

## **U.S. Compliance with International Human Rights Law Obligations**

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**A Stakeholder's Joint Report submitted by:**

**The International Law Association (American Branch) Task Force on Immigrant Human Rights and Women's Rights<sup>1</sup>**

**The International Refugee Assistance Project<sup>2</sup>**

**The National Immigration Project of the National Lawyers Guild<sup>3</sup>**

**The Interdisciplinary Human Rights Initiative of the College of Arts and Letters at San Diego State University<sup>4</sup>**

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1. This joint report is submitted on behalf of members of the International Human Rights Committee of the International Law Association (American Branch) Task Force on Immigrant Human Rights and Women’s Rights, the International Refugee Assistance Project, the National Immigration Project of the National Lawyers Guild, the Interdisciplinary Human Rights Initiative of the College of Arts and Letters at San Diego State University, and the Leitner Center for International Law and Justice at Fordham Law School.

2. The report will address two areas of U.S. compliance with its international human rights law obligations: (1) discrimination based on sex and gender, and (2) violations of the human rights of refugees and migrants.

**I. Discrimination on the Basis of Sex and Gender**

**A. U.S. Human Rights Obligations Prohibiting Discrimination**

3. In the United States, discrimination by the federal or state governments on grounds of race, sex, or religion is prohibited by the Equal Protection Clause and Due Process Clause of the Constitution, as interpreted by the U.S. Supreme Court.<sup>6</sup> However, the Court has long interpreted these provisions generally to preclude a finding of discrimination unless the government had discriminatory intent, or the pattern of discrimination was extreme.<sup>7</sup> In contrast, U.S. obligations under international human rights law (IHRL) do not require discriminatory intent as a prerequisite to finding a human rights violation. Article 1 of the Convention on the Elimination of All Forms of Racial Discrimination (CERD), to which the United States is a party, defines prohibited racial discrimination to mean any distinction having the “purpose *or* effect” of nullifying or impairing human rights and freedoms. The Human Rights Committee has interpreted Article 26 of the International Covenant on Civil and Political Rights (ICCPR), to which the United States is also a party, to prohibit indirect discrimination as well, unless based on objective and reasonable grounds: “[A] violation of article 26 can also result from the discriminatory effect of a rule or measure that is neutral at face value or without intent to discriminate.”<sup>8</sup> Nor is a state excused from combatting discrimination because the consequence is not, in its opinion, extreme. The United States is obligated by IHRL to prohibit and punish any discrimination not justified as proportionate to a legitimate government aim.

4. In its 2010 and again in the 2015 UPR Review, the Council recommended that the United States reform its definition of discrimination to comport with its treaty obligations,<sup>9</sup> but the United States has adopted no complying measure. As long as U.S. law continues to tolerate government measures causing significantly discriminatory effects on vulnerable or minority groups, including women, it is not in compliance with its human rights law obligations.

**Recommendation:**

1. Adopt legislation providing for a right against public and private discrimination and equal protection of the law in terms that parallel U.S. international commitments in the ICCPR and CERD.

**B. Transgender Discrimination**

5. In August 2019, the Trump Administration asked the Supreme Court to set a legal precedent that would allow employers to fire employees because the employee is a transgender individual. The case, *R.G. & G.R. Harris Funeral Homes Inc. v. Equal Employment Opportunity Commission*, turns on Title VII of the 1964 Civil Rights Act, a federal employment antidiscrimination law. The Department of Justice is arguing that Title VII does not prohibit discrimination against transgender individuals, but only protects “biological sex.” In the case, the owner of a funeral home fired a transgender woman working for his company. The employee sent a letter to the owner that she would start wearing the female uniform and was then fired for refusing to follow the company’s dress code.<sup>10</sup>

6. Transgender discrimination violates ICCPR articles 2, 3 and 26, both because it constitutes discrimination on the basis of sex, and because gender is an “other status” as provided in those articles. In addition, gender discrimination violates the customary international law prohibition on gender discrimination and right to equal protection of the law, as set forth in articles 2 and 7 of the UDHR.

7. In its 2015 UPR Review, the Council recommended that the United States heighten efforts to promote non-discrimination of any kind, including discrimination on the basis of sexual orientation and gender identity, and urged the United States to promote progress in “lesbian, gay, bisexual, transgender and intersex issues.”

**Recommendations:**

1. Adopt legislation providing for a right against public and private discrimination and equal protection of the law in terms that parallel U.S. international commitments in the ICCPR and CERD, including those protections on the basis of sex and gender.
2. Strengthen federal and state protections against discrimination against transgender individuals.

**C. Basic Reproductive Rights**

8. In 2017, the Trump Administration reinstated and released guidance on the Mexico City Policy, more commonly known as the Global Gag Rule.<sup>11</sup> This policy bans from U.S. health funding any organizations that provide counseling, referrals, services, or advocate for safe abortion, even if these activities are conducted using their own money.<sup>12</sup> This restricts \$8.8 billion dollars in financial support.<sup>13</sup> The guidance allows deviation from this rule in very limited circumstances, allowing these services and this information to be provided in the case of rape,

incest, and life-threatening pregnancy.<sup>14</sup> It makes no allowance for the general health, or avoiding pain and suffering, of the pregnant woman or girl.

9. In addition, in 2019, the Trump administration released a final draft of a rule that makes changes to the federal family planning program. The change means that organizations that provide or refer patients for abortions are not eligible to receive Title X funding.<sup>15</sup> Title X funding provides reproductive health services to millions of low income Americans.<sup>16</sup> Planned Parenthood, an organization serving about 40% of Title X recipients who receive services including contraception and STD screenings, decided to withdraw from Title X rather than comply with the new rules.<sup>17</sup> Maine Family Planning also plans to withdraw from the program, potentially forcing as many as 15 clinics to close in a largely rural state.<sup>18</sup>

10. In the first half of 2019 several U.S. states began discussing and passing restrictive abortion laws as well. Some, such as the one passed in Alabama on 15 May 2019, make no exceptions for rape or incest, for ectopic pregnancies, or for procedures to remove a dead fetus from the womb.<sup>19</sup>

11. These new laws violate the right to life protected by ICCPR article 6, because they threaten the physical and mental health of pregnant women and girls. The UN Human Rights Committee has recently made clear that meaningful access to abortion is a human right under the heading of article 6:

States parties must provide safe, legal and effective access to abortion where the life and health of the pregnant woman or girl is at risk, or where carrying a pregnancy to term would cause the pregnant woman or girl substantial pain or suffering, most notably where the pregnancy is the result of rape or incest or is not viable. In addition, States parties may not regulate pregnancy or abortion in all other cases in a manner that runs contrary to their duty to ensure that women and girls do not have to undertake unsafe abortions, and they should revise their abortion laws accordingly.<sup>20</sup>

12. Because the United States is bound by the ICCPR, its restrictions on and impediments to access to abortion (both at home and in its provision of international aid) violate its international human rights obligations. Recognizing this, in both its 2010 and 2015 UPR Review, the Council recommended that the United States allow foreign assistance to be used to support safe abortion services, where legal in the host country.

### **Recommendations:**

1. Withdraw the Mexico City Policy and remove the blanket restrictions on the provision of humanitarian aid to organizations that provide counseling, referrals, or direct reproductive health care services to women seeking to terminate pregnancies.
2. Reinstate Title X funding for organizations within the United States that provide or refer patients for abortions.
3. Ensure compliance with Article 6 of the ICCPR at both the federal and state level.

## II. Immigrant and Refugee Rights

### A. U.S. Human Rights Obligations Protecting Refugees and Migrants

13. The United States is party to several international human rights treaties that establish its obligations to refugees and asylum-seekers. The most significant of these commitments are found in the 1951 Convention Relating to the Status of Refugees (“Refugee Convention”),<sup>21</sup> by which the United States became bound when it acceded to the 1967 Protocol Relating to the Status of Refugees.<sup>22</sup> The United States incorporated many of the Convention’s provisions directly into U.S. law with the passage of the Refugee Act of 1980.<sup>23</sup> Article 31 of the Refugee Convention provides that the signatory states “shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened . . . enter or are present in their territory without authorization” if they “present themselves without delay to the authorities and show good cause for their illegal entry or presence.”<sup>24</sup> The U.S. Immigration and Nationality Act incorporates this standard by providing that: “Any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival . . .), irrespective of such alien’s status, may apply for asylum.”<sup>25</sup> Article 33 of the Refugee Convention codifies the principle of *non-refoulement* (non-expulsion) by prohibiting states parties from removing an asylum-seeker “in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”<sup>26</sup> The U.S. Immigration and Nationality Act incorporates this standard by assuring that when individuals qualify for asylum on any of these enumerated grounds the government may not “remove or return the alien to the alien’s country of nationality or, in the case of a person having no nationality, the country of the alien’s last habitual residence.”<sup>27</sup>

14. In addition to the Refugee Convention, the United States is also a party to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”).<sup>28</sup> Under the CAT, and its U.S. implementing legislation,<sup>29</sup> the U.S. is barred from *refoulement* migrants who are at risk of being tortured.<sup>30</sup> The U.S. also has specific obligations under international law involving the treatment of migrant families, as set forth in the provisions of the International Covenant on Civil and Political Rights (“ICCPR”), to which it is a party, pertaining to the right to family life.<sup>31</sup> Under the ICCPR, forcible separation of minor children from their parents or guardians without compelling justification constitutes unlawful interference with family life.<sup>32</sup> Additionally, the U.S. has obligations to safeguard the human rights of children in accordance with the provisions of the UN Convention on the Rights of the Child (“CRC”).<sup>33</sup> The United States has signed, but has not yet ratified, the CRC. The terms of the Convention have, however, become part of customary international law. As a signatory, the United States is required, under customary international law, to refrain from acts that would defeat the object and purpose of the treaty. Under Article 9(1) of the CRC, states must “ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.”<sup>34</sup> Under Articles 20 and 22, as interpreted by the Committee on the Rights of the Child, “a child who has adult relatives arriving with him or her or already living in the country of asylum should be allowed to stay with them unless such action would be contrary to the best interests of the child.”<sup>35</sup>

15. The United States also has obligations to protect the human rights of migrants pursuant to its membership of the Organization of American States (“OAS”). The United States has signed, but has not ratified the American Convention on Human Rights, and has declined to become a party to numerous other OAS human rights treaties.<sup>36</sup> Nonetheless, its membership in the in the OAS signifies its acceptance of the provisions of the American Declaration on the Rights and Duties of Man for all members of the OAS (“American Declaration”).<sup>37</sup> The American Declaration is applicable to all OAS member states, and is the default instrument for those states that have not yet become parties to the American Convention on Human Rights. In accordance with the American Declaration, every person has the right to life, liberty, and personal security,<sup>38</sup> to enjoy basic civil rights,<sup>39</sup> and, under Article XXVII, the right “to seek and receive asylum in foreign territory.”<sup>40</sup> The Declaration also contains protections for the right to family life,<sup>41</sup> specific protections for pregnant and nursing mothers and children,<sup>42</sup> and protections against arbitrary detention<sup>43</sup> and unsanitary conditions of confinement.<sup>44</sup>

16. The United States has failed to meet its international human rights treaty obligations and its responsibilities under its own laws to asylum-seekers arriving at the Southwest Border. First, the so-called “Migrant Protection Protocols” violate its most fundamental obligations under the Refugee Convention, the CAT, and the American Declaration to allow eligible individuals to seek asylum and to respect the principle of *nonrefoulement*. Second, the policy of family separation violates the right to family life enshrined in the ICCPR and the American Declaration and contravenes the best interests of the child, as set forth in the CRC. Third, and finally, the detention of asylum seekers, including pregnant women, nursing mothers, and children violates the provisions of the CRC, the CAT, and the American Declaration.

## **B. The Migrant Protection Protocols**

17. The United States’ “Migrant Protection Protocols” and new asylum regulations violate the terms of the Refugee Convention, the CAT, and the American Declaration by preventing eligible individuals from seeking asylum, and returning them to locations where they are at risk of harm. On 25 January 2019, the Trump Administration, in cooperation with the government of Mexico, implemented the “Migrant Protection Protocols.”<sup>45</sup> Under this policy, migrants presenting themselves at a port of entry to the United States to seek asylum are barred entry to the United States and are instructed to remain in Mexico, with their names placed on a “waitlist” to await processing.<sup>46</sup> The U.S. government refers to this practice as “metering” or “queue management.”<sup>47</sup> But, in practice, nongovernmental organizations (NGOs) working with asylum-seekers report that “informal wait “list” systems have developed in border towns operated by Mexican government officials, private citizens, NGOs or asylum seekers themselves.”<sup>48</sup> Those asylum-seekers who eventually receive formal processing by the U.S. authorities, including an interview determining whether they have a credible fear of future persecution that would warrant a grant of asylum, are issued with a Notice to Appear for an immigration court hearing in the United States that will take place at a future date and time, often months later, and are then returned to Mexico. NGOs working with asylum-seekers report that U.S. government officials do not inquire into whether asylum-seekers will be at risk while waiting in Mexico before returning them.<sup>49</sup> This restriction on access to asylum forces asylum-seekers awaiting processing by the U.S. asylum system to live

in dangerous and unstable conditions in northern Mexico.<sup>50</sup> The U.S. State Department currently has travel warnings for Mexico's northern border states,<sup>51</sup> urging U.S. citizens not to travel to the region or to reconsider traveling there, but it insists that vulnerable asylum-seekers remain there pending the outcome of their proceedings.<sup>52</sup> As a consequence, families with children, pregnant women, persons with serious medical conditions and other vulnerable individuals are forced to live in unstable camps or on the streets in northern Mexico while they await the eventual adjudication of their asylum claims in the United States.<sup>53</sup> According to one NGO report, 99 percent of the crimes against migrants and asylum seekers waiting in limbo at Mexico's northern border are not investigated by the Mexican authorities.<sup>54</sup> In this situation, many of the asylum-seekers at the border are abandoning their attempts to seek asylum in the United States. Indeed, so many migrants stranded at the border are relinquishing their attempts to enter the United States that the U.S. and Mexico have, together with the International Organization for Migration, extended Mexico's assisted voluntary return program to asylum-seekers at the border.<sup>55</sup> However, NGOs working with asylum-seekers at the border report that many returning to their country of origin through this program are provided inadequate information about their legal options and the impact of return to their countries of origin on their pending proceedings in U.S. immigration court, so that these returns may not be fully voluntary and may lead to *refoulement* to danger.<sup>56</sup> According to human rights advocates working with asylum-seekers in both the U.S. and Mexico, the Migrant Protection Protocols are effectively barring asylum-seekers from pursuing their claims,<sup>57</sup> in clear contravention of the Refugee Convention and the American Declaration. According to the U.S. Department of Homeland Security, between 1 January 2019, and 1 August 2019, approximately 30,000 asylum-seekers have been returned to Mexico under the Migrant Protection Protocols.<sup>58</sup> A lawsuit challenging the legality of the Migrant Protection Protocols, and seeking to prevent the return of asylum-seekers to Mexico, is currently pending before United States District Court for the Northern District of California;<sup>59</sup> initial attempts to obtain a preliminary injunction to halt the operation of the policy during the pendency of the suit were unsuccessful.<sup>60</sup>

### **Recommendations:**

1. The United States should immediately end the Migrant Protection Protocol policy and reinstate the standard practice of accepting applications for asylum made at ports of entry on the Southern Border of the United States, in accordance with international law.
2. Individuals seeking asylum in the United States should be granted a fair and full hearing of their claims and should be allowed to remain in the United States during the pendency of the adjudication of those claims.

### **C. New Limitations on Access to Asylum**

18. In addition to the Migrant Protection Protocols serving as a functional barrier to asylum that poses a grave risk of *refoulement* to danger, the Trump Administration has published two new regulations designed to bar access to asylum for asylum seekers arriving at the Southwest Border. First, on 9 November 2018 the Attorney General and the Secretary of Homeland Security published a regulation denying asylum to any person who crossed the border outside of a designated port of entry.<sup>61</sup> This regulation, which contravenes the U.S. Immigration and

Nationality Act, the Refugee Convention, and the American Declaration was declared to be unlawful and the rule was vacated by the United States District Court for the District of Columbia on 2 August 2019.<sup>62</sup> Second, on 16 July 2019, the Trump Administration issued a new rule amending existing regulations governing asylum to bar consideration of applications for asylum from individuals who arrived at the southern U.S. border after transiting through Mexico or other countries that are parties to the Refugee Convention.<sup>63</sup> In addition to denying asylum this regulation denies a credible fear of persecution interview to individuals who would be ineligible for asylum under the regulation (those who transited another country prior to reaching the United States) and instead limits them to a reasonable fear of persecution interview which subjects them to a much higher burden of proof and standard in order to qualify for a hearing before an immigration judge.<sup>64</sup> A law suit challenging the legality of this regulation is currently pending before United States District Court for the Northern District of California;<sup>65</sup> attempts by the plaintiffs in the to prevent the rule going into effect nationwide during the pendency of the suit were unsuccessful.<sup>66</sup>

### **Recommendations:**

1. The United States should cease all attempts to introduce the proposed regulatory change that would bar individuals who enter the country without inspection from seeking asylum.
2. The United States should end all attempts to broker “safe third country” agreements that would impermissibly limit access to asylum by individuals who transited through other countries before arriving at the United States border.

### **D. Family Separation and the Human Rights of Children**

19. Since 2018, the United States has also been pursuing a policy of separating immigrant children from their parents and guardians upon their arrival at the Southwest border. This policy of family separation violates the right to family life enshrined in the ICCPR and the American Declaration and contravenes the best interests of the child, as set forth in the CRC. During the summer of 2018, the United States pursued a formal policy of “zero tolerance” toward migrants attempting to cross the border at places other than ports of entry<sup>67</sup> Under the policy, all adults entering the United States without inspection at the Southwest border would face criminal prosecution and, if they were accompanied by a minor child, that child would be separated from the parent.<sup>68</sup> According to the U.S. government, over two thousand migrant children were separated from their parents in accordance with this policy.<sup>69</sup> On 26 June 2018, the United States District Court for the Southern District of California granted a preliminary injunction to end, at least temporarily, the practice of family separation.<sup>70</sup> The preliminary injunction carved out an exception for families where the adult caregiver had a criminal history (except for immigration violations). In a memorandum filed in support of a motion to enforce the District Court’s preliminary injunction, counsel for the separated families explained that, as a consequence of this ruling, from 28 June 2018 through 29 June 2019, more than 900 children, including babies and toddlers, were separated from their family members based on criminal history or allegations of unfitness, and this pattern and practice continues.<sup>71</sup> According to the memorandum, criminal history used as a basis for family separation includes minor offenses such as traffic violations, misdemeanor property



damage, and disorderly conduct, and incidents that took place many years ago.<sup>72</sup> The memorandum further explains that “tender age” (i.e., very young) children have been left without any parent and treated as unaccompanied minors, leading to their placement in large state institutions.<sup>73</sup> NGOs working with separated families report that even when children do ultimately reunify with their family members it is often after a significant delay of six months or longer.<sup>74</sup> Once separated, families members confront extreme difficulties in initiating and maintaining communication with their children.<sup>75</sup> Moreover, the NGOs claim that many separations result from the discriminatory treatment of indigenous families, based on lack of language capacity in indigenous languages and/or lack of familiarity with indigenous cultural practices.<sup>76</sup>

20. In its 2015 UPR Review, the Council recommended that the United States take steps to safeguard due process for all immigrants in immigration proceedings, using the principle of the best interest, especially in the case of families and unaccompanied children.

### **Recommendations:**

1. The United States should immediately halt its policy of separating children from their adult caregivers on the basis of very minor and irrelevant criminal history.
2. The United States should immediately reunite children with their parents or guardians.
3. The United States should investigate claims that family separations occurred as the result of impermissible discrimination on the basis of race and/or national origin.

### **E. The Indefinite Detention of Asylum Seekers**

21. Beyond family separation, the ongoing detention of vulnerable asylum seekers, including pregnant women, nursing mothers, and children violates the provisions of the CRC, the CAT, and the American Declaration. At present, asylum-seekers are routinely held in detention at the border, not as a “matter of last resort,” but as a standard practice.<sup>77</sup> The practice is one of categorical detention, not based on individualized circumstances, and not limited to circumstances where there has been a showing of absolute necessity.<sup>78</sup> In March 2018, a lawsuit was filed in the United States District Court of the District of Columbia, arguing that this widespread practice of routinely detaining asylum seekers was unlawful.<sup>79</sup> The court issued a preliminary injunction, barring U.S. Immigration and Customs Enforcement from denying parole to any detained, arriving asylum seeker who has shown a credible fear of returning to their country of origin, “absent an individualized determination, through the parole process, that [the person] presents a flight risk or a danger to the community.”<sup>80</sup> But, case status reports submitted by the plaintiffs contend that the government is not complying with the court’s order.<sup>81</sup> Government officials explain that this blanket policy of detention is intended to deter intending migrants, including asylum-seekers.<sup>82</sup> U.S. government officials and NGOs alike have described the conditions of confinement reported in these immigration detention centers as unsanitary, with reports of freezing temperatures, inadequate medical care, and a lack of access to basic necessities including water, food, soap, and toothbrushes.<sup>83</sup> The conditions in which children are held, in particular, are a cause for grave concern.<sup>84</sup> A number of children have died in detention,<sup>85</sup> and others report experiencing sexual assault and other forms of physical and psychological trauma.<sup>86</sup> On 23 August 2019, the Trump Administration published a new regulation that would also enable it to detain migrant children

indefinitely.<sup>87</sup> This rule would effectively end the operation of the Stipulated Settlement Agreement in the 1997 case, *Flores v. Reno*,<sup>88</sup> which together with Homeland Security Act of 2002<sup>89</sup> and the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008,<sup>90</sup> places limits on the amount of time minor children can spend in detention and requires that those children be held in the least restrictive setting permissible. The new rule, in contrast, purports to authorize the indefinite detention of migrant children with their guardians in “family residential centers.” The new rule was immediately challenged by a coalition of states Attorneys General, led by California Attorney General Xavier Becerra and Massachusetts Attorney General Maura Healey.<sup>91</sup> In the complaint filed before the U.S. District Court for the Central District of California, the coalition argued that the prolonged detention risked by the rule would cause irreparable harm to children, their families, and the communities that accept them upon their release from federal custody.<sup>92</sup> On 27 September the court issued a permanent injunction barring the new rule from going into effect on the grounds that it would violate the Flores Agreement.<sup>93</sup> Advocates anticipate that the United States will appeal this ruling.<sup>94</sup>

### **Recommendations:**

1. The United States should cease all attempts to introduce policies or practices resulting in the indefinite detention of children.
2. The United States should ratify, without reservation, the Convention on the Rights of the Child, and should comply with all of its provisions.

### **F. Increased Prosecution of Immigration-Related Offenses**

22. Since April 2017, the U.S. Attorney General’s office has prioritized immigration enforcement and expanding federal court prosecutions of immigration violations across the nation. As a consequence, there is a dramatic increase in the prosecutions of misdemeanor immigration offenses. For those who manage to cross the border into the United States, Customs and Border Protection officers have attempted to prevent migrants from applying for asylum in the United States by tactics that NGOs working with these migrants describe as deception, intimidation, verbal abuse, physical coercion, outright denials of access, unreasonable delays, and threats, including of family separation.<sup>95</sup>

23. Federal immigration courts are facing an unprecedented backlog of cases on their dockets. To address this they have adopted a practice of holding “expedited” removal hearings for multiple immigrant respondents at the same time. NGOs report that up to 80 asylum seekers may be charged with unlawful entry in the same hearing. Defense attorneys have characterized the practice as “coercive” for the pressure it places on the defendants, many of whom appear within days of their arrest, to concede removability before they have a chance to consider whether they might be eligible for any form of relief from removal.<sup>96</sup> U.S. courts have specifically found that such practices deny due process of law, and the U.S. government itself has admitted that the practice probably violates U.S. obligations under the 1967 Protocol to the Refugee Convention.<sup>97</sup>

24. On 21 July 2019, the U.S. Government adopted a rule expanding the ability of immigration officials to deport without a court hearing or access to a lawyer any undocumented immigrants apprehended anywhere in the United States (previously, they could only deport those apprehended

within 100 miles of the border).<sup>98</sup> This raises concerns that the order would further deprive unauthorized migrants of due process and put legal immigrants and US citizens at risk of being deported without seeing judge.<sup>99</sup>

### **Recommendations:**

1. The United States should ensure that all removal hearings for immigrant respondents are conducted in accordance with due process of law.
2. The United States should end the practice of “expedited” mass immigration hearings, which violate due process and preclude meaningful consideration of each individual’s personal circumstances.
3. The United States should end the practice of deportation of undocumented migrants who have not been allowed access to counsel or a meaningful opportunity to be heard before an immigration judge.

### **G. Harassment and Intimidation of Immigration Lawyers and Journalists**

25. Beginning in 2018 at the latest, U.S. Customs and Border Protection (“CBP”) created a watchlist containing the personal details, social media information, and descriptions of the migration work of over sixty journalists and lawyers working at the border to assist asylum seekers and immigrants.<sup>100</sup> CPB has used this watchlist to monitor the work of these individuals and target them for extra screening at border checkpoints.<sup>101</sup> CBP, and the Mexican authorities with whom it is collaborating,<sup>102</sup> have subjected some journalists and lawyers to lengthy interrogations and detention, have confiscated cameras and notes, and have denied them entry into Mexico based on false U.S. government reports of terrorism.<sup>103</sup> In one case, for example, an American photojournalist was held for 13 hours in custody at the border before being denied entry into Mexico.<sup>104</sup>

26. This conduct violates article 19 of the ICCPR, which protects freedom of expression.<sup>105</sup> As the Human Rights Committee has interpreted article 19, it requires a “free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.”<sup>106</sup> By targeting journalists at the border, the government impedes their ability to raise awareness of migration issues and comment on the government’s treatment of migrants.<sup>107</sup> Harassment of journalists also violates the public’s “corresponding right to receive media output.”<sup>108</sup> “[W]hen an individual’s freedom of expression is unlawfully restricted, it is not only the right of that individual that is being violated, but also the right of all others to ‘receive’ information and ideas.”<sup>109</sup>

27. The harassment of journalists and lawyers, and in particular denial of their entry into Mexico, also violates the freedom of movement. Under Article 12(3) of the ICCPR, any restriction on the freedom to leave a country must be “provided by law.” The government’s interference with individuals working at the border based solely on their reporting on or facilitation of applications for asylum or entry visas, fails to satisfy this requirement. The First Amendment of the United States Constitution guards against the government’s singling out of a set of messages that the government seeks to remove from public debate.<sup>110</sup> Here, the government appears to be targeting

these individuals based on their speech concerning migrant rights and asylum, contravening the First Amendment.<sup>111</sup>

28. Finally, by harassing immigration lawyers traveling to Mexico to provide legal assistance to migrants, the government violates its obligations to ensure the right to representation of refugees and other applicants for lawful states. Article 16 of the 1951 Refugee Convention states that a refugee shall enjoy the same access, including “legal assistance,” to the courts of law of Contracting States as nationals of Contracting States. Similarly, the Human Rights Committee has indicated that if an individual’s attempt to access the courts is “systematically frustrated,” such conduct “runs counter to the guarantees of article 14, paragraph 1” of the ICCPR.<sup>112</sup> That provision holds that “[a]ll persons shall be equal before the courts and tribunals.” The conduct described above may impede migrants and refugees’ access to the immigration courts of Mexico or the U.S. by in effect limiting their contact with immigration attorneys.

### **Recommendations:**

1. The United States should immediately cease any activity that impedes the freedom of movement and expression of journalists.
2. The United States should immediately cease any activity that impedes access to counsel by refugees, asylum-seekers, and other migrants.

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<sup>1</sup> The International Human Rights Committee of the International Law Association (American Branch) (ABILA) is dedicated to the dissemination of information and exchange of scholarly ideas relating to the status and development of international human rights law. ABILA was established in 1922 as the national branch for the United States of America of the International Law Association (“ILA”), which now has forty-five national and regional branches. The ILA, a nongovernmental organization headquartered in London and founded in 1873, has as its purpose the restatement and development of international law. The ILA has consultative status in the United Nations. This submission is on behalf of members of the ABILA International Human Rights Committee, Task Force on Immigrant Human Rights and Women’s Rights. It does not reflect the views of the International Law Association, ABILA, or any other institution with whom the authors are affiliated.

<sup>2</sup> The International Refugee Assistance Project (IRAP) provides and facilities free legal services to refugees and displaced persons who seek to escape persecution and find safety in the United States and other Western countries.

<sup>3</sup> The National Immigration Project of the National Lawyers Guild (NIPNLG) is a national nonprofit organization that provides legal and technical assistance and support to community-based immigrant organizations, attorneys, legal workers, and all advocates seeking to advance the rights of non-citizens. NIPNLG promotes justice and equality of treatment in all areas of immigration law, the criminal justice system, and policies related to immigration. For 46 years, NIPNLG has served as a progressive source of advocacy-oriented legal support on issues critical to immigrant rights. We have engaged in critical impact litigation, amicus work, and other legislative and community advocacy strategies on issues including the criminalization of immigrants, family separation, the arbitrary termination of benefits like Temporary Protected Status, and unlawful or draconian immigration enforcement efforts.

<sup>4</sup> The Interdisciplinary Human Rights Initiative (IHRI) of the College of Arts and Letters at San Diego State University supports and promotes human rights research and education, as well as opportunities for engagement with human rights organizations in the San Diego-Tijuana binational area.

<sup>5</sup> The Leitner Center for International Law and Justice at Fordham Law School is an innovative “Think-and-Do Tank” that aims to make international human rights protections an everyday reality for marginalized communities around the world. The Center provides education and training, facilitates capacity building and advocacy with activists and grassroots groups around the world, and contributes to critical research among legal scholars in international human rights.

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<sup>6</sup> *E.g.*, *Brown v. Board of Education*, 347 U.S. 483 (1954); *Bailey v. Patterson*, 369 U.S. 31 (1962); *Reed v. Reed*, 404 U.S. 71 (1971).

<sup>7</sup> *Village of Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252 (1977).

<sup>8</sup> *Althammer v. Austria*, Comm. No. 998/2001, para. 10.2, U.N. Doc. CCPR/C/78/D/998/2001 (Aug. 8, 2003).

<sup>9</sup> Human Rights Council, Report of the Working Group on the Universal Periodic Review: United States of America, U.N. Doc. A/HRC/16/11, para. 92.63 (4 Jan. 2011), *adopted by* Human Rights Council, Decision 16/115, U.N. Doc. A/HRC/16/DEC/115 (Mar. 18, 2011); Human Rights Council, Report of the Working Group on the Universal Periodic Review: United States of America, U.N. Doc. A/HRC/30/12, para. 176.122 (20 July 2015), *adopted by* Human Rights Council, Decision 30/102, U.N. Doc. A/HRC/DEC/30/102 (14 Oct. 2015).

<sup>10</sup> Tara Law, *Trump Administration Asks Supreme Court to Permit Employment Discrimination Against Transgender Workers*, Time (August 2019) <https://time.com/5654844/title-vii-trump-transgender-department-of-justice-supreme-court/>

<sup>11</sup> International Center for Research on Women, *Understanding the Expanded Global Gag Rule*, <https://www.icrw.org/news/state-dept-announces-guidance-expanded-gag-rule/>.

<sup>12</sup> Center for Reproductive Rights, Press Release, *Trump Administration Expands Global Gag Rule* (May 2017), <https://reproductiverights.org/Trump-Administration-Expands-Global-Gag-Rule> (hereinafter CRR Press Release).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Sarah McCammon, *Trump Administration Announces Sweeping Changes to Federal Family Planning Program*, NPR (February 2019) <https://www.npr.org/2019/02/22/690544297/trump-administration-proposes-sweeping-changes-to-federal-family-planning-progra>

<sup>16</sup> *Id.*

<sup>17</sup> Sarah McCammon, *Planned Parenthood Withdraws From Title X Program Over Trump Abortion Rule*, NPR (August 2019), <https://www.npr.org/2019/08/19/752438119/planned-parenthood-out-of-title-x-over-trump-rule>

<sup>18</sup> *Id.*

<sup>19</sup> Alabama H.B. 314 (15 May 2019),

<sup>20</sup> U.N. Human Rights Committee, General Comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, ¶ 8, U.N. Doc. CCPR/C/GC/36 (30 Oct. 2018).

<sup>21</sup> July 28, 1951, 189 U.N.T.S. 137.

<sup>22</sup> Protocol relating to the Status of Refugees, Jan. 31, 1967, 606 U.N.T.S. 267. When it acceded to the Protocol, the U.S. became bound by articles 2 through 34 of the 1951 Convention.

<sup>23</sup> United States Refugee Act of 1980, Pub. L. 96-212 (Mar. 17, 1980), 94 Stat. 102, *codified as amended at* 8 U.S.C. ch. 12.

<sup>24</sup> Refugee Convention art. 31.

<sup>25</sup> 8 U.S.C. §1158 (c) (1) (A).

<sup>26</sup> Refugee Convention art. 33.

<sup>27</sup> 8 U.S.C. §1158 (a) (1). Protection from *refoulement* is also available for migrants who are ineligible for asylum but whose life or freedom would, nonetheless, be at risk on account of race, religion, nationality, membership of a particular social group or political opinion through statutory withholding of removal, 8 U.S.C. §1231(b)(3), or withholding or deferral of removal under the Convention Against Torture. 8 C.F.R. 208.16-18.

<sup>28</sup> G.A. Res. 39/46, Dec. 10, 1984; SEN. EXEC. RPT. 101-30, Resolution of Ratification: Senate Consideration of Treaty Document 100-20 (Oct. 27, 1990).

<sup>29</sup> Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. 105-277, § 2242(b), 112 Stat. 2681 (Oct. 21, 1998), *codified as amended at* 8 U.S.C. § 1231(b)(3) (“It shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States.”).

<sup>30</sup> CAT art. 3.

<sup>31</sup> Dec. 19, 1966, art. 17, 23, 24, 999 U.N.T.S. 171.

<sup>32</sup> *Id.*

<sup>33</sup> Nov. 20, 1989, 1577 U.N.T.S. 3.

<sup>34</sup> *Id.* Art. 9(1).

<sup>35</sup> CRC, GC No. 6.

<sup>36</sup> Including, *inter alia*, the Inter-American Convention to Prevent and Punish Torture, adopted on December 9, 1984, entered into force February 28, 1987; Additional Protocol to the American Convention on Human Rights in the Area

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of Economic, Social and Cultural Rights “Protocol of San Salvador,” adopted on November 17, 1988, entered into force November 16, 1999; Protocol to the American Convention on Human Rights to Abolish the Death Penalty, adopted on June 8, 1990, entered into force August 28, 1991; Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ‘Convention of Belem do Para’, adopted on June 9, 1994, entered into force March 5, 1995; Inter-American Convention on Forced Disappearance of Persons, adopted on June 9, 1994, entered into force March 28, 1996; and Inter-American Convention on the Elimination of All forms of Discrimination against Persons with Disabilities, adopted on June 7, 1999, entered into force September 14, 2001.

<sup>37</sup> American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, adopted by the Ninth International Conference of American States, 1948.

<sup>38</sup> American Declaration art. I.

<sup>39</sup> American Declaration art. XVII.

<sup>40</sup> American Declaration art. XXVII.

<sup>41</sup> American Declaration art. V, VI.

<sup>42</sup> American Declaration art. VII.

<sup>43</sup> American Declaration art. XXV.

<sup>44</sup> American Declaration art. XI.

<sup>45</sup> See available Memorandum from Kirstjen M. Nielsen, Sec’y, Dep’t of Homeland Sec., to L. Francis Cissna, Dir., U.S. Citizenship & Immigration Servs., Ronald D. Vitiello, Deputy Dir. And Senior Official Performing the Duties of Dir., U.S. Immigration & Customs Enforcement, Kevin K. McAleenan, Comm’r, U.S. Customs & Border Prot. 1–4 (Jan. 25, 2019) at [https://www.dhs.gov/sites/default/files/publications/19\\_0129\\_OPA\\_migrant-protection-protocols-policy-guidance.pdf](https://www.dhs.gov/sites/default/files/publications/19_0129_OPA_migrant-protection-protocols-policy-guidance.pdf)

<sup>46</sup> Human Rights First, *Barred at the Border: Wait “Lists” Leave Asylum Seekers in Peril at Texas Ports of Entry*, April 2019 at [https://www.humanrightsfirst.org/sites/default/files/BARRED\\_AT\\_THE\\_BORDER.pdf](https://www.humanrightsfirst.org/sites/default/files/BARRED_AT_THE_BORDER.pdf).

<sup>47</sup> See United States Senate Judiciary Committee, *Oversight of Customs and Border Protection’s Response to the Smuggling of Persons at the Southern Border*, March 6 2019, (written testimony of Kevin McAleenan, Commissioner, U.S. Customs and Border Protection) available at <https://www.judiciary.senate.gov/imo/media/doc/McAleenan%20Testimony.pdf>.

<sup>48</sup> Human Rights First, *Barred at the Border: Wait “Lists” Leave Asylum Seekers in Peril at Texas Ports of Entry*, April 2019 at [https://www.humanrightsfirst.org/sites/default/files/BARRED\\_AT\\_THE\\_BORDER.pdf](https://www.humanrightsfirst.org/sites/default/files/BARRED_AT_THE_BORDER.pdf).

<sup>49</sup> See Human Rights First, *The Trump Administration’s Migrant Persecution Protocols*, June 12, 2019 (“No one ever asked if I was afraid of being in Mexico,” Blanca said. “They just gave me papers to sign. That’s it.”)

<sup>50</sup> For example, two young Honduran men traveling with the migrant caravan in the fall were murdered in Tijuana in December 2018. See Adam Isacson, Maureen Meyer & Adeline Hite, *New “Migrant Protection Protocols” Ignore U.S. Legal Obligations to Asylum Seekers and Exacerbate Humanitarian Border Crisis*, WOLA.org, Jan. 25, 2019, at <https://www.wola.org/analysis/trump-asylum-seekers-wait-in-mexico-border-crisis/>.

<sup>51</sup> Of the six northern Mexican states, Baja California, Sonora, Chihuahua, Coahuila, Nuevo Leon and Tamaulipas, the State Department instructs its citizens “do not travel” to Tamaulipas, “reconsider travel” to Sonora, Chihuahua, Coahuila, and Nuevo Leon, and “exercise caution” for travel to Baja California. U.S. Dep’t of State, Mexico International Travel Information, April 9, 2019, at <https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-Information-Pages/Mexico.html>

<sup>52</sup> U.S. Dep’t of State, Mexico International Travel Information, April 9, 2019, at <https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-Information-Pages/Mexico.html>

<sup>53</sup> See, e.g., DHS Office of Inspector General, Management Alert – DHS Needs to Address Dangerous Overcrowding and Prolonged Detention of Children and Adults in the Rio Grande Valley (July 2, 2019).

<sup>54</sup> Latin America Working Group, Washington Office on Latin America, Kino Border Initiative, Situation of Impunity and Violence in Mexico’s Northern Border Region (Mar. 2017) <https://www.wola.org/wp-content/uploads/2017/04/Situation-of-Impunity-and-Violence-in-Mexicos-northern-border-LAWG-WOLA-KBI.pdf>.

<sup>55</sup> See Mica Rosenberg, Kristina Cooke, Daniel Trotta, *Thousands of Central American Migrants Take Free Rides Home Courtesy of U.S. Government*, Reuters, Aug. 21, 2019 at <https://www.reuters.com/article/us-usa-immigration-returns/thousands-of-central-american-migrants-take-free-rides-home-courtesy-of-us-government-idUSKCN1VB0ZJ>

<sup>56</sup> See, e.g., Civil Society Request for Comprehensive *In Loco* visit to the United States and Mexico to Consider Human Rights Violations Impacting Migrants and Request for Ongoing Robust Monitoring of the Regional Human Rights Situation Relating to Migrants to the Inter-American Commission on Human Rights, July 23, 2019.

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- <sup>57</sup> Human Rights First, IMUMI, Al Otro Lado, et al., Request for a Thematic Hearing on the Human Rights Implications of the United States’s “Remain in Mexico” (formally referred to as “Migrant Protection Protocols”) Policy of Returning Asylum Seekers to Mexico; Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, Solicitud de audiencia temática sobre “Alertas Migratorias en México”; Red Jesuita con Migrantes, et al., Petición de Audiencia sobre violaciones a derechos humanos y criminalización de personas con necesidad de protección internacional a partir de la militarización de las fronteras en México; Texas Civil Rights Project & Robert F. Kennedy Human Rights Center, Thematic Hearing Request on the Deaths of Immigrants, Including Children, as a Result of the United States of America’s Inhumane Treatment of Migrants at the U.S.- Mexico Border; Harvard Immigration and Refugee Clinical Program, Human Rights Situation of Asylum Seekers at the Mexico-U.S. Border.
- <sup>58</sup> See Ted Hesson, *Border Chief Credits Trump Policies for July Drop in Migrants Caught Crossing*, *Político*, Aug. 8, 2019 at <https://www.politico.com/story/2019/08/08/border-arrests-july-recede-1647376>.
- <sup>59</sup> *Innovation Law Lab v. McAleenan*, Case No. 3:19-cv-00807 (N.D. Cal.).
- <sup>60</sup> *Innovation Law Lab v. McAleenan*, Case No. 3:19-cv-00807-RS (9th Cir. May 7, 2019)
- <sup>61</sup> *Aliens Subject to a Bar on Entry Under Certain Presidential Proclamations; Procedures for Protection Claims*, 83 Fed. Reg. 55,934, 55,939 (Nov. 9, 2018).
- <sup>62</sup> *O.A. v. Trump*, Case No. 1:18-cv-02718-RDM (D.D.C. Aug. 2, 2019)
- <sup>63</sup> *Asylum Eligibility and Procedural Modifications*, 84 Fed. Reg. 33,829 (July 16, 2019).
- <sup>64</sup> *Asylum Eligibility and Procedural Modifications*, 84 Fed. Reg. 33,829 (July 16, 2019).
- <sup>65</sup> *East Bay Sanctuary Covenant v. Barr*, Case No. 3:19-cv-04073 (N.D. Cal.)
- <sup>66</sup> *East Bay Sanctuary Covenant v. Barr*, Case No. 3:19-cv-04073-JST (9th Cir. Aug. 16, 2019)
- <sup>67</sup> Department of Justice, Press Release, Attorney General Announces Zero-Tolerance Policy for Criminal Illegal Entry, Apr. 6, 2018 at <https://www.justice.gov/opa/pr/attorney-general-announces-zero-tolerance-policy-criminal-illegal-entry>.
- <sup>68</sup> Department of Justice, Press Release, Attorney General Announces Zero-Tolerance Policy for Criminal Illegal Entry, Apr. 6, 2018 at <https://www.justice.gov/opa/pr/attorney-general-announces-zero-tolerance-policy-criminal-illegal-entry>.
- <sup>69</sup> Joint Status Report, *Ms. L. v. U.S. Immigration and Customs Enforcement*, Case No. 3:18-cv-00428-DMS-MDD (S.D. Cal., Oct. 15, 2019) (Noting that the total number of possible children of potential class members to the law suit originally identified was 2,654 children.)
- <sup>70</sup> *Ms. L. v. U.S. Immigration & Customs Enforcement*, Case No. 3:18-cv-00428-DMS-MDD (S. D. Cal., June 26, 2018)
- <sup>71</sup> Memorandum in Support of Motion to Enforce Preliminary Injunction, *Ms. L. v. U.S. Immigration and Customs Enforcement*, No. 3:18-cv-00428-DMS-MDD (July 20, 2019).
- <sup>72</sup> *Id.*
- <sup>73</sup> *Id.*
- <sup>74</sup> Civil Society Request for Comprehensive *In Loco* visit to the United States and Mexico to Consider Human Rights Violations Impacting Migrants and Request for Ongoing Robust Monitoring of the Regional Human Rights Situation Relating to Migrants to the Inter-American Commission on Human Rights, July 23, 2019.
- <sup>75</sup> *Id.*
- <sup>76</sup> *Id.*
- <sup>77</sup> See Anjali Mehta, Ashley Miller and Nikki Reisch, *Arbitrary Detention of Asylum Seekers Perpetuates the Torture of Family Separation*, Just Security, Mar. 15, 2019 at <https://www.justsecurity.org/63255/arbitrary-detention-asylum-seekers-prolongs-torture-family-separation/>.
- <sup>78</sup> See *id.* (“[T]he United States routinely detains asylum seekers without individualized findings that they pose a flight risk or a danger to the community, and without affording them an opportunity for independent judicial review of their custody.”)
- <sup>79</sup> *Damus v. Nielsen*, Case No. 1:18-cv-00578-JEB (D.D.C.).
- <sup>80</sup> *Damus v. Nielsen*, Case No. 1:18-cv-00578-JEB (D.D.C., July 2, 2018).
- <sup>81</sup> Joint Status Report, *Damus v. Nielsen*, Case No. 1:18-cv-00578-JEB (D.D.C., Dec., 2018).
- <sup>82</sup> See Philip Bump, *Here are the Administration Officials who have said that Family Separation is Meant as a Deterrent*, Wash. Post., June 19, 2018; see also Adam Cox & Ryan Goodman, *Detention of Migrant Families as “Deterrence”: Ethical Flaws and Empirical Doubts*, Just Security June 22, 2018.
- <sup>83</sup> See Department of Homeland Security, Office of Inspector General, Report, *Concerns about ICE Detainee Treatment and Care at Four Detention Facilities*, June 3, 2019, available at <https://www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-47-Jun19.pdf>; Adam Serwer, *A Crime by Any*

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Name: *The Trump administration's commitment to deterring immigration through cruelty has made horrifying conditions in detention facilities inevitable*, The Atlantic, July 3, 2019.

<sup>84</sup> Nicole Austin-Hillery, Clara Long, Human Rights Watch, *We Went to a US Border Detention Center for Children. What We Saw Was Awful*, June 24, 2019, at <https://www.hrw.org/news/2019/06/24/we-went-us-border-detention-center-children-what-we-saw-was-awful>.

<sup>85</sup> See Nicole Acevedo, *Why Are Migrant Children Dying in U.S. Custody?*, NBC News, May 29, 2019 at <https://www.nbcnews.com/news/latino/why-are-migrant-children-dying-u-s-custody-n1010316?fbclid=IwAR38n79Vu1jBLEjqEPL8NCeCJ7qaGinN2TJOuTfEkVII1BKJDyISX3Jee7Rs>.

<sup>86</sup> See Rhitu Chatterjee, *Lengthy Detention of Migrant Children May Create Lasting Trauma, Say Researchers*, NPR, Aug. 23, 2019 at <https://www.npr.org/sections/health-shots/2019/08/23/753757475/lengthy-detention-of-migrant-children-may-create-lasting-trauma-say-researchers>.

<sup>87</sup> Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children, 84 Fed. Reg. 44,392 (Aug. 23, 2019).

<sup>88</sup> *Flores v. Reno*, Case No. CV 85-4544-RJK, 5 (C.D. Cal. 1997)

<sup>89</sup> Homeland Security Act of 2002, Pub. L. No. 107-296, § 462, 116 Stat. 2135, 2202 (codified as amended at 6 U.S.C. § 279)(2006).

<sup>90</sup> William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008, Pub. L. No. 110-457, 122 Stat. 5044 (codified as amended at 8 U.S.C.A. § 1232(a)(4) (West 2011)).

<sup>91</sup> Complaint, *California v. McAleenan*, Case No. 2:19-cv-07390 (Aug. 26, 2019)

<sup>92</sup> *Id.*

<sup>93</sup> *Flores v. Bar*, Case No. CV 85-4544-DMG (C.D. Cal. Sept. 27, 2019)

<sup>94</sup> See Miriam Jordan, *Judge Blocks Trump Administration Plan to Detain Migrant Children*, N.Y. Times, Sept. 27, 2019.

<sup>95</sup> See, e.g., Civil Society Request for Comprehensive *In Loco* visit to the United States and Mexico to Consider Human Rights Violations Impacting Migrants and Request for Ongoing Robust Monitoring of the Regional Human Rights Situation Relating to Migrants to the Inter-American Commission on Human Rights, July 23, 2019.

<sup>96</sup> See Fact Sheet: Criminal Prosecutions for Unauthorized Border Crossing, American Civil Liberties Union, n.d., at <https://www.aclu.org/other/operation-streamline-issue-brief>.

<sup>97</sup> A ruling in December 2009 by the US Court of Appeals for the Ninth Circuit held that these mass hearings, which take place within a matter of minutes, in the Tucson, Arizona region violated federal laws on due process. In addition, a May 2015 report was issued by the Department of Homeland Security's Office of Inspector General, which acknowledged that the practice may violate U.S. treaty obligations under the 1967 Protocol Relating to the Status of Refugees. After a critical report was issued by Federal Defenders of San Diego in July 2018, the U.S. Court of the Southern District of California determined that judges would no longer accept guilty pleas on the same day that an individual first appears in court

<sup>98</sup> The American Bar Association, the Federal Bar Association, the National Association of Immigration Judges, and the American Immigration Lawyers Association jointly issued a letter to Congress in July 2019, calling on Congress to “establish an independent court system that can guarantee a fair day in court.” See <https://www.americanbar.org/news/abanews/aba-news-archives/2019/07/aba-urges-congress-to-create/>.

<sup>99</sup> ACLU lawsuit earlier Aug 2019 [Bloomberg 2019 Aug 6], In August 20, 2019, The Court of Appeals of the Ninth Circuit found that that over 4,000 convictions were improper [US Attorney's Office Made Thousands Of Improper Prosecutions To Achieve 'Zero Tolerance' pbs 2019 Aug 20

<sup>100</sup> NBC Investigations (March 6, 2019), <https://www.nbcсандiego.com/news/local/Source-Leaked-Documents-Show-the-US-Government-Tracking-Journalists-and-Advocates-Through-a-Secret-Database-506783231.html>; The Intercept (Feb. 9, 2019), <https://theintercept.com/2019/02/08/us-mexico-border-journalists-harassment/>; New York Times (March 7, 2019), <https://www.nytimes.com/2019/03/07/us/migrant-caravans-activists-journalists-government-list.html>.

<sup>101</sup> See sources cited *id.*

<sup>102</sup> Letter from Randy J. Howe, Executive Direct, Office of Field Operations, Customs and Border Protection, to Center for Democracy & Technology (May 9, 2019), <https://cdt.org/files/2019/05/2019-05-17-CBP-response-to-DHS-Coalition-letter.pdf> (acknowledging collaboration with Mexican authorities).

<sup>103</sup> See sources cited note 1.

<sup>104</sup> See New York Times (March 7, 2019); NBC Investigations (March 6, 2019).

<sup>105</sup> See also Universal Declaration of Human Rights, article 19 (guaranteeing the right to “receive and impart information and ideas through any media and regardless of frontiers”).



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<sup>106</sup> See U.N. Human Rts. Comm. *General Comment No. 34*, para. 13, U.N. Doc. CCPR/C/GC/34 (Sept. 12, 2011); see also *Gauthier v. Canada*, Comm. No. 633/1995, para. 13.4, U.N. Doc. CCPR/C/65/D/633/1995 (Apr. 7, 1999).

<sup>107</sup> See e.g. *Yashar Agazade and Rasul Jafarov v. Azerbaijan*, Comm. No. 2205/2012, para. 7.4., U.N. Doc. CCPR/C/118/D/2205/2012 (Nov. 2, 2012) (“The penalization of a media outlet or journalist solely for being critical of the Government or the political social system espoused by the Government can never be considered to be a necessary restriction of freedom of expression.”).

<sup>108</sup> See U.N. Human Rts. Comm. *General Comment No. 34*, para. 13.

<sup>109</sup> Inter-American Court of Human Rights, *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85 of November 13, 1985 (Series A) No. 5, para. 30 (1985).

<sup>110</sup> See *Cornelius v. NAACP Legal Defense & Ed. Fund, Inc.*, 473 U.S. 788, 806 (1985) (“[T]he government violates the First Amendment when it denies access to a speaker solely to suppress the point of view he espouses on an otherwise includible subject.”); *Matal v. Tam*, 137 S.Ct. 1744, 1765 (Kennedy, J., concurring) (“[I]t is a fundamental principle of the First Amendment that the government may not punish or suppress speech based on disapproval of the ideas or perspectives the speech conveys.”); see also American Civil Liberties Union (March 7, 2019), <https://www.aclu.org/blog/free-speech/freedom-press/government-detaining-and-interrogating-journalists-and-advocates-us>.

<sup>111</sup> Interference with the ability of journalists in particular to leave the U.S. also reflects a failure to fulfill the U.S.'s obligations under Article 19. The Human Rights Committee has articulated with respect to Article 19 that: “It is normally incompatible with paragraph 3 to restrict the freedom of journalists and others who seek to exercise their freedom of expression (such as persons who wish to travel to human rights-related meetings) to travel outside the State party, to restrict the entry into the State part of foreign journalists . . . .” See U.N. Human Rts. Comm. *General Comment No. 34*, para. 45.

<sup>112</sup> *Angel N. Oló Bahamonde v. Equatorial Guinea*, Comm. No. 468/1991, para. 9.4, U.N. Doc. CCPR/C/49/D/468/1991 (Nov. 10, 1993).