Input for the UN Special Rapporteur on the human rights of migrants: Externalization of Migration and the Impact on the Human Rights of Migrants[1]

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This submission responds to the Special Rapporteur on the human rights of migrants' call for inputs on the externalization of migration, focusing on the **United States' recently implemented "transition expulsion model"**. This policy introduced in early 2025, represents a significant escalation in externalization strategies by forcibly transferring non-citizens, including asylum seekers, to third countries such as Panama, Costa Rica, and Guatemala, with which they have no prior connection or legal ties. These "transition" countries then must arrange the expelled individuals return to their country of origin or any other third country. The following addresses the first question posed by the Special Rapporteur in focusing on this model.

1. Examples of externalisation measures

This "transition model" is based on informal, opaque and not publicly available handshake agreements[2] between the USA and contracting states like Guatemala, Panama, and Costa Rica.[3] In the cases of Costa Rica and Panama, the U.S. pays for both the removal processes and detention facilities in these countries.[4] These Central American partners are then expected to find solutions for the migrants' ultimate disposition, typically working in cooperation with international organizations such as the International Organization for Migration (IOM) and, to a lesser extent, the UNHCR[5], to facilitate their return to countries of origin. The implementation started with five publicly known deportation flights in February 2025, three to Panama (299 people total) and two to Costa Rica (200 people), targeting migrants primarily from Asia, Africa, and Eastern Europe.[6]

[1] This submission draws upon analysis of my draft paper *The U.S. 'Bridge' Expulsion Model: A New Precedent in the Externalization of Migration Control?*.
[2] Maria Verza *The US lines up Latin American cooperation for migrant deportations* AP News, 26 February 2025, available here https://apnews.com/article/deportees-migrants-trump-latin-america-mexico-panama-27320f15ad6c316f242eae53e45f19c8. This finding was also supported by several interviews conducted by the author with experts in the USA and Latin American states. Details on the interviews on file with the author.
[3] The U.S. has also concluded/is about to conclude similar agreements with El Salvador, Mexico, Rwanda, South Sudan and possibly also Libya. These policies differ however in their scope as the other countries do not serve as "transition" states.
[4] Jeff Ernst *Trump is making Central America become a dumping ground for US immigrants* 2 March 2025, available here https://www.theguardian.com/us-news/2025/mar/02/trump-central-america-immigrants-deportation.
[5] The author has reached out to both organizations offices in Costa Rica and Panama requesting an interview. UNHCR never replied. IOM Panama agreed to an interview but never responded after receiving the questions from the author. Despite several attempts of establishing contact, neither organization has offered any input. There is no public statement available on their role in this policy.
[6] On February 12, the first flight from the U.S. to Panama was a military plane from California transporting 119 individuals to Panama, comprising nationals from India (35), China (33), Uzbekistan (19), Iran (12), Vietnam (9), and smaller numbers from Nepal, Turkey, Afghanistan, Pakistan, and Sri Lanka. This group included both males (82) and females (37), with some minors accompanied by parents.

On deportations to Guatemala, there is little publicly available evidence on whether and if so, how many flights and non-citizens were removed to the country.[7]

a) The (legal) basis for these measures?

On the side of the USA, the underlying legal authority for removing non-citizens to third countries derives from the Immigration and Nationality Act (INA), particularly 8 USC 1231(b)(2)(C)(iv), which allows removal to a country willing to accept the non-citizen if the removal to the home country is "impracticable, inadvisable, or impossible".[8] Overall, the new "transition" approach is characterized by its informality and the lack of a publicly available document offering insights into the legal basis for the removals. Interviews conducted by the author with lawyers, policy makers and human rights advocates in the U.S., Panama and Costa Rica have confirmed this. In the case of Panama, a prior Memorandum of Understanding (MoU) with Panama concluded under the Biden administration in July 2024 had been made publicly available.[9] Under this agreement, the U.S. covers the costs for removal flights of third country nationals from Panama to various countries of origin that had not been in the U.S. before. Within the context of the new expulsion policy, the two countries seem to rely on an extension on this previous MoU as the legal basis.[10] The MoU, which is only publicly available in Spanish[11], does not mention an option for such "transition" expulsions from the U.S. to Panama. It seems that both governments speak of an "extension" to the original MoU – whose content however is not publicly available.[12] The reliance on this MoU as the legal basis is also evidenced by the fact that a removal flights of individuals from Cameroon, Nepal, India, Bangladesh, Vietnam, and Sri Lanka on May 6, 2025 from Panama to their home countries took place with reference to this MoU.[13]

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[7] The official statistic for all removals from and to Guatemala in 2025 can be found here https://app.powerbi.com/view?r=eyJrIjoiZWQyZDVkZjAtMmEyYi00NWRlLTg0MTUtZDRjNWExZjZiZmM0Iiwidt CI6ImViOTEyNjQxLTEwNGEtNDRmOC1iNzk3LWIzYjU4ODU4NGYxZCJ9. There is no mentioning of any expulsion of third country nationals from the U.S. to Guatemala in 2025.

[8] The provision is available here DHS Library, 8 USCS § 1231(b)(3) (2005) INA § 241, https://www.dhs.gov/xlibrary/assets/training/xus/crcl/asylumseekers/crcl_asylum/pdfs/Immigration%20and%20Nationality%20Act%20Section%20101(b)(3).pdf.

[9] US Embassy in Panama *United States Signs Arrangement with Panama to Implement Removal Flight* Program 1 July 2024, available here https://pa.usembassy.gov/united-states-signs-arrangement-with-panama-to-implement-removal-flight-program/. Interestingly, as of May 2025, the link to the original MoU of July 2024 is no longer functioning.

[10] The Library of Congress notes "On February 2, 2025, the governments of Panama and the United States agreed to expand a joint program that started in 2024 in which the U.S. provides financial assistance to Panama to repatriate foreigners that enter its territory without authorization. Under the new agreement, the program has been expanded to provide for Panama to accept migrants deported from the United States who are destined to third countries via a stop in Panama. See Library of Congress *Panama-United States: Agreement Reached on Joint Repatriation Program* 13 March 2025, available here https://www.loc.gov/item/global-legal-monitor/2025-03-13/panama-united-states-agreement-reached-on-joint-repatriation-program/.

[11] The MoU is available via the US Library of Congress, here https://perma.cc/8V3U-VMC9.

[12] This is supported by testimonies of lawyers interviewed by the author in Panama working on this matter. Marco Rubio visited Panama on 3 February 2025 and seemingly stroke this "deal". For some context, see, for example, Maria Abi-HabibAnnie CorrealEmiliano Rodríguez MegaJames Wagner and David Bolaños *Latin America Gets Into Deal-Making Mode for Rubio's Visit* New York Times, 1 February 2025, available here https://www.nytimes.com/2025/02/01/world/americas/rubio-central-america-visit.html.

[13] U.S. Embassy in Panama *U.S.-Panama Migration MOU Facilitates 48 Deportation Flights of Illegal Migrants* 6 May 2025, available here https://pa.usembassy.gov/u-s-panama-migration-mou-facilitates-48-deportation-flights-of-illegal-migrants/.

b) Which entities are responsible for negotiating, concluding and implementing these arrangements?

Negotiation and conclusion of the secretive "handshake" agreements involved U.S. diplomatic efforts led by U.S.-Secretary of State Marco Rubio with partner countries.[14] Implementation involves U.S. immigration authorities (such as ICE) and the governments of the partner countries (Panama, Costa Rica, Guatemala). In the case of Costa Rica, government representatives and officials from the Foreign Ministry Officials, the Ministry of Public Security, the Directorate of Immigration and Alien Affairs, the National Child Welfare Agency (PANI), representatives of the U.S. Embassy, as well as the International Organization for Migration were present when the first flight of expelled non-citizens arrived in San José.[15] International organizations like IOM and UNHCR were directly involved in organizing the process of receiving those expelled and in the case of IOM in facilitating "voluntary" returns.[16] The negotiation, conclusion and implementation of these policies lack transparency and they have mainly gained public attention due to a wide range of global media coverage[17] and the work of human rights advocates and lawyers, as visible in the case *Ghasemzadeh et al. v. Panama* brought to the Inter-American Commission on Human Rights.[18]

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[14] Guatemala agreed to take back some third countries' citizens when Secretary of State Marco Rubio visited the country in February 2025, see https://apnews.com/article/deportees-migrants-trump-latin-america-mexico-panama-27320f15ad6c316f242eae53e45f19c8. The oficial statement mentioning the acceptance of third country nationals is to be found here. The statement is silent on any details or the legal basis thereof: https://x.com/GuatemalaGob/status/1887298509759475838/photo/1. For Panama see, Ministerio de Seguridad de Panama *Panamá y Estados Unidos ampliarán memorándum de entendimiento para repatriación y deportación de migrantes irregulares* 2 February 2025, available here https://perma.cc/7638-PSGU. Rubio also visited Costa Rica on 4 February 2025 that lead to the handshake agreement on the "transition" expulsions, U.S. Embassy in Costa Rica *Secretary of State Marco Rubio and Costa Rican President Rodrigo Chaves Robles at a Joint Press Availability* 2 February 2025, available here https://cr.usembassy.gov/secretary-of-state-marco-rubio-and-costa-rican-president-rodrigo-chaves-robles-at-a-joint-press-availability/.

[15] In the case of Costa Rica, the organisation *Defensoria de los Habitantes* which has monitored the arrival, treatment and accommodation of those expelled to the Central American country, has in detail described the implementation of the policy on the ground, Interview with representatives of the organization, 12 May 2025. See also, Defensoria de los Habitantes *Consulta sobre el Informe de Observación Activa* Oficio DH-DIND-0256-25, 4. For for information, see here https://www.dhr.go.cr/.

[16] IOM has been severely criticized by human rights organizations for its involvement in this policy in Costa Rica and Panama and has been alleged to coercing non-citizens into their "voluntary" return, see, for example, Human Rights Watch *"Nobody Cared, Nobody Listened" The US Expulsion of Third-Country Nationals to Panama* 24 April 2025, available here https://www.hrw.org/report/2025/04/24/nobody-cared-nobody-listened/us-expulsion-third-country-nationals-panama. See also, Gisela Salim-Peyer *'All They Want Is America. All They Have Is Panama.' They thought they'd reached their journeys' end. Now many of them have come full circle.* The Atlantic, 23 May 2025, available here https://www.theatlantic.com/international/archive/2025/05/third-country-deportations-panama/682909/?gift=PmTKL8SDw2JXqwDad9p84u916d8KSkOktEDB1Q6apvs&utm_source=copy-link&utm_medium=social&utm_campaign=share.

[17] See for, example, Yong Xiong *'We are in danger': Migrants deported from US were locked in hotel and held at remote camp in Panama, lawyers say* CNN, 22 February 2025, available here https://edition.cnn.com/2025/02/22/americas/migrants-deported-camp-panama-intl-latam/index.html.

[18] *Ghasemzadeh et al. v. Panama*, submitted inter alia by the Global Strategic Litigation Council.

c) Practical implementation?

Monitoring reports show that the implementation was done on an *ad hoc* basis raising serious human rights concerns.[19] A troubling pattern has emerged where both Panama and Costa Rica transferred the non-citizens to remote jungle regions near their borders with neighboring countries.[20] These isolated locations severely restrict monitoring by human rights organizations and access by legal advocates, creating conditions where abuses can occur with minimal oversight.[21] The absence of transparent asylum procedures in these "asylum" countries effectively creates a protection vacuum where individuals potentially fleeing persecution are caught in a legal limbo, unable to access the international protection mechanisms guaranteed under refugee conventions to which both the United States and its regional partners are signatories and in danger of *refoulement*.[22] In addition, Costa Rica and Panama do not have return agreements with all countries of origin to which those removed from the U.S. are supposed to be returned to.[23] Many non-citizens do not want to return to their country of origin out of fear for their life[24] - they are now stuck in a legal limbo in these transitory countries with limited rights to remain.[25]

In conclusion, the US "transition expulsion model" represents a troubling externalization strategy that undermines migrant human rights by forcibly transferring individuals to Panama, Costa Rica, and Guatemala through opaque agreements, disregarding their right to seek asylum, minimum due process guarantees and the non-refoulement principle. This strategy violates *non-refoulement* principles and creates dangerous precedent for evading refugee protection responsibilities. The resulting legal limbo traps asylum seekers in transit countries without adequate procedures or return agreements. The Special Rapporteur must urgently address this erosion of refugee protection to prevent externalization from becoming a normalized tool for circumventing human rights obligations in return procedures.

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[19] See for example, *Consulta sobre el Informe de Observación Activa* on file with the autor.

[20] Matias Delacroix Isolated in 'harsh conditions:' Deportee from US details legal limbo in Panama camp near Darien Gap AP News, 23 February 2025, available here https://apnews.com/article/panama-deportees-trump-hotel-darien-gap-iom-bba8c3dc33fd38efd569a5b51e481a86. One individual in a detention camp told the Associated Press they were never informed of their rights or told how long they would be held. This uncertainty compounded concerns about poor conditions in the facilities.

[21] Ibid., also interview with Defensoria de los Habitantes.

[22] Interview partners in Costa Rica and Panama stressed that some individuals ultimately could apply for asylum in contrast to the governments initial statement that this is not possible. In Costa Rica, some applications are still pending according to the interviews. In the case of Panama, 6 individuals applied during their detention in the jungle, all six applications had been denied within a few days.

[23] E.g. there is not even a representation of Cameroon in Panama. Based on the leaking of documents to the public, the Cameroonian embassy in Brasil has intervened to organize some returns of Cameroonian nationals.

[24] Human Rights Watch *"Nobody Cared, Nobody Listened" The US Expulsion of Third-Country Nationals to Panama* 24 April 2025, available here https://www.hrw.org/report/2025/04/24/nobody-cared-nobody-listened/us-expulsion-third-country-nationals-panama

[25] In the csae of Panama, the government granted them a temporary permit, which has been extended to 90 days. Farnaz Fassihi, Hamed Aleaziz *U.S. Bill Named for Iranian Deported to Panama Aims to Shield Asylum Seekers* NY Times, 20 May 2025, available here https://www.nytimes.com/2025/05/20/world/middleeast/us-bill-iran-panama-asylum.html.