

**Mandates of the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the human rights of migrants; and the Special Rapporteur on trafficking in persons, especially women and children**

REFERENCE:  
AL USA 6/2018

25 May 2018

Mr. Allegra,

We have the honour to address you in our capacities as Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the human rights of migrants; and Special Rapporteur on trafficking in persons, especially women and children, pursuant to Human Rights Council resolutions 36/6, 35/15, 32/32, 33/9, 34/5, 34/21 and 35/5.

In this connection, we would like to bring to the attention of your Excellency's Government information received concerning the **arrest of Mr. Scott Warren and charges against him, including harbouring and conspiracy to transport illegal immigrants.**

Mr. Scott Warren is a professor at Arizona State University and long-time volunteer with No More Deaths, a humanitarian organisation based in southern Arizona whose mission is to end the unlawful deaths and suffering of migrants, refugees and asylum-seekers in the Mexico - United States borderlands through civil-initiative.

According to the information received:

On 17 January 2018, following several hours of surveillance by Border Patrol agents, Mr. Scott Warren was arrested, along with two individuals receiving humanitarian aid, at a location called "The Barn", a shared humanitarian space in Ajo, Arizona. His arrest occurred hours after the release of the No More Deaths report entitled "*Interference with Humanitarian Aid: Death and Disappearance on the US-Mexico Border*".

The report sheds light on the situation of thousands of migrants in vulnerable situations, including victims or potential victims of trafficking, in the desert of the Arizona-Mexico borderlands, who are prevented from accessing lifesaving resources and medical aid and are constantly dying of dehydration and heat-

related illness. Over the last two decades, the remains of at least 7,000 people have been recovered in the United States borderlands, taking into consideration that, due to the remoteness of the area, only a small fraction of those who perish in the desert are discovered.

The report also denounced the implication of Border Control agents in the destruction of humanitarian aid supplies - such as food and safe drinking water - and included video footage of such acts, concluding that the only actors with a sufficiently large and consistent presence across a sufficiently wide area of the desert, during periods when hunting is authorised or prohibited, are State authorities.

In addition, the report denounced a pattern of intimidation, harassment and surveillance against humanitarian-aid workers, including in instances where they are taking migrants to medical clinics, which was considered as part of a systemic feature of enforcement practices in the United States borderlands and a logical extension of the broader strategy of prevention through deterrence, including through the vandalising of safe drinking water. As a result, the work of humanitarian aid workers attempting to reduce the number of migrants' deaths and disappearances has been routinely sabotaged by allegedly Border Patrol agents.

It was in this context that Mr. Warren was detained overnight and released on his own recognisance at a hearing in Tucson, Arizona, the next day.

Mr. Warren is charged with two felony counts of "harbouring", both of which carry a maximum penalty of five years, one felony count of "conspiracy to transport", which carries a maximum sentence of ten years, and two class B misdemeanor charges of "operating a motor vehicle in a wilderness area" and "abandonment of property", both of which carry maximum penalties of six months each. Mr. Warren thus faces a maximum sentence of 21 years in prison.

Mr. Warren's charge of "operating a motor vehicle in a wilderness area" relates to his alleged use of an administrative road in the Cabeza Prieta Wildlife Refuge in western Arizona, an area with unusually high numbers of human remains. His charge of "abandonment of property" relates to humanitarian aid packages containing water bottles, food, blankets, clothing and medical supplies which volunteers have left in the desert along known migration routes. Mr. Warren's trial hearing is scheduled to take place on 12 June 2018.

In addition, we have been informed that eight volunteers of No More Deaths have been charged with Class B misdemeanors.

Serious concern is expressed over the arrest and charges against Mr. Scott Warren and the charges against eight other volunteers for reasons directly linked to the provision of humanitarian aid to migrants in their capacity as migrant rights defenders. We express

additional concern that the arrest of Mr. Warren took place hours after the release of a report seeking to document the situation of migrants in the US-Mexico borderlands. We regret that this arrest takes place within the context of an apparent systematic pattern of targeting migrant rights defenders in the United States for reasons either directly, or tangentially, connected with their peaceful and legitimate work in the defence of human rights. We are deeply concerned with the “chilling effect” of the arrest and charges on legitimate human rights work aimed at saving lives. Serious concerns are also expressed over the alleged implication of United States Border Control agents in the destruction of humanitarian aid supplies, and their interference with migrants’ access to medical aid, which may result in the unlawful deaths of migrants, as well as their disappearance, including victims or potential victims of trafficking, in the Arizona desert.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency’s Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above, in particular articles 6, 13, 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the United States of America on 8 June 1992, which guarantee the right to life, not to be unlawfully expelled, and to freedom of opinion and expression, and of association.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information on the factual and legal bases for the charges against Mr. Scott Warren and explain how such charges are compatible with international human rights law and standards, in particular the treaty obligations undertaken by the United States under the ICCPR.
3. Please indicate what measures have been taken to ensure that migrant rights defenders in the United States are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation or retaliation directed against them or harassment of any sort.
4. Please provide information on the status of any investigations initiated into the alleged implication of United States Border Control agents in the destruction of life-saving humanitarian aid supplies, and interference with migrants’ access to medical aid, meant to reduce the number of deaths and disappearances of migrants, including victims or potential victims of

trafficking. If no investigations have taken place or have proven inconclusive, please explain why.

5. Please provide information on efforts taken by State authorities to protect the lives and basic human rights of all people within its territory and under its jurisdiction, regardless of their legal status.
6. Please provide information on how national criminalisation of “abandonment of property” related to provision of humanitarian aid to migrants in vulnerable situations, including victims and potential victims of trafficking, is in line with the international human rights obligations undertaken by the United States, in particular under the ICCPR.
7. Please indicate the measures being undertaken by the Government to recover and identify the remains found in the United States borderlands. If some of those remains have been identified, please indicate if the victims’ families have been duly informed about their relative’s fate.

We would appreciate receiving a response within 60 days. Your Excellency’s Government’s response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Government’s to clarify the issue/s in question.

Please accept, Mr. Allegra, the assurances of our highest consideration.

Bernard Duhaime  
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Agnes Callamard  
Special Rapporteur on extrajudicial, summary or arbitrary executions

Clement Nyaletsossi Voule  
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Dainius Puras  
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable  
standard of physical and mental health

Michel Forst  
Special Rapporteur on the situation of human rights defenders

Felipe González Morales  
Special Rapporteur on the human rights of migrants

Maria Grazia Giammarinaro  
Special Rapporteur on trafficking in persons, especially women and children

**Annex**  
**Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to draw your attention to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

*Situation of Mr. Scott Warren*

Articles 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the United States of America on 8 June 1992, provide for the rights to freedom of opinion and expression and freedom of association.

We would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, we would also like to bring to the attention of your Excellency's Government article 12 (2 and 3) of the UN Declaration on Human Rights Defenders, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

We would further like to reprise the recommendations made in the Report of the Special Rapporteur on the situation of human rights defenders in 2018, (A/HRC/37/51) which underline, inter alia, that States should ensure that migrant rights defenders are not threatened with and subject to arrest, detention or deportation when reporting crimes, labour rights violations, and other forms of human rights violations and that States must ensure that domestic law and administrative provisions facilitate the work of all actors providing humanitarian assistance to, and defending the rights of, people on the move, including by avoiding criminalisation.

*Situation of migrants on the United States – Mexico borderlands*

Article 6(1) of the ICCPR provides that every human being has the inherent right to life and that no one shall be arbitrarily deprived of one's life. The Human Rights Committee, in its General Comments no. 6 and 31, confirmed that this right is not to be narrowly interpreted and that its protection requires that the State adopt positive measures (General Comment no. 6, para. 5 and CCPR/C/21/Rev.1/Add.13 para. 8). These positive

obligations are only discharged if individuals are protected by the State against violations of its own agents, and private persons and entities alike. Permitting or failing to take appropriate action to exercise due diligence to prevent the death of any individual on its territory or under its jurisdiction will result in a violation by the State party of the ICCPR and give rise to State responsibility. If found true, the destruction by State agents of life-saving humanitarian aid, i.e. food and safe drinking water, resulting in an increased risk and death of migrants at the United States – Mexico borderlands, will give rise to such a violation and consequent State responsibility for these deaths.

As stated in the latest report of the Special Rapporteur on extrajudicial, summary or arbitrary executions to the General Assembly (A/72/335), the “weaponisation” of terrain as part of a deterrence enforcement strategy, i.e. practices of “chase and scatter” or leaving people in a hostile environment without supplies, as appears to be the result of the destruction of this life-saving humanitarian aid by State agents, may also amount to excessive use of force (violation of the principles of necessity and proportionality), which, if resulting in deaths, again gives rise to State responsibility (*ibid.* para. 34). As part of her recommendations, the Special Rapporteur indicated that all States should ensure that migration governance measures respect, protect and fulfil the right to life of all refugees and migrants, and that, in particular, no policies or practices rely on the likelihood, risk or severity of the harm refugees and migrants may incur to deter entry (*Ibid.* para. 91. In addition, all States should work with UNHCR to develop and implement asylum protection-sensitive border management systems (*Ibid.* para. 95).

Further, we would like to bring to your Excellency’s Government’s attention to article 13 of the ICCPR, stating that an alien lawfully in the territory of a State party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against this expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

In this regard we would like to highlight that the enjoyment of the rights guaranteed in the ICCPR ratified by your Excellency’s Government are not limited to citizens of States parties but “must also be available to all individuals, regardless of their nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party” (ICCPR/C/21/Rev.1/Add. 13 (2004), Para. 10).

We would like to draw to your Excellency’s Government’s attention resolution 9/5 of the Human Rights Council (A/HRC/RES/9/5), which requests States to effectively promote and protect the human rights and fundamental freedoms of all migrants, especially those of women and children, regardless of their immigration status, in conformity with the Universal Declaration of Human Rights (UDHR) and the international instruments to which they are party.

In her country visit to the United States, the Special Rapporteur on trafficking in persons, especially women and children noted that “the routine detention of migrants, including possible victims of human trafficking who have been classified as smuggled and processed for removal in the absence of accurate identification of trafficking grounds, may amount to “penali[sing victims] solely for unlawful acts committed as a direct result of being trafficked, such as using false documents, entering the country without documentation or working without documentation” (A/HRC/35/37/Add.2).

The increased number of deaths along the Mexico/United States migratory route, mentioned in Mr. Warren’s report, was also confirmed by the International Organisation for Migration (IOM), which found that, due to increased criminalisation of migration, migrants are forced to look for more remote paths to avoid detention. In addition, similarly to the findings included in *the No More Deaths* report, according to IOM, prolonged exposure to extreme environmental conditions at the borderlands, with temperatures reaching up to 104°F (40°C) and lack of access to humanitarian assistance are cited as the most frequent causes of death. Indeed, destruction of supplies, such as safe drinking water, de facto hinders migrants’ access to that type of life-saving humanitarian assistance that is essential to alleviate their suffering and prevent more deaths.

Concerning the allegations of disappearances of migrants, the 1992 Declaration on the Protection of All Persons from Enforced Disappearances in its article 13 (3) establishes that steps shall be taken to ensure that all involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal. In its report on enforced disappearances in the context of migration (A/HRC/36/39/Add.2), the UN Working Group on Enforced or Involuntary Disappearances recalls that the practice of pushing back or collective expulsion of migrants does not comply with the international obligation of non-refoulement and may lead to enforced disappearances. Similarly, all returns of migrants must be formally documented and undertaken in accordance with the law in order to avoid disappearances during those processes, including temporary disappearances. Furthermore, the State in which any person has disappeared, including migrants, regardless of their status, has the obligation to make the necessary efforts to search for and locate her/him immediately, in fulfilment of the recognised right to know the truth. In case of presumption of death, the State must search for the remains, identify them and return them to the relatives. States shall also investigate whether clandestine graves or other places where bodies may be concealed may exist in migratory transit areas and establish a register of found corpses, documenting the circumstances of the discovery. The Working Group also recommended that States should gather, compile and systematise all the information in relation to all individuals who go missing in, or transiting through, their countries. This information should also be systematically shared with bordering countries as well as with relevant international and/or regional organisations.

In this regard, we would like to refer to article 25 of the UDHR which guarantees the right of everyone to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care. Similarly,

we would like to bring the attention of your Excellency's Government to article 12 of the International Covenant on Economic, Social and Cultural Rights, signed by the United States of America on 5 October 1977. While the United States of America has not ratified ICESCR, it has agreed to bind itself in good faith to ensure that nothing is done that would defeat the object and purpose of the international instrument, pending a decision on ratification. This includes protecting and promoting the right to health, which extends not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, amongst others (General Comment No. 14, Committee on Economic Social and Cultural Rights, para 11).