

TESTIMONY OF
MICHAEL BREEN
PRESIDENT AND CEO, HUMAN RIGHTS FIRST

HEARING ENTITLED: “KIDS IN CAGES: INHUMANE TREATMENT AT THE
BORDER”

BEFORE THE
HOUSE OF REPRESENTATIVES
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEE ON CIVIL RIGHTS AND CIVIL LIBERTIES

WASHINGTON, DC, JULY 10, 2019

Chairman Raskin, Ranking Member Roy, and distinguished members of the Subcommittee: Thank you for this opportunity to testify on one of the most urgent human rights problems in the United States today: our government's treatment of refugees and migrants.

Human Rights First is an independent, non-profit advocacy organization that challenges America to live up to its ideals. For more than four decades Human Rights First has pressed the United States to take a leading role in promoting and defending human rights. Our organization was founded in 1978, at a time when the United States was jailing and seeking to deport refugees fleeing repression in Haiti, Central America, and the USSR, among other countries. We worked with members of Congress to pass the landmark 1980 Refugee Act, which established a legal framework for refugee protection. In our advocacy, we partner with religious organizations, former military leaders, and other veterans, and we recruit and train lawyers to provide *pro bono* legal representation to asylum seekers. Over the years, we've helped thousands receive protection.

Last summer, it was the Trump Administration's policy of family separation that saddened and horrified many Americans. This summer, it is the appalling treatment of men, women and children detained in Customs and Border Patrol (CBP) facilities that is rightfully causing a furor. Refugees and other migrants have endured numerous other injustices and abuses that have gone largely unnoticed, or under-noticed.

Since 2013, large numbers of refugees from the Northern Triangle in Central America—including many unaccompanied children and mothers with young children—have sought refuge in the United States. The persistent suffering and disorder at the border aren't, however, the inevitable result of this displacement. Rather, they are the direct, predictable—and indeed predicted—result of the administration's actions.

The Trump Administration has:

- refused to release asylum seekers from detention, even when they meet parole requirements, and attempted to bar them from bond hearings. As a result, immigration jails are filled with people who don't require detention while Trump Administration officials disingenuously claim there is no room to transfer people from border facilities and clamor for even more detention beds.
- deliberately reduced asylum processing at ports of entry, pushing some to make dangerous, sometimes deadly crossings.
- returned asylum seekers to Mexico, leaving tens of thousands stranded in peril.
- manipulated asylum law and processes to rig the system against asylum seekers and increase immigration court backlogs.
- cut aid to programs designed to prevent displacement in Honduras, Guatemala, and El Salvador, and turned a blind eye to the problems pushing people to flee.

There is indeed a crisis at the border, albeit one that is substantially self-inflicted. It is a human rights and humanitarian crisis, and our government could and should resolve it with principled leadership that upholds America's laws and ideals. This is not a problem that money alone can address. A major shift in policies is needed. The roadmap is clear: restore orderly asylum processing at ports of entry; strengthen the asylum adjudication system; treat migrants humanely at the border; use case management, parole, and bond assessments to manage cases; alleviate the problems pushing people to flee with targeted aid and diplomacy; and support refugee protection in other countries.

Skyrocketing detention causes suffering, wastes resources, and exacerbates overcrowding in border facilities.

Immigration detention has skyrocketed, with an unprecedented [53,000](#) migrants locked up as of June 29. This surge follows the president's January 25, 2017 [executive order](#) calling for migrants to be held for the duration of their removal proceedings, even if they meet the legal criteria for release. Not only does this massive overuse of detention violate the Constitution, U.S. treaty obligations, and the Department of Homeland Security's (DHS's) own policies; it's also a waste of resources that ignores proven alternatives.

Since January 2017, Immigration and Customs Enforcement (ICE) has denied parole to many asylum seekers who initially sought protection at ports of entry. ICE's [parole directive](#) details the criteria for assessing asylum seekers for potential release; various field offices have denied parole to asylum seekers who meet them. ICE's arbitrary parole denials are the subject of two class-action lawsuits, including one initiated by Human Rights First and other organizations. In [Damus v. Nielsen](#), a federal court in Washington, D.C. required ICE to follow its parole directive, ordering a case-by-case review to assess whether asylum seekers should be released.

In addition, Attorney General Barr sought in April to deny asylum seekers who seek protection after crossing the border their right to a custody and bond determination hearing before an immigration court. Like many of the administration's punitive and unlawful policies, this one was [blocked](#) by a federal judge, in a July 2, 2019 ruling.

At the same time, the Trump Administration continues its campaign to eliminate [safeguards](#) that prevent children and families from being jailed for longer than a few weeks, even though numerous experts, including the [American Academy of Pediatrics](#), warn that detention harms children's health and development.

There are effective alternatives to detention. The administration is shunning them and pushing its [false claim](#) that over 90 percent of asylum seekers skip their hearings. In reality, [89.4 percent](#) of those who applied for asylum complied with their hearing obligations in FY2018. Further, programs like the Family Case Management Program, launched by DHS in 2016, are highly [effective](#). That program produced a 99 percent appearance rate for ICE check-ins and one hundred percent attendance for hearings. It's also incredibly cost effective. For a family of three, ICE detention costs up to \$900 per day, while Family Case Management services cost only \$36 per day. Despite DHS's own

advisory committee's [recommendation](#) to expand community-based case management, the administration ended the Family Case Management Program in June 2017.

Orchestrated bottlenecks at ports of entry create disorder and push asylum seekers to cross the border elsewhere.

In 2018, the administration expanded border-wide its policy of illegally turning away people seeking refuge at ports of entry, forcing them to wait for months before being allowed to approach a port of entry to seek protection. CBP has attempted to justify these turn-backs, which it dubbed “metering,” claiming they are the result of limited capacity at ports of entry. In fact, CBP has purposely reduced and capped the number of people it allows to request asylum. The Trump Administration was processing about half as many asylum seekers and migrants at ports of entry as the prior administration did in October 2016, according to a February 2019 [Cato Institute analysis](#).

[CBP's own statistics](#)—as well as the DHS's [Inspector General's Office](#) and CBP officials interviewed by the OIG—confirm that metering pushes some asylum seekers to undertake dangerous crossings away from ports of entry. Indeed, the recent [drowning](#) of Óscar Alberto Martínez Ramírez and his 23-month-old daughter, Angie Valeria, occurred in the wake of the massive effort to prevent refugees and migrants from presenting themselves at ports of entry.

Stranding asylum seekers in Mexico under the Migrant Protection Protocols creates chaos at the border and violates U.S. asylum law and due process.

In January 2019, the administration launched its perversely named “Migrant Protection Protocols” ([MPP](#)), by which CBP returns asylum seekers to Mexico while their cases are pending in U.S. immigration courts. As of early July, the government had returned 16,000 people who sought asylum at official ports of entry or crossed between ports of entry. While Central Americans were the initial target, the government has also used the policy to return Cuban asylum seekers and others to Mexico.

Although asylum seekers subject to MPP are given screening interviews to assess risks of harm in Mexico, asylum officers have [revealed](#) that they are pressured to turn them away and denounced these screenings as a farce. In Mexico, migrant shelters are stretched beyond capacity and, in any case, don't provide sufficient protection against the dangers facing migrants. Asylum seekers returned to Mexico have been killed, kidnapped, raped, and robbed. In June, for instance, a Honduran woman [returned](#) to Ciudad Juárez under MPP was kidnapped by Mexican federal police and repeatedly sexually assaulted.

Returned asylum seekers also face the risk of deportation back into the horror they fled. In an [amicus brief](#) in support of the lawsuit challenging the legality of MPP, the asylum officers' union called it a violation of U.S. domestic asylum law and the non-refoulement obligation enshrined in the 1951 Convention Relating to the Status of Refugees and its Protocol.

Despite the evident dangers and legal problems, the administration announced in June 2019 that it plans to [implement](#) the policy across the entire border.

Manipulating asylum law and court processes harms asylum seekers and contributes to immigration court backlogs.

The administration has taken steps to block refugees from eligibility for asylum, pressure adjudicators to rule against asylum seekers, and reduce both prosecutorial discretion and judicial independence in immigration courts. For example, in his ruling using his “certification” authority in *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018), then-Attorney General Jeff Sessions sought to severely restrict the ability of domestic violence survivors and victims of deadly criminal organizations to receive asylum. Other harmful steps include a March 2017 [change](#) that gives political appointees greater power in selecting immigration judges, the [removal](#) of particular judges from closely-watched cases, and a series of moves that rush adjudications and thwart access to legal representation, including the imposition of case closing quotas and limits on the authority of judges to grant continuances.

Human Rights First’s [analysis](#) of immigration court data from 2010-2018 found that, in the wake of these changes, asylum seekers from Central America were increasingly and disproportionately denied asylum.

Further, the Administration has sought to manipulate the credible fear process. It has [directed](#) asylum officers to make blanket negative determinations for certain claims related to gang violence and domestic violence, [attempted](#) to alter the credible fear standards set by Congress through the training of asylum officers, and even [replaced](#) asylum officers with Border Patrol agents to conduct fear screening interviews—despite the fact that DHS was aware that thousands of agents belonged to an online group sharing derogatory and biased comments about asylum seekers and migrants.

Trump Administration policies are also making court backlogs even worse. They have, for example, required refugees to pursue unnecessary appeals and remands, [restricted](#) the authority of immigration judges to manage their dockets, and added hundreds of thousands of cases to the existing backlog, according to an [analysis](#) by the Transactional Records Access Clearinghouse (TRAC).

The Trump Administration’s regional policies are exacerbating displacement

Instead of leveraging diplomacy and effective aid programs to address the abuses and deprivations pushing people to flee Central America, the Trump Administration has [cut](#) critical initiatives and failed to support crucial anti-corruption mechanisms that build the capacity of these countries to protect the rights of their citizens. Just last month, the administration [froze](#) hundreds of millions of dollars in assistance that Congress allocated for the region. In April 2019, five former commanders of U.S. Southern Command [warned](#) that “[c]utting aid to the region will only increase the drivers [that cause people to leave] and will be even more costly to deal with on our border.” Calling for increased

investment in development and diplomacy, they stressed that “[i]mproving conditions in Honduras, Guatemala, and El Salvador is a critical way to address the root causes of migration and prevent the humanitarian crisis at our border.”

Rather than cutting assistance, the United States [should](#) support anti-corruption mechanisms and human rights defenders in these countries, significantly increase the capacity of community-based initiatives to reduce violence and impunity for crimes, and restore programs—[cut](#) by the administration in July 2017—that helped Guatemalan farmers adapt to climate change through diversification of crops and other strategies.

CONCLUSION

The Trump Administration uses its own dysfunction on the border as a pretext for reducing protections for refugees and migrants. In reality, it’s the administration wide-ranging attack on these protections that is causing chaos. Whether by keeping people unnecessarily detained, restricting processing at ports of entry, stranding asylum seekers in Mexico, manipulating asylum law, or undermining efforts to solve the problems forcing people to flee, the administration is exacerbating a crisis it could, if it wanted to, resolve by adhering to American laws and ideals.

Recommendations

Many of our recommendations are detailed in the report: [“Protecting Refugees and Restoring Order: Real Solutions to the Humanitarian Crisis,”](#) issued by Human Rights First and fifteen other organizations with refugee protection and regional expertise in June 2019.

Human Rights First’s recommendations for Congress include:

- End the unnecessary and unjust detention of asylum seekers for the duration of their proceedings. Mandate that the government contract with community-based non-profits organization to run case management support programs, which have proven to be both extremely effective and cost-effective.
- Legislate access to custody (bond) hearings for all asylum seekers, including those who seek protection at ports of entry, and compliance with parole policies so that ICE releases qualifying asylum seekers from detention. Provide oversight to ensure compliance with the July 2, 2019 district court ruling requiring the government to conduct bond eligibility hearings within seven days for all asylum seekers who passed credible fear interviews after crossing into the country.
- Conduct intensive oversight of Trump Administration violations of U.S. asylum laws at the border. In doing so, Congress should press the administration to restore asylum processing at ports of entry, end metering, and terminate the Migrant Protection Protocols, which have exacerbated backups at ports as CBP

agents repeatedly process, interview, detain, and return asylum seekers to Mexico, where many have been victims of violence.

- Provide oversight and legislate compliance with the Flores Settlement Agreement and other policies and legal obligations that limit the number of days children and adult migrants are to be held in CBP facilities and mandate standards of care for migrants in border facilities. Press ICE to comply with Flores and detention standards and provide oversight on the Office of Refugee Resettlement to ensure that unaccompanied children are promptly put in the care of family members and not held in custody for improperly long periods of time.
- Upgrade the immigration adjudication system to ensure that asylum and other claims are fairly and timely adjudicated while upholding due process by reinstating a non-politicized hiring process for immigration judges, pressing DOJ and USCIS to refrain from interference in the adjudication of cases at the asylum offices and immigration courts and working to establish immigration courts that are independent of DOJ.
- Continue to fund the humanitarian needs of arriving refugees managed through non-governmental organizations, faith-based, and other shelters in the United States. Expand the Legal Orientation Program, including the non-detained pilot to ensure that released asylum seekers receive information about their rights and obligations.
- Support regional solutions through legislation and oversight. Undertake a targeted strategy— that leverages both diplomacy and aid—to address root causes of displacement in Central America, focusing on programs that reduce violence, combat corruption, strengthen rule of law, decrease gang and gender-based violence, protect vulnerable populations, mitigate climate displacement and promote sustainable economic development. Launch a major regional initiative to expand the capacity of Mexico and other countries to provide asylum to and otherwise protect refugees. While pursuing these initiatives, the United States should uphold its own asylum laws, setting a strong example for other countries around the world that host the vast majority of the world’s refugees.