

Case No. P-652-16

**BEFORE THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
OF THE ORGANIZATION OF AMERICAN STATES**

* * * * *

PETITION FOR INTERIM AND PERMANENT MEASURES REGARDING SYSTEMATIC VIOLATIONS OF THE AMERICAN CONVENTION
ON HUMAN RIGHTS AND OTHER INTERNATIONAL COVENANTS
AGAINST CENTRAL AMERICAN MIGRANTS IN MEXICO

Submitted on behalf of petitioners

Adolescentes en el Camino
AI Justice
Alianza Americas
Atlas: DIY
Bartimaeus Cooperative Ministries
Cal-Pac Immigration Task Force of the United Methodist Church
Churches for Action
Casa de Esperanza
Center for Human Rights & Constitutional Law
Central American Resource Center, Los Angeles
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Clergy and Laity United for Economic Justice
Conversations With Friends
Estancia del Migrante González y Martínez Farmworker Association of Florida, Inc.
Florida Immigrant Coalition
Friends of Broward Detainees
Immigrant Defenders Law Center
Immigration Counseling Service

Interfaith Communities United for Justice and Peace
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La Frontera Ministries International Inc.
La Raza Centro Legal
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against

United States of America and United Mexican States

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I INTRODUCTION

This petition is directed against the governments of the United States of America (“United States”) and the United Mexican States (“Mexico”). Petitioners pray this honorable Commission’s protection for thousands of migrants fleeing horrific violence in Central America’s “Northern Triangle”—the states of El Salvador, Honduras and Guatemala—whom the United States and Mexico are interdicting and summarily deporting to jurisdictions in which there is a clear and present danger they will suffer persecution, grave bodily injury, or death.

There is no credible doubt that many Central Americans now entering Mexico do so to escape endemic violence in the Northern Triangle. Reports indicate that in 2015, the death toll in the three Northern Triangle states was 17,500;¹ world-wide, more died only in Iraq, Afghanistan, and Syria, all areas undergoing large scale armed conflict.² The Northern Triangle death toll in 2015 exceeded that of all four West African countries struggling with the Boko

¹ Northern Triangle homicides for 2015 are reported at *Central America’s violent Northern Triangle registers 17,422 homicides in 2015*, THE TICO TIMES NEWS, January 5, 2016, available at www.ticotimes.net/2016/01/05/central-americas-violent-northern-triangle-registers-17422-homicides-in-2015 (last visited March 20, 2016).

² Homicide rates for Afghanistan are reported in Sayed Sharif Amiri, *Civilian Casualties Up as Security Operations Drop Report*, TOLO NEWS, August 4, 2015, www.tolonews.com/en/afghanistan/20743-civilian-casualties-up-as-security-operations-drop-report (last checked March 20, 2016); and Shakeela Ibrahimkhil, *Civilian Casualties Increase in December Against Previous Month*, TOLO NEWS, January 8, 2016, www.tolonews.com/en/afghanistan/23200-civilian-casualties-increase-in-december-against-previous-month- (last checked March 20, 2016).

Syrian homicide rates, as compiled by the Britain-based Syrian Observatory for Human Rights, are reported at www.syriahr.com/en/?p=41853 (last checked March 20, 2016).

U.N. casualty rates for Iraq are available at www.uniraq.org/index.php?option=com_k2&view=itemlist&layout=category&task=category&id=159&Itemid=633&lang=en (last checked March 20, 2016).

Haram insurgency,³ as well as that in Somalia, Libya, and South Sudan. *Ongoing Migration from Central America: An Examination of FY2015 Apprehensions: Hearing Before the S. Comm. on Homeland Security and Governmental Affairs*, 114th Cong., October 21, 2015 (testimony of Dr. Kevin Casas Zamora), Exhibit 46, at 6, www.hsgac.senate.gov/hearings/ongoing-migration-from-central-america-an-examination-of-fy2015-apprehensions (last visited March 20, 2016) (hereafter *Casas Zamora Testimony*). This widespread and escalating violence occurred in a compact region the size of the state of Oregon, with a population of under 30 million. IGNATIAN SOLIDARITY NETWORK, *The Rising Death Toll in the Northern Triangle of Central America*, 2014, ignatiansolidarity.net/wp-content/uploads/2014/10/85.pdf (last visited April 2, 2016). To put this endemic violence into perspective, Honduras alone had more homicides than occurred in the combined 28 states of the European Union in all of 2014. *Casas Zamora Testimony, supra*, Exhibit 46, at 6.⁴

Tragically, women and children bear much of the brunt of this violence. For the last six years, the Northern Triangle countries have ranked among the world's top four countries in femicide. SECRETARIAT OF GENEVA CONVENTION ON ARMED VIOLENCE AND DEVELOPMENT, *Global Burden of Armed Violence 2015: Every Body Counts*, May 8, 2015, Exhibit 49, at 94,

³ Homicides in West Africa associated with Boko Haram appear in ARMED CONFLICT LOCATION & EVENT DATA PROJECT, *Conflict Trends No. 44: Real-Time Analysis of African Political Violence*, December 2015, www.acleddata.com/wp-content/uploads/2015/12/ACLED_Conflict-Trends-Report-No.44-December-2015_pdf.pdf (last checked March 20, 2016).

⁴ As bad as national homicide rates are, subnational rates—for example those in municipalities in El Salvador's central departments of Cabañas, Cuscatlán, and La Paz—are often even worse. See generally THE WILSON CENTER, *Crime and Violence in Central America's Northern Triangle* (2015), Exhibit 47, at 250, 256-58 [hereafter *Crime and Violence in Central America's Northern Triangle*] (“[S]ome municipalities exhibit homicide rates well above 100 [per 100,000 inhabitants]”).

www.genevadeclaration.org/en/measurability/global-burden-of-armed-violence/gbav-2015/chapter-3.html (last visited March 21, 2016).

El Salvador and Guatemala have the highest rates of child homicides in the world. UNICEF, *Hidden in Plain Sight: A statistical analysis of violence against children*, September 3, 2014, Exhibit 50, at 36, www.unicef.org/publications/index_74865.html (last visited March 21, 2016).

The United Nations High Commissioner on Refugees has accordingly designated these populations—women and children—as particularly needful of international protection. UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES [hereafter UNHCR], *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection* (2014), Exhibit 17, www.unhcrwashington.org/children (last visited April 7, 2016) [hereinafter “*Children on the Run*”]; UNHCR, *Women on the Run, First-Hand Accounts of Refugees Fleeing El Salvador, Guatemala, Honduras, and Mexico* (2015), Exhibit 16, www.unhcr.org/5630f24c6.html (last visited April 7, 2016) [hereinafter *Women on the Run*].

Yet in a markedly pitiless response to this tragedy, the governments of the United States and Mexico, in or around June of 2014, agreed that Mexico, with financial, material and technical support from the United States, including millions provided under the \$2.3 billion Merida Initiative, would exponentially increase the interdiction of migrants fleeing the Northern Triangle so as to prevent them from seeking refuge in the United States.

CONGRESSIONAL RESEARCH SERVICE, *Mexico’s Recent Immigration Enforcement Efforts*, March 9, 2016, Exhibit 18, at 1 (hereafter *Mexico’s Recent Enforcement Efforts*).

Since then, Mexico, under an enigmatic program known as the *Plan Frontera Sur* (“PFS”), has increased deportations to the Northern Triangle by 71 percent. Washington Office on Latin America (WOLA), *et al.*, *An Uncertain Path: Justice for Crimes and Human Rights Violations against Migrants and Refugees in Mexico*, November 2015, Exhibit 20, at 8 (“*An Uncertain Path*”); the country now detains and departs more Central Americans than does the United States. WASHINGTON OFFICE ON LATIN AMERICA (WOLA), *Mexico Now Detains More Central American Migrants Than the United States*, June 11, 2015, www.wola.org/news/mexico_now_detains_more_central_american_migrants_than_the_united_states (last visited March 21, 2016).

Even before the recent intensification of interdictions, this Commission voiced grave concerns over Mexico’s treatment of migrants and refugees. In 2013 the Commission noted that violations of international law against migrants and refugees transiting Mexico are commonplace. INTER-AMERICAN COMMISSION ON HUMAN RIGHTS (IACHR), *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*, OEA/Ser.L/V/II, Doc. 48/13, December 30, 2013 (hereafter *Human Rights of Migrants in Mexico*).

All available evidence indicates that Mexico’s violations of human rights have only increased in lock-step with the expanding number of Northern Triangle migrants it interdicts at the behest of and with the support of the United States. In sum, Mexico and the United States are now systematically denying Northern Triangle migrants any meaningful access to international protection no matter how compelling their need and summarily deporting thousands to jurisdictions in which they face a clear probability of suffering violence or death.

The means by which the respondents carry out these mass deportations are myriad, but fall into three basic categories:

First, the respondent governments create and condone an environment of hyper-violence and impunity in which upwards of 90 percent of Central American migrants are raped, robbed, or assaulted—often multiple times—and even murdered, as the price for seeking refuge from even greater dangers in the Northern Triangle. Not only are the unchecked crime and violence targeting Central American migrants themselves clear human rights violations, these conditions of hyper-violence and impunity, whether by design or countenance, powerfully deter qualified Central Americans from seeking the international protection Mexico and the United States are legally bound to confer.

Second, respondents systematically detain interdicted Central Americans for howsoever long as it may take to adjudicate asylum claims. The evidence shows that that Mexico almost never releases Central American asylum-seekers, but instead consigns them to “migration stations” for the duration of their claims. This mass detention of asylum-seekers—even under humane and sanitary conditions—clearly violates international law. Yet migrants report that conditions in detention are far from ideal: overcrowding, poor sanitation, substandard food, and mistreatment discourage all but the most stalwart refugees from enduring confinement long enough to see their protection claims decided.

When these first two mechanisms fail, a third component of the PFS delivers a *coup de grâce*: as will be seen below, respondents systematically deny Central American migrants any semblance of a fair procedure by which they may prove their eligibility for protection.

Much like a three-headed Cerberus, the three components of respondents' interdiction program prevent all but an insignificant number of Central American from securing refuge in Mexico, no matter how compelling their need. As will be seen, Mexico's own statistics reveal that persons fleeing the Northern Triangle have a 0.6 percent chance of winning asylum in Mexico, odds that pale in comparison with the virtual certainty of being assaulted, raped, or murdered.

In sum, there is little question that respondents' interdiction campaign violates multiple instruments and principles of international law. It is also a deeply flawed response to a humanitarian crisis, as Pope Francis recently reminded the world:

We cannot deny the humanitarian crisis which in recent years has meant migration for thousands of people, whether by train or highway or on foot, crossing hundreds of kilometres through mountains, deserts and inhospitable zones. The human tragedy that is forced migration is a global phenomenon today. This crisis which can be measured in numbers and statistics, we want instead to measure with names, stories, families.

They are the brothers and sisters of those expelled by poverty and violence, by drug trafficking and criminal organizations. Being faced with so many legal vacuums, they get caught up in a web that ensnares and always destroys the poorest. Not only do they suffer poverty but they must also endure these forms of violence. Injustice is radicalized in the young; they are "cannon fodder", persecuted and threatened when they try to flee the spiral of violence and the hell of drugs, not to mention the tragic predicament of the many women whose lives have been unjustly taken.

Pope Francis, *Address in Ciudad Juarez, Mexico on the Migration Crisis*, February 18, 2016

(emphasis added).

Sadly, Francis's plea, along with those of countless migrants themselves, has fallen on deaf ears in both the United States and Mexico. This Commission, therefore, is Northern Triangle refugees' last real hope of securing the protections international law promises those fleeing violence and persecution.

The evidence and law supporting the Commission’s granting such relief are overwhelming.

II THE INSTANT PETITION MEETS ALL REQUIREMENTS FOR THIS COMMISSION’S CONSIDERATION.

A Petitioners meet Article 23 requirements.

Pursuant to Article 23, “[a]ny person or group of persons or nongovernmental entity legally recognized in one or more of the Member States of the OAS may submit petitions to the Commission, on their behalf or on behalf of third persons, concerning alleged violations of a human right...” All petitioners meet this requirement.

The following petitioning non-governmental organizations are recognized in the United States: AI Justice, Alianza Americas, Atlas: DIY, Bartimaeus Cooperative Ministries, Cal-Pac Immigration Task Force of the United Methodist Church, Casa de Esperanza, Center for Human Rights & Constitutional Law, Central American Resource Center, Los Angeles, Central American Resource Center, Washington, DC, Churches for Action, Clergy and Laity United for Economic Justice, Conversations With Friends, Farmworker Association of Florida, Inc., Florida Immigrant Coalition, Friends of Broward Detainees, Immigrant Defenders Law Center, Immigration Counseling Service, Interfaith Communities United for Justice and Peace, Justice and Compassion Ministries of the United Methodist Church Cal-Pac Conference, La Frontera Ministries International Inc., La Raza Centro Legal, National Immigration Project of the National Lawyers Guild, North Hills United Methodist Church Mission, Presbytery of the Pacific, Program Group on Global Partnership of the Episcopal Diocese of Los Angeles, Red Mexicana de Lideres y Organizaciones Migrantes, Safe Passage Project of the New York Law School, School of the

Americas Watch, Sisters of Mercy West Midwest Justice Team, The Advocates for Human Rights, and USC Gould School of Law International Human Rights Clinic.

The following petitioning non-governmental organizations are recognized in Mexico: Adolescentes en el Camino, Estancia del Migrante González y Martínez, La 72 Hogar-Refugio, and Movimiento Migrante Mesoamericano.

The following individual petitioners are persons within the meaning of Article 23.⁵

Jesus Castro, 20 years old, is from La Ceiba, Honduras, and first fled gang violence when he was 14 years old. Declaration of Jesus Castro, January 25, 2016, Exhibit 27 [hereinafter Jesus Castro]. In Honduras, he lived on the border between two gang territories. Fleeing death threats and gang recruitment, he became an internally displaced person in San Pedro Sula, Honduras in 2010. In 2012, the gangs in San Pedro Sula threatened him and almost killed him.

⁵ The following faith leaders, though not falling within the four corners of Article 23, respectfully wish advise the Commission that they endorse the instant petition: The Right Reverend J. Jon Bruno, Bishop, Episcopal Diocese of Los Angeles; Rev. David K. Farley, Director of Justice and Compassion Ministries, United Methodist Church, Cal-Pac Conference; Rev. Allison Mark, Young Clergy Initiative, Cal-Pac Annual Conference & Claremont School of Theology; Joy Prim, Chair Cal-Pac Taskforce, Philippines; Victor Cyrus-Franklin, Associate, Holman United Methodist Church; Blanca Alcántara-Hershey, Coordinator, "You Are Not Alone" Migrant Children's Program, California-Pacific Conference, United Methodist Church; Rev. Jim Conn, Retired United Methodist Minister; The Rev. Francisco J. Garcia, Jr., Priest of Holy Faith Episcopal Church Inglewood, CA; Rev. Gary Bernard Williams, Pastor of Faith UMC and Hamilton UMC; Bert Newton, Ministry Associate, Pasadena Mennonite Church, Pasadena, CA; Rev. Michael A. Mata, Program Director, Transformational Urban Leadership of Azusa Pacific Seminary; Rev. Carrie Cesar, Pastor Arlington United Methodist Church; Dr. Susan S. Stouffer, Director, Peace Center of United University Church; Rev. Sandie Richards, Peace with Justice Coordinator, California-Pacific Conference of the United Methodist Church; J. Luis Y. Buktaw, Vice-Chair, Justice & Compassion Essential Ministry of the California-Pacific Annual Conference, United Methodist Church; Daniel Armanino, Ph.D., Director, Colby Ranch Cal-Pac Camp and Retreat Ministries; Rev. Frank Wulf, Pastor United University Church; Pastor Vilma J. Cruz, La Plaza United Methodist Church; David L. Berkey, Director Camping Ministry and Operations, Cal-Pac Conference.

He fled through Mexico to the United States, where he was granted a temporary visa. He returned to Honduras, where gangs again set upon him, beating him and burning his arms. He again fled to Mexico, where he witnessed a woman who had been raped and killed. He was interdicted and detained in Mexico, where he was forced to live in dangerous proximity to gang members. Officials never explained his rights to him, and he was consequently prevented from applying for protection. Mexico deported him to Honduras, returning him to grave danger. Fleeing once again to Mexico, Zetas cartel members kidnapped, and physically and sexually abused him. Eventually he escaped, but Mexico arrested and deported him yet again. Again, he fled, this time succeeding in reaching the United States, which deported him to Mexico, where he now stays at a migrant shelter in Veracruz.

Gedalias Soto, 19 years old, is from El Playon, Honduras. He fled gang violence, which had claimed the life of his cousin, north through Guatemala and Mexico. In Palenque, Mexico, he was stopped by immigration authorities and detained. He was not informed of his rights or afforded any alternative to summary deportation. He was soon deported back to Honduras. Soto almost immediately returned to Mexico in flight from gang violence. This time he was forced to walk through a very remote, mountainous region in the hope he could thereby avoid criminals and corrupt immigration officials. He now stays at a shelter in Veracruz, Mexico.

Petitioners do not ask that their identities be withheld from the respondent states.

B Attorney designation.

Petitioners appoint Carlos Holguin, Esq., General Counsel of the Center for Human Rights and Constitutional Law, as principal attorney of record. The email address for receiving correspondence from the Commission is crholguin@centerforhumanrights.org.⁶

C Petitioners satisfy Article 31 exhaustion requirements.

Petitioners meet Article 31 exhaustion requirements with respect to both the United States and Mexico.

1 Petitioners have no cause of action for the violations alleged herein cognizable in the domestic courts of the United States.

The Commission has long held that ineffective domestic remedies do not need to be exhausted, and that domestic remedies are ineffective when “none of the means to vindicate a remedy before the domestic legal system appears to have prospects of success.” IACHR, *Juvenile Offenders Sentenced to Life Imprisonment Without Parole*, Report No. 18/12, Petition 161-06, March 20, 2012; *see also* Rules of Procedure of the Inter-American Commission on Human Rights, Article 31(2)(b). Petitioners need not exhaust domestic remedies in the United States because no domestic court has jurisdiction to hear the instant challenge to the U.S.-Mexico interdiction program.

In *Sale v. Haitian Centers Council, Inc.*, 509 U.S. 155 (1993), the U.S. Coast Guard undertook to interdict Haitian refugees on the high seas and to return those interdicted to Haiti without determining whether they qualified for refuge. *Id.* at 158. When refugees challed this

⁶ Counsel wish to acknowledge the contributions of the following to the preparation of the instant petition: Lourdes Rosas Aguilar; the Women’s Refugee Commission; Rev. Thomas Carey, Church of the Epiphany, Los Angeles, CA; and Eduardo Jimenez Sen, Estancia del Migrante Gonzalez y Martinez, Tequisquiapan, Querétaro.

interdiction, the U.S. Supreme Court held that the 1951 Refugee Convention’s principle of *non-refoulement*, as incorporated into U.S. law, does not protect persons interdicted before they reach United States territory. *Id.* at 159.

Sale establishes that U.S. courts may not entertain claims challenging the extra-territorial interdiction of refugees. Here, the United States suborns Mexico’s interdicting Central American refugees, such that they, too, cannot reach U.S. territory. If anything, persons interdicted by a third party—as opposed to the U.S. Coast Guard—would face bars to redress before U.S. courts even more robust than those which proved dispositive in *Sale*.⁷

And, of course, Central American refugees interdicted in and summarily deported from Mexico lack physical access to U.S. courts; thus they have no practical ability to raise before those courts the claims presented herein.

2 Petitioners have no effective domestic remedy in Mexico.

Central American migrants likewise lack meaningful access to remedies nominally available under Mexico’s domestic law.

This Commission has found that Mexico provides interdicted migrants —

little or no information ... about the grounds or reasons for detaining the migrants in the

⁷ 8 U.S.C. § 2378d(a) nominally bars the U.S. from providing assistance “to any unit of the security forces of a foreign country if the Secretary of State has credible information that such unit has committed a gross violation of human rights.”

However, the “conduct of the foreign relations of [the U.S.] government is committed by the Constitution to the executive and legislative—the ‘political’—departments of the government, and the propriety of what may be done in the exercise of this political power is not subject to judicial inquiry or decision.” *Oetjen v. Central Leather Company*, 246 U.S. 297, 302 (1918). This “political question” doctrine forecloses domestic courts from entertaining a private right of action for violation of 8 U.S.C. § 2378d(a). *Abusharar v. Hagel*, 77 F. Supp. 3d 1005, 1006-07 (C.D. Cal. 2014).

immigration stations, the administrative proceedings that will be followed, how long detention will last, the right to request asylum, the right to consular assistance and to communicate with family members and the right to receive legal aid and representation.

Human Rights of Migrants in Mexico, supra, at ¶ 520.⁸

As explained below, respondents instead detain Central American asylum-seekers *en masse*, forcing them to endure prolonged confinement, often under punishing conditions, as a cost for seeking an adjudication of eligibility for international protection, which in the end will almost certainly be denied. Given these overwhelming incentives to abandon Mexico entirely, interdicted migrants cannot be expected to remain in-country long enough to secure an adjudication of their instant claims from domestic tribunals.

As regards petitioners' claim that Mexico and the United States create and condone rampant criminality against Central American migrants, it is virtually self-evident that

⁸ The Commission was particularly troubled by denial of due process to migrant children and adolescents in Mexico, including the following:

- The absence of judicial control of immigration detention of children and adolescents;
- Mexico's failure to provide migrant children legal aid;
- Mexico's failure to inform detained children of their rights and the grounds for detaining them; and
- Mexico's failure to provide migrant children with guardians.

Human Rights of Migrants in Mexico, supra, at ¶ 516.

As a practical matter, the above effectively deny children's access to whatever domestic remedies Mexican law may nominally provide.

petitioners have no viable domestic remedy. Migrants in irregular status have no prosecutorial authority. Impunity necessarily comprehends the absence of effective domestic recourse.⁹

Petitioners and similarly situated Central American migrants accordingly have no meaningful recourse to Mexico's domestic courts for the injuries alleged herein.

D States the petitioners consider responsible.

The United States and Mexico are jointly and severably responsible for the design and implementation of their campaign to interdict and summarily deport Central American refugees.

As explained below, the United States has effectively outsourced its southern border enforcement and thereby shirks its obligations to confer international protection on deserving Central American refugees. The United States knows or should know that Mexico's interdiction program is rife with human rights abuses against Central American migrants:

Human rights groups have voiced concerns regarding Mexico's management of its

⁹ Moreover, once deported, crime victims are clearly without effective remedy:

When migrants who are victims of crime during their time in Mexico reach their destination or are deported to their countries of origin, it is difficult to file a complaint... Although the overwhelming majority of migrants in Mexico come from El Salvador, Honduras, and Guatemala, there are no established mechanisms either for migrants who have already been deported, or family members who learn of the crime, to inform Mexican authorities about these crimes from their countries of origin.

An Uncertain Path, supra, Exhibit 20, at 37.

Nor are crime victims' chances of receiving justice much better when they report it from within Mexico. In 2014, for example, migrants reported 123 crimes to the government of Oaxaca. As a result, one malefactor was sentenced. *Id.* at 40.

This Commission has itself expressed "deep concern at what is clearly the State's patently inadequate response in terms of the investigation, prosecution, and punishment of such crimes" committed against migrants. *Human Rights of Migrants in Mexico, supra*, at ¶ 307.

complex migrant flows and its ability to protect migrants. The United Nations High Commissioner for Refugees (UNHCR) and others have raised concerns that Mexico has denied refugees from the northern triangle countries access to asylum....

Congress may [therefore wish to] consider how to balance efforts to support immigration enforcement in Mexico with protection concerns and respect for migrants' rights.

CONGRESSIONAL RESEARCH SERVICE, *Mexico's Recent Immigration Enforcement Efforts*, March 9, 2016, Exhibit 18, at 1, 2 (hereafter *Mexico Immigration Enforcement*). Despite growing criticisms from domestic and international communities, the United States has only increased support for Mexico's interdiction program.

For its part, it will be seen, Mexico has embraced its role as the direct perpetrator of the respondent States' concerted and systematic violation of asylum-seekers' right against *refoulement*.

E No prior submission.

Petitioners have not submitted the matters complained of herein to another international settlement proceeding.

III ACCOUNT OF THE FACTS AND DESCRIPTION OF THE SITUATION DENOUNCED.

Since at least the middle of 2014, the United States and Mexico have combined to interdict and summarily deport thousands of Central American migrants to jurisdictions in which they will suffer horrific persecution. *See generally, e.g.* GEORGETOWN LAW HUMAN RIGHTS INSTITUTE, *The Cost of Stemming the Tide: How Immigration Enforcement Practices in Southern Mexico Limit Migrant Children's Access to International Protections*, April 13, 2015, Exhibit 41 [hereafter *Stemming the Tide*]. The aim of this campaign—the PFS—is to prevent persons fleeing Central American Northern Triangle from reaching the United States, where asylum-

seekers enjoy protection against *refoulement* that, however inadequate, is far more robust than what Mexico provides.

In essence, the United States seeks to externalize its southern border, with Mexico's INM now acting as a first-line border patrol to stanch the flow of Northern Triangle migrants seeking refuge in the United States. *See, e.g.* Press Release, U.S. Department of Homeland Security, *Statement by Secretary Johnson About the Situation Along the Southwest Border*, September 8, 2014, Exhibit 29, www.dhs.gov/news/2014/09/08/statement-secretary-johnson-about-situation-along-southwest-border (last visited April 2, 2016) [hereinafter *Secretary Johnson*]. This plan has proved effective: "In FY2015, U.S. apprehensions of unaccompanied minors declined by 45% and apprehensions of family units declined by 42%, due in large part to Mexico's increased efforts." *Mexico Immigration Enforcement, supra*, Exhibit 18, at 1.

But howsoever efficacious the respondent governments' effort has been at preventing the arrival of Central American migrants at the U.S.-Mexico border, those results come at the expense of Central Americans' safety, lives and rights against *refoulement*.

A Substantial numbers of Northern Triangle migrants—perhaps a majority—are *prima facie* eligible for international protection.

The plight of impoverished populations in El Salvador, Guatemala, and Honduras is truly grim. The evidence before the Commission contains numerous examples of the widespread violence and insecurity afflicting defenseless civilians throughout the Northern Triangle. Hector Boteo Fajardo, a 15-year-old Guatemalan boy, provides one recent account:

In 2006, [Mexico] deported us to Guatemala... I found work in a bakery, but soon the mara [gang] learned I was working and started extorting money from me. I paid them twice, but after that I refused to pay more because I needed the money for my rent, for which they began trying to kill me.

Once, they shot at me when I was working at the bakery. They arrived in a black Nissan, and shot at me. I threw myself on the floor, and managed to save my life. Another time I was riding a motorcycle, when they approached at fired. Another time, I was playing on a field, when two gang members arrived. They began to shoot at me, but I threw myself down an embankment and managed to survive.

Declaration of Héctor Estiven Boteo Fajardo, March 3, 2016, Exhibit 3 [hereafter Hector Boteo].

Edgar Rodriguez Paz fled Honduras in 2013. He describes his reasons for seeking refuge abroad as follows:

I first left my country in 2013, when I was 17 years old. The mara gang demanded I join their gang, but being a Christian and a student I refused to join. They told me that if I didn't join, things would go very badly for me. It was understood that this meant they would kill me. ... [I was deported in 2014 and] I returned to my home in Initivuca La Esperanza. The 24th of January 2014, I left the house, and the maras shot me in the arm. They said, "We told you this would happen." I woke up the the hospital, where I spent a month. I almost lost my arm, and now it is deformed and I cannot use it.

Declaration of Edgar Rodriguez Paz, December 13, 2015, Exhibit 8 [hereafter Edgar Rodriguez].

Salvadoran adolescent Margarita del Carmen Barrios describes similar compulsions for abandoning her country:

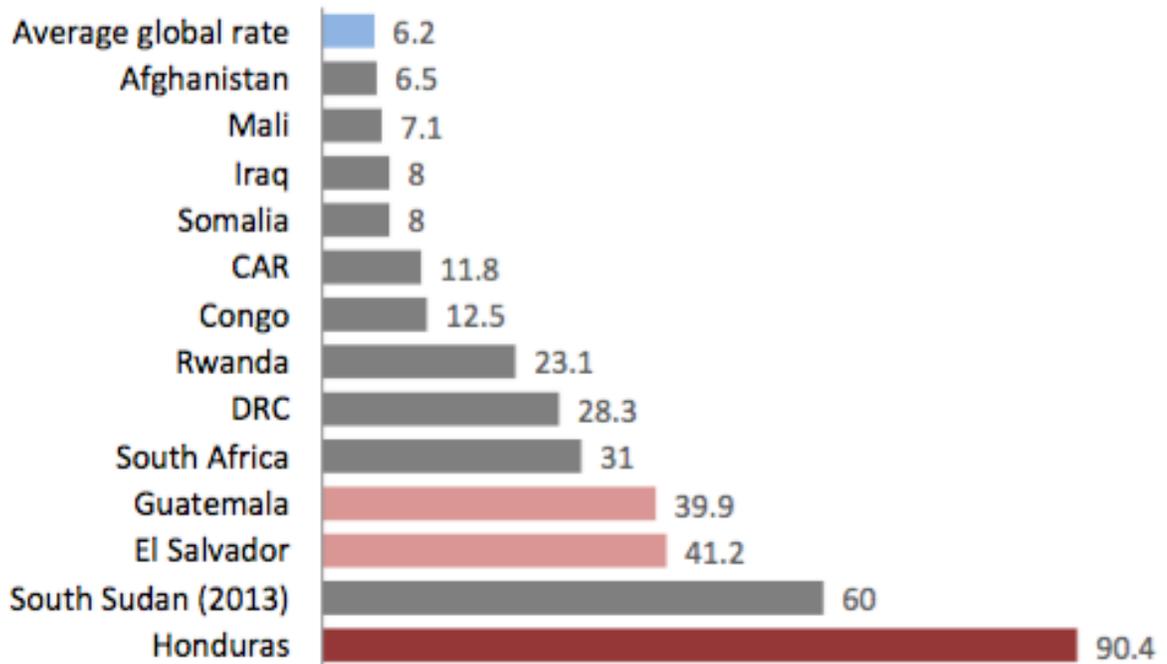
In February 2015 my brother[s], 16 and 23 years old, my niece, 13 years old and I, 17 years old, decided to leave, ... My parents were in agreement that we should leave because of the danger in El Salvador. We left because the gang wanted to force my niece, who lived with us, to sell drugs for them. The gang members use young people because they think the police will not check them as much as older people. Many gangsters lived in the United States, where they learned the tactics of delinquency, and after being deported they practice those tactics in El Salvador. The gangsters threatened my niece, that if she refused to sell drugs they would kill her and all of the family, including me. Inasmuch as my niece refused to become a drug dealer, we made the decision to leave El Salvador.

Declaration of Margarita del Carmen Barrios, January 24, 2016, Exhibit 28 [hereinafter Margarita Barrios].¹⁰

Sadly, study-after-study quantifying the horrific violence afflicting impoverished civil society in the Northern Triangle wholly corroborate these stories. *E.g. Women on the Run, supra*, Exhibit 16; *see also Children on the Run, supra*, Exhibit 17. The numbers paint a chilling picture:

¹⁰ *See also, e.g.*, Declaration of Alexander Valdez Lovato, January 27, 2016, Exhibit 5 [hereafter Alexander Valdez] (“I was in my country for about two months when the Maras started to extort from me. ... They gave me two weeks to pay them \$5,000 dollars. ... Everyone knows that the gangs are incredibly dangerous, and if you don’t pay them, they arrive at your house in the middle of the night and they kill you.”); Declaration of Oscar Ranulfo Banegas Ramos, January 27, 2016, Exhibit 7 [hereafter Oscar Banegas] (“I left Honduras because I was a member of the ... Honduran Army ... I began to receive threats because during one of the operations one of the narcos identified me. He wanted me to work with them, giving them information on the battalion, and they threatened me that if I did not work with them they would kill my family...”); Declaration of Sandra Elizabeth Ortega Reyes, January 28, 2016, Exhibit 4 [hereafter Sandra Ortega] (“The gang members of the Mara killed my brother in 2010. He was never part of any gang, and I guess they killed him to rob him. They gang also wanted to take my son, who is 14 years old now. They threatened two of my sisters, and because of all of this we lived in constant fear.”); Declaration of Felicita Pérez López, January 30, 2016, Exhibit 6 [hereafter Felicita Perez] (“I had to flee my country to save the lives of my sons. In my country, gang members from the Mara kill people all the time. I have seen them kill kids, women, anyone, just because they did not pay the money they demand. My sons cannot go out on the streets without facing the risk of being beaten up or killed by gang members.”).

Homicide rate per 100,000 people (UNODC, 2012)



Source: UNODC 2014 report (data from 2012)

ASSESSMENT CAPACITIES PROJECT (ACAPS), *Other Situations of Violence in the Northern Triangle of Central America*, July 2014, Exhibit 13, at 4 (hereafter *Other Situations of Violence*).

If anything, conditions in the Northern Triangle have only deteriorated since the United Nations Office on Drugs and Crime compiled the above statistics. In 2013 the murder rate in Honduras was again the highest in the world, with 79 homicides per 100,000 people. IACHR, *Situation of Human Rights in Honduras*, December 31, 2015, OEA/Ser.L/V/II, at 11. Although Honduras's homicide rate has fallen somewhat since, it "remains one of the highest in the region and the world, and it particularly affects youth." *Id.* Following a visit to Honduras in December 2014, this Commission remarked the extreme danger faced by "defenders [of human

rights], indigenous peoples, women, children, adolescents and young people, LGBT people, [and] migrants.” *Id.* at ¶ 5.

Guatemala is undergoing a crisis of similar proportions. *See generally* WORLD BANK, *International Homicides (per 100,000 people) (2015)*, data.worldbank.org/indicator/VC.IHR.PSRC.P5. As this Commission recently reported:

For several years, particularly since 2000, there has been a wave of generalized violence that has spiked (in 2008 and 2009) and subsequently waned, though without ever falling below the levels that make Guatemala one of the most violent countries in Latin America.

...

[In 2014], 5,924 people were killed in violent circumstances, with firearms used in 4,494 cases. By the INACIF estimates, the number of deaths in 2014 boiled down to almost 16 a day. In the first nine months of 2015, there were 4,261 homicides, corresponding to 3,705 men and 556 women.

IACHR, *Situation of Human Rights in Guatemala*, December 31, 2015, OEA/Ser.L/V/II, at ¶¶ 114 and 118.

Conditions of extreme insecurity and violence afflict civilian populations in El Salvador even more profoundly. “In El Salvador, major changes in homicidal violence took place after a ‘truce’ between two major gangs was agreed upon in March 2012.” UNITED NATIONS OFFICE ON DRUGS AND CRIME, *Global Study on Homicide 2013*, March 2014, at 45, www.unodc.org/documents/gsh/pdfs/2014_GLOBAL_HOMICIDE_BOOK_web.pdf (last visited March 24, 2016). Since then the gang truce has fractured, and the country has experienced an alarming increase in murders. Homicides are “expected to approach nearly 100 per 100,000 this year,” an “unprecedented level[] in Latin America and the Caribbean, if not the world.” *Casas Zamora Testimony, supra*, Exhibit 46, at 6.

In August 2015 alone, El Salvador experienced 918 homicides, INSTITUTO DE MEDICINA LEGAL DE EL SALVADOR, *Homicidios Agosto 2015*, Exhibit 51, www.transparencia.oj.gob.sv/portal/transparencia.php?opcion=13 (last visited March 24, 2016), out of a population of only 6.1 million. CENTRAL INTELLIGENCE AGENCY, *The World Factbook: Central America and the Caribbean: El Salvador*, www.cia.gov/library/publications/the-world-factbook/geos/es.html (last visited March 24, 2016). Should this rate persist, El Salvador will suffer annual homicides of 268 persons per 100,000. See also Instituto de Medicina Legal (El Salvador), *Homicidios Año 2014*, Exhibit 52, www.transparencia.oj.gob.sv/portal/transparencia.php?opcion=13 (last visited March 24, 2016) (reporting 3,912 homicides in El Salvador in 2014, or approximately 95 per 100,000).

To put this slaughter into perspective, consider that the homicide rate in the U.S. in 2010 was five per 100,000. THE WILSON CENTER, *Crime and Violence in Central America's Northern Triangle* (2015), Exhibit 47, at 247 (hereafter *Crime and Violence in Central America's Northern Triangle*). For its part, the World Health Organization defines homicide rates of 10 or more per 100,000 as epidemic violence. *Other Situations of Violence, supra*, Exhibit 13, at 1.

Of course, “[m]urder rates are merely the most visible consequence of the problem. The proportion of households that have been victims of crime in the course of the past year is greater than one third in every country in the Northern Triangle.” *Casas Zamora Testimony, supra*, Exhibit 46, at 6.

Women and children, sadly, are not exempt from this violence; by some measures they fare even worse than the population as a whole. See *Women on the Run, supra*, Exhibit 16; *Children on the Run, supra*, Exhibit 17.

In 2013, there were 1,506 reported cases of homicides of women in the Northern Triangle. Honduras saw 636 violent deaths of women in 2013, and Guatemala, 653 deaths. *Id.* at 30. The number of survivors of sexual violence far exceeds the number of women killed. In 2013, there were 12,252 medical-legal evaluations for sexual crime in the Northern Triangle: 2,561 in Honduras; 6,552 in Guatemala; and 3,139 in El Salvador. Those most vulnerable to sexual violence are young women between ten and 19 years of age. *Id.*

According to the UNHCR, *64 percent of displaced Central American women have been “the targets of direct attacks by members of criminal armed groups ...” Women on the Run, supra*, Exhibit 16, at 4 (emphasis supplied). The prevalence of violence against women prompted the UNHCR to warn, “[W]omen face a startling degree of violence that has a devastating impact on their daily lives. With no protection at home, women flee to protect themselves and their children from murder, extortion, and rape. *They present a clear need for international protection.” Id.* at 2 (emphasis added).

Children and youth, too, live under the “rampant threat of ... inter-gang conflict and ... the control gangs exercise in different neighborhoods, such as determining who may enter and exit these neighborhoods,” as well as with the “potentially life-threatening dangers of being misidentified as a member of one gang while in rival territory of another gang.” *Children on the Run, supra*, Exhibit 17, at 26. Gangs regularly beat, rob and threaten youth, who struggle to “avoid gang recruitment, harassment by gangs while commuting to school, and the extortion exacted by gangs on children and their families.” *Id.*

As a result, the UN body concluded, some *58 percent of such children are prima facie eligible for international protection. Id.* at 6. The UNHCR cautioned that the particular matrices

of violence against children, combined with the special solicitude international law confers on youth, place states under a clear duty to assess children's protection needs with exceptional care, something youth ensnared in respondents' deportation juggernaut, it will be seen, have scant hope of receiving.

In the end, even these astounding numbers vastly underreport the actual levels of violence afflicting the people of the Northern Triangle:

A huge percentage of crimes go unreported: between 2011 and 2013, *the percentage of impunity for killings in the NTCA was 95%*. This complicates enormously the calculation of the magnitude and intensity of the humanitarian impact of violence, especially related to the most 'invisible' impacts like forced displacement, disappearances, and extortion.

Other Situations of Violence, supra, Exhibit 13, at 4 (emphasis supplied).

Worse still, violence in the Northern Triangle goes virtually unchecked: "[Governmental] protection mechanisms are weak, and there is substantial evidence that the State has been co-opted and corrupted by highly organized non-State criminal actors in many areas, creating 'zones of impunity.'" *Children on the Run, supra*, Exhibit 17, at 16-17.

Astonishingly, 85 percent of Central American women report that the neighborhoods from which they've fled are gang-controlled. *Women on the Run, supra*, Exhibit 16, at 15, 27. Even in the increasingly rare zones where criminals have not wholly supplanted legitimate government institutions, impunity prevails. *Women on the Run, supra*, Exhibit 16, at 15, 27. The UNHCR notes that women are often unwilling to seek redress for violence because the police are wholly ineffective or corrupt. *Id.* Worse still, 10 percent of women report that the police or other authorities were the actual *perpetrators* of crimes and violence against them. *Id.*

That the UNHCR would repeatedly express “serious concern” for the safety of large numbers of people who daily confront deadly violence in El Salvador, Guatemala, and Honduras is hardly surprising. *See, e.g., UNHCR, U.S. announcement on Central America refugees highlights seriousness of situation*, January 14, 2016, www.unhcr.org/5697d35f6.html. It is beyond peradventure “that people fleeing [Northern Triangle] violence... have bona fide needs for international protection,” *id.*, yet the odds of their receiving such protection in Mexico are exceedingly remote.¹¹

B *The Plan Frontera Sur comprehends a joint, systematic and massive violation of international law by the United States and Mexico against Northern Triangle migrants.*

Given the scale and depth of the human rights tragedy afflicting defenseless populations in the Northern Triangle, one might hope for a commensurately compassionate and humanitarian international response, yet insofar as the United States and Mexico are concerned, such hopes would be badly misplaced. To the contrary, rather than discharging their

¹¹ Compounding the ignobility of suborning the interdiction of Central Americans transiting Mexico, the United States is itself largely to blame for the Northern Triangle diaspora:

U.S. policy and practice are also major factors contributing to the violence. U.S. demand for cocaine and other drugs produced in Latin America is among the highest in the world, and U.S. and Mexican efforts to interdict drug trafficking in the Caribbean and Mexico has contributed to the trade’s relocation to Central America. Furthermore, the policy of deporting large numbers of young Central Americans in the 1990s and 2000s, many of them already gang members in the United States, helped transfer the problem of violent street gangs from the United States to Central America’s northern triangle. El Salvador now has the largest number of gang members in Central America followed closely by Honduras and Guatemala. Finally, the trafficking of firearms, especially from the United States, has also contributed to the lethality and morbidity of crime. Efforts to slow firearms trafficking from the United States have encountered many domestic and political barriers and continues largely unchecked.

Crime and Violence in Central America’s Northern Triangle, supra, Exhibit 47, at 2.

obligations under international law to offer refuge to Central Americans fleeing horrific violence, the respondent States have embarked upon a concerted effort to intercept and deport them to the Northern Triangle, no matter how compelling their individual claims for protection may be.

1 The United States suborns, aids and abets Mexico's unlawful interdiction and *refoulement* of Northern Triangle refugees.

The newfound vehemence with which Mexico is now interdicting and deporting Central American refugees¹² has proximate origins in the so-called “humanitarian crisis” of mid-2014, when the United States became alarmed by an increase in Central American families and youth arriving at its southern border.¹³ The administration appealed to Mexico for help, Mexico

¹² By most accounts, Mexico has historically been relatively lenient toward migrants transiting its territory. Migration is generally not a major political issue in Mexico, and officials are accordingly under scant political pressure to crack down on unauthorized entrants. *See, e.g.,* Laura Carlsen, *Continuing the Crackdown on the Kids*, FOREIGN POLICY IN FOCUS, March 31, 2015; Nina Lakhani, *Mexico Deports Record Numbers of Women and Children in US-Driven Effort*, THE GUARDIAN, February 4, 2015 (“[According to a senior analyst] at the Washington Office of Latin America, ‘Migration is not a political issue in Mexico. They would not have grabbed on to it without increasingly loud complaints and prodding from the U.S. to do something about it. Frontera Sur is only about catching migrants and sending them back before they make it to the U.S.’”).

¹³ The 2014 “surge” in arrivals couldn’t have come at a less opportune time: seeking to blunt charges that it was soft on border enforcement, the Obama Administration had recently announced it would shelve “executive immigration reform” until after the November mid-term elections; the Central American surge threatened to derail candidates from the president’s party. *See, e.g.,* Christi Parsons, *Obama draws flak over immigration reform delay*, L.A. TIMES, September 6, 2014, www.latimes.com/nation/la-na-obama-immigration-20140907-story.html (last visited April 2, 2016).

Still, the administration’s enlisting Mexico’s help to secure its own southern border reflected a longer-standing geopolitical strategy of “border externalization.” In 2012, the administration’s former “border czar,” Alan Bersin, who now serves as Assistant Secretary of Homeland Security for International Affairs, famously declared, “[T]he Guatemalan border with Chiapas, Mexico, is now our southern border.” Remarks of Alan Bersin, Assistant Secretary of International Affairs

agreed, and the United States' apprehension of children and families along its southern border plummeted. *Mexico Immigration Enforcement, supra*, Exhibit 18, at 1.

In September 2014, the administration thanked Mexico for reducing the northward flow of refugees, stating, "We are also pleased that the Mexican government has itself taken a number of important steps to *interdict the flow of illegal migrants* from Central America bound for the United States." *Secretary Johnson, supra*, Exhibit 29.

Again in January 2015, after a summit with President Peña Nieto of Mexico, the U.S. president praised Mexico's efforts to help "stem the tide" of unaccompanied minors arriving at the U.S.'s southern border, emphasizing that the United States —

very much appreciate[s] Mexico's efforts in addressing the unaccompanied children who we saw spiking during the summer [of 2014]. In part because of strong efforts by Mexico, *including at its southern border*, we've seen those numbers reduced back to much more manageable levels.

WHITE HOUSE OFFICE OF PRESS SECRETARY, *Remarks by President Obama and President Peña Nieto after Bilateral Meeting*, January 6, 2015, Exhibit 53 (emphasis added), www.whitehouse.gov/the-press-office/2015/01/06/remarks-president-obama-and-president-pe-nieto-after-bilateral-meeting (last visited April 2, 2016).

The notion that Mexico should interdict Central American refugees at the U.S.'s behest reverberates throughout the administration's thinking. *Secretary Johnson, supra*, Exhibit 29.

The United States has, for example, declared that, with its help, Mexico should develop a "21st century border" with Guatemala. Brownfield, *supra*, Exhibit 54.

and Chief Diplomatic Officer, Department of Homeland Security, Reception for 16th Annual Border Issues Conference, September 20, 2012 (emphasis added).

Mexico's securing its southern border is a key goal of the Merida Initiative, through which the U.S. has, since 2008, provided Mexico over \$2.3 billion "to fight organized crime and associated violence" through enhanced police capabilities, border security training and equipment, and greater logistical cooperation between the two countries' immigration and national security agencies. See UNITED STATES DIPLOMATIC MISSION TO MÉXICO, *The Mérida Initiative – An Overview*, July 2015, Exhibit 56, also available at mexico.usembassy.gov/eng/ataglance/merida-initiative.html (last visited March 25, 2016).¹⁴

At least \$600 million in U.S. funds have gone to pay for "bilaterally agreed upon projects" that entail "building the capacity of Mexican law enforcement agencies [and] supporting the Government of Mexico's efforts to strengthen border management and security." *Browning, supra*, Exhibit 54. The United States now provides extensive support and direction for the *Instituto Nacional de Migración*, Mexico's immigration enforcement agency (and other agencies working on "border security"): "[I]n partnership with U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE), [the State Department] is mentoring and training Mexican immigration officials to improve checkpoint operations." *Id.*¹⁵

¹⁴ In FY2016, the U.S. even conditioned a full 25 percent of regional assistance to Central American governments on *their* meeting interdiction-related objectives: *i.e.*, "[i]mprov[ing] border security, and facilitat[e] the safe return, repatriation, and reintegration of undocumented migrants." White House Office of the Press Secretary, *FACT SHEET: The United States and Central America: Honoring Our Commitments*, January 14, 2016, Exhibit 55, also available at www.whitehouse.gov/the-press-office/2016/01/15/fact-sheet-united-states-and-central-america-honoring-our-commitments.

¹⁵ Human rights observers have criticized the presence of U.S. immigration agents working in Mexico's notorious migration stations, including the largest migrant detention center in the

U.S. support for Mexico's interdiction program only promises to grow: the State Department has requested Merida funding of almost \$130 million for the upcoming fiscal year, to "contribute to increasing U.S. national security . . . and to protect U.S. citizens along our shared border." UNITED STATES OF AMERICA DEPARTMENT OF STATE, *Congressional Budget Justification – Department of State, Foreign Operations, and Related Programs*, February 9, 2016, at 185, www.state.gov/documents/organization/252179.pdf (last checked March 25, 2016). \$80 million of that is to be spent to enhance law enforcement operations in Mexico. *Id.*

In sum, the United States has commissioned a dragnet, and it is getting value for its money. The numbers tell the tale: Mexico's detention of Central Americans has increased by 100 percent, from about 40,000 detentions in 2013, to over 90,000 detentions between October 2014 and April 2015. For the first time, Mexico now detains more Central Americans than does the United States. WOLA, *Mexico Now Detains More Central American Migrants Than the United States*, June 11, 2015, www.wola.org/news/mexico_now_detains_more_central_american_migrants_than_the_united_states (last visited April 2, 2016). Mexico has dramatically eased the U.S.'s border control "crisis,"¹⁶ but as will be seen, it has done so via a noxious amalgam of impunity, indiscriminate detention, and summary deportation.

Western Hemisphere, the infamous Siglo XXI facility in Tapachula, Chiapas. See, e.g., CENTRO DE DERECHOS HUMANOS BROTHER MATIÁS DE CÓRDOVA, *Privacion Indefinida de Libertad y Violaciones de Derechos, Persisten en el Centro de Detencion Para Migrantes de Tapachula, Ante la Mirada y Colaboracion de Funcionarios Estadounidenses*, January 20, 2016, Exhibit 12, cdhfraymatias.org/sitio/wp-content/uploads/2016/01/COMUNICADO_0116.pdf.

¹⁶ In reality, the U.S. now has better control of its southern border than it has since the 1970s. See *Open Borders: The Impact of Presidential Amnesty on Border Security: Hearing Before the H. Comm. on Homeland Security*, 113th Cong., February 12, 2014 (written testimony of Department of Homeland Security Secretary Jeh Johnson), Exhibit 30, www.dhs.gov/news/2014/12/02/written-testimony-dhs-secretary-jeh-johnson-house-committee-homeland-

2 Respondents create and maintain hyper-dangerous conditions that result in some 90 percent of Northern Triangle migrants falling victim to murder, rape, assault, extortion and like heinous crime in Mexico.

The *Plan Frontera Sur* comprises a dramatic increase in border guards, road blocks and checkpoints, and denying migrants' access to northbound trains. *See generally, An Uncertain Path, supra*, Exhibit 20. Brother Tomás González, who directs the La 72 migrant shelter in Tenosique, Tabasco, observes,

In Tenosique there has always been a heavy migration presence, but beginning in mid-2014, due to the *Plan Frontera Sur*, the increase in migration control is marked. The amount of migration agents has increased on the streets, as well as the federal police, which contribute to migration control. In Tenosique there is a military zone, and there are many checkpoints with military, state and federal police, and functionaries of the INM and PGR.”.

Declaration of Brother Tomás González, January 30, 2016, Exhibit 1, at ¶ 7 (“Brother Tomas”).

Yet of all these measures —

[t]rain operations have been the most notoriously and visible component of the sharply increased INM operational tempo in the southern border zone. ... U.S. officials had long complained, mostly in private, about Mexico’s lack of action to curb migrants’ open use of train routes.

Beginning in August 2015, INM agents carried out their first operations to prevent migrants from boarding the cargo trains, detaining many. Over the following months, there would be dozens more. ... [T]hese operations, along with track improvements and the construction of physical barriers, made riding the train increasingly difficult for migrants.

WOLA, *Increased Enforcement at Mexico’s Southern Border: An Update on Security, Migration, and U.S. Assistance*, November 2015, Exhibit 24, at 6 http://www.wola.org/commentary/increased_enforcement_at_mexico_s_southern_border (last visited April 2, 2016); *see also*

security (last visited April 2, 2016) (“Today, we have unprecedented levels of border security resources—personnel, equipment and technology—along our Southwest border. This investment has produced significant positive results. Apprehensions have declined from over 1.6 million in 2000 to around 400,000 a year—the lowest rate since the 1970s.”).

Brother Tomas, *supra*, Exhibit 1, at ¶ 8 (“The operations around the train have increased and are very violent. Beginning with the *Frontera Sur* operation, we have begun to monitor more, and the migration authorities have responded by moving their operations to places where we effectively do not have access. ... In any case, the violations of the human rights of immigrants continue to increase.”); Declaration of Jose Alberto Donis, January 28, 2016, Exhibit 2, at ¶ 3 (hereafter Alberto Donis) (“From 2007 until August 2014, 100 to 1,000 people traveled on the train, and up to 6,000 people arrived at the shelter per month, although currently I have observed a decrease in the flows of people who arrive on the train.”).¹⁷

Denied access to trains and highways, migrants are increasingly forced to travel through remote areas, which only multiplies their peril:

Migrants in an irregular situation are forced to live and move about clandestinely, to escape detection by the authorities... [This] has put migrants in the crossfire, *exponentially increasing the dangers they face when they travel by way of clandestine channels, by remote routes through isolated territory*. These are precisely the areas where organized crime and drug cartels have a greater presence. Migrants in an irregular situation run the risk of falling into the hands of these criminal organizations, but it is a risk they take to avoid being detected, detained, and subsequently deported by the Mexican authorities, or becoming victims of crimes committed by the authorities... INM agents and [police]... either directly or by colluding with organized crime, have committed crimes and human rights violations against migrants.

Human Rights of Migrants, supra, at ¶ 85.

¹⁷ The railroad lines have also increased freight trains’ speed, making the journey for those migrants who manage to board them even more dangerous. Georgetown Law Human Rights Institute, *The Cost of Stemming the Tide: How Immigration Enforcement Practices in Southern Mexico Limit Migrant Children’s Access to International Protections*, April 13, 2015, Exhibit 41, at 17-18 (“*Stemming the Tide*”).

Petitioners' evidence submitted herewith offers numerous first-hand accounts of the rampant criminality afflicting Northern Triangle refugees.¹⁸ Alexander Valdez Lovato, a young refugee from El Salvador, describes a typical story of how he and other migrants repeatedly fall prey to predatory criminals:

In November 2015, I returned to Mexico. I entered through Tecun Uman, crossing the river, and shortly after I was robbed by some thieves who wait for migrants in order to rob them. They took 300 pesos from me, and some clothes. I continued to walk along the train tracks. I managed to arrive at the Lechería station in Mexico State. There, 15 people armed with machine guns, along with 20 more people, robbed me again. They searched us, forced us to strip naked, and looked through our clothes to find any money, kept everything they found, and took a girl who was traveling with us with them, presumably to rape her. At least we heard her screaming, and afterwards we heard nothing. Then they told those of us without money that we should continue along the tracks. After about two hours of walking along the tracks, the migration officials caught us.

Alexander Valdez, *supra*, Exhibit 5, at ¶ 8.

Other migrants fare even worse. Petitioner Jesus Castro struggles to describe the horror of hyper-violence he experienced transiting Mexico:

I was in Tuxtla Gutierrez in the state of Chiapas, traveling by bus. Then I came across a woman who was dead on the other side [of the road] and it looked like she been raped because someone had taken off her clothes, and so I ran away. Then the police caught me. I told the police what I'd seen but they didn't care and they took me to detention... [On another trip] in Mexico I took the train, which is dangerous and a lot of things can happen to you. Sometimes immigration comes, and they push you off the train. I've

¹⁸ Press accounts of Central American's increasingly perilous journey through Mexico are now legion. See, e.g., Azam Ahmed, *Step by Step on a Desperate Trek by Migrants Through Mexico*, N.Y. TIMES, February 8 2016, www.nytimes.com/2016/02/08/world/americas/mexico-migrants-central-america.html?_r=1 (last checked March 16, 2016) (reporting harrowing voyage of ten Central American men, only two of whom manage to reach the United States; migrants' "trip [north] has grown increasingly dangerous in the wake of the Mexican crackdown..."); ; Sonia Nazario, *The Refugees at Our Door*, NEW YORK TIMES, October 10, 2015, www.nytimes.com/2015/10/11/opinion/sunday/the-refugees-at-our-door.html?ref=opinion&_r=1 (last checked March 16, 2016) (describing, *inter alia*, immigration officers' shooting at migrant woman as she traveled north).

seen that. There's also danger coming from other groups. I was taking the train when Zetas with machetes boarded from horseback and hurled us from the train. They kidnapped me and took me with them from state to state; I don't even know where. Horrible things happened with them; things that I keep really to myself and I don't say to anybody. I suffered all sorts of abuse, including possibly sexual abuse.

Jesus Castro, *supra*, Exhibit 27, at ¶ 12; *see also* Oscar Banegas, *supra*, Exhibit 7, at ¶ 12 (“On January 12 I returned to Mexico, and entered Tecun Uman, Guatemala, Hidalgo City. In Pijijiapan a man appeared with a pistol. Later, I was robbed by five men with pistols and machetes, and after I was robbed as I walked to Chahuities and Ixtepec, Oaxaca.”); Declaration of Jose Mena, January 26, 2016, Exhibit 9, at ¶¶ 9-10 [hereafter Jose Mena] (“In 2015, I returned to Mexico, and ... I saw many things on the train, such as a woman who died with her baby, and a friend whose leg got stuck in the train. After walking, we were very tired and we stayed in Corazones. ... We made a fire and a man with a shotgun appeared and robbed everything from us.”); Declaration of Saul Campos, January 26, 2016, Exhibit 11 [hereafter Saul Campos] (in Mexico “delinquents assaulted me before I had arrived at Arriaga [Chiapas]. They carried sawed-off shotguns. We were three Salvadorans, some Guatemalans, and two Honduran girls. They forced us to strip naked, they took all the money from our clothing, and then they raped the two girls.”).

Yet as this Commission has remarked, Central American migrants are preyed upon not only by criminal gangs, but also by a vast array of corrupt and violent law enforcement officials. *Human Rights of Migrants in Mexico, supra*, at ¶¶ 45 and 484.

Brother Tomás González, who has interviewed hundreds of Central American migrants during the course of his duties as founder and director of the La 72 migrant shelter in

Tenosique, Tabasco, describes the official brutality and impunity now permeating Mexico's interdiction of Central Americans as follows:

Among all of the controlling bodies, the migration agents are the main extorters and are therefore named in many complaints before the Attorney General of the Republic (PGR). When I say that migration functionaries are involved, it is because they have a strategy for pursuing the migrants. For example, from morning on they follow the migrants until the migrants get tired, and then they capture them. This strategy has resulted in 12 documented deaths... None of the authorities involve other authorities in these matters. The Public Ministry, which was in charge of diligence regarding these deaths, did not even investigate. The Beta Group fished out the body of the boy who drowned 10 hours later, but no investigation or charge was made. In the death of those who overturned in the truck, the Public Ministry did not even find out who in the municipal police was involved. Sometimes the remains of the victims who pass away are brought to their families, but this depends on the consulate, and many times they do not even care if the family finds out about the death of their sons or daughters, parents, or brothers.

Brother Tomas, *supra*, Exhibit 1, at ¶¶ 9, 11-12.

Numerous reports confirm that migrants regularly suffer physical and sexual violence, robbery, extortion, and worse at the hands of law enforcement officials. *E.g.*, UNHCR, *Women on the Run*, *supra*, Exhibit 16, at 44 (women subjected to physical and sexual violence, as well as threats against family members, by Mexican authorities; transgender woman physically and sexually assaulted by Mexican immigration authorities). These violent immigration operations often target migrants who manage to board northbound freight trains. Again, the testimonies of interdicted migrants illustrate:

I arrived in Mexico in In January 2015. I entered through El Ceibo, Tabasco. Since I didn't have any money to pay bus fare, I got on the train in Tenosique. In Emiliano Zapata, the federal police and agents from the Mexican immigration stopped the train. Everyone jumped off the train. I stayed inside because I was afraid of hurting myself. I saw the agents drag women and men by their necks. Immigration and federal agents got on the train and four men dressed in white and blue dragged me down from the train. While they yelled and pointed a gun at me they said that I could either come down or they would drag me down. They grabbed me from the neck and forced me down.

Felicita Perez, *supra*, Exhibit 6, at 4; *see also* Oscar Banegas, *supra*, Exhibit 7, at ¶ 13 (““While I was travelling on the train, I threw myself off it because I saw the migration officials, the Federal Police, and I ran but they caught up with me and hit me with a baton many times, while I begged them not to hit me more.”); Sandra Ortega, *supra*, Exhibit 4, at ¶ 5 (in Arrenal “[e]verybody is there: the Betas, the immigration officials, the municipal police, soldiers, and all take advantage of helpless people. I saw federals and immigration officials hitting a girl with one of the bats that they use, which are very hard, and they threatened that they would tie me up and hit me if I didn’t do what they said.”); Alexander Valdez, *supra*, Exhibit 5, at ¶¶ 2, 5 (“They arrested me in Mexico City. They pulled me off the train and threw me onto the ground violently and while insulting me... [On another trip] I traveled by train and the police stopped me in Tenosique, Tabasco. They demanded money from me, hit me, and looked through my bag to see if I had any money. I saw the police rob many people who were travelling in the train with me.”).

Jose Alberto Denis, who has directed the Hermanos en El Camino shelter in Ixtepec, Oaxaca, for seven years, estimates the odds as follows: “Before 2014, 60 percent of the people who arrived had been assaulted in Chiapas, but *now those assaulted in Oaxaca has increased to 90 percent.*” Alberto Donis, *supra*, Exhibit 2, at ¶ 11 (emphasis added); *accord*, Brother Tomas, *supra*, Exhibit 1, at ¶ 4 (“Incidents of violence, kidnappings, robberies, extortions, and rape continue at 90 percent.”); *see also* RED DE DOCUMENTACIÓN DE LAS ORGANIZACIONES DEFENSORAS DE MIGRANTES (REDODEM), *Migrantes Invisibles, Violencia Tangible*, July 2015, Exhibit 32, at 36 (“irregular migrants older than 15 years suffer the highest crime rate while transiting Mexico (96 percent).”).

In short, it is an exceedingly rare and lucky Central American who manages to emerge unscathed from this toxic mix of criminality, official brutality and corruption. To make matters worse, respondents do little or nothing to protect migrants from rampant criminality, whether irregular and official.

As this Commission has observed, Mexico makes scant effort to protect migrants or to prosecute those who prey upon them. *Human Rights of Migrants in Mexico, supra*, at ¶ 284 (“The Mexican State’s response is far from what it should be if it is to protect migrants and other persons in the context of human mobility in Mexico and prosecute, punish, and redress the crimes and human rights violations committed against them.”). Again, independent human rights observers concur:

Although the Mexican government has spoken a great deal about the need to protect migrants crossing through the country, there is no meaningful evidence that authorities have made significant progress in investigating or punishing the criminal groups or the police officers, soldiers, and INM agents that take advantage of vulnerable migrants.

An Uncertain Path, Exhibit 20, at 6; see also Jose Donis, *supra*, Exhibit 2, at ¶¶ 3, 5, 9, 11 (“The situation of aggression suffered by people at the hands of authorities, namely attacks, robberies, rape, and extortion, has changed very little, but the number of victims of such crimes has increased considerably... Since they implemented the *Plan Frontera Sur* in August 2014, until the beginning of 2016, only 5 robbers have been detained.”).

In short, “[t]he Mexican State’s failure to respond effectively to protect the life, personal integrity, and liberty of migrants has been an enabling factor in the kidnappings, torture, cruel, inhuman, and degrading treatment, murders, rapes, and other sexual abuse, trafficking in persons, and disappearances of migrants.” *Human Rights of Migrant in Mexico, supra*, at ¶ 337.

The hyper-dangerous conditions Mexico maintains, and which the United States enables and condones, constitute the *Plan Frontera Sur's* front line of entrenchment, dissuading many with clear protection needs from attempting to find refuge in either country. Although there is no way of knowing how many men, women and children this *cacería de migrantes*—“open season” in which migrants are prey—dissuades from seeking international protection, reason suggests the number must be substantial. That thousands of men, women and children remain willing to run the risk of falling victim to near-certain violence in Mexico bears stark testimony to the even greater dangers of remaining in the Northern Triangle.

Yet when hyper-dangerous conditions fail to deter, other components of respondents' interdiction campaign make the odds overwhelming that any given Central American will be summarily deported to the Northern Triangle, no matter how compelling his or her need for international protection.

3 Respondents deter Central American refugees from pursuing claims for asylum or other international protection though punishing *en masse* detention.

According to official figures of the *Secretaría de Gobernación* (“SEGOB”), in 2015 Mexico arrested 170,323 migrants from the Northern Triangle countries. SEGOB, *Boletín Mensual de Estadísticas Migratorias 2015*, Exhibit 26, at 126, Cuadro 3.1.1, www.gobernacion.gob.mx/es_mx/SEGOB/Extranjeros_alojados_y_devueltos_2015 (last checked March 7, 2016). Over roughly this same period, the *Comisión Mexicana de Ayuda a Refugiados* (“COMAR”)—the agency responsible for processing asylum claims—adjudicated just 1,944 applications. COMAR, *Estadísticas enero al 30 de noviembre de 2015*, Exhibit 15, at 12 (“COMAR Estadísticas”). In

other words, 1.2 percent of interdicted Central Americans at most received an actual adjudication of their asylum requests.¹⁹

The reasons for this astonishingly low rate of adjudication are not difficult to discover: First and foremost, Mexico systematically detains Central American migrants—often under punishingly harsh conditions—for howsoever long as the COMAR may spend adjudicating their asylum claims. *Human Rights of Migrants in Mexico, supra*, at ¶¶ 527, 532 (Central Americans in the Tapachula detention center held for more than 60 days as a consequence of having filed for international protection; Mexico employs prolonged detention as “as deterrent to [potential refugees’] defense of their rights” and contrary to Mexico’s own constitution). Such mass detention ensures that none but the most stalwart refugees ever see their claims through to adjudication.²⁰

Such *en masse* detention of asylum-seekers—even were conditions in migrant detention facilities acceptable—would clearly violate international law. See UNHCR, *Guidelines on the Applicable Criteria and Standards Relating to the Detention of Asylum-Seekers and Alternatives to Detention* (2012), Exhibit 23, at 15-16, www.unhcr.org/refworld/docid/503489533b8.html (last checked March 16, 2016) (“Detention [of asylum-seekers] must not be arbitrary, and any

¹⁹ In reality, even this paltry number overstates the number of apprehended Northern Triangle migrants who succeed in getting an actual adjudication of their eligibility for international protection because many, perhaps even most of the COMAR’s 1,944 adjudications involve unapprehended applicants who step forward affirmatively and apply for asylum. See, e.g., Declaration of Lilian Lizzeth Gonzalez, January 30, 2016, Exhibit 37, at ¶¶ 16-18 [hereafter Lilian Gonzalez].

²⁰ Indeed, the COMAR reports that in 2015 831 Northern Triangle protection applicants—almost 30 percent of those who initially apply for protection—abandoned or withdrew their claims before adjudication. *COMAR Estadísticas, supra*, Exhibit 15, at 11.

decision to detain must be based on an assessment of the individual's particular circumstances.

... Detention can only be exceptionally resorted to for a legitimate purpose. Without such a purpose, detention will be considered arbitrary, even if entry was illegal.”). Yet conditions and treatment in Mexico's detention facilities are far from acceptable:

They took me to the detention center in Mexico City. I was detained there for three weeks. The conditions in the detention center were horrible. The cells had capacity for 20 people, but often they put up to 100 people in the same cell, and there wasn't even a place to sleep. We had to stand or squat, and it was impossible to sleep. In terms of food, they did not give enough, neither in quantity or quality... As for blankets, they did not give me any for two weeks, and I suffered in the cold every night. ... After two weeks, they gave me a dirty blanket, with a bad smell, which seemed like it hadn't been washed in a long time... In November 2015, I returned to Mexico... [and] I was detained for two and a half weeks in the same detention center, and later for three days in Tapachula. The conditions were the same.

Alexander Valdez, *supra*, Exhibit 5, at ¶ 2.

Jesus Castro, among many others, relates suffering under similarly harsh conditions and treatment:

They took me to a migration center in Tuxtla Gutierrez, Chiapas, where I stayed for a week. The conditions in the center were intolerable. There they didn't really care if we were able to bathe, or anything, and some people were left to wallow in filth. They would only give us food once a day, it was so bad it was difficult to eat. There were lots of characters inside, including hit men, and there was no keeping them separate from us. For example the members of the 13th St. and the 18 street gangs were all together even though they had conflicts between them. You couldn't go anywhere by yourself, because they might attack you, and one against many is impossible. The minors they put behind bars, but they were so close if you stretched your hand you could touch them.

Jesus Castro, *supra*, Exhibit 27, at ¶ 27; *see also* Felicita Pérez, *supra*, Exhibit 6, at ¶ 5 (“They shoved me inside a cell, approximately 4 meters long and 4 meters wide. There were some 20 people in the same cell, men, women, kids, and infants. There was no place to sleep in the cell. It was cold and they did not even give us a blanket.”); Sandra Ortega, *supra*, Exhibit 4, at ¶¶ 7-8 (“In Tapachula the conditions were horrible. The lack of hygiene was disgusting”; “they

separated me from my son, who was 13 years old, and they took him to another cell and we could hardly see each other. There is also a very obvious discrimination against Central Americans. They gave the Cubans blankets, private rooms, clean bathrooms, and even food for their diet. For us, however, not even a blanket and the food was of very bad quality. *Because of the bad conditions, I asked for immediate deportation, because to stay in that place for months and months while processing my refugee application seemed unbearable to me.*” (emphasis added));²¹ Oscar Banegas, *supra*, Exhibit 7, at ¶ 3 (“During those three months, I was detained in the migration station and it made me crazy. I was treated badly, I got sick, I asked for help and they ignored me, and I spent the whole time hiding because I saw people who worked with the cartel. I requested from the migration officials to be transferred to a different migration station because I saw dangerous people where I was. They said they couldn’t.”); *see also* Alberto Donis, *supra*, Exhibit 2, at ¶¶ 19, 22, 25 (“While monitoring [detention centers], we realized there are many people who have been detained for many months within the migration stations, because migration asked them for money in order to be released, and told them that they had a deportation order even though it wasn’t necessarily true...”).

²¹ As Ms. Ortega’s declaration signals, the treatment the respondent governments accord persons seeking refuge from rampant violence in the Northern Triangle is grossly and irrationally discriminatory as compared to the treatment they afford persons from other countries, particularly Cuba. *See, e.g.,* Adriana Maestas, *US Welcomes Cubans While Deporting Vulnerable Latin American Migrants*, March 23, 2016, www.truth-out.org/opinion/item/35326-us-cubans-welcome-but-vulnerable-latin-americans-stay-out (last visited April 13, 2016) (“The US is detaining and then deporting Central American children back to dangerous countries, while extending the welcome mat to Cubans who touch US soil.”). Petitioners’ point is not that the respondent governments should treat Cubans—or any other national group—more harshly, but that international law obliges them to treat Central American migrants with greater compassion.

Of course, the foregoing will not come as news to this Commission, which has previously remarked that conditions in Mexican migrant detention centers are far from salutary. *Human Rights of Migrants in Mexico*, at ¶¶ 552-53. As the Commission there notes, INM migration stations are much like maximum-security prisons, with poor ventilation, no windows, barred entrances, and small, overcrowded cells. Food is often inadequate and of poor quality, and migrants infrequently provided beds or blankets. *Id.* These facilities are “on the whole... unsuitable, given the administrative nature of immigration detention.” *Id.*

Sadly, even children are not exempted from respondents’ policy and practice of incarcerating asylum-seekers *en masse* and under punishing conditions. As this Commission has noted, Mexico engages in “routine and widespread” detention of children and adolescents. *Id.* at ¶¶ 501, 506 (“[O]nly children under the age of 12 are being referred to one of the 27 shelters for unaccompanied children,” and “even in these shelters the children and adolescents are effectively being deprived of their liberty, as the doors to these shelters are locked and the children housed there are not allowed to leave.”).

Again, the declarations of interdicted children corroborate. Fifteen-year-old Hector Boteo recounts the following:

They detained us, and we spent about one and a half months locked in the migration station in San Luis Potosí. They never transferred us to the DIF.²²

²² Although Mexican law nominally requires that unaccompanied minors be immediately transferred to special shelters run by the *Sistema Nacional para el Desarrollo Integral de la Familia* (“DIF”), a social services agency, in practice most children are simply commingled with adults in migrant detention centers. *Stemming the Tide, supra*, Exhibit 41, at 28, 31-33.

According to another exhaustive report, of the 6,723 children who entered the Siglo XXI detention center in Tapachula, Chiapas, in 2013, only six percent were eventually placed in DIF

Conditions in the migration station were ugly. We shared bedrooms with many people: minors and adults of both sexes, all of us very crowded, and everything very dirty. Food was the same all three meals: soup or a sandwich, and water, or sometimes juice.

Hector Boteo, *supra*, Exhibit 3, at ¶¶ 4-5.²³

Margarita del Carmen Barrios, 15 years old at the time she was detained, relates a similar experience:

[T]hey transferred us to the immigration station in San Luis Potosi, where we stayed 10 days, crying all the time. The place was a room with bars, and they have the underage minors together with adult women strangers. They had no activities for us. ... I couldn't see my brother during the days I was there, and they deported him before me. Later they transferred me by bus to the migration station in Acayucan. ... The station had many rooms and we detainees had to clean them. The food was very bad: milk, ham and bread was what we ate, the same all three meals. ... I was with adult women. ... In the month I was detained they never told me I had an option of being in any other place and I felt bored, I spoke only with my friend and cried, I did not know what would happen to me.

Margarita Barrios, *supra*, Exhibit 28, at ¶ 2.

The UNHCR, among others, has been clear that the mass detention of asylum-seekers is inconsistent with established international law: “*Detention that is imposed in order to deter future asylum-seekers, or to dissuade those who have commenced their claims from pursuing them, is inconsistent with international norms.*” *Detention Guidelines, supra*, Exhibit 23, at 19 (emphasis added); *see also id.* at 18 (detention of asylum-seekers should “not ordinarily extend

shelters. UNIVERSITY OF CALIFORNIA HASTINGS CENTER FOR GENDER AND REFUGEE STUDIES, *Childhood and Migration in Central and North American: Causes, Policies, Practices, and Challenges* (2015), at 271, cgrs.uchastings.edu/sites/default/files/Childhood_Migration_HumanRights_English_1.pdf (last visited March 25, 2016).

²³ Human rights observers also report that detained children are frequently forced into regular contact with gang members. Immigration authorities appear to make no effort to separate children from gang members, with whom they must sometimes share cells. Children have reported being attacked and beaten as a result. *See, e.g., Stemming the Tide, supra*, Exhibit 41, at 36.

to a determination of the full merits of the claim. This exception to the general principle—that detention of asylum-seekers is a measure of last resort—*cannot be used to justify detention for the entire status determination procedure, or for an unlimited period of time.*” (Emphasis added)).

International law notwithstanding, the evidence establishes that respondents rely heavily on indefinite, indiscriminate detention to discourage even those few Northern Triangle detainees who apply for protection from pursuing their claims through an adjudication of their merits. “The many months that migrants must spend in detention while awaiting the results of their asylum applications have deterred some from applying and led others to abandon their petitions.” *Mexico’s Recent Immigration Enforcement, supra*, Exhibit 18, at 2.

As will be seen next, should both endemic crime and indiscriminate detention under punishing conditions somehow fall short, respondents have resort to yet another fail-safe: those few migrants who would insist on a formal adjudication of their protection claims must navigate an opaque and arbitrary adjudicatory process in which the most rudimentary elements of due process are woefully absent, after which their claims will almost certainly be rejected regardless.

4 Respondents systematically deny Northern Triangle migrants any meaningful access asylum or other international protection in Mexico.

La 72 shelter director Brother Tomás sums up the many obstacles detainees must overcome if they wish to apply for international protection as follows:

[Migrants’ defenders] are not allowed to enter where the people are detained. The people who are detained in the migration stations do not have access to anything, and we know that there are punishments, overcrowding, bad food, and that they are not informed of their rights to request asylum or any other way to avoid deportation. There are a lot of testimonies from people that the INM officials have forced them to sign their

deportation orders.

Brother Tomás, *supra*, Exhibit 1, at ¶ 16.

Numerous declarations before this Commission confirm Brother Tomás's observations: interdicted migrants rarely have access to legal services or information, even when they advise immigration officials that deportation would be tantamount to a death sentence.²⁴ Detainees who ask about asylum are told they should not bother applying, or that they must have with them documentary proof of persecution. These failing, immigration officials will simply force detainees to sign agreements authorizing their summary deportation. Petitioners' evidence corroborates:

In this detention center, no one ever explained my rights to me. If such rights exist, they're worthless because you're in Mexico and you're being detained. It's like you're nobody and nothing and no one will listen to you. There was no opportunity to tell anybody that I wanted to not return to my country. The guards and officials had more important things, like going out to catch people, than to listen to you. At no time did they let you speak with any sort of official to ask for asylum, humanitarian visa, or any other type of immigration relief... When you get deported by Mexico it's always the same: it's impossible to explain to anybody why you can't go back to Honduras. It was impossible to ask for protection because nobody would listen to you. Your word meant nothing. They take you to the border by bus and they just leave you there.

Jesus Castro, *supra*, Exhibit 27.

Other interdicted migrants describe similar treatment. Edgar Rodriguez, for example, recounts the following:

When I was arrested, I tried to explain to the Mexican immigration officials that I was a

²⁴ Self-evidently, to obtain asylum would-be applicants must know they may apply for such protection. Yet this Commission has remarked that the INM regularly denies Central American migrants, including women and children, any information about asylum or the right to apply for it. *Human Rights of Migrants in Mexico, supra*, at ¶ 535. The Commission found that 68 percent of individuals detained at the Siglo XXI detention center in Tapachula, for example, had never been informed of their right to apply for refugee protection. *Id.*

minor and that I had left Honduras to save my life. They insisted I sign for deportation. I refused, so they took my fingerprint and deported me anyway. I was given no notice or information about any chance I might have to apply for asylum or other form of international protection. I was told nothing about the *Comision Mexicana de Ayuda a Refugiados*.

Edgar Rodriguez, Exhibit 8, at ¶ 4; *see also* Felicita Perez, Exhibit 6, at ¶ 6 (immigration official “demanded that I sign my deportation. He didn’t give me any information about my rights to request asylum or refugee status or a humanitarian visa. He showed me a form six pages long, but did not give me a chance to even read it. I was forced to sign several times without knowing what it was about. I told him that I did not want to sign my deportation and that I wanted to talk to the Salvadoran lawyer. He told me that I was not going to talk to anyone and that if I did, I was going to be detained for a long time. I signed it and that afternoon ...”); Lilian Gonzalez, *supra*, Exhibit 37, at ¶ 10 (in Acayucan detention center, “we asked to speak with the Honduran consul. The next day ... he told us, ‘Look, I cannot help you.’ We asked him about asylum, and he told us only if we brought proofs, or it would not be worthwhile because the process would last one and a half to two years there in detention.”); Sandra Ortega, *supra*, Exhibit 4, at ¶ 6 (“They then took us to a migration center in Palenque. We were detained for about five days. I explained to the officials that there were reasons why we abandoned our countries, but they didn’t care. They did not tell us about any right to seek refugee status. They did not give us any other option than to be deported. I remember that they gave me a stack of papers that I had to sign, and they did not give me time to read them.”); Alexander Valdez, *supra*, Exhibit 5, at ¶ 3 (“I explained to the officials in the detention center that I was in Mexico to escape the Maras and that I was seeking refuge. They responded that I couldn’t do anything because I did not have proof that the Maras had threatened me. I explained that the Maras don’t usually

document their threats, and that my family does not have the necessary resources to send me the proof they demanded. They didn't care.”).

Again, despite their obvious vulnerability, children receive little or no special consideration in navigating the asylum process. Mexican law does not recognize unaccompanied children as having special rights to international protection. *Human Rights of Migrants in Mexico, supra*, at ¶ 513. And although Mexico nominally requires that officials specially trained in child-protection conduct a “best interests of the child” interview, *id.* at 28, they rarely do so. *Id.* at ¶¶ 509, 515. In the end, 70 percent of detained children do not know they have a right to seek asylum. UNHCR, *Arrancados de Raíz: Causas que originan el desplazamiento transfronterizo de niños, niñas y adolescentes no acompañados y separados de Centroamérica y su necesidad de protección internacional*, August 2014, Exhibit 42, at 60, www.acnur.org/t3/fileadmin/scripts/doc.php?file=t3/fileadmin/Documentos/Publicaciones/2014/9828 (last checked March 18, 2016).

Denied access to legal aid and information about of their rights, detainees must negotiate a recondite process of applying for international protection on their own, an application process in which procedural fairness is in very short supply.

As has been seen, since June 2014 “Mexico—with U.S. support—greatly increased its immigration enforcement efforts.” *Mexico’s Recent Immigration Enforcement Efforts, supra*,

Exhibit 18, at 1.²⁵ The agency responsible for adjudicating asylum claims from a pool of 157,000 potential applicants has a total of 15 adjudicators, *one for every 10,400 detainees*:

[T]he increase in detentions by the INM has not been accompanied by a significant increase in COMAR's capacity. This is significant because now that the INM has intensified its enforcement actions, it is in contact with a greater number of migrants who may be eligible to obtain refugee status. ... Despite this uptick in detentions, COMAR's budget did not increase in real terms from 2014 to 2015, and *the agency only has 15 agents throughout the entire country to conduct asylum interviews*.

An Uncertain Path, Exhibit 20, at 32 (emphasis supplied).

Underfunded and overwhelmed, the COMAR not surprisingly resorts to slipshod adjudicatory practices wholly ill-suited to adjudicating questions of life and death:

The petitioning process for asylum is one of the most complicated. *In many cases, the interviews are done exclusively by phone. There is no special treatment for women or minors*. The decisions of granting asylum are discretionary, and *it is impossible for us to know if they will approve a case or not, regardless of the strength of the facts*.

Brother Tomas, *supra*, Exhibit 1, at ¶ 18 (emphasis added).

The declarations of individual migrants confirm that the COMAR's evaluation of protection claims is cursory and lacking in rudimentary protections for confidentiality:

[In] Veracruz I was detained while riding in a bus at the checkpoint in Tapanatepec. There I wrote a request for refuge so that they would give it to the COMAR, but everyone knew about my case, and seeing that there was no confidentiality, I filed a withdrawal because everything one says is overheard by the persons detained there, and I was afraid for my safety. The COMAR called me on the telephone asking that I explain in front of everyone why I no longer wanted refuge, but I refused because I was afraid to explain the reasons in front of everyone.

Declaration of Guillermo de Jesus Ramirez, January 25, 2016, Exhibit 40, at ¶ 4; *see also*

Declaration of Cristian Yovany Garay Flores, January 26, 2015, Exhibit 33, at ¶ 4 ("I initiated my

²⁵ From July 2013 to June 2014, Mexico detained 91,905 Central Americans. *An Uncertain Path, supra*, Exhibit 20, at 8. From July 2014 to June 2015, it detained 156,992 Central Americans, an increase of 71 percent in arrests since the advent of the PFS. *Id.*

application for refuge on September 4 while I was in the [Ixtepec] shelter, COMAR interviewed me by telephone and told me I had to go every Monday to sign at the immigration office in Salina Cruz, Oaxaca, but I couldn't go to sign because I had no money; I thus abandoned my application. ... When I arrived at the Puebla jail, I asked the immigration official to reopen my application for refuge and I explained why I had abandoned it, but he told me that nothing could be done ... that I had no option but deportation.”).²⁶

²⁶ Migrants also report being denied protection simply because they have no documentary evidence of having suffered past persecution. Oscar Banegas explains his experience of being denied protection because he lacked documentary proof that gangs had threatened him:

When I arrived in Tapachula,... I requested asylum... I only saw COMAR three times in the three months that I was detained, and in mid-2015 they denied my petition, for lack of evidence – I asked them what more proof they wanted – [they asked that I] prove that I was in the Army and that I killed one of the people who was trying to recruit me.

Oscar Banegas, *supra*, Exhibit 7, at ¶¶ 5, 9; *see also* Alexander Valdez, Exhibit 5, at ¶¶ 3, 9 (“I explained to the officials in the detention center that I was in Mexico to escape the Maras and that I was seeking refuge. They responded that I couldn't do anything because I did not have proof that the Maras had threatened me. I explained that the Maras don't usually document their threats, and that my family does not have the necessary resources to send me the proof they demanded. They didn't care... [On a later trip] again I told the officials that I was in danger of being killed if they deported me to El Salvador. I also told them that I was assaulted and robbed twice. *They told me the same thing that they said in 2008, that without proof that the Maras had killed at least two of my family members, I did not qualify for refugee status.*” (Emphasis added)).

Howsoever much such adjudicatory “rules of thumb” may ease the workload of asylum adjudicators, they are wholly illegal:

Often, however, an applicant may not be able to support his statements by documentary or other proof ... In most cases a person fleeing from persecution will have arrived with the barest necessities and very frequently even without personal documents. Thus, while the burden of proof in principle rests on the applicant, the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner. Indeed, in some cases, it may be for the examiner to use all the means at his disposal to produce the necessary evidence in support of the application. Even such independent research may not, however, always be successful and there may also be

In the end, the long odds against Central American migrants ever being granted protection leaves all but a tiny minority convinced that seeking asylum would be utterly futile.

C Respondents' Cerberian interdiction campaign results in the summary deportation of thousands of men, women and children to jurisdictions in which they will suffer horrific violence.

It has now been seen (1) that Mexico, aided and abetted by the United States, has dramatically increased apprehensions and detentions of Central American migrants; and (2) that many of the interdicted have no realistic chance of avoiding summary deportation to jurisdictions in which they will likely suffer horrific violence no matter how compelling their claims for international protection. Raw numbers tell the tale.

In 2014, Mexico deported 107,814 individuals, 97 percent of them to Honduras, El Salvador, and Guatemala. INM, *Boletín de Estadísticas Migratorias 2014*, at 126, www.wola.org/sites/default/files/Boletin2014_.pdf. The INM also registered a drastic increase in its deportation of children in 2014. *Id.* at 133. Between March and September of 2014, Mexico deported 12,097 children, up 60 percent from the same period the year before. From October through December, Mexico deported another 4,467 children, 64 percent more than during the same period in 2013.

These trends have only accelerated. In 2015 —

- Mexico arrested 170,323 migrants from the three Northern Triangle countries. SEGOB, *Boletín mensual de estadísticas migratoria 2015*, Exhibit 26, at Cuadro 3.1.1,

statements that are not susceptible of proof. In such cases, if the applicant's account appears credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt.

UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status*, December 2011, Exhibit 43, at 38.

www.gobernacion.gob.mx/es_mx/SEGOB/Extranjeros_alojados_y_devueltos_2015 (last visited March 10, 2015).

- Mexico deported 96,489 males and 26,084 females, for a total of 122,573 Central Americans. *Id.*, at Cuadro 3.2.6. Over 99 percent of those were returned to the Northern Triangle countries. *Id.* at Cuadro 3.2.7.
- 22,779 (18.6 percent) of the persons Mexico deported to Central America were minors. *Id.* at Cuadro 3.2.8.
- 2,776, or 1.6 percent, of 170,323 interdicted Northern Triangle migrants managed to apply to the COMAR for protection. COMAR, Estadísticas enero al 30 de noviembre de 2015, Exhibit 15, at 12, www.comar.gob.mx/es/COMAR/Estadisticas_COMAR (last visited March 7, 2016).
- 831 applicants from the Northern Triangle—almost 30 percent of those who sought protection—abandoned or withdrew their claims. *Id.*
- Of the 1,944 Northern Triangle asylum claims the COMAR did decide, it granted 730, or 38 percent, and denied 1,098, or 56 percent. *Id.*
- Inasmuch as Mexico deported 122,573 Central Americans to the Northern Triangle, while granting asylum to 730, *the chances that a Northern Triangle migrant will be given refuge in lieu of deportation to one of the most violent regions in the world calculates to 0.6 percent.*

This negligible rate of protection conflicts markedly with the UNHCR’s finding that up to 58 percent of women and children displaced from the Northern Triangle have legitimate international protection needs. *Children on the Run, supra*, Exhibit 17, at 6; *Women on the Run, supra*, Exhibit 16, at 4. Even assuming, *arguendo*, the UNHCR were to exaggerate Central American’s protection needs by a factor of two, Mexico would still have deported over 35,000 persons in 2015—including 6,600 children—with legitimate protection needs.²⁷

²⁷ By way of contrast, in FY2013—the most recent period for which petitioners have managed to locate U.S. statistics—36,026 individuals detained by the U.S.—approximately 28,000 (78 percent) of whom were from Northern Triangle countries—expressed fear of persecution were they deported to their countries of origin. *Asylum Abuse: Is it Overwhelming our Borders?: Hearing Before the H.R. Comm. On the Judiciary, 113th Cong.*, December 12, 2013 (statement of

In sum, Mexico’s already poor compliance with international protection requirements has only deteriorated under the *Plan Frontera Sur*. See, e.g., WOLA, *Mexico’s Southern Border Plan: More Deportations and Widespread Human Rights Violations*, March 19, 2015, Exhibit 45 (describing impacts of PFS). In 2013 this Commission found that Mexico’s immigration enforcement practices violate rights of individuals, and in particular of women and children, to “humane treatment, the guarantees of due process, the duty to adopt special measures of protection for children and adolescents, the right to seek and receive asylum, and the right to judicial protection.” *Human Rights of Migrants in Mexico, supra*, at ¶ 573. Since then, Mexico has not only failed to come into compliance with international norms, it has leveraged U.S. support to flaunt them even more.

There is simply no question that men, women and children are fleeing a humanitarian crisis in the Northern Triangle. Nor is it credible to deny that many such persons have clear international protection needs. By “outsourcing” its southern border control to Mexico, the United States shirks its own duty to evaluate protection claims and to confer protection on deserving applicants.

Ruth Ellen Wasem, Specialist in Immigration Policy, Cong. Research Serv.), at 15, docs.house.gov/meetings/JU/JU00/20131212/101588/HHRG-113-JU00-Wstate-WasemR-20131212.pdf.

Establishing a credible fear of persecution is the first step in presenting a “defensive” asylum claim. See 8 C.F.R. § 208.30 (2016). Therefore, taking this number as a surrogate for Central American asylum applicants, about 10 times more Northern Triangle migrants applied for asylum in the United States than did those interdicted in Mexico in 2015, during which the pool of potential asylum applicants was certainly much larger.

IV IDENTIFICATION OF INTERNATIONAL HUMAN RIGHTS INSTRUMENTS BEING VIOLATED.

The foregoing establishes that the United States and Mexico are systematically violating the human rights of Central American refugees fleeing the Northern Triangle. The three components of the *Plan Frontera Sur* detailed herein, jointly and severably, specifically violate the following:

A Impunity: maintaining and condoning wholesale crime and violence to deter Central Americans from seeking refuge in Mexico and the United States.

As alleged herein, the respondent States' subjecting Central American migrants to conditions of unchecked violence and criminality in Mexico has the purpose and effect of deterring refugees from seeking asylum or other international protection in violation of the following:

- Article I of the American Declaration of the Rights and Duties of Man, 1948, O.A.S. Res. XXX, O.A.S. Off. Rec. OEA/Ser. L/V/II.4 Rev. (1965) [hereafter American Declaration),²⁸ which provides: "Every human being has the right to life, liberty and the security of his person."
- Article II of the American Declaration, which provides: "All persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor."
- Article V of the American Declaration, which provides: "Every person has the right to the protection of the law against abusive attacks upon his honor, his reputation, and his private and family life."
- Article VII of the American Declaration, which provides in pertinent part: "all children have the right to special protection, care and aid."

²⁸ The respondent States are bound by the American Declaration by virtue of OAS membership and ratification of the OAS Charter. See Case No. 2141 (United States) Res. 23/81, OEA/Ser.L/V/II.52, Doc. 48, Mar. 6, 1981, and the Advisory Opinion of the Inter-American Court of Human Rights OC10/89 (Colombia), July 14, 1989.

- Article XVII of the American Declaration, which provides: “Every person has the right to be recognized everywhere as a person having rights and obligation, and to enjoy the basic civil rights.”
- Article XVIII of the American Declaration, which provides: “Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority, that to his prejudice, violate any fundamental constitutional rights.”
- Article XXIV of the American Declaration, which provides: “Every person has the right to submit respectful petitions to any competent authority, for reasons of either general or private interest, and the right to obtain a prompt decision thereon.”
- Article XXVII of the American Declaration, which provides: “Every person has the right, in case of pursuit not resulting from ordinary crimes, to seek and receive asylum in foreign territory, in accordance with the laws of each country and with international agreements.”
- Article 1 of the American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 [hereafter American Convention”],²⁹ which provides in pertinent part: “The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.”
- Article 19 of the American Convention, which provides: “Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.”
- Article 4 of the American Convention, which provides: “Every person has the right to have his life respected.”
- Article 5 of the American Convention, which provides: “Every person has the right to have his physical, mental, and moral integrity respected.”
- Article 19 of the American Convention, which provides: “Every minor child has the

²⁹ Ratified by Mexico on March 2, 1981; signed by the United States on June 1, 1977, but not ratified. The signature of the United States on the American Convention nevertheless obliges it “to refrain from acts that would defeat the object and purpose of [the] treaty.” Article 18, Vienna Convention on the Law of Treaties, opened for signature May 23, 1969, Art. 27, 1115 U. N. T. S. 331, T. S. No. 58 (1980), 8 I. L. M. 679 (1969).

right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.”

- Article 22(7)-(9) of the American Convention, which provide: “Every person has the right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the state and international conventions, in the event he is being pursued for political offenses or related common crimes”; “[i]n no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status, or political opinions”; and “[t]he collective expulsion of aliens is prohibited.”
- Article 24 of the American Convention, which provides: “All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.”
- Article 25 of the American Convention, which provides in pertinent part: “Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.”

B *En masse* detention of asylum-seekers under harsh conditions.

Respondent States’ detaining Central American asylum-seekers *en masse*, often under harsh conditions, as alleged herein, has the purpose and effect of deterring refugees from seeking asylum or other international protection in violation of the following:

- Articles I, II, VII, XVIII, and XXVII of the American Declaration, which provide in pertinent part as set forth *ante*.
- Article XXV of the American Declaration, which provides: “No person may be deprived of his liberty except in the cases and according to the procedures established by pre-existing law ... Every individual who has been deprived of his liberty has the right to have the legality of his detention ascertained without delay by a court, and the right to be tried without undue delay or, otherwise, to be released. He also has the right to humane treatment during the time he is in custody.”
- Articles 1, 19, 22, 24 and 25 of the American Convention, which provide in pertinent part as set forth *ante*.

- Article 5(1) and (6), of the American Convention, which provide: “Every person has the right to have his physical, mental, and moral integrity respected”; “[e]very person has the right to have his physical, mental and moral integrity respected”; “[p]unishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners.”
- Article 7 of the American Convention, which provides, *inter alia*: “Every person has the right to personal liberty and security”; “[n]o one shall be subject to arbitrary ... imprisonment”; “Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful.”

C Systematic denial of due process in processing claims for international protection.

Respondent States’ interdicting and returning Central Americans without allowing them a fair and orderly process by which they may establish their right to asylum or other international protection, as alleged herein, violate the following:

- Articles I, II, VII, XVIII, and XXVII of the American Declaration, which provide in pertinent part as set forth *ante*.
- Articles 1, 4, 5, 19, 22, and 24 of the American Convention, which provide in pertinent part as set forth *ante*.
- Article 8 of the American Convention, which provides: “Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, ... for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.”

V RELIEF REQUESTED.³⁰

WHEREFORE, petitioners respectfully pray the Commission grant the following relief:

³⁰ As petitioners will explain fully in a forthcoming request for precautionary measures, the Commission should also exercise its authority under Article 25 to issue all necessary and appropriate and necessary precautionary measures, in addition to the permanent relief described below.

- Declare that respondents' creating and condoning a state of impunity respecting crime and violence against Central Americans transiting Mexico unlawful deterrents to such persons' seeking international protection, as well as directly violative of international proscriptions against impunity;
- Declare that Mexico's (i) detaining Northern Triangle migrants during the pendency of proceedings to determine their eligibility for asylum or other international protection; (ii) subjecting interdicted migrants to harsh or punitive conditions during detention; and (iii) detaining women, children, and similarly vulnerable migrants in facilities and under conditions that fail to accommodate their particularly vulnerability, individually and collectively violate international law;
- Declare unlawful Mexico's (i) failing to inquire into Northern Triangle migrants' reasons for having entered Mexico irregularly; (ii) failing to inform Northern Triangle migrants of their right to seek asylum and other international protection; and (iii) denying Northern Triangle migrants meaningful access to legal representation;
- Declare that respondents' systematically interdicting and summarily deporting migrants to Northern Triangle countries without affording them a full, fair and transparent process by which they may establish their right to asylum or other international protection violative of international law;
- Declare that in suborning, aiding and abetting Mexico's systematic violations of international law so as to prevent Northern Triangle migrants from reaching its territory, the United States is jointly and severally culpable for all such violations;
- Recommend to Mexico that it cease and desist committing the herein described systematic violations of international law;

- Recommend to the United States that it cease and desist suborning, aiding, or abetting Mexico's interdiction and deportation of Central American migrants until such time as this Commission finds that Mexico is in substantial compliance with its obligations to confer refugee status or like international protection upon qualified migrants fleeing the Northern Triangle.

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Respectfully submitted.

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