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ASYLUM ACCESS

Immigrants and asylum-seekers have faced an unending series of attacks over the last few years, as the Trump administration has sought to scapegoat and exclude them at every turn. From excluding, traumatizing, and criminalizing people seeking safety at the U.S.-Mexico border to jailing immigrants and asylum-seekers in facilities that are tinderboxes for the spread of COVID-19, U.S. asylum and detention policies have violated human rights and exacted tremendous human costs.

ASYLUM ACCESS

DOMESTIC

THE ISSUE

Seeking asylum is a human right. But in recent years, people in search of safety at the Mexico/U.S. border, including families and children, have been punished for seeking protection. These include people fleeing levels of violence comparable to war zones in El Salvador, Honduras, and Guatemala and widespread political repression in Venezuela, Nicaragua, and Cuba – as well as a growing number of people forcibly displaced from extra-continental countries due to persecution and conflict.

Instead of offering refuge to people who need it, the United States has devised a series of policies to offshore them, criminalize them, and deny them protection. It has done this claiming it doesn't have adequate resources to respond, all while spending billions of dollars on border militarization.

Since March 2020, asylum access at the Mexico/U.S. border has been virtually suspended. Using the pandemic as pretext, the United States has unlawfully expelled tens of thousands of people, including families and unaccompanied children, under an order nominally issued by the Centers for Disease Control and Prevention (CDC) which empowers border agents to summarily push back to Mexico or rapidly return them to their countries of origin. The UN Refugee Agency has made clear that blanket measures restricting access to asylum cannot be justified – yet this order is exactly that; furthermore, the order does nothing to further the public health justifications on which it is purportedly based. The administration has also introduced a dizzying, unfounded series of new anti-asylum eligibility rules, including a ban on asylum for people who transit through any third country on their way to the United States; a new, wide-ranging rule that radically redefines every element of the refugee definition; and a blanket eligibility bar based on public health, which is rooted in xenophobia and discrimination rather than science.

Before it suspended asylum altogether, the United States has forced tens of thousands of people seeking safety at our border to wait in dangerous, precarious conditions in Mexico. Under “Remain in Mexico,” the United States has forcibly returned close to 60,000 people to Mexico while they undergo U.S. asylum proceedings, where they are left to the mercy of cartels and criminal elements, which regularly extort, kidnap, and assault them. In 2019, the United States strong-armed the governments of Guatemala, El Salvador, and Honduras into signing a series of unsafe third country agreements, which offload U.S. obligations to process asylum claims to third countries whose conditions are anything but safe for asylum-seekers.

In 2018, thousands of parents seeking asylum were criminally charged under a “zero tolerance” policy that led to the forcible separation and irreversible traumatization of families. Thousands more families were separated by U.S. authorities both before and after that policy. Even humanitarian aid workers and lawyers working with asylum-seekers have been criminalized, targeted, surveilled, and harassed for their lifesaving work.

RECOMMENDATIONS

- Rescind disastrous and unlawful policies restricting access to asylum at the border, including the CDC order authorizing mass expulsions, the Remain in Mexico policy, unsafe third country agreements, and bans on asylum based on manner of entry or previous transit through other countries.
- Restore a fair, just, and welcoming asylum process at the border, including by ensuring that people seeking safety are not detained as default, deploying medical and child welfare experts, and ensuring that immigrants and asylum-seekers in proceedings are guaranteed access to counsel.
- Ensure redress for people who have faced harm or been denied asylum as a result of unlawful Trump-era asylum policies, including (1) an opportunity for asylum-seekers to testify to the harms they suffered as a result of policies like Remain in Mexico and various asylum bans and (2) the establishment of mechanisms to ensure they can have their claims fairly reheard.

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IMMIGRATION DETENTION

DOMESTIC

THE ISSUE

The Trump administration is failing to adequately protect tens of thousands of asylum-seekers and migrants detained by Immigration and Customs Enforcement (ICE), who are held in over 200 detention centers across the United States.

In recent years, the use of immigration detention has ballooned. Today, tens of thousands of immigrants, including thousands of asylum-seekers and families with children, are held in Department of Homeland Security (DHS) facilities throughout the country while they fight for their right to stay in the United States. Immigration detention serves as a form of punishment against people solely on the basis of their status and penalizes people who are fleeing persecution.

ICE has ample discretion to release all people in immigration detention. Yet, disregarding the cries of detained immigrants, medical experts, and advocates, it has failed to do so. Since the onset of the pandemic, COVID-19 has spread throughout detention facilities: as of October 2020, at least eight people had died after contracting the virus in detention, and over 6,500 detained people had tested positive for the virus. Experts have estimated that the virus is likely spreading rates much higher than DHS has publicized, a fear which has been borne out in the few facilities where ICE has engaged in mass testing: for example, in August, 90% of people detained at the privately operated ICE facility in Farmville tested positive for COVID-19.

Both people in detention and their lawyers have shared harrowing details of ICE's reckless endangerment of people in its custody, in violation of Centers for Disease Control and Prevention (CDC) standards on the prevention of COVID-19 in places of detention. ICE and its detention facilities have failed to provide detainees with sufficient soap and sanitizer or adequate social distancing. Additionally, ICE has not abided by CDC standards for quarantining and medical isolation, instead "cohorting" people presumed to be positive for the virus, a form of treatment one medical expert has likened to "COVID-19 torture." As COVID-19 cases increase exponentially across the United States, detained people have launched hunger strikes in multiple ICE immigration detention facilities, demanding to be released, and have often been met with brutal repression by guards and security personnel.

Now, ICE's detention practices are exacerbating a crisis beyond U.S. borders: tens of thousands of people have been deported during the COVID-19 pandemic, including hundreds of people who tested positive after contracting the virus after being detained in unsafe and unsanitary US detention facilities. Deported people have reported facing exposure to the virus, rights-abusing quarantine regimes in their countries of return, and stigma.

The U.S. government has the authority and obligation to release all people in immigration detention and to halt deportations. ICE's unnecessary and punitive detention of migrants and asylum seekers, based solely on their migration status, constitutes ill-treatment and discriminatory denial of the right to health, particularly for older people and other individuals at higher risk of serious harm or death if they contract the virus. The arbitrary detention of migrants and asylum seekers only pushes them deeper into harm's way, in unhygienic and unsafe environment.

This public health crisis presents an opportunity for the United States to reform its practice of

needless, costly, and punitive immigration detention, which has caused tremendous human suffering and has caused a crisis of contagion during the pandemic.

THE HUMAN COST

Steven Tendo is a 35-year-old pastor and asylum-seeker who fled from torture and other severe human rights violations in Uganda and requested asylum in the United States. Since December 2018, he has been detained at an immigration detention facility in Los Fresnos, Texas. He is at imminent risk of return to danger in Uganda, where he fears he will be killed, while his health is deteriorating from inadequate medical care for diabetes amidst a COVID-19 outbreak in the Los Fresnos detention facility. Amnesty is demanding that authorities stop Pastor Steven's deportation and release him immediately on parole while he continues to fight for the right to seek asylum.

RECOMMENDATIONS

- Immediately release people in ICE detention, beginning with populations at particular risk of experiencing serious harm upon contracting COVID-19, including the elderly and those with underlying conditions. For the limited time people must remain in detention, ensure appropriate measures to prevent the spread of COVID-19 within detention facilities, such as widespread access to testing and treatment and adequate access to soap, sanitizer and disinfecting materials. Those who are released from detention in light of the COVID-19 pandemic must not automatically be re-detained once the crisis lifts, and families must be released together.
- Cease the use of immigration detention as a default response, and end the involvement of private prisons in immigration detention. Robustly expand use of community-based case management support where necessary, including the Family Case Management Program, while ensuring they do not simply operate as detention by another name. Issue guidance clarifying that custody alternatives meet the definition of "custody" under the mandatory detention statute (INA § 236(c)).
- Place a temporary moratorium on deportations and other forced returns in light of the COVID-19 pandemic as well as the architecture of unlawful policies that are powering many deportations. The moratorium should remain in place for the duration of the pandemic and until the administration has had an opportunity to review and address the multitude of anti-asylum policies in place.

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