



SEALING THE BORDER

THE CRIMINALIZATION OF ASYLUM SEEKERS IN THE TRUMP ERA

Hope Border Institute

with the collaboration of the Borderland Immigration Council



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January 2018



THE HOPE BORDER INSTITUTE

The Hope Border Institute (HOPE) is an independent grassroots community organization working in the El Paso-Ciudad Juárez-Las Cruces region, that seeks to bring the perspective of Catholic social teaching to bear on the social realities unique to our region. Through a robust program of research, reflection, leadership development, advocacy and action, HOPE develops and aligns the border's community leaders engaged in the work of justice from across the Mexico-US border to deepen solidarity across borders and transform our region.

THE BORDERLAND IMMIGRATION COUNCIL

The Borderland Immigration Council (BIC) is an El Paso and Las Cruces-based coalition consisting of local immigration attorneys and advocacy groups seeking justice, fairness and transparency in the implementation of our nation's immigration laws and the fulfillment of our commitment to international standards regarding asylum seekers and migrants.

AUTHORS

This report was researched and written by staff of the Hope Border Institute, including Ms. Edith Tapia, policy research analyst; Mr. Camilo Perez-Bustillo, J.D., director of research and advocacy; Mr. Eli Beller, deputy director; and Mr. Dylan Corbett, executive director. Assistance was provided by Mr. Alejandro Marquez, research fellow at the Hope Border Institute and PhD Candidate at the University of Texas at Austin; Ms. Karen De Anda and Ms. Brittany Hear, graduate students at the University of Texas at El Paso; Ms. Calla Couch and Ms. Beth Herdmann, graduate students at the University of Dayton; and graduate students from the "Research in Latin America and Border Studies" class taught by Dr. Jeremy Slack, assistant professor at the University of Texas at El Paso.

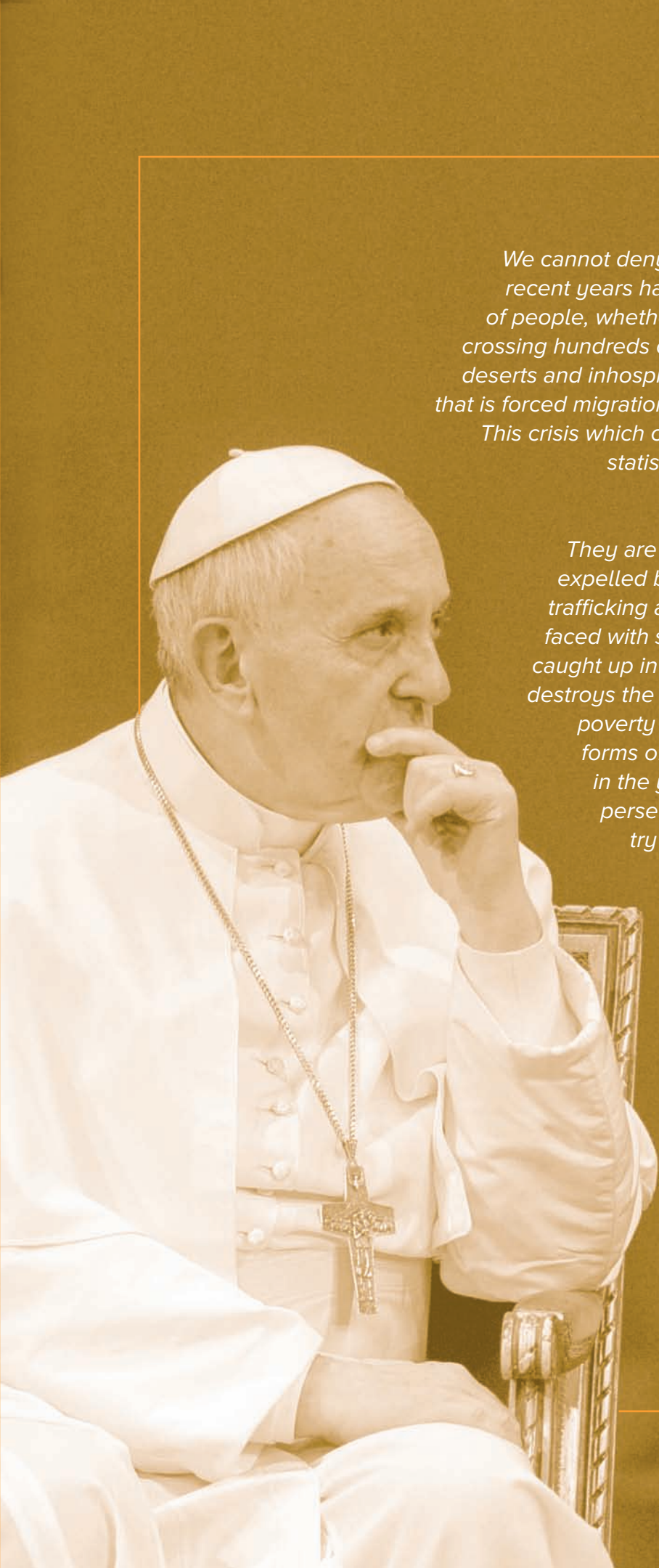
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We cannot deny the humanitarian crisis which in recent years has meant migration for thousands of people, whether by train or highway or on foot, crossing hundreds of kilometres through mountains, deserts and inhospitable zones. The human tragedy that 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,
Homily at Mass in
Ciudad Juarez,
17 February 2016

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EXECUTIVE SUMMARY

Sealing the Border documents violations of the rights and dignity of migrants and asylum-seekers by immigration enforcement agencies and officials in the El Paso and Southern New Mexico region of the borderlands. In the jargon of immigration enforcement, this area is known as the El Paso Sector. The human rights violations described paint a picture of the impact on asylum seekers of the increased militarization of the border and criminalization of migrants in the first year of the Trump administration.

Between June 2017 and January 2018, the Hope Border Institute conducted in-depth research on enforcement and detention policies and practices in the El Paso Sector. An analysis of nearly 300

documented cases revealed that the Trump administration has looked to El Paso as a laboratory for its brutal model of immigration and border enforcement. By effectively nationalizing troubling policies, practices, patterns and a culture of abuse unique to the El Paso Sector, the Trump administration has weaponized border enforcement, immigrant detention and the immigration courts, solidifying an iron triangle of deterrence against *bona fide* asylum seekers, forcing them to make the painful choice between deportation and prolonged detention.

Emboldened by the inauguration of President Donald J. Trump, immigration agencies and officials in the El Paso Sector have exacerbated the following human rights violations:

1. DETERRING ASYLUM SEEKERS AT THE BORDER

- ICE and CBP wrench children from parents arriving at the border, dividing families and creating situations where children are lost in the system.
- CBP and Border Patrol actively harass, intimidate, dissuade and discourage asylum seekers at ports of entry and within 100 miles of the border, flouting obligations to provide aid to those seeking refuge from violence and persecution.

2. DETERRING ASYLUM SEEKERS THROUGH DETENTION

- ICE has implemented a blanket policy of detention of asylum seekers at the border, including the detention of pregnant women, journalists fleeing state-sanctioned violence, and those with acute medical conditions.
- 2,000 human beings are incarcerated on any given night in the El Paso Sector in detention centers where conditions are often inhumane, food and water are restricted, medical care is inadequate, access to counsel is hampered and where migrants are punitively bounced back and forth hundreds of miles between detention centers.

3. JUSTICE FOR IMMIGRANTS IN EL PASO IS JUSTICE DENIED

- El Paso is one of the harshest places to receive justice in the immigration courts, where judges rule against Mexican and Central American asylum seekers nearly 100 percent of the time.
- The Trump administration is subverting the justice system and forcing judges to impose impossible punitive bonds on asylum seekers, rush cases, and compel asylum seekers to self-deport.
- Even when you win, you lose. Even when asylum seekers prevail in their cases, ICE appeals well-founded decisions and continues to detain individuals unjustly.

Immigration agencies and officials here are racially and ethnically profiling and criminalizing migrant families and border communities like El Paso as targets for surveillance and enforcement.

Sealing the Border is grounded in a faith-based approach to immigration enforcement and public policy which is centered around ethical imperatives of respect for the rights and dignity of all persons. It is the second study of its kind to be carried out by a local coalition of advocates in this region, a partnership between the Hope

Border Institute and the Borderland Immigration Council, and the first of its kind to expose the practices of immigration courts in the region.

Our report calls for a national dialogue in response to the need to fashion ethical approaches to immigration enforcement. We join hands here in a collective call to conscience, rooted in moral reflection and action, with all those who share our transformative vision of a global community committed to human rights and dignity for all, where borders are morally irrelevant.

INTRODUCTION

This report documents violations of the rights and dignity of migrants and asylum-seekers by immigration enforcement agencies and officials in the El Paso and Southern New Mexico region of the borderlands. In the jargon of immigration enforcement, this area is known as the El Paso Sector. The human rights violations described paint a picture of the impact on asylum seekers of the increased militarization of the border and criminalization of migrants in the first year of the Trump administration. This is the second study of its kind to be carried out by a local coalition of advocates in this region, a partnership between the Hope Border Institute and the Borderland Immigration Council. It is also the first of its kind to expose the practices of immigration courts in the region.

Sealing the Border documents how policies generated in Washington DC negatively impact border communities and those who travel through them. And yet the story is more complicated. The findings laid out here build upon those in our previous report, *Discretion to Deny*.¹ That report offered a snapshot of metastasizing systems of border enforcement in the twilight of the Obama administration and asserted that local immigration officials in the El Paso area repurposed a sprawling complex of border security and immigration enforcement in order to separate families, dissuade and discourage asylum seekers, block humanitarian claims, detain more persons for longer periods of time, and deport more migrants.

These dynamics were an integral part of an overall strategy of “aggressive deterrence,”² which framed the response of the Obama administration to the 2014 surge in Central American migrant families and unaccompanied minors seeking protection at the border. *Discretion to Deny* documented the disturbing trickle-down effect of official White House policy in this area of the borderlands. Now, the Trump administration has deepened and intensified this approach.

This report builds on the foundation of *Discretion to Deny* and focuses specifically on the plight of asylum seekers in our community in the new

presidential administration. Together, *Discretion to Deny* and *Sealing the Border* illustrate how a paradigm of exclusion centered around the deterrence, detention and deportation, long incubated in our region, became the template for national policies with even wider impact.

BY ENDORSING AND EFFECTIVELY NATIONALIZING PATTERNS AND PRACTICES TESTED IN THE EL PASO SECTOR, THE TRUMP ADMINISTRATION HAS BROUGHT MATTERS FULL CIRCLE, EXACERBATING PRE-EXISTING PATTERNS OF STATE-INDUCED AND STRUCTURAL VIOLENCE³ CHARACTERISTIC OF OUR REGION.

This approach in effect racially and ethnically profiles and criminalizes entire families and communities, such as those who constitute the majority of residents in the U.S.-Mexico border region, as targets for surveillance and enforcement. These shifts in enforcement and priorities represent an attack on communities like El Paso, with a majority population of Mexican descent (over 82 percent Latino⁴), and where families of mixed immigration status are common. These policies

sow fear and a widespread sense of vulnerability by exposing a large proportion of our population to the risk of detention and deportation.

In the Trump administration, those responsible for the architecture and implementation of the deterrence system operative in the El Paso Sector have been rewarded. Not long after the inauguration of President Donald J. Trump, the Department of Homeland Security promoted Corey Price, the ICE El Paso Sector field director, to assistant director of ICE's Enforcement Division, Enforcement and Removal Operations in Washington DC.⁵ Actions like these send the message that practices in the El Paso Sector are not an aberration but instead a blueprint for enforcement policies on a national, and increasingly transnational, scale.

According to the 2017 ICE Enforcement and Removal Operations Report recently released by

DHS, 21,420 individuals were removed from the El Paso Sector by ICE in the past year.⁶ Only San Antonio has a higher total of removals. Given the compounded issues we detail here, we can assume this figure includes too many asylum seekers who have been forced into a deportation machine designed to restrict and nullify their rights.

This report documents the implementation of a system designed to marginalize, dehumanize and erase the presence of migrants and asylum seekers. Our intention with this report is to arrest and reverse this dynamic by contributing to the essential task of putting the voices, lives, experiences and suffering of our migrant brothers and sisters at the center of the ethical reflection and action needed to transform a system which seeks to negate them.

This report is dedicated to them.

METHODOLOGY

This report is based on a mixed methodology⁷ combining elements of qualitative and quantitative research through in-depth interviews with legal representatives of asylum seekers as well as observations made in the El Paso sector's immigration courts during proceedings conducted under the auspices of the U.S. Department of Justice's Executive Office of Immigration Review (EOIR). Our goal was to collect evidence documenting the impacts of increased border enforcement on migrants and asylum seekers in the El Paso Sector, including both those with legal representation and those without.

Researchers at the Hope Border Institute (HOPE) developed a survey instrument for interviews with attorneys representing asylum seekers. Interviews took place between June 2017 and November 2017 with 25 legal representatives and advocates from both non-profit service providers and private practice in the El Paso and Las Cruces area. HOPE researchers transcribed and coded data from the interviews, which cover over 90 individual cases, and identified major thematic areas.

Over a twelve week period in the summer and fall of 2017, detailed information related to about 200 asylum cases was collected during court proceedings for detained asylum seekers and was coded, analyzed and classified by HOPE researchers. Observations were made during EOIR master calendar hearings, an asylum seeker's first appearance before an immigration judge. Assistance in data collection was provided by students enrolled in a graduate-level research and methodology class at the University of Texas at El Paso.⁸

Additional documentation collected includes information provided by the U.S. government as a

result of Freedom of Information Act requests. In case narratives presented here, where cases have not been publicized, references to individuals have been rendered anonymous.

Our research findings are consistent with a wider body of academic and policy literature on the experience of migrants with processes of criminalization and militarization in the U.S.-Mexico borderlands. We reference reports and documentation presented by leading U.S. and international scholars and human rights organizations identifying many of these same patterns and practices throughout the border and on a national scale.

LIMITATIONS

Findings in this report are based primarily on attorney interviews and observations of master calendar hearings. While legal representatives have access to a great deal of information about their clients and immigration proceedings, analysis was limited to information that attorneys could provide. Analysis based on court observations was also restricted to information presented at the time of the hearing.

LEGAL FRAMEWORK

Immigration enforcement in the United States has long been described as falling short of internationally recognized minimum requirements as to the rule of law and due process.⁹ This report documents how these systemic deficiencies have been exacerbated by the Trump administration's intensification of enforcement measures during the past year.

The Trump administration has deepened and radicalized the long historical process of the criminalization of the migrant and the militarization of the border. This has been realized through a series of executive orders, agency memoranda, and practices both in the field and in immigration courts, which together have framed and deepened an approach described by scholars such as Edward Alden as “*deterrence through enforcement.*”¹⁰

“The right to seek asylum was explicitly incorporated into U.S. law through the Refugee Act of 1980...”

The right to seek refuge and asylum in the face of a “well-founded fear” of persecution is a cornerstone of the contemporary international order. This right has been central to legal, ethical, moral and religious discourse and practices embedded in conceptualizations of fundamental rights, duties and responsibilities throughout the world, and reflected in diverse faith and cultural traditions for centuries.¹¹

The right to seek refuge and asylum was recognized in international law in the 1951 U.N. Convention on Refugees and its 1967 Protocol relating to the Status of Refugees,¹² to which the U.S. became party in 1968.

These binding international norms define those categories of persons entitled to protection based upon a nexus of “well-founded fear of persecution” and factors such as race, gender, membership in a particular social group, political opinion, religion, national origin or sexual preference. These standards and related obligations are an integral part of U.S. domestic law and are enforceable in U.S. courts, including immigration courts.

The right to seek asylum was explicitly incorporated into U.S. law through the Refugee Act of 1980¹³ which includes protections against forcible return (*non-refoulement*) to a country or territory where a claimant may face persecution, and where she may be subjected to torture or other cruel, inhuman or degrading treatment or punishment as defined by the 1984 U.N. Convention Against Torture (CAT), signed by the U.S. in 1988 and ratified in 1994.¹⁴

U.S. asylum law should apply the same definitions of refugee status contained in the 1951 Convention and 1967 Protocol to individuals seeking protection on U.S. territory, including at the border.¹⁵

The patterns and practices we document in this

report demonstrate the grave deficiency of U.S. compliance with the demands of international law within the context of the borderlands.

The Trump administration has made it evident with its policies that all those who are undocumented or whose presence in the U.S might be construed as unlawful are essentially a priority for removal¹⁶ and detention has become compulsory in practice.¹⁷

THE SYSTEMATIC DETERRENCE, DISSUASION, DETENTION AND REMOVAL OF ACTUAL AND POTENTIAL ASYLUM SEEKERS AT THE BORDER PROVIDE SYMMETRY FOR THE TRUMP ADMINISTRATION’S EQUIVALENT EFFORTS TO DIMINISH AND DENY PROTECTION TO REFUGEES THROUGH ITS MULTIPLE ATTEMPTED TRAVEL BANS AND EFFORTS AT “EXTREME VETTING.”¹⁸

The Trump administration’s policies reverse and constrain the exercise of discretion and impose an approach which increases the vulnerability of asylum seekers and undocumented immigrants seeking to enter or already living in the U.S., without regard to rights to humanitarian protection or community ties or contributions.¹⁹ The policies and practices of the Trump administration in effect presume the illegitimacy of *bona fide* claims of asylum, especially in the borderlands.²⁰ All of this has a disproportionate impact on migrants and asylum seekers of Mexican and Central American origin, and particularly on children, women and families. This represents both a violation of national and international law as well as of fundamental principles of justice and fairness.

This report also situates the border within the framework of foundational research regarding the impact of arbitrary decision-making and unfair procedures surrounding asylum claims in the nation's immigration courts.²¹

Generally accepted definitions of the rule of law define it in terms of four basic principles: accountability, just laws, open government, and accessible and impartial processes of dispute resolution.²² Scholars such as Lenni Benson have described the generalized absence of core values of effectiveness, fairness, accuracy and transparency in the U.S. system for the adjudication of immigrant removals.²³ U.S. immigration courts regularly decide cases that determine the destiny, safety and livelihoods of hundreds of thousands of vulnerable people; asylum seekers at the border are among those most at risk in this overall landscape.

Dana Marks, the president of the National Association of Immigration Judges (NAIJ) sums it up this way: "We are conducting death penalty cases in a traffic court setting" amid an overall immigration court system with some 650,000 pending cases²⁴ that is on the verge of "meltdown".²⁵ The handling of the potential and actual claims of asylum seekers in the borderlands epitomize these challenges and their human cost:

IMMIGRANTS ARE REMARKABLY VULNERABLE TO A GOVERNMENT OFFICIAL WHO OVERSTEPS, TO A JUDGE WHO ACTS IN AN ARBITRARY FASHION, TO THE ASYMMETRY OF THE POWER BETWEEN THE GOVERNMENT ATTORNEY AND THE UNREPRESENTED DETAINED INDIVIDUAL. THE US IMMIGRATION SYSTEM RUNS ROUGHSHOD OVER HUNDREDS OF THOUSANDS OF PEOPLE EACH YEAR AND IT CREATES UNCERTAINTY AND FEAR FOR NONCITIZENS AND THEIR FAMILIES.²⁶

These overall concerns have been exacerbated by measures such as the recent December 20, 2017 memorandum issued by EOIR²⁷ which provides guidelines for the handling of cases involving

immigrant children. The memorandum dilutes protections contained in previous standards and admonishes judges to maintain "impartiality" despite the fact that "juvenile cases may present sympathetic allegations."²⁸

Marks further notes in this context that "there is a feeling that the immigration courts are just being demoted into immigration enforcement offices, rather than neutral arbiters...There has been a relentless beating of the drum toward enforcement rather than due process."²⁹

Further, DHS has called for enhancement of the standards of proof and guiding frameworks for the interpretation of claims applied within the framework of the credible fear screening process.³⁰ In the past, asylum seekers were administered a credible fear interview (CFI) with a moderate threshold to allow those fearing persecution to present their claim before a judge. Currently, the Trump administration has raised the threshold of the CFI to include a "significant possibility" of establishing eligibility as well as "credible evidence" during an asylum seeker's initial screening. Raising the bar in this way in practice converts these preliminary screenings into full-fledged asylum assessments, frequently before the asylum seeker has time to access legal counsel.³¹ Additionally, for individuals traumatized from their journey or from the harm that they fled, these short timelines make it extremely difficult to clearly explain why they need protection in the United States.³²

Our research and experience in the borderlands region strongly suggests that many claimants of asylum at the border would be entitled to relief if their cases and circumstances were fairly adjudicated and considered.³³

The enormous human and moral costs of the approach of the Trump administration, of knowingly deterring and driving asylum seekers into conditions of greater danger at the risk of their lives, are incalculable. These costs and the moral claim they make are compounded by all of the ways in which the evolving web of U.S. policies as to development, free trade, and the militarization of public security pursuant to the drug war shape and drive processes of forced displacement and forced migration in regions such as Central America and Mexico.³⁴

EVA'S STORY AND THE IRON TRIANGLE OF DETERRENCE

WHAT ARE THE HUMAN CONSEQUENCES OF THE TRUMP ADMINISTRATION'S APPROACH TO ASYLUM SEEKERS AT THE US-MEXICO BORDER?

Eva and her family fled Honduras in November 2016. Despite participating in a protected witness program, Eva faced death threats after testifying in a murder trial against a notorious gang leader. The situation became a matter of life or death when one of the perpetrators was released from prison and threatened her life. Eva fled to the U.S. border with her husband and son hoping to find safety. Eva requested asylum in El Paso in December 2016 and was immediately detained and separated from her family.

Despite indicating during a credible fear interview conducted over the telephone that she did not understand the questions asked of her, Eva was forced to sign an official statement based on the interview. Later, an attorney identified several errors in the transcript, errors which threatened to undermine Eva's claim.

EVA

ICE continues to detain Eva over a year later. She has no criminal history, no history of immigration violations and she poses no threat to public safety. With ties to the community, she poses no flight risk.

Eva's attorney has requested a change of venue to give her the opportunity to consolidate her asylum case with her husband and to be closer to her support system. These requests have been denied. Meanwhile, the government has reassigned Eva's case three times.

Detention has been the price for Eva's asylum claim. Her physical and mental state are deteriorating in the face of a system designed to deter and punish her for seeking refuge.

Eva's case illustrates the systemic gamut of deterrence implemented at every step of the asylum-seeking process:

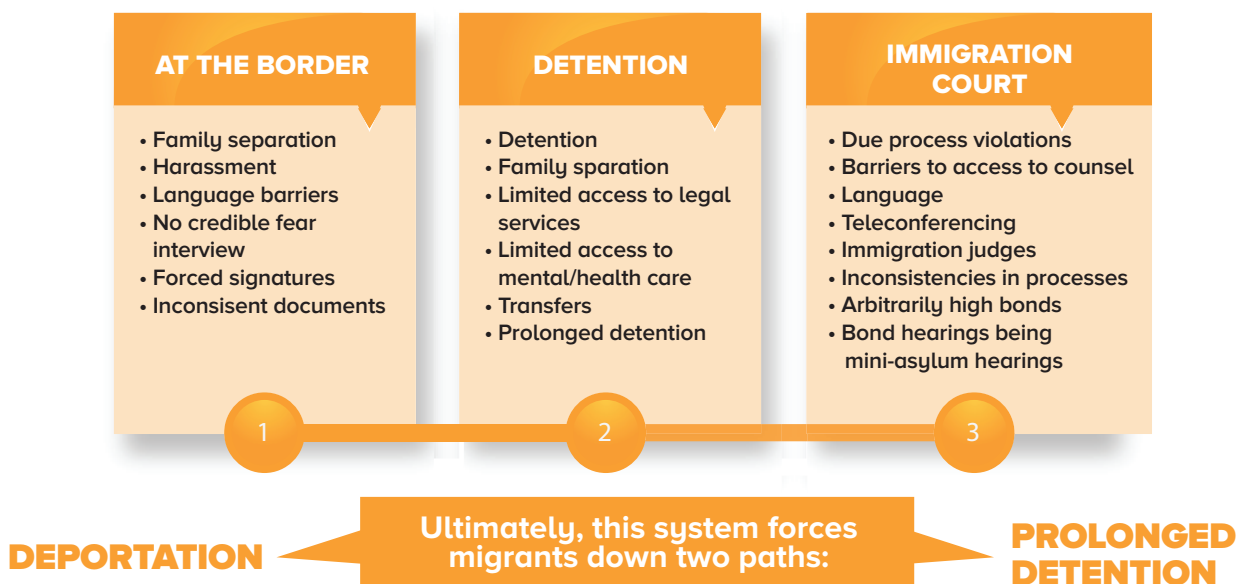
- 1) Eva was separated from her family at the port of entry
- 2) Eva has been detained for over a year
- 3) Eva's asylum claim has been impeded by due process barriers.

Eva's case is not an aberrant example. Through attorney interviews and court observations, HOPE has documented nearly 300 cases in which asylum seekers face a similar deterrence triangle at the hands of immigration officials and judges. This iron triangle of deterrence is operative at key points in the asylum seeking process:

- 1) Deterrence at the border at first contact with immigration officials
- 2) Deterrence through detention
- 3) Deterrence through due process obstacles in immigration courts

This machinery, perfected in the El Paso Sector, mirrors the overall national shifts in enforcement practices. The Trump administration has weaponized border enforcement, immigrant detention and the immigration courts against *bona fide* asylum seekers. The data collected for this report describes the three convergent dimensions of deterrence, which ultimately force asylum seekers to make the painful choice between deportation and prolonged detention.

IRON TRIANGLE OF DETERRENCE



DETERRENCE AT THE BORDER

Whether with CBP agents at a port of entry or at the hands of Border Patrol agents if apprehended within the 100 miles radius of the border, asylum seekers encounter deterrence mechanisms at the border at first contact with immigration officers.

“Family unity is a fundamental human right for migrants and refugees...”

FAMILY SEPARATION

Family separation is used increasingly as a method of deterrence at the port of entry, during apprehension by Border Patrol or later through the use of detention. 94 percent of attorneys interviewed reported cases in which families are separated. 85 percent of those families were separated at a port of entry or upon apprehension; the remaining 15 percent were separated during detention. Numerous other researchers and advocates have documented increased family separation in the Trump administration.³⁵

Family unity is a fundamental human right for migrants and refugees,³⁶ a value reflected in the Immigration and Nationality Act’s Family Unity Program,³⁷ CBP standards,³⁸ and the mission of the Office of Refugee Resettlement. Yet the Department of Homeland Security has continually failed to uphold this value and former DHS Secretary Kelly has suggested the use of family separation as a deterrent to continuing flows of forced migration from Central America.³⁹

The right to the integrity of the family unit can be undermined both by the forced physical separation of members of the family, by its division according to immigration status and by processes of detention, removal and deportation.

Family separation can occur because of flawed screening, unverified biological relationships, arbitrary and inadequate custody determinations, or as a punitive measure. Such measures impose grave

moral harm with potentially devastating long-term consequences. According to the American Academy of Pediatrics,⁴⁰ family separation and division can worsen trauma for children fleeing violent situations.

Family separation can impede the ability of families and individual members to access asylum and protection mechanisms. Families are separated into different detention centers across the country, often without the knowledge of each other’s whereabouts. When asylum claims involve all or some family members, the consolidation of asylum cases makes sense from the perspective of efficiency and fairness so that a more coherent case can be presented, to save resources, and enable the provision of relevant testimony in court. In an asylum system plagued with chronically high disparate outcomes, separation opens the door to the deportation of some family members while others continue seeking relief, exacerbating a problem that could have been prevented if the integrity of the family unit as a fundamental right was respected.

In a recent meeting between the Borderland Immigration Council and local DHS officials, a Border Patrol representative stated that it was standard local practice to separate children ten-years-old or older from their family after being apprehended. The CBP’s Office of Chief Counsel released a statement the following day retracting the agent’s declaration, stating that “the Border Patrol does not have a blanket policy requiring the separation of family units. Any increase in separated family units is due primarily to the increase in prosecutions of immigration-related crimes.”⁴¹ Local advocates were not convinced, given that many have witnessed the use of such practices on a generalized basis.

The Border Patrol agent’s assertion is troubling considering data released on December 5, 2017 by the U.S. Border Patrol Southwest Border Sector

which reflect an increase of 52 percent in family unit apprehensions⁴² compared with the last fiscal year.⁴³ Similarly, data for the population described as “inadmissible” shows an increase of 23 percent.⁴⁴ CBP’s inadmissibility metrics include individuals seeking humanitarian protection under our laws.⁴⁵ The net effect of increased apprehensions and exclusions of these kinds converges with the increased number of separated families which we have documented. Given the Trump administration’s apparent use of family separation as a deterrent factor, an increase in migrant families which have been forcibly separated is a predictable and thus avoidable consequence of the overall increase in the apprehension of family units at the border.

The specific dynamics of family division and separation vary in each case. Sometimes the mother and child might be paroled while the father is detained. Children are also often separated from one or both parents/guardians. Of the individual cases reported by attorneys in the El Paso Sector this year, 15 percent of them reflect minor children being separated from one or both parents during detention.

LUCIA

Lucia is an asylum seeker from San Salvador, the capital of El Salvador and, owing in large part to gang violence connected with the flow of drugs to the United States, one of the most murderous cities in the world. In Lucia’s neighborhood, girls approaching puberty are often forced into the sex trade or other types of slavery by the local gang. After her 12-year-old daughter, Alia, was approached and threatened by gang members, Lucia fled with Alia to the El Paso border. Immigration officials separated mother and child, placing Alia in a processing facility nearly 1,000 miles away. Lucia was placed in immigrant detention in the El Paso area and told by officials that she would have to spend at least six months in detention away from her daughter if she pursued an asylum claim. Overcome with anxiety at being isolated from her daughter in detention, Lucia withdrew her claim.

Children who are separated from their families are placed in the custody of the Office of Refugee Resettlement (ORR), under the Department of Health and Human Services. Information about a minor in ORR services is difficult to obtain for detained parents, even for those who have access to legal representation. In our research we have discovered that federal court transcripts bear witness to the frustration and indignation of U.S. magistrates in El Paso as to the government’s inability to locate children resettled following separation from their parents.

DISSUASION AT THE PORT OF ENTRY

We have documented numerous instances of CBP and Border Patrol officers pressuring asylum seekers to recant statements expressing fear of return to home countries or falsifying statements which therefore do not reflect asylum seekers’ fear of return.

Inconsistencies are commonplace between the testimonies of migrants and asylum seekers and the forms CBP and Border Patrol agents are required to fill out, such as the I-213, the DHS document used to record data as to deportable or inadmissible persons. Over 80 percent of attorneys report cases in which I-213 forms or sworn affidavits did not align with client testimony. Many times these documents do not even reflect that an individual was in fact claiming fear of returning to their home country, thus triggering a credible fear interview. Forms are often filled out in boilerplate fashion or rushed manner by agents and reveal chronic carelessness, e.g. using incorrect pronouns. Yet these forms can carry significant weight during the asylum process. By failing to document and act on an individual’s claim of fear, immigration enforcement agents limit an asylum seeker’s ability to present an asylum claim.⁴⁶

In our research, 56 percent of attorneys interviewed report cases in which CBP failed to inquire as to whether migrants or asylum seekers were afraid of returning to their home country, an inquiry that immigration agents are required to pursue. Yet, the record of many such cases falsely indicates that asylum seekers were asked those questions and that they were answered. In their 2016 report,⁴⁷ the U.S. Commission on International Religious Freedom

(USCIRF) documented these problems with the initial interview, such as failures to record answers correctly, not providing private interviews, and not reading back answers as required by law.

Our research indicates that skeptical attitudes towards asylum claims among CBP officers are common. They assume that many claims are recycled, when the repetitiveness of storylines may in fact be proof of the valid claims being made by a particular social group. Regardless, CBP officers are not commissioned nor qualified to make these determinations.

Language barriers are also a major factor when filling out these forms. Many asylum seekers arriving to El Paso do not speak English; for many indigenous persons from Central America or Mexico, Spanish may be a second language. 70 percent of attorneys surveyed report cases of inadequate interpretation during an asylum seeker's initial interview.

“MY BODY WAS TREMBLING
ALL OVER, AND I HAD TO TELL
[THE ASYLUM OFFICERS]
THAT SOMETIMES I DID NOT
UNDERSTAND THE QUESTIONS.”
-EVA FROM HONDURAS

These forms and sworn statements are a crucial part of the overall immigration and asylum process. Not only are these documents used to identify asylum seekers but they can also be used in court. Our research shows that judges commonly use inconsistencies in these forms against asylum seekers. One attorney recalls being scolded by a judge after arguing that documents were inaccurate because to make such an assertion would be to call a federal agent a liar.

HARASSMENT

Intimidation and harassment are a regular occurrence for asylum seekers. Service providers on both sides of the U.S.-Mexico border assert that asylum seekers are told by CBP officers that the United States is no longer taking asylum seekers. 76 percent of attorneys surveyed described cases in which migrants and asylum seekers reported being discouraged, threatened or otherwise dissuaded from pursuing asylum or any other type of relief. Of those accounts, nearly 90 percent point to CBP as the agency responsible for such actions. According to our research, officers will often say things such as

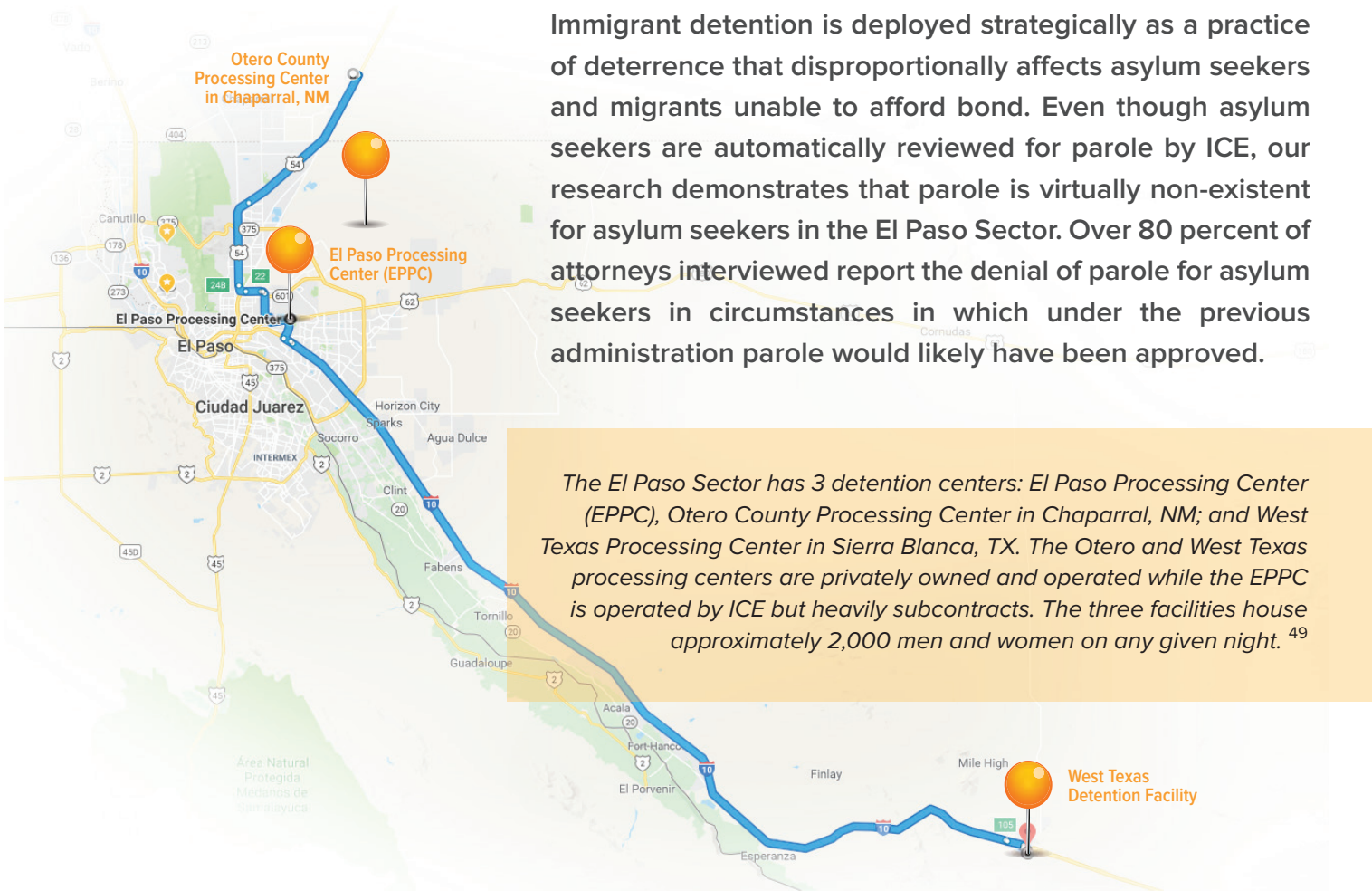
**“MEXICANS DON’T GET ASYLUM,”
OR “YOU ARE ONLY GOING TO BE
DETAINED AND THEN DEPORTED
ANYWAY, SO WHY BOTHER?”**

ROGELIO

Rogelio and his family presented themselves at a port of entry in El Paso but were improperly denied entrance. They turned back and found refuge at a migrant shelter in Ciudad Juarez. While there, Rogelio and his family made contact with a guide who specializes in crossing the border. While passing through the mountainous terrain outside El Paso, Rogelio and his family were apprehended by Border Patrol agents, who physically assaulted him and separated his family. An internal investigation was initiated at the local Border Patrol regarding Rogelio's assault.

DETERRENCE THROUGH DETENTION

President Trump’s executive order on border security calls for an increase in detention centers at the U.S. border and for the detention of all migrants while they await their immigration hearings. The Trump administration’s directive to use parole “sparingly”⁴⁸ means that virtually all asylum seekers who present at the border in the El Paso Sector now go through asylum proceedings while in detention.



Immigrant detention is deployed strategically as a practice of deterrence that disproportionately affects asylum seekers and migrants unable to afford bond. Even though asylum seekers are automatically reviewed for parole by ICE, our research demonstrates that parole is virtually non-existent for asylum seekers in the El Paso Sector. Over 80 percent of attorneys interviewed report the denial of parole for asylum seekers in circumstances in which under the previous administration parole would likely have been approved.

*The El Paso Sector has 3 detention centers: El Paso Processing Center (EPPC), Otero County Processing Center in Chaparral, NM; and West Texas Processing Center in Sierra Blanca, TX. The Otero and West Texas processing centers are privately owned and operated while the EPPC is operated by ICE but heavily subcontracts. The three facilities house approximately 2,000 men and women on any given night.*⁴⁹

Immigrant detention has become increasingly routinized, punitive in character, and prolonged.⁵⁰ Since 2009, congressional appropriations laws have included language on immigration detention beds known as the detention bed quota.⁵¹ No other law enforcement agency has a quota of this kind. The bed quota effectively requires ICE to keep 34,000 beds occupied at any given time, and the Los Angeles Times has reported that the Trump administration has considered concrete steps to more than double this number to over 80,000, through the private contracting of additional detention facilities, including at least one more in South Texas.⁵² The administration meanwhile has requested congressional funding to enable the detention of at least 44,000, an increase of almost 30% over the current number.⁵³

While in detention, those seeking asylum are given a credible fear interview to determine if there is “a

significant possibility” of establishing eligibility of asylum or protection under the Convention Against Torture (CAT), or pursuant to the five protected grounds for asylum. As at the port of entry, CFI interviews are increasingly conducted via phone. By 2014, 59 percent of the more than 51,000 interviews conducted were over the phone, which raises concerns about the reliability of the interview given language barriers and accuracy concerns recognized by the administering agency, U.S. Citizenship and Immigration Services (USCIS).⁵⁴

Detained migrants are the least likely of all migrants to have legal representation.⁵⁵ Yet even those with legal counsel in the El Paso Sector face many obstacles, including entrenchment of high asylum denial rates among immigration judges (described below). Local attorneys have denounced many of the obstacles faced when communicating with clients in detention (see Chapter 5).

ARBITRARY DETENTION

MARTIN

Martin is a journalist from Mexico, currently one of the most dangerous countries in the world for journalists, second only to Syria, and the most dangerous for free expression in the Western Hemisphere.⁵⁶ He covered stories dealing with corruption and violence in Acapulco. On account of his reporting, he was beaten and threatened by the police. Despite reporting incidents to Mexico's National Commission on Human Rights and relocating twice, threats continued. He made his way to the U.S.-Mexico border and was sent to detention at the West Texas Processing Center, 90 miles from El Paso. Martin suffered an allergic reaction to a vaccine, administered without his consent, that was not treated. Martin was put in solitary confinement. Overcrowding in detention impeded his access to a doctor. During his detention, he was transferred along with others to the Cibola County Detention Center without notification to him or his attorney. Martin and other detainees were shackled, driven for more than six hours without water, and told that they were all about to be deported. Martin's shoulder was dislocated during transport. Shortly after this experience, Martin decided to "self-deport," abandoning relief and returning to Mexico, where he remains in hiding.

Martin's is not the only case that ends before it even begins. In court observations, 23 percent of asylum seekers in detention were deported during master calendar or bond proceedings, meaning that many were deported even before they completed their asylum application.

Our findings reflect the scores of migrants and asylum seekers who end up deported as a result of the iron triangle of deterrence in the El Paso Sector. Many asylum seekers abandon their asylum applications because they can no longer tolerate punitive detention conditions, separation from family members, and the myriad of challenges within immigration courts.

DETENTION OF PREGNANT WOMEN

Absent extraordinary circumstances, ICE policies strongly discourage the detention of pregnant women.⁵⁷ Nonetheless, nearly 40 percent of attorneys surveyed in our region have reported cases of pregnant detainees denied parole. The Women's Refugee Commission and peer organizations have corroborated these trends by reporting a 35 percent increase in the detention of pregnant immigrant women during the first four months of the Trump administration.⁵⁸

ICE has even denied parole to pregnant detainees with grave medical concerns.

MAYRA

Mayra, 23, is a Salvadoran woman who requested asylum in El Paso after fleeing gang violence. Mayra had no criminal history or history of immigration violations and was lucky to have potential sponsors in the United States. Nevertheless, she was detained at the port of entry despite informing an immigration officer that she was three months pregnant. While in detention, Mayra was transferred between facilities at least six times, including an erroneous 23-hour round trip bus ride during which she had restricted access to the lavatory, food and water. At times, even her attorney was unable to locate her. After this last transfer, Mayra suffered complications with her pregnancy and was hospitalized. When diagnosed with placenta previa, which creates serious risks to the unborn child and mother, ICE ordered a reexamination. While in detention, Rebecca did not receive prenatal care and her request for a first-floor dormitory to avoid climbing staircases was denied.

NATALIA

Natalia is a Salvadoran woman traveling alone who learned she was three weeks pregnant after receiving a medical examination while in ICE custody. Still, ICE officers decided not to release Natalia. The stress of enduring pregnancy in detention was significant for Natalia, who had spent her last pregnancy bedridden. Natalia experienced serious bleeding and despite receiving medical attention within the detention center, the problem was not resolved. Natalia lost her baby while in detention during her fifth month of pregnancy and was deported shortly thereafter.

INHUMANE CONDITIONS

Inhumane conditions in local detention centers have been detailed extensively, including by the Detained Migrant Solidarity Committee⁵⁹ and the Women's Refugee Commission.⁶⁰ We have documented reports of unsanitary conditions, insufficient and ill-prepared foods, and harassment by guards. Over 60 percent of attorneys interviewed report claims by migrants regarding inhumane conditions experienced while in detention.

The Office of the Inspector General released a report on December 14, 2017 corroborating problematic conditions at many immigrant detention facilities, including at the Otero County Processing Center.⁶¹ One advocate interviewed for this report described conditions in the Otero County Processing Center.

“The toilets and sinks are cheek and jowl with each other in the cells, so that urine can easily splash into the sink.”

Over 80 percent of the attorneys surveyed report having clients who have not received adequate physical or mental health treatment.

JESUS

Jesus is a Venezuelan asylum seeker. He is HIV positive and has requested parole on several occasions due to concerns related to inadequate medical treatment while in detention. Jesus has been detained over seven months, at times in solitary confinement. Jesus was denied appropriate treatment, including antiviral therapy, for nearly two months. Medical experts have determined that his physical and mental health are significantly deteriorating.

Jesus has legal representation and strong community support.⁶² Jesus initiated a hunger strike on December 1, 2017. He ended his hunger strike a week later due to medical complications and has not been released.

TRANSFERS

Our research indicates that transfers of asylum seekers between detention centers occur arbitrarily and can be highly disruptive to migrants in detention, including creating obstacles to due process. Notice of transfers is rarely provided to attorneys or family members, and can lead to delays in court appearances or even highly complicated changes in EOIR court jurisdiction.

RODOLFO

Rodolfo is a Mexican man in his late 30s who presented himself at an El Paso port of entry and requested asylum. Days before his hearing, Rodolfo was transferred from the El Paso Processing Center to the Cibola County Detention Center, five hours away. Neither Rodolfo's attorney or the immigration court were informed. Not even the radio-frequency identification system that tracks detainees could locate Rodolfo. Ultimately, he was transferred between El Paso Processing Center and the Cibola Detention Center twice within the same month. Rodolfo's case

was delayed on three different occasions and bounced between immigration courts in Denver and El Paso. In between transfers, ICE failed to properly transfer his files. Even after arriving back to the El Paso Detention Center for the last time, Rodolfo's case remained assigned to a judge in Denver. After three months, the Denver judge granted a change of venue so the case could be sent back to El Paso. Only after four months of unjustifiable delays and bureaucratic errors did Rodolfo have his first appearance in court.

Arbitrary transfers between detention centers present critical obstacles for attorneys in their ability to speak to and represent clients. 75 percent of attorneys report transfers, often times without notification. For the most part, transfers are made with no justification provided and lead to rescheduled hearings. These delays increase the length of detention.

OBSTACLES TO ACCESS TO COUNSEL

Our research indicates that attorneys are often impeded in their ability to properly meet and speak to detainees.

The remote location of some detention centers in the El Paso Sector is the clearest example of this. Otero County Processing Center is 30 miles from El Paso, West Texas Processing Center is 90 miles from El Paso and Cibola County Detention Center is 325 miles from El Paso.

Policies and practices that violate rights to due process at the El Paso Processing Center that were reported by HOPE and the Borderland Immigration Council in a formal complaint letter to ICE in early 2017.⁶³

Nearly 60 percent of attorneys interviewed said that they often are made to wait extended periods of time before meeting with clients. Attorneys also state that paralegals are also subjected to extended wait times and limited access to clients.

“WE ASKED IN WRITING THREE OR FOUR TIMES OVER A PERIOD OF WEEKS, WE ASKED IN PERSON THE WEEK BEFORE THIS CLIENT’S HEARING, AND WE MADE AS MANY FORMAL, E-MAIL AND PHONE REQUESTS AS POSSIBLE. WE WERE NEVER ABLE TO SIT SIDE BY SIDE WITH OUR CLIENT. WE ALWAYS HAD TO TALK TO HIM THROUGH A GLASS. IT’S IMPOSSIBLE TO DEAL WITH PAPERS THROUGH THE LITTLE SLOTS IN THE INTERVIEW WINDOW.”

Restrictions to confidentiality limit attorneys’ abilities to represent asylum seekers. A lack of privacy interferes with the attorney’s ability to establish rapport. It presents an obstacle to the sharing of critical information. Information related to asylum cases is by nature highly sensitive. Over 80 percent of attorneys report that guards and other detainees are within earshot during interviews, often resulting in situations in which neither attorney or asylum seeker feel comfortable speaking freely. 75 percent of attorneys interviewed reported limited access to private or confidential rooms when speaking to clients. This is particularly difficult when dealing with asylum seekers suffering from trauma or mental health issues.

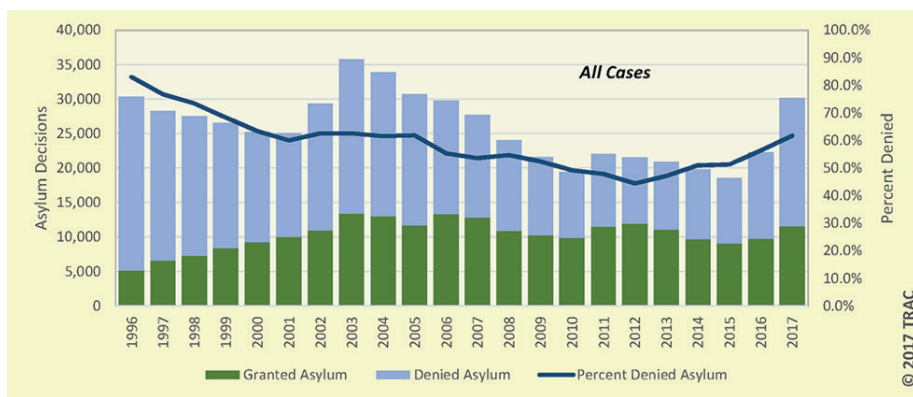
One in every four detained cases documented in this report are of individuals who have been detained over a year. Unless Supreme Court decisions on key cases related to prolonged detention, such as *Jennings v. Rodriguez*,⁶⁴ are resolved favorably towards migrants, asylum seekers will have little option other than to pursue claims from detention. Given the denial rates for asylum seekers in El Paso, many of these people will end up deported after an exhaustive stay in detention.

DETERRENCE THROUGH THE COURTS

Deterrence also takes place within the immigration court system, as a result of limited access to legal counsel, other obstacles to due process, or even on account of the actions of immigration judges.

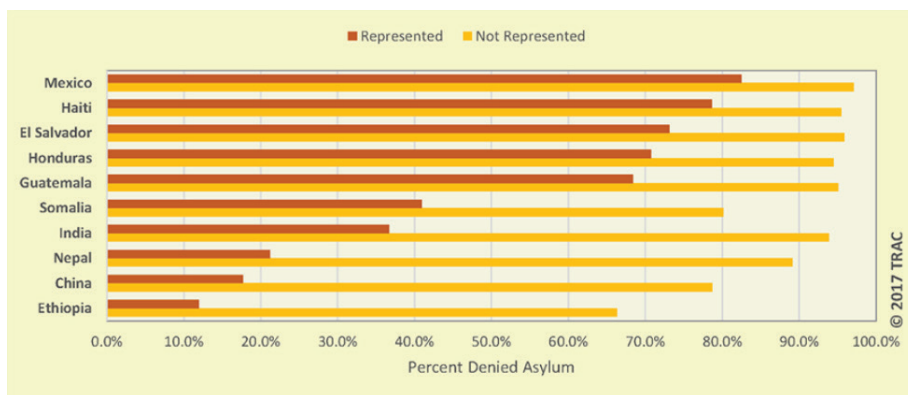
Access to legal representation is crucial in the asylum process. It is well established that people with legal representation have a better chance at winning asylum.⁶⁵ Unfortunately, the most recent data available from

the Transactional Records Access Clearinghouse (TRAC) reveals that the proportion of asylum seekers who are unable to access legal counsel has increased notably over the past ten years, from 13.6 percent in 2007 to 20.6 percent in 2017.⁶⁶



The number of asylum decisions has also increased sharply over the past year- from 22,312 to 30,179 cases, pushing the denial rate to 61.8 percent nationally.⁶⁷

The latest TRAC data also identifies two major factors linked to asylum denial rates: the nationality (or country of origin) of asylum seekers and the location of their court and the judge assigned to their case.



In the El Paso Sector, the high denial rate for Mexico and the Central American countries of El Salvador, Honduras and Guatemala is particularly troubling, because these countries are overrepresented in our region. Nationally, denial rates among judges can widely by location, sometimes with an over 20 percent difference. In El Paso, denial rates are consistently high, ranging among individual judges between 93.7 and 99.4 percent in 2016 and at similar rates in the most recent (November 2017) TRAC data we explore below.

This usually involves judge and attorney being in one place, while an asylum-seeker participates remotely. This procedure raises a number of concerns, including how effective attorneys can be when they cannot consult privately during hearings. Language issues are also compounded during VTC hearings.

Another issue characterizing EOIR's asylum process is a chronic backlog in cases, which prolongs detention and increases government costs. As a way of addressing the substantial backlog, the Department of Justice has implemented the use of video teleconference (VTC) technology for hearings.

For this report, we observed the cases of detained asylum seekers in immigration courts in the El Paso Sector and drew upon long-standing national⁶⁸ research. It must be said that the vast preponderance of research in this area does not focus on the U.S.-Mexico border region or only addresses the border marginally, and yet these studies raise key issues as to structural disparities in the adjudication of asylum claims (or "refugee roulette")⁶⁹ which are markedly present in the El Paso Sector.

We have asserted that immigration enforcement trends and practices at the border foreshadow and shape broader patterns on a national scale, and that the border has historically served as a testing ground for what have later become national policies. It is thus especially relevant to generally assess national and transnational trends along these lines, in turn, from the perspective of recurrent experiences in the El Paso Sector.

HOW ARE THESE TRENDS REFLECTED IN THE CONTEXT OF ASYLUM CASES?

Nationally, an average of about 60 percent of all asylum applications are denied (57 percent in 2016 according to TRAC), among immigration judges who decided 100 or more cases; these denial rates vary widely by judge, jurisdiction, and asylum seeker country of origin. There are large disparities as to the numbers of cases denied between locations (such as between San Francisco or New York and the border), and by varying judges within the same jurisdiction (from a denial rate as low as 9.4 percent for one judge in San Francisco vs. 97.1 percent for another assigned to the same court).⁷⁰

There are at least 20 immigration judges in an equal number of jurisdictions (including El Paso) who denied 90 percent or more of the asylum claims presented to them, but it is only in Lumpkin (GA), El Paso, Florence (AZ), and Miami-Krome (FL) where the percentage of claims denied by the judges with both the lowest and highest denial rates are each 90 percent or higher. Excepting Lumpkin, all of these are jurisdictions located at or near a port of entry. The three immigration courts with the highest virtually uniform denial rates (e.g. the lowest range of difference between judges with the lowest and highest denial rates) are Florence, Lumpkin and El Paso.

TRAC data indicates that the Oakdale (LA) court has the only judge with a 100 percent denial rate, followed closely by an El Paso judge who at 98.8 percent has the second highest denial rate in the country (id.). Other immigration courts in Texas such as Los Fresnos (in the Rio Grande Valley border region), Houston, San Antonio and Dallas have

immigration judges with very high denial rates (93.8 percent or more) but also have judges with lower denial rates, such as 69.8 percent in Dallas and 71.8 percent in Houston. Harlingen, which is comparable to El Paso because of its location at the U.S.-Mexico border, has a much flatter range with a low denial rate of 47.5 percent and a high of 64.5 percent.

IT IS MUCH HARDER ON AVERAGE TO OBTAIN A FAVORABLE ASYLUM DECISION IN EL PASO THAN IN ANY OF THE OTHER IMMIGRATION COURTS HIGHLIGHTED HERE.

El Paso is thus an outlier in terms of denial rates, even compared to other similarly situated immigration courts located at or near the U.S.-Mexico border, or to other immigration courts in Texas. This disparity is compounded by the rates of denials of Mexican and Central American asylum seekers in El Paso, a key dimension of disparity given the demographic weight of Mexican and Central American asylum cases in our region.

The systematic denial of asylum claims from these countries⁷¹ raises profoundly disturbing legal and ethical questions. There are also major structural implications in terms of the asymmetrical relations that prevail between the U.S. and its officially defined interests, and the peoples of Latin America. Asylum seekers from Central America and Mexico bear the brunt of the exclusionary effects of these accumulated inequities. The patterns and practices we have identified in the El Paso Sector and in the border region are deeply intertwined with these broader concerns.

El Paso must be understood as one of the “asylum free zones” which have been highlighted in relevant literature, and which lay the basis for the petition filed by the Catholic Legal Immigration Network (CLINIC) and others in December 2016 before the Inter-American Human Rights Commission (IACHR) challenging an overall pattern of systematic denial of asylum claims in the U.S.⁷² We also draw here on related evidence and arguments that have been made in another April 2016 IACHR petition regarding

the denial of the rights of Central American asylum seekers and migrants in transit pursuant to joint U.S.-Mexico border enforcement efforts (Plan Frontera Sur) at Mexico's southern border.⁷³

FRUSTRATED ACCESS TO NECESSARY CLIENT DOCUMENTATION PRIOR TO HEARINGS

Over 70 percent of attorneys report being denied access to key information regarding a client's hearing. Attorneys describe the lack of access to vital documents as "the way they operate." "ICE will surprise you" or "ambush you" according to attorneys. Yet ICE attorneys have full access to documentation, before and during hearings. Attorneys consistently report that the only sure way to see a client's A-file (an immigrant's official U.S. government immigration record)⁷⁴ is to file a Freedom of Information Act request. Judges sometimes appear to make decisions based on information to which attorneys are not privy and for which no explanation is given.

EXECUTION OF DEPORTATION ORDERS WITHOUT ATTORNEY NOTIFICATION

Court observations demonstrate that immigration judges sometimes make decisions without notifying legal representation, including holding hearings and issuing deportation orders. Over 70 percent of attorneys also report that the El Paso Processing Center has failed to notify them about upcoming deportations.

LANGUAGE BARRIERS IN COURT

DHS is poorly resourced to address issues of language access raised by the increasing number of migrants who speak Mayan languages and languages other than Spanish.⁷⁵ Access to interpreters or technology is often restricted. Over 60 percent of the attorneys report clients who face some type of serious language barrier.

AJEET

Ajeet is an Indian man seeking asylum in the El Paso Sector. His attorney did not speak Punjabi and the EOIR court at the

Otero County Processing Center would not provide an interpreter for preparation and translation of documents. A change of venue to a region of the country with more Punjabi speakers was denied. On account of the language constraints the attorney requested removal from the case. The request was denied.

Individuals who have no legal representation are even more vulnerable to the language barriers they face in court. Spanish is the only language for which the El Paso EOIR offers in-person interpretation. Other interpretation must be done telephonically. Many detainees are made to proceed in Spanish despite their language limitations. The assumption that a second language is "good enough" in a complex legal context is a serious concern. In approximately 44 percent of cases observed, individuals faced serious language barriers.

BETZY

Betzy, a Guatemalan asylum seeker, primarily speaks Akateko. During her hearing, she appeared confused, but it was not until she had to address the judge that it became clear she did not speak Spanish. The judge made light of the situation by jokingly claiming that he spoke better Spanish than Betzy.

We also observed several special language master calendar hearings, where the court groups respondents needing phone language interpretation. Scheduling these hearings can notably delay an individual's hearing and prolong detention. We found that cases requiring special interpretation are routinely postponed between two and six weeks.

The use of video conferencing (VTC) exacerbates language barriers, as telephonic interpreters, judges and migrants are all in different locations. Frequent connectivity issues lead to loss of relevant information. Attorneys are unable to speak before or during the hearing with their clients.

PROBLEMATIC PRACTICES AMONG IMMIGRATION JUDGES

The Otero court operated during the spring and summer months of 2017 with visiting judges from other parts of the country on two-week tours. Their approach represented a stark contrast from judges in the El Paso court, where decisions like granting bonds and asylum were consistently denied. Court observations and attorney interviews revealed that Otero judges were more likely to grant bonds and set them at amounts between \$3,000 and \$7,000. El Paso judges, on the other hand, granted fewer bonds, and when they did grant them these were usually set between \$15,000 and \$30,000 and judges attached GPS monitor requirements.

Yet Otero hearings were also characterized by the rapid speed of adjudication; visiting judges wanted to resolve cases during their two-week assignment. These expected “rocket dockets” were grossly flawed as asylum case often involve extensive preparation time. The Otero immigration court abruptly ended by fall of 2017.⁷⁶ The Office of the Attorney General’s memorandum for the EOIR on December 5, 2017 instructs immigration judges to do whatever they can to reduce the over 650,000 case backlog.⁷⁷ As a result, we can expect dockets to become the norm.

The El Paso court has four immigration judges in its detainee docket. The alarmingly high denial rate in the El Paso Sector is discouraging to asylum seekers and attorneys. Many cases do not make it past the initial master calendar hearing, during which the asylum application is submitted and a date is set for hearings. Nearly a quarter of the cases witnessed through our observations were of individuals who abandoned their application for relief. Many of these did not continue asylum applications due to the combined discouragement from the judges and pressure of being detained.

For the few asylum seekers who are eligible for bond, 80 percent of the attorneys reported that bond hearings have often illegitimately become asylum hearings. Nearly 70 percent of attorneys report excessive bonds, while 50 percent reported bonds set higher than \$20,000. These amounts would be hard for anyone of normal means.

In El Paso, one judge has a prominent profile on account of his longevity on the court, his sizeable caseload of detained migrants, and his mentorship of newer judges. This judge is known to have his own list of requirements for asylum cases which is a common practice among immigration judges. Our observation team consistently noted this judge’s skepticism towards Mexican and Central American asylum cases, including his frequent reiteration of the difficulty of proving that violence in these countries merits recognition as a basis for asylum.

“IF YOU ARE FLEEING PERSECUTION FROM ONE OF THE DRUG CARTELS IN MEXICO, WHY DON’T YOU MOVE TO A PART CONTROLLED BY ANOTHER CARTEL? DON’T THEY SAY THAT MY ENEMY’S ENEMY IS MY FRIEND?”

This judge also frequently pressures detainees, particularly those without legal representation, to submit their application as soon as possible. Though continuances are issued for those who request more time to find legal assistance or access documentation, the time provided is often inadequate. Finding legal representation for asylum is a challenge in El Paso; there is significant need for low and pro bono legal representation and local service providers are at capacity.

HIGHER THRESHOLDS AFTER PROSECUTION FOR ENTRY AND RE-ENTRY

94 percent of the attorneys interviewed report that it is common local practice to have clients who have been charged with illegal entry or reentry and who have served time at the county jail before being transferred to ICE custody. Attorneys report that in many of these cases tougher standards are applied when an asylum seeker makes a claim after prosecution. In the vast majority of cases (80 percent), attorneys report that if the client had not been prosecuted they could have likely passed the credible fear screening.

WHEN YOU WIN YOU LOSE

The perverse effects of the generalized absence of the rule of law in the adjudication of immigration cases also mean that even when a asylum seeker is able to or likely to prevail, against all odds, ways are still found to penalize her.

RAMON

Ramon is an asylum seeker from El Salvador. Against great odds, Ramon won his asylum case without legal representation, something almost unheard of in the El Paso Sector. Ramon fought hard to have many of his due process rights upheld, including the need to have his case be presented in front of a judge in person, rather than via teleconference. ICE attorneys appealed the win. Although the Board of Immigration Appeals remanded the decision, Ramon remains in detention over a year later. Ramon will have to essentially re-initiate his asylum case in front of a new judge.

During Ramon's time in detention, he has reported deplorable conditions, including issues with food and water. He refers to his treatment and conditions as "psychological torture," a chilling statement from a man who has endured physical and psychological torture in his home country.

CONCLUSIONS & RECOMMENDATIONS

This report is grounded in a faith-based approach to immigration enforcement and public policy which is centered around ethical imperatives of respect for the rights and dignity of all persons. Our report seeks to contribute key elements grounded in the voices, experiences, and suffering of immigrant families and communities, and in the insights of their advocates and allies in the borderlands region, to the broader national and global framework for ethical enforcement that is urgently needed as a principled, conceptual bridge between legality and legitimacy within the context of U.S. immigration policy.

“Asylum seekers in particular have been made more vulnerable by the weaponizing against them of what we have termed the iron triangle of deterrence...”

Migrant families and border communities have become especially vulnerable to human rights violations as the result of policies and practices radicalized by the Trump administration. Asylum seekers in particular have been made more vulnerable by the weaponizing against them of what we have termed the iron triangle of deterrence, a complex of mechanisms encountered at the border, in detention and in immigration courts. This is the true wall made up of concrete measures of exclusion which is encountered by migrants and asylum seekers on a daily basis in our region, and increasingly throughout the country. The degradation of the rule of law in U.S. asylum proceedings undermines legitimacy and reproduces disturbing variants of the kinds of state-induced and structural violence from which asylum seekers are seeking protection.

Our report calls for a national dialogue in response to the need to fashion ethical approaches to immigration enforcement consistent with the *pro persona* (or *pro homine*)⁷⁸ principle of international human rights law. This principle has become especially influential in international human rights law and the jurisprudence of the Inter-American Human Rights system, and calls for courts and other decision makers to apply the interpretation of rights which is most consistent with the full protection of the rights and dignity of the human person. The situation at the U.S.-Mexico border is essentially the opposite.

We also call for the application within the context of U.S. immigration enforcement of the principles contained in the Human Mobility Standards⁷⁹ which have been adopted by the Inter-American Commission on Human Rights, and of the recommendations of the civil society platform supported by over 200 nongovernmental

organizations from throughout the world,⁸⁰ developed for consideration within the context of the UN process intended to culminate in the adoption of Global Compacts on Migration and Refugee in September 2018, as well as more specific recommendations of peer organizations, especially the U.S. Commission on International Religious Freedom, Women’s Refugee Commission, Human Rights First, and CLINIC, whose concerns we have cited in this report.

Our conclusions and recommendations here reaffirm those of our previous report, and highlight additional concerns that reflect the impact of intensified enforcement since January 2017.

“Every recommendation made last year, as to the need for --

- **Increased accountability and transparency,**
- **Eliminating the detention of migrants and asylum seekers who pose no threat to community safety,**
- **An end to deterrence through methods such as family separation,**
- **Humane enforcement and removal,**
- **Access to counsel and respect for due process --”**

has continuing relevance, and is even more pressing now. All of these dimensions shape the adverse landscape confronted by asylum seekers, characterized by presumptions against the validity of their claims and punishment through detention, removal and deportation.

A foundational concern is the deep-seated tendency of asylum law in the U.S. to be politicized, as it was during its origins in the 1980's, by considerations rooted in foreign policy interests related to the Cold War and later to anti-terrorism imperatives. These have historically outweighed humanitarian concerns central to international refugee law. U.S. asylum law in practice has tended to construe asylum claims more restrictively, and with greater exclusionary effects.

Such trends are evident in the current disparities we highlight in this report as to asylum case outcomes involving claimants from Mexico and Central America. But these cases also underline the need for a more expanded definition of asylum and refugee status, such as that recommended by the Cartagena Declaration,⁸¹ as applied to the contexts of generalized violence which produce forced migration and displacement in these countries. These contexts are morally compelling in terms of the need for remedial action, given that conditions of this kind are at least in part the product of U.S. policies as to free trade, the drug war, and military and public security assistance.

ETHICAL ENFORCEMENT MUST THUS ALSO MEAN DUE ATTENTION TO THE U.S.' SPECIAL RESPONSIBILITIES TO EXTEND PROTECTION AND RELIEF TO THE VICTIMS OF ITS OWN POLICIES IN CONTEXTS, SUCH AS SUCH AS CENTRAL AMERICA AND HAITI THROUGH MEASURES RECOGNIZING TEMPORARY PROTECTED STATUS (TPS). THIS IS PARTICULARLY CRITICAL AS THE CONDITIONS THAT PRODUCE ONGOING FLOWS OF MASS FORCED MIGRATION FROM MEXICO AND CENTRAL AMERICA CONTINUE TO DEEPEN, TOGETHER WITH OUR RESPONSIBILITY TO ADDRESS THEM.

We join hands here in a collective call to conscience, rooted in moral reflection and action, with all those who share our transformative vision of a global community committed to human rights and dignity for all, where borders are morally irrelevant.

DATA SUMMARY TABLES

APPENDIX

CASE SUMMARY TABLE

Detailed information on over 120 cases of asylum seekers, individuals requesting humanitarian parole or relief, and detained and deported people

was collected, coded, analyzed and classified in the creation of this report. The following chart presents the raw number and percentage of cases in which people were subjected to ICE and CBP practices and decisions:

ATTORNEY INTERVIEW CASE SUMMARY	
Male	55%
Female	38%
Asylum seekers & CAT	78%
Parole denied	62%
“Self-deported”	11%
Deported	12%
Deterrence at POE	44%
Parole Denial	61%
Detention Conditions & Harassment	33%
Health and Mental Health Conditions	31%
Prolonged Detention	20%
Detention 1-6 months	15%
Detention 6-12 months	9%
Transfers	20%
Language Barriers	18%
Due Process	43%
Inter-Agency coordination concerns	11%
Issues with Judges	11%

COUNTRY	TOTAL
Mexico	27
Central America	28
South America	3
Cuba	2
Haiti	2
India	2
MENA	1
Africa	4
Eastern Europe	1
China	1
Philippines	1

COURT OBSERVATIONS CASE SUMMARY TOTAL CASES	216
Male	63%
Female	36%
Pro Se	31%
Legal Representation	54%
Asylum Seekers	64%
Stays/Cancellations	10%
Adjustment of Status/LPR	5%
Asylum seekers and migrants deported as a result of deterrence practices	5%
Asylum seekers and migrants given deportation orders by Immigration Judge	10%
Cases given Continuances	47%
Cases set for Merit Hearings	6%
Deterrence practices by Immigration Judges	19%
Video Teleconferencing	8%
Language Barriers	44%

SURVEY SUMMARY

Percentage of attorneys whose client has been charged with illegal entry or reentry and who have served time at the county jail before being transferred to ICE custody	94%
Percentage of cases reported where family separation occurs	94%
Percentage of cases of family separation that occur at a port of entry or upon apprehension	85%
Percentage of reported cases where minor children are separated from one or both parents during detention	15%
Percentage of attorneys with cases in which immigration forms and sworn affidavits do not align with their client's testimony	80%
Percentage of attorneys with cases in which CBP has failed to ask their client if they have a fear of returning to their home country	56%
Percentage of attorneys whose clients have had inadequate interpretation during their client's initial interview with an immigration official	70%
Percentage of attorneys with cases in which their clients have reported being discouraged, threatened or otherwise dissuaded from pursuing asylum or any other type of relief	76%
Percentage of cases where CBP is the agency responsible for deterrence practices	91%
Percentage of attorneys whose parole requests are regularly being denied	88%
Percentage of attorneys who claim the same parole requests being denied would have been granted under the previous administration	80%
Percentage of cases where asylum seekers were deported during master calendar or bond proceedings	11%
Percentage of attorneys who have reported cases in which pregnant detainees have not been paroled	37%
Percentage of attorneys that report consistent claims by migrants as to inhumane conditions endured while in detention	62%
Percentage of attorneys that report having a client who has not received adequate physical or mental health treatment while in detention	82%
Percentage of attorneys with cases where their client has been arbitrarily transferred between locations	77%
Percentage of attorneys that report waiting extended periods of time before being able to meet with clients	61%

SURVEY SUMMARY

Percentage of cases where the attorney's waiting period is over one hour	44%
Percentage of attorneys that report guards and other detainees are within earshot during meetings with clients	83%
Percentage of attorneys who report having limited access to private or confidential rooms when speaking to clients	77%
Percentage of individual cases reported of individuals who have been detained over one year	20%
Percentage of attorneys that report being denied access to key information regarding a client's case.	73%
Percentage of attorneys who report EPPC has failed to notify them about upcoming deportations/removal of clients	69%
Percentage of attorneys who report facing some language barrier when representing a client	62%
Percentage of attorneys reporting inadequate interpretation during initial interviews	67%
Percentage of attorneys who have experienced bond hearings being conducted as asylum hearings	81%
Percentage of attorneys who report an increase in excessive bonds	68%
Percentage of attorneys who have reported cases with bonds above \$20,000	50%
Percentage of attorneys who report clients facing tougher credibility standards because of illegal entry or reentry prosecutions and who could have otherwise likely passed the credible fear screening	80%
Percentage of attorneys reporting CFI interviews being conducted by phone	59%

LETTER TO ICE

Letter to ICE detailing concerns related to access to counsel issues at the El Paso Processing Center

31 January 2016

Re: **Concerns regarding Access to Counsel Issues at the El Paso Processing Center**

Dear Madams and Sirs:

We write to express our serious concern regarding policies and practices at the Immigration and Customs Enforcement (ICE) El Paso Processing Center (hereafter, "EPC") that hinder detainees' access to counsel, as well as policies and practices implemented by the Executive Office for Immigration Review ("EOIR") and the Office of the Chief Counsel ("OCC") in the El Paso sector. This letter is sent by members of the Borderland Immigration Council, a coalition of nonprofit legal organizations, private immigration law practitioners, community organizations, and concerned members of the community, along with non-profit and legal organizations concerned with the immigration justice system.

This letter highlights the egregious policies and practices that impede attorneys' ability to provide legal services to effectively represent clients at EPC, in violation of detainees' due process right to counsel in immigration proceedings.¹ Based on these findings, we recommend measures - which should be implemented in short order - to rectify this situation.

The El Paso Processing Center has capacity to hold 840 immigrants in detention on any given day, and can be expanded to hold 1,100 people. The facility is government owned but operated by Global Precision Systems ("GPS"). It is one of four such detention and processing centers in the El Paso Sector; others are the Otero County Processing Center, located 30 miles from El Paso, West Texas Detention Center in Sierra Blanca, located 90 miles southeast of El Paso, and the recently converted Cibola Processing Center. Together, these processing and detention centers have bed space for an additional 3,250 immigrant detainees.

Individual and family unit apprehensions on the southwest border increased significantly during the last months of FY 2016, as did apprehensions of asylum-seekers.² In addition to greater numbers of apprehensions and asylum petitions, immigrant detention in the El Paso sector is on the rise, including the recent opening of Cibola and the use of federal prison facilities at Sierra Blanca to house more immigrant detainees. As such, the due process violations laid out in this letter most likely affect not only those detained at EPC, but the thousands of immigrant detainees in the El Paso sector.

The impediments to attorney access to clients and due process detailed in this letter were collected through an investigation spanning four months, from September to December 2016. The investigation was conducted by researchers at the Hope Border Institute, in collaboration with the Borderlands Immigration Council and member organizations and attorneys. The barriers to due process and access to counsel - outlined in greater detail in Section I - identified at EPC are:

- Burdensome and inexplicable wait times for attorney-client meetings
- Unreasonable restrictions and impediments to confidential attorney-client meetings at EPC
- Direct and indirect barriers to accessing experts and interpreters for case preparation
- Lack of Access to Necessary Client Documentation prior to Hearings
- Inexplicable Restrictions on Access to Courtrooms
- Restriction on access to and lack of clear guidelines on technology in detention center
- Execution of Deportation Orders without Attorney Notification
- Policies and arbitrary practices that negatively affect attorneys' ability to represent clients

¹ Dakane v US Attorney General

² See, Statement by Secretary Johnson On Southwest Border Security. 10 Nov 2016.

These barriers to due process at the El Paso Processing Center are widespread and systematic. EPC and GPS should immediately implement measures to improve and ensure detainees' access to counsel. These corrective measures - detailed in Section II - include:

- Maximum access and flexibility for legal teams to meet and speak with detained persons and advise or represent them, and confidentiality of attorney-client conversations.
- Communication with represented individuals regarding their case only through attorneys of record
- Timely access to experts.
- Notification of impending deportation date at least 48 hours prior to removal
- Elimination of the investigative disparity between immigration attorneys and the government
- Equal treatment of government and private attorneys as officers of the court.
- Establishment of clear, consistent policies regarding use of technology and access to food and beverages.
- Ensuring that all detainees are able to participate meaningfully in their proceedings by facilitating language access.

Members of the Borderlands Immigration Council, along with other signatories to this letter, are willing to work with DHS officials in the El Paso sector to address and rectify these due process barriers and violations. We request that DHS officials create and disseminate a timeline and implementation plan for these recommendations. All people have a fundamental right to justice.

Thank you in advance for your consideration. Should these recommendations not be implemented, we reserve the right to take other actions as deemed necessary and appropriate. Please contact Theodora Simon of the Hope Border Institute at tsimon@hopeborder.org or 915-872-8400 with any questions.

Sincerely,

Hope Border Institute
Diocesan Migrant & Refugee Services
Carlos Spector, Attorney at Law
Noble & Vapri, El Paso, TX
Las Americas Immigrant Advocacy Center
Texas Civil Rights Project
Beckett Law Firm
Frontera Immigration Law
Catholic Charities of Southern New Mexico
ACLU Regional Center for Border Rights
CIVIC (Community Initiatives for Visiting Immigrants in Confinement)
Mexicanos en Exilio
The Law Office of Daniel Caudillo
New Mexico Legal Aid
Refugee and Immigrant Center for Education and Legal Services, RAICES
Janos Zavala & Villalpando, LC

EMAIL FROM US BORDER PATROL REGARDING FAMILY SEPARATION

Oct. 24, 2017 meeting clarification

1 message

DONALDSON, LISA R (OCC) <lisa.r.donaldson@cbp.dhs.gov>
To: "DONALDSON, LISA R (OCC)" <lisa.r.donaldson@cbp.dhs.gov>

Wed, Oct 25, 2017 at 1:08 PM

Good afternoon,

On October 24, 2017, there was a discussion regarding the United States Border Patrol's policy pertaining to separation of family units during a meeting organized by Congressman Beto O'Rourke's office. As a point of clarification: the Border Patrol *does not* have a blanket policy requiring the separation of family units. Any increase in separated family units is due primarily to the increase in prosecutions of immigration related crimes.

Respectfully,

Lisa R. Donaldson

Attorney

Office of Assistant Chief Counsel

U.S. Customs and Border Protection

9434 Viscount Boulevard, Suite 200

El Paso, Texas 79925

Main Tel: (915) 599-0800

Direct Tel: (915) 599-0811

Fax: (915) 595-8784

lisa.r.donaldson@cbp.dhs.gov



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5. <https://www.ice.gov/enforcement>
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ENDNOTES

Border Security Executive Order

- Detention of arriving aliens and deemed inadmissible under 235(b)
- Mandate detention of aliens and allowing Sec. Kelly to exercise discretionary parole only on case-by-case basis and only for urgent humanitarian reasons or public benefit.
- “Catch-and-release” ends
- Deployment of immigration judges and asylum officers to the border and establishment of appropriate processing and detention facilities
- May only release an alien on case-by-case basis if:
 - Order granting relief or protection from removal
 - USC, LPR, protected status
 - When required by statute to comply with binding settlement agreement or order issued by a competent judicial or administrative authority
 - Authorized parole by ICE Directors, unless it is a medical emergency and it may not be practicable to have prior authorization.
 - Arriving alien who has established “credible fear” and only after they have proven enough evidence of identity

DHS shall expand detention capabilities and all resources shall be prioritized based upon potential danger and flight risk.

The guidance does not prohibit the return of an alien arriving by land to Mexico to wait for removal proceedings.

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19. <https://www.hrw.org/report/2017/12/05/deported/immigrants-uprooted-country-they-call-home>
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