

Explainer

Human Rights organizations call for investigation of U.S. reliance on unreliable information provided by foreign sources August 2023

Immigrant rights, privacy and human rights groups filed a complaint with the Department of Homeland Security (DHS) Office of Civil Rights and Civil Liberties (CRCL) requesting an investigation into DHS's reliance on unreliable information from human rights-abusing governments in enforcement practices and immigration proceedings. The complaint details the ways in which information sharing agreements between the U.S. and El Salvador harm migrants, and provides stories of people directly impacted by the opaque data sharing programs.

DHS relies on information shared by authorities in El Salvador responsible for human rights violations

DHS relies on information obtained from a growing number of foreign sources.ⁱ This complaint focuses on U.S. data sharing programs involving El Salvador, with a focus on the country's deteriorating human rights situation documented by annual State Department reports.ⁱⁱ The United States maintains various data-sharing agreements and programs with the government of El Salvador. These programs allow for a steady stream of unsubstantiated information to enter databases used by U.S. immigration enforcement and proceedings.

The data-sharing agreements between the United States and El Salvador facilitate the sharing of names and biometrics data with U.S. authorities of people accused of committing a crime or gang affiliation. However, those accusations are often based on prejudicial evidence and/or unfounded allegations. As part of the Salvadoran government's proclaimed "state of exception," officials often bring false charges against individuals as a form of political persecution; these claims come back to haunt asylum seekers when they arrive in the United States having fled. U.S. immigration enforcement agencies use the unsubstantiated information in proceedings in ways that hinder individuals' ability to seek asylum and other forms of relief. Asylum seekers can then be deported back to El Salvador without a chance to dispute or challenge the veracity of the evidence presented against them. Back in El Salvador, they can be arrested, imprisoned, and subject to further abuse.

Case examples: People fleeing rights abuses in El Salvador face dire consequences in the U.S.

In El Salvador, people increasingly face arbitrary, retaliatory, and politically motivated arrests:

- After Salvadoran police officers repeatedly extorted him, **Antonio** (pseudonym) was arbitrarily arrested without warning two days after the state of exception began. He remains detained in El Salvador.
- **Juan** (pseudonym) was falsely reported to authorities as a gang member by an angry tenant of his wife's inn, and Salvadoran police officers arrested him without any investigation. Juan did not receive necessary medication for his severe kidney disease and, although hospitalized, remains detained in El Salvador.

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- **Don** (pseudonym) used to work at the Casa Presidencial (main venue of El Salvador's president) and has been harassed and assaulted by Salvadoran police officers who want information about his time there. After the state of exception began, Don fled El Salvador to seek safety.

In the United States, people from El Salvador are denied release from detention, denied relief, and face deportation based on false and incomplete records shared by Salvadoran authorities:

- **Simon** (pseudonym) fled El Salvador a month after the state of exception began. Late in his removal proceedings, DHS produced SAFE database printouts and two arrest warrants from El Salvador, both issued after the state of exception began. The allegations in the warrants were false.
- **Oscar** fled El Salvador and was detained by U.S. immigration authorities, who argued that Oscar could not be released on bond based on an INTERPOL Red Notice and Salvadoran arrest warrant. The documents misidentified Oscar's parents and accused Oscar of committing a crime the year after he left El Salvador. Oscar remained in ICE detention for two years.
- **Alex** (pseudonym) sought asylum in the United States. During immigration proceedings, at cross-examination, an ICE attorney introduced for the first time a printout allegedly from the FBI's Transnational Anti-Gang (TAG) database, falsely accusing Alex of being in a gang. When asked, however, the FBI stated they had no records about Alex. Alex was detained for over a year before his attorney was able to win deferral and secure his release from detention.

DHS reliance on information from El Salvador violates U.S. policies and international human rights law

The complaint filed with CRCL argues that relying on unreliable data provided by Salvadoran authorities violates U.S. regulations and DHS procedures, based on the following:

- The data does not meet the fundamentally fair standard of evidence in immigration court;
- The data does not satisfy comparable standards applied to U.S. criminal databases;
- DHS's use of unreliable information subverts the Privacy Act of 1974 and violates DHS's stated privacy requirements;
- The use of such information in U.S. immigration proceedings fails to meet due process requirements;
- Collecting and using such unreliable data is contrary to international human rights treaties and norms.

Recommendations: *CRCL should investigate the pattern of abuses discussed in the complaint, and recommend that DHS:*

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- Terminate certain bilateral data-sharing agreements with El Salvador;
- Restrict DHS from relying on information obtained by government authorities and entities with records of human rights violations as the sole source of evidence in enforcement decisions or immigration proceedings;
- Restrict the access, use, and sharing of information provided by Salvadoran police, including with DHS inter-agency databases;
- Create a clear, publicly available set of minimum reliability requirements for data collection and use in immigration enforcement decisions or immigration proceedings;
- Require DHS to provide a copy of any foreign evidence, arrest warrants, or other documentation of allegations used in the decision to undertake an enforcement action and/or in immigration proceedings and to provide an opportunity to rebut the allegations;
- Provide a complaint and redress mechanism for impacted individuals to challenge inaccurate information used against them in immigration proceedings;
- Restrict all data collection to narrow, clearly defined, lawful purposes, and limit storage of data to a reasonable time period proportionate to the purpose of collection;
- Issue guidance to instruct ICE agents to limit their reliance on El Salvador information contained in certain data sources;
- Establish policies and standards that prevent use of information from other countries with records of human rights abuses.

Acknowledgments:

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ⁱ See, e.g., JESSE FRANZBLAU, NAT'L IMMIGRANT JUST. CTR., CAUGHT IN THE WEB: THE ROLE OF TRANSNATIONAL DATA SHARING IN THE U.S. IMMIGRATION SYSTEM 6-7 (2022), <https://immigrantjustice.org/research-items/policy-brief-caught-web-role-transnational-data-sharing-us-immigration-system> [hereinafter NIJC POLICY BRIEF] (describing the United States' data-sharing agreements with El Salvador, Honduras, and Guatemala).

ⁱⁱ See, e.g., U.S. DEP'T OF STATE of State, EL SALVADOR 2022 HUMAN RIGHTS REPORT 1-2, 8-13 (2023), https://www.state.gov/wp-content/uploads/2023/02/415610_EL-SALVADOR-2022-HUMAN-RIGHTS-REPORT.pdf; see also HUM. RTS. WATCH & CRISTOSAL, "WE CAN ARREST ANYONE WE WANT": WIDESPREAD HUMAN RIGHTS VIOLATIONS UNDER EL SALVADOR'S "STATE OF EMERGENCY" 1-3, 90 (2022), https://www.hrw.org/sites/default/files/media_2022/12/elsalvador1222web.pdf.