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Forced Migration, Illegal Barriers to Asylum and the Humanitarian Crisis in Tijuana

A Report by the National Lawyers Guild
July 2019

Executive Summary

In March 2019, the [National Lawyers Guild](#) (NLG) [International Committee](#) sent a fact-finding delegation to Tijuana, Mexico, and San Diego, California, to investigate and illuminate the injustices and human rights violations confronting asylum-seekers and their advocates in Tijuana.

Seven NLG members joined two long-term, on-the-ground NLG volunteers. The team met with lawyers and activists working with migrants from Central America and elsewhere, as well as governmental and nongovernmental human rights organizations, Mexican police, U.S. Customs and Border Patrol (CBP), local and international humanitarian aid organizations, and migrants themselves (see Appendix III for a full list of delegation meetings). This report articulates the findings of that delegation.

U.S. foreign policy and economic and military aid to repressive regimes in Central America, combined with the devastating effects of climate change, extremely high murder rates, kidnappings and disappearances, gang violence, loss of ancestral lands, environmental degradation, and poverty have rendered living conditions unbearable for millions. This has triggered the recent mass exodus of people from (primarily) the "Northern Triangle" countries (Honduras, El Salvador, and Guatemala) trying to reach the U.S. border to seek asylum, referred to in the media as "migrant caravans."

The response of the Trump administration to this forced displacement has been to vilify these people, portraying them as "criminals," "rapists," and "terrorists," and characterizing the migrant caravans as "an invasion." Following up on this racist rhetoric, the administration has implemented policies and protocols to minimize the possibility of these migrants obtaining asylum in the U.S. by instructing Customs and Border Protection (CBP) to drastically limit the number of asylum-seekers allowed each day to present their asylum claims, sending troops to the U.S.-Mexico border, and pressuring the Mexican government to implement draconian tactics to discourage asylum-seekers from reaching the U.S. border. All this has fostered a virulent anti-migrant environment on both sides of the U.S.-Mexico border, resulting in numerous human rights violations by both the U.S. and Mexican governments.

The March 2019 delegation to Tijuana was not the Guild's first involvement with migrants at the border. When the first Central American caravan arrived in Tijuana in April 2018, NLG lawyers, trained [Legal Observers](#), and legal workers traveled to Tijuana to provide legal support to migrants through partnerships with groups including the bi-national legal services organization [Al Otro Lado](#) (AOL). When the second, larger caravan arrived in November 2018, the NLG again partnered with AOL to provide legal support volunteers. NLG members were dismayed by the [conditions on the ground](#) in Tijuana, including the poor treatment of migrants seeking asylum by government officials and local residents. Among the observations were the illegal "list" for asylum-seekers waiting to present themselves at the border, a lack of access to shelter, food and humanitarian aid, numerous barriers to presenting oneself for asylum, lack of basic legal information about the asylum process, and illegal surveillance of migrants and migrant advocates.

Main Findings of the March 2019 NLG International Delegation:

1. President Trump applies a racist perspective to US immigration policy and has ramped up barriers to migration to create a humanitarian crisis at the border;
2. The barriers to asylum, including the so-called “metering” system and the “Remain in Mexico” policy, misleadingly named, “Migrant Protection Protocols (MPP),” are illegal and exposes asylum-seekers to life-threatening conditions;
3. The governments of the United States and Mexico are neglecting their respective obligations under domestic and international law to respect the human rights of asylum-seekers;
4. Anti-immigrant sentiment in Mexico has resulted in harassment and violence towards migrants in Tijuana by Mexican authorities and residents
5. Vulnerable populations, such as unaccompanied children and LGBTQ+ individuals, are especially at risk, and are not being afforded the rights to which they are entitled under international law; and
6. The U.S. and Mexican governments have criminalized migrants and those who are aiding them or documenting their plight, using illegal surveillance and other tactics.

About the National Lawyers Guild and its International Committee:

The National Lawyers Guild (NLG), whose membership includes lawyers, legal workers, jailhouse lawyers, and law students, was formed in 1937 as the United States' first racially-integrated bar association to advocate for the protection of constitutional, human and civil rights. www.nlg.org

The NLG International Committee seeks to change U.S. foreign policy that threatens, rather than engages, or is based on a model of domination rather than respect. The Guild provides assistance and solidarity to movements in the United States and abroad that work for social justice in this increasingly interconnected world. www.nlginternational.org

Cover image: The existing border wall separating Mexico and the United States, in the western sector of Tijuana, March 5, 2019.



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Findings of the Delegation

1. Manufactured Humanitarian Crisis at the Border

Donald Trump ran for U.S. president on an explicitly anti-immigrant platform, publicly spouting racist rhetoric about undocumented people and making derogatory declarations about [Mexicans in his 2015 campaign launch speech](#): "They're bringing drugs. They're bringing crime. They're rapists. And some, I assume, are good people." Trump went on to claim migrants "[infest our country](#)" and are "[breeding](#)" in sanctuary cities, and depicted caravans as cover for [terrorists and M-13 gang members](#). Although these claims have been [debunked](#) by Trump's own administration and the mainstream media, they perpetuate racist and xenophobic rhetoric.

Trump used this platform to create and endorse a hatred of the "other," targeting immigrants in the U.S. as well as migrants seeking to enter the U.S. from other countries. His inability to secure funding for the border wall prompted him to shut down the government from December 22, 2018 through January 25, 2019. In February 2019, President Trump declared a "state of emergency" at the U.S. southern border, citing the Central American migrant caravans. He described these groups, consisting largely of women and children, as an "invasion" of the U.S., deploying thousands of troops and demanding that U.S. states bordering Mexico deploy their National Guard units. The deployment of U.S. troops has cost American taxpayers more than [\\$235 million since 2017](#) (and rising), has proven completely unnecessary, and arguably violates [U.S. law](#). According to the latest estimates from the Pentagon (which foresee troops on the border until at least September), the deployment of active-duty and National Guard troops will cost up to [\\$470 million in 2019](#).

The Central American migrant caravan that arrived in Tijuana in mid-November 2018 was larger than its predecessors. It consisted of families, unaccompanied children (UACs) and others who decided to travel as a group for safety, given that their dangerous journey would expose them to the elements, human traffickers, and organized crime. Many migrants with small children, traveling in buses, cars and sometimes on foot, made the difficult decision to flee their home countries due to direct threats of violence and the inability or unwillingness of their governments to protect them.

Despite Trump's rhetoric, from FY 2014 through FY 2018, border apprehensions on the Southwest border, both at and between Ports of Entry (POE), [remained relatively stable](#). It was not until January 2018 that migration numbers began to increase significantly, when more families were seeking to enter the U.S. Attorney Carlos Rafael Flores Domínguez of the State Commission on Human Rights, Baja California (Comisión Estatal de Derechos Humanos, Baja California - CEDH) explained to the NLG delegation that it was not that more people were coming in the caravans, but that they were coming in larger, more visible groups. Trump exploited the optics of the caravans to support the alarmist narrative on both sides of the border.

The Trump administration, in addition, bears some responsibility for the factors currently compelling people to flee as it continues to support the historic U.S. policies supporting repressive governments in the Northern Triangle, including by supplying military and police assistance (see Appendix I).

Despite the dire circumstances the migrants face, the Trump administration has been obstructing the asylum process in an attempt to deter refugees fleeing persecution from exercising their legal right to seek asylum in the U.S. with varied and multi-layered tactics. First, he launched a propaganda campaign to vilify the members of the caravans as criminals and terrorists in an attempt to turn public opinion against these migrants, both in the U.S. and Mexico. He then used the press and Twitter to instill fear in U.S.-bound migrants by publicizing his anti-immigrant sentiment and his anti-immigrant policies, such as his "zero-tolerance" policy and his intention to send military troops to the border.

By the time the caravan reached the U.S. border last November, the migrants found a very hostile environment on both sides of the border. In Mexico, anti-immigrant groups protested the caravan's arrival in Tijuana, as did Mexican authorities who were willing to comply with the Trump administration's edict to obstruct the asylum process. On the U.S. side, migrants found a border that was lined with border agents under strict instructions to delay and limit the inflow of asylum-seekers. The clear intent was to deter and frustrate migrants from exercising their legal right to seek asylum. As a consequence, asylum-seekers have been forced to wait for months in Mexico before being allowed access to the U.S. port of entry to seek asylum, exposed to one of the highest crime rates in the world and subjected to deplorable living conditions. Meanwhile, the Trump administration has [cut back humanitarian immigration programs](#), drastically reducing the number of refugees accepted for resettlement and terminating a refugee and parole program designed to protect at-risk youth in Central America — leaving asylum as the only option.

2. Illegal Barriers to Asylum and Violations of Human Rights

Most asylum-seekers have been attempting to enter the U.S. legally. The [purpose of asylum law](#) is to provide a safe haven to people who are fleeing persecution, when the government of their home country is unwilling or unable to protect them. Thus, undue delays in allowing asylum-seekers to access that safe haven combined with the dangerous conditions in Tijuana to which migrants were subjected (see Section 4), has exposed those asylum-seekers to further harms.

Following the law under these circumstances, however, has proven to be very difficult and frustrating for asylum-seekers, as U.S. authorities themselves have not been following the law. The [Immigration and Nationality Act](#) (INA) provides that an asylum-seeker should be allowed to apply for asylum immediately after reaching the U.S. and expressing the desire to seek asylum here due to fear of persecution. Instead of initiating the asylum process for those who reach the border, however, U.S. Customs and Border Protection (CBP), in collaboration with Mexican immigration authorities, has developed a "metering" system whereby asylum-seekers are forced to wait in Mexico for months before they are allowed into the U.S. to apply for asylum.

Dr. Alejandra Castañeda, Director of the Observatory on Migratory Legislation and Policy of the Colegio de la Frontera Norte, recounted the history of the metering system, a relatively new development. Metering originated in 2016, when there was a large influx of Haitians to Tijuana who were trying to reach the U.S. border to seek asylum. At that time, CBP made an informal agreement with the mayor of Tijuana to create a waiting list so that the asylum-seekers would not approach the border gate all at once. Allegedly, CBP did not have enough French Creole

translators. In March of that year, human rights organizations began reporting that CBP agents were turning back migrants at the border, denying them the right to seek asylum. Others were told by Mexican authorities to wait in Mexico for their turn to apply. CBP officers reportedly gave a wide range of explanations for denial of the right to seek asylum, including that “The holding cells are full,” or “the U.S. is not granting asylum anymore.”

This agreement has evolved to its present state, in which CBP decides how many asylum-seekers it will process each day and requires the Mexican authorities to decide who gets to approach the border. The Mexican authorities have further delegated to a few asylum-seekers the duty to maintain a chronological, numbered list of asylum-seekers. When any of the list keepers is allowed to enter the U.S., another migrant is tapped to take over administrative duties. The delegation witnessed asylum-seekers standing in line in the plaza outside of the gates of the El Chaparral Port of Entry between Tijuana and San Ysidro, California and having their names recorded in the notebook, commonly known as “the list.” When problems inevitably arise with that system, CBP is quick to point out that it is the Mexican immigration authorities who are overseeing it. This is, of course, a gross dereliction of duty, as U.S. law does not allow a foreign government to decide how to implement U.S. immigration laws.

This metering system has been illegal from its inception, because it serves as a barrier that keeps asylum-seekers from immediately presenting themselves at the U.S. border. The system also exposes asylum-seekers to potential exploitation by those controlling the waiting list.

Based on the metering system’s legal violations, in 2017 AOL filed a class action lawsuit (currently pending) challenging this practice by CBP ([*Al Otro Lado, Inc., et al. v. Nielsen*](#)). Plaintiffs allege that CBP officials have failed to comply with U.S. and international law by arbitrarily denying asylum-seekers access to the asylum process of presenting themselves at POEs along the border. In addition to claiming Homeland Security and CBP officials have deprived the migrants of their rights to apply for asylum under the INA, plaintiffs allege that defendants violated their due process rights under the Fifth Amendment to the U.S. Constitution. Moreover, the lawsuit claims that the U.S. is violating its obligations under international law to uphold the principle of *non-refoulement*, whereby a country may not return an asylum-seeker to a country where they would likely be in danger of persecution based on race, religion, nationality, membership in a particular social group, or political opinion.

3. “Remain in Mexico”: The So-Called Migrant Protection Protocols (MPP)

Furthering its strategy to deter migrants at the southern border at any cost, the Trump administration adopted a policy of sending asylum-seekers who have presented at the border back to Mexico to await further immigration processing there, rather than waiting in the U.S. On December 20, 2018, DHS Secretary Kirstjen Nielsen announced the misnomered [Migrant Protection Protocols](#) (MPP), more accurately referred to as the “Remain in Mexico” policy.

The Remain in Mexico policy violates the fundamental international law [principle of non-refoulement](#), and removes due process safeguards by allowing asylum officers to make determinations that are not subject to review. Under the [previous process](#), the physical removal of a migrant from the United States required an order by an immigration judge, or, for asylum-

seekers who did not pass a credible fear screening, an order of an immigration adjudicator in expedited removal proceedings.

Pete Flores, Director of Field Operations, San Diego CBP, told the NLG delegation that at the end of January, the agency had started returning single males from the Northern Triangle countries to Mexico and was currently sending back families as well. He said that they do not ask asylum-seekers if they have a fear of persecution in Mexico. As of late June, [nearly 14,000](#) asylum-seekers have been returned to Mexico.

The MPP imperils asylum-seekers, most of whom lack formal legal status in Mexico, and as described in Section 5 of this report, face growing hostility. Mexican president Andrés Manuel López Obrador indicated that he would accept migrants returned from the U.S. on humanitarian grounds, but has failed to provide for their security and needs. Delegation meetings with representatives at multiple levels of the Mexican government confirmed that there were no comprehensive plans for addressing the humanitarian and protection needs of migrants. Waiting in Mexico presents numerous perils and hardships for migrants, including the burden of finding housing and income, and presents a particular challenge in accessing legal resources.

The stakes are significant. In the U.S., migrants [with legal representation](#) are “five times more likely to get relief” in immigration proceedings than those without. As of March 2019, there was only one legal services agency in Tijuana, Al Otro Lado, a binational non-profit, which was providing basic legal information on asylum law and process to immigrants, but lacked the capacity to represent individuals in their asylum proceedings. Those returned to Mexico also face procedural barriers. They must present at the border on an assigned date for further proceedings, but face substantial impediments to getting information and notice about proceedings. Lacking permanent addresses, asylum-seekers are obligated to call a toll-free number in the U.S. to verify that the date for their hearings has not changed. However, at the time of the delegation the toll-free number did not work when calling from outside the U.S.

Eleven individual asylum-seekers and several organizational plaintiffs filed a challenge to the Remain in Mexico policy in February 2019, [Innovation Law Lab v. Nielsen \(now v. McAleenan\)](#). The lawsuit cites violations of the INA, the Administrative Procedure Act, and the United States’ duties under international human rights and humanitarian law. A federal judge [issued a preliminary injunction](#) against the MPP on April 8. That order was stayed by a three-judge panel and was later overturned on May 7. Therefore, the policy remains in effect as the court challenge continues.

Well before the implementation of the policies, Mexico was unsafe for migrants, who already faced harrowing threats from trafficking, discrimination, robbery, extortion, kidnapping, and physical and sexual assault. [As documented by Human Rights First](#), refugees are not adequately protected in Mexico. The number of murders in Mexico was 33,341 in 2018, a 33 percent increase from 2017, a statistic [Trump acknowledged via Twitter](#). In Tijuana, where the Remain in Mexico policy was rolled out, there were a record-breaking [2,508 murders](#) in 2018, making Tijuana one of the most dangerous cities in the world. The MPP will amplify the risk to migrants in Tijuana, as described to the NLG delegation and detailed in Section 5 of this report.

4. U.S. and Mexican Governments Neglected Humanitarian Obligations Under Domestic and International Law

The governments of the U.S. and Mexico are obliged under [international conventions](#) to respect the human rights of asylum-seekers. These rights have been consistently violated as evidenced by conditions for migrants in Tijuana. Some rights are considered customary international law and are therefore binding even without a country being a party to an international treaty or convention. Examples of customary law include prohibitions against refoulement (i.e. the forcible return of a refugee to a country where they are likely to face persecution), racial discrimination, the wrongful deprivation of liberty and the imposition of physical constraint in conditions of hardship. All these rights have been repeatedly violated by both the US and Mexico.

Although the “crisis” at the border has been manufactured by the US government, the lack of an adequate response to the needs of asylum-seekers upon arriving in Tijuana in late 2018 created a humanitarian emergency. Carlos Rafael Flores Domínguez of the State Human Rights Commission of Baja California (Baja California Comisión Estatal de los Derechos Humanos Baja California) told the delegation that the city of Tijuana was wholly unprepared to provide adequate assistance to the migrants.

Between 5,000 and 8,000 migrants, the vast majority from Honduras, arrived in Tijuana in the November 2018 caravan. Most of these migrants were housed in large government shelters. The first of these shelters was a sports complex known as the Benito Juárez Sports Unit, an unroofed complex, comprising a baseball field, a soccer field, and a roofed gym, surrounded mostly by a chain-link fence. The facility lacked adequate drinking water, electricity, and sanitary facilities, as documented by NLG Legal Observers and others. Migrants tried to shelter in small nylon tents that offered little protection from cold and rain. Portable toilets overflowed, flooding the camp with raw sewage and contaminating shelters, bedding, and the few possessions people had, and the showers lacked any privacy. Lilia Pacheco, Project Director of PrevenCasa, an HIV/AIDS clinic located a block from the Benito Juárez shelter, told the delegation that there was definitely not adequate drinking water in the shelter. She added that municipal police actually were stopping concerned people who were trying to bring in water and food, and staff from her clinic and others had to protest this. The shelter soon became uninhabitable.

Many of the migrants were then transferred to a larger property with somewhat better facilities called “Barretal,” but migrants were still not provided sufficient water, and sanitary conditions were poor. Some migrants remained near Benito Juárez sleeping on the street without sanitation, potable water, adequate food, or shelter. Barretal is located in the area of Tijuana with the highest crime rate and far away from the Port of Entry where the asylum-seekers had to access the waiting list and check periodically to see when their number would be called. Without money for transportation to travel between the Port of Entry and the shelter, many would-be asylum-seekers never got a chance to apply for asylum in the U.S. Instead, some applied for humanitarian visas in Mexico, others returned to their country of origin (either voluntarily out of frustration, or were deported by the Mexican authorities), and still others attempted to enter the U.S. between POEs. Some migrants were kidnapped or murdered by members of criminal gangs. The exact number is unknown.

For a two-week period, Mexican authorities offered one-year humanitarian visas in Mexico, so that migrants could move out of the shelter and seek work, which approximately 2,000 migrants accepted despite not knowing whether this might subsequently affect their prospects for asylum in the U.S. Moreover, the visas expire in one year. Although some people may be able to renew these visas, those who do not qualify for the renewal can be deported to their country of origin, where hostile conditions presumably remain. Disturbingly, the International Organization of Migration (IOM), whose mandate is to [support the needs of migrants](#), appeared to encourage self-deportation by providing assistance for migrants to return home.

In February 2019, the Barretal shelter was shut down. By then, the number of migrants living there had been reduced to a few hundred, and Mexican authorities decided that they had ample opportunity to apply for humanitarian visas and obtain work permits to be able to pay for their own living accommodations.

The NLG delegation investigated why the government and/or non-governmental humanitarian organizations failed to provide adequate aid to migrants. Cesar Palencia Chávez, Director of the Tijuana Municipal Office for Migrants (Dirección Municipal Atención al Migrante), told the delegation that his office helped set up the shelters, but the office only had six staff members and a relatively small budget, so most of the people working in the shelters were volunteers. The federal government took over running the Barretal shelter soon after the move, but they quickly moved to shut it down.

World Vision provided some food and the International Community Foundation provided some supplies. Despite ample evidence of squalid conditions, representatives from the International Committee of the Red Cross told the delegation that their assessment was that housing, sanitation, and food was sufficient for the migrants in Tijuana. Elizabeth Arroyo Quintana and Josep Herreros from the United Nations High Commissioner for Refugees (UNHCR) told the delegation that UNHCR does not provide direct services, but works with government agencies, such as the Mexican Commission for Aid to Refugees (La Comisión Mexicana de Ayuda a Refugiados - COMAR). The International Rescue Committee in San Diego said that they had provided no services to the migrants in Tijuana and were just then assessing how they might be able to support the needs of migrants arriving in caravans in the future.

5. Anti-Immigrant Sentiment in Mexico Results in Harassment and Criminalization of Migrants in Tijuana

Many of the groups the delegation met with reported that as conditions around migration deteriorated in Tijuana, Mexican nationalism, racism and xenophobia, especially toward Central Americans, was on the rise. Carlos Rafael Flores Domínguez at the State Human Rights Commission of Baja California reported an increase of complaints about discrimination and hate crimes made by migrants, which he connected to inflammatory rhetoric of public figures like Mayor of Tijuana Juan Manuel Gastélum, who has fueled this anti-immigrant sentiment and views human rights as a conditional privilege. Gastélum [declared](#) that “Human rights are for humans who behave the right way,” and that the caravans included “pot smokers,” “bums,” and “bad people.” Gastélum’s statements were so hostile to immigrants that the local legal advocacy

organization Alma Migrante was able to [obtain an injunction](#) ordering him to “refrain from issuing statements contrary to the protection of and respect for migrant people.”

Researchers at the Colegio de la Frontera Norte (COLEF) Observatory and independent journalists the delegation met with noted that local media echoed such narratives, describing migrants in an increasingly unfavorable light. This public display of hate speech contributed to the hostility towards Central American migrants that was subsequently manifested by some of the local residents in Tijuana. An NLG Legal Observer was present in the Benito Juarez shelter when residents of the neighborhood directly threatened the migrants, telling them if they did not leave they would be forcibly removed.

Additionally, Flores Domínguez said there were multiple complaints by migrants of being targeted by municipal police outside of shelters who would arrest them for “moral crimes” such as loitering, and then sometimes turn them over to Mexican immigration officials, which is unlawful. However, Flores noted such arrests are notoriously difficult to prove as human rights violations, describing these arrests as common practice among the municipal police force, and an easy way for the police to fill their daily quotas. As a result, migrants are understandably reluctant to seek police for protection when they are victims of crime or violence.

The climate of harassment and criminalization of migrants was echoed by members of Pueblo Sin Fronteras (PSF), a transborder organization that has provided accompaniment and humanitarian assistance to migrants in Mexico. The group reported to the delegation that the police treat migrants in Tijuana horribly, “they don’t even see the migrants as humans.” The police shake them down for money and arrest them for no legitimate reason, and even set fire to some camps that migrants had set up under a bridge as they had nowhere else to stay. PSF members reported that after filing almost 20 complaints against the police and organizing a community campaign, the police signed an agreement to respect the human rights of the migrants, but the agreement has been frequently breached and the harassment of migrants by police continues.

The advocates who support migrants have been harassed as well. Attorney Graciela Zamudio Campos directs Alma Migrante, an organization which focuses primarily on support for human rights defenders. In light of the many attacks on immigrants and other populations at risk, they seek to empower the small community of human rights defenders in Tijuana with skills-based trainings, as they are often vilified and even threatened for their work. “We are very exposed and very alone. That’s the truth,” said Zamudio Campos. Section 7 of this report details attacks on supporters of asylum-seekers.

6. Unaccompanied Children and LGBTQ+ Asylum-Seekers Are Not Afforded the Rights to Which They Are Entitled

Unaccompanied Children: Under international law, unaccompanied children should not face barriers in asking for asylum and, moreover, should receive special assistance and protection. Although the 1951 Refugee Convention and 1967 Protocol, the basis of modern refugee law, does not specifically refer to children, the [UNHCR Guidelines on International Protection: Child Asylum Claims](#) makes clear that children are entitled to its protections, and that moreover a child-

sensitive interpretation of the Convention must be used when evaluating asylum claims of children (paragraphs 1-4). This child-sensitive interpretation is consistent with [the 1989 Convention on the Rights of the Child](#), the “CRC” (paragraph 5 of UNHCR Guidelines), to which [196 countries are a party](#), including every member of the United Nations, except the United States, which has signed but not ratified the CRC. The Guidelines assert that children, accompanied or not, “should normally be processed on a priority basis, as they often will have special protection and assistance needs. Priority processing means reduced waiting periods at each stage of the asylum procedure” (paragraph 66).

UNHCR asserts that the [definition of a refugee](#) should be read to encompass claims from Central American children fleeing gang-related threats and other forms of violence. In an [extensive study of children from Central America](#) released in January 2016, UNHCR found that 58% are likely in need of international protection due to gang recruitment and violence or physical and/or sexual abuse at home. Yet the NLG Delegation received information from multiple lawyers, activists, and non-governmental organizations that both U.S. and Mexican border officials have repeatedly turned away unaccompanied children seeking asylum.

Mexico, as a signatory of the [Convention on the Rights of the Child \(CRC\)](#) is obligated, under Article 22, to provide special protection and humanitarian assistance for unaccompanied children seeking refugee status. Of particular importance are CRC articles 34 (protection from sexual violence), 35 (protection from abduction and trafficking), and 36 (protection from all other forms of exploitation prejudicial to any aspect of the child’s welfare).

Mexican immigration agents [started detaining children](#), even those accompanied by lawyers, at POEs on the California border in late 2018. Unaccompanied minors have almost entirely been prevented from reaching the U.S. border. If an unaccompanied minor attempted to get on the waiting list to seek asylum, the list managers refuse to allow them to add their names. Instead, the list managers call Grupo Beta, which is the humanitarian arm of the Mexican immigration agency, which, in turn, deports them or turns them over to the National System for Integral Family Development (Sistema Nacional para el Desarrollo Integral de la Familia - DIF), which places them in group homes. Nicole Ramos, from AOL, told the delegation that hundreds of children had been intercepted by Mexican child protective services and sent to group homes and that some had been deported. Efforts by local legal groups and activists to assist unaccompanied children seeking asylum have largely failed: in the majority of cases, the children are turned away before reaching the border, even when accompanied by attorneys, clergy members and other advocates. Another key issue brought to the attention of the NLG Delegation is the difficulty in reaching unaccompanied minors in Mexico to provide legal assistance to them.

Aid organizations believe that there are hundreds of unaccompanied children on the streets of Tijuana alone, and there is a serious lack of shelter capacity. These children are at extreme risk in Tijuana, as demonstrated by the violent deaths by stabbing and strangulation of two teenage migrants in December 2018, when leaving a shelter for unaccompanied children.

[Human Rights Watch](#) also found that unaccompanied children were being turned away at official border crossings when they requested asylum, with some children reporting that “border agents claimed that the post was ‘full’ when they sought asylum.” At the time of the NLG delegation,

AOL had been attempting to bring unaccompanied children to the border with U.S. Congressional representatives present, but stopped doing this as often even this strategy failed. In December 2018, two members of Congress accompanied nine unaccompanied minors and a family to the border and waited hours while CBP claimed they lacked capacity to receive them. In spite of all the evidence that minors were not being admitted at the U.S. border, Pete Flores, Chief Operations Officer for Customs and Border Patrol San Diego, categorically denied to the delegation any unwillingness by CBP to receive unaccompanied children at POEs.

As a result of these barriers to presenting for asylum, unaccompanied children fleeing unbearable conditions at home are now stuck in a country that, ironically, Donald Trump called “the most dangerous country in the world.” Since they are not allowed on the “list,” and many cannot return home, at least some will be forced to seek entry elsewhere along the U.S. border, placing them at very high risk of abuse and exploitation, including trafficking, murder, rape and kidnappings by gangs, cartels, traffickers and others. Between 2011 and 2018, over 1000 migrants were [kidnapped](#) in Tamaulipas, Mexico alone. In a [report](#) from 2014, the Congressional Research Service said that the U.S. Administration estimated that between 75% and 80% of unaccompanied migrant children travelled with smugglers, some of whom had reportedly sold migrants into situations of forced labor or prostitution to recover their costs. Concerned about the dire situation of migrant children moving through Mexico or waiting at the border in Tijuana, [UNICEF issued a statement](#), “These children have limited access to many of the essential services they need for their wellbeing, including nutrition, education, psychosocial support and healthcare. They are also at risk of exploitation, abuse and trafficking while on the road or amidst the crowded camps and respite centres at the border.” UNICEF called for immediate action by the governments in the region but provided few services for children arriving in the caravans.

LGBTQ+ Migrants: Although acceptance of LGBTQ+ people is rising slowly in the U.S., there are many countries that have seen little change in the rampant hate, discrimination, and ostracization of LGBTQ+ individuals. Often the only option for people is to seek asylum elsewhere. In a 1990 case, the U.S. Board of Immigration appeals first recognized sexual orientation as a “membership in a particular group”, and [paved the way for asylum in the U.S. based on sexual orientation](#).

[A UNHCR report](#) on guidelines for assessing the international protection needs of asylum-seekers from El Salvador pointed out that discrimination against LGBTQ+ individuals was reportedly widespread and that such persons have “consistently been targeted for attacks and murder by the gangs and other sectors of society, including by the police and other public authorities” (p. 38). A 2017 comprehensive report from Amnesty International, “[No Safe Place](#),” detailed the systemic violence that LGBTQ+ people face in all of the Northern Triangle countries.

In November 2018, approximately 80 Central American LGBTQ+ migrants arrived in Tijuana as part of the larger caravan planning to petition for U.S. asylum. Most LGBTQ+ asylum-seekers joined the caravan to escape ubiquitous discrimination and mental and physical violence (including death threats) in their home countries based on their sexual orientation/gender identity, and to travel safely through Mexico. During the journey, they formed a smaller LGBTQ+ community, “la comunidad.” While they initially travelled together within the caravan for their own protection, [ongoing discrimination on the road](#) forced them to break off from the larger group.

Once in Tijuana, LGBTQ+ asylum-seekers encountered further discrimination due to their intersecting identities as members of the LGBTQ+ community and as Central American migrants. The group thus faced new threats: physical violence, harassment by Mexican authorities (including police), negative media coverage, online attacks by local residents, and threats of deportation by immigration officials.

The violence against LGBTQ+ migrants in Mexico is well documented. From the earlier cited Amnesty International report: “According to UNHCR, two-thirds of LGBTI asylum seekers and refugees coming from the Northern Triangle and interviewed in 2016 as part of a study reported suffering sexual and gender-based violence in Mexico after crossing the border at blind spots.”

After a shelter holding a group of transgender women asylum-seekers was [robbed and set on fire](#), advocates sought new solutions given their understanding that there would be migrants in Tijuana for the foreseeable future. Activists in Tijuana sought a permanent, more open “safe space” to help LGBTQ+ asylum-seekers as well as deportees. Previously, activists had to warn LGBTQ+ persons in shelters not to leave the shelter at all. Supported by U.S. non-profits, Casa Arcoiris was created to house and support both migrants on their way to the U.S. and those who had been deported from the U.S. In addition to safety, Casa Arcoiris’ top concern, everyone involved sought to build a space that is both collective and supportive of people arriving with significant trauma.

Unfortunately, Mexican police continue to harass LGBTQ+ migrants. A recent injunction against the mayor and police against turning migrants over to Mexican immigration authorities for deportation has resulted in some improvement, but LGBTQ+ migrants are still detained from time to time. Volunteers must physically go to police stations and courthouses to advocate for their release and must often pay bonds. Casa Arcoiris is currently organizing legal and psychological resources, coordinating a program to send resources to detained migrants, raising money for bonds, and seeking to buy property for a permanent shelter.

Under the Remain in Mexico policy, migrants who face persecution in Mexico are not to be returned there while waiting for immigration processing of their asylum claim. However, the delegation was told that two LGBTQ+ migrants had already been returned and MPP had only been initiated a few weeks earlier. Remain in Mexico will create a precarious reality for queer, gender non-conforming, and transgender people who not only faced persecution in their home country, but now are facing it while waiting to seek asylum in a safer country.

7. Harassment of Migrant Supporters by the U.S. and Mexican Governments

In addition to the ostensibly lawful attempts to deter migrants at the border, the U.S. and Mexico have used covert and illegal measures to harass migrant supporters.

PSF volunteer Jeff Valenzuela, a U.S. citizen, recounted to the delegation his harrowing encounters with CBP while crossing the border into the U.S. at the San Ysidro Port of Entry First, on December 26, for two hours while crossing the PedWest (pedestrian) Port of Entry, and then again two days later on December 28, while crossing in his car. CBP personnel removed him and handcuffed him to a bench for hours, later questioning him about the caravan. After that incident,

CBP stopped and interrogated him in an interview room almost every time he crossed into the U.S. On one occasion, CBP officials took away his phone for an hour. After returning it to him, he noticed the home button was making strange noises so he replaced the phone, fearing that CPB had bugged it. It wasn't until he met with a lawyer from the ACLU, who gave him a letter to present when stopped saying that they were representing him and that they would take legal action if the unwarranted, unconstitutional questioning continued, that the interrogations stopped.

Two days after the delegation's meeting with PSF volunteers, news broke of [a covert database](#) maintained by the U.S. and Mexican governments. The database included 59 journalists, activists (including Valenzuela), and an AOL attorney that the delegation had met with, who all had in common their work reporting on or offering humanitarian aid to the recent caravans of migrants. Although the documents - collectively titled "San Diego Sector Foreign Operations Branch: Migrant Caravan FY-2019, Suspected Organizers, Coordinators, Instigators and Media" - revealed a practice that according to the CBP was specific to the San Diego/Tijuana border, there is evidence of similar tactics of detaining and interrogating attorneys and journalists at other POEs along the border in [Texas and Arizona](#). The [Intercept reported](#) that this border dragnet involved Customs and Border Protection, Immigration and Customs Enforcement, and the Border Patrol, all working with Mexican counterparts and the FBI, as part of Operation Secure Line, which was initiated by the Trump administration in the run-up to the 2018 midterm elections. Targeting, intimidating, and detaining individuals based on their human rights work is not only unconstitutional, but has a chilling effect that discourages others from engaging in similar efforts.

Prior to this current surveillance effort, the Mexican government had already invested in sophisticated technology to undermine the efforts of journalists and advocates, [using digital surveillance to intimidate journalists and attorneys investigating potential corruption](#) and/or abuse by Mexican officials. [One of the targets](#) of the illegal surveillance was investigators researching the disappearance of the 43 students at Ayotzinapa Rural Teachers' College in 2014. Mexican law requires authorization from a federal judge before engaging in such activity, but the Mexican government spent tens of millions of dollars on [Pegasus software](#) supplied by an Israeli security firm, NSO, to hack the phones of journalists and attorneys (despite being sold to the government on the condition it would only be used to surveil "criminals and terrorists"). The Special Rapporteurs on Freedom of Expression of both the Inter-American Commission on Human Rights and of the United Nations conducted a joint visit to Mexico at the end of 2017. Among other issues they expressed their concern over the use of digital surveillance of journalists and human rights defenders by the Mexican government. They expressed particular concern about this use of the Pegasus spyware against the international body established to investigate the disappearance of the Ayotzinapa students and [called for oversight](#) of such use. The Inter-American Commission on Human Rights (IACHR) later [held a hearing in 2018](#), at its 167th session in Bogota, on the use of digital surveillance by Mexican authorities.

On April 3, 2019, just weeks after the delegation had met with Irineo Mujica, the director of Pueblo Sin Fronteras, Mujica was targeted in an [arson attack at his home](#) following stalking and online death threats. PSF issued [a press statement](#), which, translated, reads, "Pueblo Sin Fronteras considers this attack against our colleague a direct result of the irresponsible campaign of hate, criminalization, and defamation that has been promoted by the Mexican and United States governments, and other public figures." PSF also cites the covert [US-Mexican watch list](#) of

journalists and activists that was leaked in March 2019 as a concrete example of such criminalization campaigns.

One of the most worrisome components of the harassment of human rights defenders is the direct attack on lawyers working with the migrants. All three of the co-directors of Al Otro Lado, the largest and most visible NGO providing legal assistance to migrants in Tijuana, have faced deliberate barriers to their continued work: Nicole Ramos had her SENTRI pass (allowing expedited entry to the U.S.) revoked, and [Erika Pinheiro was detained and expelled from Mexico on January 29 as was Nora Phillips on January 31.](#)

The NLG [soundly denounced](#) the illegal surveillance of advocates at the U.S.–Mexico border that was evidenced by the secret database as well as the [arson attack on PSF director Mujica](#). Since the delegation in March, the U.S. and Mexican governments’ criminalization campaign against migrants and their advocates persists. Humanitarian aid workers like Scott Warren of the organization No More Deaths, known for leaving water for migrants in the desert, face harboring charges and the potential for serious prison time. In June, Mujica and another migrant rights defender, Cristóbal Sánchez, were arrested by Mexican police on spurious human trafficking charges and eventually released after public outcry.

Delegation Recommendations to Congress

1. Stop funding border militarization. Human rights abuses at the U.S. southern border are exacerbated by treating migration as a national security threat instead of a humanitarian emergency. Funding militarization encourages thinking of migrants as an enemy whose presence should be addressed through brute force.
2. End the metering system and require Customs and Border Patrol to process all asylum applications promptly in accordance with existing law.
3. Reaffirm the right to due process by ordering Homeland Security to rescind the Remain in Mexico policy (Migrant Protection Protocols) and to admit asylum-seekers to the U.S. pending asylum processing.
4. Suspend all military and security funding, including training, to Northern Triangle (Guatemala, Honduras, and El Salvador) countries, until human rights conditions significantly improve in those countries.
5. Investigate U.S. surveillance and violations of the human rights of humanitarian workers, journalists, attorneys, and others working to assist or document migrants. The investigation should include identifying those responsible for surveillance at the southern border and the agencies sharing this intelligence.
6. Hold hearings related to collusion between Mexican and U.S. security and intelligence forces at the U.S. southern border. If both nations are colluding to dissuade humanitarian work and spy on U.S. citizens in Mexico, Congress and the public should know.

Appendices

Appendix I: Roots of the Current Central American Exodus

Previously, the majority of migrants coming through the U.S. southern border were Mexicans and nationals of other countries, primarily single men, seeking higher wages in the U.S. to send as remittances to their families back home. The majority of these migrants were not presenting themselves to U.S. authorities to seek political asylum, but were instead crossing the border between POEs, trying to evade detection by CBP. Now, families with children are fleeing the dangerous conditions in countries, with credible fears that they and/or their loved ones are targeted for violence and persecution. These migrants approach the U.S. border with the intent to present themselves and seek asylum protection under U.S. and international law. As a result, there has been a much more visible presence of migrants at the U.S. border. Many chose to travel in caravans for safety and to avoid fees charged by organized criminal elements. Although the caravans did not appreciably increase the number of migrants, they served as a flashpoint for nationalistic and xenophobic rhetoric.

Trump's response ignores the U.S. role in creating unstable governments in Central America and the self-defeating nature of his administration's policies. The endemic violence and poverty in the Northern Triangle countries, and the human rights crisis they engender, can be traced to centuries of U.S. influence. Since the Monroe Doctrine in 1823, the U.S. has asserted its right to direct and control political and economic development throughout the Americas, prioritizing its own geopolitical and economic interests over the well-being of those who suffer as a result. U.S. intervention has included supporting the overthrow of the democratically elected government of Jacobo Arbenz in Guatemala in 1954 and later backing genocidal dictator José Efraín Ríos Montt in the 1980s, and supporting military dictatorships in El Salvador and Chile that were responsible for the deaths of thousands of teachers, unionists, priests, and peasants.

More recently, in Honduras, the U.S. helped legitimize the coup against democratically elected president Manuel Zelaya in 2009, setting the stage for successive corrupt governments that have trampled on human rights amid near-complete impunity, contributing to the current climate of desperation. The Trump administration has also provided only tepid support to the groundbreaking UN-sponsored anti-corruption mission in Guatemala (CICIG) when it was under siege by president Jimmy Morales. Morales himself is implicated in corruption and has effectively neutralized CICIG. Through the militarized "war on drugs," the U.S. has consistently tolerated or outright supported dictators who serve its interests, even when those leaders are connected to the criminal networks that are enriched by drug trafficking. These corrupt governments, in turn, preside over staggering levels of violence, including gang and domestic violence, and targeted repression against LGBTQ+ people, journalists, activists, lawyers, and rights defenders.

Washington has also consistently promoted neoliberal economic policies that benefit transnational investors and local oligarchs, while keeping masses of people in poverty, especially rural populations and indigenous peoples. The Central American Free Trade Agreement (CAFTA) has had a deleterious impact on Northern Triangle countries. For example, in the decade after CAFTA was passed in 2005, El Salvador's small farmers suffered devastating losses from the cheap U.S. grains that flooded the markets there. At the same time, El Salvador spent years and millions of dollars fighting U.S. and Canadian mining companies under the CAFTA-imposed

Investor-State Dispute Settlement regime. International financial institutions, including the International Monetary Fund and the World Bank, over which the U.S. wields outsized influence, have supported neoliberal reforms that have ramped up privatization and austerity, gutted regulatory protections for workers, and focused on an extractivist model of development (which leads to displacement of local communities and ecological devastation).

Although Trump has directed the State Department to reduce aid (some of which contained conditions linked to human rights and good governance goals) to the Northern Triangle countries, the administration appears to be ramping up its appropriations through the Department of Defense for increased militarization, which bodes ill for the already dismal human rights situation in these countries. Finally, as a part of its own development and enrichment, the U.S. has for decades been a lead emitter of greenhouse gases, and therefore is a primary contributor to climate change that is causing famine and other harmful impacts in Central America, yet another driver of migration.

The long shadow of the U.S. heightens its responsibility to ensure the dignity and safety of people fleeing the Northern Triangle. Washington should work to lessen the suffering by helping to build more just and equitable societies through the implementation of policies and aid based on the input and participation of community-based organizations and civil society groups, not their corrupt political leaders.

Appendix II: NLG International Committee Prior Experience in Central America and Mexico

The [National Lawyers Guild](#) (NLG) [International Committee](#) (IC) supports legal work around the world “to the end that human rights shall be regarded as more sacred than property interests.” In particular, its members seek to change U.S. foreign policy that threatens, rather than engages, or is based on a model of domination rather than respect. In the past decade, the NLG IC has sent investigative delegations to all three Northern Triangle countries to [observe the genocide trial](#) of José Efraín Ríos Montt in Guatemala in 2013; to observe numerous elections in El Salvador; and in Honduras, to [document the institutional and political crisis](#) after the coup d’état that removed the democratically elected president Manuel Zelaya in 2009, to observe the [elections in 2013](#), to report on the proposed [Zones for Employment and Economic Development](#) (ZEDEs) in 2014, to make a short [documentary on ZEDEs](#) in 2015, and to investigate and [report on the murder of Berta Cáceres](#) in 2016, as well as serving as participants in the 2018 international observer mission for the trial of seven men convicted of her murder. In addition, the NLG IC sent delegations to Mexico in 2016 and 2018 to investigate human rights abuses as well as the situation for migrants on the southern border of Mexico.

Appendix III: Delegation Meetings

1. Observation of people signing up for “the list” outside the Chaparral gate at the Tijuana West POE, and the call of numbers on the list; spoke to volunteers there
2. Nicole Ramos, Director, Border Rights Project, Al Otro Lado
3. Observation of the “Know Your Rights” presentation at Al Otro Lado
4. Lic. Carlos Rafael Flores Domínguez, Comisión Estatal de Derechos Humanos de Baja California (CEDH)

5. Dr. Alejandra Castañeda, Director of the Observatorio de Legislación y Política Migratoria, at El Colegio de la Frontera Norte (COLEF) and some of the faculty, students, and researchers there including Guillermo Yrizar Barbosa
6. Soraya Vázquez, Comité Estratégico de Ayuda Humanitaria
7. Bruno Brunelli, Head of Zone for the North-West, International Committee of the Red Cross
8. Cesar Palancia Chávez, Dirección Municipal Atención al Migrante de Tijuana
9. Graciela Zamudio Campos, Directora, Alma Migrante
10. Irineo Mujica, Jeff Valenzuela, and others, Pueblo Sin Fronteras
11. Enrique Morones and Luis Aragon, Border Angels, San Diego
12. Mitra Ebadollahi, Senior Staff Attorney, Border Litigation Project, Sarah Thompson, and Mohammad Tajsar and others, ACLU, San Diego and Imperial Counties
13. Donna Durvin, Executive Director, International Rescue Committee San Diego
14. Maya Averbuch and Jordi Lebrija, independent journalists
15. Efrén García, Comisión Nacional de Derechos Humanos (CNDH)
16. Elizabeth Arroyo Quintana and Josep Herreros (by phone), Office of the United Nations High Commissioner for Refugees (UNHCR)
17. Ian Philabaum, Program Director, Innovation Law Lab
18. Chris Chambers, Arcoiris
19. Lic. Lilia Pacheco, Coordinadora de Proyectos, and Alfonso Chávez, Coordinador de Proyecto Reducción de Riesgos Y Daños, PrevenCasa, A.C.
20. Victor Coronel, Tijuana municipal police contact for migrant shelters
21. Pete Flores, Director, Field Operations, Office of Field Operations, San Diego, U.S. Customs and Border Protection, Moises Castillo, Watch Commander, and Johnny Armijo, Assistance Watch Commander.