



## **AILA Policy Brief: New Barriers at the Border Impede Due Process and Access to Asylum**

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Through a series of recent policy changes, the Trump administration has dramatically eroded the due process rights of asylum seekers and other migrants at ports of entry and in border regions. These highly controversial moves include the increased “turnbacks” of asylum seekers at ports of entry; a “zero tolerance” plan for prosecuting asylum seekers and other border entrants; the separation of families; the increased use of detention on asylum seekers; and attacks on other due process protections, such as the right to counsel. The new policies compound longstanding problems that already impeded migrants’ right to seek asylum, such as the continued failure of border agents and officers to follow required procedures for screening asylum seekers and the extensive use of summary removal procedures, such as expedited removal, that bypass immigration courts. Taken together, these policies systematically deprive people coming to the United States of due process and the opportunity to apply for legal relief to which they may be entitled under law.

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### **Background**

The administration claims recent policy changes are necessary to respond to a “border crisis.”<sup>1</sup> To the contrary, data shows that border apprehensions in fiscal year 2017 reached their lowest level in more than four decades.<sup>2</sup> With American taxpayers now spending over \$20 billion each year on immigration enforcement—an unprecedented level that exceeds all other federal law

enforcement budgets combined<sup>3</sup>—there is no justification for dedicating more resources to immigration enforcement.

Many individuals and families from the Northern Triangle of Honduras, El Salvador and Guatemala have come to the United States seeking protection from the extreme levels of uncontrolled violence in their home countries. UN agencies have described the domestic violence, high murder rates, and other life-threatening conditions in the Northern Triangle as a humanitarian emergency.<sup>4</sup> In April 2018, a caravan of 240 asylum seekers, including many traumatized women and children from Honduras, arrived at the San Ysidro Port of Entry and lawfully requested asylum.<sup>5</sup> The group was found by asylum officers in preliminary asylum screenings to have an extremely high initial eligibility rate of 94 percent.<sup>6</sup>

Despite the overwhelming evidence that many coming from Central America are refugees, the administration has yet to recognize that they deserve legal protection. Instead, the administration has responded with misleading statements and attacks on U.S. humanitarian law. When the caravan arrived in April, Attorney General Jeff Sessions declared: “[W]e are not going to let this country be overwhelmed. People are not going to caravan or otherwise stampede our border.”<sup>7</sup> He has denigrated the asylum screening procedures, which are based in statute enacted by Congress, as an “easy ticket to illegal entry into the United States.”<sup>8</sup> White House Chief of Staff and former Homeland Secretary John Kelly claimed that unaccompanied children (UACs) who enter the country are engaging in a “huge scam,” disregarding evidence that many of these youth are eligible for humanitarian protection.<sup>9</sup> By implementing what amounts to an invisible yet impenetrable wall against those who hope to apply for legal relief, the administration is violating U.S. law and the Constitution and walking away from America’s long-standing commitment to protect those fleeing violence and persecution.

### **Right to Seek Asylum at the U.S. Border**

Both U.S. immigration law and international law guarantee the right to seek asylum for those who come to our nation’s borders. The Immigration and Nationality Act (INA) explicitly states that a person who “arrives” at our borders “whether or not at a designated a port of arrival ... may apply for asylum.”<sup>10</sup> The Due Process Clause of the Fifth Amendment restricts the federal government from depriving an individual “of life, liberty, or property, without due process of law.”<sup>11</sup> When Congress establishes a statutory right—like access to asylum—and requires an agency to implement a procedure for accessing that right, the agency must implement the procedure fairly and consistently.

The United States is also a signatory to the Universal Declaration of Human Rights, which states: “[e]veryone has the right to seek...asylum from persecution.”<sup>12</sup> In addition, the UN Convention on the Status of Refugees, to which the United States is a party, established the principle that a refugee should not be returned to a country where he or she would face a serious threat to their life or liberty on account of a protected ground.<sup>13</sup>

## **“Turnbacks” of Asylum Seekers**

In recent years, U.S. Customs and Border Protection (CBP) has improperly deferred entry or turned away asylum seekers at the southern border. These practices have accelerated under the Trump Administration. In April and May 2018, officials at the San Ysidro port of entry near San Diego, California denied entry to the caravan of asylum seekers and forced them to wait outside the U.S. gate for as long as six days.<sup>14</sup> These individuals slept on concrete and in a nearby plaza in Tijuana, Mexico, enduring cold, rain, ants, and lice. CBP justified the temporary denial of entry at the port on a lack of processing capacity,<sup>15</sup> despite the fact that the agency had been anticipating the arrival of these asylum seekers for weeks. Given that over 20,000 people walk through the San Ysidro port every day,<sup>16</sup> claims that a group of 240 people created a border crisis are highly suspect.

Human Rights First has documented 125 other instances between November 2016 and April 2017 in which CBP refused to grant individuals and families access to a port of entry and the opportunity to seek asylum.<sup>17</sup> In addition to cases at San Ysidro, such turnbacks have occurred in the southern border cities of Brownsville, El Paso, Laredo, McAllen, Nogales, and Reynosa.<sup>18</sup> In some cases, CBP falsely informed noncitizens that the United States did not accept asylum claims at the border<sup>19</sup>—a clear misstatement of U.S. law. In others, CBP required asylum seekers to secure “appointments” from Mexican officials before seeking asylum—appointments that the Mexican officials often refused to provide.<sup>20</sup>

The INA requires CBP to refer a noncitizen who “indicates either an intention to apply for asylum ... or a fear of persecution” for a screening with an asylum officer called a credible fear interview.<sup>21</sup> By abandoning this referral procedure and turning away asylum seekers, CBP is violating the due process rights of those seeking asylum at the border.

The current policies also run afoul of the Refugee Convention principle prohibiting the return of asylum seekers to countries where their life of freedom would be threatened.<sup>22</sup> Asylum seekers returned to Mexico often face persecution or violence. In one case, a Cuban asylum seeker denied entry by CBP in January 2017 was then kidnapped in Mexico and found dead.<sup>23</sup> Given such perils, many noncitizens who are turned away at ports of entry believe they have no choice but to enter the United States illegally between ports.

## **Pressuring Mexico to Accept Asylum Seekers Who Sought Protection in the U.S.**

The Trump Administration has also sought to institute a “a safe third country” policy under which those arriving at U.S. borders would be denied asylum if they came through Mexico and had the opportunity to seek protection from Mexican authorities.<sup>24</sup> This change would almost certainly violate U.S. law which allows for the return of asylum seekers to a designated “safe third country” only if the individual would not face persecution there on the basis of protected grounds and if the country can ensure access to full and fair asylum procedures.<sup>25</sup>

In Mexico, asylum seekers and other migrants face the threat of kidnapping, sexual assault, and other harm and are consistently targeted on the basis of race, nationality, sexual orientation, and other protected grounds.<sup>26</sup> Data on Mexico’s asylum system indicates it is deeply flawed. A

recent survey by Amnesty International found that Mexican immigration officials failed to notify 75 percent of detained asylum seekers and other migrants of their right to apply for asylum, a violation of Mexican law.<sup>27</sup> From January through April 2016 Mexico detained 35,000 minors from Guatemala, El Salvador and Honduras. Of those individuals, the UN High Commissioner for Refugees estimated that “as many as half had plausible claims to international protection because of threats to their lives and safety.”<sup>28</sup> However, only 138 managed to apply for asylum. Of those, just 77 obtained legal protection—only .2 percent of 35,000.<sup>29</sup> A safe third country agreement with Mexico would not only bar asylum seekers from the United States but also leave them with no reliable protection from the dangers they escaped.

### **CBP Screening Practices Undermine Access to Asylum**

CBP officials often disregard required procedures and deny people the ability to apply for asylum at the border. CBP officials are required to ask people apprehended at the border whether they fear persecution or harm if they are returned to their home country.<sup>30</sup> However, the U.S. Commission on International Religious Freedom (USCIRF) reported that officials frequently failed to ask migrants these questions.<sup>31</sup> A complaint filed by AILA and several other organizations documented similar cases in which CBP officials repeatedly failed to ask individuals whether they feared returning to their home country, automatically deporting them instead.<sup>32</sup>

Additionally, CBP is required by U.S. law to document if someone expresses a fear of return. At that point, CBP must refrain from asking any further questions about the asylum seeker’s stated fears and notify U.S. Citizenship and Immigration Services (USCIS) so that an asylum officer can conduct a credible fear interview. Instead of complying with these procedures, CBP officials who are not trained to make an asylum eligibility determination have asked detailed questions about why an individual left his or her country or what the individual knows about the asylum process.<sup>33</sup> Compounding these problems, CBP sometimes conducts its interviews in group settings.<sup>34</sup> This lack of privacy discourages asylum seekers, whose persecution may have entailed deeply personal trauma such as abuse and rape, from disclosing their fear of persecution and return.

Even when someone is able to state that they are afraid to return to their home country, CBP officials regularly ignore the expression of fear or compel individuals to sign statements that say they have no fear of return.<sup>35</sup> In one representative case, a young man was beaten severely on repeated occasions in his home country, despite going to the police for protection.<sup>36</sup> When he arrived in the U.S., he told the CBP agent several times that he was afraid to return. The officer at first ignored his statements, and then accused the man of lying and told him that he had no right to fight for his case. The young man was deported without ever seeing an asylum officer. An attorney who represented six different Mexican families at the Ped-West Port of Entry stated that CBP pressured each of them to withdraw their claims for protection.<sup>37</sup> Other lawyers shared accounts of CBP officials in the Rio Grande Valley pressuring noncitizens to sign voluntary removal documents even as they articulated fears of return.<sup>38</sup>

The grave processing errors committed by CBP at the border will have even more devastating consequences if the administration promulgates new regulations that will expand the use of expedited removal. Expedited removal enables an immigration officer to rapidly remove a person without the opportunity to appear before an immigration judge. Currently, expedited removal can only be used on noncitizens encountered within 100 miles of the border who cannot show they have been in the United States for 14 days.<sup>39</sup> DHS asserts that it has the authority to apply expedited removal to people encountered *anywhere* in the United States who cannot establish show presence in the United States for two years.<sup>40</sup> Such a broad expansion of expedited removal would result in many more deportations conducted in violation of due process.

### **Setting a Higher Legal Standard for Asylum Seekers**

The Trump Administration has altered the legal standard for asylum seekers screened at the border, adding yet another barrier to asylum. In February 2017, USCIS issued new instructions to asylum officers elevating the “credibility” threshold required in credible fear determinations, the preliminary screenings of arriving asylum seekers.<sup>41</sup> The previous instructions stated that asylum officers must find “a significant possibility” that, in a full hearing, an Immigration Judge could deem the applicant credible.<sup>42</sup> The new guidance omitted that instruction and seems to require applicants to establish their credibility more persuasively, making it more difficult for applicants to obtain a positive determination.<sup>43</sup>

Compelling asylum seekers at the border to substantially establish the credibility of their claims during this preliminary stage places an unfair burden on asylum seekers whose claims will be rigorously examined by an immigration judge if they receive a positive determination from the asylum officer and have the opportunity to appear in immigration court. The lower threshold for credible fear determinations is necessary precisely because asylum seekers arriving at the border are typically detained, traumatized, and have limited access to counsel and documentation to support their claims.

Since the new policy took effect, the rate of positive determinations in credible fear screenings has dropped.<sup>44</sup> Notwithstanding this change, the USCIS Director Francis Cissna has asserted that the standard should be even higher.<sup>45</sup> Former Congressman Chaffetz (R-UT) proposed a bill raising the credible fear evidentiary standard to “preponderance of the evidence,” an exceptionally high level that would preclude many legitimate asylum seekers from ever receiving asylum.<sup>46</sup>

### **Criminal Prosecution of Asylum Seekers**

Under the Trump Administration, the Department of Justice (DOJ) has instituted measures subjecting asylum seekers to criminal prosecution for illegal entry and reentry—a policy that jeopardizes their opportunity to seek humanitarian relief. In April, Attorney General Sessions announced a “zero tolerance” policy requiring U.S. attorneys to prosecute “to the extent practicable” all noncitizens—including asylum seekers—referred by DHS for illegal entry.<sup>47</sup> Since the new administration took office, Human Rights First has found that the U.S. Attorneys

Offices at the four border-located district courts did not have a policy exempting asylum seekers from criminal prosecution for illegal entry or re-entry.<sup>48</sup>

Illegal entry and reentry prosecutions often occur through Operation Streamline, a joint DHS-DOJ initiative under which DHS refers noncitizens apprehended at the border to DOJ for prosecution. True to its name, Operation Streamline accelerates prosecutions and individuals may be convicted and sentenced within hours after being charged, sometimes in mass hearings of up to 80 individuals.<sup>49</sup> Operation Streamline strips individuals of basic due process protections by limiting their opportunity to consult with counsel and often results in guilty pleas in which the individuals do not understand the consequences.<sup>50</sup> In some cases, individuals have been asked to sign plea agreements waiving further pursuit of asylum claims.<sup>51</sup>

Article 31 of the Refugee Convention expressly forbids penalization of certain asylum seekers for “illegal entry or stay.”<sup>52</sup> Prosecutions of asylum seekers likely violates this principle. In fact, the DHS Inspector General has concluded that the application of Operation Streamline to asylum seekers “may violate U.S. treaty obligations.”<sup>53</sup>

Under the administration’s new policy, asylum seekers are confronted with an impossible choice. The Attorney General has threatened to prosecute those who enter between ports, instructing them to apply for relief at ports of entry. But those who arrive at ports of entry are being turned away or denied proper screening by CBP. Whether they enter at a port of entry or cross illegally between ports they face enormous obstacles to obtaining protection.

### **The Separation of Families**

The Administration’s policy of prosecuting individuals who enter illegally is resulting in the separation of parents from their children, including toddlers and young children. In order to prosecute the parent for illegal entry or reentry, DHS places the parent in the custody of the U.S. marshals for criminal prosecution. After the criminal proceedings are completed, the individual is transferred to ICE custody. DHS treats the child as if he or she arrived without any parental accompaniment, transferring the child into the custody of Health and Human Services as an unaccompanied child.<sup>54</sup> In many cases, the separated child and parent cannot locate each other or reunite, even after ICE deports one of them.<sup>55</sup>

Between May 6 and 19, 2018, DHS referred for prosecution 638 parents traveling with 658 minor children,<sup>56</sup> an indication that DHS split a large number of families in a two-week period. Although Secretary Nielson denies that DHS has implemented the policy to deter future arrivals, John Kelly explicitly called family separation a “tough deterrent” to illegal border crossings.<sup>57</sup>

Separating families further penalizes people who are attempting to seek asylum and other forms of legal protection as guaranteed by U.S. law. The policy puts pressure on parents to accept a plea agreement, and potentially forego legitimate asylum claims, solely to reunite with their children. Separated children, meanwhile, often lack the capacity to pursue asylum claims on their own. A four-year-old child cannot be expected to navigate complex immigration laws, marshal supporting documentation, or have the wherewithal to secure counsel. Minors may also not fully

comprehend the persecution their families suffered, the motivations for that harm, or the dangers they continue to face.<sup>58</sup>

Even if a separated child does understand her asylum claim, other changes instituted by the Trump administration may compel her to abandon it. The administration has implemented more restrictive policies regarding the release of detained UACs—including separated children. These policies substantially prolong the detention periods these minors must endure.<sup>59</sup> Facing little prospect of release or reunion with family, such oppressive conditions will put more pressure on children to withdraw asylum applications and accept removal, despite their fear of harm in their countries of origin.<sup>60</sup>

### **Indefinite Detention of Asylum Seekers**

In a major departure from well-established DHS policy, the current administration has begun indefinitely detaining the overwhelming majority of arriving asylum seekers processed at the border. A 2009 ICE directive that remains in effect generally requires ICE to release such individuals under its parole authority unless ICE makes an individualized determination establishing that the person poses a flight risk or danger to the community.<sup>61</sup>

A class-action lawsuit filed by ACLU and other organizations in March 2018 alleges that ICE is now regularly denying release to asylum seekers arriving at the border, including those who have established a credible fear of persecution.<sup>62</sup> The complaint asserts that the release of asylum seekers plummeted to less than four percent during the period from February through September 2017.<sup>63</sup> By comparison, in 2013, five ICE field offices whose practices were being challenged released 92 percent of arriving asylum seekers.<sup>64</sup> The lawsuit asserts that ICE has violated its 2009 policy by failing to notify detainees of the option to seek parole, denying parole to asylum seekers before informing them of their right to request it, denying requesters an interview, and neglecting requests for parole altogether.<sup>65</sup> When these offices do provide formal notices of parole denial, according to the complaint, they typically do not indicate that ICE conducted any evaluation of the individual's case.<sup>66</sup>

Making matters worse, the Trump administration has curbed “alternative to detention” programs that have facilitated the release of families and individuals from detention. Specifically, in June 2017, the administration terminated the “Family Case Management Program,” a highly successful alternative to detention for family units that received positive credible fear determinations.<sup>67</sup> Among other benefits, the program helped the families navigate the U.S. immigration system and obtain counsel, while ensuring their appearance at court and adherence to other immigration obligations. The program yielded a 99 percent appearance rate at check-in meetings with ICE and at immigration court hearings.<sup>68</sup> By increasing the use of detention on asylum seekers and families, DHS is unnecessarily increasing the costs borne by American taxpayers. It costs \$319.37 a day to keep a single family member in a family detention facility, whereas the Family Case Management Program costs only \$36 per day for an *entire family*.<sup>69</sup>

The administration's policy of detaining nearly all asylum seekers severely constrains their ability to exercise their right to legal counsel. The vast majority of ICE detention centers are

situated farther than 100 miles from the nearest government-listed legal aid provider,<sup>70</sup> and one facility in Alabama is 408 miles from the closest provider.<sup>71</sup>

### **Undermining Access to Counsel**

In the U.S. immigration system, attorneys play a vital role in representing people facing removal and ensuring they are able access the rights and protections afforded by law. Immigration law expressly guarantees noncitizens the right to be represented by an attorney in immigration proceedings and examinations.<sup>72</sup> Unfortunately, the system does not guarantee counsel paid-for by the government for those who are unable to afford an attorney. As a result, nationwide less than 4 out of 10 people are represented by counsel in their removal cases.<sup>73</sup> The consequences for people who face removal without representation are severe. Detained immigrants in removal proceedings who lack representation are about *ten times less likely* to obtain relief.<sup>74</sup> Asylum seekers who are denied relief and repatriated to their home country will face the dangerous, life-threatening circumstances from which they fled.

Instead of recognizing and respecting the right to counsel, this Administration has launched a campaign to undermine the credibility of the attorneys who represent noncitizens. Attorney General Sessions has called attorneys “dirty immigration lawyers.”<sup>75</sup> Secretary Nielson, in her statement on the caravan, threatened prosecution against those who “coach” asylum seekers on false claims.<sup>76</sup> The Secretary offered no evidence that any fraudulent act had been committed by attorneys or asylum applicants. If fraud was perpetrated, then that instance should be appropriately addressed by authorities, not used as a justification for curtailing access to counsel in other situations.

Finally, the Trump administration has taken additional measures that erode access to legal representation for all people in civil immigration detention. In April 2018, DOJ announced the suspension of the immigration court-run Legal Orientation Program (LOP) pending a review of the program’s effectiveness.<sup>77</sup> LOP is a vital, and sometimes the only, source of basic legal information and pro bono attorney referrals for many detained persons. Though the department lifted this suspension under Congressional pressure, the LOP program is at risk of termination.

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<sup>1</sup> See, e.g., EOIR, “Justice Department Announces Additional Prosecutors and Immigration Judges For Southwest Border Crisis” (May 2, 2018); <https://www.justice.gov/opa/pr/justice-department-announces-additional-prosecutors-and-immigration-judges-southwest-border>.

<sup>2</sup> Border apprehensions in fiscal year 2017 reached their lowest rate in 46 years. WOLA, “New Data Shows Migrant Apprehensions Along U.S.-Mexico Border at 46-year Low, Despite Trump Administration’s Demands for “Massive” Security Buildup” (December 5, 2017); <https://www.wola.org/2017/12/new-data-shows-migrant-apprehensions-along-u-s-mexico-border-46-year-low-despite-trump-administrations-demands-massive-security-buildup/>.

<sup>3</sup> DHS, “FY 2018 Budget-in-Brief;” <https://www.dhs.gov/sites/default/files/publications/DHS%20FY18%20BIB%20Final.pdf>; see also Gregory Chen, “Trump’s immigration enforcement plan misses the big picture” *The Hill* (April 4, 2018); <http://thehill.com/blogs/pundits-blog/immigration/327219-trumps-immigration-enforcement-plan-wastes-limited-resources>.

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- <sup>4</sup> UNHCR, “UNHCR calls for urgent action as Central America asylum claims soar ” (April 5, 2016); <http://www.unhcr.org/en-us/news/latest/2016/4/5703ab396/unhcr-calls-urgent-action-central-america-asylum-claims-soar.html>.
- <sup>5</sup> Human Rights First, “The Refugee Caravan: Human Rights First’s Observations From The Border ” (May 2018); [https://www.humanrightsfirst.org/sites/default/files/Caravan\\_Backgrounder.pdf](https://www.humanrightsfirst.org/sites/default/files/Caravan_Backgrounder.pdf).
- <sup>6</sup> Jorge Rivas, “Trump Administration Mad That So Many Refugee Caravan Migrants Are Passing Asylum Tests,” *Splinter* (Mar 23, 2018); <https://splinternews.com/trump-administration-mad-that-so-many-refugee-caravan-m-1826262546>.
- <sup>7</sup> DOJ, “Attorney General Sessions Delivers Remarks Discussing the Immigration Enforcement Actions of the Trump Administration ” (May 7, 2018); <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-discussing-immigration-enforcement-actions>.
- <sup>8</sup> EOIR, “Attorney General Jeff Sessions Delivers Remarks to the Executive Office for Immigration Review” (October 12, 2017); <https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-executive-office-immigration-review>.
- <sup>9</sup> America’s Voice, “DHS Secretary Kelly On Kids Who Flee Violence of Central America and Seek Safety and Family in America: ‘This is a Huge Scam’ ” (May 26, 2017); <https://americasvoice.org/blog/john-kelly-fy-18-budget/>.
- <sup>10</sup> See INA §208(a)(1).
- <sup>11</sup> U.S. Const. Amend. V.
- <sup>12</sup> UN General Assembly, “Universal Declaration of Human Rights,” 217 A (III) (December 10, 1948) [http://www.ohchr.org/EN/UDHR/Documents/UDHR\\_Translations/eng.pdf](http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf).
- <sup>13</sup> UN General Assembly, “Convention and Protocol Relating to the Status of Refugees;” <http://www.unhcr.org/en-us/3b66c2aa10>.
- <sup>14</sup> Human Rights First, *supra* note 5.
- <sup>15</sup> *Id.*
- <sup>16</sup> Sandra Dibble, “San Ysidro gets a new pedestrian entrance,” *The San Diego Union Tribune* (July 15, 2016); <http://www.sandiegouniontribune.com/news/border-baja-california/sdut-pedestrians-get-second-san-ysidro-border-entrance-2016jul15-story.html>.
- <sup>17</sup> Human Rights First, “Crossing The Line: U.S. Border Agents Illegally Reject Asylum Seekers ” (March 2017); <https://www.humanrightsfirst.org/sites/default/files/hrf-crossing-the-line-report.pdf>.
- <sup>18</sup> Human Rights First, *supra* note 17; American Immigration Council, “U.S. Customs and Border Protection’s Systemic Denial of Entry to Asylum Seekers at Ports of Entry on U.S.-Mexico Border” (January 13, 2017); <https://www.americanimmigrationcouncil.org/content/us-customs-and-border-protections-systemic-denial-entry-asylum-seekers-ports-entry-us>.
- <sup>19</sup> Human Rights First, *supra* note 17.
- <sup>20</sup> *Id.*
- <sup>21</sup> INA §208(a)(2)(A); INA §235(b)(ii).
- <sup>22</sup> UN General Assembly, *supra* note 13.
- <sup>23</sup> Human Rights First, *supra* note 17.
- <sup>24</sup> Ted Hesson, “U.S., Mexican officials to discuss asylum pact,” *Politico* (May 16, 2018); <https://www.politico.com/story/2018/05/16/trump-mexico-asylum-immigration-547919>.
- <sup>25</sup> INA §208 (a)(2)(A). UACs are exempt from safe third country laws. INA §208 (a)(2)(E).
- <sup>26</sup> Human Rights First, “Mexico: Still Not Safe for Refugees and Migrants ” (March 23, 2018); <https://www.humanrightsfirst.org/resource/mexico-still-not-safe-refugees-and-migrants>.
- <sup>27</sup> Amnesty International, “Overlooked, Under-Protected: Mexico’s Deadly Refoulement of Central Americans Seeking Asylum ” (2018); <https://www.amnestyusa.org/wp-content/uploads/2018/01/AMR4176022018-ENGLISH-05.pdf>.
- <sup>28</sup> Human Rights First, “Dangerous Territory: Mexico Still Not Safe For Refugees” (July 2017); <http://www.humanrightsfirst.org/sites/default/files/HRF-Mexico-Asylum-System-rep.pdf>.
- <sup>29</sup> *Id.*
- <sup>29</sup> *Id.*
- <sup>30</sup> USCIRF, “Barriers to Protection: The Treatment of Asylum Seekers in Expedited Removal;” <https://www.uscirf.gov/sites/default/files/Barriers%20To%20Protection.pdf>.
- <sup>31</sup> *Id.*

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<sup>32</sup> American Immigration Lawyers Association, “AILA, NIJC, and Others File CRCL Complaint Reporting Serious Flaws in CBP Fear Screening” (November 13, 2014), AILA Doc. No. 14111748; <http://www.aila.org/infonet/aila-nijc-and-others-file-crcl-complaint>. See also Human Rights Watch, “You Don’t Have Rights Here: U.S. Border Screening and Returns of Central Americans to Risks of Serious Harm” (October 2014), [https://www.hrw.org/sites/default/files/reports/us1014\\_web\\_0.pdf](https://www.hrw.org/sites/default/files/reports/us1014_web_0.pdf); American Immigration Lawyers Association, “Due Process Denied: Central Americans Seeking Asylum and Legal Protection in the United States” (June 15, 2016), AILA Doc. No. 16061461, <http://www.aila.org/infonet/report-due-process-denied>; American Immigration Council, “Mexican and Central American Asylum and Credible Fear Claims: Background and Context” (May 2014), [https://www.americanimmigrationcouncil.org/sites/default/files/research/asylum\\_and\\_credible\\_fear\\_claims\\_final\\_0.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/asylum_and_credible_fear_claims_final_0.pdf).

<sup>33</sup> USCIRF, *supra* note 30.

<sup>34</sup> *Id.*

<sup>35</sup> American Immigration Lawyers Association, *supra* note 32. .

<sup>36</sup> *Id.*

<sup>37</sup> Human Rights First, *supra* note 17.

<sup>38</sup> Human Rights First, *supra* note 17.

<sup>39</sup> American Immigration Council, *A Primer On Expedited Removal*;

[https://www.americanimmigrationcouncil.org/sites/default/files/research/a\\_primer\\_on\\_expedited\\_removal.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/a_primer_on_expedited_removal.pdf).

<sup>40</sup> DHS memorandum, “Implementing President’s Border Security and Immigration Enforcement Improvements Policies” (Feb. 20, 2017); [https://www.dhs.gov/sites/default/files/publications/17\\_0220\\_S1\\_Implementing-the-Presidents-Border-Security-Immigration-Enforcement-Improvement-Policies.pdf](https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Implementing-the-Presidents-Border-Security-Immigration-Enforcement-Improvement-Policies.pdf).

<sup>41</sup> USCIS, “Lesson Plan Overview” (Feb. 13, 2017); (on file with AILA); American Immigration Lawyers Association, “Credible Fear Lesson Plans Comparison Chart” (March 29, 2017), AILA Doc. No. 17032901; [www.aila.org/infonet/credible-fear-lesson-plans-comparison-chart](http://www.aila.org/infonet/credible-fear-lesson-plans-comparison-chart).

<sup>42</sup> USCIS, “Credible Fear” (February 28, 2014); <http://cmsny.org/wp-content/uploads/credible-fear-of-persecution-and-torture.pdf>.

<sup>43</sup> Legislative history indicates that Congress meant for the credible fear process to function as a low-threshold screening ensuring the passage of bona fide asylum seekers to full hearings in immigration court. See 142 Cong. Rec. S11491-02 (September 27, 1996) (statement of Sen. Hatch).

<sup>44</sup> From March 2017 through January 2018 (the 11 months following the issuance of the new instructions), USCIS approved 75% of credible fear claims in which the agency reached decisions; 4% lower than in the period from August 2017 through January 2017 (the six months prior to the issuance of the new instructions). See, e.g., USCIS, “Credible Fear Workload Summary;”

[https://www.uscis.gov/sites/default/files/USCIS/Outreach/Upcoming%20National%20Engagements/PED\\_FY17\\_CF\\_andRFstatsThru09302017.pdf](https://www.uscis.gov/sites/default/files/USCIS/Outreach/Upcoming%20National%20Engagements/PED_FY17_CF_andRFstatsThru09302017.pdf).

<sup>45</sup> See, e.g., written testimony of USCIS Director Francis Cissna, “Stopping the Daily Border Caravan: Time to Build a Policy Wall” before the U.S. House Committee on Homeland Security, Subcommittee on Border and Maritime Security, 115th Cong., 2nd Sess. (May 22, 2018);

<https://docs.house.gov/meetings/HM/HM11/20180522/108323/HHRG-115-HM11-Wstate-CissnaL-20180522.pdf>.

<sup>46</sup> H.R. 391, “The Asylum Reform and Border Protection Act.”

<sup>47</sup> DOJ, “Attorney General Announces Zero-Tolerance Policy for Criminal Illegal Entry” (April 6, 2018); <https://www.justice.gov/opa/pr/attorney-general-announces-zero-tolerance-policy-criminal-illegal-entry>. See 8 U.S.C. § 1325(a).

<sup>48</sup> Human Rights First, “Punishing Refugees and Migrants: The Trump Administration’s Misuse of Criminal Prosecutions” (January 2018); <https://www.humanrightsfirst.org/sites/default/files/2018-Report-Punishing-Refugees-Migrants.pdf>.

<sup>49</sup> American Immigration Council, “Prosecuting Migrants for Coming to the United States” (May 1, 2018); <https://www.americanimmigrationcouncil.org/research/immigration-prosecutions>; see also American Immigration Council, “AILA’s Take on Operation Streamline;” <http://www.aila.org/infonet/aila-take-on-operation-streamline>.

<sup>50</sup> American Immigration Council, Prosecuting Migrants for Coming to the United States (May 1, 2018); <https://www.americanimmigrationcouncil.org/research/immigration-prosecutions>.

<sup>51</sup> Human Rights First, *supra* note 48.

<sup>52</sup> UN General Assembly, *supra* note 13.

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- <sup>54</sup> Women’s Refugee Commission and Kids In Need of Defense, “Family Separation at the Border” (May 30, 2018); <https://supportkind.org/media/family-separation-at-the-border/>.
- <sup>55</sup> *Id.*
- <sup>56</sup> Seung Ming Kim, “Trump is blaming Democrats for separating migrant families at the border. Here’s why this isn’t a surprise,” *Washington Post* (May 27, 2018); [https://www.washingtonpost.com/politics/trump-is-blaming-democrats-for-separating-migrant-families-at-the-border-heres-why-this-isnt-a-surprise/2018/05/27/c07810d8-61d3-11e8-a69c-b944de66d9e7\\_story.html?utm\\_term=.aa3bc86e26e3](https://www.washingtonpost.com/politics/trump-is-blaming-democrats-for-separating-migrant-families-at-the-border-heres-why-this-isnt-a-surprise/2018/05/27/c07810d8-61d3-11e8-a69c-b944de66d9e7_story.html?utm_term=.aa3bc86e26e3).
- <sup>57</sup> “Transcript: White House Chief Of Staff John Kelly's Interview With NPR,” *NPR* (May 11, 2018); <https://www.npr.org/2018/05/11/610116389/transcript-white-house-chief-of-staff-john-kellys-interview-with-npr>.
- <sup>58</sup> See KIND, “Death By A Thousand Cuts: The Trump Administration’s Systematic Assault on the Protection of Unaccompanied Children” (May 18, 2018); <https://supportkind.org/wp-content/uploads/2018/05/Death-by-a-Thousand-Cuts-May-2018.pdf>.
- <sup>59</sup> *Id.*
- <sup>60</sup> *Id.*
- <sup>61</sup> ICE, “Parole of Aliens Generally Found To Have a Credible Fear of Persecution or Torture“(December 8, 2009); [https://www.ice.gov/doclib/dro/pdf/11002.1-hd-parole\\_of\\_arriving\\_alien\\_found\\_credible\\_fear.pdf](https://www.ice.gov/doclib/dro/pdf/11002.1-hd-parole_of_arriving_alien_found_credible_fear.pdf).
- <sup>62</sup> Class Complaint for Injunctive and Declaratory Relief, *Damus v. Nielson*; [https://www.humanrightsfirst.org/sites/default/files/parole\\_litigation\\_Mar15.pdf](https://www.humanrightsfirst.org/sites/default/files/parole_litigation_Mar15.pdf); see also Meredith Hoffman, “Trump Era Ushers in New Unofficial Policy on Asylum Seekers,” *Rolling Stone* (April 4, 2017); <https://www.rollingstone.com/politics/features/trump-era-ushers-in-new-unofficial-policy-on-asylum-seekers-w473930>.
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- <sup>65</sup> *Id.*
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