

January 19, 2022

Tania Reneaum Panszi
Executive Secretary
Inter-American Commission on Human Rights
1889 F Street, N.W.
Washington, DC 20006

Re: Request for Thematic Hearing: Abuses Against Immigrants at the Southern Border of the United States of America, Including Haitians and Central Americans

One hundred petitioning organizations from across the United States of America, Mexico, Guatemala, Honduras, El Salvador, Costa Rica, and Chile submit this request for an audience.

ORGANIZATIONS REQUESTING THIS HEARING

All petitioners appear below, along with the mission statements of the leading organizations.

Alianza Americas

Alianza Americas is a network of Latin American and Caribbean migrant organizations in the United States. Our mission is to achieve a more inclusive, equitable and sustainable way of life for Latino immigrant communities living in the United States and throughout the Americas.

Haitian-Americans United

Our mission is to improve the quality of life for Haitians and Haitian Americans through education, community empowerment and cultural development.

The Institute for Justice and Democracy in Haiti

The Institute for Justice and Democracy in Haiti (IJDH) is a United States-based human rights non-profit organization. It is a partnership of human rights advocates in Haiti and the United States, dedicated to tackling the root causes of injustice that impacts basic human rights in Haiti.

Lawyers for Civil Rights

Lawyers for Civil Rights works with communities of color and immigrants to fight discrimination and foster equity through creative and courageous legal advocacy, education, and economic empowerment.

Access Living / Cambiando Vidas

Alabama Coalition for Immigrant Justice

Alabama Latino AIDS Coalition

Albergue Decanal Guadalupano

Alianza de Salvadoreños Retornados

América Para Todos

Arkansas United

Asociación Colectivo Violeta

Asociación de Gualtemaltecos

Asociación de Retornados Guatemaltecos
Asociación de Salvadoreños de Los Angeles (ASOSAL)
Asociación Pop N'oj
Border Patrol Victims Network
CARECEN D.C. (Central American Resource Center of Washington, D.C.)
CARECEN Los Angeles (Central American Resource Center of Los Angeles)
CARECEN San Francisco (Central American Resource Center of San Francisco)
Cáritas de El Salvador
Casa de la Cultura El Salvador
Casa de la Misericordia y de Todas Las Naciones
Casa Monarca
Casa Tochán
Casa Yurumein
Center for Immigrant Progress
Centro de Atención a la Familia Migrante Indígena
Centro Internacional para los Derechos Humanos de los Migrantes
Centro Presente
Centro Romero
Centro San Bonifacio
Chicago Religious Leadership Network on Latin America
Comunidades Indígenas en Liderazgo (CIELO)
Clínica Jurídica para Refugiados "Alaíde Foppa" de la Universidad Iberoamericana
Club Francisco Villa
Club Nueva Visión de Cheranástico
Club San Juanico
Club Taji
Colectiva Feminista MAPAS
Colectivo de Mujeres Transnacionales
Colectivo Iglesias por la Paz
Comité de Solidaridad y Derechos Humanos Monseñor Romero
Comité Oscar Romero de Valparaíso, Chile
Comunicaciones Comunitaria (COMUN)
Comunidades Organizando el Poder y la Acción Latina (COPAL)
CRECEN Houston
Dominican Development Center
Durango Unido en Chicago
Familia Unidas en Acción
Familias Inmigrantes y Estudiantes en la Lucha (FIEL)
Florence Immigrant and Refugee Rights Project (FIRRP)
Florida Immigrant Coalition
Fundación Arcoíris por el Respeto a la Diversidad Sexual
Fundación para la Justicia y el Estado Democrático de Derecho
Grupo de Monitoreo Independiente de El Salvador (GMIES)
Haitian Americans United for Progress (HAUP)
Hebrew Immigrant Aid Society (HAIS) México
Hondurans Against AIDS

Immigrant Family Services Institute (IFSI)
Instituto de Geografía para la Paz (IGP)
Instituto para las Mujeres en la Migración (IMUMI)
Justice for our Neighbors
Justicia, Paz e Integridad de la Creación (JPIC) Familia Franciscana Guatemala
Kino Border Initiative
La 72, Hogar-Refugio Para Personas Migrantes
La Colaborativa
La Federación de Clubes Michoacanos en Illinois (Casa Michoacán)
Latinas en Poder
Latino Commission on AIDS
Latino Policy Forum
Latinos Progresando
Lila, LGBTQ Inc.
Living Hope Wheelchair Association
Mission Guatemala USA
Office of Latino/Latin American Studies (OLLA)
Organización Negra Centroamericana (ONECA)
Organización Trans Reinas de la Noche (OTRANS-RN)
Pastoral Social de la Iglesia Anglicana de México
Plataforma Migración y Desarrollo
Red Clamor
Red de Pueblos Transnacionales
Red Jesuita con Migrantes Latino America y el Caribe (RJM-LAC)
Red Mexicana de Lideres y Organizaciones de Migrantes
Red Nacional de Apoyo a Personas Migrantes y Refugiadas LGBT México
Red por los Derechos de la Infancia en México (REDIM)
Rural Women Health Project
Salud Integral Para La Mujer
Seeds of Resistance
Southeast Immigrant Rights Network (SEIRN)
St Brigid's Casa Mary Johanna
Strangers No Longer
Tabernacle de la Voix de l'Evangile
Telpochacalli Community Education Project
Tennessee Immigrant Refugee Rights Coalition (TIRRC)
United for a Fair Economy
We Count!
WIN! The Welcome Immigrant Network
Wind of the Spirit
Women Working Together USA

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GENERAL REQUEST

We request a thematic hearing on Abuses Against Central American and Haitian Migrants on the Southern Border of the United States of America be convened in accordance with Article 60 and Chapter VI of the Rules of Procedure of the Inter-American Commission on Human Rights at the next session in 2022. The organizations also request a special visit to both sides of the United States - Mexico border by the IACHR, with the participation of all relevant rapporteurs to observe the complex human rights violations. At the conclusion of the visit, we respectfully request that the Commission’s delegation publish a report based on its observations and recommendations.

State to be cited: United States of America

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1. EXECUTIVE SUMMARY OF THE HEARING REQUEST

Over the past months, thousands of Haitian and Central American immigrants¹ have fled from their country in search of protection and dignity. Those who have arrived at the southern border of the United States of America (hereinafter “United States”) have encountered:

- Illegal and inhumane confinements, including in an overcrowded “camp” under a bridge near Del Rio, Texas;
- Racialized violence;
- Deprivation of medical care;
- Failure to protect against COVID-19;
- Inhumane, dangerous and overcrowded conditions;
- Makeshift and squalid conditions;
- Unnecessary prolonged detention;
- Language discrimination and exclusion;
- Family Separation;
- Denial of asylum; and
- Absence of consular notification, access and protection.

All of these circumstances — at the hands of the United States government — constitute violations of human rights established under the American Declaration. Furthermore, the United States has failed to follow the recommendations of the Inter-American Commission on Human Rights (hereinafter “IACHR” or “the Commission”) related to “Haitian national origin and Afro-descendant ethnic-racial origin.” IACHR, Resolution No. 2/2021, *Protection of Haitians in Human Mobility: Inter-American Solidarity* (hereinafter “*Protection of Haitians*”) (10/24/21) at 11 ¶38.² See also *Mortlock v. U.S.* (“immigration policy cannot give rise to cruel, degrading and inhuman treatment nor discrimination based on race, color, religion or sex”).³

The United States government’s human rights abuses against Haitians and Central Americans at the southern border is part and parcel of a long history of exclusion, discrimination and racism in the United States, including unlawful practices that have been previously addressed by the Commission. See generally *The Haitian Cent. for Hum. Rts. et. al. v. U.S.*⁴ (concluding that the “United States Government has violated the right to equality before the law”); see also IACHR’s powerful statements on the unfolding crisis at the United States border with Mexico.⁵ Since the problem persists, the need for the Commission to address this latest iteration of abuses by the United States is urgent.

¹ In this petition, the terms “immigrants” and “migrants” refers to refugees, asylum-seekers, and others who left their countries of origin and are seeking protection. The terms also refer to people who are forced to remain in Mexico and those who are actively crossing the border, including those who are detained, expelled, deported or released.

² Available at: <https://www.oas.org/en/iachr/decisions/pdf/2021/Res-2-21-en.pdf>.

³ IACHR, Case 12.534, Report No. 63/08, OEA/Ser.L/V/II.134, Doc. 5, rev. 1 ¶78 (2008).

⁴ IACHR, Case 10.675, Report No. 51/96, OEA/Ser.L/V/II.98, Doc. 6, rev. ¶177 (1997).

⁵ “IACHR Expresses Concern about the Expulsion of People in a Human Mobility Context from the United States and Mexico and calls on States to Ensure the Effective Protection of Their Rights” (September 17, 2021)

(hereinafter “September 17 Statement”), available at:

https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2021/243.asp; see also “IACHR Expresses Deep Concern about the Situation of Migrants and Refugees in the United States, Mexico, and Central America” (July 23, 2019) (hereinafter “July 23 Statement”), available at:

https://www.oas.org/en/iachr/media_center/PReleases/2019/180.asp.

The requested hearing will help to bring visibility, awareness, and accountability surrounding human rights violations against Haitian and Central American families. It will also help to reinforce standards of protection in accordance with the minimum international human rights guarantees and international refugee rights. Finally, it will highlight the need to apply the recommendations and standards developed by the Commission in this area.

Background

The harrowing experiences of Central American and Haitian immigrants form the basis of this Petition filed by 100 organizations across the United States, Mexico, Guatemala, El Salvador, Honduras, Costa Rica and Chile.

As news reports confirm, thousands of people have fled to the southern border of the United States in recent months.⁶ This petition captures the stories and experiences of dozens of Central American and Haitian migrants, including individuals, families, and children who arrived seeking help at the United States-Mexico border in 2021.⁷

Fleeing families have risked everything, and many have survived sexual assault and rape, extortion, robbery and kidnapping, while watching family and friends die. Unfortunately, fleeing families have been re-victimized by the United States government upon arrival at the border. The United States certainly has a duty, responsibility and legal obligation to treat all people without discrimination, racial bias, or violence. However, the United States government has subjected — and continues to subject — Central American and Haitian immigrants to inhumane conditions.

Human Rights Violations at the United States Border

While in United States custody, immigrants have been subjected to conditions that threatened their health and safety, including:

- Overcrowded conditions that threatened their health and wellbeing, particularly in light of the COVID-19 pandemic.
- Confinement without protection from or screening for COVID-19.
- Denial of medical care. Even pregnant women and children experiencing illness have been deprived of medical assistance.

⁶ United Nations, “Poverty and violence push 378,000 Central Americans north each year” (November 23, 2021), available at: <https://news.un.org/en/story/2021/11/1106432> (“The report revealed that in just two years, the percentage of people who considered migrating internationally increased more than five-fold, jumping from eight per cent in 2019 to 43 per cent in 2021.”); see also IACHR, *Protection of Haitians* at 1-2 (noting the consequences of the COVID-19 pandemic and the August 2021 earthquake).

⁷ Doctors Without Borders, “Migration crisis in the Americas” (June 15, 2021) (“People are fleeing the kind of violence we usually see in war zones.”), available at: <https://www.doctorswithoutborders.org/migration-crisis-america>; see also International Rescue Committee, “What is happening at the U.S. southern border?” (October 22, 2021) (explaining the impact of border crisis on Central American and Haitian families), available at: <https://www.rescue.org/article/what-happening-us-southern-border>.

- At least one mother suffered a miscarriage while in the custody of the United States. Another soon-to-be-mother had her medications confiscated and discarded by United States officials.
- While kept by the United States government in makeshift outdoor “camps,” people did not have access to food, water, hygiene products, sanitation or protection from the elements. Families were deprived of blankets — or any protection from the ground — while confined under a bridge near Del Rio, Texas.
- Even once they were transferred by the United States government from the “camps” to detention facilities, many families — including those with infant children — continued to be deprived of food and water. Over the course of multiple days, some families received food only once. They had no access to showers, hygiene products, blankets, or beds. Many slept without any covers on concrete floors.

The United States government confined immigrants in these inhumane and dangerous conditions for unnecessary and excessive periods of time. Some families were confined for up to 10 days under the border bridge near Del Rio, Texas. Once transferred to detention facilities, immigrants were confined for up to 49 days before being released.

With few exceptions, immigrants have not been screened for asylum.

The commonalities in the experiences of dozens of immigrants demonstrate that the inhumane and dangerous conditions they were subjected to are systemic. The United States government injured and harmed immigrants who arrived at the border in search of safety and human dignity.

The mistreatment of immigrants demonstrates that the United States has failed to protect Central Americans and Haitians at the border. For example, the United States has not taken “the measures necessary to guarantee that these Haitian persons and their family members are not subject to any discrimination in the enjoyment of their rights and freedoms merely because they are in the context of human mobility.” IACHR, *Protection of Haitians* at 5 ¶1⁸; see also IACHR, September 17 Statement (expressing “concern over the implementation of fast-track procedures to expel people in movement from the United States to the northern and southern borders of Mexico, and from there to different borders with Guatemala”).⁹

The conditions described herein violate Articles I (right to life, liberty, security and integrity of the person), II (right to equality before the law), VI (right to the constitution and protection of the family), VII (right to protection of motherhood and childhood), XI (right to preservation of health and well-being), XVIII (right to justice), XXV (right to protection against arbitrary detention), XXVI (right to due process) and XXVII (right to asylum) of the American Declaration.

⁸ Supra note 2.

⁹ Supra note 5.

I. Deprivation of Medical Care

Despite being in United States custody, none of the immigrants identified by petitioners were offered medical care, including pregnant women and children. Many requested medical assistance, but they were denied care and treatment, regardless of the length of their detention. The U.S. government has also utterly failed to protect immigrants at the border from COVID-19. *Mortlock* at ¶72 (highlighting the importance of receiving medical care in connection with Article XI).¹⁰

Immigrants released from U.S. custody are reporting horrific accounts of being denied access to medical care while in detention.¹¹ The denial and deprivation of medical care for vulnerable people is especially unconscionable during the COVID-19 pandemic. Immigrants' lives are endangered as they are denied access to medical care in government facilities.¹² Petitioners have also identified recurring patterns and practices of migrants being deprived of medications for chronic illnesses and denied medical care.¹³ In more detail:

- At least one migrant was deprived of HIV medication during United States immigration detention.¹⁴
- One man was held for 46 days in a detention center where he submitted multiple requests in writing for help with a mouth infection. He did not receive medical care until after he was released from the government's custody.
- Pregnant women were not given proper care, placing their lives and the lives of their unborn children at risk.¹⁵

The experiences of pregnant women are particularly harrowing. The failure to provide medical care has led to at least one recent miscarriage. In greater detail:

- Marjory¹⁶ was carrying her first child when she was detained by the United States. Marjory and her husband, Frantz, made sure to tell officials at two detention facilities about the pregnancy and requested medical care. Marjory was separated from her husband and sent to a separate detention center. Marjory begged and pleaded for medical assistance at the detention center and was ignored. Days later she suffered a miscarriage. Traumatized, this family continues to mourn — and cry — as the mother attempts to

¹⁰ *Supra* note 3.

¹¹ Civil Rights Complaint Affirming Abuse of 48 Black Immigrants Fleeing Haiti (filed Oct. 18, 2021 with the U.S. Department of Homeland Security) (hereinafter “Civil Rights Complaint”), available at: <http://lawyersforcivilrights.org/wp-content/uploads/2021/10/DHS-Complaint-FINAL-10.18.2021.pdf>.

¹² *Id.*

¹³ *Id.*

¹⁴ *Supra* note 3 at ¶94 (ruling against the United States concluding that deportation of persons with HIV without adequate medical care constitutes “a de facto sentence to prolonged suffering and unnecessary premature death”),

¹⁵ Civil Rights Complaint, *supra* note 11 (noting miscarriage resulting from the denial of medical care while in U.S. custody).

¹⁶ This petition uses pseudonyms.

recover. Marjory's miscarriage at the hands of the government of the United States rises to the level of cruel and inhumane punishment.

Experiences like Marjory's are unfortunately not uncommon. In fact:

- Another pregnant woman, Marie, had done everything she could to care for herself and her pregnancy while making the trek to the United States through Mexico and Central America. Marie came to the border with prenatal medications and other medications that were vital to her health and the health of her baby. The government of the United States discarded her medications, and failed to provide any medical care or replacement medications. Instead of acting with care, the United States confiscated Marie's critical medication directly harming the mother and her pregnancy.
- Similarly, when taken into custody, Martine was visibly pregnant and at the end of her second trimester. Despite requesting medical care, she was denied any medical attention. She was detained for 4 days and forced to sleep on the concrete floor of an overcrowded cell without sufficient food or water.
- Jaqueline, another pregnant mother, was not given medical attention for the 10 days that she was detained by the United States.

Many of the immigrants came to the United States seeking the safety and well-being of their families. Nonetheless, they found their lives still at risk in government custody. For example:

- While in United States custody, Joceline, previously an active and giggling two-year-old child, suffered an ear infection, diarrhea, and a high fever for 8 days before receiving medical attention. For days, Joceline's parents attempted to secure medical assistance while they were kept by United States officials outdoors under a bridge in squalid conditions, and again once they were moved to an indoor, overcrowded detention facility without sufficient food.
- Marie, mentioned above, feared not only for her unborn child after being deprived of medication by the United States government, but also struggled to care for her infant child who was very ill.
- Another parent, Janette, grew increasingly concerned as her daughter, Monique, a two-year-old suffered from an extremely high fever for 8 days.

All these families and others were deprived of medical assistance by the United States government. At least seven additional families identified by petitioners had infants or toddlers – and none received medical care.

In addition, migrants are denied support, which is particularly problematic as many women and children experience sexual violence during their trek through Central America and Mexico to the border of the United States. Although the U.S. government is aware of the high incidence of sexual violence, survivors do not have access to psychosocial care or treatment during their

detention. Asylum-seekers fleeing persecution and violence are being denied psychosocial resources to cope with the trauma of their lived experiences. This retraumatizes survivors of sexual violence and compounds physical and mental health complications.

II. *Failure to Address COVID-19*

In light of the pandemic, the Commission has stressed the importance of “non-discriminatory, equitable access to health facilities ... [and] providing care for people with COVID-19 and groups disproportionately affected....” IACHR, Res. No. 1/2020, *Pandemic and Human Rights in the Americas* (04/10/20) at ¶8;¹⁷ see also IACHR, *Protection of Haitians* at ¶16 (noting importance of “access to vaccines in the context of the COVID-19 pandemic”).¹⁸ However, the United States refuses to provide COVID-19 testing and vaccination to immigrants in its custody, intensifying the public health crisis on both sides of the border between the United States and Mexico.

For example, in a group of approximately 70 recently expelled Central American immigrants in Sonora, Mexico, at least two people from the group were released from United States custody with COVID-19. The infections were only discovered after a non-profit organization tested each migrant. It was the first time they were tested despite being detained and transported under United States custody.

The denial of basic COVID-19 protections and safety measures has exacerbated the public health crisis. The two individuals who tested positive for COVID-19 in the group of expelled Central Americans described above were released from United States custody with no knowledge of their infection. These migrants were all transported together in conditions that disregard public health and safety guidelines, including basic protocols such as social distancing and masking. Since they were denied access to COVID-19 tests and vaccines while in United States custody, the entire 70-person Central American group was exposed to the coronavirus, including children and breastfeeding infants.

In addition to denial of COVID-19 testing and care, migrants are experiencing severe overcrowding in United States detention facilities. Detention facilities are a particularly heightened risk during the ongoing COVID-19 pandemic because COVID-19 is most prone to transmission in crowded, unventilated areas.¹⁹ These facilities force detainees into close contact with a large number of people. The severe overcrowding and inability to social distance — compounded by a lack of testing, denial of vaccine access, and failure to provide masks — creates the ideal grounds for COVID-19 transmission amongst already vulnerable individuals. Constant transfers across cells or detention facilities increase the likelihood of viral transmission. The detention facilities are doing little to mitigate the risk of COVID-19 transmission. For example:

¹⁷ Available at: <https://www.oas.org/en/iachr/decisions/pdf/Resolution-1-20-en.pdf>.

¹⁸ *Supra* note 2.

¹⁹ CDC, COVID-19 Protection (November 29, 2021), available at: <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html#stay6ft>.

- Families are housed in overcrowded cells where they cannot follow public health protocols or engage in social distancing. They are confined in close quarters without the basic protection of facemasks. They cannot wash their hands. They have no access to sanitizers or disinfectants.
- People are not tested for COVID-19 or screened for symptoms either when they first come into government custody or at any time thereafter, including when they are released from custody into the community.
- People are not vaccinated or offered COVID-19 vaccines. The United States further imperils lives by failing to provide proper nourishment (discussed below in section III). Malnutrition weakens immune systems and places people at greater risk of COVID-19 infection and death.²⁰

At every turn, the United States has failed to abide by prevailing pandemic protections issued by its own health authorities, as well as human rights guidelines from the Commission:

Avoid the use of strategies of detention of migrants and other measures that may increase the risk of contagion and propagation of the disease caused by COVID-19 and the vulnerability of migrant people, such as deportations or mass expulsions, or any form of return without proper coordination and verification of the corresponding health conditions, ensuring that these people and their families can preserve their right to health without discrimination of any kind. Mechanisms should quickly be put in place to free people who are currently in detention centers.

IACHR, *Pandemic and Human Rights in the Americas* at 16 ¶58.²¹

III. Inhumane, Dangerous, and Overcrowded Conditions

Nearly all immigrants identified by petitioners experienced inhumane conditions, including overcrowding, malnourishment, and makeshift detention conditions. Each of these unlawful conditions is discussed below.

a. Hunger, Malnutrition, and Lack of Sanitation

Hunger and malnutrition are disturbingly common in detention centers. Multiple children risked malnourishment and starvation as they were not given their own food rations. They were forced to share individually portioned meals with a parent. Some children had only bread or apples while being held for days at detention centers. More specifically:

²⁰ “Malnutrition Linked to Higher Risk of Death from COVID-19,” Open Access News (July 22, 2021), available at: <https://www.openaccessgovernment.org/malnutrition-linked-to-higher-risk-of-death-from-covid-19/115893/>.

²¹ *Supra* note 17.

- A family traveling with a three-year-old considered themselves lucky to have a few apples to quell their child’s hunger while detained, as families around them had nothing. The family was refused wipes and diapers for the baby, and were not allowed to wash the baby during their confinement.
- One individual was given food only one out of the four days he was confined.
- An adult man blacked-out and fainted from malnourishment during his 19 days in a detention facility.

These experiences are typical of what the immigrant families are encountering under the custody of the United States. Even those who were fed regularly did not receive enough food, and reported being hungry during their confinement.

Sanitary conditions were also lacking. Nearly every person was held in overcrowded conditions, and almost all spent days deprived of the ability to take care of their basic needs through showers or access to a toothbrush. They did not even have the ability to wash their hands. As a young man described his detention experience in an overcrowded cell:

- Not enough space to lie down, let alone blankets for protection from the freezing concrete floor. For almost a week, only fed when there were enough leftovers from feeding other prisoners. Leftovers were infrequent.

These conditions — particularly the level of overcrowding — would have been inhumane at the best of times. During the pandemic, overcrowding is dangerous in light of COVID-19 and lethal variants as detainees are unable to practice social distancing.

b. Cruel Family Separation

Under United States custody, migrants are being separated from their family members at the border and transported away from children and spouses.²² Individuals are separated from their spouses and children when they cannot provide a marriage license. Considering the lengthy and dangerous journeys²³ that people embark on across Central America and Mexico, it is inhumane to deny an individual the right to remain with their spouse or child because they lost a piece of paper or were robbed while fleeing violence. Siblings are also being separated by border officials in the United States.

For example, Jean Paul, a two-year-old, and his two parents were separated at the detention facility, with the father placed in an overcrowded cell, and the son and mother in another. Similarly, Janet’s family was torn apart and forced into separate, overcrowded cells. Marie, six

²² Supra note 11 (noting separation of Haitian families).

²³ “In Their Words: Haitian Immigrants in New York Describe Perilous Escape,” New York Times (Oct. 27, 2021), available at <https://www.nytimes.com/2021/10/03/nyregion/haitian-immigrants-nyc-hopes-fears.html> (“Some people who were sick died on the way, because they didn’t have enough energy to resist. Some died of thirst or starvation. Children died while on the shoulders of their parents. Thieves in the forest raped the women. We saw dead bodies ... and the list of dangers is longer than what you can imagine.”).

months pregnant and with an infant, was separated from her husband, with Marie and her child in one overcrowded cell and her husband in another.

As these experiences demonstrate, the United States exacerbates the traumatizing effects of migration by separating people from their only reliable source of security and stability: their family.

IV. Makeshift and Squalid Conditions

Under the control of the United States, many of the families identified by petitioners were forced to spend days outdoors before they were moved to indoor detention facilities. In these makeshift “camps,” the families were deprived of food and water, despite the extreme heat. For many, the only shelter from the searing sun was a bridge where United States agents directed them to wait for processing. Conditions were horrifying:

- Joceline, who is only two-years-old, developed debilitating diarrhea from the unsanitary conditions in the camp. Her parents were unable to secure her medical care for 8 days, by which time she had also developed a serious infection and high fever.

Many people, including pregnant women and infants, were kept in these life-threatening “camps” without access to essential services or medical care for days.

V. Unnecessary and Prolonged Detention

Many families, and young men in particular, were unnecessarily held by the United States government for prolonged periods. In light of the harrowing experiences in the detention facilities, all immigrants should be released from United States custody within 72 hours. That is sufficient time to ascertain whether anyone poses a national security or public safety threat.²⁴ Nevertheless, immigrants were detained for days to months with no information as to when they would be released. For example:

- One young man who was detained at the border and subsequently transferred was confined for 46 days in a detention facility. He was never provided with any information about his immigration status or future release.
- Another young man spent 19 days trapped in a detention center, unable to contact his wife, who was suffering a miscarriage in a different government facility.

Many others spent over a month crowded into various facilities located across the southern United States, where they were unable to access adequate food or medical services. Due to their race and national origin, immigrant families experienced prolonged detention and exposure to life-threatening conditions.

²⁴ *Supra* note 17 at 16 ¶58 (“Mechanisms should quickly be put in place to free people who are currently in detention centers.”).

VI. *Language Discrimination and Exclusion*

According to the Commission, “States should redouble their efforts to prevent xenophobia, discrimination, and related forms of intolerance based on ethnic-racial origin ... [and] *language...*” (emphasis added). IACHR, *Protection of Haitians* at 11 ¶37.²⁵ For example, “States should consider, among other issues, accessibility, availability of information, interpretation in French and Creole...” *Id.* at 8 ¶ 19.²⁶ Unfortunately, at the border, the United States does not provide information in a language that immigrants can understand. There are countless cases that illustrate this problem:

- Of the Haitian immigrants identified by petitioners, not a single person was ever given information in Haitian Creole, their native language.
- Haitian immigrants are being forced to rely on ad-hoc translations from fellow detainees or insufficient Spanish to understand what is required of them by the United States.
- Petitioners have also received alarming reports of indigenous people from Latin America who were not provided interpretation services in their native indigenous languages. These immigrants received legal documents in a language that they cannot read, speak or understand.

The lack of language access has life-or-death consequences. It hinders families from being properly screened for asylum and other forms of refugee status, humanitarian relief, legal representation or immigration protection. The denial of language access at the border also creates life-threatening danger as people are unable to request critical medical attention.²⁷

Petitioners have also received multiple reports that white and English-speaking migrants are treated better by United States officials and released faster from United States custody compared to Black and indigenous migrants and non-English speakers. There is a clear pattern and practice of discrimination and mistreatment. To comply with other requirements of the United States immigration process — such as “credible fear” and asylum-related screenings — immigrants must be provided the means to understand and communicate. Nevertheless, consistent failures to provide adequate language access for immigrants at the border have been well documented and confirmed.²⁸

²⁵ *Supra* note 2.

²⁶ *Id.*

²⁷ “Language Access Has Life-or-Death Consequences for Migrants,” Center for American Progress (Feb. 2019), available at: <https://www.americanprogress.org/article/language-access-life-death-consequences-migrants/> (noting that “two children from indigenous Maya communities in Guatemala died while in U.S. Border Patrol custody” — namely, Jakelin Caal Maquin (7-years-old), and Felipe Gómez (8-years-old)); *see also* IACHR, July 23 Statement, *supra* note 5 (expressing concern over the deaths of Jakelin Caal Maquin, Felipe Gómez, and other migrant children).

²⁸ *Supra* note 11 (noting lack of language access for Haitian Creole speakers)

VII. Denial of Asylum

When the COVID-19 pandemic escalated to a global scale, the United States government under the Trump Administration claimed that migration through the southern border must be halted because it posed too great a risk of disease transmission. On March 20, 2020, the Trump Administration invoked Title 42, a United States health law concerning communicable diseases,²⁹ to deny thousands of immigrants and refugees entry into the United States. This policy has effectively closed the border to these individuals and eliminated the right to seek asylum, which is a human right recognized in the American Declaration. Under Title 42, refugees and asylum seekers, including those seeking safety from violence, persecution and torture, are immediately removed to Mexico or their countries of origin, including Haiti, without any judicial process. This practice can be compared to the reprehensible Haitian interdiction practices that the Commission addressed in matters such as *The Haitian Cent. for Hum. Rts.*³⁰

Specifically, with respect to the Haitian migrant crisis, the Commission has spoken clearly: “Public health measures adopted to respond to the COVID-19 pandemic should not result in the denial of an effective opportunity to seek asylum, or some other type of protection, or give rise to the direct or indirect refoulement.” IACHR, *Protection of Haitians* at 8 ¶21³¹. The Commission has also recognized that “immigration policy must grant aliens the right not to be deported without a decision firmly supported by law, and must prohibit the collective expulsion of aliens, regardless of their legal status.” *Mortlock* at ¶78.³² The same protections apply to Central American immigrants.

Nevertheless, the United States denies people an opportunity to apply for asylum despite chilling experiences that justify humanitarian relief:

- Many immigrants saw loved ones persecuted, targeted, and murdered in cold blood by gang members and government officials, which are often one and the same in Central America and Haiti.
- A young man found his slain father’s corpse after a violent machete attack in Haiti.
- Another young man was kidnapped for ransom twice before fleeing for his life after Haitian police officers refused to help.³³

²⁹ 42 U.S. Code § 265 (“suspension of entries and imports from designated places to prevent spread of communicable diseases”), available at: <https://www.law.cornell.edu/uscode/text/42/265>; see “A Guide To Title 42 Expulsions at the Border, American Immigration Council” (Oct. 15, 2021), available at: <https://www.americanimmigrationcouncil.org/research/guide-title-42-expulsions-border>; see also “Why is Biden preserving Miller’s racist immigration policy?”, Brian Concannon, Al Jazeera (Oct. 26, 2021), available at <https://www.aljazeera.com/author/brian-concannon>.

³⁰ *Supra* note 4 at ¶172-180.

³¹ *Supra* note 2

³² *Supra* note 3.

³³ *Supra* note 11.

- Some fled after being involved with political parties and social movements, including people whose lives were threatened for working at a polling center, and an individual who was threatened with death after the assassin of a candidate he supported won a local election.

Despite public pressure, the United States has continued Trump-era practices of turning back asylum-seekers at the border based on so-called “public health” measures. Title 42 expulsions are exacerbating public safety issues and human rights abuses at the border. The United States government is illegally denying families access to asylum, a fundamental right under the American Declaration. *See* IACHR, September 17 Statement.³⁴

Reports from multiple sources indicate that Mexico has agreed to only receive Mexican and Central American people who are expelled from the United States under Title 42. Other nationals that Mexico has declined to accept are typically detained and either expelled to their home country or released into the community in the United States while the government executes their deportation. This policy has unleashed disparate treatment and discriminatory practices based on national origin. Some nationalities are denied access to the asylum application process in the United States and immediately expelled to Mexico — while other nationalities are treated favorably. This practice is discriminatory and creates barriers to asylum based on nationality and country of origin.

Furthermore, conditions in Mexico are inadequate in terms of shelter, food, healthcare, and safety. Central Americans and Haitians at the Mexican side of the border encounter multiple threats to their life and safety. Conditions at the Mexican side of the border are well-documented in reports confirming that the border policies of the United States government are resulting in greater danger and peril for asylum-seekers.³⁵

VIII. Lack of Consular Protection, Notification and Access

Under Title 42, Mexican and Central American people are generally expelled to Mexico within hours — often within 45 minutes — of surrendering to United States border officials. Far too often, these individuals are not notified of their right to consular protection.³⁶ This deprives immigrants of an opportunity to exercise their right to opt into consular notification based on their individual needs and safety assessments. The failure to offer consular access deprives migrants of the legal protection and support services that consulates provide. This constitutes a violation of due process rights under Articles XVIII and XXVI of the American Declaration. *Medellín, Ramírez Cardenas and Leal García v. U.S.* (“the right to consular notification and assistance constituted a fundamental component of the due process standards to which they were

³⁴ *Supra* note 5.

³⁵ Women’s Refugee Commission, “Asylum Denied: Remain in Mexico 2.0” (December 2021), available at: <https://www.womensrefugeecommission.org/wp-content/uploads/2021/12/Asylum-Denied-Remain-in-Mexico-2.0-12152021.pdf>.

³⁶ Consular Notification and Access, U.S. Department of State (Sept. 2018), available at: https://travel.state.gov/content/dam/travel/CNAtrainingresources/CNA%20Manual%205th%20Edition_September%202018.pdf (international treaties require a nation arresting or detaining a foreign national to afford the detainee access to his or her consulate and to notify the foreign national of the right to consular access).

entitled under Articles XVIII and XXVI of the American Declaration”);³⁷ *see Lackey et. al v. U.S.* (same conclusion);³⁸ *see also* Advisory Opinion OC-16/99, Inter-American Court of Human Rights (Oct. 1, 1999).³⁹

Interference with consular access is highly problematic and raises serious questions about how rapid expulsion compromises fundamental rights, including the right to due process.

Purpose of the Hearing

In light of the foregoing, petitioners consider it essential that the Commission address the grave situation at the United States border. If granted, the requested hearing would serve as a timely forum to present the Commission with information relevant to combating structural racism and systemic discrimination against Central American and Haitian immigrants. The hearing would be an opportunity to present evidence of violation of Articles I (right to life, liberty, security and integrity of the person), II (right to equality before the law), VI (right to the constitution and protection of the family), VII (right to protection of motherhood and childhood), XI (right to preservation of health and well-being), XVIII (right to justice), XXV (right to protection against arbitrary detention), XXVI (right to due process) and XXVII (right to asylum) of the American Declaration. The hearing would also provide an opportunity to present the Commission with up-to-date information on conditions and practices at the United States border.

Conclusion and Request

At the hearing, the petitioners will present evidence of abuses by the United States government against people from Central America and Haiti who are arriving at the border. Petitioners will also offer concrete suggestions on how the Commission can strengthen its monitoring mechanisms to counter racial violence and discrimination. Finally, the hearing will provide a timely forum for government representatives with the authority to implement international standards to directly address the Commission, civil society and affected populations.

In light of the foregoing, petitioners respectfully request a visit by the Commission, including relevant special rapporteurs, to both sides of the United States-Mexico border. At the conclusion of this special visit, we urge the Commission to publish a report based on its observations and recommendations.

6. NOTIFICATIONS

Please send notification via e-mail: iespinoza@lawyersforcivilrights.org.

³⁷ IACHR, Case 12.644, Report No. 90/09, OEA/Ser.L/V/II., Doc. 51, corr. 1 ¶132 (2009).

³⁸ IACHR, Cases 11.575, 12.333 & 12.341, Report No. 52/13, OEA/Ser.L/V/II., Doc. 50 Corr. 1 ¶189 (2013).

³⁹ Available here: https://www.corteidh.or.cr/docs/opiniones/seriea_16_esp.pdf (discussing the right to information on consular assistance within the framework of the guarantees of due process of law).

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