (CBP) Custody," December 2017, available at: <https://www.womensrefugeecommission.org/news/press-releases-and-statements/2762-civil-and-human-rights-organizations-file-joint-complaint-with-dhs-on-behalf-of-families-forcibly-separated-in-cbp-custody>

This complaint will not detail all of WRC's concerns with the RIM program, which are numerous<sup>3</sup>, but will instead focus on the rights violations caused by family separations. The present complaint includes documented cases involving separations of children from their parents, legal guardians, and caretakers, pursuant to or as part of RIM. It also documents cases involving spouses who were separated from one other, where one spouse is returned to Mexico under RIM, and a case involving an entire family that was split into two, where one half was placed into RIM and the other half was processed into the United States.

As we mentioned in our December 2017 complaint, while the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) allows for the separation of children from non-parents and legal guardians in certain limited circumstances - in order to prevent trafficking and comply with safe family reunification standards, **it is WRC's position that no parent, guardian, or caretaker (including any alleged parent, guardian or caretaker who DHS suspects does not have a valid relationship or is suspected of trafficking,) who has been separated from their child or other family members should ever be placed into RIM:**

- 1) In the case of a parent or legal guardian accompanying a child, absent a risk of imminent harm to the child, separation is unlawful, renders the child unaccompanied, has tremendous negative impacts on the well-being of that child (and family), and potentially splits one case in the immigration court system into two (or more, if two or more children are involved). In fact, the American Academy of Pediatrics has warned that "highly stressful experiences, like family separation, can cause irreparable harm, disrupting a child's brain architecture and affecting his or her short- and long-term health. This type of prolonged exposure to serious stress - known as toxic stress - can carry lifelong consequences for children."<sup>4</sup>
- 2) In the case of a caretaker accompanying a child (most often a family member such as a grandparent, aunt, or older sibling), that caretaker may be the best suited person to care for that child during her or his immigration proceedings in the United States. Along those same lines, the caretaker may be the only person who is able to provide critical information regarding the child, including past mental or physical health needs, food or drug allergies, past trauma, and so forth; their circumstances and their family contacts; and may be the only person available to provide critical elements of the child's asylum claim or protection needs. Indeed, this person may have been caring for that child for years in their home country, prior to ever arriving to the United States. By returning that person to Mexico, and especially in cases where there is no other family present in the United States or no other suitable sponsor, or where the child does not have that information or key documents pertinent to their case (as the adult, in practice, usually retains those), that child will languish in the custody of the Office of Refugee

<sup>3</sup> These concerns are detailed in our report, *Chaos, Confusion, and Danger: The Remain in Mexico Program in El Paso*, from May 2019. The report is available on our website at: <https://www.womensrefugeecommission.org/rights/resources/1763-chaos-confusion-and-danger>.

<sup>4</sup> See, e.g., "AAP Statement Opposing Separation of Parents and Children at the Border," May 8, 2018, available at: <https://www.aap.org/en-us/about-the-aap/aap-press-room/Pages/StatementOpposingSeparationofChildrenandParents.aspx>.

Resettlement needlessly, at great harm to the well-being of the family and at great cost to the government.

- 3) Due process is jeopardized. When one part of the family has all the documents, critical details, or may have a better understanding of the full reasons for fleeing their home country, having that family member and that information in Mexico does not allow for the family in the United States to fully prepare their cases. In cases in which families are seeking safety and protection in the United States, this may have life or death consequences. This is especially likely when children are involved – since parents may have been trying to protect them from disturbing or dangerous information. Additionally, having multiple cases for the same family in multiple courts creates inefficiency in the immigration court system and contributes to the backlog of cases.
- 4) As mentioned previously, the barriers to communication are extreme. Many separated families do not know how to locate their loved ones in the United States and they are not given this information by US authorities. Even advocates, Mexican authorities, and some US authorities are unaware of how families can locate one another. Furthermore, even if they obtain relevant information about how to locate a family member, procedures for making contact can be impossible to implement from Mexico with no phone or address.<sup>5</sup> Similarly, returned family members who are unable to find housing at a shelter, may end up on the street or renting space in private homes, where they may be at risk of abuse and exploitation and are certainly cut off from resources and information.<sup>6</sup> WRC is aware of some families that have gone months without being able to communicate with their loved ones on the other side of the border. Additionally, this lack of communication also affects other federal employees and contractors. For example, for children who have been rendered unaccompanied and are in ORR custody, ORR, the child's legal representative (if she has one), or her assigned child advocate (if she has one), may need to contact the family who has been returned to Mexico to solicit additional information about the child and his/her case, or potential sponsors available in the United States to care for the child. If they cannot locate the family in RIM, the child's case may be delayed and their time held in ORR custody will increase. Absent information from family in RIM, it could also lead to less safe placements for children who are released from government custody – when the ideal sponsor is waiting in Mexico – which increases the risk for abuse and neglect of those children, among other risks. Furthermore, as we have already mentioned, such separations, especially without follow-up contact or information are extremely traumatic and damaging to children – who are likely to suffer irreparable harm from such a separation.
- 5) In cases where CBP alleges that either a parent or legal guardian is not actually who they purport to be in relationship to a child, returning that individual to Mexico under RIM –

<sup>5</sup> ORR relies on parents calling a 1-800 number that cannot be reached from Mexico. Furthermore, if a parent calls ORR looking for their child, the standard procedure is to obtain information and require a call-back number for ORR to reach the parents after confirming the relationship. This is often impossible for a parent who is homeless and waiting for a hearing in Mexico with no local connections and no money.

<sup>6</sup> CBP does not collect any personal contact information for those returned under RIM; rather, in some places, they cite that every person in RIM is staying at one shelter in Ciudad Juárez when this is simply not the case.

as opposed to taking any additional steps to verify the relationship or to conduct any type of investigation where wrongdoing is suspected – is contrary to law enforcement best practice, disregards parental rights and the human right to family unity, may render a permanent separation of a family, and is dangerous in that it potentially places other children with whom the individual comes into contact into harm in Mexico.

## **II. Individual Cases**

### ***Biological parents separated from their children and returned to Mexico under RIM***

#### **1) Alvaro**

Alvaro, an indigenous Guatemalan man who speaks little Spanish, and his son Enzo, were separated by CBP officials when they entered the United States on April 6, 2019 near El Paso, Texas. Alvaro presented his son's birth certificate to prove that Enzo was his son, but officials claimed that the documents were false. Alvaro was called a liar by U.S. Border Patrol officials, who forcibly separated him from his son. Enzo was sent to an ORR shelter in the United States. Alvaro was kept in CBP processing for 12 days, during which time he asked about his son but received no answers. The government never provided Alvaro with any information on how to contact his son or even with the whereabouts of his son. Alvaro was sent to Ciudad Juárez in Mexico, pursuant to RIM. It was only in Juárez that he was able to borrow a phone to contact a family member in the US, who was able to provide information about his son because this family member had been contacted by ORR. Alvaro was not afforded an opportunity to ask any U.S. immigration official about his son or the separation until his first immigration court hearing, over two months after they were initially separated. Alvaro asked the immigration judge about his son and was told that he needed to bring his case to the attention of immigration officials at CBP and that the court could do nothing to facilitate reunification. Alvaro was sent back to Mexico following the hearing and, again, was not given any information on how he could reunify with his son.

Pro bono immigration attorneys who met with Alvaro in immigration court were able to take on his case. Together with the American Civil Liberties Union (ACLU), they worked with the Department of Justice (DOJ) to facilitate Alvaro's parole into the United States so that he could reunify with his son. Alvaro's attorneys accompanied him to a port of entry to be processed into the United States on June 15, 2019, but CBP refused to allow the attorneys to accompany him during his processing or to specify how long Alvaro would be in CBP custody again. In the end, Alvaro remained the rest of that day and all night in an outdoor CBP facility that was covered by a tarp. He was held with approximately 150 other people. He was forced to sleep directly on the concrete with no blanket. He was released the following day and was finally reunified with his son on July 3, 2019, nearly three months after they were separated.

## 2) Bianca

Bianca, a young woman from Nicaragua, was separated from her five-year-old daughter, Helen, and her 16 year-old-brother, Eddy, with whom she was traveling to the United States when they turned themselves in to immigration agents at or near El Paso, Texas on/about May 1, 2019. Bianca was kidnapped and raped when she was a young teen, which resulted in her pregnancy with Helen. Because of the violent circumstances of her pregnancy and because she was a minor at the time of the birth, Bianca was not listed as the birth mother on Helen's birth certificate. Rather, Bianca's mother, Ingrid, was listed instead. However, a biological parent-child relationship claim (between Bianca and Helen) was made clear to the CBP officials verbally and by way of hospital records when Bianca and her child were in CBP custody. Despite that claim, and amid ongoing intergovernmental discussions about providing Bianca with a DNA test, Helen was sent to the same ORR shelter where Eddy had already been sent. After approximately six weeks in CBP custody, Bianca was never provided with the DNA test and was placed into RIM. A team of attorneys and advocates searched for Bianca in Ciudad Juárez, and only after getting in touch with Ingrid (Bianca's mother), was she able to be located. Eventually pro bono attorneys familiar with her case, together with the ACLU, negotiated with a DOJ attorney to bring Bianca back to the Port of Entry for a DNA test. When Bianca returned to the US for her first immigration court hearing on July 8, 2019, her counsel was under the impression she was to receive the DNA test while in CBP custody or after having been transferred to ICE custody. Neither happened, and Bianca was returned to Mexico again. Following weeks of further advocacy and follow-up with government officials, Bianca finally received a DNA test on August 1, 2019. On August 7, 2019, the results came back confirming her parental relationship to Helen.

In total, Bianca was separated from her daughter (and from her younger brother) for approximately three months. The separation wrought distress on Bianca's family and traumatized Bianca and her daughter. In addition, Bianca herself was placed at higher risk upon being sent to Ciudad Juárez to wait for her immigration hearings, as she did not feel safe in Ciudad Juárez and had a difficult time finding a place to stay. For example, upon her initial return to Mexico, she was turned away from one shelter that was full and was sleeping in a church.

## 3) Marcelo

Marcelo, a father from Guatemala, was separated from his 15-year-old son Byron when they crossed into the US on approximately May 2, 2019 near Calexico, California. According to Marcelo, CBP officials accused him of lying about whether Byron was his son. He said that officers "humiliated him," and that they threw Byron's birth certificate into the garbage. He was told that if it was determined that he was lying, he would go to jail. When Marcelo received a Notice to Appear (NTA) while in CBP custody, where he was held for eight days, he asked why they did not give him an NTA for Byron. Marcelo was told not to worry about it. Unbeknownst to Marcelo, Byron was sent to an ORR facility in Florida, and Marcelo – without ever having received any explanation or warning for the separation or his placement into RIM – was returned

to Mexicali, Mexico. His first immigration court hearing, held hundreds of miles away in San Diego, California, was on July 8, 2019. Marcelo was returned to Mexico after his July 8<sup>th</sup> hearing and again following a second hearing on August 7, 2019.

Marcelo now has counsel; together with the ACLU, the attorneys are negotiating with the DOJ in trying to process Marcelo into the US so that he and his son can be reunified while they go through immigration proceedings. As of mid-August 2019, neither has happened. Marcelo and his son have now been separated for three months. Regarding the separation, Marcelo is devastated and wants to be back with his son.

***Legal guardians separated from their children and returned to Mexico under RIM***

4) Gladys

Gladys is a 24-year-old woman from El Salvador, who was separated from her younger siblings, Elmer (14 years old) and Nancy (11 years old) when they entered the United States. Gladys's young daughter was also with her when the siblings entered the US. Gladys has been the legal guardian and primary caretaker for her younger siblings since their mother was murdered three years ago. Her custody of Elmer and Nancy is recognized by the Salvadoran government. Their dad died many years ago. She has never been separated from her siblings in the past.

Following their processing at the border, Gladys's siblings were transferred to an ORR shelter. Neither Gladys nor her siblings were provided with any explanation of what was happening; Gladys is unsure of whether CBP recorded their family relationship. She did not even have the chance to say goodbye to them when she realized that she was being returned to Tijuana under RIM. Gladys thinks her siblings did not realize what had happened to her, until she was finally able to speak telephonically with them many weeks later, after WRC contacted ORR to alert them of the situation and provide them with Gladys's contact information.

Upon Gladys and her daughter's return to Tijuana, Gladys was robbed. Out of desperation, she and her daughter travelled to the Nogales area. They tried to present at the port of entry there and were held for seven days in holding cells at the port. Gladys and her daughter were ultimately sent back again to Mexico to wait for her court hearing in the fall.

The separation was deeply traumatic for both Gladys and her siblings. They cry a lot and have experienced heightened anxiety and uncertainty.

5) Ana

Siblings Ana (20 years old) and Alberto (13 years old) arrived at the border together, along with Ana's 5-year-old daughter. Although Alberto had been residing with his grandmother in Honduras, his grandmother provided Ana with a letter and documents authorizing her as Alberto's custodian. The siblings were separated by CBP at the border, and the reason agents

provided was that Ana was not his mother. CBP told Ana that they would be separated and that Alberto would be reunified with his mother (who is living in the United States). Ana was afraid and tried to insist that she was his caregiver and provide the paperwork that she had, but she was told that her brother was being taken away. In the end, no agent looked at the letter or paperwork that she had with her. She had a moment to say goodbye to her younger brother and told him to behave well.

When Ana was told that she would be sent to Juárez under RIM, she began to cry, explaining that she also wanted to be released to her mother. Ana and her daughter were sent back to Mexico despite the fact that her daughter was sick with a bad cough and a fever. Alberto was worried about what would happen to them, especially while he was in ORR care. Ana and her daughter were sent to a shelter, which had no space for them. They then tried to go to a church, but there was no space for them there, either. They were on the streets with nowhere to go, they had no food, and Ana could not provide for her hungry daughter. Ana's mother was able to contact some of her husband's relatives in Durango, Mexico, to see if they might be able to provide her daughter with refuge. Ana and her daughter are now staying with these relatives and waiting for their immigration hearing in October 2019.

6) Wilfredo

Wilfredo, a 19-year-old from a Central American country, traveled with his 17-year-old sister, who has a mental health condition. Wilfredo carried with him a power of attorney document that he says allows him to make decisions about his sister in their parents' absence. Despite this, Wilfredo was placed in RIM and Wilfredo's sister was sent to an ORR shelter in the US. As of early May 2019, he had not seen his sister for five weeks nor been able to contact her.

7) Gil X.

Gil, a 28-year-old from Guatemala, traveled with his 15-year-old brother for whom he is the primary caregiver. Gil had a power of attorney form with him. Gil was separated from his brother and returned to Mexico under RIM. His younger brother was sent to an ORR shelter. When Gil appeared before immigration court, he showed the court a power of attorney form, which he said he carried since their father died. He said it had been over five weeks since he was separated from his brother (as of early May 2019) and that they had not been able to speak in that time.

***Legal guardian or adoptive parent separated from child and returned to Mexico under RIM***

8) Ilma

Ilma travelled with her niece by birth, Roxana, to the US border and was separated from her niece by CBP officials on June 14, 2019 in El Paso, Texas. Both Ilma and Roxana are from Guatemala and are indigenous language speakers. Ilma and the child's mother (Ilma's sister) went to see an attorney in Guatemala prior to Ilma and Roxana leaving the country. Ilma says

Roxana's mother authorized Ilma to be the caregiver for Roxana from that day onward and for Ilma to treat Roxana as a daughter. The attorney prepared a document to memorialize this arrangement, including by changing Roxana's last name to match Ilma's. Ilma carried this document with her and presented it to CBP officials. Nonetheless, CBP officials accused Ilma at one point in processing of having "kidnapped" Roxana. CBP said that since Ilma was not on the child's birth certificate, they would have to separate her from Roxana. Ilma does not know what happened to the document she presented, as CBP officials held on to it.

After being separated, Roxana was sent to an ORR shelter, and Ilma was held in custody for 12 days before being returned to Ciudad Juárez, Mexico under RIM. Regarding her time in CBP custody, Ilma described extremely poor conditions and that officials treated her "inhumanely," noting that not once was she afforded the opportunity to bathe nor was she offered a change of clothing. Further, CBP never explained what was happening or where Roxana was being sent, much less how to get in touch with Roxana or whether Ilma would eventually be able to be reunified with her. As a result, Ilma did not know where Roxana was being held and was unable to speak with her for two months. Ilma described how painful the separation was for her and how she worried all the time about Roxana. Once alerted to the situation, WRC intervened with ORR to provide contact information for Ilma, such that she and Roxana could finally be in communication.

***Caretakers/common law guardians separated from their children and returned to Mexico under RIM***

9) Henry

Henry, a 19-year-old from Guatemala, raised his three younger siblings from when he was approximately 10 years old. His mother left when he was that age, and he does not know his father. One of his siblings was still in diapers when his mother left. Henry and his younger siblings were separated at the border in El Paso, Texas, after they fled their home country. The separation was very sudden and traumatic, according to Henry, who has essentially served as the "parent" to his siblings for most of their lives. Although Henry had his siblings' documents with him (e.g., birth certificates), he said that CBP officials would not even look at the documents. Henry still has the documents with him. His younger siblings were transferred to the custody of ORR. Henry was held in the 'hielera' for approximately four days and nights standing up because there was no room to lie or sit down. Henry was then sent to Ciudad Juárez in Mexico under RIM. Since being in Juárez, he has been robbed and his living situation is not secure.

10) Laura

CBP separated Laura, a 24-year-old asylum seeker and her 15-year-old brother, Humberto, after they crossed the border in mid-April near the El Paso port of entry. Held for two weeks in a CBP tent camp, Laura reported that officers falsely told her she would be reunited with her brother but instead pressured her to sign documents acknowledging her return to Mexico under RIM. Laura was sent to Ciudad Juárez around 3 o'clock in the morning in late April by CBP without



anywhere to go. Her brother was sent to an ORR facility, and she has not seen him in more than three months.

11) Josefa

Josefa is a 53-year-old grandmother from Honduras who raised her three granddaughters. The girls' mother moved to the United States approximately five years ago, and since that time Josefa has been the girls' caretaker. When Josefa fled from Honduras, she took her granddaughters, then aged 7, 12, and 15, with her. Once in CBP custody, she said agents took the girls away, forcibly removing the children as the 7-year-old clung to Josefa's pants and all four cried. The separation was very traumatic for Josefa, who said that she "never imagined this could happen. We don't deserve this because we are human beings." Josefa was placed into RIM and returned to Mexico alone, while the girls were transferred to an ORR shelter.

***Families with children where parents and children are split up, with some part of the family being sent back to Mexico under RIM***

12) Mayra

Mayra and her three sons crossed into Texas between ports of entry, from somewhere near Reynosa, Mexico, on July 13, 2019. They were taken to a 'hielera' that Mayra believes was located in McAllen, Texas. Mayra and her two minor sons were placed in one area and Javier, her 18-year-old son, was taken to another area – Mayra did not know where at the time. CBP sent Mayra and her two minor sons, via plane, to San Diego. When she was boarding the plane, Mayra told an official that she did not have her oldest son with her, and the official said that Javier was an adult and had to undergo his process separately. Javier had his passport with him, but Mayra had his birth certificate and his cell phone with her. After 15 days, she was able to establish telephonic communication with him and found out that he is being held in immigration detention in Texas, waiting to apply for asylum. Meanwhile, Mayra and her two younger sons were placed into RIM and sent to Tijuana, where they are currently waiting for their first court date scheduled to take place in October 2019.

13) Lorena

Common law partners, Lorena and Nery fled Honduras with both of their children (a girl approximately 22 months old, Martha, and their 6-year-old son, Vicente) due to death threats the family was receiving. The last message that Lorena received threatened the lives of their children, as well. Terrified, the family left and made their way to the US southern border. The family presented themselves at the border at El Paso on or around June 1, 2019. Lorena believes they were separated on or around June 3, 2019. She said the family was simply told to go to different places around 6pm one evening. She said they assumed they would be together. CBP officials did not ask her for any information, just to show them her ID. Once Lorena was returned to the 'hielera' around 8pm that evening, she did not see her husband or son again. No

explanation was provided. The next morning, Lorena and her daughter were transferred to another place.

Lorena and her daughter are now undergoing their immigration proceedings in the United States, separately from her husband and son, who were placed into RIM and returned to Ciudad Juárez. According to Lorena, the separation has been “incredibly hard” for her family. They have never been separated before. Lorena has been able to speak with her husband over the phone, and she learned that her son got very ill after he left CBP custody: he had a fever and was vomiting blood. She mentioned that the CBP facility was very cold and that they were not provided with sufficient food while held there. Lorena says her son is depressed and will not speak with her anymore over the phone; he just cries. Her husband told Lorena that he and their son have food where they are staying in Juárez but that it is not enough. “It’s very hard for me. I suffer a lot,” she said. “I don’t have words for it...they separated me from my son.”

#### 14) Katia

CBP sent Katia and her daughter to Mexico, separating them from Katia’s husband and 7-year-old son when the girl fell ill in CBP custody. After days in makeshift CBP detention facilities under the Paso del Norte Bridge and a desert tent camp with limited food and heavily chlorinated water that burned their lips, Katia’s daughter collapsed. The child was sent to a local hospital with her mother. “When I returned to the camp with my daughter, my husband and son were gone. They’d been released. No one had told me that was happening,” Katia said. CBP returned Katia and her daughter to Mexico where a taxi driver kidnapped them outside of a Mexican migration office in Ciudad Juárez.

#### 15) Blanca

CBP in El Paso also separated Blanca from her longtime partner and partner’s son, when they sought asylum after facing violence in Guatemala because of their sexual orientation. Blanca said, “[w]hen we told [Border Patrol] we were a couple, the officers in the green uniforms told us that if we weren’t married, we couldn’t stay together.” She was sent to Mexico after 20 days in CBP holding cells. “No one ever asked if I was afraid of being in Mexico,” she said. “They just gave me papers to sign. That’s it.” In Juárez, Blanca and other asylum seekers were repeatedly robbed and assaulted.

#### 16) Victoria

On or about April 2, 2019, Victoria, an 18-year-old young woman, was separated from her mother and younger siblings at the San Ysidro port of entry in San Diego, California. Her family is seeking asylum in the United States. When Victoria was first separated from her family, CBP told her that she was just going to be questioned separately. At some point during the interview, the tone changed, and she was told she would be going to Mexico. Victoria and her family members have similar underlying claims for asylum. Although Victoria’s lawyer was able to

have her removed from RIM and her case consolidated with her family's – through the immigration judge's grant of a change of venue to the court presiding over her family's case (the grant was issued on July 18, 2019) – had this not have happened, her case would have been impacted tremendously: as Victoria is only 18, she knows the reason for needing to flee but does not have all the details of the entire threat to her family.

***Spouses, including common law partners, separated from one another where one is returned to Mexico under RIM***

17) Christopher E.

Christopher E. fled Honduras with his pregnant wife. While they were traveling through Mexico, they were kidnapped in Nuevo Laredo, Tamaulipas for two months. After their kidnappers had no success in reaching a family member, they were released. By the time they turned themselves in to the U.S. Border Patrol, Christopher's wife was six-months pregnant. Border Patrol separated them, sending Christopher to Ciudad Juárez while his wife was processed in and is currently staying with a family member in the US. Christopher said he was worried about his wife; he also said he was too afraid to leave the home where he was staying in Juárez. "One feels as if one is not a human being," he said.

18) Donaldo U.

Donaldo U. arrived at the U.S. southern border with his common law partner, who is pregnant. U.S. Border Patrol separated them. Donaldo's partner was processed and released into the US, while he was sent back to Juárez under RIM.

***Adult siblings separated from minor siblings and returned to Mexico under RIM***

19) Amanda M.

Amanda M., a 19-year-old asylum-seeker from Guatemala, travelled with her 14-year-old sister to the US border. When they turned themselves in to the U.S. Border Patrol near El Paso, Texas, Amanda told agents that she was afraid to return to her home country. One agent responded: "We can't help you here." She was then separated from her younger sister, who was sent to ORR. Meanwhile, Amanda was placed into RIM and returned to Ciudad Juárez, where she said she is too afraid to leave the hotel room she shares with other young women. She also stated that sometimes she and the other women do not eat so that they can afford shelter in Juárez.

20) Gloria

Gloria O., a 20-year-old woman from Honduras, fled with her 16-year-old brother. U.S. Border Patrol separated the siblings, and when she asked agents where they were taking him, an agent told her that "He's going to a better place than you." She said that while in Border Patrol

custody, agents woke her and the other women (including some who were pregnant) in the middle of the night and shouted at them to sign documents in English that she and the others could not understand. As of early May 2019, she had no idea as to the whereabouts of her brother and only more recently was she finally able to speak with him over the phone, where she learned that he is being detained in an ICE detention center.

### **III. Conclusion**

The above case examples demonstrate a disturbing practice of continued family separations by CBP agents along the U.S.-Mexico border under the administration's Remain in Mexico program. Separation of family members, and especially minor children from their parents or legal guardians, absent extraordinary circumstances, raises significant legal concerns and threatens the most fundamental of interests. Separations of children from caretakers may not raise the same legal concerns but certainly have a profound, negative impact on the child and the family as a whole and, like separations from parents and legal guardians, may have serious implications for the child's case for protection and how long they spend in government custody.

WRC urges your office to investigate and clarify current DHS policy on family separation, particularly as it pertains to the RIM program. WRC continues to advocate for many of the recommendations that we and partner organizations put forth in our December 2017 complaint to prevent family separation, ensure a fair process for those seeking protection, and help families stay connected and in communication if a separation does occur. To those recommendations, and more specifically to address RIM separations, we would add:

1. DHS should never place any separated family members into RIM – parent, legal guardian, caretaker, or other part of the family;
2. "Alleged" family members or those whom DHS suspects of not having legitimate family ties should also not be placed in RIM; and
3. DHS should develop and implement a process to immediately identify families separated under RIM, take those family members out of RIM, and work to facilitate reunification in the US where possible.

Thank you in advance for your time and consideration. If you have any questions or require additional information, please feel free to reach out.

Sincerely,

Leah Chavla  
Policy Advisor, Migrant Rights and Justice  
Women's Refugee Commission  
[leahc@wrcommission.org](mailto:leahc@wrcommission.org)  
202-750-8598

Ms. JAYAPAL. Thank you. And in my remaining one second I wanted to ask Ms. Rivas, you know, what is the—out of the 400 I think you said calls that you that you have taken—did I get that number right—how many people can you actually represent given your staff and your resources?

Ms. RIVAS. The reality is very little. Ten is really pushing it at this point. Unfortunately, of those, some had decided to go back home. But just to kind of really paint the picture for you, our staff grew in response to family separation and in response to horrific detention center conditions and prolonged detention. And when we have a partnership with the Southern Poverty Law Center that expands our capabilities to serve people on the detention center, we are thinking we are finally—you know, we are not going to be this scrappy nonprofit anymore. We are going to be built up.

Then MPP hits, and then suddenly, the attorneys that we were able to secure for the detention program, they can't—we can't do MPP. So I found myself having to go myself because I am the director and I am not under any specific grant, and so I said okay, we are going to do this. And so the reality is, no, very little. We don't have the resources for it. And we found ourselves as a community also saying, you know, MPP has to come to an end, and we need to be calling for an end. So if we start expanding resources and writing grants, are we acquiescing to this program that this administration has thrust upon us?

So we have been in an incredibly difficult position as a community. And the reality is that although, you know, we are one and although we have registered 600 phone calls and we have conducted 300 intakes, we are not able to take many of those cases.

Ms. JAYAPAL. Thank you, Ms. Rivas, and thank you again for all of you for your work. I yield back.

Ms. ESCOBAR. Thank you. I now recognize the gentlewoman from Texas, Ms. Garcia.

Ms. GARCIA. Thank you, Madam Chair. And first, let me just say thank you to the lawyers. You know, often, when people talk about lawyers, it is really not good things that they say about us. So speaking as a lawyer—and I know there are some lawyers at the table and certainly here, let's hear it for the lawyers, everybody. They are doing a good job.

And, quite frankly, these days, on many of our issues, Mr. Drake, we count on you and the ACLU and a number of other legal rights advocacy groups to go to the Federal courts to try to undo some of the damage that is being done.

I know you have studied in Latin America. You know the situation in a lot of those countries. Regrettably, we have a President who just thinks that that is all fake news and that everything down there is hunky-dory and people are just coming here for spring break.

Tell us, if you had to just try to explain to someone middle America across this country and why people flee, 25 words or less, just get to the bottom line. Why are people coming to our country?

Mr. DRAKE. They are coming to our country because staying at home means certain imminent threat to the lives of themselves or to their children, and not leaving is simply not an option.

Ms. GARCIA. It is not an option. It is life or death, isn't it?

Mr. DRAKE. Absolutely.

Ms. GARCIA. And, Mr. Garcia—and, by the way, Garcia is a great name—you know, you have visited and talked to a lot of people who come for those very reasons, haven't you?

Mr. GARCIA. Yes.

Ms. GARCIA. And there are some people who actually think that the detention centers are better positioned than what they were, what they are fleeing. Some commentators, conservative commentators on Fox News have even said it is like summer camp. They get everything they need. They are being taken care of. What are you hearing here on the ground? Tell us a few stories to convince the American people that what we describe is not fake news, it is happening.

Mr. GARCIA. It is not true. Actually, we had interviewed several families both in Juarez and El Paso about the conditions in detention centers, and we released a report about that. You have it in my testimonial as an attachment. We had documented these situations that we had never seen and experienced for many years at the border or in the interior.

For example, the fact that one kid was asking for milk, and there were bottles of milk there in one of these Border Patrol stations, and one of the agents, they just throw the milk to the dirt without giving that milk to that child, that was extreme. We had another situation with, again, Border Patrol and ICE officers gathering people in the courtyard of the detention center and with a hose they just water people because they were bathing them collectively with their clothes on.

We never hear situations like that before. We are just throwing children and families in what is called hieleras, these extreme cold rooms where they get actually sick. And when they are released—and they can also—our friends can present testimonies—many of them actually are released sick with colds and with other kind of diseases because of the conditions that were there.

So I think it is extreme. We never thought that we would see this in America. And they themselves, they are seeing that the conditions in those detention centers sometimes were worse than the conditions in their own countries.

Ms. GARCIA. Right. Can I ask you just real quickly, do you think it is worse in for-profit detention centers versus nonprofit detention centers?

Mr. GARCIA. It is. It is because, I mean, at least we think that there is a level of accountability for those detention centers run by the government.

Ms. GARCIA. Right.

Mr. GARCIA. I mean, we need more than that. I mean, that is why I am advocating for that—

Ms. GARCIA. Yes. I agree with you.

Mr. GARCIA. But what you have, private detention centers with no accountability, they don't have to report in many of these cases what are the conditions that they are in. We had also received letters from people within the detention centers, private detention centers explaining the conditions about the quality of food, medication, water. It is extremely terrible.

Ms. GARCIA. Right. I have visited both, quite a few on private and nonprofit, and I think I agree with you.

Ms. Rivas, for you, are the immigrants being treated any better or worse in Mexico once they go back to Mexico or sent back to Mexico?

Ms. RIVAS. That is a great question. I have had the ability to tour the tents on the Mexican side of the border, and I have to say that I just found myself wondering—I am just going to be very honest with you—150 people are returned under MPP at a time, sometimes more, and what they have done with their tents is there is no sleeping space, there are just chairs. There are chairs, there are fans, there is fresh fruit, there is water, there is port-o-potties that frankly do not smell. You are in a pretty clean area under these tents on the Mexican side of the border.

And I find myself wondering how is it that the Mexican Government is able to process so many people? You know, they get processed, they get their Mexican—it is called an FMM, your Mexican visa. And I found myself wondering how is it that they do this process in a way that is pretty efficient in comparison to us having people sleep under bridges, as they did in March?

Many of the people that I encountered in MPP at the very beginning and in April, the very beginning weeks of this, had described sleeping under that bridge. They described sleeping on rocks. They described having the children sleep on top of their bodies so that the children wouldn't have to sleep on rocks. Rocks, gravel, dirt, construction material is what they told me.

What you see in Mexico is a ton of resilience. Shelter system—well, not a shelter system, unofficial shelters that are just trying to pull themselves together, do the best that they can, people starting to rent homes, people living in hotels, it is not okay. They are essentially doing the absolute best they can. But what I see and what I witness is in many ways Mexico is doing the work that the United States should be doing in a way that is as dignified as possible. It is far from perfect, but it is something that we frankly should be ashamed of to not meet our international obligations.

Ms. GARCIA. Well, I think there is a lot of shame to spread around and on many of these policies, so thank you for the work that you are doing and to all of you. I yield back.

Ms. ESCOBAR. Thank you. Thank you so much. I now recognize the gentleman from Colorado, Mr. Neguse.

Mr. NEGUSE. Thank you, Madam Chair.

You know, first, I just would associate myself with the remarks of Representative Garcia in terms of thanking you all, as a lawyer, you know, the work that you all are doing each and every day and touching immeasurable lives here and across the State of Texas and really across the country, and so I thank you for that.

You know, one of the reasons why these field hearings are so incredibly productive in my view is we get to learn new things that I didn't necessarily know before, but also it underscores some of the necessity in terms of the legislation that we are considering that I believe we ought to move forward on.

And, you know, Mr. Garcia, you mentioned Representative Escobar's Homeland Security Improvement Act, which I couldn't

agree with you more and think we ought to proceed with a Floor vote on that bill when we return from our work period.

And with respect to your point about for-profit detention, I couldn't agree more. I believe we need to eliminate for-profit detention entirely. We have a facility in Colorado that is for-profit. And of course the Dignity in Detention Act with our champion, Representative Jayapal's legislation that she has introduced. I believe we also should move forward and the Congress ought to move on that piece of legislation. So I thank you, every witness, for underscoring that.

There are two facts in your testimony, Mr. Drake, that I thought bear mentioning. They were in your written testimony, and for me, they were very striking. The first is, quote, "At least 12 migrants have died in CBP custody in the last year, including multiple children. Notably, there had not been a single death of a child in over a decade." That is a damning statement. And it demands the attention of this committee and of this Congress, and that is why we are here.

I am wondering—I know this is a bit outside of the work that you are currently engaged in in terms of the litigation with respect to the administration's recent MPP policy and so forth, but I had a chance to visit a number of facilities yesterday, including the facility at Clint. And at the time we visited, there were, I believe, five unaccompanied minors, unaccompanied children. And of course this summer is the surge that you mentioned, you know, tens of thousands of children being housed in this area and at that facility being detained.

I guess the question I have, Mr. Drake, is where are those children now? And I understand that, you know, they were released into ORR custody supposedly, but I guess does the ACLU have a good sense of what happened and where we go from here?

MR. DRAKE. I think it would be hard to say that we have a good sense of how anything within CBP operates. We obviously were not aware until the Flores Council visited Clint the degree of abusive conditions that were being perpetrated against children, and I think it brings it back to the central point of accountability and transparency within the agency. We simply do not know where children are being held, how many are being held, and for what period they are being held. CBP does not release that data publicly or to Members of Congress.

I mean, there are examples of—Clint is a strong example of that that we did not know of the number of children being held there. Also, Congress of course didn't learn of the death of Jakelin Caal until many weeks later and until a news report broke that. And then it makes me think of the case of Carlos in the RGV who died on the floor of a Border Patrol station of flu symptoms and laid there on the floor with those symptoms for hours without any attention from an agent. And there has been no accountability for that death or any of the other 12 deaths in the past year and certainly none for the death of children.

And so, as you mentioned legislation that Congress should be looking at and moving forward, the Dr. Ruiz bill around the care of children and then there needs to be robust legislation. Representative Escobar's bill is a step in the right direction, but there



needs to be vast changes to how CBP operates and provides information to the public and provides access to detention facilities. Otherwise, we may never know where children are held and under what conditions they are held in.

Mr. NEGUSE. Last question for—thank you, Mr. Drake. For Mr. Garcia, as I mentioned, there are, you know, facts that we learned that we didn't necessarily know before. I come from Colorado, which is, you know, a State very deep into the interior of the country, and so I don't know that I necessarily fully appreciated the context in which El Paso is located and the integration of this broad community across an international border. And as we were driving up, my good colleague Representative Escobar pointing out that Juarez is just a few miles from here, from where we sit.

In your testimony, Mr. Drake, you mentioned that Border Patrol's interior enforcement operations encroach deep into and across the country because of the 100-mile zone and that almost two-thirds of the U.S. population lives within that 100-mile zone when you consider the entire continental United States.

So, Mr. Garcia, the question is, you know, you talked a bit both in your oral testimony as well as your written testimony about the day-to-day impact, but I am curious if you can expound a little bit more about the impact of the operations that have been implemented over the course of the last several years on just day-to-day life in this very vibrant, robust community of El Paso.

Mr. GARCIA. Yes, thank you. And let me just say that this is just a concern. The concern is that I hope that from the legislative standpoint we don't only see the problems that Trump has created in the last two years but there have many problems in the last 30 years. It is what I call the militarization of the border and the criminalization of immigrants has been happening for many, many, many years.

And we need to resolve MPP, metering, and other things, yes, but there are larger issues happening in our border community that were here long before Trump got elected. The only problem with Trump is that too many things start happening at the same time at the border infused with racism and white supremacy. I think that is the new framework that we have.

But I mentioned one of the aspects of this militarization is that we live in communities and you can see in the communities that there is this extreme fear and uncertainty. When you have U.S. children, U.S. children running away when they see Border Patrol vehicles, I mean, these are U.S. citizen children, U.S. citizen children running away from Border Patrol vehicles, that means that something is deeply wrong in this region.

Secondly, I mean, people are families. They have a mixed legal status. This was mentioned before. I mean, it is not that you have undocumented families in one community and the legal families or U.S. citizen families. We are all mixed. This is part of one community. And you have mothers afraid to go to take their kids to the school or to buy groceries or to the clinic because of these enforcement. And what makes it even worse, it is the policy, it is the practice, but also the narrative that is being permeated in the border that this is a special zone that constitutional rights do not apply, that law enforcement agents can do anything that they want.

So I think that fear, that distortion, by the way, has penetrated within our communities in ways that we had not seen before. And that is why we are saying policy change is important, but also we need to build a better narrative, a successful narrative that recognizes that impunity and abuse is not normal and that respect of the Constitution should apply to the border.

Ms. ESCOBAR. Thank you. And I now recognize Rep. Jackson Lee, the gentlewoman from Texas.

Ms. JACKSON LEE. I thank the chairwoman very much. And let me just say that is the goodness of America, when good people like each and every one of you and those in this audience and those who we see when we go in field hearings around the Nation are courageous enough and open enough and experienced enough to be able to tell us the truth to fix this longstanding, broken process. I am grateful for each and every one of you and the witnesses beforehand.

Let me be very clear. It seems to get a little murky. And certainly I think the tone of the present administration, without disregarding, Mr. Garcia, your comments, but having been back-and-forth in front of the border and over across the board or for decades-plus in my service in public office, I am going to testify and say that it was distinctive and different under President Obama.

The reason I know that because I did come to the border when many, many children, as you remember in 2014, were coming across the border. And we opened up a number of settings. Those children came across, some came across with their parents or mothers, and they were allowed to stay together. And there was a difference. We were all trying to work to fix it, but there was a difference. And I think this is important to clarify.

The other point to clarify is that immigrants don't have due process rights. Let me negate, deny, and rebut that is not accurate. There are limits when it is a civil proceeding, but if you step on the soil of the United States, they should be respected for those rights.

And thirdly, to Mr. Drake, thank you for giving me time when I came here, and you know I went across the border. The MPP is a blatantly illegal program, period. I can't imagine that the circuit is going to find any basis in law because the administration has no basis in law for the MPP program other than what is a figment of their imagination. It should be crushed, stopped, denied, ruled unconstitutional, and we need to write a law that forever bans a silly program like that.

I want to ask you and I will have to do bionic questioning again very quickly, but let me just ask all three of you to answer this question of the militarization of the border. Mr. Garcia, you articulately said it, but everyone can come at it. And this Posse Comitatus Act, the use of—and let me just say this. There are good men and women at Border Patrol, CBP, ICE. The reason is they are your neighbors. I see them. But what has happened is that it has been flipped upside down as to what the role is, and it is harmful.

So, Posse Comitatus, great people in the Texas National Guard. They are at the border. Why? And so what has that impact been,

and what is the public's understanding of U.S. military law and civilian law? Let me just—if you can take a note of that.

Should we restructure these agencies so they get back to—I am appalled that they are not meeting with you. And the FBI is doing the same thing. You can't get the FBI unless you are a Republican to come and visit with your constituents for informational purposes.

And then the last one is—and you all can just take it as you want if you can remember—the conditions—I think you have already spoken about that—the conditions in Mexico. Just to point if—Mr. Drake, could you weave in, did anything ever happen in the death of Claudia Patricia Gomez, who was shot down at the border? Is there any relief to this kind of violence?

And, Ms. Rivas, in your answer if you can say anything about Sophia and the devastation of her example. I want to know whether we need to write specific laws added to the great work that is being done dealing with women and children.

And then also, Mr. Garcia, we are going to write, working with my great chairwoman, to make sure that the private detention centers have the same responsible reporting that the other centers do. But if you can answer those questions, please.

Mr. DRAKE. Sure.

Ms. JACKSON LEE. Mr. Drake, why don't you just go ahead and—

Mr. DRAKE. Absolutely. So the military has no place on the U.S.-Mexico border. They are barred by law from conducting any law enforcement activity within the country, and they are getting dangerously close to doing that by being now stationed at detention facilities and at our ports of entry. Their presence add to the overall false narrative of a crisis and threat of an invasion at our border, which is simply not true. Their presence is not needed, and they should not be here.

The case of Claudia Patricia Gomez, the ACLU is representing her family in a civil rights lawsuit in which we are seeking \$100 million in damages for her death. A Border Patrol agent shot her while she was hiding in a ravine in the head and then lied to the American public about the circumstances surrounding that case until cell phone video came out that showed that she in fact had not attacked a Border Patrol agent and was in fact hiding in a ravine.

Ms. JACKSON LEE. No criminal charges.

Mr. DRAKE. No criminal charges, and we do not know the identity of the agent that took that action.

Regarding meetings or otherwise with Border Patrol, I think the broad call is that there needs to—what we have seen is that CBP will not release any information or provide any information to local communities or the public or Congress unless they are absolutely required to do so by a court of law or by legislation. And so anything short of legislation requiring them to reveal basic information, data—

Ms. JACKSON LEE. Right.

Mr. DRAKE [continuing]. About their activities, they do not even collect data on stops that they conduct within the 100-mile zone, and they certainly—because they don't even collect it, don't report

it, and so therefore there is no ability to conduct oversight of their racial profiling of border communities throughout the 100-mile zone.

I will leave the rest in time for my colleagues.

Ms. JACKSON LEE. That is right. Thank you. We are working on those issues. I hope you can work with us on that. Thank you.

Ms. RIVAS. Border militarization I just have to say, it means going into labor on November 30 and having a Border Patrol agent in the delivery area because he was there with a person he had apprehended it. And as an immigration attorney, that was the most unpleasant experience. I contacted one of my colleagues at the ACLU. She said there is nothing you could do. Just write a blog about it one day. That is what militarization in this border means. Helicopters at night is me telling my kids that it is probably Border Patrol agents, and they know what that means.

Should we restructure these agencies to meet with us, and in so many ways, yes, we need to restructure. And the meetings will happen sometimes not in the way that they used to, but there is no true access, there is no true answers that are being given at these meetings. And the reality is for me we need access to counsel every step of the way from Border Patrol facilities to CBP holding under bridges to holding in bridges. We need access. When I walk a 19-year-old victim who was just raped and I am told I cannot be with her as her counsel, that I need to leave immediately and I need to stand down, that is not correct.

The fact that an MPP court, again, we are on this list but yet we are not allowed to be even in the waiting room of that court. We are effectively shut out. We are told to wait downstairs. If we don't file an entry of appearance, we cannot speak to not one single person who is there for MPP court, not even to give basic information. We truly, truly need access as attorneys.

Ms. JACKSON LEE. Madam Chair, if you would allow, I think the chairman is getting ready to ask a question. I don't have the time. I was going to yield. But I just want to say those orders seem to be patently illegal. I don't know who has authority to keep you out of something that is called a court, a public court. Mr. Chairman—

Ms. ESCOBAR. Mr. Chairman?

Ms. JACKSON LEE. Did you want to say something?

Ms. ESCOBAR. You were wondering—you were going to ask Ms. Rivas—

Chairman NADLER. I would just ask who makes that determination that you can't speak to people there, et cetera?

Ms. RIVAS. It is EOIR headquarters that have made that determination that—

Chairman NADLER. OIR?

Ms. JACKSON LEE. Yes, in Washington, yes.

Ms. ESCOBAR. ORR.

Ms. JACKSON LEE. Right.

Chairman NADLER. ORR.

Ms. RIVAS. Essentially, immigration court, the Executive Office of Immigration Review.

Ms. JACKSON LEE. Is—

Chairman NADLER. The court can't make that determination?

Ms. RIVAS. No, the court themselves cannot. And, as a matter of fact, we don't exactly know what happened, but we have been told that we cannot speak to anybody who is in the MPP process even in giving what we, again, many of us on this list came together and made a script that was just simply a know your rights for people who are in MPP. We are not allowed to do that anymore. I actually witnessed—the only person that is giving information beforehand is the government attorney.

Ms. JACKSON LEE. No basis in law—may Mr. Garcia finish is—

Ms. ESCOBAR. Yes.

Ms. JACKSON LEE. Thank you so very much.

Mr. GARCIA. Thank you.

Ms. ESCOBAR. Mr. Garcia, and if we could wrap up. You have the final word.

Mr. GARCIA. Will do. The national emergency declaration of Trump is illegal and unconstitutional.

Ms. JACKSON LEE. Yes, sir.

Mr. GARCIA. And when I say that is because he went above you and above our communities—

Ms. JACKSON LEE. Yes.

Mr. GARCIA [continuing]. To not only use military resources but also deployed active-duty soldiers in our community, violating the Posse Comitatus Act. And the precedent of that is that if we allow the militarization of the border and we see it as normal, then that will happen in Houston, in Chicago, in New York. So we don't want to go that route.

And finally, to say that we have been working with Border Patrol for 20 years, we had very good moments of accountability.

Ms. JACKSON LEE. That is right.

Mr. GARCIA. We had created a good engagement model. This is not about persons.

Ms. JACKSON LEE. Right.

Mr. GARCIA. This is about systems, systems that are broken, systems of oversight and accountability, and that is what we need to fix.

Ms. ESCOBAR. Thank you—

Ms. JACKSON LEE. Thank you.

Ms. ESCOBAR [continuing]. So much. Thank you, Congresswoman Jackson Lee.

This concludes today's hearing. I would like to once again thank both panels of excellent witnesses for participating in this very important hearing.

I would also like to thank El Paso. You all showed up. We have a packed house. I am so grateful to all of you for spending your morning with us and for showing my colleagues that we care very deeply about these issues and that we are going to help lead the way in reminding our country that we are a place of dignity, and the people who arrive at our front door deserve equal treatment in terms of dignity.

Without objection, all members will have five legislative days to submit additional written questions for the witness or additional materials for the record. And I again just thank you so much to my incredible colleagues. I am so, so, so grateful.

Without objection, the hearing is adjourned.  
[Whereupon, at 12:38 p.m., the subcommittee was adjourned.]

## APPENDIX

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DEMOCRATIC CAUCUS POLICY AND  
STEERING COMMITTEE

CONGRESSIONAL CHILDREN'S CAUCUS

# **CONGRESSWOMAN SHEILA JACKSON LEE OF TEXAS**



## **HOUSE JUDICIARY COMMITTEE**

### **SUBCOMMITTEE ON IMMIGRATION AND**

### **CITIZENSHIP**

## **HEARING ON OVERSIGHT OF THE TRUMP ADMINISTRATION'S BORDER POLICIES AND THE RELATIONSHIP BETWEEN ANTI-IMMIGRATION RHETORIC AND DOMESTIC TERRORISM**

**SEPTEMBER 5, 2019 – 10:00 AM**

**UNIVERSITY OF TEXAS – EL PASO**

- Thank you, Madam Chairwoman for convening this important hearing on Trump Administration's Border Policies and the Relationship Between Anti-Immigration Rhetoric and Domestic Terrorism.
- Thank you to our witnesses:



- Jo Anne Bernal, County Attorney, County of El Paso;
  - Monica Munoz Martinez, Assistant Professor of American and Ethnic Studies, Brown University;
  - Alejandra Castillo, Executive Director, Border Network for Human Rights;
  - Shaw Drake, Policy Counsel, ACLU of Texas and Border;
  - Linda Rivas, Executive Director, Las Americas; and
  - Fernando Garcia, Executive Director, Border Network for Human Rights.
- This hearing examining the effects of the Migrant Protection Protocols, the metering of asylum seekers, and the treatment of children, families, and adults in U.S. Customs and Border Protection (CBP) custody. Border Patrol agents told DHS inspectors that some of the individuals had been held in standing-room-only conditions for days or weeks.
  - We've heard about there being limited access to showers and clean clothing, and individuals have been wearing soiled clothing for days or weeks.
  - Individuals standing on toilets in the cells to make room and gain breathing space, thus limiting access to the toilets.
  - Border Patrol data indicating that 826 (31 percent) of the 2,669 children at these facilities had been held longer than the 72

hours generally permitted under the TEDS standards and the Flores Agreement.

- It has always been very concerning that CBP has reported the deaths of six adults in CBP custody and at least seven children, reminding me of **Baby Roger** in my arms.
- A July 2, 2019 DHS Inspector General report reveals that hundreds of children have fallen ill while in custody, including many requiring urgent medical attention.
- I is why applaud and supported Rep. Raul Ruiz's Humanitarian Standards for Individuals in Customs and Border Protection Custody Act (H.R. 3239), which would require CBP to perform an initial health screening on all individuals in CBP custody and ensure that each individual in custody has access to water, sanitation and hygiene, food and nutrition, and safe shelter, among other provisions.
- Although CBP headquarters management has been aware of the situation at PDT for months and detailed staff to assist with custody management, DHS had not identified a process to alleviate issues with overcrowding at PDT.
- Within DHS, providing long-term detention is the responsibility of U.S. Immigration and Customs Enforcement (ICE), not CBP.

- I also appreciate the Chairman holding this hearing because we will also examine the connection between anti-immigrant rhetoric and domestic terrorism, and the impact of such rhetoric on immigrant communities.
- I support this field hearing because violent extremism in America can no longer be swept under the rug, ignored or irrationally justified.
- We are in a state of national crisis and it is time to act.
- I held a Gun Violence Prevention Summit earlier this week in Houston, Texas, and one of the pressing concerning issues brought up during the Summit was hate crimes.
- According to the FBI, there were 7,175 hate crime incidents in 2017, a 17 percent increase from 2016 and the third year in a row with an increase.
- The number of incidents in 2017 was also the highest yearly total since 2008.
- About 58 percent of the hate crimes in 2017 were motivated by race/ethnicity/ancestry.

- The Southern Poverty Law Center reports a dramatic increase in the number of white nationalist groups in the U.S., from 100 chapters in 2017 to 148 in 2018.
- The Montgomery, Alabama-based Southern Poverty Law Center, which tracks domestic extremism, last month reported a 7 percent rise in hate groups in the U.S. in 2018, with 1,020 groups identified.
- White nationalist groups, specifically, surged nearly 50 percent, growing from 100 chapters in 2017 to 148 in 2018.
- Our colleague Rep. Elijah Cummings held a hearing to investigate the social media activity of employees that showed bias and abuse by the people entrusted to keep everyone safe.
- This country is in a state of unrest.
- Our country has reacted to these types of hate-filled challenges to our democracy in the past, and it's up to us to speak truth to power and enact legislative measure that will shape what our future holds.
- Thank you for convening this hearing, Chairman and I look forward to hearing from the witnesses.
- I yield back.

MR. FERNANDO GARCIA SUPPORTING DOCUMENT

<https://docs.house.gov/meetings/JU/JU01/20190906/109889/HHRG-116-JU01-Wstate-GarciaF-20190906-SD001.pdf>

## United States Senate

WASHINGTON, DC 20510

August 27, 2019

The Honorable Mike Pompeo  
Secretary of State  
U.S. Department of State  
2201 C Street, N.W.  
Washington, D.C. 20520

The Honorable Kevin McAleenan  
Acting Secretary of Homeland Security  
U.S. Department of Homeland Security  
245 Murray Lane, S.W.  
Washington, D.C. 20528

Dear Secretary Pompeo and Acting Secretary McAleenan:

We call on the Trump Administration to end its Remain in Mexico policy, deceptively named the Migrant Protection Protocols, which the administration uses to forcibly send tens of thousands of asylum seekers to Mexico to wait for immigration court hearings in the United States. Not only does this policy do nothing to protect either migrants or U.S. interests, but we have grave concerns about its legality, recent efforts to expand it, and the dangerous conditions it forces asylum seekers to endure while waiting for their cases to be heard.

Under the Remain in Mexico policy, the United States has turned its back on its domestic and international legal obligations by forcing men, women, and children to await resolution of their U.S. asylum cases in parts of Mexico plagued by violence. While in Mexico, these asylum seekers have limited access to lawyers and shelter, which makes it nearly impossible for them to prepare their cases and effectively denies them meaningful access to the U.S. asylum system.

Moreover, the Remain in Mexico policy further damages our status as a global leader in protecting refugees and undercuts our ability to ask other countries to cooperate on migration issues. This policy also has implications for U.S. national security, as it risks fueling instability in Mexican border cities unable to handle the increased number of asylum seekers.

On January 28, 2019, the Administration began implementing its Remain in Mexico policy at the San Diego-Tijuana port of entry. It has since expanded it, forcing asylum seekers to wait in the Mexican cities of Mexicali, Ciudad Juárez, Nuevo Laredo, and Matamoros. More than 30,000 asylum seekers are currently in Mexico awaiting adjudication of their cases, and by the end of August 2019, Mexican officials estimate that this number will rise to 60,000.

As the adjudication process can last for months and even years, the Administration is forcing this growing number of asylum seekers to reside in perilous conditions. Tijuana counted over 2,000 homicide cases in 2018, an increase of 22% from 2017. In Ciudad Juárez, there were 1,247 homicide cases in 2018, a 62% increase from 2017. Due to the prevalence of violent crime and gang activity in the Mexican border state of Tamaulipas, which includes the cities of Nuevo Laredo and Matamoros, the State Department issued a "Do Not Travel" warning for the area.

Amid this increasing violence, there has also been a growing number of reports from the border of the kidnapping, extortion, trafficking, rape, and murder of migrants seeking asylum in the

U.S. LGBT individuals and indigenous peoples are at particularly high risk, and we are deeply disturbed by reports that pregnant women are also being returned to these precarious conditions in Mexico. These incidents include:

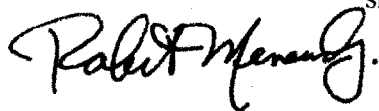
- In December 2018, two Honduran teenagers seeking asylum were murdered outside their shelter in Tijuana while waiting to enter the U.S.<sup>1</sup>
- From January to May 2019, Doctors Without Borders treated 378 patients in Nuevo Laredo. Of these, more than 45 percent had experienced at least one episode of violence and about 12 percent had been kidnapped while waiting to cross into the U.S.<sup>2</sup>
- In April 2019, a Honduran woman and her 5-year-old daughter, who had been returned to Ciudad Juárez after their U.S. court hearing, were kidnapped by a taxi driver who threatened to kill them if their family did not pay a ransom.<sup>3</sup>

As the Trump Administration restricts access to the U.S. asylum system, it also places greater stress on the Mexican immigration system. This Administration knows that, according to independent experts, Mexico has a weak and underfunded asylum system, and does not appropriately screen migrants for protection needs. The Mexican government also has routinely violated the principle of nonrefoulement, a binding pillar of international law that prohibits the return of people to life-threatening situations, by involuntarily returning Central American asylum seekers to their home countries, despite fears of persecution or torture.

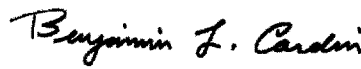
The growing body of evidence that migrants fleeing persecution face abuse or even death, along with the fact that the Remain in Mexico policy flouts our legal obligation to asylum seekers, underscores why we demand an end to this dangerous policy. It is imperative that the United States end this reckless course of action and reaffirm its commitment to the principles of due process on which this country was founded.

Thank you for your attention to this matter. We look forward to your response.

Sincerely,



Robert Menendez  
United States Senator

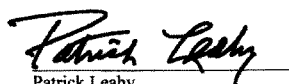



Benjamin L. Cardin  
United States Senator

<sup>1</sup>Mary Beth Sheridan and Kevin Sieff, *Two Honduran Teens from Migrant Caravan Are Killed in Tijuana*, The Washington Post, December 19, 2018.

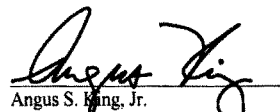
<sup>2</sup>*Mexican City of Nuevo Laredo Not a Safe Place for People Seeking Asylum*, Doctors Without Borders, 3 July 2019.

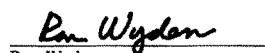
<sup>3</sup>Clara Long and Ariana Sawyer, *We Can't Help You Here: US Returns of Asylum Seekers to Mexico*, Human Rights Watch, July 2, 2019.

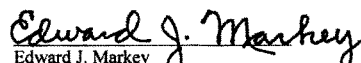
  
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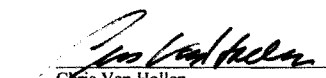
  
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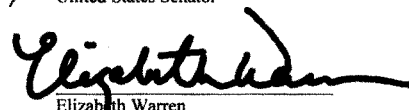
  
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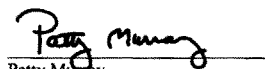
  
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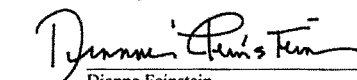
  
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Cory A. Booker  
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Elizabeth Warren  
United States Senator

  
Patty Murray  
United States Senator

  
Dianne Feinstein  
United States Senator





Bernard Sanders  
United States Senator



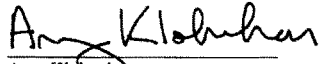
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Jack Reed  
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Amy Klobuchar  
United States Senator



Richard J. Durbin  
United States Senator



Catherine Cortez Masto  
United States Senator



Sherrod Brown  
United States Senator

MR. SHAW DRAKE SUPPORTING DOCUMENTS

Human Rights Watch Report entitled, “‘We Can’t Help You Here’: US Returns of Asylum Seekers to Mexico” - <https://docs.house.gov/meetings/JU/JU01/20190906/109889/HHRG-116-JU01-Wstate-DrakeS-20190906-SD002.pdf>

Human Rights Watch Report entitled, “Delivered to Danger: Illegal Remain in Mexico Policy Imperils Asylum Seekers’ Lives and Denies Due Process” - <https://docs.house.gov/meetings/JU/JU01/20190906/109889/HHRG-116-JU01-Wstate-DrakeS-20190906-SD003.pdf>

**The  
Intercept\_**

## **AN ASYLUM OFFICER SPEAKS OUT AGAINST THE TRUMP ADMINISTRATION'S “SUPERVILLAIN” ATTACKS ON IMMIGRANTS**

Debbie Nathan

September 13 2019, 12:30 p.m.



Border Patrol agents check migrants' documents after they were apprehended crossing the border in El Paso, Texas, June 8, 2019. Photo: Paul Ratje

Asylum officers at U.S. Citizenship and Immigration Services, or USCIS, were reeling after John Lafferty, director of the asylum division, was replaced on Monday by Andrew Davidson, former deputy associate director for USCIS's fraud

detection and national security directorate. Then came the Supreme Court's ruling Wednesday reinstating the Trump administration's "third-country" rule, which effectively denies asylum to all Central American immigrants if they passed through another country on the way to the U.S. border with Mexico. It has been a very bad week for defenders of political asylum in the United States.

Lafferty had previously worked as a lawyer at Catholic Charities, an immigrant legal services nonprofit, and the asylum officers who worked under him at USCIS have generally had similar backgrounds. Many are highly educated attorneys who have worked in nonprofits assisting immigrants with asylum claims rather than trying to deport them. Lafferty's ousting and replacement by a fraud investigator is just the latest development in the Trump administration's assault on the asylum system, according to a USCIS asylum officer who contacted The Intercept. The asylum officer's name is being withheld to protect against retaliation.

In recent months, Customs and Border Protection agents have been conducting asylum screening interviews in place of asylum and refugee officers from USCIS. These interviews have been taking place in detention centers in border states. Perhaps more ominously, they are also happening with immigrants trapped in Mexico by the so-called Migrant Protection Protocols, or MPP. Mexico is also where many immigrants will be dumped as the "third country" policy rolls out.



Related

**Trump's "Remain in Mexico" Policy Exposes Migrants to Rape, Kidnapping, and Murder in Dangerous Border Cities**

MPP forces asylum-seekers to live in dangerous Mexico border cities while awaiting intermittent court hearings in the U.S. As of this month, 42,000 men, women, and children are trapped in MPP. Many have been raped, robbed, and kidnapped in Mexico. They want desperately to escape the dangers they face, and many ask for what is called a "non-refoulement" interview so they can tell

government officials about the violence they've suffered in Mexico, and their need to be removed from MPP and permitted to enter the U.S.



Migrants have their documents checked by a Border Patrol agent after crossing the Rio Grande illegally outside of EL Paso, May 16, 2019. Photo: Paul Ratje

Until recently, the officer said, such interviews were done exclusively by USCIS asylum officers, who undergo extensive, long-term training to conduct this kind of interview. Many are attorneys and have gone through at least 10 weeks of training. They are required to spend four hours a week on continuing education and legal policy and procedure. And even after training is completed, supervisors review the interviewers' notes for mistakes and correct their findings if significant errors are found.



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The asylum officer said that many of their colleagues and superiors have been troubled by new draconian requirements for MPP interviewees — requirements that have resulted in only about 5 percent of interviewed immigrants being removed from the program. The fact that someone has already been kidnapped or raped in Mexico is not enough for them to be removed from MPP. That is because passing the interview requires evidence not that the violence might happen again, but that it probably will reoccur.

The officer believes that MPP unconstitutionally deprives refugees of due process. That belief was the subject of an amicus brief filed by the officers' union recently in the 9th Circuit, arguing that the government cannot force asylum officers to make illegal decisions. The officers have struggled to interpret MPP so that they can fulfill the spirit of the law: that people with legitimate claims deserve the chance to present their full claim before a judge.

The Intercept asked USCIS if asylum officers were being pressured by the Trump administration and the Department of Homeland Security to break the law. A spokesperson responded that that DHS policies and regulations such as for MPP and the third country rule "are carefully drafted and reviewed not only by agency counsel, but also by DHS counsel and DOJ to ensure legal sufficiency and compliance with existing immigration laws."

But Customs and Border Protection officers who conduct the interviews have different training and a different agenda, the asylum officer said.

The officer said that CBP agents with no legal background are receiving as little as two weeks of training. As a result — or maybe deliberately — they commit errors.



Migrants are asked questions by Border Patrol agents about their origins after having crossed into the U.S. near the Paso del Norte International Bridge, June 10, 2019. Photo: Paul Ratje

The officer recalled an incorrect decision by a CBP agent. The agent finished the interview and wrote a report. Reading it, a USCIS asylum officer who had been sitting in noticed that the CBP agent had neglected to classify the immigrant as a member of an oppressed group in their home country. That is clear grounds for an asylum claim, and the USCIS employee's interview notes clearly identified the immigrant as a member of that group. The CBP officer's report did not. Whether the omission "was on purpose or by accident, we can't know," the asylum officer said. "But it's not a good sign."

The officer suspects malfeasance, however, because "CBP officers routinely fake paperwork. Several times a week I would speak to someone whose interview notes with CBP were wildly inaccurate, either intentionally or unintentionally."

For example, the officer described speaking with many immigrants who, according to CBP, had signed a sworn affidavit saying they were not afraid to

return to their country – yet the immigrants denied ever having been asked the question.

“The most obvious fake thing I see on paperwork these days,” the officer added, “is ‘Subject claims to fluently speak Spanish.’” In fact, the officer said, “They know 10 words of Spanish because they’re from the mountains of Guatemala and only speak an obscure Mayan language.”

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CBP now has at least 75 officers who can do the MPP non-refoulement interview, the asylum officer said, and these days border agents are doing many, if not most, of the interviews. Almost everyone interviewed receives a negative determination and is sent back to Mexico. “I think their end goal,” the asylum officer said of the Trump administration, “is to have all CBP stations have CBP officers do these interviews because then they are no longer being kicked up to us. CBP hates sending stuff to us. Our positive rates are very high and CBP hates that.”

The Intercept asked CBP to respond to the officer’s claims that its agents make mistakes, possibly deliberately. A CBP spokesperson did not respond to that question but stated that “in addition to the training that is received at the Border Patrol Academy, Border Patrol Agents in the Pilot Program receive 5 weeks of training under U.S. Citizenship and Immigration Services lesson plans to conduct Credible Fear interviews.”

The asylum officer is also troubled that no attorneys are allowed to accompany immigrants to MPP interviews; the immigrants need attorneys. “These people are extremely confused. There’s all sorts of reasons why someone wouldn’t be able to tell you what happened to them, where an attorney is able to find out, if nothing else because they have more than the 30 to 60 minutes we have to do an interview.”



For now, USCIS supervisors are still reviewing MPP decisions, including those done by CBP agents, but the asylum officer is concerned that even that safeguard could be eliminated. When asylum and refugee officers do other types of interviews, they are required to write substantial narratives justifying their findings. That does not happen with MPP. "The scary part is that the officer doesn't have to justify their decision. They just check a 'yes' or a 'no.' So you can't know what the quality of their analysis was."

As for the new third country policy, interviewers — whether they are asylum officers or CBP agents — are being ordered to automatically disqualify all immigrants except for those who show that they were trafficked or were denied asylum in other countries, or can prove that they are more likely than not to be persecuted or tortured in their home country. The bar is extremely high, and for anyone who does pass the interview, the asylum officer said, the government "can always return them to Mexico under MPP. It's a supervillain plan."

The government's goal now is to turn everyone away, the officer said. That will empty currently crowded detention centers to make room for immigrants who have been picked up in the U.S. interior rather than at the border.

The officer described feeling horrified, even physically sickened, by these new policies under Trump, and by what the asylum interview process has become. Still, USCIS officers are trying to do their interviews comprehensively and correctly. For instance, the officer said, it's important to ask immigrants if they were trafficked or if they were compelled to have sex with their smugglers, or were otherwise forced to remain with or work for smugglers who demanded higher fees than were previously agreed upon. These are common instances of trafficking. Yet the officer already knows of one case where a CBP agent paid no attention to a girl who repeatedly described being trafficked.

The officer could leave USCIS and get another job, but stays on. "I'm doing harm reduction with my own government. It's insane. The alternative is, who's going to come in and take my place?"

**Update: September 13, 2019, 3 p.m.**

VICE VICELAND I-D IMPACT



**VICE NEWS**

**Trump's Asylum Policies Sent Him Back to Mexico. He Was Kidnapped Five Hours**

## Later By a Cartel.

David's story is not unique.

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By [Emily Green](#)

Sep 16 2019, 7:23am



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NUEVO LAREDO, Mexico — David wept as U.S. immigration agents marched him and his child across the bridge into Mexico. “They say here in this country, where we are, they kidnap a lot of people,” he said.

They didn't even last the night. Hours later and just three miles away, cartel members surrounded David and a dozen other migrants at a bus station. They were forced into trucks, and abducted.

David is among the estimated 42,000 asylum seekers who've been returned to Mexico in recent months under President Trump's new asylum policies. The Trump administration calls the policy “Migrant Protection Protocols,” but far from offering protection, the policy has led to a brutal wave of kidnappings in some of Mexico's most dangerous border cities.

“They are sending them to a place that is too dangerous,” Laura, David's sister, told VICE News. “Why are they doing this? Why, if Mexico is a place that is so dangerous?”

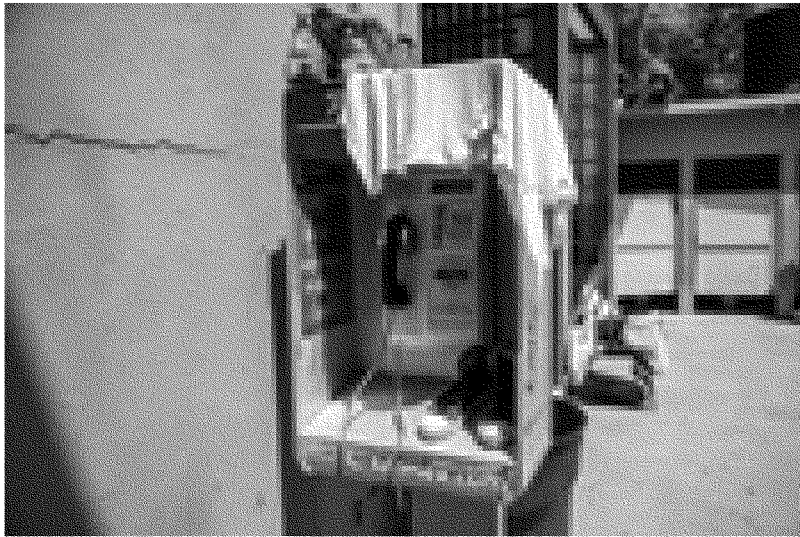
Powerful criminal organizations have seized on Trump's changes, targeting asylum seekers with family in the U.S. by holding them hostage until their relatives come up with thousands of dollars to pay for their release.

VICE News spoke with multiple asylum seekers who have been kidnapped or narrowly escaped being kidnapped upon being returned to Mexico. All of them said they suspected Mexican immigration officials were working in coordination with the cartels. Often, they were grabbed at the bus station or

along the three-mile stretch from the Mexican immigration office to their shelter. The stretch between the border and the shelters may be a few miles, but it is among the most dangerous part of a migrant's journey.

"[The U.S. agents] told us they were going to bring us to a shelter," David told VICE News, a few hours before he and his child were kidnapped. "They lied." VICE News has changed names and withheld certain details of David's story to protect the identity of him and his family.

### **The Phone Call**



CLOTHES AND SHOES ARE SET OUT TO DRY INSIDE A PHONE BOOTH AT A MIGRANT SHELTER IN IN NUEVO LAREDO, MEXICO.  
SERGIO FLORES/VICE NEWS

Instead, once across the border, Mexican immigration officials gave David and the other 120 migrants sent back that day two options: The government would provide them a bus ride for free to Tapachula, a city 30 hours away, on the border with Guatemala, or they could go it alone in Nuevo Laredo.

Those who took the government's offer did so with the understanding that they would never make it back to their court hearing in the U.S., which had been scheduled for three or four months down the road.

Those who stayed did so at their own risk.

David, without a cellphone or any money, was among them.

Nuevo Laredo is one of the most dangerous cities in one of the most dangerous regions of Mexico. It's marked not only by the near constant crime that fuels the city but also by the impunity with which criminals here operate. The corruption and crime is so prevalent that local news barely covered the recent kidnapping in broad daylight of a minister who ran a shelter for migrants, deeming it too dangerous to report on.

**“Why are they doing this? Why, if Mexico is a place that is so dangerous?”**

At the Mexican immigration offices, David was frazzled and desperate to reach Laura, who lives in the U.S., and was prepared to wire him money so he could get a bus ticket to a safer city nearby. He borrowed the cellphone of a man he said identified himself as an immigration agent and wore the agency's typical white-shirt uniform. Outside the office, men in a white four-door truck kept an eye on who came and left the building's parking lot.

The man who lent David his phone spoke with Laura, also identifying himself to her as an immigration agent. He told her he would help David and instructed her to send the money directly to his account. David didn't have a Mexican ID or passport to receive a wire transfer on his own, but the man assured them their money was in safe hands.

But after Laura sent the money, the man stopped picking up. At 8 p.m. that night, Laura received a call from a different number. “A man got on the line and said my brother had been turned over to him.”

David believes the immigration agents never intended to help them.



A GROUP OF MIGRANTS CROSS BACK INTO MEXICO AFTER BEING SENT BACK UNDER THE MIGRANT PROTECTION PROTOCOLS.  
SERGIO FLORES/VICE NEWS

He said when he and another dozen or so asylum seekers who had been returned that day to Mexico arrived at the bus station in Nuevo Laredo, a group of 20 men were already waiting for them. Immediately, the men forced David, his child, and the other migrants into trucks, as an immigration official looked their way but did nothing.

“The people in migration turned us over to the cartels,” he said. “They know what they are doing. They don’t care if you’re killed or not.”

Mexico’s Institute of Migration, which is in charge of carrying out Mexico’s immigration policies, said that it is “committed to combating any behavior that violates the rights and integrity of migrants,” and that it has not

received any recent complaints regarding Mexican immigration officials turning migrants over to cartels or turning a blind eye to their kidnapping.

Foreign Minister Marcelo Ebrard downplayed the issue on Thursday, saying he didn't see the kidnapping of migrants "as a massive phenomenon." But minutes later, Mexican President Andrés Manuel López Obrador said the government was attentive to the issue. "The more migrants that arrive at the [border], the more criminal groups there are, and the higher the risks."

Ebrard's office later contacted VICE News to say it was looking into the problem.

David said the kidnappers took his few belongings, including the paperwork U.S. Customs and Border Protection had given him. Without it, he and his child can't enter the U.S. to attend their hearing in December.

The kidnappers took a dozen pictures of each of the migrants who were being held, and they took notes on everyone — their full names, where they were from, their family members. The cartel was also holding at least 20 other men, plus dozens of children and women, who "were treated like pieces of meat," David said.

They separated the women from the men, and beat any of the men who turned to look. David said one man tried to escape and they shot him dead.

Back in the U.S., Laura was desperately trying to negotiate the release of her brother and his child. But she works in a factory earning \$10.50 an hour. She didn't have a dollar to spare, much less the thousands the kidnappers were demanding.

### **"It's absolutely pointless to go to the police"**

Over the course of several days, Laura received up to three calls a day from them, recordings of which VICE News has reviewed. She was passed

between an underling and his boss, as they alternately comforted and threatened her while demanding money.

“I need you to send me the money as fast as possible, Grandma,” one of the men told her.

When she told them there was no way she could pay the extortion fee, they said she didn’t need all the money at once and could start depositing it in pieces. “You’ll get all the money, mother, don’t worry.”



MIGRANTS PLAY TABLE TENNIS AT A SHELTER IN NUEVO LAREDO, MEXICO. SERGIO FLORES/VICE NEWS

Kidnapping and extortion stories like these have become the norm in Nuevo Laredo since the U.S. started returning migrants there in mid-July.

There is no way to know exactly how many migrants have been kidnapped because most victims and family members are too terrified to file a report to the police, who are also believed to have ties with the cartels. It’s estimated



that hundreds, if not thousands, of migrants have been kidnapped, raped, and targeted for extortion after being returned to Mexico under Migrant Protection Protocols.

“It’s pretty clear that the Department of Homeland Security is essentially delivering asylum seekers and migrants into the hands of kidnappers, and people who are attacking the refugees and migrants when they return,” said Eleanor Acer, senior director for refugee protection at Human Rights First. She added that in these regions of Mexico, “it’s absolutely pointless to go to the police.”

The U.S. Department of Homeland Security didn’t respond to queries about whether it was aware of the widespread kidnapping of migrants returned under Migrant Protection Protocols. Acting U.S. Customs and Border Protection Commissioner Mark Morgan said earlier this month that he has heard “anecdotal allegations” of migrants being kidnapped, but that “Mexico has provided nothing to the United States corroborating or verifying those allegations.”

### **The Business of Kidnapping**



The business of kidnapping migrants is so entrenched in Nuevo Laredo that it's referred to as "passing through the office," according to victims and one person with knowledge of the process.

One woman, whom VICE News is calling Ana to protect her identity, was kidnapped with her husband and two children the day after the U.S. sent them back. She said they were at the bus terminal buying a ticket for a nearby city when a group of men surrounded them and said the family needed to go with the men.

The first night they stayed at an abandoned house. Then they were taken to a hotel, where they spent the next six nights. Ana, her husband and children slept in one bed. Many others were forced to sleep on the floor, she said. Every day captives were taken out and more were brought in. The hotel door was guarded by a single man. Meals were provided daily.

Unlike David, Ana said the kidnappers never showed force. But they didn't need to. She said the man guarding the door made clear the consequences if they tried to escape. "I promise you won't make it two blocks before we will catch you again and the situation will be much worse for you," he told them.

The kidnappers searched Ana, looking for slips of paper with U.S. telephone numbers. They didn't find any and demanded she give them numbers of family members. She gave them Honduran phone numbers. "We don't want those. We want numbers from the U.S.," they chastised.

Ana gave her the number of a brother in the U.S. In a separate room, hidden from her, the kidnappers negotiated over the phone. Over the next week, the brother scraped together more than \$15,000 for their release and wired the money.



A WOMAN WASHES DISHES AT A MIGRANT SHELTER IN NUEVO LAREDO, MEXICO. SERGIO FLORES/VICE NEWS

Ana said when they were released, they were given a keyword as a form of security: If they were kidnapped again, the keyword would indicate what cartel they pertained to and that they had already paid the ransom fee.

The cartels keep records of the people they kidnap, according to the person with knowledge of their operations. That includes how many people they have kidnapped, where they are from, who could pay, who couldn't pay, where they crossed into the U.S., and how many opportunities the coyotes gave them to cross.

Throughout Mexico, migrants who travel with smugglers are given keywords that indicate what smugglers they have traveled with — and by extension, what cartels have been paid off. If the migrants don't have a keyword, or the keyword corresponds to the wrong region, they are vulnerable.

“Here, organized crime is actually organized,” said the person with knowledge of the cartel’s operations. “It’s a company that functions like a clock. Exactly like it should.”

### **The Threat**

In the U.S., Laura was getting desperate. The kidnappers had promised to call back at 3 p.m. but hadn’t.

She managed to pull together a few thousand dollars from family members to pay the kidnappers. When they called the following afternoon, the man on the other end of the line berated her for not having more.

Still, he told Laura that she should deposit what she had into Mexican bank accounts, and that he would talk to the boss. VICE News has reviewed records of the money deposits.

**“I can’t sleep thinking about it. Every night, I dream about everything that has happened to us”**

After Laura deposited the money, members of the cartel drove David and his child back to the bus station. They told him the cartel would be watching him from there, that they had people everywhere. Dozens of migrants remained behind, including at least 10 children, he said.

“They told me they would kill me if I talked,” he said.

He has no idea how he will pursue his asylum claim in the U.S. since the cartel took away his paperwork that allows him to enter the U.S. for a hearing before a judge. But even then, the idea of staying in Mexico until December is untenable.

David can’t stop crying, and his young child has stopped talking altogether.

“One of the kidnappers told me that the kidneys of my [child] were good for removal,” David said, sobbing so hard he could barely get the words out. “I can’t sleep thinking about it. Every night, I dream about everything that has happened to us.”

**Cover:** Migrants who were returned to Mexico under Migrant Protection Protocols prepare to be taken to a processing center in Nuevo Laredo, Mexico.  
Sergio Flores/Vice News

Design and illustrations by Hunter French.

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