

November 9, 2021

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Re: Submission in conjunction with the *ex officio* hearing on *Protection of persons in human mobility in the United States, Mexico and the North of Central America*, 181st period of sessions.

Esteemed Dr. Reneaum Panszi,

The Promise Institute for Human Rights at the University of California Los Angeles (UCLA) School of Law, together with our partners in this submission Comunidades Indígenas en Liderazgo (CIELO) and the Haitian Bridge Alliance (HBA), respectfully submit this expanded analysis of our presentations at the *ex officio* hearing on *Protection of persons in human mobility in the United States, Mexico and the North of Central America*, during the 181st period of sessions of the Inter-American Commission on Human Rights.

Externalizing and Policing the Border: Analysis of an Ongoing Human Rights Crisis

Introduction

U.S. immigration law and policy are marked by conflicting and contradictory strains: one that purports to be humane, welcoming, accommodating and pragmatic with respect to migration generally and refugees and informal migration in particular; and another that is punitive, xenophobic and racialized, focused on deterrence, control and policing the border, resulting in multiple human rights violations. The latter strain has been sustained over the last 25 years under both Democratic and Republican administrations,¹ and found recent expression in the Trump administration's anti-immigrant rhetoric, reductions of the refugee admission ceiling, Attorney General Opinions limiting access to asylum, so-called "safe third country agreements", the Migrant Protection Protocols (MPP), and the use of Title 42 to summarily expel migrants without due process. The latter two have continued in one form or another under

¹ For example, in laws such as the Antiterrorism and Effective Death Penalty Act (AEDPA), the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), and in policies such as Section 287(g) MOUs with Local Law Enforcement, Secure Communities, the Priority Enforcement Program, vastly increased security forces (Border Patrol and ICE) at the border and internally, expanded use of detention and criminalization of migrants, expanded border wall construction, and the use of military-style surveillance at the southern border. See below for an analysis of the more recent examples of this impulse in U.S. law and policy at the border.

the Biden administration, the courts having enjoined termination of MPP, and the Biden administration electing to continue *en masse* expulsions under Title 42.

Deeply rooted structures and ongoing logics of settler-colonialism and anti-Black racism inform this latter strain and are evident in current expressions of human rights violations at the various “borders”, both physical and social, constructed by these policies. Erasure of Indigenous identity, family separation and lack of language access for indigenous language speakers, as well as the use of Border Patrol agents on horseback to corral Haitian migrants, are performances of both settler colonialism and anti-Black racism. Moreover, the exercise of U.S. hegemony in the hemisphere and particularly in Mexico, Central America and the Caribbean has led to the export and imposition of this punitive framework in other countries and the effective externalization of the U.S. southern border. This has similarly activated settler colonial and anti-Black impulses in these societies, resulting in the criminalization of and discrimination against migrants and the militarization of borders in Mexico, Guatemala, and Honduras in efforts to stop and deter the migrant flow.

U.S. responsibility for the human rights violations suffered by refugees and migrants in the region extends to the factors motivating their migration. Again, we see two conflicting and contradictory strains of U.S. political and economic policy in the region: one that purports to address the structural causes of forced migration through economic development and respect for human rights and the rule of law, and another dominated by peculiarly U.S. interests in fighting the drug war, protecting U.S. business interests and access to natural resources, deterring and preventing the migrant flow at its source and transit points, and supporting authoritarian regimes willing to align with these interests. The latter create a feedback loop perpetuating the structural causes of forced migration: greater inequality, environmental degradation, militarization, ongoing human rights abuses, and states captive to both licit and illicit capital. U.S. hegemony in the region similarly establishes the United States as the logical destination of the forced migrant flow and the only hope for escape from poverty, violence and natural disaster.

Enforcement mechanisms seeking to deter and punish migrants, originating in the United States, have expanded into a regional framework resulting in the denial of human rights and the rights to asylum, non-refoulement and due process. Similarly, this framework reproduces patterns of discrimination and the denial of the collective rights of Indigenous peoples. An awareness of both the structural causes and regional scope of the human rights crisis is a necessary starting point for developing a human rights framework and protective mechanisms to ensure respect for the dignity and human rights of those forced to leave their homeland or otherwise exercising their right to human mobility in relation to other first, second and third generation human rights under threat at home and throughout their journey.

Overview of U.S. Immigration Law and Policies – at the Border

The Title 42 policy

On March 20, the [Centers for Disease Control](#) (“CDC”) issued a series of order commonly referred to as “Title 42”, that enabled U.S. immigration authorities to block entry into the United States and expel (effectively deport) noncitizens without adequate procedural protections, and often depriving them of exercising their right to seek asylum.² The CDC order “is based on an emergency Department of Health and Human Services (HHS) Interim Final Rule issued simultaneously with the Order under the authority of an obscure provision of the 1944 Public Health Service Act,” Section 362 of which “authorizes the Surgeon

² Just Security. *How an Internal State Department Memo Exposes “Title 42” Expulsions of Refugees as Violations of Law*. (October 5, 2021).

<https://www.justsecurity.org/78476/how-an-internal-state-department-memo-exposes-title-42-expulsions-of-refugees-as-violations-of-law/>

General to suspend “introduction of persons or goods” into the United States on public health grounds.”³ The Trump administration called Title 42 “necessary” to protect the public from the COVID-19 and minimize the number of people being held in congregate settings, including immigration detention centers.

Under this pretext, Title 42 establishes a summary immigration expulsion process, which violates the Refugee Act, legal safeguards for unaccompanied minors, and fundamental procedural rights.³ The policy “operates wholly outside the normal immigration removal process and provides no opportunity for hearings or assertion of asylum claims.”⁴ It “deploys a medical quarantine authorization to override the protections of the immigration and refugee laws through the use of an unreviewable Border Patrol health ‘expulsion’ mechanism unrelated to any finding of disease or contagion.”⁵ Although a lower federal court issued a preliminary injunction blocking implementation of Title 42,⁶ the U.S. Court of Appeals stayed that order, effectively allowing the Biden administration to continue Title 42 expulsions, and scheduled a hearing on the case in January of 2022.⁷

Many health experts have rejected Title 42 as having no basis as a public health measure, and denounced it as a pretext to ban asylum seekers and others seeking protection at the border.⁸ The CDC order and plan implementing Title 42 unlawfully excludes migrants fleeing war, violence, poverty and disasters, leaving them without even the opportunity to seek asylum or other forms of protection.⁹ As outlined below, Title 42 disproportionately affects Black immigrants – and in particular, Haitians - who are constantly subject to exclusion and discriminatory treatment on racist and xenophobic bases.

The legal basis for Title 42 has been widely criticized, including in an internal memo by outgoing State Department senior advisor Harold Koh, which described the policy – and its application to Haitians at the U.S.-Mexico border - as violating international refugee law, international human rights law, and U.S. immigration law.¹⁰ He called the use of Title 42 “illegal,” “inhumane” and “not worthy of this

³ Just Security. *Coronavirus Border Expulsions: CDC’s Assault on Asylum Seekers and Unaccompanied Minors*. (April 13, 2020).

<https://www.justsecurity.org/69640/coronavirus-border-expulsions-cdcs-assault-on-asylum-seekers-and-unaccompanied-minors/>

⁴ Just Security. *Coronavirus Border Expulsions: CDC’s Assault on Asylum Seekers and Unaccompanied Minors*. (April 13, 2020).

<https://www.justsecurity.org/69640/coronavirus-border-expulsions-cdcs-assault-on-asylum-seekers-and-unaccompanied-minors/>

⁵ Just Security. *Coronavirus Border Expulsions: CDC’s Assault on Asylum Seekers and Unaccompanied Minors*. (April 13, 2020). <https://www.justsecurity.org/69640/coronavirus-border-expulsions-cdcs-assault-on-asylum-seekers-and-unaccompanied-minors/>

⁶ Memorandum Opinion and Order, *Gimena Huisha-Huisha et al. v. Mayorkis et al.*, Civ. Action No. 21-100, U.S. District Court for the District of Columbia, Sept. 16, 2021.

⁷ Julia Ainsley “Court sides with Biden administration, preserves Covid limits on asylum-seekers for now,” NBC News (September 30, 2021). <https://www.nbcnews.com/politics/immigration/court-sides-biden-administration-leaves-covid-limits-asylum-seekers-place-n1280529>

⁸ See e.g., Letter to Acting HHS Secretary Cochran and CDC Director Walensky, Colombia Public Health (Jan. 28, 2021) <https://www.publichealth.columbia.edu/research/program-forced-migration-and-health/letter-acting-hhs-secretary-cochran-and-cdc-director-walensky>; Aguilera, Jasmine. *Biden Is Expelling Migrants on COVID-19 Grounds, But Health Experts Say That’s All Wrong* (October 2021), <https://time.com/6105055/biden-title-42-covid-19/>

⁹ Haitian Bridge Alliance. *The Invisible Wall: Title 42 and its Impact on Haitian Migrants* (March 2021) <https://www.quixote.org/wp-content/uploads/2021/03/The-Invisible-Wall.pdf>

¹⁰ Just Security. *How an Internal State Department Memo Exposes “Title 42” Expulsions of Refugees as Violations of Law*. (October 5, 2021).

<https://www.justsecurity.org/78476/how-an-internal-state-department-memo-exposes-title-42-expulsions-of-refugees-as-violations-of-law/>

Administration that I so strongly support.”¹¹ Koh’s criticisms of the Biden Administration and their use of Title 42 comes shortly after a [resignation letter](#) from Daniel Foote, the former Special Envoy to Haiti, who called Biden’s deportation policy “inhumane” and did not want “to be associated” with it.¹²

Expedited Removal

Expedited removal is a “process by which low-level immigration officers can quickly deport certain noncitizens who are undocumented or have committed fraud or misrepresentation.”¹³ Since 2004, immigration officials have used expedited removal to quickly deport migrants arriving at the U.S.-Mexico border without due-process protections, including the right to an attorney or a hearing.¹⁴

Initially created in 1996 pursuant to the *Illegal Immigration and Immigrant Responsibility Act*, expedited removal has been expanded by subsequent administrations, purportedly as a deterrence mechanism to discourage unauthorized immigration.¹⁵ On July 26, 2021 the Biden Administration’s Department of Homeland Security (DHS) resumed expedited removals for “certain family units who are not able to be expelled under Title 42.”¹⁶ Shortly thereafter, DHS implemented a new rule that allowed for expanded use of expedited removal.¹⁷ Under expedited removal processes, migrants who are seeking asylum in the United States are referred to asylum officers for a “fast-tracked” credible fear screenings.¹⁸ In this process, asylum-seekers are often forced to conduct credible fear interviews – which involve traumatic recounting of the circumstances in which they were forced to migrate, or harms experienced during migration – while in immigration detention, often without adequate privacy or an attorney.¹⁹ This erosion of the rights of asylum seekers amidst a policy of deterrence and removal is exacerbated in the use of the so-called “Migrant Protection Protocols” detailed below.

The Migrant Protection Protocols (MPP)

In January 2019, under the Trump administration, the United States Department of Homeland Security (DHS) instituted the [Migrant Protection Protocols](#) (MPP), also known as the “Remain in Mexico” program.²⁰ Under this policy, individuals and families seeking asylum from Mexico are processed by an immigration official, given a court date, and then returned to Mexico and wait outside of the U.S. for the

¹¹ Politico. *Top State adviser leaves post, rips Biden’s use of Trump-era Title 42*. (October 4, 2021).

¹² Just Security. *How an Internal State Department Memo Exposes “Title 42” Expulsions of Refugees as Violations of Law*. (October 5, 2021).

<https://www.justsecurity.org/78476/how-an-internal-state-department-memo-exposes-title-42-expulsions-of-refugees-as-violations-of-law/>

¹³ American Immigration Council. *A Primer on Expedited Removal* (July 22, 2019).

<https://www.americanimmigrationcouncil.org/research/primer-expedited-removal>

¹⁴ Id.

¹⁵ Jordan, Miriam. *U.S. Can Expedite Removal of Migrant Families, Biden Administration Says*. The New York Times. (July 26, 2021)

<https://www.nytimes.com/2021/07/26/us/expedited-removal-migrant-families.html>

¹⁶ DHS. *DHS Statement on the Resumption of Expedited Removal for Certain Family Units*. (July 26, 2021).

<https://www.dhs.gov/news/2021/07/26/dhs-statement-resumption-expedited-removal-certain-family-units>

¹⁷ Lowell, Chloe. *The Resurrection of Expedited Removal: Biden Administration Reverting to and Expanding Anti-Immigration Tactics*. Human Rights First. (September 8, 2021). <https://www.humanrightsfirst.org/blog/resurrection-expedited-removal-biden-administration-reverting-and-expanding-anti-immigration>

¹⁸ Id.

¹⁹ Id.

²⁰ U.S. Department of Homeland Security. *Migrant Protection Protocols*. <https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols>

duration of their immigration proceedings.²¹ Contravening longstanding US and international refugee law and practice, MPP “dramatically altered the processing of asylum claims at the U.S. southern border and made it far more difficult for asylum seekers to receive a fair and meaningful review of their claims.”²²

The Trump administration defended the policy as “necessary to protect migrants from danger and end exploitation of immigration laws.”²³ However, the policy has resulted in extremely dangerous conditions for migrants, , including children and families²⁴, with “high risks of kidnapping, extortion, and violence.”²⁵ MPP “also compounded existing failings in US immigration courts, including a [lack of access to counsel](#), [barriers to legal representation](#), [lack of transparency](#) in immigration proceedings, and [limited legal protections](#) for asylum seekers.”²⁶ In March 2020, as a result of the COVID-19 pandemic, all MPP hearings were suspended, creating confusion for migrants and their advocates.²⁷ After taking office in early 2021, the Biden Administration attempted to end MPP, but was enjoined from doing so by successful legal challenges.²⁸

How U.S. Law Makes Migration A Crime: Section 1325 and 1326 criminalization of Border Crossing

U.S. federal law makes it a crime to enter or re-enter the United States without authorization. These migrants can face criminal sanctions in addition to civil deportation proceedings.²⁹ Under Section 1325 of Title 8 of the U.S. Code it is a federal misdemeanor to enter the United States without authorization, and under Section 1326 of Title 8 of the U.S. Code, it is a felony to reenter the United States without permission after a prior deportation or removal order.³⁰

As documented by the National Immigrant Justice Center, “felony prosecutions for reentry violations impact thousands of individuals every year across the country, many of whom have been in the United States for years with strong family ties.”³¹ The National Immigrant Justice Center launched an extensive investigation over the course of a year into rights violations stemming from migration-related prosecutions.³² Their investigation found rights violations in the context of prosecutions relating to

²¹ Kate Smith, *Trump Administration Prepares for “Exponential” Expansion to “Remain in Mexico” Program*, CBW News (March 1, 2019) <https://www.cbsnews.com/news/remain-in-mexico-trump-administration-preparing-exponential-expansion-contested-remain-in-mexico-2019-03-01/>; Suzanne Gamboa and Julia Ainsley, *Trump Administration Starts ‘Remain in Mexico’ Policy in El Paso, Texas*, NBC News (March 20, 2019)

<https://www.nbcnews.com/news/us-news/trump-administration-starts-remain-mexico-policy-el-paso-texas-n985641>
²² ALIA. Featured Issue: Migrant Protection Protocols (MPP). (September 30, 2021). <https://www.aila.org/advo-media/issues/all/port-courts>

²³ Suzanne Gamboa and Julia Ainsley, *Trump Administration Starts ‘Remain in Mexico’ Policy in El Paso, Texas*, NBC News (March 20, 2019) <https://www.nbcnews.com/news/us-news/trump-administration-starts-remain-mexico-policy-el-paso-texas-n985641>

²⁴ Human Rights Watch. “We Can’t Help You Here” US Returns of Asylum Seekers to Mexico. (July 2, 2019). <https://www.hrw.org/report/2019/07/02/we-cant-help-you-here/us-returns-asylum-seekers-mexico>

²⁵ Human Rights Watch. Q&A: Trump Administration’s “Remain in Mexico” Program. (January 29, 2020). <https://www.hrw.org/news/2020/01/29/qa-trump-administrations-remain-mexico-program>

²⁶ Id.

²⁷ ALIA. Featured Issue: Migrant Protection Protocols (MPP). (September 30, 2021). <https://www.aila.org/advo-media/issues/all/port-courts>

²⁸ ALIA. DHS Announces Expanded Criteria for MPP-Enrolled Individuals Who Are Eligible for Processing into the United States. (June 23, 2021). <https://www.aila.org/infonet/expanded-criteria-for-mpp-enrolled-individuals>

²⁹ National Immigrant Justice Center. *Report | A Legacy of Injustice: The U.S. Criminalization of Migration* (July 23, 2020). <https://immigrantjustice.org/research-items/report-legacy-injustice-us-criminalization-migration>

³⁰ Id.

³¹ A 2015 U.S. Sentencing Commission report found nearly 50 percent of people sentenced for “illegal re-entry” had at least one child living in the U.S. See U.S. Sentencing Commission, *Illegal Reentry Offenses* (2015), <https://www.ussc.gov/research/research-publications/illegal-reentry-offenses>.

³² National Immigrant Justice Center. *Report | A Legacy of Injustice: The U.S. Criminalization of Migration* (July 23, 2020). <https://immigrantjustice.org/research-items/report-legacy-injustice-us-criminalization-migration>

migration, including "separating families, obstructing the right to asylum, denying due process protections, and dehumanizing and racist treatment."³³ The right to asylum is obstructed where immigration judges, exercising broad discretion, consider past convictions as a basis on which to deny asylum or motions (including to reopen or reconsider cases).³⁴ The government routinely convicts asylum seekers of illegal entry, even though they are legally entitled to claim asylum regardless of where/how they entered the United States.³⁵ In this context, human rights groups and others have called for an end to illegal entry prosecutions of asylum seekers.³⁶

Furthermore, Black, Indigenous, and other racialized migrants are disproportionately impacted by the criminalization of border crossing.³⁷ As in the U.S. criminal legal system more broadly, these populations are subject to racial profiling and other forms of discrimination.³⁸ Migrants who are prosecuted under these laws, alongside civil deportation proceedings, are caught between the immigration and criminal legal systems. These laws are the product of, and perpetuate, structural racism in U.S. immigration and criminal laws, and they disproportionately result in the "incarceration, deportation, and destruction of families of color and immigrant communities."³⁹ Furthermore, these migration-related prosecutions are a significant contributor to mass incarceration and have had a pernicious impact on the racial and citizenship makeup of those in federal courts and the federal prison population. The country's prison population grew dramatically along racial lines over the past two decades, due in part to the increase in federal prison sentences for immigrants.⁴⁰ As immigration groups have advocated for years, "repealing these laws is an essential step toward ending systemic injustices, reducing mass incarceration, and protecting fundamental human rights."⁴¹

Use of surveillance technology at the US border under the Biden Administration

On January 20, 2021, President Biden issued an executive order pausing the remaining construction of the "border wall" along the U.S.-Mexico border, which was initiated during the Trump administration.⁴² The White House then sent a bill to Congress: the *US Citizenship Act of 2021*, which calls for the deployment of "smart technology" to "manage and secure the southern border"⁴³, i.e. "smart borders

³³ Id.

³⁵ Id.

³⁶ Id.

³⁷ BAJI. *Until We're Free: Open Letter to President Biden*.

<https://baji.org/our-work/statements/until-were-free-open-letter-to-president-biden/>

³⁸ National Immigrant Justice Center. *Report | A Legacy of Injustice: The U.S. Criminalization of Migration* (July 23, 2020). <https://immigrantjustice.org/research-items/report-legacy-injustice-us-criminalization-migration>

³⁹ See Simon Clark, "How White Supremacy Returned to Mainstream Politics," Center for American Progress, July 1, 2020, <https://www.americanprogress.org/issues/security/reports/2020/07/01/482414/white-supremacy-returned-mainstream-politics>.

⁴⁰ See Jeremy Travis, Bruce Western, and Steve Redburn, eds., *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, National Research Council (Washington, DC: The National Academies Press, 2014), at p. 56.

⁴¹ See Jeremy Travis, Bruce Western, and Steve Redburn, eds., *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, National Research Council (Washington, DC: The National Academies Press, 2014), at p. 56.

⁴² The White House. *Proclamation on the Termination of Emergency With Respect To the Southern Border of The United States and Redirection of Funds Diverted To Border Wall Construction*. (January 20, 2021)

<https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/proclamation-termination-of-emergency-with-respect-to-southern-border-of-united-states-and-redirection-of-funds-diverted-to-border-wall-construction/>

⁴³ *US Citizenship Act of 2021*, 117th Congress 1st Session, <https://www.congress.gov/bill/117th-congress/house-bill/1177/text>

technology.”⁴⁴ Smart borders “involve the expanded use of surveillance and monitoring technologies including cameras, drones, biometrics, and motion sensors to make a border more effective in stopping unwanted migration and keeping track of migrants.”⁴⁵ Smart borders “are also embedded in a logic of deterrence, which seeks, by way of militarized border infrastructure, detention, and deportation, to make unwanted migration so brutal and painful that it will dissuade people from even trying to enter the United States without authorization.”⁴⁶ As outlined in a recent report by the Immigrant Defense Project, this technology expands the regime of border policing and exclusion that greatly harms migrants and asylum-seekers.⁴⁷

Implementation of "safe third country" agreements with Central American countries

In December 2020, the DHS announced that Guatemala, El Salvador and Honduras all signed Asylum Cooperation Agreements.⁴⁸ These so-called “safe third country agreements” required certain asylum seekers, namely those from these Central American countries, to seek asylum in the first of these “transit” countries they pass through as non-nationals, before being eligible to seek asylum in the United States.⁴⁹ These agreements effectively prevent migrants arriving at the U.S.-Mexico border from exercising their right to seek asylum, and has facilitated their deportation to Central American countries that are, similar to their countries of origin, facing violence, poverty, and with inadequate infrastructure to receive or process asylum seekers.⁵⁰ While the Biden administration terminated these “safe third country agreements,” they are demonstrative of the punitive and xenophobic impulse of U.S. immigration law and policy, an impulse that remains current in the above-mentioned law and policies that the Biden administration continues to implement.

Externalization of the U.S. Border into Mexico

Restrictive Mexican immigration enforcement – The “Mexican Wall” and Impact on Black migrants⁵¹

In addition to the laws and policies referenced above, Mexican immigration enforcement has also become more restrictive in recent years, in apparent collaboration with the United States.⁵² In late January 2019, following the former U.S. Administration’s decision to implement the Migrant Protection Protocols (“MPP” or “Remain in Mexico”), Mexico stopped its humanitarian push to issue *Tarjetas de Visitante por Razones Humanitarias* (“TVRH” or, colloquially, “humanitarian visas”) on an expedited basis to foreign nationals, primarily Central Americans. Then, in the context of trade negotiations between the United States, Mexico, and Canada, former U.S. President Donald Trump “threatened (by tweet) to impose tariffs on imported Mexican goods until undocumented migrants stopped entering the United States through

⁴⁴ Immigrant Defense Project. Smart Borders or a Humane World? <https://www.immigrantdefenseproject.org/smart-borders-or-a-humane-world/>. See also: Mijente, Just Futures Law, and No Border Wall Coalition, The Deadly Digital Border Wall, https://notechforice.com/wp-content/uploads/2021/10/Deadly.Digital.Border.Wall_.pdf.

⁴⁵ Id.

⁴⁶ Id.

⁴⁷ Id.

⁴⁸ US Department of Homeland Security. *DHS Announces Guatemala, El Salvador, and Honduras Have Signed Asylum Cooperation Agreement* (December 29, 2020). <https://www.dhs.gov/news/2020/12/29/dhs-announces-guatemala-el-salvador-and-honduras-have-signed-asylum-cooperation>

⁴⁹ Justice for Immigrants. *Asylum Cooperative Agreement Backgrounder*. <https://justiceforimmigrants.org/what-we-are-working-on/asylum/asylum-cooperative-agreement-backgrounder/>

⁵⁰ American Friends Service Committee. *The dangers of Trump’s “safe third country” agreements in Central America* (July 28, 2020). <https://www.afsc.org/blogs/news-and-commentary/dangers-trumps-safe-third-country-agreements-central-america>

⁵¹ The authors are grateful for the work and collaborative research done on this topic with the Black Alliance for Just Immigration (BAJI), and to Tsion Gurmu and Nana Gyamfi of BAJI for reviewing these sections.

⁵² S. Priya Morley et al., *A Journey of Hope: Haitian Women’s Migration to Tapachula, Mexico* (2021). <https://cgrs.uchastings.edu/sites/default/files/A-Journey-of-Hope-Haitian-Womens-Migration-to%20-Tapachula.pdf>

Mexico.”⁵³ Shortly thereafter, Mexico agreed to “take unprecedented steps to curb irregular migration.”⁵⁴ One of the primary manifestations of this commitment was the deployment of Mexican National Guard officers throughout the country – and particularly to the southern state of Chiapas – to conduct immigration enforcement. The deployment of the National Guard has meant the effective militarization of Mexico’s immigration enforcement; although the National Guard is intended to be a civilian-led security force, many of its officers are from the Mexican military and federal police. This has also “led to increased apprehension and detention of migrants, and violations of their human rights at levels not seen for years.”⁵⁵ Due to their skin color, Black and Indigenous migrants (and on some occasions Afro-Mexicans and Indigenous Mexicans)⁵⁶ are often targeted by immigration enforcement. Further, the practices of the *Instituto Nacional de Migración* (National Migration Institute, “INM”) in Tapachula, Chiapas shifted. It became more difficult for migrants – including from Haiti and various African countries – to move through Mexico and reach the U.S.-Mexico border. The INM stopped its former practice of issuing “exit permits” (*oficios de salida del país*), which had previously enabled these populations to transit through Mexican territory to the U.S.-Mexico border. Instead, from mid-2019 on, increasing numbers of them were stuck in Tapachula waiting for their cases to be processed by an over-burdened and under-funded Mexican immigration system.

African migrants are one population that has been disproportionately impacted by this restrictive immigration enforcement in Mexican territory.⁵⁷ Since 2015, there have been increasing numbers of African migrants, including from Cameroon, the Democratic Republic of the Congo, Eritrea, Ghana, and Somalia, traversing South and Central America to reach Mexico and continue onwards to the U.S.-Mexico border. Before 2019, many Africans arriving in Tapachula were issued “exit permits” that enabled them to transit through Mexico. From mid-2019 to late 2019, thousands of African migrants – including children and families – were stuck in Tapachula and forced to live in makeshift encampments near the main immigration detention center, *Siglo XXI*. The Assembly of African Migrants, a collective that they formed to advocate for their rights, documented and condemned their inhumane living conditions, the human rights violations they experienced at the hands of state officials and in detention facilities, and their experiences of racial discrimination, gender-based discrimination, and xenophobia by Mexican officials and citizens alike. Although the COVID-19 pandemic has impacted the migratory flows of Africans, more and more African migrants are using the migratory route through the Western Hemisphere.⁵⁸ The migrants that are forced to remain in Mexican territory, while they are being prevented by the “Mexican wall” from reaching the United States, will contend with the prevalence of anti-Black racism in Mexico.⁵⁹

⁵³ Id.

⁵⁴ Id.

⁵⁵ Id.

⁵⁶ IMUMI. *Because of the Color of My Skin and the Way I Speak Spanish: The INMs Detention and Deportation of Indigenous and Afro Descendant Mexicans*.

<https://imumi.org/wp-content/uploads/2020/11/The-INMs-Detention-and-Deportation-of-Indigenous-and-AfroDescendant-Mexicans.pdf>

⁵⁷ S. Priya Morley et al., “*There is a Target on Us*” – *The Impact of Anti-Black Racism on African Migrants at Mexico’s Southern Border* (2021).

<http://baji.org/wp-content/uploads/2021/01/The-Impact-of-Anti-Black-Racism-on-African-Migrants-at-Mexico.pdf>

⁵⁸ Migration Policy Institute, *African Migration through the Americas: Drivers, Routes, and Policy Responses* (2021).

<https://www.migrationpolicy.org/research/african-migration-through-americas>

⁵⁹ S. Priya Morley, *Reckoning with racism against Black migrants in Mexico* (2021).

<https://www.openglobalrights.org/reckoning-with-racism-against-black-migrants-in-mexico/>

S. Priya Morley et al., “*There is a Target on Us*” – *The Impact of Anti-Black Racism on African Migrants at Mexico’s Southern Border* (2021).

<http://baji.org/wp-content/uploads/2021/01/The-Impact-of-Anti-Black-Racism-on-African-Migrants-at-Mexico.pdf>

Another population suffering the consequences of the “Mexican wall,” along with stricter controls at the U.S.-Mexico border, are Haitian migrants.⁶⁰ After the 2010 earthquake in Haiti, subsequent natural disasters, and political instability that has gripped the country in the intervening decade, tens of thousands of Haitians were forced to flee their homes. Large numbers of Haitians who fled Haiti first settled in Brazil and then Chile, only to be ostracized by both an increase in anti-Black racism and the implementation of xenophobic immigration policies championed by right-wing governments to mobilize electoral support.⁶¹ This forced many Haitians to seek refuge again, embarking on a harrowing journey north, traversing as many as eleven countries before arriving in Mexico. One notoriously dangerous part of this journey is the 100-mile Darien Gap rainforest, which must be traversed on foot. Those crossing the area report being violently targeted, robbed, sexually assaulted, and discovering bodies of those who traveled before them.

Once they arrive in Mexico, they face the immigration enforcement barriers described above, and increasing numbers of Haitians – as well as their Chilean and Brazilian children – have been detained by Mexican authorities since 2019.⁶² This has led to a significant increase in the number of Haitians staying in Mexico, including those seeking asylum.⁶³ As of October 2021, tens of thousands of Haitians were stuck in limbo in Tapachula, where they must await for their asylum claims to be resolved by an overwhelmed and under-resourced asylum system. More than 26,000 Haitians have requested asylum in Mexico this year, up from just under 6,000 claims per year in 2020 and 2019, according to Mexican authorities.⁶⁴ In addition, they still face significant barriers within and outside of the immigration system. These include the lack of access to Haitian Creole interpretation in the immigration system, barriers to accessing medical care, housing, and other social supports, and both incidents and structures of racial and gender-based discrimination in Mexico.⁶⁵ Meanwhile, Mexican immigration authorities are either conducting mass deportations to Haiti, pushing Haitians back to Guatemala, or restricting their movement within Mexico to the state of Chiapas, often using racial profiling and other abusive tactics.⁶⁶ **Recent Events: The “Title 42 Wall” and Haitian migrants**

In recent weeks, large groups of these Haitians and other migrants joined “migrant caravans” and traveled north to the U.S. border, creating a makeshift encampment in Mexico near Del Rio, Texas. Those attempting to cross the border were met with force by U.S. officials.⁶⁷ The conduct of U.S. officials at the border was, in some cases, explicitly racist. For instance, many U.S. citizens were shocked by the images

⁶⁰ S. Priya Morley et al., *A Journey of Hope: Haitian Women’s Migration to Tapachula, Mexico* (2021). <https://cgrs.uchastings.edu/sites/default/files/A-Journey-of-Hope-Haitian-Womens-Migration-to%20-Tapachula.pdf>

⁶¹ S. Priya Morley, *Haitian migration through the Western hemisphere: a racial (in)justice analysis* (2021). <https://www.openglobalrights.org/haitian-migration-through-the-western-hemisphere-a-racial-injustice-analysis/?lang=English>

⁶² Migration Policy Institute, *Haitian Migration through the Americas: A Decade in the Making* (2021). <https://www.migrationpolicy.org/article/haitian-migration-through-americas>

⁶³ Id.

⁶⁴ Amnesty Int’l, *Not Safe Anywhere: Haitians on the Move Need Urgent International Protection* (Oct. 2021), <https://www.amnestyusa.org/wp-content/uploads/2021/10/Not-Safe-Anywhere-Haitians-need-urgent-international-protection-READY-FOR-PUBLISHING1.pdf>.

⁶⁵ S. Priya Morley et al., *A Journey of Hope: Haitian Women’s Migration to Tapachula, Mexico* (2021). <https://cgrs.uchastings.edu/sites/default/files/A-Journey-of-Hope-Haitian-Womens-Migration-to%20-Tapachula.pdf>

⁶⁶ Amnesty Int’l, *Not Safe Anywhere: Haitians on the Move Need Urgent International Protection* (Oct. 2021), <https://www.amnestyusa.org/wp-content/uploads/2021/10/Not-Safe-Anywhere-Haitians-need-urgent-international-protection-READY-FOR-PUBLISHING1.pdf>.

⁶⁷ OAS, *IACHR and UN’s Special Rapporteur Condemn Excessive Use of Force and Deportations of Migrants from Haiti at the United States’ Southern Border* (2021). https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2021/260.asp

of U.S. Customs and Border Patrol officers on horseback, cracking their straps like whips at Haitian migrants.⁶⁸ This, as Vice President Kamala Harris described, “evokes images of slavery.”⁶⁹

Haitians were also targeted by U.S. immigration officials for detention and deportation, in some cases in contravention of international asylum laws. Around 15,000 Haitians arrived at the U.S.-Mexico border near Del Rio, Texas.⁷⁰ Many were detained and, in a short period of time, over 7500 were deported to Haiti.⁷¹ Many of these Haitians had left Haiti years earlier, after the 2010 earthquake, and some had children born in Chile or Brazil who had never been to Haiti before and were not Haitian nationals.⁷² This year, Haiti has become more unstable: there was a 7.2 magnitude earthquake in August 2021, and Haitian President Jovenel Moïse was assassinated in July 2021.⁷³ The U.S. Department of Homeland Security (“DHS”) has itself noted that “Haiti is grappling with a deteriorating political crisis, violence, and a staggering increase in human rights abuses” and designated Haiti for Temporary Protected Status.⁷⁴

These deportations occurred under the Title 42 policy, which the Trump Administration adopted to both block entry into U.S. territory and deport migrants under the pretext of public health and absent procedural or humanitarian protections.⁷⁵ The stated justification for Title 42 was to protect Border Protection officers from contracting COVID-19 and to reduce the number of people held in immigration detention centers and other congregate settings. Yet, this policy has been widely criticized, including by prominent public health experts.⁷⁶ Deported asylum seekers are not able to claim asylum or seek other forms of international protection in the United States, in contravention of the United States’ obligations under international law, including the Refugee Convention, particularly the principle of *non-refoulement*.⁷⁷ After coming into power in early 2021, the Biden Administration has continued to rely on Title 42 to prevent

⁶⁸ Martha Pskowski, El Paso Times. *Haitian migrants face tough choices in Del Rio amid crackdown at Texas-Mexico border* (September 19, 2021). <https://www.elpasotimes.com/story/news/immigration/2021/09/19/haitian-migrants-tough-choices-crackdown-del-rio-texas-border/8411152002/>

⁶⁹ Erin B. Logan, LA Times. *Kamala Harris says footage of Border Patrol evokes images of slavery* (September 24, 2021). <https://www.latimes.com/politics/story/2021-09-24/kamala-harris-says-footage-of-border-patrol-on-horseback-evokes-images-of-american-slavery>

⁷⁰ Morning Edition, NPR. *Examining the recent Haitian migrant surge at the U.S. border with Mexico* (October 14, 2021). <https://www.npr.org/2021/10/14/1045904232/examining-the-haitian-migrant-surge-at-the-u-s-border-with-mexico>

⁷¹ Rafael Bernal, The Hill. *Haitian advocates call on Biden to turn page on ‘cruel asylum policies’* (October 14, 2021). <https://thehill.com/latino/576746-haitian-advocates-call-on-biden-to-turn-page-on-cruel-asylum-policies>

⁷² Migration Policy Institute, *Haitian Migration through the Americas: A Decade in the Making* (2021). <https://www.migrationpolicy.org/article/haitian-migration-through-americas>

⁷³ Human Rights First, *Biden Administration’s Dangerous Haitian Expulsion Strategy Escalates the U.S. History of Illegal and Discriminatory Mistreatment of Haitians Seeking Safety in the United States*, (Sept. 2021), <https://www.humanrightsfirst.org/sites/default/files/BidenAdministrationDangerousHaitianExpulsionStrategy.pdf>

⁷⁴ Human Rights First, *Biden Administration’s Dangerous Haitian Expulsion Strategy Escalates the U.S. History of Illegal and Discriminatory Mistreatment of Haitians Seeking Safety in the United States*, (Sept. 2021), <https://www.humanrightsfirst.org/sites/default/files/BidenAdministrationDangerousHaitianExpulsionStrategy.pdf>

⁷⁵ Haitian Bridge Alliance. *The Invisible Wall: Title 42 and its Impact on Haitian Migrants* (March 2021) <https://www.quixote.org/wp-content/uploads/2021/03/The-Invisible-Wall.pdf>

⁷⁶ See e.g., Letter to Acting HHS Secretary Cochran and CDC Director Walensky, Colombia Public Health (Jan. 28, 2021) <https://www.publichealth.columbia.edu/research/program-forced-migrationand-health/letter-acting-hhs-secretary-cochran-and-cdc-director-walensky>

⁷⁷ Human Rights First. *Biden Administration’s Dangerous Haitian Expulsion Strategy Escalates the U.S. History of Illegal and Discriminatory Mistreatment of Haitians Seeking Safety in the United States*. (September 2021); Haitian Bridge Alliance. *Report on 20th anniversary of the Durban Declaration and Programme of Action: Response to call for input issued by the UN’s Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance* (August 2021).

Haitian and other migrants from seeking asylum or other forms of protection in the United States, despite that they are fleeing war, violence, poverty, and climate change-fueled natural disasters.⁷⁸ Since February 1, amidst the unprecedented insecurity and instability, the Biden Administration has deported over 115 flights to Haiti, holding at least 10,500 people, the vast majority of them under Title 42.⁷⁹

The recent treatment of Haitians at the U.S.-Mexico border is just the latest manifestation of the anti-Black – and particularly anti-Haitian – history of U.S. immigration law and policy.⁸⁰ The U.S. Border Patrol has a history of institutional racism and violence.⁸¹ Further, as far back as 1978, when the U.S. government implemented the illegal rapid expulsion program, the United States blocked Haitians from reaching U.S. territory and rapidly removed those who entered without full process.⁸² Between 1981 and 1991, the U.S. government ‘returned’ over 25,000 Haitians to Haiti under the interdiction program.⁸³ ⁸⁴ U.S. immigration courts viewed Haitian asylum claims with “presumptive skepticism,”⁸⁵ and a discriminatory statute adopted in 1997 excluded Haitian asylum seekers from immigration relief.⁸⁶ This practice of denying protection to Haitian migrants has continued into recent years, including under the auspices of MPP and Title 42.

Impact of U.S. externalization on Indigenous migration from Mexico and Central America

The settler-imposed border is a site of extreme vulnerability for Indigenous migrants, where language access is a matter of life and death. In a form of erasure, Department of Homeland Security (DHS) data fails to capture the Indigenous identity of those apprehended or presenting themselves at the border, listing only country of origin. Efforts at identifying, let alone providing services for indigenous language speakers is virtually non-existent for those expelled under Title 42, and severely limited and deficient for those taken into custody, including unaccompanied minors. We look here at data on migrants from Guatemala on the assumption that the largest number of Indigenous migrants in recent years come from there.

In fiscal year 2021 (from October 2020 through September of 2021), 283,035 Guatemalans were detained or expelled by U.S. Customs and Border Protection (CBP). This represents 16.3% of the total

⁷⁸ Nicole Phillips et al, *The Invisible Wall: Title 42 and its Impacts on Haitian Migrants* (Mar. 2021), <https://www.quixote.org/wp-content/uploads/2021/03/The-Invisible-Wall.pdf>.

⁷⁹ Witness at the Border, *ICE Air Flights October 2021 and the Last 12 Months* (Nov 2021), https://static1.squarespace.com/static/5e221cacff87ba2d2833cf54/t/61885e51aeac3d346b925dc2/1636327005294/CE+Air+Oct+2021+_THCPDF.pdf.

⁸⁰ Haitian Bridge Alliance’s “[Report on 20th anniversary of the Durban Declaration and Programme of Action: Response to call for input by the UN’s Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance](#)”, dated August 16, 2021

⁸¹ American Immigration Council, *The Legacy of Racism within the U.S. Broder Patrol* (Feb. 2021), <https://www.americanimmigrationcouncil.org/research/legacy-racism-within-us-border-patrol>

⁸² Human Rights First. *Biden Administration’s Dangerous Haitian Expulsion Strategy Escalates the U.S. History of Illegal and Discriminatory Mistreatment of Haitians Seeking Safety in the United States*, (Sept. 2021), <https://www.humanrightsfirst.org/sites/default/files/BidenAdministrationDangerousHaitianExpulsionStrategy.pdf>

⁸³ Haitian Ctrs. Council, Inc. v. Sale, 823 F. Supp. 1028, 1034 (E.D.N.Y. 1993) https://www.splcenter.org/sites/default/files/documents/0600-002_10-27-2020_brief_of_haitian_bridge_alliance_institute_for_justice_democracy_in_haiti_i.pdf

⁸⁴ S. Priya Morley et al., *A Journey of Hope: Haitian Women’s Migration to Tapachula, Mexico* (2021). <https://cgrs.uchastings.edu/sites/default/files/A-Journey-of-Hope-Haitian-Womens-Migration-to%20-Tapachula.pdf>

⁸⁵ Deborah E. Anker, *Determining Asylum Claims in the U.S.: A Case Study on the Implementation of Legal Norms in an Unstructured Adjudicatory Environment*, 19 N.Y.U. Rev. L. & Soc. Change 433, 455 (1992).

⁸⁶ Elizabeth M. Iglesias, Identity, Democracy, Communicate Power, Inter/National Labor Rights and the Evolution of LatCrit Theory and Community, 53 U. Miami L. Rev. 575, 601 (1999)

number of 1,734,686 detentions and expulsions realized by CBP.⁸⁷ Of total CBP encounters at southwest border, 1,063,526 were Title 42 expulsions, including 173,616 Guatemalans.⁸⁸ Guatemalan nationals were disproportionately represented among the unaccompanied minor population. Of the 146,925 unaccompanied minors detained or expelled, 40% (58,778) were Guatemalan.

Indigenous Mayans represent between 40% (official government figure) to 60% (as claimed by Mayan organizations) of the population in Guatemala, living largely in the rural highlands. 83% of Indigenous people in rural areas live in poverty. These Mayan populations were subjected to state-sponsored genocide in the 1980s and are currently displaced by ongoing discrimination, violence and dispossession in the wake of extractivist industries in their territory.⁸⁹ Given these factors, Indigenous people clearly represent a majority of migrants from Guatemala. Amilcar Pop, Representative in the Central American Parliament and head of the Commission on Indigenous and Afro-Descendent Peoples stated in this hearing that they estimate 80% of Guatemalan migrants are Indigenous. When added to the Indigenous people likely present in the migrant streams from Mexico⁹⁰ and other Central American countries, Indigenous migrants at the U.S. border number in the hundreds of thousands.

Many Indigenous language speakers are reluctant to self-identify as Indigenous at the border and while in custody given their experience of racism and discrimination. Similarly, they are reluctant to request interpreters if agents speak to them in Spanish, believing that is what the authorities presume or want them to speak. When requests for interpreters in Mayan Indigenous languages are made to DHS, the response time can be weeks or even months, further discouraging individuals from requesting an interpreter and aggravating the harm when effective communication is needed in high stakes situations.

Separate surveys of migrant shelters on the Arizona border found that 43% and 30% of migrants interviewed were Indigenous language speakers from Guatemala.⁹¹ CIELO has begun entering detention centers and privately run shelters for unaccompanied minors in Texas and California and identified hundreds of indigenous language speakers, representing 30-40% of the population held in those facilities. There is no public data on the language access services, if any, being provided to Indigenous families and children at these facilities.

Settler state performance and Indigenous deaths

Insufficient interpretation and language access leads to increased vulnerability for Indigenous women and children in particular. Indigenous scholar Shannon Speed has documented through narrative testimonies how Indigenous women are more vulnerable to sexual assault in immigration detention

⁸⁷ *Southwest Land Border Encounters*, U.S. CUSTOMS & BORDER PROTECTION, <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters> (Last visited Nov. 4, 2021)

⁸⁸ *Id.*

⁸⁹ Sofia Menchú & José Alejandro García, *'I'm in despair': A Mother and Village Mourn Guatemalan Boy's Death in US*, THE OBSERVER (Dec. 29, 2018), <https://www.theguardian.com/world/2018/dec/29/felipe-gomez-alonzo-guatemala-boy-death-us-custody-home-village-mourns>.

⁹⁰ An element of the DHS data that requires further analysis is the spike in border encounters with Mexican nationals, more than doubling over the previous year (297,711 to 655,594), the vast majority of whom were Title 42 expulsions (582,537). Researchers have noted, however, increased out-migration from the heavily Indigenous state of Chiapas, and CIELO has also noted increased demand for Maya Tzotzil speakers from Chiapas.

⁹¹ *Indigenous Peoples' Rights to Exist, Self-Determination, Language and Due Process in Migration*, Indigenous Alliance without Borders & International Maya League (May 2020), https://issuu.com/mayanleague.org/docs/indigenous_peoples_rights_to_exist_self_determin

centers.⁹² A women's detention facility and a family detention facility in Texas were both the subjects of lawsuits alleging multiple cases of ongoing sexual abuse of women (2019:74-76).⁹³ For Indigenous women, their indigeneity and lack of language access render them invisible, and therefore easy targets for abusers. Because of the lack of language access, they are further limited in their ability to report such abuse.

More recently, the vulnerability of Indigenous children in state custody has come to light. The health, emotional and physical needs of these children go unattended due to failures in identification and language access. This no doubt played a role in the deaths while in custody of five Indigenous children in a span of 6 months from 2018-19.

In December 2018, seven-year-old Jakelin Caal and eight-year-old Felipe Gómez Alonzo died while in U.S. Border patrol custody. Both were traveling with their fathers. Jakelin and her father were native K'ekchi' speakers and Felipe and his father were native Chuj speakers from Guatemala. Jakelin's father reported that he informed Border Patrol agents that she was vomiting and sick when they were first apprehended, and they were not given anything to eat or drink in the holding facility. The Border Patrol alleged that he did not indicate she was sick until they boarded a bus the next morning to be transported and claimed he had signed a form during processing that his daughter was in good health. The form was in English. Jakelin was vomiting on the bus and had to be revived twice. After the 90-minute ride from the border to Lordsburg, NM she received medical attention, but later died. The cause was determined to be streptococcal sepsis, "found in her lungs, adrenal gland, liver and spleen," which spread rapidly and "led to multiple organ dysfunction and death."⁹⁴

Felipe similarly died of the flu complicated by a bacterial staph infection that led to sepsis.⁹⁵ He and his father had been in Border Patrol custody for six days. On the sixth day, December 24, 2018, he was under medical observation for 90 minutes when his fever spiked to 103. Medical staff diagnosed a common cold and fever, gave him amoxicillin and ibuprofen, and sent him back into custody. When he later vomited, Border Patrol alleged his father refused medical attention. In fact, later affidavits showed the father called Border Patrol agents to the cell where he told them his son was in pain and thought he was going to die. Three hours later, as his condition worsened, he was sent back to the hospital where he died.⁹⁶

At least three other Mayan Indigenous children died in custody in 2019.⁹⁷ Juan de León Gutierrez, 16 years old, died April 30 under the care of the Office of Refugee Resettlement (ORR, a division of the

⁹² Shannon Speed, *Incarcerated stories: Indigenous women migrants and violence in the settler-capitalist state*. UNC Press Books, 2019.

⁹³ *Id.*, 74-76.

⁹⁴ Amir Vera, *Autopsy Determines 7-year-old Guatemalan Girl died from Sepsis While in US Custody*, CNN (Updated 12:12 AM EDT, March 30, 2019), <https://www.cnn.com/2019/03/29/us/guatemala-jakelin-caal-maquin-autopsy>; <https://www.nytimes.com/2018/12/15/us/migrant-girl-border-patrol-jakelin.html>.

⁹⁵ Chris Boyette, Edith Bracho-Sanchez and Michelle Mendoza, *Guatemalan Boy Died of Flu and a Bacterial Infection While in US Custody*, CNN (April 2, 2019), <https://www.cnn.com/2019/04/02/us/guatemala-felipe-gomez-alonzo-autopsy#:~:text=Felipe%20G%C3%B3mez%20Alonzo%20died%20of.the%20Guatemalan%20Foreign%20Ministry%20said.&text=The%20boy%20died%20on%20Christmas.crossing%20in%20El%20Paso%2C%20Texas>.

⁹⁶ Adolfo Flores, *A Guatemalan Boy Who Died in US Custody Told His Father "I'm Going to Die"*, BUZZFEED NEWS (Updated April 5, 2020), <https://www.buzzfeednews.com/article/adolfoflores/guatemalan-immigrant-boy-death-border-patrol-report>.

⁹⁷ *Sign-on: Open Letter From Mayab' Scholars in Diaspora to the United States, Mexican, and Guatemalan Governments*, https://docs.google.com/forms/d/e/1FAIpQLSfWIVXR6QryalGkzz3DyVhCxPqxaEq15I7oh0HNZPi1dVL9w/view_form

Department of Health and Human Services) after officials at the detention facility noticed he was sick. He was Maya Ch'orti' and died of a brain infection caused by an untreated sinus infection.⁹⁸ Wilmer Josué Ramírez Vásquez, 2 ½ years old and also Maya Ch'orti', died on May 14 after being detained with his mother by Border Patrol in April. He was sent to a hospital where he was diagnosed with pneumonia and died after one month.⁹⁹ Carlos Gregorio Hernandez Vasquez, Maya Achi and 16 years old, died after spending a week in Border Patrol custody. While in custody, he was diagnosed with Influenza B, but was sent back into custody and given flu medication. He died while under observation on May 20.¹⁰⁰

Multiple factors contributed to the deaths of these children, many of them related to other human rights violations such as holding children in inhumane conditions and providing inadequate health screening and health care. But it is striking that all were Indigenous. There is little doubt that their indigeneity, through discrimination, denial, or lack of language access, intersected with the factors leading to their deaths. As one Indigenous language knowledge keeper for CIELO noted to us, “our Indigenous languages have been murdered and our knowledge destroyed.” These deaths are the real-life consequences of that reality. They are an expression of settler state performance at the border.

Institutional resistance to reform

On the issue of language access, and given the failures that led to these deaths, DHS has been making some institutional efforts to address the deficiencies with respect to Indigenous language speakers. These efforts are hampered by structural and bureaucratic limitations. For example, DHS only contracts with large, corporate interpreter services, rather than partnering with community-based interpreter organizations like CIELO. Conditions at the border, in detention centers and holding facilities, are already extreme in their remoteness, rendering encounters with Indigenous migrants primarily punitive and exclusionary. Border Patrol agents exhibit a racial bias towards Indigenous people, resulting in feelings of superiority and discriminatory behavior, erasure of Indigenous identity, and misclassification as Latinos, a problem universally encountered by the populations served by CIELO. Agents are not adequately trained to identify and assess Indigenous language needs. Interpreter services, when provided, often occur only further downstream in the process – for example when individuals appear in court – and are frequently conducted by phone. The erasure of Indigenous identity and lack of language access is particularly egregious under Title 42 expulsion policies, which offer no protections for Indigenous peoples' rights to identity and language access.

In August of 2019 and again in August of 2021 CIELO participated as subject matter experts in an Indigenous Language Roundtable sponsored by the DHS Office of Civil Rights and Civil Liberties and the DHS Language Access Working Group. Among other things, CIELO advocated for the DHS to fund community-based interpreter organizations and provide them with access to detention facilities and shelters to help identify Indigenous language speakers, inform them of their rights, and facilitate interpreter services.

⁹⁸Anna-Catherine Brigida, 'He Went Seeking Life But Found Death.' *How a Guatemalan Teen Fleeing Climate Change Ended Up Dying in a U.S. Detention Center*, TIME (May 13, 2019), <https://time.com/5587817/juan-de-leon-gutierrez-guatemalan-migrant/#:~:text=Doctors%20detected%20an%20infection%20in,30%2C%20de%20Le%C3%B3n%20Guti%C3%A9rrez%20died.>

⁹⁹ Robert Moore and Maria Sacchetti, *Toddler who died after being taken into custody at the Mexican border suffered multiple diseases*, WASHINGTON POST (July 2, 2019), https://www.washingtonpost.com/immigration/toddler-who-died-after-being-taken-into-custody-at-the-mexican-border-suffered-multiple-diseases/2019/07/02/5fda6674-9d03-11e9-9ed4-c9089972ad5a_story.html

¹⁰⁰ Daniella Silva, *16-year-old migrant boy dies in U.S. Custody, 5th Child to Die Since December*, NBC NEWS (May 20, 2019), [https://www.nbcnews.com/news/latino/16-year-old-migrant-boy-dies-u-s-custody-5th-n1007751?cid=related.](https://www.nbcnews.com/news/latino/16-year-old-migrant-boy-dies-u-s-custody-5th-n1007751?cid=related)

DHS and their contract shelters and detention facilities have only recently taken initial steps to employ Indigenous language rights organizations like CIELO to identify Indigenous language speakers in detention. As noted, in the past year CIELO has visited multiple detention facilities for children and families and identified 30% or more of those detained as Indigenous language speakers. CIELO is unaware, however, of the ongoing status of these Indigenous migrants, as they have not been contracted to provide ongoing interpreter services. There is no adequate monitoring of the ongoing conditions and treatment of Indigenous migrants and their lack of access to interpreter services, know-your-rights education, and effective legal representation. Given their vulnerability and numbers in the U.S. immigration detention system, Indigenous migrants at the southwest border represent an ongoing and grave human rights concern.

Conclusion and Recommendations

As noted by Guerline Jozef of Haitian Bridge Alliance at the hearing, Black people in mobility have no protections, and as Odilia Romero of CIELO described, Indigenous peoples' languages are murdered at the border, resulting in the erasure of their identity and stripping of their rights. These experiences are only the latest iterations –within the region's crisis of human mobility—of deeply ingrained structures of anti-Black racism and white settler colonialism, structures which also extend beyond the borders of the United States. In addition to the troubling externalization of the U.S. border, the Commission should also consider the persistence and resurgence of these ugly impulses in the region.¹⁰¹ They are present as well in the transnational economic priorities driven by extractivist industries. As noted by Odilia Romero and Representative Pop, these forces are driving the dispossession of Indigenous people, leading to human rights violations in their territories and outmigration to the United States. Similarly, the effects of climate change, for which the industrialized world bears primary responsibility, are producing waves of human mobility in response to extreme climatic events and steady streams of migrants due to the erosion of sustainable livelihoods.

The migrant streams themselves are a direct product of the imposition of U.S. geopolitical priorities that override humanitarian and human rights concerns. Historically, the United States has been willing to accept authoritarian regimes that are willing partners of United States geopolitical interests in maintaining hegemony in the region, and domestic policy interests in stemming the migrant flow and fighting the drug war. These overriding policy interests mute or undermine efforts aimed at building respect for human rights, the rule of law and rooting out corruption. In the economic sphere, the general alignment of U.S. foreign policy with transnational economic priorities stymies any hope for sustainable, equitable development and reproduces the conditions of poverty and insecurity which force people to migrate. In this context, the state response is to punish and deter human mobility. The evolving technologies of state control, including the externalization and militarization of the border, the criminalization and racialization of migrants, and the heightened use of biometrics and technological surveillance tools against persons in mobility are all features of the humanitarian and human rights crisis of human mobility in the region.

These factors—persistent state logics of dispossession, Indigenous erasure and anti-Black racism; the evolving technologies of state control; the impact of policies serving geopolitical and transnational economic interests rather than the needs of impacted communities; the rise of popular nationalisms, growing inequality and insecurity; and the impact climate change—all demand an evolving framework of international human rights standards and mechanisms to meet the challenges of the moment.

¹⁰¹ A/HRC/38/52, Report of the United Nations Special Rapporteur on contemporary forms of racism: Racial discrimination in the context of laws, policies and practices concerning citizenship, nationality and immigration (2018, 38th session HRC): https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/38/52

We applaud the vision of Commissioner Macauley suggesting the need for a World Conference on human mobility given the current and foreseeable future of the crisis. A first step, within the reach and mandate of the Commission, would be to promote a regional conference and the formation of a permanent working group on human mobility. Drawing from experiences of similar working groups on the rights of Indigenous peoples, a working group on human mobility should prioritize and include members of the impacted communities and their organizations, as well as experts on the thematic area, and work towards the draft of a Declaration on the Rights of Persons in Mobility. Participation of impacted communities is key, because the evolving normative human rights framework emerges from the human rights horizons of these communities. We need to learn from their experiences, understand what produced the harms, and work to develop protective mechanisms to ensure non-repetition.

Similarly, we also urge the formation of a Special Follow-Up Mechanism on the Protection of Persons in Human Mobility in the United States, Mexico and the Northern Central America to monitor the human rights situation of persons in human mobility and the conduct of these states. In this regard, we further urge to the Commission to:

- Prepare a report addressing the rise regionally in policies and technologies designed to deter and punish human mobility, externalizing the border and border enforcement, and reproducing patterns of anti-Black racism and Indigenous erasure.
- Work with states in the region and with the United States in particular to end practices of erasure of Indigenous identity and discrimination against Indigenous migrants and to provide interpreters in Indigenous languages to asylum seekers.
- Work with states in the region and with the United States in particular to end practices of racial and intersectional discrimination against Haitian, Black, and other Afro-descendant migrants.
- Call on States of the region, especially the governments of the United States, Mexico and Guatemala, to immediately cease the expulsion of persons without the opportunity to request protection, as occurs under Title 42, as well as chain refoulement and any similar practices that deny access to asylum systems.
- Work with the states in the region to provide Haitians with access to systems of protection, without discrimination, including fair, individualized evaluations for refugee status, and other legal status through legal residency and with appropriate safeguards, in line with the 1984 Cartagena Declaration.

Given the pervasive role of the policies and practices of the United States, their implication in the conditions giving rise to human mobility, the punishment and deterrence of human mobility, and the inhumane treatment of migrants at the border and in the U.S. immigration system, we urge the Commission to find ways of monitoring and holding the United States accountable for its role in the degradation of the human rights and dignity of people in mobility. Specifically, we urge the Commission to:

- Ask the United States to promptly identify and keep accurate data on Indigenous encounters at the border to be used to ensure proper monitoring of the rights of Indigenous people in migration.
- Ask the United States to contract with Indigenous-led organizations to provide Indigenous language interpretation and culturally appropriate services to minors in detention and facilitate their prompt release to the custody of family members and sponsors.
- Ask the United States to provide funding for legal services and interpreters for Indigenous and Haitian migrants seeking asylum.
- Call on the United States to immediately halt removal and deportation flights to Haiti, allow Haitian and other migrants to exercise their right to seek asylum or other forms of protection under

international law, which is being deprived of them due to the U.S. government's use of Title 42, chain refoulement, and other similar practices that deny access to asylum and protection.

- Call on the United States to provide urgent humanitarian assistance to Haitian migrants in immigration proceedings in the United States and to Haitian migrants and their families who were recently deported to Haiti.
- Send a communication to the United States regarding Inter-American human rights standards as applied to Title 42 expulsions prior to the scheduled hearing in the U.S. Court of Appeals for the D.C. Circuit in *Gimena Huisha-Huisha et al. v. Mayorkis et al.*
- Send a communication to the United States regarding Inter-American human rights standards that apply to the treatment of migrants entering the United States, in transit, and within the U.S. immigration system.

Please do not hesitate to ask us for follow up information regarding this submission and our presentations at the hearing.

Respectfully yours,



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