

President Andrés Manuel López Obrador
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Secretary of Foreign Affairs, Marcelo Ebrard Causabon
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December 1, 2018

Dear President López Obrador, Secretary Ebrard, and Secretary Sanchez,

As organizations committed to advancing human rights in the United States and internationally, we are grateful for your stated commitment to a rights-based approach toward the complex issue of migration. We wish you congratulations on the commencement of your new administration and look to your incoming leadership with hope. Today, we write to express our pressing concerns regarding your reported consideration of a bilateral agreement with the United States regarding the processing of asylum seekers.

Specifically, we urge you to reject any proposal that would require individuals seeking asylum in the United States to return to or remain in Mexico, including a “safe third country agreement,” the “Remain in Mexico” policy,¹ or other bilateral schemes that would block, bar or prevent individuals from seeking asylum in the United States. **Requests for asylum in the United States trigger very specific legal and moral obligations. Those obligations are on the United States; outsourcing them to Mexico risks placing both countries in legal and moral jeopardy.**

The Trump administration has demonstrated an open disregard toward the international protection regime. We are gravely concerned at efforts by this administration to outsource its own human rights obligations, placing responsibility onto Mexico for the processing of asylum seekers who have chosen to seek safety in the United States. There is no legitimate capacity- or protection-based justification for such outsourcing. The United States’ plan places a burden on Mexico to assist in preventing migrants and asylum seekers from gaining entry to the United

¹ Recent reporting suggests that your administration has been asked by the United States government to consider variations of a policy frequently referred to as “Remain in Mexico” that would permit the United States to return asylum seekers arriving on the United States / Mexico border to Mexico where they would remain during the pendency of their asylum processing, up until or including the adjudication.

States even when our domestic and international laws provide them clear access to protections. Indeed, Mexican officers are already preventing asylum seekers from approaching United States border posts, while United States border officers have reduced processing levels at ports of entry, triggering bottlenecks, back-ups, growing numbers and long wait times in Mexico. At the dawn of your new government, we urge you to reject an agreement that compromises lawful access to protection.

The right to seek asylum is inviolable under international law.² Both Mexico and the United States have voluntarily acceded to the obligations set forth in the United Nations Convention Relating to the Status of Refugees.³

As emphasized by the United Nations High Commissioner for Refugees (UNHCR), the “primary responsibility to provide protection” rightly rests with “the State where asylum is sought,” and “asylum-seekers and refugees should ordinarily be processed in the territory of the State where they arrive.”⁴ This principle respects the wishes and self-determination of the asylum seeker herself. Departures from that principle, which is what the Trump administration is proposing, should not be undertaken lightly or acceded to, as here, at the expense of asylum seekers.⁵

By entering into an agreement with the United States, Mexico could incur legal obligations it might not want. Under international law, jurisdiction is most frequently determined by territoriality, but it may also, in some cases, arise when a state exercises effective control of an area or individual outside of its territory.⁶ A bilateral agreement between the United States and Mexico would likely result in mixed or dual responsibility between the two countries for the myriad legal obligations that arise under international and domestic laws of both countries toward the processing and treatment of asylum seekers.

Under a bilateral agreement, Mexico’s obligations, including under the Refugee Convention, would include *non-refoulement* and responsibility for guaranteeing access to counsel and fair refugee status determinations—including for those in its territories who are undergoing legal procedures in the United States. Over the past two years, the Trump administration has issued refugee- and asylum-related policies that are often unlawful⁷ and demonstrate a disregard and

² Art. 14, Universal Declaration of Human Rights, 1948.

³ The United States and Mexico are both party to the 1951 Convention Relating to the Status of Refugees through accession to its 1967 Protocol.

⁴ UNHCR, Division of International Protection, Guidance Note on bilateral and/or multilateral transfer arrangements of asylum-seekers, May 2013.

⁵ This and other guarantees factoring into the determination of the lawfulness and propriety of a bilateral transfer agreement are spelled out in the Guidance Notes, *id.*

⁶ *See, e.g.*, European Court of Human Rights, *Hirsi Jamaa and Others v. Italy*, Application No. 27765/09, Judgment of 23 February 2012, p. 25.

⁷ In one recent glaring example, the United States Department of Homeland Security issued a regulation supporting a Presidential Proclamation that endeavored to ban all individuals who entered between ports of entry from seeking asylum, in direct contravention of the Refugee Convention and its implementing domestic statute, the Refugee Act.

distain toward the foundations of the international protection regime.⁸ We have grave concerns that the administration would continue to disregard its obligations in the context of a bilateral agreement. Even in the best of circumstances, it would be impossible to develop a bilateral agreement that could ensure meaningful access to United States legal counsel and access to evidence for asylum seekers undergoing removal proceedings in United States immigration courts from Mexican soil. In this case, the Trump administration has already evidenced that it would not be a partner interested in upholding those legal obligations.

The Trump administration's proposals are not aimed at contributing to the overall protection of asylum seekers or honoring international law obligations. President Trump has repeatedly referred to migrants traveling to the United States to seek asylum as an "invasion" and recently tweeted that when a migrant arrives in the United States, "we must immediately, with no Judges or Court Cases, bring them back from where they came." UNHCR's formal guidance on bilateral agreements warns that such agreements "would not be appropriate where they represent an attempt, in whole or part by a 1951 Convention State party to divest itself of responsibility; or they are used as an excuse to deny or limit jurisdiction and responsibility under international refugee and human rights law." The President's own words reveal this insidious intent to be *exactly* what motivates his administration's efforts to strike a deal with you. Indeed this agreement would be yet another step in the Trump administration's efforts to block and bar refugees from the United States.

Finally, we urge you to look closely, and with an open heart, at the face of the asylum seeking population that would be subject to a bilateral agreement. Recent data suggests that more than half of those people apprehended by United States Border Patrol agents are parents traveling with their children or children traveling alone.⁹ Many of those fleeing violence in Central America carry with them the recent memory of the death of a loved one or an attempt on their own life.¹⁰ Many are seeking to reunite with a family member or other loved one in the United States. International human rights obligations are particularly multi-faceted in response to such vulnerable populations. We urge you to consider the grave hazard inherent in entering into shared responsibility for such obligations with an administration that routinely disparages the norms you come into office vowing to hold dear.

A federal district court judge struck the rule down within days of its issuance, remarking that the President cannot "by proclamation ... override Congress's clearly expressed legislative intent, simply because a statute conflicts with the President's policy goals." Order Granting Temporary Restraining Order, *East Bay Sanctuary Covenant v. Trump*, Case 3:18-cv-06810 (N. Dist. Ca, Nov. 19, 2018).

⁸ The United States Department of Homeland Security faces, for example, allegations of engaging in coercive measures against parents forcibly separated from their children, causing them to waive their rights and in some cases stipulate to deportation under duress. *See* American Immigration Council and the American Immigration Lawyers Association, Complaint re the Use of Coercion by U.S. DHS Officials Against Parents Who Were Forcibly Separated From their Children, Aug. 23, 2018.

⁹ Dara Lind, Vox, "Half the people caught by Border Patrol are now children or families," Oct. 23, 2018.

¹⁰ *See, e.g.,* Medecines Sans Frontieres, *Forced to Flee Central America's Northern Triangle* (May 2017).

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We instead encourage that discussions and cooperation with the United States focus on addressing urgent humanitarian challenges, strengthening both Mexican asylum processing and United States asylum processing at ports of entry, increasing asylum options and ending policies that block, bar and prevent refugees from seeking asylum in the United States.

We are grateful for your time and consideration of this critical issue and stand ready to support your administration in working toward a safe and welcoming world for all migrants. We would welcome the opportunity to meet in person the next time you or your colleagues are in the United States.

Sincerely,

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