

March 25, 2021

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**Kamala Harris, Vice President of the United States,**

**Antony J. Blinken, Secretary of State,**

**Alejandro Mayorkas, Secretary of the Department of Homeland Security,**

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**Patrick Ventrell, Director of the Office of Central American Affairs, U.S. Department of State,**

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We, the undersigned organizations and academics, are writing to express our hope for a change in the narrative and vision of U.S. immigration policies. In this sense, as organizations and individuals who study, accompany and work on human mobility with a human rights approach, we place ourselves at your disposal to collaborate in favor of actions that place people and their human dignity at the center, addressing those root causes of forced mobility in the region.

It is in this spirit that we remain attentive to the future of U.S. immigration policies, as well as the impact they have on the respective policies of Mexico, Guatemala, El Salvador and Honduras.

For years, we the undersigned have provided humanitarian assistance, advice and legal representation to thousands of people who, for various reasons, have been forced to leave their countries of origin. Throughout this time, we have been able to observe firsthand the effects of the policies implemented by different governments, some of them with a more humanitarian approach, others with a criminalizing conception of migration. From this experience, we have detected two main pillars necessary to build a successful migration policy: attention to and prevention of forced mobility.

The first point—attention—refers to short-term measures aimed at managing migration that is already occurring, including people already in the new destination country, as well as those in transit in a third country other than their own and the destination country. This is the type of measures that migration policies tend to focus on, which can have a humanitarian approach (for example, in January 2019 when the Mexican government granted humanitarian support to migrant caravans and offered them shortened and expedited procedures to obtain migration regularization),<sup>1</sup> or a repressive approach (for example, in January 2021 when the Guatemalan army used excessive force to dissuade a migrant caravan attempting to cross into Mexico).<sup>2</sup>

These measures are of paramount importance, as they directly and immediately affect the lives and rights of migrants. In this regard, we welcome the executive orders signed by President Biden to halt construction of the U.S.-Mexico border wall, end the Muslim travel ban, include non-citizens in the U.S. census, modify Immigration and Customs Enforcement (ICE) arrest priorities, and send the U.S. Citizenship Act of 2021 to Congress. All of these policies have a respectful approach to human rights and show a comprehensive understanding of the need to enable channels for migration and immigration regularization.

However, there is still much to be done with respect to attention measures, particularly regarding persons in need of international protection. Since March of last year, the U.S.-Mexico land border has been closed to non-essential travel. This has had an enormous impact on people seeking asylum in the U.S., since, on the one hand, they run the risk of remaining in border cities where their lives or physical integrity are at great risk; and, on the other hand, asylum procedures are suspended. There is also widespread uncertainty as to what will happen to the people who were subject to the Migrant Protection Protocols (MPP), also known as the "Remain in Mexico" policy.

In addition to these problems that have gone unanswered, the insecurity that migratory flows face while trying to reach the border is a constant that has not stopped and, on the contrary, has worsened. For example, in January of this year, a mixed group of Mexican and Guatemalan migrants and asylum seekers on their way to

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<sup>1</sup> EFE. 19 January 2019. Mexico welcomes caravan migrants and offers residency permits. Available at: <https://www.france24.com/es/20190119-mexico-caravana-migrante-asilo-residencia>.

<sup>2</sup> BBC News. Migrant caravan: "I wish the army fought organized crime in Guatemala with that vehemence, with that force," says the country's human rights ombudsman. Available at: <https://www.bbc.com/mundo/noticias-america-latina-55715753>.

the U.S. were intercepted by a group of armed men. On that day, 19 migrants were gunned down in the cars in which they were traveling, and their bodies were subsequently burned and abandoned on the Camargo highway, less than 70 km from the U.S. border.<sup>3</sup> Investigations are still open, but so far, 12 state police officers have been arrested for their involvement in the events.<sup>4</sup> Unfortunately, this type of situation is not unusual. A few years ago, a similar massacre occurred in the same state of Mexico, in which 72 migrants were killed and their bodies abandoned.<sup>5</sup> It is clear that this insecurity and constant risk respond to the fact that the flow of migrants must pass through northern Mexico, which is historically one of the areas of the country where organized crime and generalized violence predominate.

Therefore, public policies that seek to provide responses that contravene international human rights standards, such as the MPP, have had and continue to have serious consequences for the rights of asylum seekers, who were forced to remain in northern Mexico while their immigration proceedings were being resolved in the U.S. It is worth noting that, during this time, they did not receive any type of support from the Mexican or U.S. governments and many of them were victims of atrocious crimes such as homicide, sexual violence, kidnapping or torture at the hands of organized crime.<sup>6</sup> In this regard, for example, the Inter-American Commission on Human Rights (IACHR) noted with concern that, in recent years, American immigration policy has been based on “the implementation of policies aimed at securitizing borders and criminalizing migration, which have resulted in the increasing use of immigration detention and rejections at the border”.<sup>7</sup>

Although the current health emergency generates legitimate restrictions to free mobility, it is clear that this reality cannot be used as an excuse to adopt measures that disregard the rights of persons in need of international protection. In this regard, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CWW) and the UN Special Rapporteur on the Human Rights of Migrants have pointed out that States must respect the prohibition of rejection at the

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<sup>3</sup> Animal Político. January 28, 2021. Grupo de migrantes sobrevivió a masacre de Camargo y está en EU, dice funcionario de Guatemala. Available at: <https://www.animalpolitico.com/2021/01/migrantes-sobrevivieron-masacre-camargo-eu-guatemala/>.

<sup>4</sup> Aristegui Noticias. February 2, 2021. 12 police arrested for massacre of migrants in Camargo, Tamaulipas. Available at: <https://aristeguinoticias.com/0202/mexico/detienen-a-12-policias-por-masacre-de-migrantes-en-camargo-tamaulipas/>.

<sup>5</sup> Deutsche Welle. August 23, 2020. Massacre of migrants in Tamaulipas: relatives claim 10 years of impunity. Available at: <https://p.dw.com/p/3hM4P>.

<sup>6</sup> On this, see the joint research report by Human Rights Watch, Stanford University's Human Rights in Trauma Mental Health Program, and Willamette University's Child and Family Advocacy Clinic. January 2021. *"Like I'm Drowning": Children and Families Sent to Harm by the U.S. 'Remain in Mexico' Program*. Available at: <https://www.hrw.org/report/2021/01/06/im-drowning/children-and-families-sent-harm-us-remain-mexico-program>.

<sup>7</sup> IACHR. September 16, 2019. IACHR conducted a visit to the southern border of the United States of America. Available at: <https://www.oas.org/es/cidh/prensa/comunicados/2019/228.asp>.

border and must ensure the continuity of international protection procedures in the context of the pandemic.<sup>8</sup>

Accordingly, closing land borders indefinitely and absolutely is not a proportional measure in the face of the pandemic, as it ignores the imminent danger in which asylum seekers find themselves. It is therefore imperative that policies be adopted that reconcile the protection of public health with the right of refugees to seek and receive international protection.<sup>9</sup>

For this reason, we note with concern the current situation at the border. On the one hand, some Central American migrant families are being deported to Mexico without knowing that they would be taken to this country and exposing them to a dangerous situation.<sup>10</sup> On the other hand, other families have been allowed to continue their asylum application without the necessary documents to appear before an immigration court.<sup>11</sup> This, in addition to the fact that Border Patrol Agents continue to repeat, "The Border is closed, do not come!", has generated great confusion as to what criteria the U.S. is using to accept some families while deciding to expel others.<sup>12</sup>

Regarding the measures to prevent forced mobility, it should be noted that these will only have an effect in the medium and long term and will not immediately stop the migratory flows of people seeking international protection. It is worth remembering that the causes that force people to leave their countries of origin are many and varied: violence, poverty, natural disasters, corruption, institutional weakness, etc.<sup>13</sup> However, they all have something in common, which is their structural and systematic nature. None of these aspects are isolated or new; indeed, these structural causes have affected our region for decades, despite various efforts to address them.

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<sup>8</sup> CCW and Special Rapporteur on the Human Rights of Migrants. Joint Guidance Note on the Impacts of the COVID-19 Pandemic on the Human Rights of Migrants. Available at: <https://www.ohchr.org/Documents/Issues/Migration/CMWSPMJointGuidanceNoteCOVID-19Migrants.SP.pdf>.

<sup>9</sup> See the statement by U.S. public health experts on the same subject: "Letter to HHS Secretary Azar and CDC Director Redfield Signed by Leaders of Public Health Schools, Medical Schools, Hospitals, and Other U.S. Institutions". Columbia University Mailman School of Public Health. March 18, 2020. Available at: <https://www.publichealth.columbia.edu/public-health-now/news/public-health-experts-urge-us-officials-withdraw-order-enabling-mass-expulsion-asylum-seekers>.

<sup>10</sup> The New York Times. March 24, 2021. Images of Confusion, Then Anguish: Migrant Families Deported by Surprise. Available at: <https://www.nytimes.com/2021/03/19/world/americas/mexico-border-deportations.html>.

<sup>11</sup> Los Angeles Times. March 22, 2021. Overwhelmed, Border Patrol releases migrants without court paperwork, stirring confusion. Available at: <https://www.latimes.com/world-nation/story/2021-03-22/texas-border-patrol-migrants>.

<sup>12</sup> For more, see Reuters. March 23, 2021. Expulsions, releases, hotels: Migrant families at U.S.-Mexico border face mixed U.S. policies. Available at: <https://www.reuters.com/article/us-usa-immigration-families-idUSKBN2BF161>.

<sup>13</sup> At the end of this document, we include an annex in which we analyze the specific causes that drive people to migrate from Mexico, Guatemala, El Salvador and Honduras.

It is worth pointing out that, regardless of how extreme the migration policy may be, migratory flows have clearly demonstrated that people in need of international protection will continue to seek safe spaces. Therefore, none of the policies implemented in the past have succeeded in reducing irregular migration, but rather have led to new border crossings and strategies with greater risks, particularly in relation to human trafficking and smuggling. Therefore, it is essential to analyze the migration phenomenon as a whole, understanding that migration is one of the multiple effects generated by the systematic human rights violations committed in the region, and that it is the latter that must be addressed as a priority.

Given the above, and based on close monitoring by the undersigned organizations of the issues outlined, we urge the U.S. government to do the following:

1. Guarantee the right to seek and receive asylum, adopting the necessary measures to facilitate access to the procedures available for this purpose. In order to achieve this, the State should eliminate barriers and unjustified delays during the course of the procedures, as well as provide free legal assistance to individuals, including interpretation and translation.
2. Generate an effective public policy for the 25,000 people who are awaiting a response to their asylum request from the U.S. government under the MPP program.<sup>14</sup>
3. Adapt national legislation to international human rights standards, observing mainly that: a. migration should not be considered a crime, since many of the people involved in migratory movements have international protection needs, and many others find themselves in situations of vulnerability and require special protection.
4. End expedited deportations and automatic returns, because they do not allow for an individualized and duly considered decision with due process guarantees, prioritizing the principle of *non-refoulement*.
5. Eliminate policies that seek prolonged immigration detention and adopt the necessary measures for the existence of alternative measures to the deprivation of liberty that allow migrants and asylum seekers to remain in U.S. territory. In addition, in consideration of the best interests of the child, any policy that seeks to detain children and/or adolescents and their families should be eradicated.
6. In response to the current health emergency, policies should be proposed to provide access to medical and health services, especially for pregnant migrant women and asylum seekers, as well as adequate food, access to water and hygiene for all persons. Likewise, the State must guarantee detainees protection against mistreatment and discrimination.

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<sup>14</sup> UNICEF Mexico. February 24, 2021. Inicia registro de personas bajo MPP en Matamoros. Available at: <https://www.unicef.org/mexico/comunicados-prensa/inicia-registro-de-personas-bajo-mpp-en-matamoros>. See also, DHS, February 11, 2021. DHS Announces Process to Address Individuals in Mexico with Active MPP Cases. Available at: <https://www.dhs.gov/news/2021/02/11/dhs-announces-process-address-individuals-mexico-active-mpp-cases>.

7. Implement measures aimed at guaranteeing the protection of defenders of the rights of migrants, asylum seekers and refugees, as well as the free exercise of their work and effective access to justice. Likewise, put an immediate end to threats and acts of harassment against them.
8. Create national and transnational mechanisms for the effective and timely identification of missing or deceased migrants, as well as the investigation, punishment and reparation of the violations committed in their cases.

We, the undersigned, recognize that States have the right to control their borders, define the requirements for entry, stay and expulsion of foreigners from their territory and, in general, to establish their migration policies. However, such policies, laws and practices must respect and guarantee the human rights of all migrants, which derive from their human dignity and which have been widely recognized by States on the basis of their international human rights obligations resulting from the international instruments on refugee law and statelessness.

Therefore, we, the undersigned, express our full willingness to discuss in greater detail the specific matters identified in this migratory context and the need to implement comprehensive and effective public policies to address it.

Please accept our regards.

Sincerely,

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