



RAICES HOPE



IRAP
International Refugee
Assistance Project

Human
Rights
First



imumi
Instituto para las Mujeres en la Migración A.C.



DISAPPEARANCES OF MIGRANTS AS A RESULT OF UNITED STATES' AND MEXICO'S MIGRATION POLICIES

The U.S. and Mexican governments' reliance on deterrence and externalization policies that violate human rights, and collaboration by Mexican state actors with non-state criminals, contribute significantly to migrant disappearances. Advocates and academics in the United States have documented how U.S. policies result in enforced disappearance of migrants while in immigration custody, interdicted at sea and detained in Guantánamo, and while blocked in or returned to Mexico. Advocates have submitted information to the United Nations Working Group on Enforced or Involuntary Disappearances (WGEID) regarding short-term enforced disappearances in these contexts. In response to multiple submitted inputs and meetings with the WGEID, the WGEID issued to the U.S. Government general allegations regarding the enforced disappearance of migrants.¹

I. U.S.'s and Mexico's Cooperation on Border Policies Result in Disappearances

Recently, the U.S. Government has implemented policies aimed at deterring and punishing migration in violation of non-refoulement obligations and Article 31 of the Refugee

¹ *General Allegation, 132nd Session (29 January - 2 February), United States of America*, U.N. Working Group on Enforced or Involuntary Disappearances, June 2024 (https://www.ohchr.org/sites/default/files/documents/issues/disappearances/allegations/132-USA_Annex-I_0.pdf).

Convention.² These policies force migrants into unsafe countries where they suffer disappearances, persecution, torture, and other harms.

A. “Remain in Mexico”

Under the Trump administration’s Migration Protection Protocols, (also referred to as “Remain in Mexico”), people processed at the U.S. southwest border were returned to Mexico to prepare their asylum cases while stranded in dangerous conditions without meaningful access to counsel. Human Rights First documented over 1,500 enforced disappearances, kidnappings, rapes, and other attacks against people enrolled in Remain in Mexico.³ People transiting to the U.S. border, including those attempting to attend their hearings, were routinely targeted for kidnappings and other attacks by cartels and Mexican government agents collaborating with them.⁴ The WGEID, advocates, and academics recognize this public-private ransom scheme as enforced disappearance.⁵ A temporary court-ordered resurrection of the policy under the Biden administration added to the toll of violent attacks on people in the program.⁶

B. Title 42

The U.S. Government’s Title 42 policy unlawfully blocked and summarily expelled asylum seekers to Mexico and other countries in violation of U.S. and international law under the pretext of public health. Human Rights First tracked over 13,000 migrant survivors of enforced disappearance, kidnapping, sexual assault, and other harm who were expelled to danger in

² UNHCR, “Guidelines on International Protection No. 14: Non-penalization of refugees on account of their irregular entry or presence and restrictions on their movements in accordance with Article 31 of the 1951 Convention relating to the Status of Refugees,” 23 Sept. 2024

(<https://www.refworld.org/policy/legalguidance/unhcr/2024/en/148632>).

³ *Any Version of “Remain in Mexico” Policy Would be Unlawful, Inhumane, and Deadly*, HUMAN RIGHTS FIRST, Sept. 2021

(<https://humanrightsfirst.org/library/any-version-of-remain-in-mexico-policy-would-be-unlawful-inhumane-and-deadly/>).

⁴ *Id.*

⁵ U.N. Office of the High Commissioner for Human Rights, *United Nations Working Group on Enforced or Involuntary Disappearances Concludes Visit to Mexico*, 1 April 2011

(<https://www.ohchr.org/en/statements/2011/04/united-nations-working-group-enforced-or-involuntary-disappearances-concludes?LangID=E&NewsID=10907>); CEJIL et al., *Input to the CED Regarding Enforced Disappearances in the Context of Migration*, 17 May 2022

(https://www.ohchr.org/sites/default/files/documents/hrbodies/ced/cfis/general-comment-1/csos/2022-07-20/CEJIL_MENAMIG_ECAP_GCMigration_Spanish.pdf); Natalie Cadwalader, *South to Justice: Using International Law to Defend against U.S. Border Externalization Policies through the Example of Forcibly Disappeared Migrants to Mexico*, forthcoming 64 SANTA CLARA L. REV. (Issue 3), available <https://doi.org/10.31219/osf.io/vgwu2>; Leal and Cadwalader, *Enforced Disappearance as a Border Management Tool: The Case of Border Patrol Detentions of Immigrant and Asylum-Seeking Families in the United States*, J. MIGRATION & HUM. SEC., Dec. 2024,

<https://doi.org/10.1177/2331502424129683> (online first).

⁶ *Fatally Flawed: “Remain in Mexico” Policy Should Never Be Revived*, HUMAN RIGHTS FIRST, Sept. 2022 (<https://humanrightsfirst.org/library/fatally-flawed-remain-in-mexico-policy-should-never-be-revived/>).

Mexico under this policy.⁷ These attacks often amounted to enforced disappearances. This policy has also been associated with increased border crosser fatalities.⁸

C. Restrictions on Access to Territory and Asylum Bans

The U.S. Government has severely restricted access to asylum at ports of entry through metering, turnbacks, and most recently a suspension of processing at ports of entry that works in tandem with the Securing the Border asylum ban (below). Policies that restrict access to asylum at ports of entry exacerbate risks that migrants will experience disappearances, as they are often trapped in dangerous conditions and pushed to attempt crossings between ports of entry, leaving them vulnerable to disappearances, death, and other harms.⁹

Simultaneously, the U.S. Government has implemented asylum bans that endanger asylum seekers and lead to enforced disappearances. Currently, the 2023 Circumvention of Lawful Pathways rule and the 2024 Securing the Border rule remain in effect and fuel systematic violations of human rights and refugee law.¹⁰ Both bans penalize and deny asylum to people who enter the United States at the southern border between ports of entry or at a port of entry without a CBP One mobile application appointment and weaponize expedited removal to block asylum access.¹¹

Coupled with restrictions on or suspension of asylum processing at ports of entry, the bans force people to make difficult choices between remaining in danger in Mexico or entering between ports of entry to seek safety and risk the bans' penalties, which include ineligibility for asylum.¹² Asylum bans increase the risk that migrants will suffer disappearances by forcing them

⁷ *Human Rights Stain, Public Health Farce: Evasion of Asylum Law and Title 42 Abuse Must End—and Never be Revived*, HUMAN RIGHTS FIRST, Dec. 2022

(<https://humanrightsfirst.org/library/human-rights-stain-public-health-farce/>).

⁸ Martínez, Daniel E., Sam Chambers, Geoffrey Alan Boyce, and Jeremy Slack, *Title 42 'Expulsions' and Migrant Deaths along the Arizona-Sonora Border*, J. MIGRATION & HUM. SEC. 12(3): 182-203 (2024).

⁹ “Nothing but Bones”: 30 years of Deadly Deterrence at the US-Mexico Border, HUMAN RIGHTS WATCH

(<https://www.hrw.org/content/388364>).

¹⁰ *Six-Week Report: Implementation of the Biden Administration's June 2024 'Securing the Border' Asylum Ban*, NATIONAL IMMIGRANT JUSTICE CENTER, July 2024

(<https://immigrantjustice.org/research-items/Biden-June-2024-asylum-ban-six-week-report>); *Trapped, Preyed Upon, and Punished: One Year of the Biden Administration Asylum Ban*, HUMAN RIGHTS FIRST, May 2024

(www.humanrightsfirst.org/library/trapped-preyed-upon-and-punished).

¹¹ UNHCR, *Guidelines on International Protection No. 14: Non-penalization of refugees on account of their irregular entry or presence and restrictions on their movements in accordance with Article 31 of the 1951 Convention relating to the Status of Refugees*, 23 Sept. 2024

(<https://www.refworld.org/policy/legalguidance/unhcr/2024/en/148632>); *Comment Submitted by United Nations High Commissioner for Refugees* (UNHCR), 8 July 2024

(<https://www.regulations.gov/comment/USCIS-2024-0006-1033>).

¹² *Trapped, Preyed Upon, and Punished: One Year of the Biden Administration Asylum Ban*, HUMAN RIGHTS FIRST, May 2024 (www.humanrightsfirst.org/library/trapped-preyed-upon-and-punished); *Six-Week Report: Implementation of the Biden Administration's June 2024 'Securing the Border' Asylum Ban*, NATIONAL IMMIGRANT JUSTICE CENTER, July 2024

(<https://immigrantjustice.org/research-items/Biden-June-2024-asylum-ban-six-week-report>)

to wait indefinitely in Mexico. Since the 2023 asylum ban was initiated, Human Rights First has tracked reports of over 2,500 survivors of enforced disappearances, kidnappings, and other attacks on asylum seekers and migrants stranded in Mexico, including those waiting to secure CBP One appointments.¹³

D. Summary Deportations under 2024 Ban

The Securing the Border rule eliminated the decades-old requirement that Customs and Border Protection (CBP) officers ask people in expedited removal whether they fear return to identify those needing referral for fear screening under U.S. law. This change has led to widespread summary deportations of asylum seekers without fear screenings.¹⁴ Often, CBP officials ignore asylum seekers' expressions of fear and deport them despite the legal requirement to refer them for a fear interview.¹⁵ In other cases, asylum seekers cannot express their fear of return because they do not know they are required to do so, do not speak English, face abuses and intimidation in custody, have disabilities or mental health issues, or face other barriers.¹⁶ Groups have documented wide variation and arbitrary outcomes regarding who is referred for a fear screening and who is processed for deportation, even among family members with related asylum claims.¹⁷

E. Unsafe Third Country Agreements

The Trump administration also implemented agreements that did not comply with U.S. or international law to send people to third countries where they had no guarantees of safety. After these agreements took effect, the United States deported nearly 1,000 Honduran and Salvadoran asylum seekers, the majority of whom were women and children, to Guatemala, where many feared the same persecution that they had suffered in their home countries.¹⁸

F. Mexican Authorities' Abuses Against Migrants

¹³ *Trapped, Preyed Upon, and Punished: One Year of the Biden Administration Asylum Ban*, HUMAN RIGHTS FIRST, May 2024 (www.humanrightsfirst.org/library/trapped-preyed-upon-and-punished).

¹⁴ "Don't Tell Me About Your Fear": Elimination of Longstanding Safeguard Leads to Systematic Violations of Refugee Law, HUMAN RIGHTS FIRST, 7 Aug. 2024 (<https://humanrightsfirst.org/library/dont-tell-me-about-your-fear/>).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Deportation with a Layover: Failure of Protection under the US-Guatemala Asylum Cooperative Agreement*, HUMAN RIGHTS WATCH, May 2020, (<https://www.hrw.org/report/2020/05/19/deportation-layover/failure-protection-under-us-guatemala-asylum-cooperative>); See also Adolfo Flores, *Border Patrol is Detaining Asylum-Seeking Families at a Texas Facility for Longer than the Law Allows*, BUZZFEED NEWS, 11 Jan. 2020 (<https://www.buzzfeednews.com/article/adolfoflores/border-patrol-asylum-seeking-families-guatemala-donna>).

While in transit to the United States or blocked from seeking asylum, migrants in Mexico face grave risks of kidnapping, rape, extortion, and other violence that are often perpetrated with complicity by Mexican government officials, at times amounting to enforced disappearances.

Targeting of migrants stranded in Mexico continues to escalate.¹⁹ Border organizations HOPE and DHIA documented Mexican immigration agents and other state security forces working with cartels to intercept and kidnap migrants, amounting to enforced disappearances.²⁰ Scholars and the U.N. WGEID have also identified these practices as enforced disappearances.²¹ Mexico has also escalated efforts to intercept migrants traveling to the United States, including implementing checkpoints across major land and bus transit routes.²² Migrants intercepted by Mexican authorities experience extortion, arbitrary arrest, prolonged detention, family separation, physical abuse, forced transfers to southern Mexico, and refoulement to their countries of feared persecution.²³ As a result, migrants often resort to increasingly perilous and covert modes of transit through Mexico leading to risks of disappearances, deaths, and other harms.²⁴

II. Enforced Disappearances in U.S. Detention

Migrants detained by the U.S. Government are frequently forcibly disappeared and subjected to due process violations, refoulement, medical neglect, and family separation.

A. CBP Detention

¹⁹ *Trapped, Preyed Upon, and Punished: One Year of the Biden Administration Asylum Ban*, HUMAN RIGHTS FIRST, May 2024 (www.humanrightsfirst.org/library/trapped-preyed-upon-and-punished); *Pain as Strategy: The Violence of U.S.-Mexico Immigration Enforcement and Texas' Operation Lone Star against People on the Move in El Paso-Ciudad Juarez*, HOPE BORDER INSTITUTE AND DERECHOS HUMANOS INTEGRALES EN ACCIÓN, A.C., 2024 (https://www.hopeborder.org/files/ugd/e07ba9_1ef77e8068b24ab7bf55ff6236c1850d.pdf).

²⁰ *Pain as Strategy: The Violence of U.S.-Mexico Immigration Enforcement and Texas' Operation Lone Star against People on the Move in El Paso-Ciudad Juarez*, HOPE BORDER INSTITUTE AND DERECHOS HUMANOS INTEGRALES EN ACCIÓN, A.C., 2024 (https://www.hopeborder.org/files/ugd/e07ba9_1ef77e8068b24ab7bf55ff6236c1850d.pdf); see also *Trapped, Preyed Upon, and Punished: One Year of the Biden Administration Asylum Ban*, HUMAN RIGHTS FIRST, May 2024 (www.humanrightsfirst.org/library/trapped-preyed-upon-and-punished).

²¹ See supra note 5.

²² Megan Janetsky and Félix Márquez, *Mexico's Tactic to Cut Immigration to the US: Wear Out Immigrants*, ASSOCIATED PRESS, 11 June 2024 (<https://apnews.com/article/mexico-immigration-border-lopez-obrador-biden-a5498f0791f5f1ef99f1dfd9acce88f4>).

²³ *Trapped, Preyed Upon, and Punished: One Year of the Biden Administration Asylum Ban*, HUMAN RIGHTS FIRST, May 2024 (www.humanrightsfirst.org/library/trapped-preyed-upon-and-punished).

²⁴ Jesús Escudero et al., *From Chiapas to Tamaulipas, New Database Maps Thousands of Migrants' Dangerous Journeys through Mexico in Trailer Trucks*, INTERNATIONAL CONSORTIUM OF INVESTIGATIVE JOURNALISTS, 30 April 2024 (<https://www.icij.org/inside-icij/2024/04/from-chiapas-to-tamaulipas-new-database-maps-thousands-of-migrants-dangerous-journeys-through-mexico-in-trailer-trucks/>).

CBP and Border Patrol detention often amounts to enforced disappearance.²⁵ Migrants are frequently held incommunicado. Attorneys and others are not permitted in the facilities. Many people are deported without an opportunity to seek asylum before they can speak to an attorney.

Historically, CBP had no system to locate migrants in their custody. Days following the WGEID's allegations,²⁶ the U.S. Government announced changes to include individuals held in CBP custody for more than 48 hours in its existing Immigration and Customs Enforcement (ICE) detainee locator system.²⁷ The Government also responded to the allegations, equivocating that they do not hold individuals incommunicado while also acknowledging that phone access for detained people onboard Coast Guard ships is "operationally limited" and that people in CBP custody "may, in some locations" use phones to call family and attorneys.²⁸

Yet migrants in CBP custody often continue to be unlocatable by family or counsel because phone access is severely limited and often non-existent. Advocates at Immigrant Defenders Law Center and RAICES report that some people who have been in CBP custody for more than 48 hours still do not appear in the locator. When people in CBP custody do appear in the locator, it solely confirms their detention by CBP but not their location or contact information for the detention facility, even though that information is available for individuals detained by ICE.²⁹

Additionally, individuals disappeared in CBP custody may be summarily deported without a fear screening in the window of disappearance, often because CBP ignores their expressions of fear or does not provide an opportunity to express fear.³⁰ The vast majority of those who do manage to be referred for fear screenings in CBP custody are never able to speak to

²⁵ Leal and Cadwalader, *Enforced Disappearance as a Border Management Tool: The Case of Border Patrol Detentions of Immigrant and Asylum-Seeking Families in the United States*, J. MIGRATION & HUM. SEC., Dec. 2024, <https://doi.org/10.1177/2331502424129683> (online first).

²⁶ U.N. Working Group on Enforced or Involuntary Disappearances, *General Allegation, 132nd Session (29 January - 2 February), United States of America*, June 2024 (https://www.ohchr.org/sites/default/files/documents/issues/disappearances/allegations/132-USA_Annex-I_0.pdf).

²⁷ *Department of Homeland Security Announces Enhanced Searchability of Migrants in Custody after Crossing the Border*, U.S. Department of Homeland Security, 7 June 2024 (<https://www.dhs.gov/news/2024/06/07/department-homeland-security-announces-enhanced-searchability-migrants-custody>).

²⁸ *U.S. Response to Communication G/SO 217/1/USA*, Permanent Mission of the United States of America to the United Nations and Other International Organizations in Geneva, 7 June 2024 (<https://www.ohchr.org/sites/default/files/documents/issues/disappearances/comments-states/wgeid132-us-comment.pdf>).

²⁹ *Seeking Safety from Darkness: Recommendations to the Biden Administration to Safeguard Asylum Rights in CBP Custody*, NATIONAL IMMIGRATION LAW CENTER AND HUMAN RIGHTS FIRST, Nov. 2024 (<https://www.nilc.org/resources/seeking-safety-from-darkness-recommendations-to-the-biden-administration-to-safeguard-asylum-rights-in-cbp-custody/>).

³⁰ "Don't Tell Me About Your Fear": *Elimination of Longstanding Safeguard Leads to Systematic Violations of Refugee Law*, HUMAN RIGHTS FIRST, 7 Aug. 2024 (<https://humanrightsfirst.org/library/dont-tell-me-about-your-fear/>).

a lawyer, a problem that has been exacerbated by the Government reducing the amount of time that people have to consult telephonically with a lawyer to a minimum of four hours.³¹ These barriers increase the likelihood that people will be erroneously deported before anyone knows they were in CBP custody. Additionally, expedited removal decisions are not reviewed by an independent judiciary.

As the government continues to accelerate removals without due process, routinely refouling people within days, the use of enforced disappearance is a key tool to systematically deport people without access to asylum protections in U.S. law. These wrongful deportations increase the risk that refugees will be deported to their country of feared persecution or to Mexico, where they may face onward refoulement and enforced disappearance.

B. ICE Detention

The overuse of immigration detention is a major impediment to protecting individuals from enforced disappearance. Migrants held in administrative detention are presumed detainable and their detention is rarely reviewable by an independent judiciary.

Scholars and advocates have noted that improperly registered ICE detentions may result in enforced disappearances of migrants.³² Disappearances include improperly documented transfers of detained people between ICE facilities, lapses in registration after transfer from CBP custody to ICE custody, and failure to properly register those detained by ICE following interaction with law enforcement.³³ Improper registration, restricted phone access in detention, and the remote locations of many detention centers make it extremely difficult or impossible to otherwise locate and contact people detained by ICE.

³¹ *Seeking Safety from Darkness: Recommendations to the Biden Administration to Safeguard Asylum Rights in CBP Custody*, NATIONAL IMMIGRATION LAW CENTER AND HUMAN RIGHTS FIRST, Nov. 2024

(<https://www.nilc.org/resources/seeking-safety-from-darkness-recommendations-to-the-biden-administration-to-safeguard-asylum-rights-in-cbp-custody/>).; Hamed Aleaziz, *A New Hurdle for Asylum Seekers: 4 Hours to Find a Lawyer*, NEW YORK TIMES, 5 June 2024 (<https://www.nytimes.com/2024/06/05/us/politics/biden-asylum-restrictions-lawyer.html>).

³² Leal and Cadwalader, *Enforced Disappearance as a Border Management Tool: The Case of Border Patrol Detentions of Immigrant and Asylum-Seeking Families in the United States*, J. MIGRATION & HUM. SEC., Dec. 2024, <https://doi.org/10.1177/2331502424129683> (online first).; Amina Zarrugh, *The Development of US Regimes of Disappearance: The War on Terror, Mass Incarceration, and Immigrant Deportation*, CRITICAL SOCIOLOGY 46(2): 257-271, 2020; *Detained and Disappeared: Enforced Disappearances Perpetrated in Immigration Detention by the United States*, FREEDOM FOR IMMIGRANTS, 2021, accessed 18 Aug. 2024 (https://static1.squarespace.com/static/5a33042eb078691c386e7bce/t/61ae943be71448138264802e/1638831165517/Detained-and-Disappeared_FFI_120621.pdf); Lilia Loera, *Zero Matching Records Found: Enforced Disappearance in the Carceral Web Landscape*, SOCIOLOGY LENS 36(1): 60-73, 2023.

³³ *Detained and Disappeared: Enforced Disappearances Perpetrated in Immigration Detention by the United States*, FREEDOM FOR IMMIGRANTS, 2021, accessed 18 Aug. 2024 (https://static1.squarespace.com/static/5a33042eb078691c386e7bce/t/61ae943be71448138264802e/1638831165517/Detained-and-Disappeared_FFI_120621.pdf).

C. Separation of Families

Separation of families at the United States-Mexico border under the Trump administration's Zero Tolerance policy resulted in thousands of enforced disappearances of children from their parents. The U.S. Government prosecuted parents for "illegal entry" in order to separate parents from their minor children, sending the children to separate facilities while the parents were prosecuted, detained by ICE, and often deported without their children. Parents were left without information regarding where their children had been taken, sometimes for weeks, months, or even years. Human rights advocates have identified the practice as one that resulted in enforced disappearances.³⁴ According to government records, as of April 2024, at least 1,360 children separated from their parents under the Zero Tolerance policy had yet to be reunified with the parents from whom the government separated them.³⁵

Other border policies also effectuate family separations, causing lasting harm. In the context of maritime interdictions, *ProPublica's* extensive reporting on the U.S. Coast Guard's interception of unaccompanied and separated children underscores this harm.³⁶ Human rights groups have documented that Texas' Operation Lone Star has resulted in family separations.³⁷ The Government also continues to separate families who are detained in CBP custody, including where people receive disparate outcomes in their expedited removal proceedings and are processed for summary deportation while other family members are permitted to seek asylum. Those who are summarily deported face a risk of enforced disappearances, as discussed above, and may be unable to find or contact their loved ones in CBP custody and learn what happened to them. The Government separates children from parents—sometimes for months—when parents are flagged for broad national security reasons without any administrative hearing as to the validity of the concern, during which time parents are often unaware, sometimes for days, as to where their children have been taken.³⁸

³⁴Hajjar Habich et al, *You Will Never See Your Child Again": The Persistent Psychological Effects of Family Separation*, PHYSICIANS FOR HUMAN RIGHTS, 25 Feb. 2020, last accessed 13 Nov. 2024 (<https://phr.org/our-work/resources/you-will-never-see-your-child-again-the-persistent-psychological-effects-of-family-separation/>); see also Alonso Gurmendi Dunkelberg, *On Calling Things What They Are: Family Separation and Enforced Disappearance of Children*, OPINIONJURIS, 24 June 2019, last accessed 13 Nov. 2024 (<https://opiniojuris.org/2019/06/24/on-calling-things-what-they-are-family-separation-and-enforced-disappearance-of-children/>); Leal and Cadwalader, *Enforced Disappearance as a Border Management Tool: The Case of Border Patrol Detentions of Immigrant and Asylum-Seeking Families in the United States*, J. MIGRATION & HUM. SEC., Dec. 2024, <https://doi.org/10.1177/2331502424129683> (online first).

³⁵ *Interim Progress Report: Interagency Task Force on the Reunification of Families*, U.S. Department of Homeland Security, 22 April 2024, last accessed 13 Nov. 2024 (https://www.dhs.gov/sites/default/files/2024-05/24_0422_sec_fttf-interim-progress-report-final-508.pdf).

³⁶ Seth Freed Wessler, *When the Coast Guard Intercepts Unaccompanied Kids*, PROPUBLICA, 7 Dec. 2023 (<https://www.propublica.org/article/when-the-coast-guard-intercepts-unaccompanied-kids>).

³⁷ *Pain as Strategy: The Violence of U.S.-Mexico Immigration Enforcement and Texas' Operation Lone Star against People on the Move in El Paso-Ciudad Juarez*, HOPE BORDER INSTITUTE AND DERECHOS HUMANOS INTEGRALES EN ACCIÓN, A.C., 2024 (https://www.hopeborder.org/_files/ugd/e07ba9_1ef77e8068b24ab7bf55ff6236c1850d.pdf).

³⁸ Mica Rosenberg, *Family Separations Persist. In Some Cases, the Government Doesn't Say Why.*, PROPUBLICA, 12 Dec. 2024 (<https://www.propublica.org/article/family-separations-biden-russian-immigrants>).

D. Maritime Interdictions of Migrants and Detention in Guantánamo

The U.S. Government forcibly disappears migrants onboard U.S. Coast Guard (USCG) ships in the Caribbean and at the Migrant Operations Center (MOC) in Guantánamo Bay, Cuba. When USCG ships intercept people seeking protection in the Caribbean, most often Haitian and Cuban migrants, they are typically held onboard for days without the ability to call loved ones or attorneys.³⁹ The Government does not register their detention in any locator and there is no mechanism for family or attorneys to locate them.

Detained people are not provided information in their language about their ability to express concerns about return and instead must affirmatively “manifest” fear, which is supposed to trigger a fear screening at sea. Those who are unaware that it is their burden to manifest their fear or whose expression of fear is ignored or not understood are repatriated.

If a USCG officer onboard decides that an individual merits a fear screening, a U.S. Citizenship and Immigration Services (USCIS) officer conducts a screening at sea by satellite phone or onboard, which a former USCIS officer described as a “quasi-credible fear interview...with a higher unknown standard.”⁴⁰

People who pass fear screenings are transferred to the MOC – sometimes after weeks onboard. The individuals are then blindfolded, shackled, and taken to a warehouse for processing. They are detained for weeks to months before receiving an additional USCIS interview to determine if they will receive “protected” or “non-protected” status, a term not employed or defined in U.S. immigration law. A finding of “non-protected” results in repatriation; “protected” status results in transfer to Department of State custody at the MOC.

Individuals in “protected” status remain detained and unsearchable in any public database until their resettlement to a third country – sometimes waiting in custody in excess of a year or more, without confidential phone access except in rare circumstances, adequate access to healthcare or, for children, education. Individuals detained at the MOC reported denial of access to counsel, collective punishment, grave sanitary conditions, and lack of adequate medical care.

³⁹ *Offshoring Human Rights: Detention of Refugees at Guantánamo Bay*, INTERNATIONAL REFUGEE ASSISTANCE PROJECT (IRAP), Sept. 2024, p.9

(<https://refugeerights.org/wp-content/uploads/2024/09/Offshoring-Human-Rights-Guantanamo-Bay-English-Report-September-2024.pdf>); Hamed Aleaziz, *Inside the Secretive Facility Housing Migrants at Guantánamo Bay*, NEW YORK TIMES, 19 Sept. 2024 (<https://www.nytimes.com/2024/09/19/us/politics/migrants-guantanamo-bay-cuba-detention.html>).

⁴⁰ *Offshoring Human Rights: Detention of Refugees at Guantánamo Bay*, INTERNATIONAL REFUGEE ASSISTANCE PROJECT (IRAP), Sept. 2024, p.9 (<https://refugeerights.org/wp-content/uploads/2024/09/Offshoring-Human-Rights-Guantanamo-Bay-English-Report-September-2024.pdf>).

III. Measures to Enhance Monitoring, Accountability, and Prevent Migrant Deaths and Disappearances

The U.S. Government should adopt the following recommendations to prevent disappearances of migrants in their custody:

1. In relation to any bi- or multilateral agreements with other countries to respond to migration, ensure a human rights-based approach and recognize the right to seek asylum, the principle of non-refoulement, and respect for the human rights of migrants.
2. End and refrain from entering into agreements with other countries that do not adhere to international law and require individuals seeking U.S. asylum to wait in third countries (e.g. “Remain in Mexico”) or return individuals to unsafe third countries where they are at risk of disappearance, violence, and death, in violation of non-refoulement (including safe third-country, asylum cooperative agreements, or other arrangements with countries where migrants face violence, with significant internal and international forced displacement, or with ill-prepared asylum systems).
3. End punitive policies (such as asylum bans and asylum processing shut-downs at borders) that violate international law and restrict access to U.S. ports of entry and to asylum, punish individuals seeking international protection, and place them in dangerous situations.
4. Uphold the right to seek asylum, ensure prompt and expanded asylum processing at ports of entry, and end the use of metering or other policies that force migrants to wait in dangerous situations.
5. Require immigration agents to affirmatively ask migrants whether they fear returning to their country of origin or a third country in the migrant’s best language.
6. Ensure investigation of and appropriate consequences for agents who illegally ignore migrants’ expressions of fear or need for international protection and provide redress to those who were wrongfully deported and whose rights were violated, including a path for their re-entry.
7. End the use of administrative detention, which violates international law. Instead, encourage use of proven and humane community-based case support programs. Short of that, ensure that the government bears the burden to establish that an individual’s detention is necessary and proportionate, consistent with human rights law, to justify a judicial order of detention due to the danger that person presents. Provide for a process determined through an independent, non-administrative hearing, for such custody claims to be brought and in which migrants may challenge their detention and be represented.

8. Guarantee adjudication by an independent (non-administrative) judiciary of all claims for asylum and other international protection, including within expedited, reinstatement, and regular removal processes. Ensure that any administrative decisions of such claims are subject to judicial review.
9. Expand the ICE Detainee Locator to include migrants onboard USCG ships, at the MOC in Guantánamo, and in CBP custody. Require the locator to include location and contact information for all migrants. Forbid government officials from carrying out fear screenings until individuals have been entered into the locator and have had the opportunity to consult with family and lawyers. Ensure that victims whose rights are violated are able to pursue relief and hold violators accountable.
10. Stop conducting fear screenings in CBP and USCG custody. Recognize visitation rights (by attorneys, family and friends, NGOs, U.N. agencies, and human rights and monitoring agencies) for individuals in CBP and Guantánamo MOC custody, and provide ample access to telephonic communication.
11. Shut down the Guantánamo MOC. Transfer individuals interdicted at sea to a safe and humane location on U.S. mainland where individuals may contact family and loved ones and access counsel.

CONCLUSION

Disappearances of migrants in custodial settings in the United States are not incidental to the immigration processes in whose context they occur. They are an intentional means of managing borders and facilitating hyper-expedited deportations before anyone knows that migrants are there and can intervene to protect their rights. By employing enforced disappearances in these widespread contexts, the Government prevents the disappeared from accessing protection of the law, including through denial of due process, right to counsel, and right to seek asylum. The unlawful removals that flow from these disappearances prevent individuals from accessing recourse or protection of the law, because they are often deported before anyone can learn their fate or whereabouts. Unlawful deportations, expulsions, and turnbacks by the United States in turn subject many to enforced disappearance in Mexico or their countries of feared persecution.

Signatures

Al Otro Lado (AOL)
Americans for Immigrant Justice (AIJ)
Amnesty International
Florence Immigrant & Refugee Rights Project (FIRRP)
Haitian Bridge Alliance (HBA)
Hope Border Institute
Human Rights First (HRF)

Immigrant Defenders Law Center (ImmDef)
Instituto para las Mujeres en la Migración, AC (IMUMI)
International Refugee Assistance Project (IRAP)
Refugee and Immigrant Center for Education and Legal Services (RAICES)
Dr. Diego F. Leal, Associate Professor of Sociology, University of Arizona
Natalie Cadwalader-Schultheis, Independent Researcher