



HUMAN
RIGHTS
WATCH

“You Don’t Have Rights Here”

US Border Screening and Returns of Central Americans
to Risk of Serious Harm

SUMMARY

“I told them, I cried, that I couldn’t go back to my country... but they deported us.”

—Alicia R., deported from the United States following Border Patrol screening in August 2014 with her two children, ages 3 and 10, feared retribution from gang members in Honduras after witnessing the murder of her mother.¹

Migrants from Central America and Mexico seek to enter the United States without authorization for many reasons. Some seek economic opportunity. Others are fleeing violent gangs in countries such as Guatemala, El Salvador, and Honduras, where local officials may be complicit with gangs or otherwise unable or unwilling to provide meaningful protection. Many have mixed motives for leaving, including poverty, gang violence, and reuniting with separated family members.

At the US-Mexico border, US immigration officers issue deportation orders to unauthorized migrants in accelerated processes known as “expedited removal” or “reinstatement of removal.” These processes include rapid-fire screening for a migrant’s fear of persecution or torture upon return to their home country or an intention to apply for asylum. As detailed in this report, this cursory screening is failing to effectively identify people fleeing serious risks to their lives and safety.

¹ Human Rights Watch interview with Alicia R. (pseudonym), San Pedro Sula, Honduras, September 8, 2014. The names of migrants quoted in this report have been changed in the interest of the security of those concerned.



Alicia R. after being deported from the United States in August 2014 with her two children.

Photographs by Stephen Ferry



Graffiti of the MS-13 (Mara Salvatrucha) transnational criminal gang in San Pedro Sula, Honduras. Bullet holes are visible alongside the graffiti.



Honduran military police beside a bus with “Honduras is my land” painted on the side in downtown San Pedro Sula.

In the past two decades, US laws and policies have become less responsive to the risks faced by arriving migrants seeking asylum from persecution. In 1996, and subsequently in 2006, the US government severely undermined the system for identifying asylum seekers through the establishment and expansion of expedited removal. The flaws of that approach are readily apparent today at the US-Mexico border.

This report is based on 35 interviews with Central American migrants in detention in the US or recently deported to Honduras. While focusing on the situation facing Hondurans, our findings and recommendations apply to others coming to the US from Central America and Mexico.

All migrants we interviewed expressed a fear of returning to Honduras. Some of those who had been returned to Honduras had fear so acute that they were living in hiding, afraid to go out in public. Several who were recently deported provided accounts that, if true, should qualify them for asylum in the US. They said that, prior to attempting to enter the US, they had been subject to serious threats from gangs in Honduras. These included small business owners who refused to make demanded payments to gangs; victims of or witnesses to gang crimes, including murder and rape; and fear of a gang



Man shows scars from bullet wounds from gang attack that prompted him to flee to the United States. He is now back in San Pedro Sula after having been deported.



Murder victim in the central neighborhood of the Rivera Hernandez district of San Pedro Sula, Honduras, September 8, 2014.

forcibly recruiting a family's young son. Others fled abusive domestic partners or violence related to sexual orientation, both grounds for asylum under US law.

Virtually all of those we interviewed who had been apprehended at or near the border were deported summarily, via expedited removal or reinstatement of removal. Many said they had expressed their fears to US Border Patrol officials charged with screening for fear of return before being deported, but fewer than half of these were referred by US Border Patrol for a further assessment of whether they had a "credible" or "reasonable" fear of returning to Honduras. US law requires that when a migrant in expedited or reinstatement of removal expresses a

fear of return to their country of origin, they be referred to a US Citizenship and Immigration Services (USCIS) asylum officer for an interview to determine whether their fear might qualify them for asylum or other protection.

Human Rights Watch was unable to corroborate claims about the specific dangers interviewees said they faced in Honduras. However, the experiences they described and the fears they expressed should have led US immigration authorities to give their cases sufficient scrutiny before they were returned to their home country. The principle of nonrefoulement, the right not to be returned to a place where one would likely face threats to life or freedom or other serious harm, recognized under both US and international law, demands as much.

* * *

The vast majority of migrants crossing the US-Mexico border without authorization are placed in detention and undergo a hasty two-part assessment by US officials under either "expedited removal," for first-time border crossers, or "reinstatement of removal," for migrants who have previously been deported from the United States.

In either case, to pass the first stage an agent from Customs and Border Protection (CBP) or another US immigration agency must flag the person for a "credible fear" or "reasonable fear" assessment. To pass the second stage, migrants meet with an asylum officer from USCIS who determines whether their fear of return is "credible," or in reinstatement cases, "reasonable" – that is, whether there is a significant possibility they will prevail in immigration court on their claim for asylum or protection from deportation to a country where they are likely to face torture.

While there is evidence that fewer people are passing through this second stage,² Human Rights Watch's investigations in Honduras suggests that many asylum seekers are being turned away in the first stage. The failure of CBP and other US immigration agencies to identify asylum seekers raises concerns that the US government is violating its international human rights obligations to examine asylum claims before returning them to places where their lives or freedom would be threatened.

² Ana Campoy, "Illegal Immigrants Seeking Asylum Face a Higher Bar," Wall Street Journal, September 28, 2014, <http://online.wsj.com/articles/illegal-immigrants-seeking-asylum-face-a-higher-bar-1411945370> (accessed October 9, 2014).

Data for 2011 and 2012 that Human Rights Watch obtained from Customs and Border Protection under the Freedom of Information Act indicate that few Central American migrants are identified by CBP as people who fear return to their country in the first stage of the expedited removal process. The data show that the vast majority of Hondurans, at least 80 percent, are placed in fast-track expedited removal and reinstatement of removal proceedings but only a minuscule minority, 1.9 percent, got flagged for credible fear assessments by CBP. The percentages for Mexico, Honduras, El Salvador, and Guatemala are similar, ranging from 0.1 to 5.5 percent. By comparison, 21 percent of migrants from other countries who underwent the same proceedings in the same years were flagged for credible fear interviews by CBP.

CBP has a proactive duty to initially screen migrants for fear of return to their country of origin when it apprehends them crossing the border and places them in expedited or reinstatement of removal. However, a migrant may be identified as fearing return to their country by an immigration official after they have left CBP custody and entered the custody of Immigration and Customs Enforcement (ICE), the agency responsible for more prolonged detention of migrants. ICE, however, does not have a duty to proactively screen all migrants in its custody for their fear of return. It is telling, then, that the majority of credible and reasonable fear referrals that USCIS received in 2011 and 2012 did not come from CBP, but from ICE and other immigration agencies that learn of migrants' fear of return on an ad-hoc basis. In 2012, for example, CBP referred only 615 of the 2,405 Hondurans who eventually were flagged for credible fear interviews by USCIS.³ Approximately three-quarters of the credible fear referrals USCIS conducted in 2012 came from agencies other than the CBP, even though that year CBP was responsible for approximately 57 percent of all noncitizen apprehensions.

Migrants who feared returning to Honduras told Human Rights Watch about problems they encountered at all stages of the summary removal process: some said that US border officials ignored their expressions of fear and

³ Some noncitizens, apprehended in the interior of the country and placed in reinstatement of removal by ICE, may not pass through CBP custody and should be screened by ICE for fear of return.

removed them with no opportunity to have their claims examined; others said border officials acknowledged hearing their expressions of fear but pressured them to abandon their claims. For those who were referred for "credible fear" interviews, some said they were intimidated and confused by the interview process and complex immigration court asylum proceedings that they had to navigate on their own while detained and without legal assistance.

When immigration officials place potential asylum seekers from Honduras and other Central American countries in summary removal without putting them into the "credible fear" process, the migrants have no opportunity to have an asylum officer or immigration judge consider their case. US immigration courts are badly backlogged, but many migrants apprehended in the interior of the country – and thus not subject to Customs and Border Protection custody – are able to present their defenses against removal from the United States, including any claims to asylum, before a decision-maker who can make a more thorough examination of their claims.

Things are different at the border. Research by Human Rights Watch and others show that the CBP's methods for interviewing migrants in expedited removal procedures are seriously flawed. Unlike "credible or reasonable fear" assessments, which usually last over 45 minutes and take place at least 48 hours after a migrant is in ICE custody, Border Patrol screening interviews occur in Border Patrol stations and are much shorter. Uniformed CBP officers are usually armed while apprehending migrants; when they interview the migrants a few hours or days later their holsters are empty but visible; they often conduct interviews in crowded settings, without confidentiality from family members or others. All of these factors appear to hamper the ability of officers to identify those in need of more in-depth screening. The migrants we interviewed said that the CBP officers whom they encountered seemed singularly focused on removing them from the United States, which impeded their ability to make their fears known.

One man who was deported in September 2014 told Human Rights Watch that when he informed a Border Patrol officer of the threats to his life in Honduras, "He told me



there was nothing I could do and I didn't have a case so there was no reason to dispute the deportation.... I told him he was violating my right to life and he said, 'You don't have rights here.'"

Arriving migrants in expedited removal or reinstatement of removal are subject to mandatory detention under US law. In recent years, this has meant US immigration officials have exercised their discretion not to use these accelerated procedures for most arriving families with children, which would mean they would be mandatorily detained, opting instead to place families in removal proceedings before immigration judges. In 2009, facing lawsuits and under pressure from rights organizations, the Obama administration ended family detention at the T. Don Hutto Detention Center, which had 490 beds for the detention of migrant families with children. Since it was

Returned migrants board a bus to Tegucigalpa in front the Center for Returned Migrants, San Pedro Sula airport, Honduras. September 2014.

one of two migrant facilities in the country equipped to detain families with children (the other, in Berks, Pennsylvania, has 85 beds), this decision indicated an intention to drastically reduce the practice of detaining families.

Since that time, however, the US government has reversed its plans. In June 2014, the Department of Homeland Security (DHS) established two detention facilities in Artesia, New Mexico, and Karnes, Texas, with between 500 and 700 beds each to hold arriving families. In September 2014, DHS announced plans to contract with a private prison company, the Corrections Corporation of America, to build a 2,400-bed family detention facility in Dilley, Texas. The facilities now in operation

have been used to detain families primarily from Honduras, Guatemala, and El Salvador who are in the process of expedited removal.

International law prohibits the detention of migrant children and discourages the detention of asylum seekers. Detention interferes with individuals' ability to assert claims to asylum, access counsel, and harms the physical and mental health of children as they struggle with life behind bars and the uncertainties of indefinite detention. These policies also contravene international standards against the use of immigration detention to deter asylum seekers.

Human Rights Watch urges the Obama administration and the Congress to immediately address US border policies that are risking the lives of Central American migrants. They should cease fast-tracking Central American migrants for deportation to ensure migrants have an adequate opportunity to make a claim for asylum. If fast-tracking continues, the US should take immediate measures to ensure all migrants who express fear are being flagged for further screening. The administration should also reverse its decision to expand the detention of migrant families, evidenced by the creation of two new family detention facilities in June and July and plans announced in September to build a 2,400-bed facility in Dilley, Texas. Finally, the government should increase migrants' access to legal counsel, which would improve handling of asylum claims and better ensure the US does not return people to countries where they face persecution or torture.



In recent years, the United States has apprehended growing numbers of Central Americans crossing the US-Mexico border without authorization. These migrants have left their countries for many reasons, including fleeing rising violence by gangs involved in the drug trade.

US Customs and Border Protection deports the overwhelming majority of migrants it apprehends from Central America in accelerated processes known as “expedited removal” or “reinstatement of removal.” These processes include rapid-fire screening for a migrant’s fear of persecution or torture upon return to their home country.

“*You Don’t Have Rights Here*” details how summary screening at the US border is failing to identify people fleeing serious risks to their lives and safety. It is based primarily on the accounts of migrants sent back to Honduras or in detention in US migrant detention facilities. An analysis of US government deportation data shows that the Border Patrol flags only a tiny minority of Central Americans for a more extended interview to determine if they have a “credible” fear of returning home. Migrants said that Border Patrol officers seemed singularly focused on deporting them and their families despite their fear of return. Some said that after their deportation they went into hiding, fearful for their lives.

Human Rights Watch calls on the US government to ensure that immigration authorities give the cases of Central American migrants sufficient scrutiny before returning them to risk of serious harm. It also urges US authorities to stop detaining migrant children, and to improve migrants’ access to lawyers.

(above) Police patrolling in Chamelecón neighborhood, San Pedro Sula, Honduras. In 2012, the MS-13 (Mara Salvatrucha) transnational criminal gang forced many residents of the neighborhood to flee their homes.

(front cover) Returned migrants at the Attention Center for the Returned Migrant, San Pedro Sula airport, Honduras.

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