

**Systemic Rights Abuses on the Border:  
The Real Problems and What Will Fix Them**  
July 2019

**Migrants on the U.S. southern border are enduring systemic human rights abuses.** Children and adults alike are held in overcrowded processing pens, hungry and neglected.<sup>i</sup> Families are torn apart.<sup>ii</sup> People are dying on their journey toward safety and in U.S. government custody.<sup>iii</sup>

**Abuses on the border are not happening because of a resource crunch. They are happening because of Trump administration policies designed to visit cruelty on immigrants and deter asylum seekers.** Recent revelations regarding social media posts by Customs and Border Protection (CBP) agents expose the culture of racism and hate that exists within the agency implementing these policies.<sup>iv</sup> More funds for these agencies will only fuel the drivers of abuse. Real change will require rescission of the policies causing the abuse, meaningful congressional oversight of the agencies carrying them out, and a transformative approach to immigration law and policy.

**What are the policies creating these abusive conditions?** The president's January 2017 Executive Order<sup>v</sup> laid a roadmap for a restrictionist overhaul of U.S. border policies. The administration has relentlessly sought to realize this vision, with the deaths and suffering of migrant families and children the inevitable result. These policies include:

**1. Turning asylum seekers back to Mexico through illegal “metering” and “MPP” policies**

When migrants present themselves at U.S. ports of entry to lawfully seek asylum, border agents routinely turn them back to wait for weeks or months through a policy known as “metering.” Other migrants are processed into the U.S. but promptly returned to Mexico to await their hearing dates through a program the administration refers to as the Migrant Protection Protocols (MPP). At least 13,000 people are waiting in Mexico subject to metering<sup>vi</sup> and more than 15,000 have been returned to Mexico through MPP, all at constant risk of robbery, assault, extortion, kidnapping, and homicide in parts of Mexico notoriously dangerous for migrants.<sup>vii</sup> Those awaiting their court dates struggle to develop their asylum cases without access to U.S. attorneys or legal service organizations.<sup>viii</sup> These policies are routinely **forcing migrants who cannot wait safely in Mexico to cross between ports, risking death and criminal prosecution.** Óscar Alberto Martínez Ramírez and his baby Valeria were among those who tried to reach safety in the U.S. after being turned back through metering; they drowned before reaching safety, their images in death shocking the nation.<sup>ix</sup>

**2. Prolonged detention of children**

CBP is holding children in custody for days and weeks beyond the 72-hour limit imposed by law

rather promptly transferring them to the Department of Health and Human Services (HHS), the agency responsible for ensuring that children who arrive at the U.S. border alone are cared for until they can be reunified with a parent or loved one. The administration claims these delays are due to pressure on HHS's capacity to hold children in longer-term care. But its own policies are responsible for pushing the HHS system beyond capacity by **prolonging the detention of unaccompanied immigrant children who otherwise could be released**. In April 2017, HHS and the Department of Homeland Security (DHS) entered into an agreement inserting Immigration and Customs Enforcement (ICE) into HHS's reunification process. This agreement dramatically slowed the reunification process and made family members reluctant to come forward to pursue reunification, for fear ICE would target them for detention and deportation.<sup>x</sup> As HHS resources ran dry because more children were entering custody but few were being released, the administration went so far as to temporarily terminate recreational and educational services for children rather than rescind this harmful policy.<sup>xi</sup>

### 3. Overcrowding and expansion of ICE jails

The administration has expanded and systemically over-crowded ICE detention facilities by **abandoning discretion over who it jails and jailing them for longer**. In violation of its own agency directives, ICE jails asylum seekers for the duration of their asylum proceedings even when they have community sponsors.<sup>xii</sup> The administration has also doubled down on abusive enforcement operations in U.S. homes and workplaces. Even while claiming to be short on resources, ICE is planning massive raids that will target families and community members for arrest and removal.<sup>xiii</sup> This jail-obsessed approach to immigration policy ignores mountains of evidence demonstrating it to be cheaper, more effective, and more humane to support immigrants in the community during their court proceedings.<sup>xiv</sup> Furthermore, the administration uses overcrowding in ICE facilities to vindicate the inhumane overcrowding asylum seekers are being subjected to at border facilities.

**Historians are warning us that the mass detention of migrants, deprived of due process and subject to dehumanizing conditions and actions by government actors, signals a dangerous moment for the U.S.<sup>xv</sup> Transformative change is imperative.** The policies described above must be rescinded. Congress must impose robust oversight of DHS's treatment of migrants. And, finally, we must dismantle the current immigration policy and rebuild a just framework for welcoming immigrants. Guideposts for such an approach are available through numerous resources including:

- National Immigrant Justice Center, *Welcome and Compassion: NIJC's Principles Toward a Just Approach to Migration Policy* (November 2018)<sup>xvi</sup>
- DC Immigration Hub et al., *Five Investments in Our Immigration System* (April 2019)<sup>xvii</sup>
- National Immigrant Justice Center, *A Better Way: Community-Based Programming as an Alternative to Immigrant Incarceration* (June 2019).<sup>xviii</sup>

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## ENDNOTES

- <sup>i</sup> Simon Romero, et al., The New York Times, “Hungry, Scared and Sick: Inside the Migrant Detention Center in Clint, Tex.,” July 6, 2019, <https://www.nytimes.com/interactive/2019/07/06/us/migrants-border-patrol-clint.html>; Department of Homeland Security Office of Inspector General, *Management Alert—DHS Needs to Address Dangerous Overcrowding and Prolonged Detention of Children and Adults in the Rio Grande Valley*, July 2, 2019, <https://www.oig.dhs.gov/sites/default/files/assets/2019-07/OIG-19-51-Jul19.pdf>.
- <sup>ii</sup> Lomi Kriel and Dug Begley, Houston Chronicle, “Trump administration still separating hundreds of migrant children at the border through often questionable claims of danger,” June 22, 2019, <https://www.houstonchronicle.com/news/houston-texas/houston/article/Trump-administration-still-separating-hundreds-of-14029494.php>.
- <sup>iii</sup> Gaby Del Valle, Vice News, “The Trump administration has let 24 people die in ICE custody,” June 10, 2019, [https://news.vice.com/en\\_us/article/3k3jd3/the-trump-administration-has-let-24-people-die-in-ice-custody](https://news.vice.com/en_us/article/3k3jd3/the-trump-administration-has-let-24-people-die-in-ice-custody).
- <sup>iv</sup> A.C. Thompson, Pro Publica, “Inside the secret Border Patrol Facebook page where agents joke about migrants deaths and post sexist memes,” July 1, 2019, <https://www.propublica.org/article/secret-border-patrol-facebook-group-agents-joke-about-migrant-deaths-post-sexist-memes>.
- <sup>v</sup> NIJC’s annotated version of the Executive Order is available here: <https://immigrantjustice.org/sites/default/files/content-type/research-item/documents/2017-01/EOBorderSecurityAnnotatedFINAL.pdf>.
- <sup>vi</sup> Elliot Spagat, Nomaan Merchant, and Patricio Espinoza, Associated Press, “For thousands of asylum seekers, all they can do is wait,” May 9, 2019, <https://www.apnews.com/ed788f5b4269407381d79e588b6c1dc2>.
- <sup>vii</sup> Chantal Da Silva, Newsweek, “Asylum seekers forced to remain in Mexico are being kidnapped, extorted and beaten, MSF warns,” July 5, 2019, [https://www.newsweek.com/remain-mexico-asylum-seekers-kidnapped-beaten-extorted-msf-1447760?utm\\_source=GoogleNewsstandWorld&utm\\_medium=Feed&utm\\_campaign=Partnerships](https://www.newsweek.com/remain-mexico-asylum-seekers-kidnapped-beaten-extorted-msf-1447760?utm_source=GoogleNewsstandWorld&utm_medium=Feed&utm_campaign=Partnerships); Ariane Francisco, Josefina Salomón, InSight Crime, “Mexican officials extort asylum seekers on way to U.S.A.,” Mar. 25, 2019, <https://www.insightcrime.org/news/analysis/mexican-officials-extort-asylum-seekers/>; Jose Luis Gonzalez, Reuters, “Mexico buses home migrants who gave up on U.S. asylum claims,” July 2, 2019, <https://www.reuters.com/article/us-usa-immigration-mexico/mexico-buses-home-migrants-who-gave-up-on-us-asylum-claims-idUSKCN1TX2TY>.
- <sup>viii</sup> Camilo Montoya-Galvez, CBS News, “David v. Goliath: lawyers struggle to help asylum seekers sent back to Mexico,” July 1, 2019, <https://www.cbsnews.com/news/trump-remain-in-mexico-policy-thousands-of-asylum-seekers-in-mexico-and-few-lawyers-to-help-them/>.
- <sup>ix</sup> Jesse Franzblau, National Immigrant Justice Center, “Funding the Administration’s Hateful Border Policies Will Increase Abuse and Inflict More Harm on Migrants,” June 28, 2019, <https://immigrantjustice.org/index.php/staff/blog/funding-administrations-hateful-border-policies-will-increase-abuse-and-inflict-more>.
- <sup>x</sup> National Immigrant Justice Center, Women’s Refugee Commission, “Children as Bait: Impacts of the ORR-DHS Information-Sharing Agreement,” March 2019, <https://www.immigrantjustice.org/sites/default/files/content-type/research-item/documents/2019-03/Children-as-Bait.pdf>. On July 2, 2019, numerous Chairs of relevant committees of jurisdiction in the House of Representatives called for the agreement’s rescission, see <https://homeland.house.gov/imo/media/doc/190703%20T%20McAleenan%20%20Azar%20re%20Memorandum%20of%20Agreement%20between%20DHS%20%20HHS.pdf>.
- <sup>xi</sup> Maria Sachetti, Washington Post, “Trump administration cancels English classes, soccer, legal aid for unaccompanied child migrants in U.S. shelters,” June 5, 2019, [https://www.washingtonpost.com/immigration/trump-administration-cancels-english-classes-soccer-legal-aid-for-unaccompanied-child-migrants-in-us-shelters/2019/06/05/df2a0008-8712-11e9-a491-25df61c78dc4\\_story.html?utm\\_term=.771ce5be2870](https://www.washingtonpost.com/immigration/trump-administration-cancels-english-classes-soccer-legal-aid-for-unaccompanied-child-migrants-in-us-shelters/2019/06/05/df2a0008-8712-11e9-a491-25df61c78dc4_story.html?utm_term=.771ce5be2870).
- <sup>xii</sup> The administration is facing litigation for its blanket policy of prolonged detention of asylum seekers, including a recent case filed by the Southern Poverty Law Center and others alleging that the rate of release on parole granted by the New Orleans ICE office to those detained in its jurisdiction fell from 75.9 to 1.5 percent since 2016, see [https://www.splcenter.org/sites/default/files/2019.05.30\\_-\\_002\\_-\\_class\\_complaint\\_for\\_injunctive\\_and\\_declaratory\\_relief.pdf](https://www.splcenter.org/sites/default/files/2019.05.30_-_002_-_class_complaint_for_injunctive_and_declaratory_relief.pdf).
- <sup>xiii</sup> Maryam Saleh, The Intercept, “As Trump announces mass immigration raid, documents show how ICE uses arrest quotas,” July 3, 2019, <https://theintercept.com/2019/07/03/ice-raids-arrest-quotas/>.
- <sup>xiv</sup> National Immigrant Justice Center, A Better Way, April 2019, <https://www.immigrantjustice.org/research-items/report-better-way-community-based-programming-alternative-immigrant-incarceration>.

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<sup>xv</sup> Jack Holmes, Esquire, “An expert on concentration camps says that’s exactly what the U.S. is running at the border,” June 13, 2019, <https://www.esquire.com/news-politics/a27813648/concentration-camps-southern-border-migrant-detention-facilities-trump/>.

<sup>xvi</sup> Available at <https://immigrantjustice.org/index.php/staff/blog/welcome-and-compassion-nijcs-principles-toward-just-approach-migration-policy>.

<sup>xvii</sup> Available at <https://immigrantjustice.org/staff/blog/five-investments-our-immigration-system-address-crisis-border>.

<sup>xviii</sup> Available at <https://www.immigrantjustice.org/research-items/report-better-way-community-based-programming-alternative-immigrant-incarceration>.