

United States Senate

WASHINGTON, DC 20510

June 28, 2019

The Honorable William Barr
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

I write with concern regarding the Department of Justice (DOJ) practice of bringing charges against humanitarian aid workers who are working at the U.S. Mexico border.

On April 11, 2017, then-Attorney General Jeff Sessions issued a memorandum to federal prosecutors, urging them to prioritize for prosecution “any case involving the unlawful transportation or harboring of aliens.”¹ In the wake of this guidance, DOJ prosecutors have also, with increasing frequency, charged aid workers at our border for a variety of actions related to their humanitarian work. I am deeply troubled that the DOJ is using its prosecutorial discretion in this manner.

In January 2018, for example, the United States Attorney’s Office for the District of Arizona filed a complaint against Dr. Scott Warren, a humanitarian aid volunteer working at our southern border to prevent deaths of migrants and asylum seekers. Through his work with the faith-based organization No More Deaths, Dr. Warren seeks to provide migrants with life-saving aid. The complaint against Dr. Warren alleges that on or about January 17, 2018, he “took care of [migrants] by giving them food, water, beds, and clean clothes.”² For this conduct, the government charged Dr. Warren with two felony counts of harboring undocumented migrants and one count of conspiracy to transport and harbor undocumented migrants. Although the jury deliberating the charge remained deadlocked and was ultimately unable to deliver a verdict, had Dr. Warren been convicted on all charges, he would have faced up to twenty years in prison.

DOJ’s decision to charge Dr. Warren is not an isolated incident of charging a humanitarian aid worker. In January 2019, four other volunteers associated with No More Deaths were convicted on misdemeanor charges for leaving food and water on the Cabeza Prieta Refuge.³

¹ Memorandum from the Office of the Attorney General on Renewed Commitment to Criminal Immigration Enforcement to All Federal Prosecutors (Apr. 11, 2017) <https://www.justice.gov/opa/press-release/file/956841/download>.

² *United States v. Warren*, Case 4:18-cr-00223-RCC-DTF Compl. (D. Ariz. filed Jan. 18, 2018).

³ Kristine Phillips, *They Left Food and Water for Migrants in the Desert. Now They Might Go to Prison.*, Wash. Post (Jan. 20, 2019), <https://www.washingtonpost.com/nation/2019/01/20/they-left-food-water-migrants-desert-now-they-might-go-prison>.

According to U.S. Customs and Border Protection (CBP), more than 7,200 migrants have died crossing our southern border over the past twenty years.⁴ Many of these fatalities were from hunger, thirst, or heat-related illness. Recognizing the tragic nature of these deaths, in 2018, Congress urged CBP “to continue its policies and activities that help protect people who have illegally entered the United States from the dangers inherent in crossing this terrain, including the prohibition on any activity by agents that could damage water and food caches and continued support for initiatives focused on increasing migration safety.”⁵ Referral of humanitarian actors for prosecution under dubious conspiracy and harboring charges unquestionably undermines initiatives to increase migration safety.

Former Attorney General Sessions’ April 2017 memorandum suggests that the offenses he prioritized for prosecution — including the harboring offense with which Dr. Warren has been charged — will help “establish lawfulness in our immigration system.”⁶ This assertion lacks evidence and ignores an undeniable reality: Migrants will continue to make this perilous journey so long as violence and persecution persists in their home countries. Deterrence through prosecution of humanitarian aid workers is, at best, an ineffective strategy to stem the flow of those seeking refuge, and at worst, a punitive tactic meant to harm migrants and those who would aid them.

Aid workers at our border understand that they can play a pivotal role in preventing the needless deaths of migrants and asylum seekers. Indeed, Amnesty International and multiple United Nations experts have acknowledged these aid workers as doing legitimate humanitarian work. The decision to criminalize their work is a stunningly poor use of resources, and may be a de facto death sentence for desperate migrants navigating an unforgiving terrain. Assuredly, DOJ has more serious efforts to undertake than to pursue charges against humanitarian volunteers.

I urge you to rescind Attorney General Sessions’ April 2017 memorandum and any other guidance that would encourage the prosecution of humanitarian aid workers, and advise all U.S. Attorneys to exercise their prosecutorial discretion accordingly in cases involving humanitarian aid. Providing humanitarian aid should never be a crime.

Sincerely,


EDWARD J. MARKEY
United States Senator


ELIZABETH WARREN
United States Senator

⁴ US Border Patrol, "Southwest Border Sectors: Southwest Border Deaths By Fiscal Year (Oct. 1st through Sept. 30th)," available at: <https://www.cbp.gov/sites/default/files/assets/documents/2019-Mar/bp-southwest-border-sector-deaths-fy1998-fy2018.pdf>.

⁵ H.R. Rep., Comm. on Appropriations, 115th Cong., 2d Sess., DHS Appropriations Bill, 2019, at 17, <https://docs.house.gov/meetings/AP/AP00/20180725/108623/HMKP-115-AP00-20180725-SD004.pdf>.

⁶ Memorandum, *supra* note 1.



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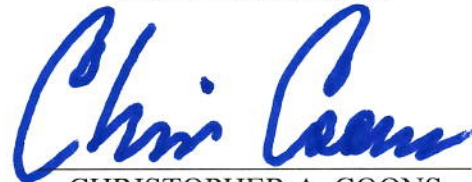
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