



November 12, 2009

Dr. Santiago Canton
Executive Secretary
Inter-American Commission on Human Rights
1889 F Street, N.W.
Washington, D.C. 2006

Dear Dr. Canton:

The American Civil Liberties Union of San Diego & Imperial Counties (“ACLU-SDIC”) and the National Commission for Human Rights in Mexico (“CNDH”) wish to apprise the Inter-American Commission on Human Rights (“Commission”) of an escalating humanitarian crisis at the United States-Mexico border. Over the last fifteen years, an average of at least one migrant a day has died as a result of deadly enforcement-deterrence policies that intentionally force unauthorized persons crossing the border (“border crossers”) into environmentally hostile areas.¹ The U.S.-Mexico border death toll is now over 5,000 and an estimated 7-11 percent of the dead are children.²

This tragedy continues unabated with more migrants dying every day and is the subject of the attached report, *Humanitarian Crisis: Migrant Deaths at the U.S.-Mexico Border*, recently released by the ACLU-SDIC and CNDH.³ The report marks the 15th anniversary of the U.S. border enforcement-deterrence policy known as “Operation Gatekeeper” that concentrated U.S. border agents on populated areas of the border and added walls and fencing to those same areas, driving unauthorized border crossers to more remote and more dangerous parts of the border where they face a higher incidence of injury and death.

¹ In his March 2009 report of his mission to Mexico, UN Special Rapporteur on the Human Rights of Migrants Jorge Bustamante noted that the border crossing of irregular migrants from Mexico has become more dangerous because of the United States’ border control policies, including erecting a wall along its southern border with Mexico, carrying out radar surveillance, and increasing its technical and human capacity to do roundups and arrest and detain undocumented migrants. Bustamante further noted that the high number of deaths of migrants, equivalent to about one death a day during the last decade, “directly relates to the need for would-be migrants to undertake increasingly high-risk routes, which are often longer and involve traversing rough terrain in extreme temperatures.” Report of the Special Rapporteur on the Human Rights of Migrants, Jorge Bustamante, Mission to Mexico, UN Doc. A/HRC/11/7/Add.2 (Mar. 24, 2009).

² American Civil Liberties Union of San Diego & Imperial Counties and National Commission for Human Rights in Mexico, *Humanitarian Crisis: Migrant Deaths at the U.S.-Mexico Border*, September 30, 2009, <http://www.aclusandiego.org>.

³ *Id.*

The resulting deaths of border crossers constitute violations of the American Declaration of the Rights and Duties of Man (“American Declaration”). Both the United States and Mexico are bound by the American Declaration.⁴ As a party to the American Convention on Human Rights, these deaths also constitute violations of Mexico’s obligations under the Convention.

While sovereign nations have an inherent right to protect their borders, that power is constrained by international human rights. As revealed by our report, both the United States and Mexico fall short in their obligations to protect the right to life of migrants and in their obligations to the deceased and their families.⁵ In the most comprehensive analysis of border deaths to date, the report makes the following findings:

- The deaths of over 5,000 migrants have been a predictable and inhumane outcome of U.S. enforcement-deterrence policies begun 15 years ago.
- Border deaths have not decreased despite the economic downturn, fewer migrant crossers and a steady drop in apprehensions.
- The risk of death for migrant crossers has increased in spite of U.S. and Mexican governmental programs that attempt to reduce the harmful effects of border enforcement policies and strategies.
- The ongoing deaths of migrants have exposed government neglect in both the United States and Mexico in complying with international law obligations in the treatment of the dead and their families.

In 1999, the ACLU-SDIC along with co-counsel submitted a petition to the Commission (*Victor Nicolas Sanchez et al.*) alleging that U.S. border enforcement-deterrence strategies violated the right to life under Article I of the American Declaration. Although that petition was ultimately dismissed on procedural grounds in 2005, the Commission expressed its concern regarding the matters raised in the petition:

[T]hey point to the existence of longstanding and serious circumstances in which the lives and physical integrity of people who traverse the border between two

⁴ As a signatory to the Charter of the Organization of American States (“OAS Charter”), the United States is bound by its provisions, and the General Assembly of the OAS has repeatedly recognized the American Declaration as a source of international legal obligation for OAS member states, including the United States. This principle has been affirmed by the Inter-American Court, which has found that that the “Declaration contains and defines the fundamental human rights referred to in the Charter,” as well as by the Commission, which recognizes the American Declaration as a “source of international obligations” for OAS member states. See Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights, Advisory Opinion OC-10/89, Inter-Am. Ct.H.R. (ser. A) No. 10, ¶ 43, 45 (July 14, 1989); James Terry Roach and Jay Pinkerton v. United States, Case 9647, Res. 3-87, Annual Report of the Inter-Am. C.H.R. 147, OEA/Ser.L/V/II.71, doc. 9 rev. 1, ¶ 46 (1987).

⁵ Organization of American States, “Persons Who Have Disappeared and Assistance to Members of their Families (AG/RES. 2513 (XXXIX-O/09))” (San Pedro Sula, Honduras: June 2-4, 2009), <http://reliefweb.int/rw/rwb.nsf/db900sid/SNAA-7SQ7C2?OpenDocument>; William J. Aceves to Maria Jimenez, June 25, 2009, Memo, “International Obligation to Identify the Dead,” California Western School of Law, San Diego, CA.

OAS Member States have been and continue to be threatened. Accordingly, the Commission will continue to monitor the situation, consistent with its broad mandate to promote the observance and protection of human right in the Hemisphere as well as the specific authority under its Statute to make recommendations to the governments of the states on the adoption of progressive measures in favor of human rights in the framework of their legislation, constitutional provisions and international commitments.⁶

Given the Commission's indication in this 2005 admissibility decision that it would "continue to monitor the situation" at the U.S.-Mexico border, we respectfully request that the Commission now act on its expressed concern regarding the predictable, preventable, and continuing loss of life at the border. At the time ACLU-SDIC brought the petition, over 300 migrants had died. That number has since increased nearly twentyfold and more people die every day. Many of these deaths are directly attributable to U.S. enforcement-deterrence policies.

While the issue of border deaths has been raised before the Commission previously, to our knowledge, the issue of state obligations to families of the deceased has not been raised in the context of migrant deaths at the U.S.-Mexico border. Family members are confronted with complex, often contradictory, bureaucratic mazes to locate relatives or loved ones who they believe have gone missing or have died while attempting to cross the border. For example, there is no centralized database for locating a relative, no uniform standard for identifying remains, and the search for loved ones can take months or even years. Approximately 25 percent of persons who die while crossing the border are never identified and their families live in constant anguish. The situation is exacerbated on the U.S. side of the border, where the federal government has shifted the responsibility for treatment of the missing and dead to local authorities who are unable to cope with requests for assistance from family members because of ever shrinking resources.

The treatment of these missing or dead migrant border crossers highlights both the United States' and Mexico's abandonment of their obligations under international law to respect and ensure the rights of migrant populations. In particular, in the case of the many migrants who go missing or perish during unauthorized border crossings, the governments of the United States and Mexico have failed to adopt domestic laws or policies or negotiate bilateral agreements to adequately address the situation of missing or deceased migrants and the problems encountered by family members of missing and deceased loved ones.

In light of these continuing human rights violations, we urge the Commission to request the permission of the U.S. and Mexican governments to make an onsite visit to the region, conduct an investigation, and issue a report on the crisis for the General Assembly of the Organization of American States. The visit, investigation and report should address the ongoing violations of the right to life and identify protective and preventive measures that should be adopted by the United States and Mexico to bring their actions into line with applicable human rights obligations. The Commission's investigation and report should also address the right of families to identify, recover, and dispose of their deceased family members in a dignified manner.

⁶ Report No. 104/05, Petition 65/99, *Victor Nicolas Sanchez et al.* ("Operation Gatekeeper"), United States, October 27, 2005, ¶. 76.

Dr. Cantón, thank you for your consideration of this request. Should you have any questions or wish to discuss this matter, please do not hesitate to contact us.

Respectfully submitted,



Kevin Keenan
Executive Director
ACLU San Diego & Imperial Counties
kkeenan@aclusandiego.org
619.232.2121 x 210



Dr. Jose Luis Soberanes
President
National Commission for Human Rights
jlsf@cndh.org.mx
(52-55) 1719-2000 x 8163

Cc: *IACHR Commissioners:*

Luz Patricia Mejía Guerrero, Venezuela
Felipe González, Chile
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Special Rapporteur:

IACHR Special Rapporteurship on Migrant Workers and their Families