

To:

Luis Videgaray Caso, Minister of Foreign Affairs
Alfonso Navarrete Prida, Minister of the Interior

Mike Pompeo, Secretary of State
Kirstjen Nielsen, Secretary of Homeland Security

Re: NGO Statement Opposing Mexico as a ‘Safe’ Third Country
Date: May 22, 2018

The United States and Mexican governments met in Washington, DC, on May 17-18, 2018, to discuss the possibility of establishing a bilateral safe third country agreement. “Safe third country” is a legal designation indicating that the country is capable of providing adequate protection to asylum seekers such that the United States need not provide refuge to them. This type of agreement would prevent anyone who traveled through Mexico from asking for protection from the U.S. government and require they go back to Mexico to seek humanitarian protection. The process presumes migrants have the ability to access protection in Mexico and that it is a safe place to stay.

The below human rights, refugee rights, migrants’ rights, children’s rights, and women’s rights organizations strongly condemn the possibility of the United States and Mexico signing such an agreement. An agreement of this type would violate the United States’ international protection commitments to people seeking protection. As recently as February 2018, the Mexican National Human Rights Commission (CNDH) issued an urgent call to the Mexican government out of concern that the Mexican Commission of Assistance to Refugees (COMAR) was collapsing and urging the government to affirm its commitment to refugee protection.¹ Mexico is not safe for many migrants, and its asylum system lacks capacity to process more than a tiny fraction of cases of individuals seeking, and in need of, international protection.

Denying access to protection in the United States and forcing migrants to seek protection in Mexico would be devastating for those fleeing violence in their own countries, as Mexico has repeatedly failed to protect the most vulnerable. Women and girl migrants in Mexico face sexual abuse at an alarming rate. A recent survey of 429 Central American migrants in Mexico found that 31.4% of women and 17.2% of men had been sexually abused in transit in Mexico.² Not

¹ La CNDH hace un Llamado Urgente al Gobierno Federal ante el Posible Colapso del Sistema de Protección a Refugiados en México, February 25, 2018, http://www.cndh.org.mx/sites/all/doc/Comunicados/2018/Com_2018_046.pdf

² Forced to Flee Central America’s Northern Triangle, Doctors Without Borders, May 2017, p. 11, https://www.doctorswithoutborders.org/sites/usa/files/msf_forced-to-flee-central-americas-northern-triangle_6.30.pdf

only women and girls are targeted; in fact many migrants in transit in Mexico are the victims of crimes, including kidnappings, homicides, sexual assault, robbery, and extortion that are perpetrated by organized criminal groups, corrupt migration authorities, and the police who are charged with protecting them. An alarming 68.3% of the same group of Central American migrants surveyed reported being victims of any type of violence while in Mexico.³ Mexico's own official figures show that between 2014 and 2016, less than one percent of the crimes against migrants reported to federal authorities or authorities in states frequented by migrants (Chiapas, Oaxaca, Tabasco, Sonora, and Coahuila) resulted in a conviction of those responsible.⁴ Increasing murders, kidnapping, sexual and gender-based violence, and other violence in Mexico has also forced many Mexicans to flee to the United States in search of safety—22,605 Mexicans sought asylum in the United States in 2017.⁵

The UN Committee for Migrant Workers recently expressed its concern for the large number of families, pregnant women, trafficking victims, asylum seekers, and other persons in need of special protection being held in immigration detention in Mexico.⁶ These people are not adequately screened for protection concerns. A monitoring mission of Mexico's National Migration Institute's (INM) Citizen Council found that Mexico's migration policy lacks processes to identify and ensure protection for persons fleeing violence or instability in their home countries, as it is primarily oriented toward the detection, detention, and deportation of migrants.⁷ The majority of detained migrants interviewed reported never having received information about their right to apply for asylum or that the information they did receive was not clear. Mexico's National Human Rights Commission's monitoring of detention centers has further found that conditions in several centers do not guarantee a safe and dignified stay and put migrants at risk of torture and mistreatment.⁸

Individuals seeking protection in Mexico face many obstacles, including remaining in detention while their claim is being processed in the majority of cases, and lack of access to legal advice to assist in navigating Mexico's immigration and refugee laws. These challenges are reflected in the

³ Forced to Flee Central America's Northern Triangle, Doctors Without Borders, May 2017, p. 11, https://www.doctorswithoutborders.org/sites/usa/files/msf_forced-to-flee-central-americas-northern-triangle_6.30.pdf

⁴ Ximena Suárez, Andrés Díaz, José Knippen, and Maureen Meyer, Access to Justice for Migrants in Mexico, July 2017, https://www.wola.org/wp-content/uploads/2017/07/Access-to-Justice-for-Migrants_July-2017.pdf

⁵ United Nations High Commissioner for Refugees Population Statistics (UNCHR), http://popstats.unhcr.org/en/asylum_seekers_monthly

⁶ United Nations Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Concluding observations on the third periodic report of Mexico, September 27, 2017, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CMW%2fC%2fMEX%2fCO%2f3&Lang=en

⁷ Voces Mesoamericanas, Executive Summary, People in Migratory Detention in Mexico, July 2017, <http://vocesmesoamericanas.org/noticias/resumen-ejecutivo-personas-en-detencion-migratoria-en-mexico/>

⁸ Mexican National Human Rights Commission (CNDH), National Mechanism for the Prevention of Torture, Recommendation M-07/2017, November 27, 2017, http://www.cndh.org.mx/sites/all/doc/Recomendaciones/PrevencionTortura/RecPT_2017_007.pdf

low number of Central American asylum claims filed in Mexico: in 2017, of the 81,136 Guatemalans, Salvadorans, and Hondurans detected by migration authorities in Mexico, only 8,656 filed for asylum,⁹ a clear sign that Central Americans continue to be misinformed about their right to seek asylum, or do not feel safe to do so in Mexico.

Obstacles to seeking and receiving asylum in Mexico are often compounded for unaccompanied children. Child protection officials working for Mexico's immigration agency (INM) and officials from Mexico's child welfare agency (DIF) charged with identifying the protection needs of unaccompanied children in Mexico do not spend sufficient time with children to identify protection needs and frequently discourage children from seeking refugee status, telling children they will face long-term detention if they seek protection. Despite the country's recently implemented official regulations prohibiting the detention of children for migration purposes,¹⁰ many children continue to be detained in INM custody. According to official statistics, 18,300 children were detained by immigration authorities in 2017;¹¹ even those transferred to DIF custody are in locked-door facilities, in conditions that dissuade them from seeking protection. Officials routinely fail to inform children of their right to seek refugee status or do so in terms not understood by children.¹² That unaccompanied children are discouraged from or do not feel safe to seek asylum in Mexico is reflected in the fact that less than 1% of unaccompanied children detected in Mexico file for asylum, and during the first nine months of 2017, Mexico deported 88% of the children it detained.¹³

When unaccompanied children do file for asylum in Mexico, they are interviewed by COMAR officials who often lack expertise in child-sensitive questioning and sometimes fail to consider child-specific protection issues, as well as current country conditions relevant to refugee claims.¹⁴ Rather than increasing protection for unaccompanied children as capacity increases, COMAR actually decreased protection for unaccompanied child asylum seekers from 2016 to 2017. Of the 175 unaccompanied children's claims adjudicated to completion in Mexico in 2016,

⁹ Mexican Secretary of the Interior (SEGOB), Statistical Bulletin, Foreigners Presented and Returned, 2017, http://www.politicamigratoria.gob.mx/es_mx/SEGOB/Extranjeros_alojados_y_devueltos_2017; Mexican Commission of Assistance to Refugees (COMAR), Statistics, 2017, https://www.gob.mx/cms/uploads/attachment/file/290340/ESTADISTICAS_2013_A_4TO_TRIMESTRE_2017.pdf

¹⁰ International Detention Coalition, Mexico Includes Non-detention of Migrant Children in Regulations for New Child Rights Law, December 5, 2015, <https://idcoalition.org/news/mexico-regulations-for-new-child-rights-law/>; Regulations for the National Child Rights Law, Mexico, Article 111, http://www.diputados.gob.mx/LeyesBiblio/regley/Reg_LGDNNA.pdf

¹¹ Mexican Secretary of the Interior (SEGOB), Statistical Bulletin, Events of Minors Presented Before the Migration Authority, 2017, http://www.gobernacion.gob.mx/es_mx/SEGOB/Boletines_Estadisticos

¹² Kids in Need of Defense, Childhood Cut Short, Sexual and Gender Based Violence Against Central American Migrant and Refugee Children, June 2017, https://supportkind.org/wp-content/uploads/2017/06/Childhood-Cut-Short-KIND-SGBV-Report_June2017.pdf

¹³ Mexican Secretary of the Interior (SEGOB), Statistical Bulletin, 2017, http://www.politicamigratoria.gob.mx/work/models/SEGOB/CEM/PDF/Estadisticas/Boletines_Estadisticos/2017/Boletin_2017.pdf

¹⁴ Human Rights First, Dangerous Territory, Mexico Still Not Safe for Refugees, July 2017, <http://www.humanrightsfirst.org/sites/default/files/HRF-Mexico-Asylum-System-rep.pdf>

102 were recognized as refugees (58.2 percent approval rate), but in 2017 only 36 unaccompanied children out of 104 cases adjudicated to completion were granted refugee status (34.6 percent approval rate).¹⁵ Mexico's General Children's Law and Migration Law require consideration of the best interests of the child in all proceedings affecting them, and require Best Interests Determinations (BIDs) prior to the deportation of a child to ensure children are not deported to persecution or other significant danger. In reality, however, the law is not implemented.¹⁶ Best Interest Determinations are conducted in only a limited number of unaccompanied children's cases prior to deportation due to lack of resources, capacity, and in some cases, will by Child Protection Authority offices. Some children have been deported during the Best Interest Determination process. And while Mexico's child protection law provides for representation of migrant children by the Child Protection Authority, in reality, attorneys of the Child Protection Authority offices lack capacity to represent unaccompanied children and rarely accompany them to or represent them in refugee status interviews or on other immigration relief claims.¹⁷

COMAR also lacks financial, technical, and human resources, and the Mexican government has not shown the political will to address these shortcomings. The agency currently has a backlog of thousands of pending asylum applications and announced last October it would indefinitely halt all decisions for claims made in Mexico City, a move recently declared unconstitutional by a federal judge.¹⁸ COMAR only has three offices throughout Mexico to handle all of the asylum applications it receives, and it does not have any offices north of Mexico City. This leaves those who arrive at the U.S.-Mexico border without protection, and at risk of falling prey to smugglers, kidnappings, and violence.¹⁹ Organizations have also documented obstacles to access asylum at Mexico's southern border, even where COMAR does have offices.²⁰ In 2017, COMAR received 14,596 claims,²¹ the greatest number of asylum claims it has received in any year to date, but

¹⁵ Mexican Commission of Assistance to Refugees (COMAR), Statistics, https://www.gob.mx/cms/uploads/attachment/file/290340/ESTADISTICAS_2013_A_4TO_TRIMESTRE_2017.pdf

¹⁶ Kids in Need of Defense, Childhood Cut Short, Sexual and Gender Based Violence Against Central American Migrant and Refugee Children, June 2017, https://supportkind.org/wp-content/uploads/2017/06/Childhood-Cut-Short-KIND-SGBV-Report_June2017.pdf

¹⁷ Kids in Need of Defense, Childhood Cut Short, Sexual and Gender Based Violence Against Central American Migrant and Refugee Children, June 2017, https://supportkind.org/wp-content/uploads/2017/06/Childhood-Cut-Short-KIND-SGBV-Report_June2017.pdf

¹⁸ International Detention Coalition, Agreement that Suspends Asylum Proceedings is Unconstitutional, April 20, 2018, <https://idcoalition.org/news/mexico-acuerdo-que-suspende-procedimiento-de-asilo-es-inconstitucional/>

¹⁹ WOLA, Latin America Working Group, Kino Border Initiative, Situation of Impunity and Violence in Mexico's Northern Border Region, March 2017, http://lawg.org/storage/documents/Situation_of_Impunity_and_Violence_in_Mexicos_northern_border_LAWG_WOLA_KBI_3.9.16.pdf

²⁰ Daniella Burgi-Palomino and Emma Buckhout, Does my Story Matter? Seeking Asylum at Mexico's Southern Border, July 2017, http://lawg.org/storage/documents/LAWGEF_MX_Asylum_Report_July_2017.pdf

²¹ Mexican Commission of Assistance to Refugees (COMAR), Statistics, https://www.gob.mx/cms/uploads/attachment/file/290340/ESTADISTICAS_2013_A_4TO_TRIMESTRE_2017.pdf

only decided 30% of those claims.²² The agency has no capacity to adjudicate the number of asylum claims received in the United States. In 2017, 90,104²³ asylum claims were filed in the United States by asylum seekers from Central America alone; an additional 29,832²⁴ were filed by Venezuelan asylum seekers, many of whom enter the U.S. through Mexico. Under a safe third country agreement, these individuals would be required to file for asylum in Mexico. While it is taking steps to reduce the backlog, the system would further collapse if COMAR had to handle this many more applications.

We strongly urge the United States and Mexico to abandon negotiations on such an agreement and instead to uphold their responsibility under international and national law to offer access to international protection to all those seeking it, ensuring due process and respect for family unity.

Respectfully,

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²² Human Rights First, Dangerous Territory, Mexico Still Not Safe for Refugees, July 2017, <http://www.humanrightsfirst.org/sites/default/files/HRF-Mexico-Asylum-System-rep.pdf>

²³ United Nations High Commissioner for Refugees Population Statistics (UNCHR), http://popstats.unhcr.org/en/asylum_seekers_monthly

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