



HUMAN
RIGHTS
WATCH

“We Can’t Help You Here”

US Returns of Asylum Seekers to Mexico



“We Can’t Help You Here”
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Summary

The Trump administration has pursued a series of policy initiatives aimed at making it harder for people fleeing their homes to seek asylum in the United States, separating families, limiting the number of people processed daily at ports of entry, prolonging detention, and narrowing the grounds of eligibility for asylum. In January 2019, the administration expanded its crackdown on asylum with a wholly new practice: returning primarily Central American asylum seekers to several border towns in Mexico where they are expected to wait until their US asylum court proceedings conclude, which could take months and even years. Under a recent deal with Mexico, this practice may expand across the entire border.

Human Rights Watch found that the program, named the “Migrant Protection Protocols” (MPP) by the US government but known colloquially as “Remain in Mexico,” has thus far had serious rights consequences for returned asylum seekers. We found that the returns program is expelling asylum seekers to ill-prepared, dangerous Mexican border cities where they face high if not insurmountable barriers to receiving due process on their asylum claims.

Asylum seekers already returned to Mexico under the MPP have been facing an extremely precarious situation. There, they encounter a severe shortage of shelter space, leaving those who can’t afford to pay for a hotel room or private residence to sleep on the streets or stay in churches or abandoned homes. Most asylum seekers fleeing Central America have extremely limited means and often cannot pay for shelter, food, water, or other necessities. They are also at risk of serious crime, including kidnapping, sexual assault, and violence.

As of June 24, 2019, the Mexican government reported that 15,079 people, mostly from Honduras, Guatemala and El Salvador, had been returned to Ciudad Juárez, Tijuana and Mexicali under the MPP program, with instructions to appear months later in US immigration court across the border. This number includes at least 4,780 children with their parents, at least 13 pregnant women, and dozens of others who may be especially vulnerable due to their medical condition, age, gender identity or other factor.

On June 7, President Donald Trump announced the United States had concluded a deal with Mexico to “immediately expand the implementation” of MPP across the entire border, all but ensuring that the number of those affected by the program will grow rapidly. Mexican officials have publicly estimated that they expect about 60,000 people to be sent by the US to Mexico by the end of August.

Human Rights Watch conducted 19 in-depth interviews with asylum seekers sent to Ciudad Juárez, as well as 13 interviews with government officials, local civil society activists and attorneys in the US and Mexico. We observed MPP immigration court hearings for 69 individuals.

In February, the American Civil Liberties Union, the Southern Poverty Law Center, and the Center for Gender & Refugee Studies challenged the return program in federal district court in California, arguing that the MPP violates the US Immigration and Nationality Act, the Administrative Procedure Act, and US obligations under international human rights law not to return people to places where they face grave danger.

The plaintiffs won a preliminary injunction, successfully arguing that the program would pose immediate harms to asylum seekers as well as to the advocacy organizations serving them. The government appealed and in May, the US Court of Appeals for the Ninth Circuit stayed the district court’s injunction pending the appeal. The appeals court held that the return program could continue while the case was being argued, in part based on the premise that returned asylum seekers would have access to humanitarian support and work authorization in Mexico. Human Rights Watch found, however, that despite the Mexican government’s earlier promises, which were later echoed by the US Department of Homeland Security, Mexico has not provided work authorization to asylum seekers in the MPP program, leaving tens of thousands stranded for prolonged periods, many with no way to support themselves. As of June, the number of asylum seekers marooned in Ciudad Juárez already outnumbered the spaces available in free humanitarian shelters by 11 to 1.

On June 26, the union representing federal asylum officers – those tasked with implementing the MPP program – filed an amicus brief in federal court condemning the program as “fundamentally contrary to the moral fabric of our Nation and our international and domestic legal obligations.”

The precarious existence of asylum seekers and their identity as non-Mexicans in Ciudad Juárez increases their vulnerability to physical harm.

According to the Mexican government, the country is currently facing a violent public security crisis. Mexico recorded more intentional homicides in 2018 than it has since the country began keeping records in 1997, and two of the northern states to which asylum seekers are being returned under MPP, Baja California and Chihuahua, are among the most violent in the country.

Among those asylum seekers Human Rights Watch interviewed and those interviewed by a local advocacy organization, several reported attacks on themselves or others in the town, including violent assaults, sexual violence, and kidnapping. A US government screening process to remove people from the MPP program who face harm in Mexico is allowing less than 1 percent of returned asylum seekers to exit the program and pursue their claims within the United States.

Meanwhile, asylum seekers forced to remain in Mexico have no meaningful access to due process. Immigration attorneys and advocates in El Paso, Texas, told Human Rights Watch the need for legal services for returned asylum seekers in Mexico is overwhelming and that attorneys working to provide low-cost or free representation face serious barriers to providing that representation, including returned asylum seekers' lack of fixed addresses and telephone numbers.

Human Rights Watch also confirmed reports that US Border Patrol agents have routinely refused or failed to return asylum seekers' personal identification documents. Without identification, asylum seekers face difficulties proving the custody of their children or receiving money wired by family members. They may also be barred from travel, meaning they cannot freely seek asylum elsewhere or return home in cases of extenuating circumstances.

The Migrant Protection Protocols program is separating families, including people who are the primary caretakers of children, siblings, and parents. The separations can wreak severe psychological harm and split shared claims for protection across US jurisdictions, adding to the already hefty immigration court backlog.

The US should immediately cease returning asylum seekers to Mexico and instead ensure them access to humanitarian support, safety, and due process in asylum proceedings. Congress should urgently act to prohibit using government funds to continue this program. The US should manage asylum-seeker arrivals through a genuine humanitarian response that includes fair determinations of an asylum seeker's eligibility to remain or not in the US. The US should simultaneously pursue longer-term efforts to address the root causes of forced displacement in Central America.

Recommendations

To the US Department of Homeland Security

- Immediately end the Migrant Protection Protocols (MPP) program and cease returning asylum seekers to Mexico, and instead ensure them access to humanitarian support, safety, and due process in immigration court proceedings.
- Ensure every person who applies for asylum in the US, at or between a port of entry, is able to have a fair hearing in which their claims receive full and adequate consideration.
- Return all identity documents and personal belongings to asylum seekers and other migrants upon release.

To the US Department of Justice

- Reduce barriers to due process as well as the backlog in the immigration court system, including by restoring the ability of immigration judges to close cases administratively.

To the US Congress

- Provide sufficient resources to the Executive Office of Immigration Review of the Department of Justice for additional immigration judges and to US Citizenship and Immigration Services for additional asylum officers.
- Do not provide additional funding to the Department of Homeland Security (DHS) for immigration enforcement without specific measures to ensure appropriate and effective oversight and to stop and prevent abusive policies.
- Prohibit funds from being used to implement the Migrant Protection Protocols or any subsequent revisions to those protocols.

To the Mexican Government

- Do not accept asylum seekers sent by the US to Mexico under the MPP program unless the US government can ensure they have adequate means to safely stay in

Mexico, and so long as the US government can ensure they receive due process in their immigration proceedings.

- Clearly articulate, while the MPP program is in effect, the total number of MPP asylum seekers Mexico can receive in each sector based on existing shelter capacity, rather than processing capacity at the border. Do not accept anyone DHS attempts to transfer outside of those parameters.
- Provide, while the MPP program is in effect, humanitarian visas and work authorization to asylum seekers in the MPP program.

Methodology

This report is based on interviews and court monitoring conducted by Human Rights Watch in Mexico in Ciudad Juárez, Chihuahua, and in the United States in El Paso, Texas, and Las Cruces, New Mexico, from May 6 to 13, 2019, as well as in San Diego, California, May 22, 2019.

Human Rights Watch visited shelters and nonprofits in Mexico, where we conducted in-depth interviews with 19 Central American asylum seekers. Sixteen of those interviewed were recently sent to Ciudad Juárez from the United States to remain for the duration of their asylum proceedings; two additional interviews included asylum seekers waiting in Mexico to pursue their claims. Researchers interviewed one additional asylum seeker in the US who had been separated from her mother after she was sent to remain in Ciudad Juárez. Staff with a partner organization, the Hope Border Institute, conducted another four interviews during the same visit to Ciudad Juárez. Findings from those interviews were shared with Human Rights Watch and are included in this report. We also observed immigration court proceedings for 54 asylum seekers in El Paso and 15 returned asylum seekers in San Diego, all of whom had been placed in the MPP program.

Some of the Central American asylum seekers interviewed were identified with the assistance of immigration advocates working in Ciudad Juárez, Mexico, and El Paso, Texas.

Human Rights Watch also interviewed 13 migrant services providers, lawyers, academics, and government officials in Mexico and in the United States. Most of these interviews took place in person, but some took place by voice or video calls.

Human Rights Watch carried out interviews in English or in Spanish, depending on the preference of the interviewee, without interpreters. We informed the interviewees of the purpose of our research and they consented to be interviewed for that purpose. They did not receive money or other compensation to speak with us.

The names of asylum seekers have been replaced with pseudonyms to mitigate security concerns, and the names of some government officials have been withheld at their request because of concerns of political retaliation, as indicated in relevant citations.

The report is also based on an extensive review of official documents, news accounts in media outlets in the US and Mexico, and other publicly available sources.

This report covers events and data as of July 1, 2019, when it went to print.

We shared our findings with the US Department of Homeland Security and requested a response but did not receive any as of the date of publication.

Background

On January 25, 2019, the Donald Trump administration announced it would begin returns to Mexico under the Migrant Protection Protocols (MPP), otherwise known as “Remain in Mexico,” on the grounds that such measures were needed to address a growing number of migrants, including adults traveling with children, coming to the US-Mexico border to apply for asylum.¹ The US Department of Homeland Security (DHS) asserted that a recent rise in numbers of such migrants, particularly families who were turning themselves in to US Border Patrol, was caused by people who were “trying to game the system” and applying for asylum only to cross the border and disappear into the US, rather than show up for immigration court hearings.²

However, the claims made by DHS were not supported by available data.

According to the US Department of Justice, Executive Office of Immigration Review (EOIR), which adjudicates immigration court cases, among those who filed an asylum application in immigration court – a complicated and lengthy form that must be completed in English – 81 percent showed up to all of their court hearings through case completion in fiscal year 2017.³

The Transactional Records Access Clearinghouse at Syracuse University (TRAC), a research center that analyzes government data, obtained Immigration Court records via the Freedom of Information Act of nearly 47,000 newly arrived families seeking asylum and found that nearly 86 percent of asylum seekers released from custody attended initial hearings as of

¹ “Secretary Kirstjen M. Nielsen Announces Historic Action to Confront Illegal Immigration,” DHS press release, December 20, 2018, <https://www.dhs.gov/news/2018/12/20/secretary-nielsen-announces-historic-action-confront-illegal-immigration> (accessed May 28, 2019). As currently instituted, the Migrant Protection Protocols (MPP) is a formally unilateral program by the United States with no formal agreement with the government of Mexico. See Robert Moore, “Controversial ‘Remain in Mexico’ Policy for Asylum Applicants Headed to El Paso,” *Texas Monthly*, March 1, 2019, <https://www.texasmonthly.com/news/controversial-remain-in-mexico-policy-for-asylum-applicants-headed-to-el-paso/> (accessed June 5, 2019).

² “Secretary Kirstjen M. Nielsen Announces Historic Action to Confront Illegal Immigration,” DHS press release, December 20, 2018, <https://www.dhs.gov/news/2018/12/20/secretary-nielsen-announces-historic-action-confront-illegal-immigration> (accessed May 28, 2019).

³ This number probably does not represent the totality of migrants with fear claims given the difficulty involved in even filing an asylum claim. US Department of Justice Executive Office for Immigration Review, “Statistics Yearbook: Fiscal Year 2017,” undated, <https://www.justice.gov/eoir/page/file/1107056/download> (accessed June 17, 2019).

the end of May 2019.⁴ Of those who were represented by an attorney, more than 99 percent attended hearings.⁵

An independent study analyzing 18,000 immigration court proceedings for families from 2001 to 2016 found 86 percent of released families attended all court hearings during those years; that number rose to 96 percent for families that had filed asylum applications.⁶

Initial data suggests that investing in legal assistance and community support for released asylum seekers could ensure that an even higher number of people appear.⁷ In a pilot detention alternative program in which families and unaccompanied children had legal representation, the figure of asylum seekers who attended asylum proceedings rose to nearly 98 percent.⁸

EOIR data suggests among all immigrants released from detention, a lower percentage attend all their hearings to court completion. EOIR reported that in fiscal year 2017, 41 percent received *in absentia* orders of removal – that is, they did not attend the hearing in which a court ordered their removal.⁹ Other analysts, however, have disputed EOIR’s methodology in calculating *in absentia* rates. TRAC has calculated lower *in absentia* rates using EOIR’s own data, obtained via the Freedom of Information Act, but using different methodology.¹⁰ For example, in fiscal year 2015, EOIR reported that 38 percent of people

⁴ Transactional Records Access Clearinghouse (TRAC), “Most Released Families Attend Immigration Court Hearings,” June 18, 2019, <https://trac.syr.edu/immigration/reports/562/#f1> (accessed June 20, 2019).

⁵ Ibid.

⁶ Ingrid Eagley, Steven Shafer, and Jana Whalley, “Detaining Families: A Study of Asylum Adjudication in Family Detention,” *American Immigration Council*, August 2018, https://www.americanimmigrationcouncil.org/sites/default/files/research/detaining_families_a_study_of_asylum_adjudication_in_family_detention_final.pdf (accessed June 17, 2019).

⁷ Denise Lu and Erik Watkins, “Court Backlog May Prove Bigger Barrier Than Any Wall,” *New York Times*, January 24, 2019, <https://www.nytimes.com/interactive/2019/01/24/us/migrants-border-immigration-court.html> (accessed May 28, 2019).

⁸ Transactional Records Access Clearinghouse (TRAC), “Priority Immigration Court Cases: Women with Children,” May 2018, <https://trac.syr.edu/phptools/immigration/mwc/> (accessed May 28, 2019).

⁹ Transactional Records Access Clearinghouse (TRAC), “What Happens When Individuals are Released on Bond in Immigration Court Proceedings,” September 14, 2016, <https://trac.syr.edu/immigration/reports/438/> (accessed June 17, 2019).

¹⁰ TRAC explains the difference between its calculation and EOIR’s: “TRAC’s result differs from what EOIR publishes as its ‘in absentia’ rate for the following two reasons. First, EOIR’s rate is based upon the initial, rather than the last proceeding. If this rate is being used as an indicator of individuals absconding, rather than simply failing to appear, then using the first proceeding and ignoring subsequent ones is quite inappropriate. Where, for example, the individual never received notice of the hearing, the case may be reopened, and a later hearing may take place. Use of the last proceeding, rather than the first, is thus a more accurate measure in this context. In fact, using the last proceeding instead of the first significantly impacts

released were ordered removed *in absentia*. Under TRAC’s calculations, 23 percent were ordered removed *in absentia*.¹¹ The *in absentia* rate of removal may also reflect the significant systemic barriers asylum seekers face to pursuing asylum in the US.¹² The large backlog and lack of government-appointed counsel in immigration court likely affects the rate of overall no-shows to court hearings as it forces migrants to navigate a complicated court system alone over many years.

EOIR’s calculation also does not account for people who were ordered removed *in absentia* and who subsequently managed to get the order overturned, having demonstrated that they did not attend their hearing because the government failed to properly serve them with a notice to appear or other extenuating circumstances.¹³

Northern Triangle countries – El Salvador, Guatemala and Honduras – have been experiencing extremely high levels of violence from which their governments have proven unwilling or unable to protect the population. Several United Nations (UN) agencies working in Central America have noted that violence has forced hundreds of thousands of people into internal displacement or to flee their countries in search of protection abroad.¹⁴ El Salvador has one of the highest homicide rates in the world, and many

and reduces the calculated rates. Second, EOIR unlike TRAC does not include all individuals with hearings that conclude their case, choosing to exclude some because of the particular type of decision the court ultimately made. While anyone who absconded would not be qualified to receive the type of decision that EOIR labels as ‘other completions’, the agency excludes these from its total case completion count when computing *in absentia* rates. Although formerly insignificant in number, these ‘other completions’ have grown in recent years. They have the same practical effect of closing the case and allowing the individual to remain in the US. In FY 2015, these ‘other completions’ made up around a quarter of the cases the court decided. EOIR appears to continue to exclude them for what appears to be largely historical reasons when its case counting methodology was quite different. No rationale now for their current exclusion remains. Indeed, continuing to exclude them results in publishing misleading and greatly inflated *in absentia* rates.” TRAC, “What Happens When Individuals Are Released on Bond in Immigration Court Proceedings,” fn. 7.

¹¹ Ibid. See also *Innovation Law Lab v. Nielsen*, US District Court, Northern District of California, Case No. 19-00807, declaration of Aaron Reichlin-Melnick, April 20, 2019, available at https://www.aclu.org/sites/default/files/field_document/2019.02.20.0020-12_decl._of_aaron_reichlin-melnick.pdf (accessed June 20, 2019).

¹² American Immigration Council, “Asylum in the United States,” May 14, 2018, <https://www.americanimmigrationcouncil.org/research/asylum-united-states> (accessed June 17, 2019).

¹³ Transactional Records Access Clearinghouse (TRAC), “What Happens When Individuals are Released on Bond in Immigration Court Proceedings,” September 14, 2016, <https://trac.syr.edu/immigration/reports/438/> (accessed June 17, 2019).

¹⁴ “Armed Gangs Force ‘Growing Number’ to Flee North and South, in Central America,” UN news release, May 22, 2018, <https://news.un.org/en/story/2018/05/1010362> (accessed June 24, 2019); United Nations High Commissioner for Refugees, “Central America Refugee Crisis: Families and Unaccompanied Children are Fleeing Horrific Gang Violence,” undated, <https://www.unrefugees.org/emergencies/central-america/> (accessed June 24, 2019); “2,300 Migrant Children in Central American ‘Caravan’ Need Protection, UNICEF Says,” UN news release, October 26, 2018, <https://news.un.org/en/story/2018/10/1024222> (accessed June 24, 2019); “UNHCR Appeals for Regional Talks on Central

homicides are gang related and targeted.¹⁵ Honduras also has one of the world's highest homicide rates.¹⁶ Violence and extortion by gangs remain serious problems in Guatemala as well.¹⁷

Northern Triangle countries also have extremely high rates of sexual and gender-based violence. El Salvador, Honduras and Guatemala have some of the highest rates of femicide (gender-based killing of women and girls) in the world, with those rates rising dramatically in recent years.¹⁸

The United States is not the sole destination of Northern Triangle asylum seekers. Other countries – such as Belize, Panama, and Costa Rica – have also seen a rise in asylum seekers from Northern Triangle countries.¹⁹

The administration has claimed it is overwhelmed by a “dramatic increase” at the border.²⁰ However, US officials have been aware of the growing proportion of asylum-seeking, Central American families from Guatemala, Honduras, and El Salvador among new arrivals for at least five years. In 2014, Border Patrol documented for the first time more Central Americans than Mexicans attempting to cross the US-Mexico border as violence in Central America was one important factor spawning a humanitarian crisis of families and unaccompanied children fleeing north. A few years later, the share of families and children

America Displacement,” UN High Commissioner for Refugees (UNHCR) press release, June 12, 2019, https://www.unhcr.org/news/press/2019/6/5d0132624/unhcr-appeals-regional-talks-central-america-displacement.html?utm_source=&utm_medium=email&utm_content=here&utm_campaign= (accessed June 24, 2019); Human Rights Watch, *US–Central Americans Have a Legal Right to Seek Asylum: Claims Should be Heard and Given Due Process*, January 17, 2019, <https://www.hrw.org/news/2019/01/17/us-central-americans-have-legal-right-seek-asylum>.

¹⁵ World Bank, “The World Bank in El Salvador,” April 4, 2019, <https://www.worldbank.org/en/country/elsalvador/overview> (accessed June 24, 2019); Human Rights Watch, *World Report 2018* (New York: Human Rights Watch, 2019), El Salvador chapter, <https://www.hrw.org/world-report/2019/country-chapters/el-salvador>.

¹⁶ World Bank, “The World Bank in Honduras,” April 4, 2019, <http://www.worldbank.org/en/country/honduras/overview> (accessed June 24, 2019); Human Rights Watch, *World Report 2018* (New York: Human Rights Watch, 2019), Honduras chapter, <https://www.hrw.org/world-report/2019/country-chapters/honduras>.

¹⁷ Human Rights Watch, *World Report 2018* (New York: Human Rights Watch, 2019), Guatemala chapter, <https://www.hrw.org/world-report/2019/country-chapters/guatemala>.

¹⁸ Kids in Need of Defense, “Neither Security nor Justice: Sexual and Gender-Based Violence and Gang Violence in El Salvador, Honduras, and Guatemala,” May 4, 2017, https://reliefweb.int/sites/reliefweb.int/files/resources/Neither-Security-nor-Justice_SGBV-Gang-Report-FINAL_o.pdf (accessed June 10, 2019).

¹⁹ “UNHCR Alarmed by Sharp Rise in Forced Displacement in North and Central America,” UNHCR press briefing notes, May 22, 2018, <https://www.unhcr.org/en-us/news/briefing/2018/5/5b03d89c4/unhcr-alarmed-sharp-rise-forced-displacement-north-central-america.html> (accessed May 28, 2019).

²⁰ Transcript of news conference, DHS Director Kevin McAleenan, El Paso, TX, March 27, 2019, available at <https://www.cbp.gov/newsroom/speeches-and-statements/el-paso-press-conference-transcript> (accessed June 20, 2019).

among apprehended migrants rose to 39 percent, compared to under 10 percent a decade ago.²¹ By February 2019, that portion had risen to 61 percent.²²

DHS first began returning certain asylum seekers in the US to Mexico under the MPP at the San Ysidro port of entry near San Diego in southern California and Tijuana, Mexico, on January 29, 2019.²³ In mid-March, DHS expanded the MPP to Calexico, California, which borders Mexicali, Mexico, and in late March, implemented the program in El Paso, across the border from Ciudad Juárez.²⁴ Since then, Ciudad Juárez has surpassed both Tijuana and Mexicali as hosting the highest number of asylum seekers placed in the MPP program.²⁵

When launching the MPP, then-Secretary of Homeland Security Kirstjen Nielsen said the US government would implement the program in a manner consistent with domestic and international law, including US humanitarian commitments, relying in part on the government's expectation that "affected migrants will receive humanitarian visas to stay on Mexican soil, the ability to apply for work, and other protections while they await a US legal determination."²⁶ She also said asylum seekers in the MPP would have access to attorneys.²⁷ After a federal district court issued a preliminary injunction, ruling that the program was illegal on several grounds, the US Court of Appeals for the Ninth Circuit stayed the injunction on May 8, 2019, although two of the three judges expressed serious reservations about the legality of the program.²⁸ The court based its decision in part on the

²¹ US Customs and Border Protection (CBP), "Southwest Border Migration FY 2017," December 15, 2017, <https://www.cbp.gov/newsroom/stats/sw-border-migration-fy2017> (accessed May 28, 2019).

²² US Customs and Border Protection (CBP), "Southwest Border Migration FY 2019," June 7, 2019, <https://www.cbp.gov/newsroom/stats/sw-border-migration> (accessed May 28, 2019).

²³ "Secretary Kirstjen M. Nielsen Announces Historic Action to Confront Illegal Immigration," DHS press release, December 20, 2018, <https://www.dhs.gov/news/2018/12/20/secretary-nielsen-announces-historic-action-confront-illegal-immigration> (accessed May 28, 2019); US Customs and Border Protection, "MPP Guiding Principles," January 28, 2019, https://www.cbp.gov/sites/default/files/assets/documents/2019-Jan/MPP_Guiding_Principles_1-28-19.pdf (accessed May 28, 2019).

²⁴ Moore, "Controversial 'Remain in Mexico' Policy for Asylum Applicants Heads to El Paso," *Texas Monthly*.

²⁵ Lizbeth Diaz and Mica Rosenberg, "Trump ramps up returns of asylum seekers to Mexico," *Reuters (US Edition)*, <https://fingfx.thomsonreuters.com/gfx/editorcharts/USA-IMMIGRATION-ASYLUM/oHoo1PBW36BD/index.html> (accessed May 28, 2019).

²⁶ "Secretary Kirstjen M. Nielsen Announces Historic Action to Confront Illegal Immigration," DHS press release, December 20, 2018, <https://www.dhs.gov/news/2018/12/20/secretary-nielsen-announces-historic-action-confront-illegal-immigration> (accessed May 28, 2019).

²⁷ *Ibid.*

²⁸ *Innovation Law Lab v. Nielsen*, US District Court, Northern District of California, Case No. 19-00807, order granting preliminary injunction, April 8, 2019; *Innovation Law Lab v. Nielsen*, US Court of Appeals for the Ninth Circuit, Case No. 19-15716, stay order, May 7, 2019.

Mexican government's commitments to grant humanitarian status and work authorization.²⁹

As described below, Human Rights Watch findings contradict the Ninth Circuit's assumption. Asylum seekers forced to return to Mexico are not being granted humanitarian visas, the ability to apply for work, or other protections.

On June 7, the Trump administration announced it had concluded a deal with Mexico to "immediately expand the implementation" of the MPP across the entire border, making it likely that the number of those affected by this program will increase substantially.³⁰ As part of this agreement, Mexico committed to "authorize the entrance" of returned individuals "for humanitarian reasons, in compliance with its international obligations, while they await the adjudication of their asylum claims."³¹ Mexico also committed to "offer jobs, healthcare and education according to its principles."³²

Mexican officials said that the MPP would be implemented in San Luis Rio Colorado, bordering Yuma, Arizona, and Nuevo Laredo, in the state of Tamaulipas and bordering Laredo, Texas, according to a June 23 Reuters report.³³ The situation is likely to become more dire as the number of asylum seekers returned to Mexico increases in the coming months.

²⁹ *Innovation Law Lab v. Nielsen*, US Court of Appeals for the Ninth Circuit, Case No. 19-15716, stay order, May 7, 2019.

³⁰ "U.S.-Mexico Joint Declaration," US Department of State media note, June 7, 2019, <https://www.state.gov/u-s-mexico-joint-declaration/> (accessed June 11, 2019).

³¹ *Ibid.*

³² *Ibid.*

³³ Lizbeth Diaz, "Two More Border Cities Added to US-Mexico Asylum Program: Sources," *Reuters*, June 23, 2019, <https://www.reuters.com/article/us-usa-immigration-mexico-idUSKCN1TOoY5> (accessed June 24, 2019).

Harms to Asylum Seekers Returned to Mexico

Asylum Seekers Stranded with No Means to Survive

Asylum seekers who spoke to Human Rights Watch expressed fear and confusion at the prospect of being made to wait in a city where they did not have social ties, access to shelter or legal authorization to work, and where the number of asylum seekers in the city already far exceeded available free shelter space. Mexican officials and attorneys told Human Rights Watch that there was no program under current regulations to issue work visas to those seeking asylum in the US and returned to wait in Mexico.

If these asylum seekers were pursuing their cases in the US, they would more likely be able to access financial support through personal networks. Although asylum seekers are not legally eligible to apply for work in the US until their cases have been won or 150 days have passed, nearly 84 percent of the asylum seekers in the MPP program reported having relatives in the US, according to the Mexican government.³⁴

Migrant shelters in Ciudad Juárez have the capacity to hold about 1,000 people, according to Enrique Valenzuela, who heads the Chihuahua State Population Council (COESPO) branch and has been working to collate information about available shelters.³⁵ In addition to the 6,100 asylum seekers returned to Ciudad Juárez under the MPP as of June 21, Valenzuela said that 5,600 asylum seekers were still waiting on a list in Ciudad Juárez to seek asylum in the US.³⁶ Together, this would mean as many as 11,700 asylum seekers were in limbo in Ciudad Juárez, with the US transferring an additional average of 100 per day, according to Mexican officials.³⁷

³⁴ US Citizenship and Immigration Services, “Asylum,” last updated June 14, 2019, <https://www.uscis.gov/humanitarian/refugees-asylum/asylum> (accessed June 24, 2019). Estados Unidos Mexicanos Secretaría de Gobernación, Instituto Nacional de Migración, MPP Program–Chihuahua and MPP Program–Tijuana and Mexicali (copies on file with Human Rights Watch), May 13, 2019, and May 14, 2019.

³⁵ Human Rights Watch interview and text message correspondence with Enrique Valenzuela, general coordinator, Comisión Estatal de Población, Ciudad Juárez, Mexico, May 7, 2019, and June 21, 2019.

³⁶ Ibid.

³⁷ Human Rights Watch interview with Mexican government officials (names withheld), Ciudad Juárez, Mexico, May 7, 2019, and May 9, 2019.



“Carmen S.” holds her son, 3, at a shelter where they were staying in Ciudad Juárez, Mexico, May 2019, after being returned to Mexico under the Trump administration’s “Migrant Protection Protocols.” Carmen told Human Rights Watch that she was thinking of trying to cross illegally but was afraid of losing her children. © 2019 Clara Long/Human Rights Watch

However, Valenzuela estimated that of the population of returned and metered asylum seekers, up to 20 and 30 percent respectively, may have already left to attempt to cross the border illicitly.³⁸

On June 12, less than a week after the US and Mexico made a joint declaration announcing an agreement that included the expansion of the MPP program,³⁹ US returns to Ciudad Juárez doubled to about 200 asylum seekers. That number rose as high as 500 in late June and continued to surpass the previously negotiated level of 100 returns per day.⁴⁰

³⁸ Ibid.

³⁹ “US-Mexico Joint Declaration,” US Department of State media note, June 7, 2019, <https://www.state.gov/u-s-mexico-joint-declaration/> (accessed June 21, 2019).

⁴⁰ Lizbeth Diaz, “Two More Border Cities Added to US-Mexico Asylum Program: Sources,” *Reuters*; Estados Unidos Mexicanos Secretaría de Gobernación, Instituto Nacional de Migración, MPP Program–Chihuahua, (copy on file with Human Rights Watch), May 13, 2019.

Valenzuela said that US authorities accept an average of 30 asylum seekers per day for processing at the El Paso port of entry. This practice of “metering,” or of limiting the number of people who can apply for asylum each day, has led to asylum seekers in border towns having to sign up on a “list” and wait for their number to be called. Since there are many more asylum seekers waiting to apply than are being processed, the number of people waiting in Mexican border towns for their turn to present themselves at the border continues to grow. As of June 4, the Mexican government said there were about 18,778 metered asylum seekers waiting in Mexican border cities to apply for the first time.⁴¹

In June, the director of the Mexican government office in charge of refugee aid, the Comisión Mexicana de Ayuda a Refugiados, estimated that Mexico will host some 60,000 asylum seekers returned under the MPP by August.⁴²

The May 8 Ninth Circuit ruling that the MPP could continue while the court considered the appeal of the lower court’s injunction was based in part on the court’s understanding that Mexico would grant humanitarian status and work visas to asylum seekers.⁴³ But Mexico is not granting work visas to asylum seekers, according to officials.⁴⁴

The decision states, “The plaintiffs fear substantial injury upon return to Mexico, but the likelihood of harm is reduced somewhat by the Mexican government’s commitment to honor its international law obligations and to grant humanitarian status and work permits to individuals returned under the MPP.”⁴⁵

⁴¹ Gobierno de Mexico Secretaría de Relaciones Exteriores, “Position of the Mexican Government on Migration and the Imposition of Tariff Rates” (Posicionamiento de Gobierno de México Sobre Migración e Imposición de Tarifas Arancelarias), June 3, 2019, <https://www.gob.mx/sre/prensa/posicionamiento-del-gobierno-de-mexico-sobre-migracion-e-imposicion-de-tarifas-arancelarias-202603?state=published> (accessed June 10, 2019).

⁴² Antonio Baranda, “Prevent the US from Returning 50,000 Migrants in 3 Months” (Prevén que EU Regrese a 50 mil Migrantes en 3 Meses), *Reforma*, June 10, 2019, https://www.reforma.com/aplicacioneslibre/preacceso/articulo/default.aspx?id=1697458&opinion=0&urlredirect=https://www.reforma.com/preven-que-eu-regrese-a-50-mil-migrantes-en-3-meses/ar1697458?__rval=1 (accessed June 17, 2019).

⁴³ Richard Gonzales and Laurel Wamsley, “Appeals Court Rules Trump Administration Can Keep Sending Asylum-Seekers to Mexico,” *NPR*, May 8, 2019, <https://www.npr.org/2019/05/08/721293828/appeals-court-rules-trump-administration-can-keep-sending-asylum-seekers-to-mexi> (accessed May 28, 2019).

⁴⁴ Human Rights Watch interview with Mexican government officials (names withheld), Ciudad Juárez, Mexico, May 7, 2019, and May 9, 2019.

⁴⁵ *Innovation Law Lab v. Nielsen*, US Court of Appeals for the Ninth Circuit, Case No. 19-15716, stay order, May 7, 2019.

Although the Mexican government initially promised to grant asylum seekers work visas, that promise was never realized.⁴⁶ Instead, asylum seekers forced to wait in Mexico are given temporary “multi-entry” visas contingent on their status in the MPP program – permission to be in Mexico expires on the day asylum seekers must travel to the US to attend a hearing in their case and is renewed each time Border Patrol sends them back to Mexico to wait for the next hearing.

Human Rights Watch examined the Mexican immigration paperwork of at least seven of the returned asylum seekers with whom we spoke. All carried a standard “visa multiple” form, which a Mexican immigration official confirmed did not confer the right to work.⁴⁷

Although Human Rights Watch did not find evidence that anyone had tried to work and been penalized, many of the asylum seekers we interviewed expressed frustration that they could not legally get a job.

Returned asylum seekers have both immediate and long-term needs to access food, water, shelter, communication with family and lawyers, and other necessities, but have been left with no legal means to earn the income required to do so.

- Luisa A. (pseudonym), 20, who fled Honduras with her 3-year-old son, was staying in a local shelter in Ciudad Juárez, but when she left to appear at her preliminary hearing in El Paso, the shelter told her she’d lost her space and could not return. Mother and son were forced to stay in the street. “These are things I thought I would never live,” she said. She eventually pooled her money with a group of other women, some of whom also have small children, to rent a low-cost room in a hotel. “There are times when we either eat or pay for the hotel room,” Luisa said. “I prefer to have a roof over our heads than to wander the streets looking for shelter.” But she said money was running out.⁴⁸

⁴⁶ Human Rights Watch interview with a Mexican official (name and details withheld), Ciudad Juárez, Mexico, May 9, 2019; Human Rights Watch telephone interview with Margarita Juárez Aparicio, attorney, El Instituto para las Mujeres en la Migración, May 24, 2019; See also Sarah Kinosian, “As United States’ ‘Remain in Mexico’ Plan Begins, Mexico Plans to Shut its ‘Too Successful’ Humanitarian Visa Program,” *Public Radio International*, January 24, 2019, <https://www.pri.org/stories/2019-01-24/united-states-remain-mexico-plan-begins-mexico-plans-shut-its-too-successful> (accessed May 28, 2019).

⁴⁷ Human Rights Watch interviews with asylum seekers (names withheld), Ciudad Juárez, Mexico, May 8-10, 2019.

⁴⁸ Human Rights Watch interview with Luisa A. (pseudonym), Ciudad Juárez, Mexico, May 7, 2019.

- Galena L. (pseudonym), 23, also fled Honduras with her 5-year-old daughter and said she was on the verge of losing her hotel room in Ciudad Juárez because she could no longer afford to pay. She said she was feeling hungry during the interview and that she needed money to feed her daughter and herself. She was frustrated because not being able to work legally in Mexico meant she couldn't make the money necessary to obtain food or shelter.⁴⁹
- Nina S. (pseudonym), 31, and Mariana S. (pseudonym), 21, are sisters from Guatemala who found temporary shelter space after being returned from the US. They told Human Rights Watch they could not imagine maintaining their lives in Ciudad Juárez given the pending expiration of their allotted time at the shelter, their lack of work permits and their fear of being targeted in the city. "We've thought about working, but we're afraid to go out." They spoke with Human Rights Watch the day before going to their first immigration court hearing and hoped to convince US authorities to let them proceed with their cases from within the US. If they were to be returned again to Ciudad Juárez, Nina said, "I don't want to think about that because I don't know."⁵⁰

Asylum seekers reported that when they could not find space, they were forced to sleep on the street or squat in abandoned houses located in some of the most dangerous neighborhoods.

- Silvia M. (pseudonym), 23, from Honduras, said her family had been sending her some money for food, but because she could not work legally, she was unable to pay for more permanent housing in Ciudad Juárez. "What if they give me [a court date] in October?" she said. "How am I going to handle it?" Since the shelter she is staying in has a limit on the duration asylum seekers can stay there, usually one week, she was in need of finding somewhere else to stay very soon.⁵¹

⁴⁹ Human Rights Watch interview with Galena L. (pseudonym), Ciudad Juárez, Mexico, May 7, 2019.

⁵⁰ Human Rights Watch interview with asylum seekers (names withheld), Ciudad Juárez, Mexico, May 8, 2019.

⁵¹ Human Rights Watch interview with Silvia M. (pseudonym), Ciudad Juárez, Mexico, May 8, 2019, and Immigration Court hearing, El Paso, Texas, May 9, 2019.

- Carmen S. (pseudonym), an asylum seeker traveling with her 6-year-old and 3-year old sons from Honduras, was told the day Human Rights Watch interviewed her that she and her children could not stay at the shelter anymore. She showed Human Rights Watch documents saying that her preliminary court date in the US was not until October, five months later. “Why did they make the court hearing so long from now knowing that I have nothing?” she said. Carmen said her husband and 10-year-old son traveled first and were already in Texas, where they were in asylum proceedings. In preparation for their arrival, Carmen’s husband rented a larger apartment and told their older son the family would soon be reunited. When their 10-year-old found out his mother and little brothers were sent to wait in Mexico, Carmen said the boy stopped eating. “I’m thinking about going across, because I have no other option. But I’m very afraid they will take my kids,” she said. “If they take my kids, it’s better that they just kill me.”⁵²
- Lazaro P. said that he was staying in an abandoned house and felt he is at risk of being targeted in Ciudad Juárez as a migrant. A brother in the US who had been sending him some money recently died. He said he asked for permission from US authorities to enter the US to go to the funeral and was denied.⁵³

Other asylum seekers that Human Rights Watch interviewed also indicated they were considering trying to cross the border without authorization between the ports of entry because their situations in Ciudad Juárez had become so dire. Immigration attorney Linda Rivas said that as of late May, new returnees were being scheduled for their first court dates in January 2020. As of mid-June, preliminary hearings were being set for June 2020.⁵⁴

Returned Asylum Seekers Facing Physical Violence, Threats

Human Rights Watch documented at least 29 reports of harm to asylum seekers in Ciudad Juárez, including violent attacks, sexual assault, and kidnapping, in interviews and court observations.

⁵² Human Rights Watch interview with Carmen S. (pseudonym), Ciudad Juárez, Mexico, May 8, 2019.

⁵³ Human Rights Watch interview with Lazaro P. (pseudonym), Ciudad Juárez, Mexico, May 7, 2019.

⁵⁴ Hope Border Institute, “Remain in Mexico Updates,” June 6, 2019, <https://www.hopeborder.org/remain-in-mexico-052219> (accessed June 10, 2019).

According to the Mexican government, the country is currently facing an “emergency of violence and insecurity,” and the national security plan of Mexican President Andrés Manuel López Obrador states in its opening sentence that Mexico is “among the most unsafe countries in the world.”⁵⁵ Mexico recorded over 33,500 intentional homicides in 2018, the highest since the country began keeping records in 1997.⁵⁶ Two of the northern states to which asylum seekers are being returned under the MPP, Baja California and Chihuahua, are among the most violent in the country.⁵⁷ While El Paso and San Diego are relatively safe cities, with 23 and 86 homicides in 2018 respectively, there were 1,247 homicides in Ciudad Juárez and 2,529 homicides in Tijuana.⁵⁸ Meanwhile, Mexico suffers from “widespread and persistent impunity,” where approximately 98 percent of crimes go unsolved, according to the United Nations High Commissioner for Human Rights, meaning there are often no meaningful legal consequences for committing crimes there.⁵⁹

Expanding the MPP would mean returning migrants to Tamaulipas, one of two Mexican Gulf states where human rights officials have discovered more than 1,300 mass graves

⁵⁵ Human Rights Watch, *US—Don’t Return Asylum Seekers to Mexico: Policy Change Unnecessary, Potentially Dangerous*, December 21, 2018, <https://www.hrw.org/news/2018/12/21/us-dont-return-asylum-seekers-mexico#>.

⁵⁶ Estados Unidos Mexicanos Secretaría de Seguridad y Protección Ciudadana, “Victims of Crimes Under Ordinary Law” (Víctimas de Delitos del Fuero Común), May 20, 2019, <https://drive.google.com/file/d/1rRYCrj-ZyBStbCCUSwMnvFhBm-djHNAY/view> (accessed May 28, 2019).

⁵⁷ *Ibid.*; Estados Unidos Mexicanos Secretaría de Seguridad y Protección Ciudadana, “Report of Ordinary Law Criminal Incidents” (Informe de Incidencia Delictiva Fuero Común), April 30, 2019, <https://drive.google.com/file/d/1YsVmzB4olEGz34-7d1Jg7h2j-jATmou8/view> (accessed May 28, 2019).

⁵⁸ Bethania Palma, “Was El Paso One of the ‘Most Dangerous Cities’ in the US Before a Border Fence Was Built?” *Snopes*, February 6, 2019, <https://www.snopes.com/fact-check/el-paso-border-barrier-crime/>, (accessed June 5, 2019); “El Paso Police Release Murder Statistics From 1960 to 2018,” *KVIA News*, January 16, 2019, <https://www.kvia.com/crime/here-are-el-paso-s-murder-statistics-from-1960-to-2018/978417058> (accessed on June 25, 2019); Teri Figueroa and Michelle Gilchrist, “Homicides in San Diego County by the Numbers: 2018,” *San Diego Union Tribune*, March 9, 2019, https://www.sandiegouniontribune.com/news/public-safety/sd-in-g-county-homicides-2018-graphics-20190308-story.html?int=lat_digitaladshouse_bx-modal_acquisition-subscriber_ngux_display-ad-interstitial_bx-bonus-story (accessed June 5, 2019); Jesus Rodríguez, “El Diario: 1,247 Homicides Reported in Juarez in 2018,” *KVIA News*, January 3, 2019, <https://www.kvia.com/news/border/el-diario-1-247-homicides-reported-in-juarez-in-2018/96277824> (accessed June 5, 2019). The number of murders per 100,000 general population in 2018 are approximately as follows: El Paso, Texas: 3.37; San Diego, California: 6.03; Ciudad Juarez, Mexico: 93.6; Tijuana, Mexico: 154.06. See: Quick Facts: San Diego city, California; El Paso city, Texas, *US Census Bureau*, available at <https://www.census.gov/quickfacts/fact/table/sandiegocitycalifornia,elpasocitytexas/PSTo45218> (accessed June 25, 2019); Space and Data of Mexico (Espacia y Datos de Mexico), Instituto Nacional de Estadística y Geografía, undated, available at <https://www.inegi.org.mx/temas/estructura/default.html#Mapas> (accessed June 25, 2019).

⁵⁹ UN Commission on Human Rights, Report of the Special Rapporteur on the Situation of Human Rights Defenders, Michel Forst, Mission to Mexico, February 12, 2018, https://www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/Issues/Defenders/A_HRC_37_51_Add%202.docx&action=default&DefaultItemOpen=1 (accessed June 26, 2019).

since 2007, including those of murdered migrants and where there have been multiple reports this year alone of bus kidnappings of migrants attempting to reach the border.⁶⁰

In January, a series of attacks on Ciudad Juárez police officers prompted the US to issue a security alert for US citizens in the city, one of 17 priority areas to which the Mexican government is deploying national guard troops.⁶¹

Within Ciudad Juárez itself, Human Rights Watch observed at least three shelters located in “hot spot” areas where the reported number of homicides was above the city’s mean between 2009 and 2010, according to peer reviewed study by Carlos Vilalta and Robert Muggah of violent homicides there from April 2014, the most recently available.⁶²

Because asylum seekers must travel to a port of entry to attend immigration court proceedings in the US, they have had little choice but to remain in these areas under difficult conditions. Meanwhile, that same study found migrant populations in Ciudad Juárez were among the most vulnerable to homicidal violence.⁶³

On May 3, three Honduran asylum seekers were shot to death, according to local news reports.⁶⁴ Human Rights Watch verified with Mexican government officials that those killed were not on the list of Central Americans returned under the MPP to Ciudad Juárez.⁶⁵

⁶⁰ Nick Miroff, “Migrant Caravan: One Reason Central Americans Are Going All the Way to Tijuana to Reach the U.S. Border? El Chapo,” *Washington Post*, November 15, 2018, https://www.washingtonpost.com/world/2018/10/24/migrant-caravan-updates/?utm_term=.dda236d09ed6 (accessed on June 24, 2019); “At Least 4,000 Migrant on Way to US Have Died of Gone Missing in Last Four Years,” *Associated Press*, December 5, 2018, <https://www.nbcnews.com/news/latino/least-4-000-migrants-way-u-s-have-died-or-n944046> (accessed June 17, 2019); Kate Linthicum, “Mexico Launching Search for Migrants Pulled Off Bus by Gunmen Near the US Border,” *Los Angeles Times*, March 13, 2019, <https://www.latimes.com/world/la-fg-mexico-missing-migrants-20190313-story.html> (accessed June 17, 2019).

⁶¹ Daniel Borunda, “US Issues Security Alert for Juárez After Wave of Drug Cartel, Gang Attacks on Police,” *El Paso Times*, January 20, 2019, <https://www.elpasotimes.com/story/news/local/juarez/2019/01/20/u-s-issues-security-alert-after-attacks-police-juarez-mexico-violence/2634280002/> (accessed May 28, 2019); Daina Beth Solomon and Noe Torres, “Mexico to Send Police and Military Force of 10,200 to Murder Hot Spots,” *Reuters (World News)*, February 6, 2019, <https://www.reuters.com/article/us-mexico-violence/mexico-to-send-police-and-military-force-of-10200-to-murder-hot-spots-idUSKCN1PV2HH> (accessed May 28, 2019).

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Andra Litton, “Three Migrants Killed in Juarez Massacre,” *KTSM News*, May 4, 2019, <https://www.ktsm.com/news/juarez/three-migrants-killed-in-juarez-massacre/1978595461> (accessed May 28, 2019).

⁶⁵ Human Rights Watch interviews and text message correspondence with Mexican government officials (names and details withheld), May 16, 2019.

One Honduran asylum seeker who had been returned to Ciudad Juárez under the MPP was kidnapped and raped in mid-June, according to news reports.⁶⁶ In a Mexican court hearing on June 17, the asylum seeker testified that Mexican federal police officers stormed into a house where migrants were staying and abducted her and two others, turning them over to a criminal group.⁶⁷

US federal asylum officers have said that “Mexico is simply not safe for Central American asylum seekers,” and that “the risk of persecution in Mexico is even higher for the most vulnerable segments of asylum seekers,” including ethnic minorities from indigenous cultures, migrant women at large, and LGBTI migrants.⁶⁸

Accounts of Violence

Human Rights Watch received accounts of harm to asylum seekers in the course of individual interviews with asylum seekers, shelter operators, and immigration attorneys, as well as while observing immigration court proceedings in El Paso and San Diego.

- Delfina M. (pseudonym), 20, an asylum seeker who fled Guatemala with her 4-year-old son, said that after she was returned to Ciudad Juárez, two men grabbed her in the street and sexually assaulted her. They told her not to scream and threatened to kill her son. “I can still feel the dirtiness of what they did in my body,” she said.⁶⁹
- Rodrigo S. (pseudonym), 21, who fled El Salvador, told a judge in immigration court proceedings that he was robbed at knifepoint and stabbed in the back. He said he went to the police, but the Mexican officers wouldn’t help him because he wasn’t a Mexican citizen. He told the judge that although he is recovering physically, he’s afraid to be sent back.⁷⁰

⁶⁶ “Honduran Migrant Kidnapped By Federal Police: They Are Also Accused of Raping Witnesses; The Fact Was Revealed in a Court Hearing” (Secuestraron Federales a Migrante Hondureña: Los Acusan Además de Violar a Testigos; el Hecho Fue Revelado en Audiencia Judicial), *El Diario*, June 18, 2019, <https://www.eldiariodechihuahua.mx/estado/secuestraron-federales-a-migrante-hondurena-20190618-1528964.html> (accessed June 24, 2019); Parker Asmann, “Mexico Police Collude With Criminals to Kidnap, Extort Migrant,” *InSight Crime*, June 20, 2019, <https://www.insightcrime.org/news/brief/mexico-police-collude-criminals-kidnap-migrant/> (accessed June 24, 2019).

⁶⁷ *Ibid.*

⁶⁸ *Innovation Law Lab v. Nielsen*, US Court of Appeals for the Ninth Circuit, Case No. 19-15716, amicus curiae, Local 1924 June 27, 2019, pp. 22-23.

⁶⁹ Human Rights Watch interview with Delfina M. (pseudonym), Ciudad Juárez, Mexico, May 7, 2019.

⁷⁰ Human Rights Watch observations of Immigration Court hearing for Rodrigo S. (pseudonym) El Paso, Texas, May 9, 2019.

- Esteban G. (pseudonym), 19, said in immigration court he was robbed when he left his room to go to the store for food. He told police he suspected a neighbor of stealing his cellphone. When police investigated the neighbor, they recovered his cellphone, but after that, the neighbor's family threatened to hurt him.⁷¹
- Kimberlyn, a 23-year-old Honduran, told Human Rights Watch she had been kidnapped by a taxi driver along with her 5-year-old daughter upon returning to Ciudad Juárez after her first court hearing in the US in April. The driver released them within hours but said he would kill them if her family did not pay a ransom. She showed Human Rights Watch deposit receipts for \$800 in payments made by relatives in Honduras.⁷²

Two families who had been forced to remain in Mexico told the immigration judge in court that family members had been “express-kidnapped,” or abducted for a short period of time and extorted, prior to their preliminary hearing in El Paso, according to local lawyers and news reports.⁷³

Violence also affects asylum seekers who are waiting to cross into the US.

Central Americans Rafael M. (pseudonym) and Gerald H. (pseudonym), who said they planned to seek asylum in the US, reported that after they had been in Ciudad Juárez for 21 days around April, they were kidnapped at gunpoint in Parque de las Tortugas, which runs along the border just north of the Santa Fe Bridge.⁷⁴ Some cars pulled up and men got out with guns. Rafael said he tried to run, but they grabbed him, tearing his shirt. They put a jacket over Rafael’s head, told the two not to scream, and forced them into cars. The kidnappers accused the two of being rival smugglers working their territory. The kidnappers interrogated them and searched Rafael’s phone to confirm they were in fact asylum seekers. They let them go, but not before taking photos of their faces. They also

⁷¹ Human Rights Watch observations of Immigration Court hearing for Esteban G. (pseudonym) El Paso, Texas, May 9, 2019.

⁷² Human Rights Watch interview with Kimberlyn (full name withheld), Ciudad Juárez, Mexico, May 7, 2019.

⁷³ Human Rights Watch email correspondence with Linda Rivas, executive director and attorney, Las Americas Immigrant Advocate Agency, May 29, 2019; Robert Moore, “I’m in Danger’: Migrant Parents Face Violence in Mexico Under New Trump Policy,” *Texas Monthly*, April 25, 2019, <https://www.texasmonthly.com/politics/im-in-danger-migrant-parents-face-violence-in-mexico-under-new-trump-policy/>, (accessed May 28, 2019).

⁷⁴ Human Rights Watch interview with Rafael M. and Gerald H. (pseudonyms and identifying details withheld), Ciudad Juárez, Mexico, May 7, 2019, and May 10, 2019. Their nationality is not identified here to protect them from further reprisal.

recorded information on where they were staying. The abductors told the two that if they reported the incident, they would kill them. Rafael reported he was hit about 30 times; Gerald reported being hit in the back of the head so hard he could taste blood in his mouth.⁷⁵

Organizations providing asylum seekers with humanitarian aid may also be at risk. The Ciudad Juárez-based human rights group, Derechos Humanos Integrales en Acción, showed Human Rights Watch a declaration they collected from two women operating a migrant shelter in the Anapra neighborhood.⁷⁶ According to their account, on April 16, they were kidnapped, beaten, and interrogated to determine whether they were involved in smuggling.

Several returned asylum seekers who had not suffered physical harm told us they were terrified of being forced to remain in Ciudad Juárez.

- Gloria O. (pseudonym), a 20-year-old asylum seeker from Honduras, said she fled because a local gang member wanted her to be his girlfriend and threatened to kill her if she refused. She said she was afraid to leave the shelter where she was staying because Ciudad Juárez was too dangerous. She heard that someone was killed close to the shelter and that a pregnant woman had been kidnapped. "I know that in any moment something could happen to me," she said.⁷⁷
- Doris C. (pseudonym) fled Honduras with her 5-year-old child and was headed to Dallas, Texas, where her husband and son are in asylum proceedings. She said that asylum seekers, including herself, were too afraid to leave the shelter. "We don't know anybody, and we don't have any way to be here in Juárez," she told Human Rights Watch. At one point, she was staying at a cathedral, when a pastor arrived with a bus to give asylum seekers a ride to a shelter. Doris said that after several asylum seekers boarded the bus and shortly after it left the cathedral,

⁷⁵ Human Rights Watch interview with Rafael M. and Gerald H., Ciudad Juárez, Mexico, May 7, 2019, and May 10, 2019.

⁷⁶ Human Rights Watch interview with Rocío Meléndez Domínguez, attorney, Derechos Humanos Integrales en Acción, Ciudad Juárez, Mexico, May 9, 2019.

⁷⁷ Human Rights Watch interview with Gloria O. (pseudonym), Ciudad Juárez, Mexico, May 8, 2019.

“narcos” in several cars pulled the vehicle over and kidnapped the pastor on board.⁷⁸

Shelter operators at Casa del Migrante and El Buen Pastor, two of the oldest shelters with the greatest capacity in Ciudad Juárez, said criminal syndicates as well as petty criminals target asylum seekers.

Cristina Coronado, who works at Casa del Migrante, said local criminals or smugglers have infiltrated the shelter, preying on vulnerable asylum seekers.⁷⁹ She said local Mexican journalists are too afraid of organized crime in the area, making it difficult for the public to understand the dangers they face.

As the result of these security concerns, Coronado said Casa del Migrante requires asylum seekers to turn over their phones to shelter workers to stay there and does not permit shelter residents to come and go as they please. She said she recognizes such rules limit asylum seekers’ ability to communicate with attorneys and aren’t sustainable since the MPP has created long-term shelter needs.

Pastor Juan Fierro, who operates El Buen Pastor, said the shelter had to install cameras after suspicious people were lurking outside of the gates. He said asylum seekers have been robbed or kidnapped and that local criminals are aware that some asylum seekers are sent money from relatives in the US and know where asylum seekers frequently go to collect that money.⁸⁰

According to Fierro, one asylum seeker who was express-kidnapped was told that to stay in Ciudad Juárez, he had to “pay the plaza,” or the criminal organization controlling that area or drug-smuggling corridor.⁸¹

The Mexican government officials who spoke to Human Rights Watch acknowledged that Ciudad Juárez is not a safe place for asylum seekers to remain.⁸²

⁷⁸ Human Rights Watch interview with Doris C. (pseudonym), Ciudad Juárez, Mexico, May 8, 2019.

⁷⁹ Human Rights Watch observation of Borderland Immigration Council meeting, El Paso, Texas, May 8, 2019.

⁸⁰ Human Rights Watch interview with Juan Fierro, pastor at El Buen Pastor, Ciudad Juárez, Mexico, May 7, 2019.

⁸¹ June S. Beittel, “Mexico: Organized Crime and Drug Trafficking Organizations,” *Congressional Research Service*, July 3, 2018, <https://fas.org/sgp/crs/row/R41576.pdf> (accessed June 10, 2019).

Valenzuela, the Mexican official managing the metering list in Ciudad Juárez, called the situation “a pressure cooker,” explaining that though the city has had problems with violence, crime, and impunity in the past, the people who live there have begun blaming migrants.⁸³

He said asylum seekers forced to stay on the street – often congregating in Ciudad Juárez’ main square, the Plaza de Armas – are particularly vulnerable, as “anyone can come and take advantage of them.”⁸⁴

Valenzuela said that some of the asylum seekers on the metering list in Mexico become the victims of violent crime while waiting for weeks or months to request asylum and turn themselves in to US authorities. He said he has helped such people to leave Mexico ahead of their number being called, allowing them to cross into the US more rapidly.⁸⁵

Asylum seekers placed into the MPP, however, would be returned back to Mexico.

Many of the migrants that Human Rights Watch interviewed expressed fear at the prospect of talking to Mexican authorities, refusing to report to police any of the crimes they either witnessed or were victim to, and even Mexican officials acknowledged that corruption among Ciudad Juárez police officers was commonplace.⁸⁶

Nearly Impossible Standard for Exemption from the MPP Program

Typically, when Border Patrol agents apprehend someone at the border, they must ask whether that person is afraid to return to their country of origin to ensure they are complying with laws that say a person cannot be returned to a place where they are in

⁸² Human Rights Watch interviews with government officials (names withheld), Ciudad Juárez, Mexico, May 7, 2019, and May 9, 2019.

⁸³ Human Rights Watch interview with Enrique Valenzuela, general coordinator, Comisión Estatal de Población, Ciudad Juárez, Mexico, May 7, 2019.

⁸⁴ Hérica Martínez Prado, “Returnees Sleep in the Streets” (Retornados Duermen en la Calle), *El Diario*, May 18, 2019, <https://diario.mx/juarez/retornados-duermen-en-la-calle-20190517-1516722/> (accessed June 10, 2019); Human Rights Watch interview with Enrique Valenzuela, general coordinator, Comisión Estatal de Población, Ciudad Juárez, Mexico, May 7, 2019.

⁸⁵ Ibid.

⁸⁶ Human Rights Watch interviews with Mexican government officials (names and details withheld), May 7, 2019, May 9, 2019, and May 10, 2019.

danger of persecution or torture – known as non-refoulement.⁸⁷ If that person indicates they are afraid to return, they are supposed to be referred to a trained asylum officer – someone independent of Border Patrol – who will then determine if the asylum seeker’s claim of fear meets certain standards of credibility or not, and has a “credible fear” of return. If so, the asylum seeker will then be scheduled for an asylum hearing before a judge.

That policy has changed under the MPP.

Under the MPP guidance from DHS, Border Patrol agents are not required to ask asylum seekers if they are afraid to be returned to Mexico.⁸⁸

According to program guidelines, asylum seekers subject to them must voluntarily express fear of harm in Mexico, and only then are they entitled to an interview with an asylum officer to assess whether they are “more likely than not” to face persecution or torture or else can be safely returned to Mexico. Asylum seekers who are not from Mexico may not expect to be sent to Mexico and may not be aware of potential harms there, nor be aware that voluntarily expressing fear of return to Mexico is required to trigger an interview that would assess whether they can be returned to Mexico.⁸⁹

When asylum seekers do express fear, their claims are being held to an improperly high standard.

US federal asylum officers condemned the MPP in an amicus (“friend of the court”) brief filed June 26 in the lawsuit against the program, saying the interview process under the MPP “virtually guarantees a violation of the non-refoulement obligation” because it lacks

⁸⁷ 8 C.F.R. 235.3(b)(4) (stating that if an applicant requests asylum or expresses a fear of return, the “examining immigration officer shall record sufficient information in the sworn statement to establish and record that the alien has indicated such intention, fear, or concern,” and should then refer the alien for a credible fear interview). This applies to both Border Patrol agents between ports of entry and officers with the Customs and Border Protection Office of Field Operations at ports of entry. Julie Veroff, “Asylum Officers Are Being Replaced by CBP Agents,” *American Civil Liberties Union*, May 6, 2019, <https://www.aclu.org/blog/immigrants-rights/ice-and-border-patrol-abuses/asylum-officers-are-being-replaced-cbp-agents> (accessed June 27, 2019).

⁸⁸ Memorandum from US Department of Homeland Security to US Citizenship and Immigration Services, “MPP Guiding Principles,” January 28, 2019, <https://www.cbp.gov/sites/default/files/assets/documents/2019-Jan/MPP%20Guiding%20Principles%201-28-19.pdf> (accessed June 10, 2019).

⁸⁹ Dara Lind, “Exclusive: Civil Servants Say They’re Being Used as Pawns in a Dangerous Asylum Program,” *Vox*, May 2, 2019, <https://www.vox.com/2019/5/2/18522386/asylum-trump-mpp-remain-m> (accessed June 24, 2019).

the safeguards and protections that asylum seekers need to meet the high burden of proof required under the “more likely than not” standard officers have been directed to use under the program.⁹⁰ That standard is typically reserved for full-scale removal proceedings in front of an immigration judge, officers explained, whereas asylum officers typically apply lower standards to determine if someone has a “well-founded fear” since an asylum seeker who has passed the officer’s interview will then go before a judge where the high “more likely than not” standard will be applied.⁹¹ In such cases, asylum seekers have access to attorneys, notice of rights, time to prepare their case, and the right to administrative and judicial review.

The MPP program has none of those same protections. Asylum seekers are not provided access to attorneys, and the asylum officer’s decision is not reviewable by a judge.⁹²

Outside of the MPP, where the lower “well-founded fear” standard is applied in asylum officer interviews, asylum seekers are informed of their rights, which include the right to consult with an attorney, to request that the officer’s decision be reviewed by an immigration judge, and to rest for 48 hours before the interview.⁹³ The MPP process does not provide any of these same rights or protections, even though “it imposes a significantly higher evidentiary standard.”⁹⁴

Attorney Linda Rivas, who has represented some returned asylum seekers in these interviews, said the standard for approval appears to be whether the person has already suffered harm in Ciudad Juárez. She represented two families whose claims were approved after the fathers of each were kidnapped for several hours there.⁹⁵ If so, that standard is applied inconsistently. Kimberlyn, whose account of being kidnapped with her 5-year-old daughter is referenced above, did not prevail in her non-refoulement interview and was returned to Ciudad Juárez, according to a reporter who observed their second hearing.⁹⁶

⁹⁰ *Innovation Law Lab v. Nielsen*, US Court of Appeals for the Ninth Circuit, Case No. 19-15716, amicus curiae, Local 1924, June 27, 2019, pp. 18-20.

⁹¹ *Ibid.*

⁹² *Ibid.*

⁹³ *Ibid.*, p. 21.

⁹⁴ *Ibid.*, pp. 21-22.

⁹⁵ Human Rights Watch telephone interview with Linda Rivas, May 7, 2019.

⁹⁶ Robert Moore’s Twitter thread, <https://twitter.com/BobMooreNews/status/1130687076226277376> (accessed June 10, 2019).

The Hope Border Institute, a faith-based research and policy group, has monitored nearly all the MPP court proceedings in El Paso and found that although 84 percent of asylum seekers placed in the program expressed in court a fear of persecution in Mexico, only 5 percent were subsequently exempted from the MPP and allowed to stay.⁹⁷

An asylum officer who had been administering these interviews told *Vox*, an online news source, that decisions to let an asylum seeker in the MPP stay in the US are often reviewed — and blocked or overturned — by asylum headquarters, and that in practice the standard for prevailing on claims of fear of return to Mexico was “all but impossible for applicants to meet.”⁹⁸

Vulnerable Populations

The US government asserts that “individuals from vulnerable populations may be excluded on a case-by-case basis” from being forced to wait in Mexico, and that those with “known physical/mental health issues” [sic] are “not amenable to MPP,” though without more specific definitions of what would constitute a “vulnerability”.⁹⁹

US immigration advocates have argued certain populations would face particular challenges supporting themselves in Mexico¹⁰⁰ and accessing the US asylum process and should be excluded from the MPP. Without identity documents, money, and family members and the support they can provide, both financial and otherwise, asylum seekers with certain characteristics -- families with children, migrants with mental health conditions or physical disabilities, pregnant women, and transgender women, for example — are likely to face greater challenges supporting themselves and accessing the US asylum

⁹⁷ Human Rights Watch email correspondence with Edith Tapia, policy research analyst, Hope Border Institute, June 22, 2019.

⁹⁸ Dara Lind, “Exclusive: Civil Servants Say They’re Being Used as Pawns in a Dangerous Asylum Program,” *Vox*, May 2, 2019, <https://www.vox.com/2019/5/2/18522386/asylum-trump-mpp-remain-mexico-lawsuit> (accessed June 5, 2019).

⁹⁹ “Secretary Kirstjen M. Nielsen Announces Historic Action to Confront Illegal Immigration,” DHS press release, December 20, 2018, <https://www.dhs.gov/news/2018/12/20/secretary-nielsen-announces-historic-action-confront-illegal-immigration> (accessed May 28, 2019); US Customs and Border Protection, “MPP Guiding Principles,” January 28, 2019, https://www.cbp.gov/sites/default/files/assets/documents/2019-Jan/MPP_Guiding_Principles_1-28-19.pdf (accessed May 28, 2019).

¹⁰⁰ Carlos Ríos Espinosa, “Life With a Disability in the Migrant Caravan,” commentary, Human Rights Dispatch, December 20, 2018, <https://www.hrw.org/news/2018/12/20/life-disability-migrant-caravan>

process. Transgender women seeking asylum from Central America in particular have reported violence and harassment in Mexico.¹⁰¹

Although they would also likely face difficulties supporting themselves in the US, according to data from the Mexican government, nearly 84 percent of asylum seekers placed in the MPP program reported they have relatives in the US.

Human Rights Watch interviews and court observations indicate CBP's decisions to include or exclude such populations have been inconsistent.

In Ciudad Juárez, the Mexican government took note of at least 62 asylum seekers up until May 13 with a vulnerability (as defined by the Mexican government) who were returned under the MPP, including senior adults, LGBT people, at least one person with a physical disability, and 46 people with symptoms of respiratory illness.¹⁰² Over 4,780 children have been returned to Mexico with their parents as of mid-May with 1,654 specifically to Ciudad Juárez, according to the Mexican National Institute of Migration.¹⁰³

Included in a group of 20 people who appeared in court on May 8 in El Paso were a transgender woman and a young man with a “profound mental incapacity,” [sic] according to a psychological evaluation reviewed by the judge. Human Rights Watch asked Border

¹⁰¹ Transgender Law Center and Cornell University Law School LGBT Clinic, “Report on Human Rights Conditions of Transgender Women in Mexico,” May 2016, <http://transgenderlawcenter.org/wp-content/uploads/2016/05/CountryConditionsReport-FINAL.pdf> (accessed June 27, 2019). See also, Amnesty International, “Facing Walls: USA and Mexico’s Violations of the Rights of Asylum Seekers,” June 2017, <https://www.amnestyusa.org/wp-content/uploads/2017/06/USA-Mexico-Facing-Walls-REPORT-ENG.pdf> (accessed June 26, 2019) (Amnesty International interviewed 10 transgender women in Southern Mexico; the majority reported they did not feel safe in Mexico and faced discrimination or violent attacks by gangs while awaiting decisions on their asylum claims in Mexico); Human Rights First, “Refugee Blockade: The Trump Administration’s Obstruction of Asylum Claims at the Border,” December 2018, https://www.humanrightsfirst.org/sites/default/files/December_Border_Report.pdf (accessed June 27, 2019) (Human Rights First interviewed a transgender Mexican woman robbed and threatened with sexual assault while waiting for a chance to seek asylum in the US); Associated Press, “In Mexico Caravan, LGBTQ Migrants Stick Together for Safety,” NBC News, November 13, 2018, <https://www.nbcnews.com/feature/nbc-out/mexico-caravan-lgbtq-migrants-stick-together-safety-n935591> (accessed June 27, 2019).

¹⁰² Estados Unidos Mexicanos Secretaría de Gobernación, Instituto Nacional de Migración, MPP Program—Chihuahua (copy on file with Human Rights Watch), May 13, 2019.

¹⁰³ Estados Unidos Mexicanos Secretaría de Gobernación, Instituto Nacional de Migración, MPP Program—Chihuahua and MPP Program—Tijuana and Mexicali (copies on file with Human Rights Watch), June 18, 2019, and June 13, 2019.



“Karen,” a transgender woman returned to Ciudad Juárez, Mexico, under the Trump administration’s “Migrant Protection Protocols,” turns herself in to Border Patrol agents on the Paso del Norte international bridge so that she can cross over into El Paso, Texas, for the preliminary hearing in her asylum case, May 2019. Karen told Human Rights Watch that when she first arrived at the US-Mexico border and was detained by Border Patrol agents, they misgendered her, placing her in a cold, overcrowded cell with 78 men and refusing to call her by her chosen name. © 2019 Ariana Sawyer/Human Rights Watch

Patrol why these people had been included in the MPP. Border Patrol referred us to their guidelines posted online that state such persons may be excluded from the program.¹⁰⁴

During court proceedings on May 22 in San Diego, the immigration judge asked repeatedly whether a mother and daughter whose primary language was Achi, an indigenous Mayan language, and who understand very little Spanish, were “appropriate” for the MPP.¹⁰⁵

¹⁰⁴ Memorandum from US Department of Homeland Security, to US Citizenship and Immigration Services, “Guidance for Implementing Section 235(b)(2)(C) of the Immigration and Nationality Act and the Migrant Protection Protocols,” January 28, 2019, <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2019/2019-01-28-Guidance-for-Implementing-Section-35-b-2-C-INA.pdf> (accessed June 10, 2019).

¹⁰⁵ Human Rights Watch observation of immigration court proceedings, San Diego, California, May 22, 2019.

According to Linda Rivas, executive director and lead attorney at Las Americas Immigrant Advocacy Center, a woman with two daughters, one of whom is a person with a disability that has high support requirements; a transgender woman; and seven pregnant women, one of whom gave birth shortly after being sent back to Mexico, and another who was separated from her husband and 10-month-old baby with special needs, were placed into the MPP and later removed from the program.

At the same time, attorneys arguing for other pregnant women to be excluded from the MPP have seen them returned to Mexico.¹⁰⁶

Severely Limited Access to Attorneys, Chaotic Court Hearings

Preliminary court proceedings and interviews with local attorneys as well as asylum seekers returned to Mexico show the MPP program mired in confusion with little to no meaningful access to due process.

Though everyone in the MPP has the right to an attorney at no cost to the US government, for asylum seekers forced to remain in Mexico, getting legal representation has been nearly impossible. Additionally, DHS is not allowing attorneys to participate in fear interviews.¹⁰⁷ For the few who do manage to find a lawyer, the MPP makes ongoing access to attorneys extremely limited.

Of the 54 asylum seekers Human Rights Watch observed in court in El Paso, 50 entered proceedings with no legal representation. In San Diego, 13 out of 15 entered proceedings with no legal representation.

Asylum seekers returned to Mexico are given a list of low-cost attorneys on the US side of the border they can call, which, according to attorneys, is the same list asylum seekers located in the US are given.¹⁰⁸ However, most of the attorneys on it are either unable to go to Mexico or are too overwhelmed to take their cases.

¹⁰⁶ Hope Border Institute's Facebook page, "Seven Weeks of 'Remain in Mexico,' a Real Time Update From El Paso, TX," webinar, May 21, 2019, <https://www.facebook.com/hopeborderinstitute/videos/1839680246133315/?v=1839680246133315> (accessed May 29, 2019).

¹⁰⁷ Human Rights Watch observation of immigration court proceedings for asylum seekers, El Paso, Texas, May 9, 2019.

¹⁰⁸ Letter from American Immigration Lawyers Association to Kevin McAleenan, acting secretary, US Department of Homeland Security, June 3, 2019, <https://www.aila.org/infonet/aila-sends-letter-to-dhs-acting-secretary-mpp> (accessed June 10, 2019).

Asylum seekers located in the US are not bound to attend immigration court proceedings in US border towns. Instead, they spread out across the US to other immigration court districts, whether because they are detained elsewhere or are residing in cities where they have friends or family. But under the MPP, thousands of asylum seekers have been forcibly concentrated in El Paso and San Diego, overwhelming the limited number of immigration attorneys who practice there.

While private attorneys may have more availability to represent clients, they also have concerns about traveling to Mexico and must charge for their services. Most asylum seekers cannot afford to pay for food, let alone tens of thousands of dollars needed to pay for private representation for the duration of their cases.

At the two preliminary hearings Human Rights Watch observed in El Paso where everyone appeared for the first time, Immigration Judge Nathan Herbert gave more time to everyone who wanted it for the purpose of finding an attorney. Those who appeared in his courtroom on May 10 for their second MPP hearings, mostly women with very small children, still had not found one. Immigration Judge Scott Simpson in San Diego explicitly acknowledged it might be more difficult for asylum seekers to find attorneys in Mexico and gave more time to everyone who wanted time to find an attorney.

Before granting more time to those at their second hearings, Judge Herbert asked each asylum seeker to describe the efforts they had made. One woman, Sol O. (pseudonym), fled Guatemala with her two daughters, one of whom was suffering from a phlegmy cough throughout proceedings. “I have called several and they tell me they can’t help me because they have too many cases,” Sol said. She also said she can’t afford the ones that charge. “Why have they been so unfair with us?” she asked the judge. “We’ve been waiting for months. Other people have gone through just like that.”¹⁰⁹

According to immigration attorneys, most of the funding available for pro bono legal representation for immigrants in deportation proceedings limits eligibility to clients who are residents of certain geographical areas in the US. As a result, many of the attorneys who would typically be available to low-income clients cannot represent those forced to remain in Mexico. The costs associated with traveling, including the amount of time it

¹⁰⁹ Human Rights Watch observation of immigration court hearing for Sol O. (pseudonym), El Paso, Texas, May 10, 2019.

takes to cross the border, also impedes their ability to represent people in the MPP.

The few attorneys who can take clients in Ciudad Juárez are overwhelmed and face logistical and security barriers that make getting access to their clients extremely difficult. Attorneys working in Ciudad Juárez and other Mexican border cities cannot ensure their own safety; long wait times at ports of entry mean lawyers have to spend hours of their time commuting; and US-based attorneys do not have their own offices in Mexico where they could meet privately with clients.¹¹⁰

Additionally, asylum seekers do not have regular access to phones and rarely have access to computers, meaning there are limited opportunities for the communication required to prepare asylum seekers' cases, according to attorneys and shelter operators.¹¹¹

In a letter to DHS regarding the MPP program, the American Immigration Lawyers Association, the largest national association of immigration attorneys, stated that, "representing an asylum seeker in immigration court conservatively takes between 40-60 hours of work, with an estimated 35 hours of face-to-face communication with the client," especially since many asylum seekers have experienced physical and psychological trauma and will need time to build trust with attorneys.¹¹² Yet the MPP only guarantees asylum seekers one hour at immigration court just before proceedings, meaning lawyers have mere moments of face-to-face contact with clients.¹¹³

In one hearing, Human Rights Watch witnessed an asylum seeker cite the difficulty in accessing an attorney as one of the factors pushing her to give up her asylum claim. Karmele G. (pseudonym), who fled Guatemala with her two sons, ages 10 months and 9

¹¹⁰ Julian Aguilar, "Long Delays at Border Bridges Bring Anxiety for Businesses as Holy Week Begins," *The Texas Tribune*, April 15, 2019, <https://www.texastribune.org/2019/04/15/delays-border-bring-anxiety-business-owners-during-holy-week/> (accessed June 5, 2019); Holly Bock, "Local Private School Students from Mexico Say Long Wait Times at Bridges Making Them Late," *KDBC News*, April 9, 2019, <http://cbs4local.com/news/local/local-private-school-students-from-mexico-say-long-wait-times-at-bridges-making-them-late> (accessed June 5, 2019)

¹¹¹ Human Rights Watch observation of Borderland Immigration Council meeting, El Paso, Texas, May 8, 2019.; Human Rights Watch interview with Imelda Maynard, immigration attorney, Catholic Charities of Southern New Mexico, Las Cruces, New Mexico, May 6, 2019.

¹¹² Letter from American Immigration Lawyers Association to Kevin McAleenan, acting secretary, US Department of Homeland Security, June 3, 2019, <https://www.aila.org/infonet/aila-sends-letter-to-dhs-acting-secretary-mpp> (accessed June 10, 2019).

¹¹³ Memorandum from Nathalie R. Asher, acting executive associate director, US Department of Homeland Security Enforcement and Removal Operations, to field office directors, Enforcement and Removal Operations, February 12, 2019, <https://www.ice.gov/sites/default/files/documents/Fact%20sheet/2019/ERO-MPP-Implementation-Memo.pdf> (accessed June 10, 2019).

years, was the only asylum seeker in the May 10 proceedings in El Paso who did not want more time to find an attorney. She said she had tried calling attorneys, but they were too expensive and that she just wanted to get on with her case. Where a lawyer would have been equipped to navigate the proceedings, Karmele repeatedly asked the judge to define the important legal terms used, and though the judge expressed concern that she was afraid to return to her country, he ultimately ordered her removed. Karmele insisted that she was afraid to return to Guatemala but said she was even more afraid of being sent back to Ciudad Juárez again, stating that, “they sent me to Mexico, and there I have no job and no family.” She said that at least in Guatemala, her family could care for her children if anything happened to her.¹¹⁴

Just as the concentration of thousands of asylum seekers forced to wait in Mexico has overwhelmed attorneys, so too has the program overwhelmed courtrooms. Only a few immigration judges – one in El Paso and three in San Diego – were presiding over the MPP cases when Human Rights Watch observed proceedings.¹¹⁵

Because immigration judges and the Board of Immigration Appeals no longer have the ability to perform administrative closures, a tool that allowed judges to manage their dockets by temporarily closing cases, they have been left with little power to manage the backlog in cases.¹¹⁶ Meanwhile, the Trump administration has been pushing judges to decide cases more quickly with quotas.¹¹⁷

The US immigration court system is not designed to hold hearings for people who are residing outside of the country. Human Rights Watch witnessed immigration judges unsure of how to interpret or apply US immigration law in the context of the MPP program and attorneys and asylum seekers scrambled to deal with the unintended consequences of choices that would typically have predictable outcomes.

¹¹⁴ Human Rights Watch observation of immigration court hearing for Karmele G. (pseudonym), El Paso, Texas, May 10, 2019.

¹¹⁵ Morrissey, “San Diego Immigration Court ‘Overwhelmed’ by Remain in Mexico Cases,” *San Diego Union Tribune*; Human Rights Watch observation of immigration court proceedings, El Paso, Texas, May 8-10, 2019, and San Diego, California, May 22, 2019.

¹¹⁶ Lolita Brayman, “The End of Administrative Closure: Sessions Moves to Further Strip Immigration Judges of Independence,” *Catholic Legal Immigration Network, Inc.*, June 4, 2018, <https://cliniclegal.org/resources/end-administrative-closure-sessions-moves-further-strip-immigration-judges-independence> (accessed June 10, 2019); US Department of Justice, Office of the Attorney General, “Matter of Castro-Tum,” interim decision, May 17, 2018, <https://www.justice.gov/eoir/page/file/1064086/download> (accessed on June 25, 2019).

¹¹⁷ *Ibid.*

Court documents, which were only provided in English, were full of errors with regard to people's names, and addresses were unusable. Because shelter space in Ciudad Juárez is limited and often temporary, many asylum seekers do not have stable addresses, meaning the court has no way to notify them of changes or decisions in their cases, an important component of due process. When asylum seekers leave Mexico to attend immigration court hearings in the US, they can lose their spots in Mexican shelters, meaning whichever address the court has on file may no longer be correct. In many cases, Border Patrol have recorded simply "address known" or the name of the city or state in Mexico to which Border Patrol agents were sending the asylum seeker.¹¹⁸

In San Diego, Immigration Judge Simpson repeatedly questioned how asylum seekers in MPP who had not yet appeared in court would receive adequate notice of their next hearing date and asked the DHS attorney to file a brief showing that it was appropriate to move forward in these cases. Several asylum seekers whose hearings were scheduled did not appear in court. The only person ordered removed *in absentia* in proceedings that day was a man who had appeared at his first hearing. Those who had never appeared in court were not ordered removed. The judge noted that usually, if a person fails to appear, that person is in the US, but that these migrants were in Mexico, had been given a hearing date in another country, which "creates an impediment to come to court." The judge further noted his concern about the ability of asylum seekers to understand the process and referred to two persons in court that day who spoke an indigenous language and understood very little Spanish.¹¹⁹

In El Paso, Immigration Judge Herbert has ordered over 150 people removed *in absentia*, according to the Hope Border Institute.¹²⁰ Asylum seekers ordered deported *in absentia* are barred from returning to the United States for at least 10 years.

Human Rights Watch witnessed the El Paso judge telling attorneys that errors to names and unusable or incorrect addresses in court records were not as significant considering

¹¹⁸ Kate Morrissey, "San Diego Immigration Court 'Overwhelmed' by Remain in Mexico Cases," *San Diego Union Tribune*, June 3, 2019, <https://www.sandiegouniontribune.com/news/immigration/story/2019-05-31/san-diego-immigration-court-overwhelmed-by-remain-in-mexico-cases> (accessed on June 6, 2019).

¹¹⁹ Human Rights Watch observation of immigration court proceedings, San Diego, California, May 22, 2019.

¹²⁰ Hope Border Institute, "Remain in Mexico Updates," June 6, 2019, <https://www.hopeborder.org/remain-in-mexico-052219> (accessed June 10, 2019).

the fact that Border Patrol issues a notice to appear in person when asylum seekers are initially sent to Mexico and then again after each hearing they attend.

But for asylum seekers with no money and no access to transportation, arriving at the border may prove difficult when shelters in Ciudad Juárez can be as many as 17 miles from the designated bridge where they are supposed to present themselves as early as 5 a.m. to attend court proceedings in the US. Asylum seekers waiting in Mexicali are expected to travel more than 100 miles to get to their proceedings in San Diego.¹²¹

One asylum seeker's good faith effort to withdraw his asylum petition, the first known attempt to do so, quickly became twisted and confused under the MPP. Emilio G. (pseudonym) told the judge in El Paso he needed to return to El Salvador to care of his sick infant. Although Emilio was afraid to return to El Salvador, he "will have to take the risk," he said. He needed to work and make money as soon as possible to pay for his baby's medical care, but with no work visa in Mexico and with his asylum case likely to drag on for months or years, returning to El Salvador was the surest possible way to provide his family with immediate support.¹²²

Typically, withdrawing an asylum claim means the applicant must go home immediately but reserves the right to apply again later. In this case, the DHS attorney told the judge he'd been ordered by headquarters to object and appeal. The DHS attorney said that because Emilio only had permission to be in Mexico based on his status as an asylum seeker in the MPP program, as soon as the judge granted the petition to withdraw, Emilio may not necessarily have permission to reenter Mexico, and would therefore have no means to travel home. To complicate matters further, Emilio would have trouble taking a direct flight to El Salvador or even traveling by land since Border Patrol had taken his national identification documents.¹²³

Emilio was likely going to be detained by US Immigration and Customs Enforcement for the weeks or months it would take the court to reach a decision, and the consequences for his

¹²¹ Kate Morrissey, "Asylum Seekers Forced to 'Remain in' Mexicali Face Long Journey to Court Hearings," *San Diego Union Tribune*, May 14, 2019, (accessed June 4, 2019), <https://www.sandiegouniontribune.com/news/immigration/story/2019-05-13/asylum-seekers-forced-to-remain-in-mexicali-face-long-journey-to-court-hearings>.

¹²² Human Rights Watch observation of court proceeding for Emilio G. (pseudonym), El Paso, Texas, May 9, 2019.

¹²³ *Ibid.*

family back home would be devastating. But at the last minute, an attorney present in the courtroom serving as “friend of the court” agreed to represent Emilio, stepping in to make a deal with the DHS attorney.¹²⁴

The attorney was able to negotiate with the DHS attorney so that Border Patrol would return Emilio to Ciudad Juárez along with his identification document, at which point he would immediately travel to El Salvador and send proof to the US government that he was there. Only then would the judge grant his request to withdraw the asylum application. If his application to withdraw had not been granted, Emilio could have been ordered deported *in absentia*.

As described below, however, even with this arrangement, Emilio was not returned to Mexico with his identification document.

In San Diego, one unrepresented asylum seeker said he wanted to move forward anyway and appeared to have already filled out an asylum application form.¹²⁵ When the immigration judge went through the standard process of asking him to affirm or deny the government’s charges against him, things became confused.

In response to the charge of whether he sought to enter the US without proper documentation, the asylum seeker said he’d received a “number” at the El Chaparral port of entry in Tijuana, most likely referring to the metering system. But the judge and the DHS attorney failed to understand what he was saying. The judge stated the man seemed to be denying the charge of lacking valid documentation and set another hearing to address this issue. With no attorney to explain the situation to the judge, the asylum seeker found himself delayed at least another two weeks in pursuing his asylum application.

US Failure to Return Asylum Seekers’ Documents and Possessions

In several of the interviews Human Rights Watch conducted, as well as in court proceedings we observed, asylum seekers reported that Border Patrol agents took some or all of their documents and personal possessions, refusing to return them. DHS attorneys

¹²⁴ Ibid.

¹²⁵ Human Rights Watch observation of immigration court proceedings, San Diego, California, May 22, 2019.

acknowledged the practice and Mexican officials stated they commonly encountered migrants returned without their documents.¹²⁶

According to a Reuters report, a DHS official said it has been federal policy since 2013 to return possessions to migrants no longer in their custody, except for those documents believed to be fraudulent or altered.¹²⁷

Asylum seekers consistently reported that when they were initially detained by Border Patrol, agents took their documents, including government-issued forms of identification, photos, memorabilia and other possessions. A report by the DHS Office of the Inspector General found that agents routinely threw away asylum seekers' personal property, including backpacks, handbags and suitcases.¹²⁸

Asylum seekers who were placed into the MPP program and sent to Ciudad Juárez said that their documents were not returned to them.

Without identification, asylum seekers, who are often destitute, may have difficulty receiving financial support from family or friends abroad. For example, with no government-issued ID, asylum seekers told us they would not be able to pick up cash from a Western Union transfer. Meanwhile, asylum cases are likely to take months or even years, creating a nearly impossible situation for asylum seekers forced to make long-term arrangements in dangerous border cities with little to no access to the resources required to sustain themselves.

¹²⁶ Human Rights Watch observation of immigration court proceedings, El Paso, Texas, May 9, 2019; Human Rights Watch interviews with government officials (names withheld), Ciudad Juárez, Mexico, May 7, 2019, and May 9, 2019. It is regular practice for DHS when taking someone into custody to take their personal property, including identification documents. Even when people are released, US Immigration and Customs Enforcement (ICE) often keep passports and other identity documents as evidence of the person's alienage. ICE often holds these documents until the end of proceedings. This routine practice can adversely impact people who are in the US, but it has a particularly egregious impact on those who have been returned to Mexico. See Lutheran Immigration and Refugee Service, "Asylum Seekers: A Supplement to First Steps, An LIRS Guide for Refugees, Asylum Seekers, and Migrants Released from Detention," 2014, https://www.lirs.org/assets/2474/asylumseekers_english.pdf (accessed June 4, 2019).

¹²⁷ Julia Love and Kristina Cooke, "Asylum Seekers Say U.S. Officials Returned Them to Mexico but Kept Their IDs," *Reuters (U.S.)*, May 31, 2019, <https://www.reuters.com/article/us-usa-immigration-returns/asylum-seekers-say-u-s-officials-returned-them-to-mexico-but-kept-their-ids-idUSKCN1T115L> (accessed May 28, 2019).

¹²⁸ Memorandum from John V. Kelly, acting inspector general, Office of the Inspector General, Department of Homeland Security, to Kevin McAleenan, acting secretary, Department of Homeland Security, "Management Alert – DHS Needs to Address Dangerous Overcrowding Among Single Adults at El Paso Del Norte Processing Center," May 30, 2019, <https://www.oig.dhs.gov/sites/default/files/assets/2019-05/OIG-19-46-May19.pdf> (accessed June 17, 2019).

- Kimberlyn, the 23-year-old mother from Honduras who was express-kidnapped after being returned to Mexico under the MPP, said that Border Patrol agents took all of her documents when they detained her and never returned them. When they sent her to Mexico, they only gave her a notice to appear in court. She said she now has no proof that her daughter is even her own.¹²⁹
- Delia E. (pseudonym), a 43-year-old asylum seeker from Guatemala who was traveling with her 18-year-old daughter, said Border Patrol agents took all of her documents, mementos, photos, and other possessions. She said she asked agents to give her documents back to her, but they accused her of using a false name and refused. “It infuriates me, the way they took all of my mementos and everything from me,” Delia said.¹³⁰
- Bernardo P. (pseudonym), a 28-year-old asylum seeker from Honduras, said Border Patrol agents took his ID and cell phone. When he tried to get his possessions back, he said they refused, telling him that the law prevents them from returning such items. Though Human Rights Watch could not verify Bernardo’s exchange with agents, returning asylum seekers’ documents is not illegal. As a result, Bernardo said he has had no access to his money and no way to receive financial support from anyone else. Because the shelter he was staying in has a limit on the number of days asylum seekers can stay, he would soon have to search for somewhere else to stay.¹³¹

Asylum seekers may also have difficulty traveling, meaning they are not free to seek asylum elsewhere or return home.

As noted above, CBP refused to return a government-issued identification to Emilio, the asylum seeker who needed his ID to make an urgent trip home to care for his 6-month-old baby who had become gravely ill.¹³²

¹²⁹ Human Rights Watch interview with Kimberlyn, Ciudad Juárez, Mexico, May 7, 2019.

¹³⁰ Human Rights Watch interview with Delia E. (pseudonym), Ciudad Juárez, Mexico, May 8, 2019.

¹³¹ Human Rights Watch interview with Bernardo P. (pseudonym), Ciudad Juárez, Mexico, May 8, 2019, and observation of immigration court hearing, El Paso, Texas, May 9, 2019.

¹³² Human Rights Watch observation of immigration court hearing for Emilio G. (pseudonym), El Paso, Texas, May 9, 2019; Human Rights Watch observation at Paso Del Norte port of entry, El Paso, Texas, and Ciudad Juárez, Mexico, May 10, 2019.

Emilio appeared at his preliminary court proceeding in El Paso on May 9, where the judge agreed to allow Emilio to withdraw his application for asylum, a process that means he could seek asylum in the future without hurting his case. In order to return to El Salvador, Emilio would need his ID, which Border Patrol had taken.¹³³

Yet when CBP officers sent Emilio to Ciudad Juárez, they did not return his ID. The next day, when Human Rights Watch and the Hope Border Institute accompanied Emilio to the border to try again to get his ID, a Border Patrol supervisor refused to see the group.

Human Rights Watch followed up with the Department of Homeland Security to find out why Border Patrol agents were refusing to return documents. A spokesperson referred us to the MPP information page, which says nothing about the practice. When asked for clarification, the spokesperson stopped responding.¹³⁴

Emilio ultimately traveled to a Salvadoran consulate in Monterrey, Mexico, about 722 miles (1,162 kilometers) southeast of Ciudad Juárez, where he received a new form of identification and then left the following day for El Salvador.¹³⁵

Separation of Families within the MPP Program

Human Rights Watch documented several reports of family separation, where agents split apart families who'd been traveling together at the border. Children, including some with mental health conditions, were separated from non-parental guardians by Border Patrol, classified as “unaccompanied alien children,” and placed into the custody of a US Department of Health and Human Services (HHS)-funded shelter in the United States.¹³⁶ Meanwhile, the adult family member was sent to Mexico for the duration of their lengthy asylum case.

Staying in touch is especially difficult for families separated under the MPP, since those forced to wait in Mexico may not have access to a cell phone or landline.

¹³³ Ibid.

¹³⁴ Human Rights Watch email correspondence with April Grant, spokesperson, US Department of Homeland Security Headquarters, May 14, May 23, and June 12, 2019.

¹³⁵ Human Rights Watch text message correspondence with Edith Tapia, research policy analyst, Hope Border Institute, El Paso, Texas, June 24, 2019.

¹³⁶ Human Rights Watch observation of immigration court hearings, El Paso, Texas, May 8, 2019.

- Wilfredo S. (pseudonym), a 19-year-old Central American asylum seeker, said he had been separated from his 17-year-old sister who has a mental health condition and has not seen her in five weeks. Wilfredo showed the court he carried a power of attorney document that he said gives him power to make decisions about his sister in their parents' absence. DHS attorneys said their records show the girl had already been released from HHS custody to a family friend, but Wilfredo said he had learned the previous day from their mother that his sister remained in custody. He said he had not been able to contact his sister.¹³⁷
- Elias S. (pseudonym), a 19-year-old Central American asylum seeker, said in immigration court that he had been separated from his three minor siblings, ages 9, 13 and 17, one of whom had been raped. DHS attorneys said they had no record that Elias was traveling with younger siblings, let alone that they had been separated. Elias said their mother lives in the US and that while his 13-year-old brother had been released to their mother, his two little sisters remained in HHS custody. Though his mother was in touch with the two girls, he said he had not been able to talk to them.¹³⁸
- Gil X. (pseudonym), a 28-year-old asylum seeker from Guatemala, said he was separated from his 15-year-old brother for whom he is the primary caregiver. Gil showed the court a power of attorney form, which he said he had carried since their father died. He said it had been over five weeks since he was separated from his brother and that they had not been able to speak in that time because the process is too complicated and expensive.¹³⁹
- Amanda M., a 19-year-old asylum seeker from Guatemala, said that after she and her 14-year-old sister turned themselves in to Border Patrol and she told them she was afraid to return to her country, an agent told her, "We can't help you here." She said she was separated her from her little sister, who was ultimately released to their brother in the US. Meanwhile, Amanda was returned to Mexico, where she

¹³⁷ Human Rights Watch observation of court hearing for Wilfredo S. (pseudonym), El Paso, Texas, May 8, 2019.

¹³⁸ Human Rights Watch observation of court hearing for Elias S. (pseudonym), El Paso, Texas, May 8, 2019.

¹³⁹ Human Rights Watch observation of court hearing for Gil X. (pseudonym), El Paso, Texas, May 8, 2019.

said she is too afraid to leave the hotel room she shares with some other girls. Sometimes, they don't eat so that they can pay for shelter, Amanda said.

- Josefa C. is a 53-year-old grandmother who raised her three granddaughters after their mother moved to Texas. When she fled from Honduras, she took her granddaughters, then ages 7, 12 and 15, with her. She said Border Patrol took the girls away, forcibly removing the children as the 7-year-old clung to Josefa's pants and all four cried. She was returned to Mexico alone, while the three girls were eventually released to their mother in Texas.¹⁴⁰

The MPP is applied selectively, and not everyone seeking asylum in the US is placed in the MPP program. According to Mexican officials, and verified by local attorneys and advocates, nearly all of those placed into the MPP are Central Americans from Northern Triangle countries, the vast majority of whom told Mexican officials they had family in the US.¹⁴¹ Recently, under the expansion of the MPP, Cubans and some others have also been included in the program.¹⁴²

Human Rights Watch also documented non-custodial family separations that occurred when asylum seekers were returned to Mexico while their family members were released in the US to pursue their asylum cases from within the country.

- Christopher E. (pseudonym) fled Honduras with his pregnant wife. He told a research analyst with the Hope Border Institute who interviewed him that as they were traveling through Mexico, they were kidnapped in Nuevo Laredo, Tamaulipas, for two months. When their kidnappers couldn't get ahold of a family member, they were eventually released. By the time they turned themselves in to Border Patrol, Christopher's wife was six-months pregnant. Border Patrol separated them, sending Christopher back to Ciudad Juárez and releasing his wife to his brother in Tennessee who has epilepsy. He said he was worried about them both. He also

¹⁴⁰ Human Rights Watch interview with Josefa C. (pseudonym), El Paso, Texas, May 7, 2019, and observation of immigration court hearing, Ciudad Juárez, Mexico, May 8, 2019.

¹⁴¹ Estados Unidos Mexicanos Secretaría de Gobernación, Instituto Nacional de Migración, MPP Program—Chihuahua, May 13, 2019, and MPP Program—Tijuana and Mexicali, (copies on file with Human Rights Watch) May 14, 2019.

¹⁴² Ibid.

said he was too afraid to leave the home where he was staying with a local pastor. “One feels as if one is not a human being,” Christopher said.¹⁴³

- Jose C. (pseudonym) fled Central America with his brother, his brother’s wife and their baby. When they were detained by Border Patrol, agents separated them, sending Jose to Ciudad Juárez and his brother, sister-in-law, and their child to the US where they were also in asylum proceedings. At Jose’s preliminary hearing, the immigration judge told him that Border Patrol separated the family because Jose is considered a single adult, while his brother, brother’s wife and their baby are considered a family unit. The judge also said their cases could possibly be consolidated later on, but that it would depend on how quickly each case moved.¹⁴⁴

¹⁴³ Human Rights Watch interview with Edith Tapia, policy research analyst, Hope Border Institute, El Paso, Texas, May 7, 2019. Tapia interviewed Christopher E. May 7, 2019 in Ciudad Juárez, Mexico, alongside Human Rights Watch researchers.

¹⁴⁴ Human Rights Watch observation of immigration court hearing for Jose C. (pseudonym), El Paso, Texas, May 8, 2019.

US Law and International Refugee Law

The United States in 1968 committed to the central guarantees of the 1951 Convention relating to the Status of Refugees (the Refugee Convention) by its accession to the Refugee Convention's 1967 Protocol.¹⁴⁵ The US government then enacted the Refugee Act of 1980 to bring US law into compliance with the Refugee Convention and Protocol. The Refugee Act incorporated into US law the convention's definition of a refugee and adopted the principle of nonrefoulement, which prohibits the return of refugees to countries where they would face persecution.¹⁴⁶

The US, as a party to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, is also obligated not to return anyone to a country "where there are substantial grounds for believing that [they] would be in danger of being subjected to torture."¹⁴⁷ The UN Human Rights Committee, in its general comment on the prohibition against torture and other ill-treatment, stated that governments "must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement."¹⁴⁸

As described above, Human Rights Watch's findings indicate that under the Migrant Protection Protocols program, the US fails to comply with its international legal obligations to ensure that asylum seekers can fairly exercise their right to seek asylum and are protected from refoulement. The MPP defeats mechanisms already in place in US law

¹⁴⁵ Convention Relating to the Status of Refugees, 189 U.N.T.S. 150, entered into force April 22, 1954, <http://www.unhcr.org/3b66c2aa10.html>; UN Protocol Relating to the Status of Refugees, 606 U.N.T.S. 268, entered into force October 4, 1967. The United States acceded to the 1967 Protocol in 1968.

¹⁴⁶ The US incorporated the provisions of the 1967 Protocol into domestic law through the Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat 102 (1980). As the Supreme Court has confirmed, a primary purpose of Congress in passing the Refugee Act "was to bring United States refugee law into conformance with the 1967 United Nations Protocol." *INS v. Cardoza-Fonseca*, 480 U.S. 421, 426 (1987); see also *INS v. Stevic*, 467 U.S. 407, 416-24 (1984) (providing a history of the incorporation of the Refugee Convention standards into US law through the 1967 Protocol and the Refugee Act of 1980).

¹⁴⁷ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, article 3(1).

¹⁴⁸ UN Human Rights Committee, General Comment 20, Article 7 (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 30 (1994), para. 9.

(specifically the asylum process in US immigration courts) to ensure that asylum seekers are identified and have a fair process through which to present their claims. Under the MPP, asylum seekers are returned to a country where they may be at risk of serious harm and where their vulnerability is compounded by the lack of access to humanitarian visas or work permits.

As of June 2019, US courts were considering whether the MPP was legal under US law. The American Civil Liberties Union, Southern Poverty Law Center, and Center for Gender & Refugee Studies filed a lawsuit challenging the MPP on February 14, 2019. A federal court issued a preliminary injunction in April, and in early May, the Ninth Circuit issued a stay, allowing the program to proceed while the Ninth Circuit considered the government's appeal of the preliminary injunction.¹⁴⁹

Two main questions were being argued:

- 1) Whether the Immigration and Nationality Act (INA) authorizes the Department of Homeland Security to carry out the MPP;
- 2) If DHS does have the authority to carry out the MPP, whether the program is in compliance with US laws that prohibit migrants from being returned to a territory where they would be subjected to persecution or torture (nonrefoulement).

At issue are provisions of INA section 235. Section 235 deals with procedures for inspecting foreign nationals entering the US and the treatment of those who do not have the legal authorization to do so, which includes people who apply for asylum at the US border.¹⁵⁰

Section 235(b)(2)(C) states that “in the case of an alien . . . who is arriving on land (whether or not at a designated port of arrival) from a foreign territory contiguous to the

¹⁴⁹ *Innovation Law Lab v. Nielsen*, US District Court, Northern District of California, Case No. 19-00807, order granting preliminary injunction, April 8, 2019; *Innovation Law Lab v. Nielsen*, US Court of Appeals for the Ninth Circuit, Case No. 19-15716, stay order, May 7, 2019.

¹⁵⁰ Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing, *US Congress*, 8 USC 1225, 1952, <http://uscode.house.gov/view.xhtml?req=granuleid%3AUSC-prelim-title8-section1225&num=0&edition=prelim> (accessed June 10, 2019).

U.S.,” the Secretary of Homeland Security “may return the alien to that territory pending a [removal] proceeding” under INA section 240.¹⁵¹

The district judge, in issuing the preliminary injunction initially blocking the MPP, said the statute could not be read to apply to asylum seekers being forced to wait in Mexico.¹⁵²

The district judge’s opinion states that Congress defines two categories of aliens. Asylum seekers are among those described under the first paragraph. The second paragraph describes “other aliens.” The decision finds the contiguous territory return provision “shall not apply to an alien to whom paragraph one (1) applies” and can only be applied to the second category of migrants described in paragraph two, which includes those “suspected of being, inter alia, drug addicts, convicted criminals, terrorists, or alien smugglers, and who would therefore be inadmissible.”¹⁵³

The US government, however, argues that paragraphs one and two create overlapping categories, which would mean asylum seekers arriving on land from a contiguous territory could be sent back to that territory for the duration of their asylum cases at DHS discretion.

In reversing the district court’s decision, the Ninth Circuit agreed with the US government’s interpretation of these provisions. It also found that the likelihood of harm upon return to Mexico is “reduced somewhat by the Mexican government’s commitment to honor its international law obligations and to grant humanitarian status and work permits to individuals returned under the MPP.”¹⁵⁴ Nonetheless, two of the three judges on the panel that issued the decision wrote separate opinions expressing reservations about the program’s legality.¹⁵⁵

¹⁵¹ “Migrant Protection Protocols,” DHS press release, January 24, 2019, <https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols> (accessed June 10, 2019).

¹⁵² *Innovation Law Lab v. Nielsen*, US District Court, Northern District of California, Case No. 19-00807, order granting preliminary injunction, April 8, 2019.

¹⁵³ *Ibid.*

¹⁵⁴ *Innovation Law Lab v. Nielsen*, US Court of Appeals for the Ninth Circuit, Case No. 19-15716, stay order, May 7, 2019.

¹⁵⁵ *Ibid.*

With respect to the question of nonrefoulement under the MPP, DHS acknowledged in its internal MPP policy guidance that it has a responsibility to ensure migrants are not returned to conditions where they are likely to face persecution or torture.¹⁵⁶

As the findings in this report make clear, the Ninth Circuit relied on assurances by the Mexican government that have not been borne out in reality – asylum seekers placed into the MPP program do not have meaningful access to the US asylum process and are at risk of return to dangerous conditions.

¹⁵⁶ Memorandum from Kirstjen Nielsen, secretary, Department of Homeland Security, to L. Francis Cissna, director, US Citizenship and Immigration Services, Kevin McAleenan, commissioner, US Customs and Border Protection, Ronald Vitiello, deputy director and senior official performing the duties of director, US Immigration and Customs Enforcement, January 25, 2019, https://www.dhs.gov/sites/default/files/publications/19_0129_OPA_migrant-protection-protocols-policy-guidance.pdf (accessed June 10, 2019).

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The Trump administration has pursued a series of policy initiatives aimed at making it harder for people fleeing their homes to seek asylum in the United States, separating families, limiting the number of legal entries, prolonging detentions, and narrowing the grounds of eligibility. In January 2019, the administration expanded its crackdown on asylum to a wholly new practice: that of returning asylum seekers to Mexico where they are expected to wait until their US asylum court proceedings conclude, for months and perhaps even for years.

“We Can’t Help You Here”: *US Asylum Seeker Returns to Mexico* details serious abuses associated with the US Department of Homeland Security’s so-called Migrant Protection Protocols (MPP). Based on interviews with asylum seekers in Ciudad Juárez, Mexico, attorneys, advocates, and Mexican and US government officials, as well as court monitoring in El Paso, Texas, the report reveals asylum seekers are trapped in dangerous Mexican border cities with limited shelter space where they lack meaningful access to due process in the US and face risks to safety and security.

Human Rights Watch calls on the Department of Homeland Security to immediately end the MPP program and cease returning asylum seekers to Mexico in order to ensure their safety, access to humanitarian support, and due process in their asylum proceedings. The US government should also reduce the backlog in the immigration court system and avoid detaining migrants, especially asylum seekers, children, families, those with physical or mental health concerns, and other vulnerable populations.

(above) A sign in front of a migrant shelter in Ciudad Juárez, Mexico, informs asylum seekers that they have no space, May 2019. This shelter is located in a particularly dangerous neighborhood, and asylum seekers there said they were afraid to leave, even to go to the store just blocks away.

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(front cover) Immigrants attempt to enter the US between Ciudad Juarez, Mexico and El Paso, Texas, on April 29, 2019. Family apprehensions in El Paso area have topped about 60,000 individuals, an increase of 1,670%, up from about 3,000 last year, according to officials.

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