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A Report on The United States Asylum Policies Under
the Trump Administration:

Central America vs. Mexico and the Arbitrary Politics That
Influence a Strong Asylum Claim

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Introduction

Migration is a universal human behavior that has existed since the beginning of time. Representations of migration can be traced as far back as the nomadic cavemen of the Middle Ages, to the forced global migration of slaves and indentured servants between the sixteenth and twentieth centuries, the many instances of diaspora and voluntary migration from one nation to another in search of more opportunities and a better quality of life, and of course the hundreds of thousands of individuals fleeing violence and political persecution and seeking refuge in other states. The latter-particularly as it pertains to Central American and Mexican migrants currently seeking asylum in the United States- is what I will focus on in this research paper.

In recent years, the United States has experienced a massive surge in the number of asylum seekers arriving at our southern border from Mexico and the three nations of the Central American “Northern Triangle”: Guatemala, Honduras, and El Salvador. While these migration trends have existed for decades, the sheer quantity of individuals travelling north to Mexico’s northern border cities has increased exponentially in recent years due to the increased unrest, corruption, gang violence, and government persecution of which thousands of people are fleeing. The United States presidents of the last decade, Barack Obama and Donald J. Trump, inherited a post-9/11, post-George Bush xenophobic immigration system in which “immigrants deserving of asylum in the U.S. have faced unnecessary and in some cases inhumane hardship”¹, and both of these presidents have exacerbated the humanitarian crisis in their own distinct ways. The current presidential administration’s hardline approach to the influx of refugees from our southern neighbors has taken anti-immigrant rhetoric and policy to the extreme, has deeply exacerbated

¹Rottman, A. J., Fariss, C. J., & Poe, S. C. (2009). The Path to Asylum in the US and the Determinants for Who Gets In and Why. *International Migration Review*, 43(1), 3–30.

the humanitarian concerns that already existed, and overall, has dealt with the crisis in an extremely inhumane way.

In the following pages, I discuss the history of asylum law and policy in the United States from the founding of the United Nations to the present day, as well as how our laws and policies differ from comparable systems in other developed democracies around the world. I then discuss the current political situations in the countries from which most Latin American asylum seekers are coming to the United States right now including Guatemala, Honduras, El Salvador and Mexico, and highlight the various threats they are fleeing. I will explain what life is like for these populations as they await their chance to petition for asylum at Mexican border cities, and what the process of applying for asylum entails-including the experience of “credible fear” and “reasonable fear” interviews. I also describe the history and development of the United States’ use of detention facilities, the traumatic and inhumane experiences asylum seekers have within these facilities, as well as how the American detention system has changed from the Obama administration to that of President Trump.

Finally, I discuss what the human rights experts, policymakers, and immigration attorneys have to say about the current situation at the border between the United States and Mexico, their hypotheses as to why these injustices are occurring at alarmingly high rates, and some of the implications this crisis has on the United States’ position as a “champion of human rights” around the world and on its responsibility to “respect, protect, and fulfill”². The way that the United States is treating our Mexican neighbors is unconscionable. While there is a wealth of scholarly work on United States asylum policy, and the history of the U.S/Mexico border, there

²“The Foundation of International Human Rights Law.” *United Nations*, United Nations, <https://www.un.org/en/sections/universal-declaration/foundation-international-human-rights-law/index.html>.

is very little existing work that specifically addresses the discrepancies between how Mexican and Central American asylum seekers are treated by the United States government. This report aims to fill that gap by examining not only the policies that reaffirm this particular discrepancy, but also first-hand accounts from asylum seekers themselves that irrefutably demonstrate it.

The massive waves of asylum seekers arriving at our southern border, and how they are treated once they get there presents an indisputable humanitarian crisis. This crisis is the result of many things, but the way the United States chooses to treat these asylum-seekers while in custody or detention, and how it chooses to rank the severity of their cases is based on arbitrary policies designed to filter certain individuals out of an opportunity and to determine how many and which refugees it decides to grant protection to. These policies have a significant impact on the journeys of asylum seekers. As one of the wealthiest and most powerful nations in the world, and as a signatory to the United Nations Universal Declaration of Human Rights, The United States has an international human rights obligation to protect these vulnerable people, and it is failing asylum seekers -particularly Mexicans- by choosing to betray them.

Brief History of Asylum in the United States

Since the founding of the United States, individuals in peril around the world have sought refuge within our borders. The first notable example of asylum in the modern world is the post-World War II Jewish diaspora. European Jews all across Europe fled to states such as Israel, the United States, and Argentina in pursuit of a better life in a nation in which they could be safe. However, there are many accounts of Jewish refugees being turned away upon arrival in the U.S. This reality is a stain on our nation's legacy and marked the beginning of the dismal truth about

how we treat asylum seekers, and how we have failed to live up to the ideals spelled out by Emma Lazarus on the Statue of Liberty:

“Give me your tired, your poor,
Your huddled masses yearning to breathe free,
The wretched refuse of your teeming shore.
Send these, the homeless, tempest-tost to me,
I lift my lamp beside the golden door!”³

This iconic poem is emblematic of the pro-immigrant values, and “land of the free” messages that the United States has promoted since its founding yet has never fully lived up to. President Harry S. Truman, who served the United States in the years following World War II, stated in a “Special Message on Admission of Displaced Persons” (1947) that

“...victims of war and oppression look hopefully to the democratic countries to help them rebuild their lives...The only civilized course is to enable these people to take new roots in friendly soil.”⁴

This sentiment is consistent with the most important American promise of “life, liberty, and the pursuit of happiness”⁵, as stated in our Declaration of Independence. The United States is a nation that, for two and a half centuries, has promoted pro-immigration values and sentiments (we are, in fact, a nation of immigrants) and recognized the importance of welcoming those seeking refuge at our shores. While welcoming immigrants and refugees has been a definitive

³Lazarus, Emma, and Gregory Eiselein. *Emma Lazarus: Selected Poems and Other Writings*. Broadview Press, 2002.

⁴“Statement by the President Upon Signing the Displaced Persons Act.” *Harry S. Truman*, <https://www.trumanlibrary.gov/library/public-papers/142/statement-president-upon-signing-displaced-persons-act>.

⁵“The Declaration of Independence: Full Text.” *Ushistory.org*, Independence Hall Association, <http://www.ushistory.org/declaration/document/>.

aspect of American national identity since its founding, in practice it has proven to betray these ideals. Laws that hold the United States and other world powers accountable for fulfilling that promise did not exist until the creation of the United Nations in 1945.

The United Nations, which was founded as a response to the horrific human rights abuses that occurred during World War II and the Holocaust, would become the first international body to hold nations around the world accountable to a certain standard of human rights, with the responsibility to “respect, protect, and fulfill” the human rights of all of its people. It would also implement consequences for states who do not uphold these obligations. Article 14 of The United Nations’ Universal Declaration of Human Rights (1948) established many universal human rights of which no one shall be denied. In respect to asylum and refuge, the UDHR (1948) and the subsequent Convention Relating to the Status of Refugees (1951), established that “everyone has the right to seek and to enjoy in other countries asylum from persecution”,⁶ and thus, that the ability to seek asylum should be considered as a universally protected, inalienable human right. By definition, the meaning of “asylum” is understood as a “protection granted to foreign nationals already in the United States or at the border who meet the international law definition of a ‘refugee’”⁷. Thus, an asylum seeker is “someone who is seeking international protection but whose claim for refugee status has not yet been determined”⁸. The term refugee is understood to mean “someone who has been recognized under the 1951 Convention Relating to the Status of Refugees to be a refugee”⁹ because he or she is “unable or unwilling to return to his

⁶Universal Declaration of Human Rights. (n.d.). Retrieved from <http://www.un.org/en/universal-declaration-human-rights/index.html>.

⁷Asylum in the United States. (2018). *American Immigration Council*, 1–8.

⁸Phillips, J. (2011). Asylum seekers and refugees: what are the facts? *Parliament of Australia Parliamentary Library*, 1–15.

⁹Phillips, J. (2011). Asylum seekers and refugees: what are the facts? *Parliament of Australia Parliamentary Library*, 1–15.

or her home country, and cannot obtain protection in that country, due to past persecution or well-founded fear of being persecuted in the future on account of race, religion, nationality, membership in a particular social group, or political opinion”¹⁰. These five grounds for asylum are critically important to the asylum process, and whether or not an individual can prove at least one of them is the principal factor in determining whether or not they win their claim and receive protection.

Sixteen years after the UDHR was written, the United Nations entered a key treaty into international refugee law, the 1967 Protocol. This protocol was created considering new refugee situations that had arisen around the world since Convention Relating to the Status of Refugees was written and was also a step towards removing the racism that was inherent in the first convention that only focused on European refugees. The United States is still haunted by its decision to prioritize Europeans over refugees from other continents, and history continues to repeat itself in the rhetoric that Trump uses to talk about Latin American immigrants. Later in this paper I discuss in more depth the way in which Donald Trump represents our hypocrisy as a nation in not upholding our human rights obligations to protect asylum seekers. Thirteen years after the 1967 Protocol, the United States, under President Jimmy Carter, made an amendment to the Immigration and Nationality Act of 1965. This new public law (96-212) was designed in order “to provide for the effective resettlement of refugees and to assist them to achieve economic self-sufficiency as quickly as possible after arrival in the United States”¹¹.

The United States Congress incorporated the 1951 Convention’s definition of refugee into United States Immigration Law in the Refugee Act of 1980 in order to “set a uniform and

¹⁰Asylum in the United States. (2018). *American Immigration Council*, 1–8.

¹¹“The Refugee Act.” *ACF*, <https://www.acf.hhs.gov/orr/resource/the-refugee-act>.

just standard for the admission of refugees”¹² of which each signatory of the declaration has an international responsibility to follow. According to the American Immigration Council, as a signatory to the 1967 Protocol and the Refugee Act of 1980, The United States possesses “legal obligations to provide protection to those who qualify as refugees”¹³, although, unsurprisingly, it often fails to fulfill these obligations. The state is obligated to provide asylum, to ensure the fulfillment of all human rights an individual enjoys under international law, and most critically to respect the principle of non-refoulement. The principle of non-refoulement makes illegal the forced return of someone to their country of origin if their life is under direct threat. In addition to these specific-to-asylum international and domestic legal obligations, signatories of the UDHR, the 1967 Protocol, and the Refugee Act of 1980 are obligated to respect, protect, and fulfill the human rights of asylum seekers and refugees. They are responsible for not only refraining from violating one’s human rights, but also for creating an enabling environment for rights, and allocating resources towards the construction of ports and police forces that help protect these rights.

While asylum seekers -particularly under the current presidential administration- have so few rights, protected refugees are afforded many rights that not only keep them safe, but allow them to participate in American social, political, and economic systems, *and* have a pathway to citizenship. The protection of asylum comes with many benefits for those for whom it is granted, the most important being the promise that the refugee legally cannot be forced to return to their home country. Additionally, refugees are eligible to work in the United States, to petition for their families to join them, and to participate in the social security system. Once a refugee has

¹²Bockley, K. M. (1995). A Historical Overview of Refugee Legislation: The Deception of Foreign Policy in the Land of Promise. *North Carolina Journal of International Law and Commercial Regulation*, 21(1), 254–292.

¹³Asylum in the United States. (2018). *American Immigration Council*, 1–8.

been living in the United States for a year, they are eligible to apply for a Green Card. If they receive said Green Card, and live and work as productive residents in the U.S. for an additional four years, they become eligible to apply for citizenship.

Currently at the border between the United States and Mexico, asylum seekers are being apprehended at exponentially greater degrees than ever before. According to the American Immigration Council, “noncitizens who are encountered by, or present themselves to, a U.S. official at a port of entry or near the border are subject to expedited removal, an accelerated process which authorizes [the Department of Homeland Security] to perform rapid deportations of certain individuals”¹⁴. However, there are still some measures in place that protect asylum seekers from the United States’ power to violate international and domestic laws by returning individuals to countries where their lives are under threat. The “credible fear” and “reasonable fear” interviews protect asylum seekers who are in removal proceedings from being returned to their countries of origin¹⁵. The difference between credible fear proceedings and reasonable fear proceedings is determined by whether the individual who is seeking asylum has previously entered the country awfully and been deported or not. Individuals who are

“placed in expedited removal proceedings and who tell a [Customs and Border Patrol] official that they fear persecution, torture, or returning to their country or that they wish to apply for asylum should be referred for a credible fear screening interview conducted by an asylum officer. If the asylum officer determines the person doesn't have a credible fear, the individual is ordered removed”¹⁶.

By contrast, individuals who

¹⁴Asylum in the United States. (2018). *American Immigration Council*, 1–8.

¹⁵Asylum in the United States. (2018). *American Immigration Council*, 1–8.

¹⁶Asylum in the United States. (2018). *American Immigration Council*, 1–8.

“re-enter the United States unlawfully after a prior deportation order and noncitizens convicted of certain crimes are subject to a different expedited removal process called reinstatement of removal”¹⁷.

Individuals in this situation are afforded a “reasonable fear” interview with an asylum officer who will decide whether or not their fear is reasonable, and whether or not they will be deported. Later in this article, I will go into further detail about the credible fear and reasonable fear interview proceedings, how the process has changed in recent years, the challenges that asylum seekers face in these interviews, and the factors that contribute to CBP’s ultimate decisions.

While the United States has experienced a steady increase in asylum seekers at our southern border over the last few decades- the current surge beginning in 2014 and increasing constantly every year since- each presidential administration has lowered the ceiling for refugee admission more than the last. During the 2017 fiscal year, the Obama administration had the refugee admission ceiling set at 110,000. The following year, President Trump reduced this ceiling by more than 50%- to 50,000.¹⁸ And in the most extreme measure yet, in September 2019, the Trump administration lowered the ceiling to a shocking 18,000- an 84% reduction in refugee admission in just two fiscal years.¹⁹ In order to understand these alarming statistics, and why the United States continues to lower the ceiling for refugee admission, it is crucial to understand some of the factors that contribute to the growing numbers of individuals and families coming to the United States border in seek of asylum as well as sociocultural factors

¹⁷Asylum in the United States. (2018). *American Immigration Council*, 1–8.

¹⁸Hiemstra, N. (2019). *Detain and deport: the chaotic U.S. immigration enforcement regime*. Athens, GA: The University of Georgia Press.

¹⁹Michael. (2019, September 26). Trump Slashes Refugee Cap to 18,000, Curtailing U.S. Role as Haven. Retrieved from <https://www.nytimes.com/2019/09/26/us/politics/trump-refugees.html>.

that led Trump's Department of Homeland Security to drastically reduce the nation's refugee admission ceiling.

Political Situations in Countries of Origin

Mexico and the Central American states of Guatemala, Honduras, and El Salvador have been experiencing high rates of gang violence, police corruption, extortion, and state-sanctioned political persecution, and the rates of these abuses have been rising rapidly in recent years.

According to the Human Rights Watch's 2018 Report²⁰ of each of these four nations, some of the most notable political problems that they all have in common include:

1. Violent crime (gang violence, violence against women, hate crimes)
2. Highest rates of homicide in the world
3. Activists, journalists and marginalized populations (LGBTQ+ in particular) vulnerable to violence
4. Freedom of speech and expression not respected
5. Lack of government accountability
6. Police abuse, corruption, and extortion
7. Military abuses and torture
8. Enforced disappearances and extrajudicial killings

²⁰Roth, K. (2019, January 17). World Report 2019: Rights Trends in Guatemala. Retrieved from <https://www.hrw.org/world-report/2019/country-chapters/guatemala>.

Roth, K. (2019, January 17). World Report 2019: Rights Trends in Honduras. Retrieved from <https://www.hrw.org/world-report/2019/country-chapters/honduras>.

Roth, K. (2019, January 17). World Report 2019: Rights Trends in El Salvador. Retrieved from <https://www.hrw.org/world-report/2019/country-chapters/el-salvador>.

Roth, K. (2019, January 17). World Report 2019: Rights Trends in Mexico. Retrieved from <https://www.hrw.org/world-report/2019/country-chapters/mexico>.

These eight humanitarian abuses are only some of the injustices individuals and families in these four nations are subjected to, however, they are representative of the majority of the threats and violence that are occurring. Below, I highlight and describe some of the specific political problems that each state faces, and how the United States plays a role in the cause of the extreme instability and corruption that is rampant today.

The United States has a dark history, particularly in the middle of the twentieth century, of military intervention abroad, driven by fear of socialism/communism and leftist regimes in general, it assisted in the installment of brutal authoritarian dictators to ensure that socialist and communist values do not spread throughout our many Latin American southern neighbors. Guatemala is an example of one of the nations of which the United States assisted in empowering a brutal dictator. In 1954, a CIA-orchestrated coup-d'état ended the first decade of democratically elected governance that Guatemala has ever, in its entire history, experienced²¹. In the wake of this coup, the United States funded, installed, and advised several authoritarian governments that “waged a brutal war of repression against not just the guerrilla opposition that sprung up to oppose them, but against the indigenous way of life in Guatemala as a whole”²². This war of oppression would eventually result in an estimated 200,000 innocent civilian lives lost, and would further exacerbate the ethnic, social, political, and economic divisions that the government of 1944-1954 worked so hard to repair. For decades to come, the United States would remain involved in Guatemalan affairs in the name of “containment” of socialism and communism in Latin America. This U.S.-backed civil war lasted for an alarming 36 years, finally ending in 1996. In 1997, the CIA declassified 1,400 pages of documents that described its

²¹Perrigo, Billy. “The Devastating Effects of American Intervention in Guatemala.” *The Panoptic*, The Panoptic, 4 June 2018, <https://thepanoptic.co.uk/2016/11/19/american-intervention-guatemala/>.

²² Perrigo, Billy. “The Devastating Effects of American Intervention in Guatemala.” *The Panoptic*, The Panoptic, 4 June 2018, <https://thepanoptic.co.uk/2016/11/19/american-intervention-guatemala/>.

orchestration of the coup, and its distribution of guns and money to the guerilla forces for four decades²³. Today Guatemala's society and economy have still not been able to fully recover. The country continues to face high rates of violence, and weak and corrupt police enforcement and government institutions. An alarming 60% of the country's population lives in extreme poverty, and the increasing levels of gang violence, crime, and corruption describe a nation in which poverty, racism, inequality, and the threat of ones very livelihood dominate their everyday lives.²⁴ The United States prides itself as being a global champion of human rights, however, judgments and decisions such as these deeply tarnish such a reputation, and call American hypocrisy into question.

Unfortunately, Guatemala is not the only Central American nation in which the United States intervened for the worse. The origins of military presence in Honduras, and Honduran migration to the United States can be traced back as far as the 1890s, when the United States first started benefiting from the banana industry there. For the next couple of decades, the United States would increasingly control the Honduran economy due to our control of their primary natural resource. The Honduran ruling class was now entirely dependent on Washington for economic support. By the 1960s, the Honduran military had become their most powerful and most developed political institution, and the United States played a big role in it becoming as such. The United States, in another attempt to extinguish leftist threats in Latin America, utilized its control of the Honduran military in order to overthrow the Sandinista government in the neighboring state of Nicaragua. This Regan-era militarization of Honduras heavily contributed to the political repression that followed, and the many human rights abuses that occurred under this

²³“FRONTLINE/World Guatemala Timeline.” *PBS*, Public Broadcasting Service, <http://www.pbs.org/frontlineworld/stories/guatemala704/history/timeline.html>.

²⁴“FRONTLINE/World Guatemala Timeline.” *PBS*, Public Broadcasting Service, <http://www.pbs.org/frontlineworld/stories/guatemala704/history/timeline.html>.

repressive regime. The lasting effects of the United States' military involvement in Honduras directly caused Honduran emigration to the United States that came in great waves beginning in the 1990s²⁵. At this point, the politics and economy of Honduras have been controlled by the United States for a century, and that kind of reluctant dependency is difficult to come back from. In 2009, there was another military coup against the progressive, democratically elected president, Manuel Zelaya. The United States government, under Barack Obama's Administration and Hillary Clinton's Department of State, refused to call for the "immediate and unconditional" return of Zelaya. This most recent coup has further increased the instability and danger that unfortunately plagues Honduras. The strong military ties between Honduras and the United States persist. Since the coup, the Trump Administration's recognition of President Juan Orlando Hernandez's reelection- after a term marked by corruption and violence- represents the United States' "long standing willingness" to overlook corruption and human rights abuses in Honduras "as long as the country's ruling elites serve what are defined as U.S. economic and geopolitical interests"²⁶. The crime, gang violence, and state-sanctioned political persecution of vulnerable individuals persists in Honduras, and the United States' role in shaping the causes of this surge in migration calls into question its responsibility to helping those seeking asylum from the terror that it helped produce.

The last of the three Northern Triangle nations, El Salvador is a country marked by similar political challenges. Similarly, to the case with Honduras, the United States and Britain had major control of the nation's economy in the twentieth century because they owned the

²⁵Nevins, Joseph. "How US Policy in Honduras Set the Stage for Today's Migration." *The Conversation*, 6 Oct. 2019, <http://theconversation.com/how-us-policy-in-honduras-set-the-stage-for-todays-migration-65935>.

²⁶Nevins, Joseph. "How US Policy in Honduras Set the Stage for Today's Migration." *The Conversation*, 6 Oct. 2019, <http://theconversation.com/how-us-policy-in-honduras-set-the-stage-for-todays-migration-65935>.

majority of its coffee plantations. In 1932, when a communist rebellion challenged the authority of the government, the United States intervened by sending naval support to suppress the rebellion. Twelve years later, the military leader Maximiliano Hernandez Martinez is ousted by a student-led populist revolution. However, within a short few months Martinez's government is reinstated, and legitimized by immediate recognition from the United States. In 1960, just when El Salvadorians are acclimating to the promise of democratic elections, there was a military counter coup facilitated by the United States. Two decades later, in the 1980s, a civil war broke out between the military-led government and the leftist liberation movement. The Regan administration, again under its Cold War 'containment' policy, provides military assistance to the authoritarian government. This civil war lasted twelve years and resulted in an estimated 80,000 deaths. The United Nations estimates that at least 85% of those deaths were committed by the military forces against civilians. Not only has the United States played a massive role in the human rights atrocities that occurred under El Salvador's various dictatorial regimes by supporting their military forces, but they also continue to produce instability and poverty in El Salvador due to their control over its economy. In 2015, a tariff policy that declared all U.S. imports into El Salvador enter "duty free" has made it entirely impossible for domestic industries to compete, putting the country in a massive amount of debt. The reality of economic instability and rampant poverty in El Salvador has produced extreme levels of gang violence and drug trafficking, among other crimes, as well as government inadequacy to apprehend crimes. El Salvador is another example of a nation in severe crisis due largely to a long history of U.S. intervention.²⁷

²⁷Tseng-Putterman, Mark. "A Century of U.S. Intervention Created the Immigration Crisis." *Medium*, Medium, 28 June 2018, <https://medium.com/s/story/timeline-us-intervention-central-america-a9bea9ebc148>.

While the United States government likes to argue that Mexico is a safer nation than the three “northern triangle” Central American nations, statistics, humanitarian reports, and first-hand accounts prove that Mexico is facing very similar challenges as its Central American neighbors, and Mexicans fleeing violence and seeking refuge are in many ways facing more danger because they are being forced to wait in the very country that is threatening them, or that simply cannot protect them. While the corruption and violence that currently exists in Mexico is not as blatantly linked to United States involvement, the United States has in many ways neglected Mexico. The U.S. has dismissed Mexico’s cries for help, put Mexicans in perilous danger by forcing them to wait their asylum claim within the very state that they’re fleeing from, and has dismissed the claims of Mexican asylum seekers solely on the basis of nationality. One could argue that the United States is even less generous in accommodating for the needs of Mexican asylum seekers, because they have less economic and military ties and personal interests with Mexico than they do with the other three states. This discrepancy is not only connected to greed and personal interests, but also to the Trump Administration’s blatant disinterest and laziness to accommodate for asylum seekers’ needs. Thus, the administration decided to allocate responsibility to Mexico- a nation that does not have the infrastructure, resources, or government capacity to handle such an influx of asylum seekers in its northern cities.

According to Time Magazine, 2018 was the bloodiest year in Mexico’s history. On average, someone is killed in Mexico every 15 minutes, equating to approximately 29,168 murders per year. Political killings and gang violence are the principal contributors to these high numbers, and often the two are working together. Mexico is suffering from a shortage of police officers, mainly because they do not earn very high wages. Having such a low paying job causes

many of them to become involved in gangs, thus, when a police officer himself or an innocent civilian is being extorted by a government member or a gang member, they do not feel safe filing a report with the police, because people are aware of the corruption that exists, and the dangers that they would put themselves in by filing a report. Additionally, in recent years gangs have been fragmenting throughout different areas around Mexico- making it more and more uncertain which departamentos and which cities are safe.²⁸ The Trump Administration, The State Department, and the Department of Homeland Security argue that Mexico is safe enough for Central Americans and Mexicans alike, and that Central Americans should apply for asylum there, and Mexicans should just move to a different part of the country. However, first-hand accounts, as well as demographic information and statistics, prove that Mexico is not safe for any of these vulnerable people, particularly those who are fleeing state persecution within Mexico.

In August of 2019, I volunteered for a legal aid organization in the border city of Tijuana, Mexico by the name of Al Otro Lado (“The Other Side” in English). During my time there, I bore witness to dozens of first-hand accounts of the injustices that asylum seekers face in their home countries of Mexico, Guatemala, Honduras, and El Salvador. A noteworthy observation that I made while volunteering with Al Otro Lado was that the principal differences in each person’s stories were not determined by nationality. Certainly, each asylum seeker has experienced different trauma and injustices, and no story is the same, however, the primary threats and injustices that asylum seekers are faced with were the same or very similar among the clients that I spoke with. Those seeking refuge from Mexico were not fleeing from threats or violence to any lesser of a degree than the Central American asylum seekers. In fact, the Mexican asylum seekers are in even more perilous danger because as they wait several months to

²⁸Nugent, Ciara. “Why Mexico Is Suffering Record Levels of Violence in 2018.” *Time*, Time, 28 June 2018, <https://time.com/5324888/mexico-violence-murders/>.

make their claim to the United States Border Patrol, they must wait within the country that they are seeking refuge from. It is not humane, and the United States is betraying Mexican asylum seekers by not fulfilling their legal responsibility to protect those seeking refuge from danger.

The Border

The humanitarian issue at the border is changing for the worse every single day. The northern Mexican cities with ports of entry into the United States are in a state of utter chaos due to the increasing need to accommodate the tens of thousands of asylum seekers waiting at the border. In the following paragraphs I will paint the scene of what Mexican border cities, and particularly their ports of entry, look like right now.

According to Al Otro Lado, there were approximately 1,300 asylum seekers processed at the Port of Entry in Tijuana in January of 2019, and by the end of the month, an additionally 2,400 were on the waitlist. By August, there were more than 10,000 people on the waitlist. With this rapid increase in asylees arriving in Tijuana, and the average crossing rate of 34 persons per day, the waiting time in Tijuana is estimated to be between six and nine months.²⁹

The border between the United States and Mexico is precisely 1,954 miles or 3,145 kilometers long, approximately 650 miles of which is separated by a fence³⁰. Along this vast meandering border, there are 47 official ports of entry that divide northern Mexico with the states of California, Arizona, New Mexico, and Texas. Of these 47 official ports of entry, the most trafficked are the three ports of entry between Tijuana and San Diego: El Chaparral, San Ysidro,

²⁹Kao, J., & Lu, D. (2019, August 18). How Trump's Policies Are Leaving Thousands of Asylum Seekers Waiting in Mexico. Retrieved from <https://www.nytimes.com/interactive/2019/08/18/us/mexico-immigration-asylum.html>.

³⁰Fact check/How many miles of fence stand along the U.S.-Mexico border. (n.d.). Retrieved from https://ballotpedia.org/Fact_check/How_many_miles_of_fence_stand_along_the_U.S.-Mexico_border.

and Otay Mesa. In this article, I will focus on the port of entry of El Chaparral between Tijuana and San Diego, not only because it is one of the most trafficked port of entry between any two nations in the entire world³¹, but also because I have direct experience at El Chaparral, and I can speak to some of what occurs there.

When an individual seeking asylum arrives at El Chaparral, they first turn themselves in to a Customs and Border Patrol officer, and then wait in line to receive their “A” number.³² The “A” number is used by the United States government to identify how many asylum seekers there are to process. The A number that one receives determines how long they will have to wait in Tijuana before their number is called. A common misconception about the asylum process is that an asylum seeker is processed and put in custody immediately upon arrival at the border of whichever country in which they are seeking refuge. This is an understandable misconception because this is how the process is meant to be according to international human rights law. However, in reality, it typically takes about 6 to 10 months of waiting in Tijuana for one’s number to be called.³³ Asylum seekers take it upon themselves to control the list in a spiral bound notebook. When asylum seekers know that their number may be called soon, they arrive at the border at around 7 am and wait to hear the numbers and their corresponding names. If their number is not called, they come back the next day. If one suspects that their number might be called that day, they arrive at El Chaparral- typically with a backpack or small suitcase of

³¹Heyman, J. M. C. (2001). U.S. Ports of Entry on the Mexican Border. *Journal of the Southwest*, 43(4), 281–698.

³² Rivlin-Nadler, M. (2019, July 11). Waitlist for Asylum-Seekers In Tijuana Now At Its Highest Number Ever. Retrieved from <https://www.kpbs.org/news/2019/jul/11/waitlist-asylum-seekers-tijuana-now-its-highest-nu/>.

³³Silva, D. (2019, March 19). Trapped in Tijuana: Migrants face a long, dangerous wait to claim asylum. Retrieved from <https://www.nbcnews.com/news/latino/trapped-tijuana-migrants-face-long-dangerous-wait-claim-asylum-n981721>.

belongings. AOL clients with numbers that are to be called soon are encouraged (by the attorneys) to eat a big meal, shower well, and dress warmly because there is absolutely no determining where you will end up on the other side and for how long. On this day, many will be immediately deported back to their home countries, and others will be put in detention for the indefinite future. Some will be separated from their children or other family members, and the very rare and lucky individual will be granted asylum and released to their sponsor. In addition to the aforementioned possibilities, many individuals will be returned to Tijuana under the Migrant Protection Protocol (MPP), or as it is colloquially known: the “Remain in Mexico” policy. In the following section, I will describe what this policy is, as well as its detrimental implications for Central American asylees, Mexican asylees, and the Mexican government. After, I explain what “Metering” is, and how it differs from the Migrant Protection Protocols.

Migrant Protection Protocol & Metering

The Migrant Protection Protocol, otherwise known as the “Remain in Mexico” Policy, is a Trump era immigration policy intended to decrease the amount of asylum seekers for which the United States must be responsible by mandating that certain asylum seekers and other individuals who have entered the United States illegally or without proper documentation must “remain in Mexico” while they wait to attempt again. The policy was created and first implemented in January 2019 with hopes of discouraging other vulnerable individuals from seeking asylum in the United States. The argument for the policy is that the U.S. does not have the capacity for all of these individuals seeking asylum, so they tell them that they must wait to make their claim on the Mexico side rather than the U.S. side, even though Mexico does not have the economic or national security capacity for these individuals. The MPP policy fundamentally

contradicts the spirit of asylum law which states that while we cannot guarantee you refugee status, we can at least guarantee that we will keep you safe while you wait to make your claim. When the policy was released on January 24th, 2019, former Secretary of Homeland Security, Kirsjen M. Nielson (2017-2019) stated,

“We have implemented an unprecedented action that will address the urgent humanitarian and security crisis at the Southern border. This humanitarian approach will help to end the exploitation of our generous immigration laws. The Migrant Protection Protocols represent a methodical commonsense approach, exercising long-standing statutory authority to help address the crisis at our Southern border.”³⁴

While Nielson described the protocol as a “methodical common-sense approach”, it is far from common sense. For the asylum seekers in Tijuana and other northern Mexican border cities, the humanitarian crisis is only rising. Additionally, describing the act of seeking refugee from repressive and dangerous governments and dictators as “[exploiting] our generous immigration laws” is incredibly tactless, especially since providing refuge to those fleeing violence is our legal responsibility as signatories to the UN Universal Declaration of Human Rights.

While the Trump administration and the Department of Homeland Security (DHS) confidently assert that this new policy is a “humanitarian approach”, the danger to which it subjects asylum seekers proves otherwise. This approach to immigration policy is actively putting asylum seekers in danger by keeping them vulnerable to the threats from which they are fleeing. Unsurprisingly, the southern border of Mexico is not protected in the same manner or to the same degree that the United States protects its southern border. Thus, it is not exceedingly

³⁴Migrant Protection Protocols. (2019, January 29). Retrieved from <https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols>.

difficult, as a Central American, to cross it. If, for example, an individual is fleeing threats or violence from a gang in Guatemala, that individual is not free from that danger while waiting in Tijuana. Mexican asylum seekers from southern states are arguably subjected to more danger by waiting in Tijuana, because the very government or gang from which they are fleeing danger is within the same country and could find them and hurt them or their loved ones at any given moment. According to the American Civil Liberties Union, at least 50,000 asylees have been returned to Mexico on MPP alone.³⁵

According to the ACLU, the U.S. policy of “Metering” is distinct from DHS’s Migrant Protection Protocol which requires asylum seekers to wait in Mexico pending their formal asylum proceedings. The metering policy applies to asylees who have not yet been inspected by CBP, whereas the MPP applies to asylees who have already been inspected and placed in removal proceedings. Recently, a federal district court barred DHS from continuing the MPP pending the court’s decision on the legality of the policy. The metering policy implements a daily limit or cap for the number of people who can claim asylum, and each asylee must wait through the metering system to file their claim. The ACLU projects that there are currently about 30,000 asylees stuck in Mexican border cities on metering alone.³⁶

³⁵“Trump Targets Asylum-Seekers.” *American Civil Liberties Union*, https://www.aclu.org/video/trump-targets-asylum-seekers?initms_aff=nat&initms_chan=eml&utm_medium=eml&initms=191118_asylum_immigrantrights-var-americanSL_gradeAD_sail&utm_source=sail&utm_campaign=asylum&utm_content=191118_immigrant_rights-var-americanSL_gradeAD&af=wVnhpiN58AOQGj8SrpXbJLUmk942kAwxMn8H+pG7h2gyv1ga32i2S5tKwzn+r9MIvq0B6FBPI/eBtBm7jGV2nII+qAGMllwggegi8QX6ClfxL+6h4mM7LUgNIIWMRShOexyzjseCQE0kmwhcB+Xt9b6saX9Fz+I4zZI2h+lAN20=&gs=qmJync7wAeJsvEHUshSDhAg5n9PRoRAoDQGaXeJ3f5w4qps3GnUarYfdd6ppnJ30DB8nbPWYuAZQVYUzBQO7Mw==&ms_aff=nat&ms_chan=eml&ms=191118_asylum_immigrantrights-var-americanSL_gradeAD_sail.

³⁶“Trump Targets Asylum-Seekers.” *American Civil Liberties Union*, <https://www.aclu.org/video/trump-targets-asylum-seekers>

The Transit Rule

The Supreme Court, on Wednesday September 11th, 2019 granted permission to the Trump administration to bar most Central American migrants from seeking asylum in the United States, by stating that they must stop in each country along their journey, and try applying for asylum there first. Then, if all are unsuccessful, they may try and seek asylum in the United States.³⁷ The goal is to effectively end migration of asylum seekers from these countries. The ruling represents an even more extreme measure than the MPP policy, and for many it “takes away all hope”³⁸. The MPP has already made asylum in the United States nearly impossible for asylum seekers, but this new measure is further proof to the asylees that the United States does not want them, and that they should give up trying. It is another attempt at “deterrence” on the part of the United States, although the experts know and the numbers and stories show that the political situations in Central America and Mexico are so bad that nothing will deter them from trying to gain asylum in the United States- not even a life-threatening journey, the possibility of being separated from your family members, and the possibility that even after a perilous journey, they may very well be deported back to their dangerous home countries. Recently, the first asylee was returned under this policy- an asylee from Honduras who was deported and told to try his luck applying for asylum in Guatemala or Mexico. However, it would be an understatement to say that this policy is less than ideal for asylees. For Central Americans, applying for asylum in Mexico is nearly impossible- the processing takes several months, and much like the MPP,

³⁷Liptak, Adam. “Supreme Court Says Trump Can Bar Asylum Seekers While Legal Fight Continues.” *The New York Times*, The New York Times, 11 Sept. 2019, <https://www.nytimes.com/2019/09/11/us/politics/supreme-court-trump-asylum.html>.

³⁸ Ahmed, Azam, and Paulina Villegas. “‘This Takes Away All Hope’: Rule Bars Most Applicants for Asylum in U.S.” *The New York Times*, The New York Times, 12 Sept. 2019, <https://www.nytimes.com/2019/09/12/world/americas/asylum-seekers.html>

while you are waiting you are in too much danger. Why would anyone want to apply for asylum in a country that cannot keep them safe? The Trump Administration, in a new concept called “Safe Third-Party Agreements”, is attempting to argue that Guatemala is safe enough for a Honduran, and vice versa. However, according to Guatemala’s Department of Foreign Affairs, they only have *four* asylum officers³⁹, in contrast to the United States’ 58,000 employees. Donald Trump, without any knowledge and concern for the truth, has stated that Guatemala is a very safe country, and that in fact, “Baltimore is more dangerous than Guatemala”. Regardless of wherever that unsubstantiated claim came from, the statement is incredibly ignorant and diminishes the very real threats that asylees have gone through. This policy contradicts the entire spirit of asylum law and international human rights law, both of which the United States, regardless of who is in office, has the responsibility to respect. Not only is this new rule abhorrently inhumane and makes the prospect of receiving protection very bleak for many asylees, but it also presents Mexico with an immense duty that not only does it not want to fulfill, but also for which it does not have the economic infrastructure.

U.S. Asylum Statistics for 2018⁴⁰

Region of Origin	Admission Ceiling	Cases Received	Cases Filed	Asylum Granted
In Total (Four Countries)	1,500	103,174	31,924	5,989
Central America	N/A	78,762	25,326	7,350
Mexico	N/A	24,412	6,598	1,361

³⁹Beltrán, Adriana, et al. “Guatemala.” *Foreign Affairs*, 25 Sept. 2019, <https://www.foreignaffairs.com/regions/guatemala>.

⁴⁰“Refugees and Asylees.” *Department of Homeland Security*, 18 Nov. 2019, <https://www.dhs.gov/immigration-statistics/refugees-asylees>.

Capacity of Mexican Government to Handle Asylum Seekers

The effect of MPP, Metering, and the Transit Rule has been harmful to the humanity of the asylum-seeking populations and has done nothing but create more disorder in cities like Tijuana. Not only does it keep the asylum seekers in dangerous and life-threatening positions, but it also puts more pressure on the already overextended and overburdened Mexican government. Tijuana, Mexico is already considered one of the poorest and most dangerous cities in the entire world. While Tijuana may be a microcosm of the extreme wealth disparities that exist within Mexico, neither the city nor the Mexican government have the economic or security capabilities to handle and support the tens of thousands of individuals currently living there as they await their chance at asylum.

Many immigration attorneys and other legal professionals are arguing the illegality of this policy- stating that it violates the most fundamental principle of international human rights law: protection. Whether this policy is illegal or not is a discussion for the experts, but it is evident that the fact that The United States, one of the wealthiest nations in the entire world, is delegating the responsibility of providing for these migrants to Mexico- a nation with far less wealth and resources to handle such a massive influx of asylum seekers- disregards the very purpose and spirit of international human rights and asylum law, and puts thousands of people in danger.

However, it is important to briefly note that Mexico's lack of sufficient resources does not absolve them of any responsibility to deal with the matter. As I mentioned earlier in this article, the Mexican government is fraught with corruption and abuses of power, and the state of Mexico is not simply a poor defenseless country that "would help out if they could". They, too, have a responsibility to protect not only their own citizens, but those from other countries

seeking safety. The Mexican government has done a terrible job not only keeping Mexicans safe, but also providing for the Central American asylum seekers and keeping them safe as well.

The United States vs. Similar Developed Democracies on This Issue

The United States is not the only developed democracy that is currently taking a very firm stance on immigration- especially as it pertains to offering those seeking asylum with refugee status and protections. Two of the most notable examples of other developed democracies that are acting similarly on immigration are the European Union and Australia.

Articles 2 and 3 of The Treaty on the European Union assert that each member state must display a “respect for human dignity, nondiscrimination, international immigration law and asylum”.⁴¹ However, in reality, many EU member states are not following through with this simple promise. According to the Human Rights Watch 2019 World Report, “Despite arrivals of migrants and asylum seekers decreasing to pre-2015 levels, the often- opportunistic hardline approach of anti-immigrant European Union governments, including those of Italy, Hungary, and Austria, dominated the migration debate throughout the year.”⁴² The Republic of Austria, for example, has been subject to great scrutiny for its culture of xenophobia and discriminatory asylum rejections for African and Middle Eastern refugees. Additionally, in the last few years, several EU member states, especially those with Mediterranean coasts, have been subject to scrutiny for their responses to the influx of boats filled with asylees fleeing the Northern African nation of Libya. Italy has received particular scrutiny for the way in which the Italian Coast Guard turned boats away and ushered them back to Libya- resulting in several tragic deaths. The

⁴¹“Treaty on European Union.” *European Union Treaties: Treaty on European Union Treaty on the Functioning of the European Union*, doi:10.5040/9781472561862.ch-001.

⁴²Roth, Kenneth. “World Report 2019: Rights Trends in European Union.” *Human Rights Watch*, 17 Jan. 2019, <https://www.hrw.org/world-report/2019/country-chapters/european-union>.

desperate and dangerous way in which these Libyan asylum seekers fled their home is comparable to the dangers that many migrants face in the deserts of northern Mexico around the Rio Grande- a perilous journey that also results in many deaths a year. It is truly staggering that countries such as Italy who have the economic resources and infrastructure to provide aid for these Libyans would display such racism, xenophobia and blatant inhumanity to human beings facing a life-threatening situation.

Australia is another nation that has demonstrated itself to be uninterested in accepting any refugees. Recently, Australia has been receiving large waves of asylum seekers from countries such as Afghanistan, Myanmar, Iran, Pakistan, Somalia and Sudan with great frequency. However, over the last five years the Australian government has been sending them to wait on the neighboring islands of Papua New Guinea, Manus and Nauru rather than processing and resettling them within Australia. This method is not unlike the United States' Migrant Protection Protocol. In January of 2019 when Human Rights Watch conducted its annual World Report, there were 570 refugees and asylum seekers in Papua New Guinea and 600 on the island of Nauru. Since these islands are less economically and infrastructurally equipped to handle such an influx of migrants, the asylees have had to set up outdoor camps filled with tents for families to use as shelter. According to Human Rights Watch, asylees are kept on the islands of Nauru and Manus and are "not even allowed on Australian soil"⁴³. Not dissimilar to the hypocrisy of the United States' approach to immigration policy, the racially-motivated hypocrisy of Australia's "professed 'non-discriminatory'" immigration system was made evident to the public when it was revealed that the former Immigration Minister, Peter Dutton, had been generously granting tourist visas for white European nannies on "public interest grounds", while he would constantly

⁴³Roth, Kenneth. "World Report 2019: Rights Trends in Australia." *Human Rights Watch*, 17 Jan. 2019, <https://www.hrw.org/world-report/2019/country-chapters/australia#5a664c>.

deny medical transfers to Australia for Middle Eastern and African asylees in offshore detention facilities. Additionally, in March 2018, Dutton stated that South African farmers coming to Australia should be prioritized in the immigration process because they are “coming from a civilized country like Australia”.⁴⁴ These sorts of sentiments are not unlike the United States’ longstanding racialized preferential treatment of individuals immigrating from majority-white European nations. This past August, in another instance of making asylees lives harder than they already are, the Australian government removed all income support and housing from asylum seekers that are living on the Australian mainland. The UN Special Rapporteur on Extreme Poverty and Human Rights, Philip Alston, described this decision as “ruthless”. Evidently, the current trend among powerful and wealthy developed nations around the globe is to reject one's international human rights obligations, and to actively harm the most vulnerable among us. The inhumane treatment of asylees does not end at the lack of food, housing, and state support. Asylum seekers in detention, particularly in the United States, are subject to a whole new host of injustices.

Detention

The United States operates the largest detention and deportation system in the world⁴⁵. Detention and deportation have been used throughout modern history; however, they have only been mechanisms of the United States’ immigration and enforcement approach since the mid-1980s with an exponential increase in use since the tragic events of September 11th, 2001. According to Nancy Heimstra, author of *Detain and Deport* (2019),

⁴⁴Roth, Kenneth. “World Report 2019: Rights Trends in Australia.” *Human Rights Watch*, 17 Jan. 2019, <https://www.hrw.org/world-report/2019/country-chapters/australia#5a664c>.

⁴⁵Hiemstra, N. (2019). *Detain and deport: the chaotic U.S. immigration enforcement regime*. Athens, GA: The University of Georgia Press. Page 63.

“While it was not until the 1980s that detention and deportation became increasingly central and permanent mechanisms of the U.S. immigration and enforcement approach, they have been used throughout U.S. history. There are three key factors consistently buttressing the use of deportation and detention, historically and today: the linking of immigration to national security, racialized ideas of national identity, and fluctuating economic climates”⁴⁶.

American xenophobia, according to Heimstra, is caused by “the anchoring of Americanness to ‘whiteness’”⁴⁷. Another hypothesis that Heimstra promulgates is that the image that American citizens have of immigrants is critically influenced by the health of the national economy⁴⁸.

Below I will outline the evolution of the institutionalization of detention and deportation from the administration of Barack Obama to that of Donald Trump. As I previously stated, post-9/11 policies led to massive increases in detention and removal. When Barack Obama was elected in 2008, he continued to expand these strict immigration policies. For example, he instituted a policy called “the detention bed mandate” which required the Department of Homeland Security (DHS) to have 33,440 migrants in detention at all times. Similarly to the arrest quotas that the police departments in several states must fulfill, the nature of this mandate suggests that many individuals are wrongfully detained due to racial profiling and thus, violated

⁴⁶Hiemstra, N. (2019). *Detain and deport: the chaotic U.S. immigration enforcement regime*. Athens, GA: The University of Georgia Press. Page 46.

⁴⁷Hiemstra, N. (2019). *Detain and deport: the chaotic U.S. immigration enforcement regime*. Athens, GA: The University of Georgia Press. Page 47.

⁴⁸Hiemstra, N. (2019). *Detain and deport: the chaotic U.S. immigration enforcement regime*. Athens, GA: The University of Georgia Press. Page 47.

of their human right to freedom from discrimination and freedom from arbitrary detention as laid out in Article 2 and 9 of the UDHR, respectively.⁴⁹

Additionally, the Obama Administration increased the capacity to specifically detain families and children. In response to a “surge” of women and children fleeing extreme violence and poverty in Central America beginning in 2014, the DHS opened a number of new detention facilities by contracting with private companies and local governments to expeditiously deport undocumented minors and families. The Obama administration argued that this approach was crucial for discouraging additional immigration and fought in court (arguing Homeland Security concerns) to keep these vulnerable populations in detention, even when the court ordered that they be immediately released. This represents a flagrant disregard for human rights and asylum law, and a blatant criminalization of immigration by the most powerful individual in our nation. Matters have only gotten exponentially worse since the election of Donald Trump to executive office.

In 2016, shortly before President Donald Trump took office, the Department of Homeland Security conducted a series of raids aimed at arresting and deporting Central Americans who had recently arrived at the United States- particularly mothers and children⁵⁰. Unfortunately, this was the immigration framework that Trump inherited upon taking office- the building blocks to further perpetuation the culture of “crimmigration” in this country, of racializing the other, and instilling xenophobia and fear through national security concerns as well as economic ones. Trump ran a campaign that won by scapegoating nonwhite immigrants and promising to “crack down” on those who are, as Kirsten Neilson stated, “[exploiting] our

⁴⁹Hiemstra, N. (2019). *Detain and deport: the chaotic U.S. immigration enforcement regime*. Athens, GA: The University of Georgia Press. Page 60.

⁵⁰Hiemstra, N. (2019). *Detain and deport: the chaotic U.S. immigration enforcement regime*. Athens, GA: The University of Georgia Press. Page 47.

generous immigration laws”⁵¹. Trump and his advisers have, since the moment they took office, consistently promoted the narrative that ruthless immigration policies will successfully deter further migration to our southern border, and thus, will protect our national security and our national economy⁵².

Not only is the inherent concept of detention ethically flawed, but the experience of thousands of persons held within the detention centers can only be described as inhumane. During my time in Tijuana, most of the asylum seekers that I spoke with at Al Otro Lado had previously been detained in facilities within the United States for varying lengths. The amount of time someone spends in detention is determined by many factors and can range from one day or week to as long as eight months. One client’s experience in detention stands out to me as particularly egregious.

On my second day at AOL, I met a Honduran woman named Maria who made an asylum claim at the border but was returned to Mexico under MPP. She was in detention for several weeks before she was ultimately returned to Tijuana, and what she shared with me keeps me up at night. Maria and her husband were fleeing personal threats and violence from a gang that they refused to get involved with. CBP decided that these fears were not “credible” enough to grant them asylum. However, what troubled me the most was the way she was treated within the detention center, before being returned to Mexico. Maria was eight months pregnant when I met her, and she is diabetic. Not only has she not been able to receive help from Mexican hospitals and doctors due to her own lack of papers and the Mexican government’s lack of resources, she also had her very life and humanity violated by the officers inside the detention facility.

⁵¹Migrant Protection Protocols. (2019, January 29). Retrieved from <https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols>.

⁵²Hiemstra, N. (2019). *Detain and deport: the chaotic U.S. immigration enforcement regime*. Athens, GA: The University of Georgia Press. Page 60.

Immediately upon arriving, Maria was stripped of not only her prenatal vitamins, but also the insulin that keeps her alive. She was refused both of these essential medications for the three weeks that she was detained. How she is still alive and relatively healthy is a miracle, and the purpose of denying her these health care essentials will never cease to perplex and viscerally disgust me. Unfortunately, these occurrences are not uncommon, and Maria's story is not unique. There is no way to justify putting a mother and her unborn child's health and life in such direct danger.

Additionally, during my time in Tijuana, I learned a considerable amount about "la hielera" and what actually happens inside of these detention facilities nicknamed "the ice box". La hielera gained its name from the absolutely freezing temperatures inside the facilities, and the lack of adequate heating these individuals must endure. Most people have no idea that this is going to be the case and thus are not adequately prepared with proper clothing. It is especially sad to see the long lines of Cameroonian asylum seekers at the port of entry wearing shorts and a shirt with not a single bag filled with clothes or any other belongings. There is no way that they would have known to prepare for the freezing conditions within "la hielera" and they don't even have a single sweater to keep them warm. We tell every single person that enters the doors of AOL about "la hielera" if they haven't already been there or don't already know what it is like so that they can prepare as best as they can for the conditions within. We tell each client to bathe thoroughly, eat a very big and filling meal, and to dress warmly on the day their number is going to be called.

The freezing conditions and confiscation of medications are not the only injustices that occur within the detention centers. Many asylum seekers are also stripped of the few belongings that they have- including all of their legal documentation such as passports, birth certificates,

police reports, and the information of their family members and/or sponsors in the United States. There is no reasonable rationale behind these unjust actions, and all they achieve is making the lives of these asylum seekers that much harder than they already are. Since many asylum seekers hear about these confiscations by word of mouth, they resort to writing names and phone numbers and other important information on their arms and their children's arms with permanent markers just in case they are stripped of and denied access to their essential legal documentation. As if it couldn't get any worse, when CBP caught wind of this, they started asking individuals to bare their forearms upon entering the detention facilities so that they could scrub the writing off of their skin. What the purpose or justification of this is eludes me entirely, and it is simply unjust and unnecessary.

Family separation is also something to be conscious of when entering a detention facility. Another central reason children have started writing important information- such as the names, numbers, and physical addresses of their sponsors in the United States- is because they know that being separated from their parents or adult family members is very likely, and want to be prepared to have somewhere to go and someone to contact when they are released. According to the pro bono immigration attorneys that I spoke with while in Tijuana, families are typically separated by age and gender- where younger children typically stay with their mother or parent, and older kids are separated from the rest of their family (typically by gender)- sometimes they are able to stay together, but there is no guarantee. There is no way of knowing how long you will be in detention, where you will be released to, and if you will be able to find and connect with your family and belongings once you are released.

The Credible Fear Interview

For an asylum seeker, the credible fear interview is the most important and high stakes interview of their life. This interview, and how convincingly an asylee is able to tell their story, is the main factor in determining whether or not they are granted asylum in the United States. The Credible Fear interview is often the first instance in which Mexican asylum seekers are told that their case is not serious enough, simply for the fact that the U.S. deems Mexico “safe enough” for them to stay there and relocate. As previously stated, in order to pass a CFI, you must prove that you are “unable or unwilling to return to his or her home country, and cannot obtain protection in that country, due to past persecution or well-founded fear of being persecuted in the future on account of race, religion, nationality, membership in a particular social group, or political opinion”⁵³. Your story must include very specific details, it must be very clear what happened to you, and you must have some sort of tangible evidence to back up your story. While *many* asylees do have cases that fall under these requirements for asylum, there are many asylees who are fleeing gang violence or domestic violence, and the Trump administration considers those threats “private violence”, and thus, somehow not legitimate grounds for protection.

At Al Otro Lado, in order to prepare the clients for their CFIs, they a diagram called “La Manita” or “The Hand” to explain to them the most important things to express in the interview. La Manita is a diagram of a hand with five fingers- each finger representing a different aspect of their story that they will be asked about during their interview. The five different fingers say “What”, “Who”, “Why”, “Police”, and “Relocate”. The “what” is about what happened to you. The “who” is asking about who is targeting you. The “why” is concerned with why you think

⁵³Asylum in the United States. (2018). *American Immigration Council*, 1–8.

you specifically are being targeted. The “police” is asking whether or not you went to the police when this happened to you, and why or why not. Lastly, the “relocate” finger signifies whether or not you feel it is safe for you to relocate within your home country. Some other factors that the United States considers in addition to their general story and CFI are age, gender, family, whether or not they have a sponsor in the United States, whether that sponsor is a US citizen or not, the place of birth of the asylee, and if anyone in their family has been separated.

I found that all of the clients said essentially the same thing- they were being threatened and extorted by gangs because they have land or businesses or something that the gangs want, they can't go to the police because the police and the gangs work together, and they cannot relocate because the government and the gangs work together. Everyone's fear is credible- a problem is that the U.S. is trying to limit admission somehow- even if arbitrary and unfair. Whenever we had a Central American with a case like this, the attorneys typically told them it was strong, however, whenever we had a Southern Mexican asylum-seeker with this exact case, the attorneys would tell them that their case was weak.

For non-Latin American immigrants that do not speak English or Spanish, the asylum process, and particularly the credible and reasonable fear interviews, are incredibly challenging and the chance one will be granted asylum is even lower. Outside of Latin America, the largest group of migrants arriving in Tijuana are Cameroonians. They have travelled extremely long and challenging journeys, typically flying from Cameroon to Peru because Peru has the least strict visa policies of any country in the region. The process is incredibly difficult for the Cameroonians, not just because they have to embark on a very long and challenging journey, but also because once they arrive at the border they are met with extreme racial discrimination and language barriers. They have a difficult time communicating with anyone within Tijuana that

would be able to assist them or inform them about what their future might hold after their number is called, or simply that could tell them to bring a sweater to la hielera. One of the saddest things I have ever seen is the sight of a large group of Cameroonian men standing at the El Chaparral border crossing at dawn, while waiting for their numbers to be called, in nothing but khaki shorts and white tank tops- clearly uninformed about what might await them at the other side of the fence.

What Do the Experts Say?

There is a general consensus of outrage among the experts on human rights and immigration law and policy. For example, Michelle Bachelet, the UN Commissioner of Human Rights (Chile) stated that she was “appalled” by the treatment asylum seekers are experiencing at the hands of the United States. Of course, the United Nations is not the only international body that has expressed outrage over the humanitarian crisis at our southern border. Various nonprofit and nongovernmental organizations such as Al Otro Lado, among many others, have also spoken out against the injustices occurring at the U.S./Mexico Border, and put special pressure on Donald Trump and his administration to do something to solve the crisis rather than further complicate it.

Immigration attorneys have also expressed outrage, and many have been inspired to offer their legal expertise and advice to asylum seekers at the border on a pro bono basis. Many of these generous men and women volunteered at Al Otro Lado while I was there, and I was able to gain some insight into various legal perspectives on this situation, and learn about some of the class action lawsuits and other legal actions taken against the Trump Administration, Homeland Security, and Customs and Border Patrol. Legal organizations such as Al Otro Lado, The

Southern Poverty Law Center, and the American Civil Liberties Union have been very active in filing lawsuits. According to Lee Gelernt, an attorney with the ACLU's Immigrants' Rights Project, the ACLU works on an average of one lawsuit per week against CBP and the DHS. While it is amazing that people are taking action, and that organizations such as the ACLU exist and continue fighting, it is unbelievable that the institutions that we have in place in order to protect people are instead treating human beings so inhumanely.

Human Rights Theories

There is a wealth of scholarly work done by human rights philosophers, theorists and experts on the subject of immigration and asylum. Henry Shue is an example of a philosopher that tackles this issue and presents a theoretical explanation for foreign policy matters such as immigration. In his essay, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy*, Shue argues for the importance of moral rights and basic rights. He contends that a moral right provides “(1) the rational basis for a justified demand, (2) that the actual enjoyment of a substance be (3) socially guaranteed against standard threats”.⁵⁴ He goes on to describe what a basic right is, under the structure that “(1) everyone has a right to something, (2) some other things are necessary for enjoying the first thing as a right, whatever the first thing is, (3) Therefore, everyone also has rights to the other things that are necessary for enjoying the first as a right.”⁵⁵ Shue argues that there is a “basic right to physical security and to a minimum level of subsistence.” He argues that it is

⁵⁴Woodward, P. A. “Shue on Basic Rights.” *Social Theory and Practice*, vol. 28, no. 4, 2002, pp. 638–640., doi:10.5840/soctheorpract200228428.

⁵⁵Woodward, P. A. “Shue on Basic Rights.” *Social Theory and Practice*, vol. 28, no. 4, 2002, pp. 638–640., doi:10.5840/soctheorpract200228428. Page 638.

“necessary to having something as a right that one be free to enjoy that thing without being credibly threatened with murder, beating, or incarceration. If one can be threatened with physical violence when one is attempting to enjoy a right, it cannot be said that that right is socially guaranteed.”⁵⁶

Physical security, according to Shue, is a “necessary condition for the exercise of any other right and guaranteeing physical security must be part of guaranteeing anything else as a right”.⁵⁷ We can look at the human rights issue of asylum through Shue’s lens. Using the framework of this argument, individuals living in nations fraught with violence are being violated of their basic right to physical security while attempting to enjoy various rights- such as freedom of expression, or simply the right to live. Since so many rights are not guaranteed in the nations from which asylum seekers are fleeing, their basic rights to physical security are also being threatened.

Similarly, Shue argues that there is a basic right to “subsistence” which can be understood as access to the most necessary elements required to live a healthy life without any extreme interventions. The concept of a basic right to physical security and a basic right to subsistence are inextricably connected, as both describe the elements needed for survival, and the enjoyment of life, as well as how they should be respected as the most fundamental, basic human rights. Shue’s philosophy also applies to the treatment of asylum seekers after they leave their dangerous countries of origin and arrive at the United States border. When someone is in detention, for example, and is denied the medications that they require in order to survive, that is

⁵⁶Woodward, P. A. “Shue on Basic Rights.” *Social Theory and Practice*, vol. 28, no. 4, 2002, pp. 638–640., doi:10.5840/soctheorpract200228428. Page 639.

⁵⁷Woodward, P. A. “Shue on Basic Rights.” *Social Theory and Practice*, vol. 28, no. 4, 2002, pp. 638–640., doi:10.5840/soctheorpract200228428. Page 640.

not only taking away something essential to enjoying a healthy life, but it is putting their physical security at risk.

Another theorist who tackles the human rights question of immigration is the Canadian political scientist, Joseph H. Carens. In his essay, *Aliens and Citizens: The Case for Open Borders*, Carens takes a humanitarian and economic driven stance on the immigration systems of wealthy nations. He contends that our current excessive border control measures are inhumane, “protect unjust privilege”⁵⁸, and do not consider or treat all human beings as “free and equal moral persons”⁵⁹. He challenges powerful nations and their exercise of their legal right to perform excessive border control measures “in pursuit of [their] own national interest”⁶⁰ even if, in the case of asylum seekers, that interest denies a desperate individual’s need to escape peril and seek a better life. While this article does not specifically focus on the human rights abuses of asylum seekers and refugees, he challenges the inhumane and self-serving measures that are carried out against migrants at the borders of wealthy and powerful developed nations. Carens states that “many poor and oppressed people wish to leave their countries of origin”⁶¹ and come to developed nations such as the United States for a better life. He argues that there is “little justification for keeping them out”⁶².

⁵⁸ Carens, Joseph H. (1987). “Aliens and Citizens: The Case for Open Borders.” *The Review of Politics*, 49(2), Page 229., doi:10.1017/s0034670500033817

⁵⁹ Carens, Joseph H. (1987). “Aliens and Citizens: The Case for Open Borders.” *The Review of Politics*, 49(2), Page 211., doi:10.1017/s0034670500033817

⁶⁰ Carens, Joseph H. (1987). “Aliens and Citizens: The Case for Open Borders.” *The Review of Politics*, 49(2), Page 251., doi:10.1017/s0034670500033817

⁶¹ Carens, Joseph H. (1987). “Aliens and Citizens: The Case for Open Borders.” *The Review of Politics*, 49(2), Page 251., doi:10.1017/s0034670500033817

⁶² Carens, Joseph H. (1987). “Aliens and Citizens: The Case for Open Borders.” *The Review of Politics*, 49(2), Page 251., doi:10.1017/s0034670500033817

In this essay, Carens considers the Rawlsian justification of an “activist state with positive responsibilities for social welfare”⁶³ and applies it to responsibilities to migrants. The American philosopher John Rawls often expressed a very closed view on immigration in his philosophy. However, according to Carens, his ideology can still be applied to a broader context and to an open borders argument. Rawls argues that the two principles that people would choose to govern their society, “under a veil of ignorance”⁶⁴, would be guaranteed equal liberty for all and the permitting of social and economic inequalities so long as they existed to benefit the least well off, and so long as they existed under fair conditions of equal opportunity.

Rawls explains the distinction between an ideal and nonideal theory. He asserts that the ideal theory assumes that even if the “veil of ignorance” about race, gender, sex, religion, etc. were lifted, people would still maintain a belief in the same principles they originally chose. The nonideal theory assumes that historical problems and unjust actions are taken into account. While nonideal theory is more strongly related to immediate matters and practical problems, the ideal theory is more fundamental, “establishing the ultimate goal of social reform and a basis for judging the relative importance of departures from the ideal”⁶⁵. Ultimately, according to Carens, Rawls’ ideal theory “holds up the principle of free migration as an essential part of the just social order toward which we should strive”⁶⁶ because it asserts that all human beings should be granted equal liberty, opportunity, and fair conditions. This argument, at its basic principles, while not what Rawls himself intended, is applicable not only to Carens’ argument for open

⁶³ Carens, Joseph H. (1987). “Aliens and Citizens: The Case for Open Borders.” *The Review of Politics*, 49(2), Page 251., doi:10.1017/s0034670500033817

⁶⁴ Carens, Joseph H. (1987). “Aliens and Citizens: The Case for Open Borders.” *The Review of Politics*, 49(2), Page 215., doi:10.1017/s003467050003381

⁶⁵Carens, Joseph H. (1987). “Aliens and Citizens: The Case for Open Borders.” *The Review of Politics*, 49(2), Page 251., doi:10.1017/s0034670500033817

⁶⁶Carens, Joseph H. (1987). “Aliens and Citizens: The Case for Open Borders.” *The Review of Politics*, 49(2), Page 222., doi:10.1017/s0034670500033817

borders, but also to the need for asylum policy reform and an increased concern for the human dignity and conditions for asylees seeking protection in the United States.

In the following section I will describe some of the implications that the inhumane and discriminatory treatment of asylum seekers has on the broader human rights context. Then, I will outline another popular theory on asylum trends, and particularly the root cause of the recent spike in migration that we are seeing all over the world.

Implications for Human Rights

The United States not only has a state obligation based on international human rights law, and asylum/refugee law but also has transnational human rights obligations and correlative duties to respect, protect, and fulfill the human rights of anyone who steps foot on its soil. I will describe what these terms mean through the example of the extremely dangerous treks that asylum seekers and migrants take through treacherous terrain in order to hopefully arrive at the United States border. When we talk about human rights violations, it is essential that we talk about who is responsible. It is not always easy to clearly identify responsibility, because it is typically more than one entity that is violating its obligations to respect, protect, and fulfill human rights. For example, with the asylum seekers that are making the perilous journey from Central American countries to the United States border, it is essential to recognize the responsibility of the country of origin and their current government administration and law enforcement. It is also important to recognize, as I explained earlier in this article, the responsibility that the United States bears in regard to the instability that exists in these countries right now. And of course, the most obvious of all, the United States' violations of its human rights obligations in terms of its treatment of the recent arrivals at our southern border with

Mexico. I have explained how the United States' treatment of asylum seekers, through measures such as MPP, Metering, and the Transit Rule, have violated international human rights law, U.S. domestic asylum and refugee policies, and more generally, the spirit of asylum. However, as signatories to United Nations protocols and declarations, states have an obligation not only to respect the spirit of the declared human right(s), but to protect and fulfill it within its own government, and in regard to the treatment of that state's own people. Making such a promise implies a "correlative duty". The concept of correlative duties contends that if someone has a certain human right, then someone else bears an obligation, or a *duty*, to respect, protect, and fulfill that right. If all asylum seekers have the right to have their cases processed while waiting on the other side of the border in the United States, then the United States has a correlative duty with respect to that right, and they must act in such a way that respects, protects, and fulfills the asylum seekers right to temporary protection while their asylum claim is being processed.

Another popular theory to explain the recent surge of groups en masse seeking asylum from countries all around the world is climate change. This argument states that the indirect cause of all of this violence, civil conflict, and economic instability is the fact that regions like Central America and Mexico are experiencing droughts, heat waves, and disease at an unprecedented level, and these environmental changes and challenges are not only causing health problems in individuals, but are contributing to economic collapse because the changing environment is hurting farmers by killing its crops. These desperate conditions are making people more vulnerable, and more prone to becoming involved in criminal activity such as gangs not only because of personal stress factors, but also because of the economic stress that they would not be burdened by if it were not for the climate warming and affecting their means of

survival.⁶⁷ This argument of “climate refugees” further stresses the question of who should bear responsibility for this crisis. The United States is the biggest contributor of CO2 emissions per capita in the world, and plays a major role in the devastating effects of climate change that are occurring today.⁶⁸ By not helping those who are affected by catastrophes and human rights abuses that the United States had a major hand in producing, how can they conscionable consider themselves morally superior, or as “global champions of human rights”?

Additionally, the question of economic migrants versus asylum seekers and refugees also poses a philosophical challenge in terms of the upholding and uplifting of migrants’ human rights. This contention has been used as one of the main excuses by governments who do not want to offer aid to asylum seekers. Many conservative, anti-immigrant politicians and governments are rallying against so-called “fake refugees”⁶⁹ which they believe to be people who are making up fictional asylum claims in order to more easily migrate when they really only want to do so for economic reasons. This is a conspiracy theory promulgated by the conservative right of many world powers in order to deflect any of their own responsibility to respect, protect and fulfill. This kind of rhetoric, especially when promoted by powerful world leaders, further complicates the human rights concerns in regard to asylum because it validates these inherently racist and xenophobic attitudes towards asylum seekers, and scapegoats them as criminals rather than victims of oppression and abuse. This culture of scapegoating immigrants is very powerful and very dangerous because it leads to the acceptance of racist attitudes and believes and a mass

⁶⁷United Nations. “Climate Change and Disaster Displacement.” *UNHCR*, <https://www.unhcr.org/en-us/climate-change-and-disasters.html>.

⁶⁸United Nations. “Climate Change and Disaster Displacement.” *UNHCR*, <https://www.unhcr.org/en-us/climate-change-and-disasters.html>.

⁶⁹Smith, Saphora. (2019). “Europe Grapples with Distinction between Refugees and Economic Migrants.” NBC Universal News Group. Retrieved from <https://www.nbcnews.com/news/world/europe-grapples-distinction-between-refugees-economic-migrants>

denial of any wrongdoing. Additionally, it allows injustices to continue without any consequences for those committing them.

American Culture of Racism and Mass Denial

It is impossible to talk about what is happening at the border between the U.S. and Mexico without addressing the way in which the culture of sheer racism and xenophobia in America play a role. In her book, *Detain and Deport*, Nancy Heimstra highlights the role that racism plays in the entire immigration conversation. According to Heimstra, the dominant anti-immigrant narrative in the United States is “critically connected” to “narratives of national identity and plays an important role in the performance of discourses of (homeland) security” (98). Thus, these ideologies which are exacerbated by the current administration, reinforce processes of “immigrant securitization, racialization, and criminalization”⁷⁰, particularly of Latin American immigrants. The culture of racism in this country allows for broader-scale, institutionalized racism in the immigration context.

Evidently, the United States has violated nearly every single one of its international human rights obligations to asylum seekers, as well as the moral rights, and basic rights to physical security and subsistence that Henry Shue outlines in his essay. It has not treated every human being as a “free and equal moral persons” as Caren describes. Yet, there is a culture in the United States of ignorance and mass denial in regard to the role we play in human rights violations at home and abroad, and the culpability we must be accountable for in instances of human suffering that we produce. Mass denial of the severity of this very real humanitarian crisis present at our nation’s southern border is alive and well in the United States, especially on the

⁷⁰Heimstra, N. (2019). *Detain and deport: the chaotic U.S. immigration enforcement regime*. Athens, GA: The University of Georgia Press. Page 98.

conservative political right. This mass denial of humanitarian crises- in particular what occurs at the border between the United States and Mexico- is by no means a new phenomenon. However, the election of Donald J. Trump, and the zealous racist and xenophobic anti-immigrant rhetoric that he has been spewing to the masses of the American public have only exacerbated this cultural denial that exists in our country on the issue of immigration. This kind of extreme mass denial also influences policies that are put in place.

Conclusion

Historically, the United States has implemented many inhumane, racist, and xenophobic measures to arbitrarily prohibit certain populations from easily migrating to and seeking refuge in our “land of opportunity”. While the Bush and Obama administrations respectively have enacted many questionable and problematic immigration measures in the last two decades that are deserving of criticism, the Trump administration has taken anti-immigrant policy to the next level. As I stated in the introduction to this article, there is a lack of scholarship that discusses and analyzes the discrepancies between the asylum process for Mexicans and Central Americans who wish to seek refuge in the United States. This paper was my attempt at filling that gap so that people outside of the immigration field could have a substantial understanding of what is occurring in regard to this humanitarian crisis at the U.S./Mexico border and how individuals are treated based on their countries or origin.

What is happening to asylum seekers at our southern border is not only an issue of international law and domestic asylum policy, but also of humanity and the United States’ fundamental responsibility as a major world power to respect, protect, and fulfill inalienable universal human rights. As Americans, when we look back on this time in history, and the

blatantly racist way in which the Trump administration cruelly violated the human dignity of tens of thousands of individuals, I hope that we will be ashamed that we have failed so dismally in upholding the pro-immigrant values spelled out by Emma Lazarus on the Statue of Liberty. I also hope that other countries around the world, especially those which are powerful and have comparable resources, will learn something from our mistakes and treat those arriving on their shores a little better.

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