Communique to Fionnuala Ni Aolain: United Nations Special Rapporteur for the Protection and Promotion of Human Rights while Countering Terrorism, February 12, 2019

Several human rights defenders and journalists have been harassed and “flagged” by the United States government, in retaliation for their work with immigrants, asylum seekers and intending migrants. This letter is written to communicate and summarize some of the instances in which immigration lawyers, immigration advocates and journalists have been stopped and detained by US authorities or by other governments at the request of US authorities, who are misusing international systems designed to flag organized crime and threats to national security. We believe that the United States government has falsely suggested that these individuals pose a national security threat, in retaliation for their work with migrants. We further believe that the US government is using their ability to withhold, threaten or delay travel, to stop and question, and to inspect electronic devices in order to punish and attempt to deter rights defenders from continuing with their work. We request that you communicate our concerns to the appropriate offices within the United States government, as well as the countries that have been honoring these false and retaliatory “flags.” We further request that you ask that human rights defenders be permitted to continue with their work, unmolested by these border officials.

Following are multiple instances of such harassment of rights defenders and journalists, under the guise of “national security.” Many of the instances seem to come in direct response to individuals working with the so-called “migrant caravan,” the arrival of which seemed to generated intensified scrutiny of rights defenders assisting them. Several other instances, however occurred prior to the travel and arrival of this most recent “migrant caravan,” and appear to be in response to broader lawful immigration and human rights activism.

Department of Homeland Security [DHS] harassment of lawyers working and volunteering in Tijuana and southern California, assisting intending asylum seekers and unaccompanied children after the July 2018 arrival of the so called “migrant caravan”

The leadership of, Al Otro Lado, an organization engaging in both direct client services to asylum seekers and immigrants in the United States and broader impact litigation, and operating on both sides of the Mexican/United States border, has been subject to retaliation on the alleged basis of national security threats. As described below, this intensified shortly after Al Otro Lado filed suit against the US government challenging DHS agency practices and policies that infringe upon the right to seek asylum at the US-Mexico border and Mexican government complicity or acquiescence (Al Otro Lado v. Nielsen and East Bay Sanctuary Covenant v. Trump, as plaintiff and Gonzalez v. Core Civic and Novoa v. Adelanto, as co-counsel).

- On January 10, 2019 Attorney Nicole Ramos, a US citizen living in Tijuana and Legal Director at Al Otro Lado, crossed at the San Ysidro vehicle crossing into the United States as she had previously done hundreds of times. This time, Customs and Border Protection (CBP) sent her into secondary inspection, during which time they confiscated her SENTRI card. SENTRI
stands for Secure Electronic Network for Travelers Rapid Inspection. It is a US CBP program that allows expedited clearance for pre-approved, low-risk travelers upon arrival in the United States. Participants may enter the United States by using dedicated primary lanes into the United States at Southern land border ports. Travelers must be pre-approved for the SENTRI program. All applicants undergo a rigorous background check and in-person interview before enrollment, and Attorney Ramos had passed this rigorous screening process. On this day she was advised by a CBP Supervisor with the surname of Griffin that she could make inquiries as to the reason for the suspension at the SENTRI office. It is clear therefore that the decision to revoke her SENTRI card was made by US government officials who were not part of the SENTRI office staff, as that office was closed due to the government shutdown, and Attorney Ramos had crossed the border without incident four days prior.

- On January 29, 2019, Al Otro Lado Attorney Erika Pinheiro, a US citizen, was detained by Mexican immigration authorities as she attempted to enter Mexico at the pedestrian crossing of the San Ysidro East Port of Entry. Mexican immigration officials [INM] advised Attorney Pinheiro that a foreign government had issued a migratory alert on her passport. Mexican border officials provided no additional information, but detained her for two hours, before ultimately denying her entry into Mexico. Attorney Pinheiro advised the INM officials that her Mexican-born child and her partner were both waiting for her to return to Mexico. Attorney Pinheiro had with her a photograph of her child’s Mexican birth certificate. Attorney Pinheiro requested to speak with a Mexican attorney who came to the port of entry to advocate on Attorney Pinheiro’s behalf. The attorney, Graciela Zamudio Campos, Director of ALMA Migrante, A. C., with the organization Alma Migrante, was directed to leave the port of entry, and she complied with this order. Another attorney, John Hector, a member of Amnesty International, and an attorney in private practice, arrived to the port of entry to advocate on behalf of Attorney Pinheiro. INM officials similarly denied him access to speak with Attorney Pinheiro and subsequently denied Attorney Hector admission to Mexico.

- On January 31, 2019, Attorney Nora Phillips, the Legal Director of Al Otro Lado and a US citizen, was detained by Mexican officers at the Guadalajara Airport. The stated reason for her detention was a “migratory alert” connected to her US passport. Attorney Phillips is based in the organization’s Los Angeles office, and had traveled to Mexico for a short family vacation with her seven-year-old child, husband, and a family friend. Attorney Phillips was detained for approximately 10 hours, during which time neither she nor her child were given food or water. Attorney Phillips is disabled and requires medication to manage her multiple medical conditions. Despite informing Mexican officials of her condition and need to take her medication at the outset of their interrogation, Attorney Phillips was not provided water for over eight hours. Attorney Phillips was ultimately denied entry, and she and her child were returned to the United States.

Earlier incidents of US authorities’ harassment of lawyers working and volunteering to assist asylum seekers and immigrants

Although hostile and retaliatory actions by the US government against rights defenders have increased since mid-2018, with the arrival of the so-called “migrant caravan” and with the
corresponding increased rhetoric linking migrant crime with the need to build a border wall, DHS was utilizing these same practices beginning in early 2017. The staff of Al Otro Lado, an organization engaging in both direct client services and broader immigration and human rights related impact litigation, and operating on both sides of the Mexican/United States border, has been subject to retaliation on the alleged basis of national security. Shortly after Al Otro Lado filed suit against the US government, their permanent staff and volunteer rights defenders began being detained or delayed when crossing the border. Agents for the Department of Homeland Security also began intensifying a practice of uttering defamatory and false remarks about these rights defenders, in an effort to delegitimatize them, and dissuade them from continuing with their work.

- During the months of February, March, and April 2017, Attorney Ramos received reports from asylum seekers that CBP officers made multiple slanderous statements against her while officers processed the asylum seekers at the San Ysidro port of entry. Specifically, the asylum seekers noted that CBP officers referred to Attorney Ramos as a “fraud,” a “fake attorney,” a “troublemaker,” and accused them of having “been coached” by Attorney Ramos to provide false accounts of their persecution, and “had lied to them” about their rights in the legal process of requesting the right to apply for asylum in the United States.

- Shortly after Al Otro Lado filed its class action lawsuit against the Department of Homeland Security on July 12, 2017 (Al Otro Lado v. Nielsen), Attorney Pinheiro crossed the San Ysidro border crossing and was questioned for several minutes by a CBP officer, during which time the officer stated to Attorney Pinheiro “I better not be rude to you or you will sue me too,” indicating that they knew who she was and that her organization had filed a lawsuit against the Secretary of Homeland Security.

- On July 22, 2017, Attorney Ramos received email communication from Enrique Morones, the Executive Director of Border Angels, a binational humanitarian aid organization working to aid migrants. Mr. Morones noted that the local delegate of the Instituto Nacional de Migracion, Rodulfo Figueroa, had received inquiries from the US Government regarding Attorney Ramos’s immigration status, and her permission to remain in Mexico. While Attorney Ramos is not privy to the extent of communications between the U.S. and Mexican governments about her work, this was her first clear indication that the two governments were specifically communicating concerns about her for the purpose of using her immigration status and ability to travel as a means to exert pressure on her advocacy efforts.

In addition to the incidents described above, U.S. attorneys and immigration advocates volunteering with Al Otro Lado have been diverted into secondary inspection by U.S. immigration authorities as they entered the United States after working in Tijuana. “Secondary inspection” is typically used to question people that DHS suspects either do not have the legal right to be in the United States, or whom they suspect are threats to national security. There is no legal authority to use secondary inspection as a mechanism to deter lawyering or human rights advocacy.
Detention and Harassment of Other Rights Defenders

Other rights defenders have also been stopped and detained by border officials after having been “flagged” by the US government.

- In July of 2017, Dina Haynes, a US citizen and an attorney and law professor specializing in immigration, human rights law and constitutional law, volunteered at Logan Airport to help several of the people impacted by the travel ban imposed pursuant to the Executive Order Protecting the Nation from Foreign Terrorist Entry into the United States. The ban had been enjoined in federal court in Boston, and several parties impacted by the ban had rerouted to fly into Boston during the time when it was legal to do so. Throughout February, March, April, May and June of 2017, Professor Haynes joined several lawsuits challenging the legality of aspects of the various Executive Orders, both as *amicus curie* and in one instance as plaintiff (*City and County of San Francisco v Sessions*), and was a signatory to several additional amicus briefs contesting three of the Executive Orders issued in January of 2017. During this time, she was also interviewed by multiple national and international news outlets and asked to comment on the lawsuits and on the US government’s position with respect to its newly implemented policies and laws. She also ran a remote lawyering project at a family residential detention center in which women and children asylum seekers have been detained. In July of 2017, returning from the Canary Islands, Professor Haynes was stopped in the Madrid airport when she went to board her return flight to the US. She was turned away from her gate and sent to a room where Spanish authorities kept her for more than an hour, questioning her about her travel, the contents of her bag, her profession and her employment. All of her belongings were swabbed and x-rayed multiple times. Her electronics were inspected and she was asked to turn them on. When she asked the reason for her detention, the Spanish authorities told her that the US government had issued a “flag” on her, which had generated the letters “SSSS” on her boarding pass. After over an hour, she was let go to board her flight. Professor Haynes had previously held security clearance within three federal government agencies, and travelled through more than 20 countries as a UN and OSCE employee. She therefore has reason to ascribe this stop to her recent immigration related challenges to the US government, given that she had never previously been stopped while travelling.

The following information is relayed from an article in the *Intercept*. The information is included to demonstrate that other human rights defenders working to assist migrants have also been detained and harassed.

- Jeff Valenzuela, a volunteer with an organization called Pueblo Sin Fronteras, living in Tijuana has been sent to secondary screening a half-dozen times since late December 2018. On Christmas Day, after two hours of waiting to cross to the US, two officers escorted him to an interview room where they asked a series of general questions about the migrant caravan and the condition of the shelters in Tijuana. During the questioning, Valenzuela was told that the officers needed to look through his phone, but that he could hold it the entire time. They also told him this was “standard procedure to make sure you don’t have child pornography.” He was told that he could refuse, but if he did, his phone would be seized and he would be sent to a second location. He consented, allowing the officers to watch as he scrolled through
his photos. He was released after more than 2 hours. Two days later, this time crossing by car on his way to visit his family in Los Angeles, a pair of DHS officers approached his vehicle and told him to get out and put his hands behind his back. They reached for handcuffs, but told him that he was not being placed under arrest, and that his treatment was “standard procedure.” He was taken to secondary where his belongings were confiscated, and he was shackled to a bench. This time he was detained for more than four hours, shackled, before two plainclothes officers arrived and took him to another interview room and asked him questions similar to the prior interrogation. This time they told him he was required to unlock his phone. When he questioned whether he could be legally compelled to do so, he was presented with a document, which said that his phone had been “detained for further examination, which may include copying,” implying this would be the next step if he failed to consent. He unlocked his phone, and it was taken from him anyway, and returned about an hour later. He believes that most of the apps on the device had been accessed. He was pulled into secondary screening four more times in the weeks that followed, and on one of those occasions he was again shackled.

- David Abud, another Pueblo Sin Fronteras volunteer, has been sent to secondary screening twice since December 2018, with his longest interview taking place at Los Angeles International Airport in early January, following a trip to visit friends and family in Mexico and Honduras.

- At least two volunteers with Border Angels have been subjected to secondary screening in the last two months. Volunteer Hugo Castro was detained for more than five hours on December 20, 2018. James Cordero, was first sent to secondary on Christmas Eve, when he returned from bringing a load of toys to children at a Tijuana shelter where many of the migrants who had participated in the caravan were staying. Officers questioned him about who ran the shelter and what the mood was like there.

**Journalists harassed and detained after reporting on human rights and immigration law and policy impacting migrants**

The following information is relayed from an article in the *Intercept*, and information published by the [Center for the Protection of Journalists](https://cpj.org/). The information is included to demonstrate that journalists covering immigration policy have also been detained and harassed.

- Kitra Cahana, a freelance journalist with dual US and Canadian citizenship, had her passport photographed by Mexican officials two days after her work was published on the front page of the New York Times. Traveling from Montreal to Mexico City shortly thereafter, in January 2018, her photograph printed out from the automatic passport check machine with a large X on it. She was then questioned by two Canadian officials about her work, but let go to board her flight. When she landed in Mexico City, Mexican officials took her to a back room and detained her for 13 hours, during which she was not permitted to speak to a lawyer or her family. Her phone was confiscated and her requests for an interpreter, or contact with embassy officials were denied. When she asked if she was being detained because she was a journalist, the Mexican officials told her that the US government had put an Interpol alert on her. She asked if she could speak to someone from her embassy
or someone who at least spoke good English so she could understand what was happening, and was told no. She again asked if she was being detained because she was a journalist. Mexican officials said her detention was due to a US travel flag. After being held overnight, without food or water or sleep, she was returned on a flight to Detroit. When she landed in Detroit, she again ran her passport through the check-in machine and it printed out an X across her face. She was then detained by DHS and questioned about her work on the border. Later in January, she attempted to enter Mexico from Guatemala. Although she was not stopped when she landed in Guatemala, she was denied entry to Mexico when she presented herself at the Mexican land border crossing from Guatemala. The reason, she was told, was that there was a “migratory alert” placed on her.

- On December 1, photographer Fabio Bucciarelli and videographer Francesca Tosarelli, both Italian citizens, captured video showing that Mexican and US border patrol were working together to prevent asylum seekers from seeking to turn themselves into to CBP to request the ability to apply for asylum. The day after they shot the footage, they and other journalists reported that CBP “got really aggressive” with them. The journalists filmed DHS agents approaching them and saying “My agents say that some of you are aiding and abetting these people to enter the United States illegally, OK?” One agent, identified as S. Gisler, can be heard on film telling them that they could be charged with a misdemeanor or a felony. The journalists can be heard telling the agent that the accusation was not true. The agent replied, “I’m just saying that if you come to the United States, we could conceivably get [an] arrest warrant for whoever was doing that, and if you ever come to the United States, we just charge you with that. I don’t know if they’d actually prosecute you for it or not.” A second agent is on film accusing the journalists of aiding the migrants to illegally cross, saying “Shame on you… You guys are going to the shelters and telling them to come over here. This is not happening naturally. You guys are enticing these people to come over here. You know it.”

- Carol Guzy, a four-time Pulitzer Prize winner, who was present during this incident was pulled into secondary screening in El Chaparral port of entry, between Tijuana and San Ysidro San Diego when she left Mexico in January of 2018.

- Santi Palacios, and Daniel Ochoa de Olza, a longtime AP contributor whose coverage of the New Year’s tear gassing was shared around the world, were approached by Mexican police. Their passports were photographed. When Palacios asked the officers why they were taking photos, they were told it was because “the Americans” were asking them to do so.

- Mark Abramson, a freelancer whose December 2018 work in Tijuana was also featured in the New York Times, was pulled into secondary screening at the El Chaparral port of entry, between Tijuana and San Ysidro as he returned to the US on January 5. He was taken to secondary screening where CBP officials told him to put his phone down, as they began going through his backpack and notes. He explained that he was a photojournalist. A plainclothes agent then led him to a windowless room, and another agent kept his belongings. He was interviewed for 30 minutes about the migrant caravan and asked how he earned his money and whether he planned to return to Mexico. They may have cloned his phone during this time.
Bing Guan and Go Nakamura, both freelance photojournalists whose passports were photographed by Mexican police were also stopped by CBP as they entered the San Ysidro port of entry by car on December 29. Guan, who was driving, was directed to secondary screening. After roughly an hour of waiting, a pair of plainclothes officers separated the journalists for questioning. Guan was led to a room where one of the officers launched into a series of questions about “instigators” on the border. He then presented Guan with a photo lineup and asked him to identify the alleged “instigators.” They were released after about two and a half hours.

Manuel Rapalo, a freelancer with Al Jazeera, who was among the journalists at the border wall on New Year’s Eve was accused by CBP of helping to facilitate illegal migrant crossings. He has been pulled into secondary screening twice when flying back to the US. Each time CBP look through his bags and camera. During the most recent screening, on January 18, Rapalo asked the officer who was detaining him why he was repeatedly stopped. The CBP officer told him it was likely due to the line of work he was in.

Sindbad Rumney Guggenheim, an independent documentary filmmaker who spent two months with the caravan, was sent to secondary screening in the last week of December and the first week of January. During his second detention, he was questioned about the New Year’s gassing and asked whether he was an “activist.” US officials asked him to unlock his phone and he complied. They then took the device for approximately 15 minutes. He believes they cloned it during that time.

The foregoing demonstrates a clear pattern and practice of using DHS using secondary inspection to harass and question human rights defenders. It demonstrates a clear pattern and practice of US authorities misuse of international systems designed to respond to organized crime and terrorism by issuing “flags” and “migratory alerts” as retaliation against lawful lawyering, reporting, and other human rights activities. The foregoing demonstrates a clear pattern and practice of cooperation by other governments in responding to these “flags” and “migratory alerts” designed to chill speech and force rights defenders to exercise prior restraint on their lawful activities or risk further retaliation and harassment by US authorities, or by other governments at the request of US authorities.

We request that you contact the US government and the other governments implicated in this letter, and request that they cease and desist this practice.

Submitted by Dina Haynes,
On behalf of Nicole Ramos, Nora Phillips, Erika Pinheiro of Al Otro Lado
And Graciela Zamudio Campos, of ALMA Migrante, A. C.