UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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EAST BAY SANCTUARY COVENANT et al.,

Plaintiffs,

v.

DONALD TRUMP, et al.,

Defendants.

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SUPPLEMENTAL DECLARATION OF MADELEINE PENMAN

I, MADELEINE PENMAN, declare pursuant to 28 U.S.C. § 1746 and subject to the penalty of perjury, that the following is true and correct:

1. I am a Researcher on Mexico for the International Secretariat of Amnesty International. I make this statement in support of Plaintiffs' Motion for a Preliminary Injunction and to supplement the declaration I made in support of Plaintiffs' Motion for a Temporary Restraining Order. (ECF No. 35-7, filed 11/16/2018). I am over 18 and have personal knowledge of the facts described herein.

2. My experience and qualifications are set forth in my Declaration in Support of Plaintiffs' Motion for a Temporary Restraining Order. As described therein, I earned Bachelor of Arts and Bachelor of Law degrees from Macquarie University in Australia, and am a Ph.D. candidate in Latin American Studies at Australian National University. Since 2015 I have worked as a Researcher based in Mexico City, investigating human rights violations in several countries in the Americas, specializing in migration in Central America and Mexico. A significant part of my work focuses on the migration of people fleeing the Northern Triangle

(Honduras, Guatemala, and El Salvador). Since 2016, Amnesty International has conducted intensive research and campaigning on asylum seekers and refugees in Central and North America. My colleagues and I at the Americas Regional Office of Amnesty International have published six reports and briefings about the experiences of people fleeing the Northern Triangle in search of international protection.

3. I am the author of our most recent report, *Americas: Stuck at the Door: The Urgent Need for Protection of Central American Refugees, Asylum Seekers, and Migrants in the Caravans* (Amnesty International, November 26, 2018) ("*Stuck at the Door*" or "the Report"). The Report is the product of Amnesty International's fact-finding missions undertaken in October and November of 2018 in southern Mexico and Guatemala as well as Tijuana and Mexico City. In addition to information obtained from governments in the region and international and civil society organizations in the field, Amnesty International has spoken to more than 200 members of caravans, either as individuals or in groups, including families, women with children, and members of the LGBTI community.

4. The Report focuses on the harmful effects of attempts to implement hard-line border controls that aim to deter migration. It concludes that rather than stem the number of people migrating, these attempts force migrants to use more clandestine and dangerous means of fleeing, causing great risk to human life and fuelling criminal networks. The Report also places the exceptional phenomenon of caravans of migrants in the context of an overall decrease in migration levels. A summary of the findings in the Report is set forth below.

The Flight of Central Americans from Violence and Persecution in Their Home Countries

5. Recent years have seen a dramatic increase in the number of people from El Salvador, Guatemala, and Honduras fleeing violence and persecution. According to the United Nations High Commissioner on Refugees (UNHCR), the number of people applying to be recognized as refugees from those countries increased 1007% between 2012 and 2017. (Report at 4).

6. The *maras*, violent criminal groups that exercise territorial control over significant portions of the Northern Triangle, operate with impunity. Citizens in the Northern Triangle do not have government protection from epidemic homicide rates, extortion, death threats, sexual violence (particularly against women and LGBTI individuals) and forced recruitment of children and adolescents. (Report at 4).

7. Since April 2018, thousands of Nicaraguans have begun fleeing their country as a result of their government's violent repressive response to social protests, including extrajudicial killings, torture, and arbitrary detentions. (Report at 4).

8. Amnesty International has documented that many members of caravans are fleeing violence and persecution in Honduras and El Salvador, as well as repressive government actions in Nicaragua. (Report at 4).

9. Conditions on the route from Central America are extremely difficult and dangerous. Many members of the caravans are unaccompanied minors, women, children, LGBTI individuals, and people with disabilities, and are in need of special protection. But in the course of their flight, members of caravans have been subjected to harsh conditions, violence, and abuse of state authority. Honduran, Guatemalan, and Mexican authorities have arbitrarily closed border crossings, causing migrants to wait for days in unsafe and unsanitary conditions

or to take more dangerous routes. Some members of caravans, like thousands of migrants and asylum-seekers before them, have faced violence, extortion, kidnappings, and denounced disappearances while in Mexico. These crimes are not properly investigated by authorities, and in some instances government authorities themselves have been involved in harassment and extortion. (Report at 5).

10. Mexican and Guatemalan military and police have been deployed to the Mexico-Guatemala border in response to the arrival of the caravans. On October 19, 2018 the Mexican Federal Police used tear gas on thousands of migrants who were confined within barriers on a border bridge between Mexico and Guatemala. On October 28, during the arrival on the bridge of a second large caravan, a Honduran man was killed, his death evidently the result of either a rubber bullet or a projectile designed to disperse a chemical irritant in a closed space. (Report at 4-5).

11. Mexican authorities do not adequately inform migrants of their rights and appear to have violated international principles of *non-refoulement*. Although Mexico's migration law allows for several options for caravan members, including humanitarian visas that would protect migrants from detention or deportation, most caravan members have received no provisional document. (Report at 9). Mexico reported receiving 3230 asylum applications from members of caravans at the end of October. But after many of these applicants were detained, Mexico claimed on November 14 that 533 abandoned their claims. On November 25, Mexican authorities reported that 2000 caravan members had been returned to their home countries. This number likely undercounts the number of migrants returned to their home countries; the Honduran government has reported that more than 4000 Hondurans were returned from Mexico between October 15 and November 7. Amnesty International has also documented the

apprehension of hundreds of caravan members along Mexican highways, including families with children. Testimony collected by Amnesty International from members of caravans demonstrates that numerous asylum-seekers have been deported on buses, in some cases following mass-detentions on highways. (Report at 6-7). In short, Mexico is not a "safe country for all asylum-seekers." (Report at 10).

Arrival of Caravans at the United States Border with Mexico in Tijuana

12. The United States government has implemented a number of measures that interfere with the rights of asylum seekers and violate *non-refoulement* principles. These include mass illegal pushbacks of asylum seekers; illegal family separations that cause extreme suffering; and arbitrary, punitive, and indefinite detention of asylum seekers without parole.

13. As members of caravans have begun arriving at the United States border with Mexico in Tijuana, the U.S. Department of Homeland Security has continued its policy of limiting processing of asylum seekers and erected new barriers. In recent months, agents of U.S. Customs & Border Protection (CBP) have limited the processing of asylum seekers at the San Ysidro Port of Entry to no more than 30 to 70 per day. (Report at 9). There is no indication that the United States intends to increase capacity for processing asylum seekers to meet the needs of the caravans, even as it deploys 7000 troops to the border. (Report at 9). In the aftermath of President Trump's proclamation, on November 9, making those who cross the southern border without inspection ineligible for asylum, authorities have also erected physical barriers, including concertina wire in the car lanes leading to the Port of Entry, to stop asylum-seekers from approaching. (Report at 9).

14. Moreover, United States authorities have subjected caravan members to repeated rights violations and use of force. On November 25, agents of U.S. Customs & Border

Protection (CBP) sprayed teargas into a group of hundreds of migrants and refugees, including families with young children, who had approached the border fence near the San Ysidro Port of Entry after a public march. Analysis by Amnesty International of photographs and video of this incident demonstrate that CBP also used projectiles that may have been batons or bean bag rounds, including at close range. (Report at 9).

15. Purported negotiations between the United States and Mexico to arrange for asylum seekers to seek refuge in Mexico are not adequate to protect caravan members. Policies that seek to return asylum seekers en masse to a "safe third country" undermine authorities' obligations to make an individualized assessment of each asylum claim. Moreover, it is clear that Mexico is not uniformly safe for asylum-seekers and that there is a heightened risk of *refoulement* of asylum-seekers to persecution and violence in their countries of origin. (Report at 10). Such a result would violate international law.

Conclusion

16. Amnesty International has made numerous recommendations to countries of origin in Central America, to authorities of transit and receiving countries, and to the government of Mexico and the United States. (Report at 10-11). It is crucial that the United States halt its policy of illegal pushbacks of asylum-seekers at Ports of Entry; ban family separations; and provide adequate resources at Ports of Entry to protect those seeking refuge. (Report at 11-12).

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on this 3rd day of December. 2018

Madeleine Penman
Amnesty International