

CHAPTER 6

DETENTION AND DEPORTATIONS

Central Americans are regularly deported from Mexico. Under Mexican law, the process is called expulsion rather than deportation.^[1] In common speech, the process is generally called deportation.

Usually, Central Americans are not returned to their countries of origin but rather are taken to the border with Guatemala.^[2] This has the effect of permitting Mexico to claim that it does not violate international or regional *non-refoulement* prescriptions, which prohibit the expulsion of a refugee to a country where his life or freedom would be threatened.

There is very little official information available in Mexico about the detention and deportation of Central Americans for violations of Mexican immigration laws. No reports or statistics are published and local immigration officials generally decline to provide information.^[3] There are no written procedures to which the public has access and no point at which a claim of refugee status must be heard. This process occurs without judicial supervision, with little access to any legal recourse, with only occasional public knowledge (generally through newspaper accounts), and in a manner which makes it difficult to trace the fate of those involved.^[4]

Although there are possible criminal penalties under the General Law on Population for the violation of immigration laws, the usual penalty is expulsion.^[5] The kinds of immigration law violations for which a foreigner can be expelled include not having papers or having false papers, violating a condition of status (such as not working), or violating Article 33 of the Constitution, which prohibits foreigners from taking part in political activities in Mexico. However, the government is not limited to these grounds for expulsion. The complete discretion granted to the government under Article 33 to expel foreigners where it is deemed *conveniente*, or advisable, makes foreigners subject to expulsion without any legal recourse.^[6]

According to Fernando Pérez Domínguez, the former Director of *Servicios Migratorios* for the state of Chiapas, 250 Central Americans are deported to Guatemala from Mexico each day. This figure includes Guatemalans returned to their home country as well as other Central Americans expelled to Guatemala. Two years ago, the reported figure was 250 Central Americans a week. Of the 250 currently deported daily, 200 are detained in Chiapas and deported to Guatemala. The remaining 50 are detained in other parts of Mexico, brought to the border, and deported to Guatemala.^[7]

Others give lower deportation figures. The immigration *delegado* or director in Ciudad Hidalgo, a principal deportation point from Chiapas to Guatemala, reports 100 people a day being deported, most of them Salvadorans. A refugee worker on the border reports 200 a week. He says that the immigration agency

conducts round-ups in the state of Chiapas and occasionally will refer particular people to him for help. The current immigration *delegado* for the state of Chiapas, Juan Roque Flores, reported 50 deportations a day in the three days preceding an interview with him in March 1986, and 500-600 deportations every two weeks.[8]

The principal apprehension sites are in the south of Mexico after Central Americans enter the country and along the border with the United States, at immigration checkpoints, and at bus and train stations. There are also roving patrols which look for undocumented foreigners. Detection facilities in the north and the south have been strengthened and new checkpoints opened. There are occasional announcements of campaigns to locate Central Americans in the country.[9]

In 1983, immigration authorities ordered the detention of Central Americans who were said to be living illegally in Mexico City with Mexican documents.[10] Despite this announcement, there are only occasional reports of detentions and deportations from Mexico City, in contrast to the widespread, systematic detentions and deportations recounted in other parts of the country. The explanation generally given for the absence of organized campaigns in Mexico City is that residents of the capital are hard to locate because they are so dispersed.

However, there are regular reports that Salvadorans who have arrived in Mexico City by airplane are being deported. Usually it is unclear whether they have valid visas. Officials report that they are rejected because they do not have money to support themselves in Mexico. The implication is that they are traveling to the north to try to enter the United States.[11]

Corruption among immigration and police agents is endemic in Mexico and the government reports that this corruption is under attack.[12] Central Americans (and Mexicans) stopped for visa checks report widespread extortion by Mexican immigration officials throughout the network of immigration checkpoints.[13] Foreigners often must pay to enter the country, whether legally or illegally.[14] Central Americans reportedly are taken off buses or other transport and forced to pay bribes to continue their passage. Bribes are said to be higher for Central Americans detained at airports in the north, since they are thought to have more money than those coming in by bus.[15] Hotel personnel and taxi drivers reportedly also extort money from Central Americans and cooperate with immigration officials.[16] There are also widespread reports of immigration officials taking valid documents away from Central Americans, often at their first encounter on entering Mexico.[17]

The Mexican government has built facilities to be used strictly for immigration detention in Ciudad Juarez and Mexicali, along the Mexico-U.S. border, and in Veracruz. However, these facilities have not been opened.[18] Under Mexican law, the Interior Ministry may declare any facility to be an immigration detention facility. Therefore, Central Americans are often held in jails where common criminals or those accused of common crimes are held, sometimes even in the same cells.[19]

Conditions at the facilities generally are described as terrible. For example, the area in the Nuevo Laredo jail where people are detained for immigration

violations was described by one visitor as follows: a small room without windows, like an inferno in summer; a few broken cots, no blankets; people sleeping on the floor, with men, women, and children in one room.[20]

Similar conditions reportedly prevail in other jails. Many officials contend that they have no budgets to pay for the detention of foreigners in local jails.[21] Some jails depend on church groups to bring food, clothes, and blankets to prisoners. However, some refugee workers contend that food and clothing brought by volunteer groups are stolen as soon as the volunteers leave.[22]

In the north of Mexico, detained refugees generally remain in jail until enough of them accumulate to be sent by bus to the immigration detention facility in Mexico City. In some cases, people arrested in different cities are consolidated in a staging area. For example, in the Baja California area, Central Americans detained in Tijuana, Ensenada, and Tecate are sent to Mexicali and from there are bussed to Mexico City.[23] There are recent reports of Central Americans being jailed in a facility in Hermosillo before being sent to Mexico City.[24]

Those detained are held for varying lengths of time, ranging from days to months. Some workers say that Central Americans are held in Nuevo Laredo for as long as a month or two, waiting for enough people to fill a bus. People in Tijuana report that periods of confinement there are much shorter, especially since Mexicali was established as a staging area, although detention is longer than the one-day period claimed by immigration officials. Some refugee workers report that people are held in jail long enough for their relatives to send money to buy their release, while in other places release through bribes is more difficult once the Central Americans have been jailed.[25]

Refugee workers in the north complain that once refugees are transferred to Mexico City, their trail is lost and workers have no way of finding out what happened to them.[26]

Those arrested make no appearance before a judge, nor is any judicial order or judgment required before a detainee is sent to Mexico City. There is no right to a lawyer nor to release on bond. Some officials contend that, under Mexican law, a refugee whose rights are violated (for example, a refugee with a valid tourist visa) can ask a judge for an *amparo* (a restraining order) or can file criminal charges against the official who is acting illegally. However, refugees and refugee workers say that a foreigner with valid papers cannot prove the illegality of his or her detention because passports, visas, and identification documents are confiscated. In any case, most detainees do not have money for lawyers for the *amparo* process. Furthermore, the enormous discretion granted the government by Article 33 of the Constitution to deport without any legal process or prior order makes it difficult to stop a deportation.[27]

In Mexico City, Central Americans generally are held in an immigration detention facility. Those Central Americans the government marks for deportation are taken to the Guatemalan border. This is done regardless of their country of origin. (Foreigners from other parts of the world generally are not

taken there). The Central Americans must then pass through Guatemalan immigration.[28]

Whether they then are detained by Guatemalan authorities and taken to Guatemala's borders with their own countries or simply permitted to enter Guatemala freely is a disputed point. According to Jose Humberto Flores Lara, the immigration *delegado* for Ciudad Cuauhtémoc in Chiapas, the deportees are handed over to Guatemalan officials. He reports that Guatemalans are released on proof of citizenship, and Salvadorans are taken by Guatemalan authorities to the border with El Salvador. One Mexican refugee worker believes the Salvadorans are not taken to the El Salvador border because they return to Mexico so quickly. However, in years past the transfer to Salvadoran authorities did occur.[29]

Central Americans picked up south of the capital are not taken to Mexico City for deportation processing. Those detained in the southern border area are taken to Tapachula near the border with Guatemala, held in a municipal jail, and then taken to the Guatemalan border. Central Americans in the Veracruz area along the east coast of Mexico are taken directly to the Guatemalan border.[30]

The UNHCR reports that immigration officials call when a detained Central American declares himself to be a refugee under UNHCR's protection, and on several occasions they have received calls from the border with the U.S. In the past, the UNHCR has not always had access to detained foreigners, including refugees. For example, for some time after May 1983, UNHCR access to detention sites—and therefore to detainees—was limited. Because the UNHCR could not interview detainees, it could not seek solutions such as repatriation, resettlement, or integration. In addition, the UNHCR does not always receive responses when it inquires about the status of detained people.[31]

Refugee status with the UNHCR does not automatically prevent detention. In 1985, 53 UNHCR-certified refugees (overwhelmingly Salvadoran) were detained. When the UNHCR learns of the detention of a refugee, it contacts the detaining authorities. According to the UNHCR, its intervention is successful whenever done directly with local authorities prior to referral of the cases to immigration authorities. Although UNHCR reports do not say so directly, in practice successful intervention has meant paying a small bribe. During the period until mid-1985 when Mario Vallejo was Director of *Servicios Migratorios*, once the case was referred to immigration authorities, the refugee could be released only if the UNHCR arranged resettlement in a third country. This practice has not continued under the current Director of *Servicios Migratorios*, Jose Ortiz Arana. During the Vallejo administration at *Servicios Migratorios*, UNHCR refugees could be also detained for long periods in an immigration facility.[32]

Servicios Migratorios appears to be strengthening its means of tracking down undocumented foreigners. The Interior Ministry has a section where people can make *denuncias*, or accusations, against someone they think is in the country illegally. *Servicios Migratorios* makes a daily list of people to be detained. Initially, under the current *Servicios Migratorios* administration, the

UNHCR could obtain the release of its refugees from detention by verifying that the person was a refugee and taking custody of him or her. Beginning in March 1986, *Servicios Migratorios* requested that the UNHCR provide a list of refugees under mandate, with the understanding that these refugees would not be put on the list of foreigners to be detained.[33] While this may protect some refugees, it also gives *Servicios Migratorios* the names of all those declared refugees even if they have not sought immigration status from the Mexican government. In addition, this system does not prevent other agencies, including the police, from detaining refugees.

Deportations can send a message to the Central American community about their vulnerability in Mexico. In 1984, several well-publicized cases occurred. Two groups of Salvadorans were deported, with UNHCR interventions getting no response. In addition, nine Guatemalans were detained and held incomunicado in unknown locations or detained in their houses for two weeks. The UNHCR concluded that they were tortured. The government claimed later that the Guatemalans were involved in arms traffic and were expelled pursuant to the discretionary authority granted under Article 33 of the Constitution. Others in refugee groups say the expulsions were for violating the portion of Article 33 which prohibits foreigners from getting involved in Mexican political affairs. According to the UNHCR, this incident "created panic within the Guatemalan refugee community in Mexico City."^[34]

Under a high-level Mexican government decision, Central Americans are to be prevented from crossing to the U.S. There are regular, and usually vague, reports of cooperation between the U.S. and Mexico to prevent Central Americans from entering the U.S. and to deport those who are caught. For example, the UNHCR reports "[i]t is obvious that there is an agreement between the border patrols on both sides which allows massive expulsion of the illegal foreigners from the USA toward Mexico, from where they are deported."^[35]

It is official Mexican policy that undocumented Central Americans detected among Mexicans deported to Mexico from the U.S. are returned to U.S. immigration officials.^[36] However, some appear to remain in Mexico for Mexican deportation procedures although they are known to be Central Americans.^[37] Some Mexican and U.S. officials deny that Central Americans caught just over the border in the U.S. have been handed over to Mexican authorities for deportation, although there are reports to the contrary.^[38] There is no evidence that Mexico has agreed to accept Central Americans deported from the U.S. for whom the U.S. argued that Mexico was a "safe haven" or that their passage through Mexico was a basis for denying asylum in the U.S.

Sometimes immigration officials on both sides of the border have agreed to an expedited deportation procedure for Central Americans. Larry Richardson, then the U.S. Border Patrol's Chief Agent for the McAllen section in Texas, testified in a 1982 deposition to an arrangement he made with Mexican border officials. He turned over to Mexican officials those Central Americans detained in the U.S. who reportedly agreed to the procedure and had valid Mexican visas. They were then flown at U.S. expense to Mexico City for later deportation from Mexico. This procedure was apparently discontinued in

1983. Although Richardson thought this arrangement existed elsewhere on the border, other agents deny this. According to Al Guigni, the District Director for the Immigration and Naturalization Service in El Paso, this kind of arrangement could not continue because it was not a Mexico City-Washington arrangement.[39]

U.S. authorities regularly hand over to Mexican authorities those who try to enter the U.S. but are denied entry, for example, those with counterfeit documents or who have made false claims about citizenship.[40] In addition, the U.S. provides training in Mexico to Mexican officials on the detection of false documents. The U.S. also passes along information to Mexican officials related to the illegal entry of Central Americans into Mexico. If, for example, a factory in El Salvador that produces false Mexican documents is discovered, the U.S. government advises the Mexican government.[41]

The Immigration and Naturalization Service in the U.S. confirms Mexican "cooperation" in preventing the entry of Central Americans through Mexico's southern border, although the nature of the cooperation is unspecified.[42] In addition, the U.S. and Mexico have shown increasing cooperation along the northern border. For example, in March and April 1986, U.S. and Mexican agents carried out a cross-border operation in which Mexican police officers joined forces with U.S. officers in Mexico and the U.S. to roundup suspected felons in both countries. Some of those arrested in Mexico were deported to the U.S. and some of those arrested in the U.S. were deported to Mexico. There was no suggestion that extradition or other formal procedures were followed.[43]

In the past, Central Americans applying to U.S. immigration officials in Nogales, Arizona, for asylum have been told they have to stay in Mexico during the proceedings and have then been turned over to Mexican immigration authorities.[44] In addition, U.S. agents have entered Mexico, with the permission or knowledge of Mexican authorities, to gather evidence on the Sanctuary cases in the U.S.[45]

It is evident that Mexican and U.S. authorities view the passage of Central Americans through Mexico as a problem in which both countries have an interest. However, the degree to which they cooperate in keeping Central Americans outside of Mexico is largely unexplored and a complete analysis of the level of security of Central Americans in Mexico depends on future examinations of this issue.