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President Esmeralda Arosemena de Troitiño
Executive Secretary Paulo Abrão
Inter-American Commission on Human Rights
1889 F Street, N.W.
Washington, D.C. 20006

**Re: Thematic Hearing Request (Mexico)
Human Rights Situation of Asylum Seekers at the Mexico-U.S. border**

Dear President Arosemena de Troitiño and Executive Secretary Abrão:

We, the undersigned individuals¹ and organizations, write to request a thematic hearing regarding the human rights situation of asylum seekers at the Mexico-U.S. border in light of the Mexican government's complicity in the illegal practice of "metering." This practice has forced thousands of asylum seekers to wait for prolonged periods in Mexico before they can seek asylum in the United States. The undersigned petitioners include individuals and organizations working on the Mexican side of the Mexico-U.S. border who have received first-hand reports regarding the human rights impact of the illegal metering system.

This illegal system of metering, described further below, has resulted in grave violations of asylum seekers' rights. Indeed, many asylum seekers forced to wait along the border are Mexicans, who must either obtain permission from Mexican officials or navigate a list managed by organized crime before they can seek asylum in the U.S.² As a result of these hurdles to seeking asylum, these Mexicans face an increased risk of persecution, torture, or even death, as they wait in limbo at the border, attempting to escape the country in which they have suffered or fear harm. The practice of metering also exposes asylum seekers from Honduras, El Salvador, Guatemala, and other countries who are transiting through Mexico to increased risk of *refoulement*, given Mexico's aggressive practice of rounding up and deporting Central Americans as well as asylum seekers from other countries.³

¹ Institutional affiliations for identification purposes only.

² Al Otro Lado, *On the Ground Legal Services Report*, Nov. 15, 2018-May 3, 2019 (on file with authors) (noting that approximately one-third of 3,000 individual consultations during the report period were with Mexican citizens).

³ See, e.g., Amnesty International, *Overlooked, Under-Protected Mexico's Deadly Refoulement of Central Americans Seeking Asylum*, 2018, <https://www.amnestyusa.org/wp-content/uploads/2018/01/AMR4176022018-ENGLISH-05.pdf>; Nicholas Sakelaris, *Mexico rounding up, deporting migrants hoping to reach U.S.*, UPI, Apr. 24, 2019, https://www.upi.com/Top_News/World-News/2019/04/24/Mexico-rounding-up-deporting-migrants-hoping-to-reach-US/7561556116246/.

As noted by this Commission, actions like these, which require asylum seekers to wait in precarious situations where their lives may be at risk, improperly aim to deter people from seeking the international protection they need.⁴ Instead of creating barriers to seeking asylum in the U.S., Mexican authorities should take steps to safeguard the rights of asylum seekers and refugees. We therefore ask that the Commission urge Mexico to end its complicity in the illegal system of metering. We also ask the Commission to carry out on-site visits to both sides of the Mexico-U.S. border to gather facts related to this topic. Such information gathering would build on the Commission's previous hearing and work regarding treatment of the asylum seeker caravans, human rights of migrants in Mexico, and pending site visits to the southern border of the United States.⁵

A thematic hearing on the treatment of individuals at the border and barriers to asylum would provide an important opportunity to address recent developments in Mexico's immigration and refugee policy and reinforce Mexico's regional and international human rights obligations. To assist the Commission in further understanding the situation and preparing for upcoming on-site visits, Petitioners propose to present information based on first-hand reports and primary source information gathered on (1) Mexico's complicity in the illegal system of metering and other U.S. border externalization policies, (2) egregious rights violations suffered by Mexican asylum seekers due to the practice of metering, and (3) violations of Mexico's *non-refoulement* obligations in this context.

(1) Background on "Metering"

Metering is one of the most recent examples of U.S. border externalization policies in which Mexico is complicit. Since at least the summer of 2016, human rights advocates and the media have reported that U.S. border agents have turned away asylum seekers at the Mexico-U.S. border, telling them that they cannot apply for asylum in the United States.⁶ In 2017, *Al Otro Lado* and several individual asylum seekers filed a class action lawsuit against DHS challenging CBP's denial of access to the asylum process at ports of entry along the southern border of the U.S.; that litigation is still pending.⁷

The U.S. government admitted use of this illegal metering practice in March 2019, when

⁴ Press Release, No. 155/19, *On World Refugee Day, IACHR Asks States in the Region to Take Action and Protect the Human Rights of Refugees*, June 21, 2019,

https://www.oas.org/en/iachr/media_center/PReleases/2019/155.asp.

⁵ See, e.g., IACHR, *Situation of Human Rights in Mexico*,

<https://www.oas.org/en/iachr/reports/pdfs/Mexico2016-en.pdf> (documenting the precarious situation of migrants in Mexico, including violence against and forced disappearance of migrants).

⁶ Amnesty International, *Facing walls: USA and Mexico's violations of the rights of asylum-seekers*, June 15, 2017, <https://www.amnestyusa.org/reports/facing-walls-usa-mexicos-violation-rights-asylum-seekers/>; Richard Gonzalez, *Advocates Say Agents Are Unlawfully Turning Away Asylum Seekers At The Border*, NPR, July 26, 2017, <http://www.npr.org/2017/07/26/539496312/advocates-say-agents-are-unlawfully-turning-away-asylum-seekers-at-the-border>; Caitlin Dickerson & Miriam Jordan, *'No Asylum Here': Some Say U.S. Border Agents Rejected Them*, New York Times, May 3, 2017; Aaron Nelsen, *U.S. officials sending asylum seekers back to Mexico*, San Antonio Express-News, Dec. 30, 2016.

⁷ Complaint for Declaratory and Injunctive Relief, *Al Otro Lado, Inc. v. Kelly*, No. 2:17-cv-5111 (C.D. Cal. July 12, 2017). See also <https://www.clearinghouse.net/detail.php?id=15991>.

CBP Commissioner Kevin McAleenan testified about “metering” or “queue management” before the Senate Judiciary Committee.⁸ Mexico’s National Migration Institute has partnered with CBP in preventing asylum seekers, including Mexicans, from accessing official border crossings, known as ports of entry, in direct violation of the right to seek asylum.⁹

Under this system, Mexican officials from the National Migration Institute, Grupo Beta (a unit of the National Migration Institute), Mexican security agents, members of drug cartels and other rogue groups, private individuals, as well as asylum seekers themselves maintain the list.¹⁰ When Customs and Border Protection (CBP) officials decide how many asylum seekers can be processed on a given day, they notify the manager of the list on the Mexican side of the border who then calls the asylum seekers’ phone numbers or notifies them via Facebook or WhatsApp.¹¹ The undersigned petitioners have received information that in Tijuana, the calls from CBP go to officials at Grupo Beta, who then notify the list managers.¹² According to information gathered by the undersigned, at some ports of entry, people must continually check on the status of the wait list numbers or risk missing the day their number is called, and being forced to get on the list again.

Those who maintain the list are often corrupt, taking bribes to allow certain individuals or families to advance on the list.¹³ In some places, asylum seekers are forced to pay hundreds, if not thousands, of dollars to have their numbers called. In other places, list managers extort payment from asylum seekers to place them on a “parallel, expedited ‘list.’”¹⁴ According to recent news reports, about 19,000 asylum seekers were on waitlists along the border as of May 2019.¹⁵ In Tijuana, about 5,000 were on the illegal list; in Ciudad Juarez 4,500, and in Nogales, 1,000 were left waiting.¹⁶ As the graphic below reflects, hundreds of people are also on waitlists in other cities along the border.

⁸ Human Rights First, *Barred at the Border: Wait “lists” Leave Asylum Seekers in Peril at Texas Ports of Entry*, Apr. 22, 2019, <https://www.humanrightsfirst.org/resource/barred-border-wait-lists-leave-asylum-seekers-peril-texas-ports-entry>; Senate Judiciary Committee Hearing, PBS News Hour, *Senate Judiciary Committee Holds Hearing on Human Trafficking at U.S. Southern Border*, Mar. 6, 2019, <https://www.pbs.org/newshour/nation/watch-live-senate-judiciary-committee-holds-hearing-on-human-trafficking-at-u-s-southern-border>.

⁹ Human Rights First, *Barred at the Border: Wait “lists” Leave Asylum Seekers in Peril at Texas Ports of Entry*, Apr. 22, 2019, <https://www.humanrightsfirst.org/resource/barred-border-wait-lists-leave-asylum-seekers-peril-texas-ports-entry>.

¹⁰ Elliot Spagate, *For Thousands of Asylum Seekers, All They Can Do is Wait*, AP News, May 9, 2019, <https://www.apnews.com/ed788f5b4269407381d79e588b6c1dc2>.

¹¹ *For Thousands of Asylum Seekers, All They Can Do is Wait*, AP News, May 9, 2019, *supra*.

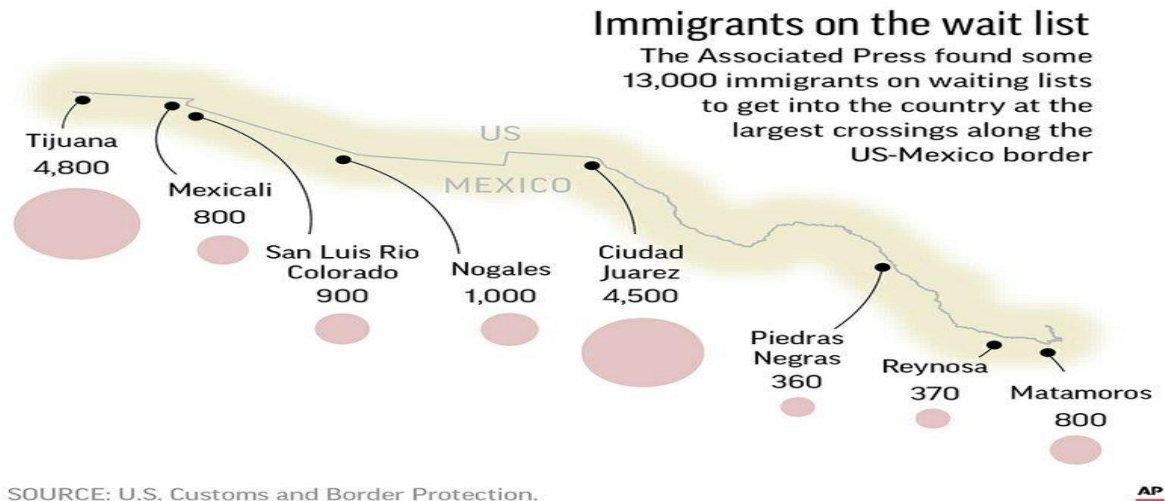
¹² Report from Al Otro Lado, July 8, 2019 (information on file with authors).

¹³ *For Thousands of Asylum Seekers, All They Can Do is Wait*, AP News, May 9, 2019, *supra*.

¹⁴ Human Rights First, *Barred at the Border: Wait “lists” Leave Asylum Seekers in Peril at Texas Ports of Entry*, Apr. 22, 2019, *supra*.

¹⁵ Savitri Arvey, *Thousands of Asylum-Seekers Left Waiting at the US-Mexico Border*, PRI, June 17, 2019, <https://www.pri.org/stories/2019-06-17/thousands-asylum-seekers-left-waiting-us-mexico-border>.

¹⁶ Savitri Arvey, *Thousands of Asylum-Seekers Left Waiting at the US-Mexico Border*, PRI, June 17, 2019, *supra*. See also Al Otro Lado, *On the Ground Legal Services Report*, Nov. 15, 2018-May 3, 2019 (on file with authors).



Yet, despite the fact that thousands are waiting to be processed at the U.S. border, on some days and in some cities, no one's number is called.¹⁷ Al Otro Lado has received reports that in early July, for example, no numbers were called in Tijuana for a period of five days.¹⁸ The limbo in which asylum seekers are forced to wait has led to an increasingly tense situation along the border, as asylum seekers engage in peaceful protests against the illegal metering system. According to reports received by Al Otro Lado, on July 4, for example, a group of asylum seekers staged a peaceful sit-in at the border, to which armed officers responded; volunteers and observers with Al Otro Lado witnessed the events and provided first-hand accounts.¹⁹

(2) Egregious Rights Violations Suffered by Asylum Seekers due to Metering

Due to this illegal metering procedure, bona fide refugees spend weeks, if not months, in legal limbo, unable to move forward and seek protection.²⁰ Wait times before asylum seekers' numbers are called range from less than two weeks in Matamoros to five to six months in Piedras Negras.²¹ Reports from Al Otro Lado indicate that in Tijuana, current wait times range from two to five months.²²

In some places along the border, Mexican authorities bar asylum seekers from even putting their names on the list if they do not have a valid migration status in Mexico, and they cannot access shelters either.²³ According to interviews with senior Mexican immigration officials conducted by Amnesty International, the U.S. has encouraged Mexico to detain

¹⁷For Thousands of Asylum Seekers, All They Can Do is Wait, AP News, May 9, 2019, *supra*.

¹⁸Report from Al Otro Lado, July 8, 2019 (information on file with authors).

¹⁹*Id.*

²⁰Human Rights First, *Barred at the Border: Wait "lists" Leave Asylum Seekers in Peril at Texas Ports of Entry*, Apr. 22, 2019, *supra*.

²¹Strauss Center, *Metering Update*, Feb. 2019, https://www.strausscenter.org/images/strauss/18-19/MSI/MSI_MeteringUpdate_190213.pdf.

²²Report from Al Otro Lado, July 8, 2019 (information on file with authors).

²³Human Rights First, *Barred at the Border: Wait "lists" Leave Asylum Seekers in Peril at Texas Ports of Entry*, Apr. 22, 2019, *supra*.

and deport asylum seekers forced to wait in Mexico in direct violation of Mexico's *non-refoulement* obligations.²⁴

In addition, asylum seekers left waiting in Mexico—especially Mexican asylum seekers—are vulnerable to attack. Of the 3,000 consultations Al Otro Lado conducted over a six month period, over 30% were with Mexican asylum seekers.²⁵ And Human Rights First found that about 80% of the asylum seekers waiting in Ciudad Acuña in early 2019 were Mexican.²⁶ Given that the waitlists are often shared or maintained by Mexican officials or by organized crime—who may be the very officials or non-state actors asylum seekers are attempting to flee, the illegal list system reflects an egregious violation of the right to seek asylum.²⁷ Indeed, being placed on a list with identifying biographical details and descriptions while waiting to seek protection in the U.S. only makes individuals fleeing persecution easier to find and attack again.²⁸

Yet, Mexican asylum seekers report significant barriers—beyond the illegal waitlist—to accessing U.S. protection. For example, Mexican officials informed a 17-year-old girl who sought to escape from cartels who had murdered several of her family members that Mexican asylum seekers were not being accepted at the U.S. border, and at least in Tijuana, the officials kept a separate list of Mexicans waiting to seek asylum in the U.S.²⁹

Moreover, many asylum seekers from Central America and other countries are the target of kidnappings, beatings, and threats in Mexico.³⁰ Mexico's complicity in the illegal waitlists

²⁴ Amnesty International, *USA: "You Don't Have Any Rights Here,"* Oct. 2018,

<https://www.amnesty.org/en/latest/research/2018/10/usa-treatment-of-asylum-seekers-southern-border/>.

²⁵ Al Otro Lado, *On the Ground Legal Services Report*, Nov. 15, 2018-May 3, 2019, *supra*. Hondurans, Salvadorans, and Guatemalans made up about half of the consultations Al Otro Lado conducted. About one-quarter of those screened by Al Otro Lado were identified "most vulnerable populations" including unaccompanied children and LGBTQ, as well as people at immediate risk, among others.

²⁶ Human Rights First, *Barred at the Border: Wait "lists" Leave Asylum Seekers in Peril at Texas Ports of Entry*, Apr. 22, 2019, *supra*.

²⁷ Human Rights First, *Barred at the Border: Wait "lists" Leave Asylum Seekers in Peril at Texas Ports of Entry*, Apr. 22, 2019, *supra*. ("In Ciudad Acuña, Piedras Negras and Nuevo Laredo, government officials or agents managed the 'lists.' That Mexican officials control these 'lists' raises concerns about the safety of asylum seekers as Mexican migration officials have been implicated in organized crime and extortion of migrants. In Reynosa, for example, top-level INM officials have been implicated in kidnapping and extortion schemes for migrants from Central America and the Caribbean.").

²⁸ Human Rights First, *Barred at the Border: Wait "lists" Leave Asylum Seekers in Peril at Texas Ports of Entry*, Apr. 22, 2019, *supra* ("[R]equiring Mexican asylum seekers to disclose their biographical information photograph and location to a Mexican local or federal official places them at risk of being discovered by their persecutors—whether members of the government or non-state persecutors who can access supposedly private Mexican government files.... Apparent efforts to increase 'list' transparency expose sensitive asylum seeker information. Several 'list' managers noted that their processes were open to review by federal or local officials. This practice, while ostensibly aimed at increasing transparency and accountability, multiplies the number of government officials with access to a list that contains the names of individuals who fear persecution by or have not been offered the protection of the Mexican government.").

²⁹ Amnesty International, *USA: 'You Don't Have Any Rights Here,' Illegal Pushbacks, Arbitrary Detention & Ill-Treatment of Asylum Seekers in The United States*, 2018,

<https://www.amnesty.org/download/Documents/AMR5191012018ENGLISH.PDF>.

³⁰ Sabrineh Ardalan, *Refugee Protection at Risk: Remain in Mexico and Other Efforts to Undermine The U.S. Asylum System*, Harvard Law Review Blog, May 26, 2019, <https://blog.harvardlawreview.org/refugee-protection-at-risk-remain-in-mexico-and-other-efforts-to-undermine-the-u-s-asylum-system/>; Doctors Without

leaves them in precarious conditions, risking their lives each day that goes by without accessing their right to seek asylum in the U.S. NGOs have documented attacks on many asylum seekers waiting at the border, including:

- a gay couple from Honduras in Nuevo Laredo who were kidnapped, beaten and threatened;
- a woman from Honduras struck in the head and knocked unconscious;
- a Guatemalan man threatened by members of the Zeta cartel;
- a 17-year-old Honduran boy attacked at knife point; and
- a Honduran university student beaten and threatened by a state police officer because he was undocumented.³¹

Mexican authorities often turn a blind eye to or are complicit in the attacks on asylum seekers.³² As a result, some are so desperate to escape Mexico given the dangers they face and the failure of state protection that they choose not to wait on the illegal lists and instead try dangerous crossings between ports of entry.³³ Recent reports have shed light on a number of people who have died trying to cross the Rio Grande;³⁴ these include a Honduran family—a father and three children, including a baby, among others.³⁵

(3) Violations of Mexico's *Non-Refoulement* Obligations

Human rights reports have documented the rampant problems with the asylum system in Mexico, including thousands of asylum seekers being sent back to their home countries without consideration of their fears of return to persecution or torture.³⁶ Indeed, a survey conducted by Amnesty International revealed that Mexico deported large numbers of asylum seekers to their home countries despite their requests for asylum and fears of return.³⁷

Borders, *Unacceptable Treatment of Migrants in Piedras Negras, Mexico*, Feb. 16, 2019, <https://www.doctorswithoutborders.org/what-we-do/news-stories/news/unacceptable-treatment-migrants-piedras-negras-mexico>. See also Amnesty International, *USA: 'You Don't Have Any Rights Here,' Illegal Pushbacks, Arbitrary Detention & Ill-Treatment of Asylum Seekers in the United States*, 2018, *supra*. (describing Mexican police arrests of African asylum seekers waiting to cross to the U.S. in San Ysidro).

³¹ Human Rights First, *Barred at the Border: Wait "lists" Leave Asylum Seekers in Peril at Texas Ports of Entry*, Apr. 22, 2019, *supra*.

³² Amnesty International, *USA: 'You Don't Have Any Rights Here,' Illegal Pushbacks, Arbitrary Detention & Ill-Treatment of Asylum Seekers in the United States*, 2018, *supra* ("Amnesty International has also documented frequent cases of asylum-seekers transiting through Mexico being subjected to discrimination, exploitation, sexual assault, murder or disappearance, and arrests and beatings by law enforcement authorities.").

³³ Human Rights First, *Barred at the Border: Wait "lists" Leave Asylum Seekers in Peril at Texas Ports of Entry*, Apr. 22, 2019, *supra*.

³⁴ *Id.*

³⁵ *For Thousands of Asylum Seekers, All They Can Do is Wait*, AP News, May 9, 2019, *supra*.

³⁶ See generally Amnesty International, *Facing walls: USA and Mexico's violations of the rights of asylum-seekers*, *supra*.

³⁷ Amnesty International, *USA: 'You Don't Have Any Rights Here,' Illegal Pushbacks, Arbitrary Detention & Ill-Treatment of Asylum Seekers in The United States*, 2018, *supra*; Amnesty International, *Mexico: Migration authorities unlawfully turning back thousands of Central Americans to possible death*, Jan. 23, 2018, <https://www.amnesty.org/en/latest/news/2018/01/mexico-migration-authorities-unlawfully-turning-back-thousands-of-central-americans-to-possible-death>.

Mexican authorities often check the IDs of those waiting at border crossings and detain non-Mexican asylum seekers who do not have valid transit visas as a first step toward deportation. NGOs have documented ongoing efforts by Mexican authorities to detain and/or deport asylum seekers along the border. These include:

- An unaccompanied minor and young man detained in preparation for deportation until the shelter where they were staying intervened;
- Guatemalan transgender women detained by police in Tijuana; and
- Two Honduran mothers detained for days and threatened with deportation by Mexican officials after attempting to cross from Mexico into Texas over an international bridge;³⁸
- A Salvadoran man deported from Piedras Negras by Mexican authorities without being informed of his right to seek asylum; and
- Honduran asylum seekers who were on the illegal waitlist to seek asylum in the U.S. but whom Mexican immigration authorities deported after a police officer arrested them without basis for alleged loitering outside the shelter where they were staying.³⁹

The metering process thus leaves asylum seekers at grave risk of detention and/or deportation back to their home countries in flagrant violation of Mexico's *non-refoulement* obligations.

Regional and International Human Rights Obligations

Mexico is a party to the 1951 Refugee Convention and its 1967 Protocol as well as the Convention Against Torture.⁴⁰ Article 33 of the Refugee Convention and Article 3 of CAT establish an obligation of *non-refoulement*.

As a Member State of the Organization of American States (hereinafter "OAS"), Mexico has undertaken to respect and ensure the rights of all persons subject to its jurisdiction pursuant to the OAS Charter and the American Declaration of the Rights and Duties of Man (hereinafter "American Declaration"). The American Declaration recognizes the right to asylum in Article XXVII, and sets out a range of other rights that are relevant to refugees, including *inter alia* the right to life, liberty and security of the person (Article I); equality before the law (Article II); family and the protection thereof (Article VI); protection for mothers and children (Article VII); recognition of juridical personality (Article XVII); fair trial (XVIII); and protection from arbitrary arrest (Article XXV). Mexico is also party to other international human rights instruments, including the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, as well as the Belém do Pará Convention and the Convention on the Rights of the Child. The illegal metering practice in which Mexico is complicit violates the rights safeguarded in these treaties.

This Commission has recognized that States have an obligation to ensure the right to seek

³⁸ Amnesty International, *USA: 'You Don't Have Any Rights Here,' Illegal Pushbacks, Arbitrary Detention & Ill-Treatment of Asylum Seekers in The United States*, 2018, *supra*.

³⁹ Human Rights First, *Barred at the Border: Wait "lists" Leave Asylum Seekers in Peril at Texas Ports of Entry*, Apr. 22, 2019, *supra*.

⁴⁰ The UN Refugee Agency, *UNHCR Hails Mexico as New Refugee Law Comes into Force*, Jan. 28, 2011, <https://www.unhcr.org/en-us/news/latest/2011/1/4d42e6ad6/unhcr-hails-mexico-new-refugee-law-comes-force.html>.

asylum.⁴¹ This Commission has also emphasized the right to due process in asylum claims. This right involves the right to be heard and “all the guarantees which make it possible to arrive at fair decisions.”⁴² The metering practice in which Mexico is complicit is unlawful on its face. It may also have a discriminatory impact, including on children and gender- and race-based claims, given the numbers of women and indigenous people escaping violence in Central America. A hearing on Mexico would help shed light on these issues.

Recommendations and Requests

Petitioners believe that this hearing will provide the Commission with valuable primary source information on and analysis of the human rights situation of asylum seekers in Mexico under the metering policy in which the Mexican government is complicit. We also believe that the Commission’s intervention would be a valuable tool in shedding light on the issues surrounding pushbacks of asylum seekers at the border and the illegal metering policy and in reinforcing Mexico’s international and regional obligations for refugee protection. At a previous Commission hearing regarding asylum seeker caravans, the Commission indicated that it would conduct on-site visits at the U.S.-Mexico border. This hearing will also provide the Commission with primary source information relevant to those pending on-site visits.

During the hearing, we will address steps the Commission can take in this regard, including the following:

1. urge Mexico to adopt the necessary legislative or administrative changes to ensure due process in refugee protection claims, including by abolishing the illegal list-keeping system;⁴³
2. carry out site visits at both sides of the U.S.-Mexico border to monitor enforcement activities and gather facts related to the treatment of asylum seekers; and
3. urge Mexico to provide information relating to the impact of the metering system on gender-based and minority group claims, as well as claims by children, including disaggregated data regarding living conditions, rates of victimization, and access to work, housing, and healthcare.

Petitioners respectfully request that the Mexican delegation for the hearing include representatives of government agencies with decision-making authority in the context of immigration and refugee policy, including the National Institute of Migration and Grupo Beta, as well as the Secretary of General Affairs and Ministry of Foreign Affairs, given these pressing concerns about treatment of asylum seekers at the border, which immigration and foreign affairs authorities must act together to address.

⁴¹ *Haitian Interdiction Case* (United States), Merits, IACHR, Report No. 51/96, Case No. 10.675, § 163 (March 1997).

⁴² *John Doe v. Canada*, *supra*, at § 116.

⁴³ Pending abolition of the list, we also recommend that the Commission urge Mexico to allow outside parties, including civil society monitoring the well-being of asylum seekers, to review the list.

Respectfully submitted,

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