

## A Year of Horrors: The Trump Administration's Illegal Returns of Asylum Seekers to Danger in Mexico

Since January 2019, the Trump Administration has forcibly returned thousands of asylum seekers to Mexico under a policy it absurdly dubbed as the “Migrant Protection Protocols” (MPP). Waiting months in Mexico for their hearings, asylum-seeking men, women, and children from Cuba, El Salvador, Guatemala, Honduras, Nicaragua, Venezuela and other countries have faced life-threatening dangers. Despite overwhelming evidence that this illegal policy is leading to kidnappings, torture, sexual assaults, legal representation barriers, and the denial and abandonment of genuine refugee protection requests, Trump Administration and Department of Homeland Security (DHS) officials continue to implement, expand, and tout this horrific policy as a “success.” In January 2020, the House Judiciary Committee initiated an investigation of the “legality” of the MPP policy and its “impact on vulnerable populations.”

Below are some key facts and figures on the devastating impact on asylum seekers and migrants after a year of the Trump Administration's immoral and illegal Remain in Mexico policy:

- Under MPP, **DHS officers have returned more than 57,000 asylum seekers and migrants to wait in danger in Mexico.** As of late November 2019, **DHS sent at least 25,000 individuals to Nuevo Laredo and Matamoros in the notoriously dangerous state of Tamaulipas**, which the U.S. State Department designates as a Level 4 “Do Not Travel,” the same threat assessment given to Afghanistan, Iran, Libya, and Syria. Since November 2019, the U.S. Consulate in Nuevo Laredo has issued repeated warnings regarding “violence between Mexican authorities and criminal organizations,” “multiple gunfights throughout the city of Nuevo Laredo,” “blockades on major highways,” and “gun battles in various locations” and reminded U.S. citizens that “organized crime activity (including gun battles, murder, armed robbery, carjacking, kidnapping, forced disappearances, extortion, and sexual assault) is common.”
- **DHS officials expanded MPP in December 2019, requiring asylum seekers to undertake dangerous travel through Sonora, Mexico.** DHS now directs asylum seekers it sends to Mexico through the Nogales, Arizona port of entry to appear at MPP immigration court in El Paso, meaning they must travel through the same region of Sonora where in November 2019 cartel members massacred nine members of an American family. DHS is also reportedly considering sending Brazilians to Mexico under MPP – even though few speak fluent Spanish, making them easy targets for kidnappers and extortionists.
- **While Trump Administration and DHS officials tout MPP as one of DHS's “most successful initiatives,” claiming it has reduced the number of asylum seekers arriving at the southern border, the policy has in fact “succeeded” in delivering asylum seekers to kidnapping and assault and terrifying asylum seekers with genuine refugee claims into abandoning their requests for protection.** Mark Morgan, acting Commissioner of U.S. Customs and Border Protection (CBP), has even dismissed the hundreds of public reports of cases of torture, rape, kidnapping, and assault against people in the MPP program as “anecdotal stuff.”
- As of January 21, 2020, Human Rights First has tracked at least **816 public reports of murder, torture, rape, kidnapping, and other violent attacks against asylum seekers and migrants returned to Mexico under MPP**. But our count is only the tip of the iceberg, as the overwhelming majority of returned individuals have not spoken with human rights investigators or journalists. The actual number of attacks is certainly much

higher. A study by the U.S. Immigration Policy Center covering only returns to Tijuana and Mexicali – but not El Paso, Nuevo Laredo, or Matamoros where the risk of violent attacks is more acute – found that one in four returned asylum seekers had been threatened with violence. Recently documented attacks on those returned to Mexico through MPP include:

- a Salvadoran asylum seeker murdered in Tijuana in November 2019 after DHS returned him there,
- an asylum seeking father tortured in front of his 3-year-old son during their kidnapping ordeal in Reynosa, and
- a young Cuban asylum seeker raped in Mexico after being returned by DHS to Matamoros.

- **Asylum seekers returned to Mexico are targeted for kidnapping and assault** in shelters, in taxis and buses, on the streets while looking for food, work, and shelter, on their way to and from U.S. immigration court, and even while seeking help from Mexican police and migration officers. Asylum seekers who have moved to other parts of Mexico in an attempt to find safer places to wait for their MPP hearings have been targeted by kidnappers while in transit, at bus stations, and at airports, when returning to border cities for their hearings. Some other recent examples of attacks on MPP returnees include:

- a 12-year-old Honduran girl and her mother kidnapped at the Nuevo Laredo bus station and nearly kidnapped again after being returned to Mexico by DHS following an MPP immigration court hearing,
- a Cuban asylum seeker returned by DHS officers to Matamoros abducted from a taxi while going to buy food in Reynosa, severely beaten, and ordered to pay his kidnappers \$500 month to remain in the area while he waits for his MPP hearing in Brownsville, and
- a young gay, HIV+ asylum seeker from Honduras kidnapped in Nuevo Laredo in late December immediately after DHS officers returned him there when a U.S. immigration judge rescheduled his final asylum hearing.

- DHS had returned, as of September 2019, some 16,000 children and 500 infants to danger in Mexico. Our tally of attacks on MPP returnees identified at least **201 publicly reported cases of kidnapping or attempted kidnapping of children in MPP**. Other children have been sexually assaulted including two young girls who were reportedly molested by a man targeting children in the Matamoros encampment. As the length of time children spend at risk of kidnapping, child trafficking, and sexual assault in Mexico under MPP grows, some parents make the desperate decision to send their children alone to safety in the United States.
- The men, women, and children returned to Mexico under MPP include **7,362 Cubans, 14,282 Guatemalans, 20,893 Hondurans, 1,275 Nicaraguans, 7,381 Salvadorans, and 1,834 Venezuelans**, among other nationalities, as of late November 2019, according to immigration court data analyzed by TRAC.
- **Asylum seekers are returned to suffer horrific conditions, often without access to safe shelter, sufficient food, proper sanitation, or adequate medical care – conditions that are deteriorating as the months of waiting grow.** In Ciudad Juárez, cramped conditions in migrant shelters led to an outbreak in mid-January 2020 of nearly 200 cases of chicken pox. Despite nearly a year of asylum seekers being returned to Mexicali, Mexican federal authorities have still not opened a government-run shelter there. A recent study by the U.S. Immigration Policy Center found that one-third of families and single adults returned to Tijuana and Mexicali had experienced periods of homelessness. In Matamoros, **children under five make up one quarter of the 2,500 asylum seekers living in tents by the port of entry, enduring sometimes near-freezing temperatures after being returned by DHS to await U.S. immigration court hearings**, according to Helen Perry an American nurse practitioner organizing volunteer emergency medical care for the camp. In early January 2020, she told to Human Rights First researchers that her clinic has seen multiple cases of

sexual and physical assault, children suffering from malnutrition, severe flu, appendicitis, fistula, sepsis, and other life-threatening conditions, and attended to a child who later died after being struck by a car. Multiple children have reported to clinic staff that they fear human traffickers are targeting the camp, including a young girl who said an unknown man approached her, held his hand up to indicate her height, and said that she about the “right size.” Asylum seekers at the camp fear moving to other parts of Matamoros due to the acute danger of kidnapping and violent attack and because the few volunteer attorneys willing to enter Matamoros will only come as far as the port of entry plaza to provide legal information.

- **Religious and humanitarian workers** struggling to aid asylum seekers and protect them from attack have themselves been **threatened and harmed** for their work, including pastors Aaron Mendez and Ricardo Alcaraz, who were abducted in Nuevo Laredo in the summer of 2019 and remain missing to date.
- **DHS has returned hundreds of vulnerable asylum seekers and migrants in violation of internal MPP policy, including children with cancer, autism, Cerebral Palsy, and brain seizures, adults with limited mental capacity, seizure disorders, and at least two deaf, nonverbal individuals, many pregnant women and LGBTQ persons, as well as dozens of Mexican nationals and at least one unaccompanied child who are not even eligible for MPP.** Some vulnerable people recently returned to Mexico under MPP include:
  - Carlos, a two-year-old Honduran boy with profound developmental disabilities and epilepsy,
  - Erica, a seven-year-old Salvadoran girl with Down’s Syndrome and a related heart defect, and
  - a transgender Guatemalan woman sent to the tent encampment in Matamoros, where LGBTQ individuals have been threatened and attacked.
- **The screening process for MPP, which is supposed to prevent the return of individuals to persecution or torture in Mexico, is rigged at every stage – leading to returns of families with children already traumatized from brutal kidnappings and women who fear being sexually assaulted again.** Over the course of the year, screening interviews, which were highly flawed to begin with, have become increasingly cursory, farcical, and hostile. Some MPP fear interviews last just minutes, consist of yes-or-no questions, and/or focus on issues not relevant to fear of Mexico. A former asylum officer who resigned in protest over MPP decried the fear interview process as “practically ensur[ing]” the violation of international law. On January 14, 2020, a federal district court issued a preliminary injunction requiring that DHS to allow individuals receiving MPP fear screening but only in California to speak with and be represented by their attorneys during these interviews. Recent examples of individuals returned to danger in Mexico after farcical MPP fear screenings include:
  - a seven-year-old girl who had been sexually abused in Mexico who was returned to Matamoros by DHS officers in December 2019 after she did not pass a telephonic MPP fear screening interview with an asylum officer, according to her attorney, Jodi Goodwin, and
  - a Cuban asylum seeker in her 20’s raped after being returned by DHS officers to Matamoros failed a farcical MPP fear screening, according to her attorney Norma Gonzalez Sepulveda, who was not given an opportunity to participate in the interview. The asylum officer conducting the interview asked primarily yes-or-no questions and suggested that if the young woman was afraid, she should go elsewhere in Mexico. The woman moved to another region of Mexico but missed her asylum merits hearing in November 2019 because she could not afford transportation to return to the border.
- **Ninety-six percent of MPP returnees did not have lawyers, as of the end of November 2019, according to immigration court data analyzed by TRAC.** Without access to attorneys or legal information, asylum seekers are unable to prepare their asylum applications, gather critical documentation, or submit certified

English translations of evidence in court. **Only 117 asylum seekers (out of 24,231 completed MPP cases) had been granted refugee protection, as of the end of November 2019, according to TRAC's analysis of immigration court data – an abysmal 0.5% grant rate for MPP cases**, though increasingly asylum eligible refugees are being granted only the deficient protection of withholding of removal. Despite the severe security, geographic, and logistical impediments to legal representation, DHS officials including, Ken Cuccinelli, senior official performing the duties of director of U.S. Citizenship and Immigration Services, expect American "NGO lawyers" to cross into Mexico to represent asylum seekers subjected to MPP regardless of deadly violence in most return locations or to represent their clients through "a phone call." Once again, DHS is giving only lip service to providing access to legal representation. Even setting aside the security and logistical barriers to cross-border representation, return locations in Mexico overwhelmingly lack safe, confidential spaces for attorney-client communications, and "telephone calls" are a deficient method for conducting highly complex asylum legal representation, which often requires asylum seekers to recount to their lawyers traumatic information relating to torture, sexual assault, and other persecution.

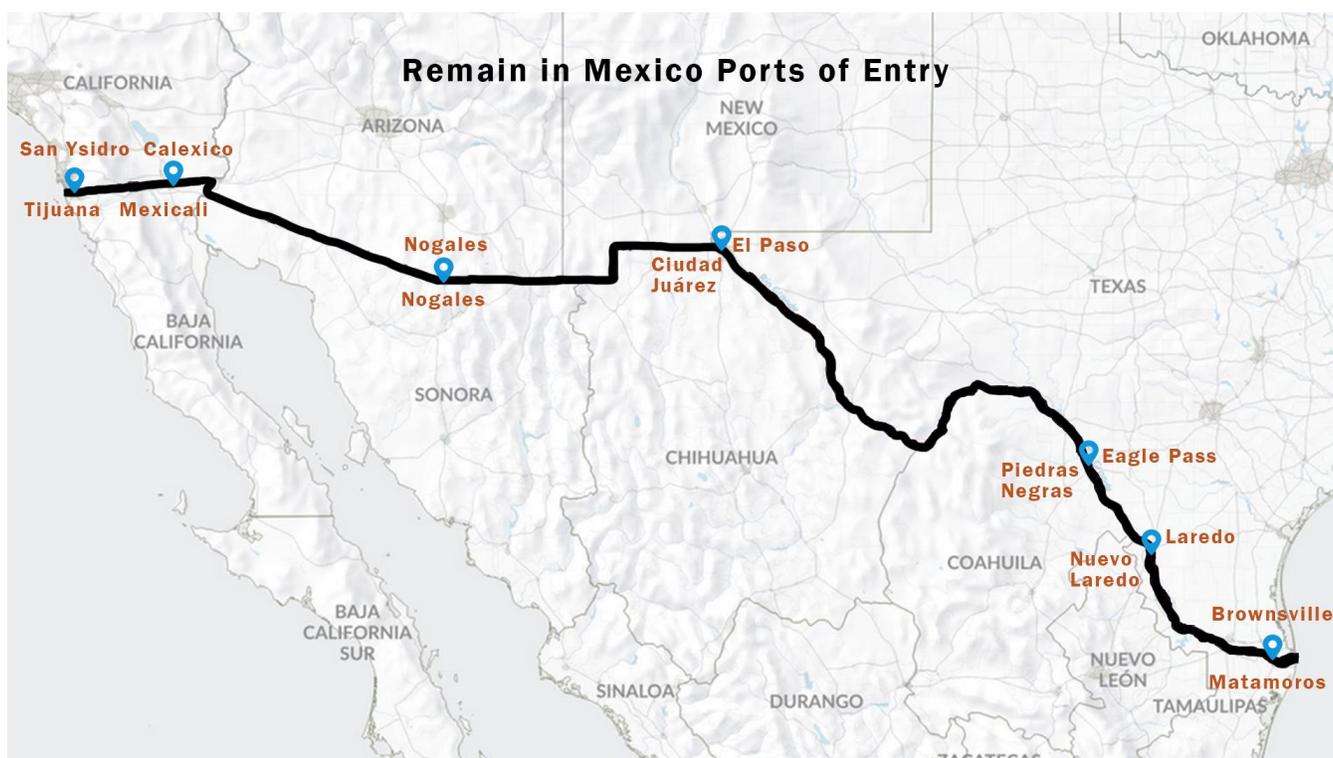
- **DHS continues to shield MPP from public scrutiny by imposing absurd and unjust restrictions on public access to immigration court hearings in secretive tent courts in Laredo and Brownsville, Texas.** Although now allowing the public to watch initial scheduling hearings, DHS has barred some reports and independent legal observers from monitoring individual asylum hearings at the tent courts and has prohibited some observers from bringing paper or writing utensils to take notes. On January 20, 2020, guards at both the Brownsville and Laredo MPP tent courts refused to allow Human Rights First researchers to observe individual asylum hearings and stated that even with the permission of the asylum seeker and his or her attorney, if represented, members of the public will not be permitted to view these hearings in tent courts. At the same time, the administration recently began scheduling MPP tent court cases with immigration judges at the Fort Worth Immigration Adjudication Center, which is not open to the public, effectively cutting off public access to final asylum hearings by removing the option to observe from the judge's courtroom. Former immigration judge Ilyce Shugall, who observed Laredo MPP hearings remotely for Human Rights First in November 2019, wrote that DHS procedure regarding the tent courts "violates the regulations governing immigration proceedings and, more fundamentally, our country's commitment to courts being open to public scrutiny."
- **Immigration judges have ordered asylum seekers deported if they are unable to attend their court hearings because they are kidnapped or face other dangers on the perilous journey to the tent courts.** Immigration judges have publicly stated that they are under pressure from DOJ to order asylum seekers deported who do not appear for hearings. For instance:
  - In January 2020, immigration lawyers in Harlingen reported that a man who had missed an MPP hearing because he had been kidnapped was ordered deported by an immigration judge in Brownsville.
  - A pregnant Salvadoran asylum seeker reported during an MPP hearing observed by Human Rights First in November 2019, that her husband had been missing in Mexico since September. DHS requested, and the immigration judge issued, an in absentia deportation order.
- **Even if asylum seekers have a well-founded fear of persecution and are eligible for asylum, the Trump Administration's third-country asylum transit ban is being applied to bar refugees from Cuba, Venezuela, and elsewhere in MPP from receiving asylum, which leaves some refugees separated from their children and others in legal limbo.** Issued as an interim final rule on July 16, 2019, the third-country transit ban eliminates asylum for virtually all asylum seekers entering or attempting to enter the southern U.S. border on or after July 16. In November 2019, Human Rights First witnessed immigration judges deny asylum

to Cuban asylum seekers who had attempted to seek asylum at ports of entry before the rule went into effect but were turned away under DHS's policy of reducing access to asylum through metering. Other recent cases denied asylum and other refugee protection because of the third-country transit ban include:

- In late December 2019, an immigration judge for the Laredo MPP tent court recognized a Venezuelan woman as a refugee but denied the woman's children, an 8-year-old boy and 4-year-old twin girls, any protection from deportation whatsoever. The judge found the family ineligible for asylum because of the transit ban and that only the woman qualified for the higher withholding of removal standard, but not her children. Had the woman been granted asylum her children would have received protection from deportation to Venezuela through her asylum grant.
  - A Cuban woman and her 11-year-old son were denied asylum by an immigration judge presiding at the Brownsville MPP tent court in mid-January 2020 solely because they had sought asylum at the port of entry after the transit ban went into effect, according to their attorney Arya Toro. Instead, the judge granted them withholding of removal, which will leave the woman and her son in a permanent state of legal limbo in the United States.
- **DHS returned to Mexico at least 17 recognized refugees with fake hearing notices after immigration judges granted them asylum or other refugee protection.** Following pressure from attorneys, the media, and members of Congress, DHS appears to have halted returning refugees to Mexico after they win protection. However, instead of releasing these recognized refugees through parole or case management (or other alternatives to detention), DHS sends some to immigration jail while it considers whether to appeal the immigration judge's decision and while such appeals are pending. For instance:
- DHS detained a Venezuelan family of three in late-January after they were granted withholding of removal (due to the transit ban) from an immigration judge at the Brownsville MPP tent court even though the government attorney did not reserve the right to appeal, meaning the judge's decision is final. According to their attorney, Jodi Goodwin, the family is currently being held in a CBP *hielera*.
  - In mid-January 2020, a Cuban woman was recognized as a refugee and granted the limited protection of withholding of removal by an immigration judge at the Brownsville MPP tent court. She was denied asylum because the judge found that the woman had requested asylum at the port of entry in July after the transit ban went into effect and was therefore ineligible for asylum on that basis, according to her attorney Kou Arie Sua. DHS is detaining the woman pending a decision to appeal.
  - In early-January 2020, an immigration judge for the Brownsville MPP court granted a Cuban asylum seeker withholding of removal, finding that he was not eligible for asylum due to the transit ban as the man had sought protection at a U.S. port of entry in mid-September, according to his attorney, Aglae Eufrazio. As a result of being denied asylum, the man is unable to petition for his wife and son, who remain in danger in Cuba, to come to the United States. DHS is currently holding the man in an immigration jail while deciding whether to appeal the judge's grant of refugee protection.
- **MPP is not only a humanitarian and due process disaster; it's also illegal.** Both U.S. law and treaties ratified by the United States prohibit the government from returning asylum seekers to persecution and torture. The MPP policy also flouts asylum laws and due process protections Congress adopted for refugees seeking protection at the border. The U.N. Refugee Agency has made clear in an amicus brief in a suit challenging MPP that fear-screening procedures like those used for MPP "lack key safeguards required by international law" as "applicants do not have access to counsel in the screening procedure; a decision is not appealable by the applicant; and applicants cannot meaningfully prepare their refugee status determination claims by meeting with lawyers and/or receive notice of upcoming court dates, or otherwise be assured of due

process in their full asylum hearings.” An amicus brief by the union for asylum officers from USCIS, who conduct these screenings, states that, “MPP fails to provide even the basic procedural protections available to asylum applicants subject to [expedited removal].”

- **While the number of asylum seekers and migrants being placed in MPP appears to have slowed, DHS is using other illegal policies that block asylum seekers from speaking with attorneys and the opportunity to apply for protection in the United States.** These include: metering – the illegal policy of turning back asylum applicants at ports of entry; asylum cooperative agreements – through which the administration began sending asylum seekers to Guatemala and has taken steps to finalize an asylum-seeker transfer agreement with Honduras; and fast-track deportation procedures at CBP facilities, including the Prompt Asylum Claim Review (PACR) and the Humanitarian Asylum Review Process (HARP), that effectively block asylum seekers from accessing legal representation before or during credible fear interviews.



## Recommendations

Human Rights First urges the Trump Administration to:

- ☑ **Cease MPP and all other policies and practices that violate U.S. asylum and immigration law and U.S. Refugee Protocol obligations**, including the third-country transit asylum ban, fast-track asylum-seeker deportation procedures including PACR and HARP, turn-backs and orchestrated reductions on asylum processing at ports of entry, and all attempts to send asylum seekers to countries, including El Salvador, Honduras, Guatemala, and Mexico, that do not meet the legal requirements for safe-third country agreements under U.S. law. Instead, the United States should employ effective and humane strategies that uphold U.S. laws and treaty obligations.

- ☑ **Direct CBP to restore timely and orderly asylum processing at ports of entry and ensure humane conditions for those held temporarily under CBP custody**, meeting all legal standards, including the Flores Settlement Agreement and internal DHS detention policies.

Human Rights First recommends that Congress:

- ☑ **Withhold appropriations to DHS and the Department of Justice (DOJ) used to carry out MPP and other forced return programs by adopting the Asylum Seeker Protection Act;**
- ☑ **Adopt the Refugee Protection Act;**
- ☑ **Hold MPP oversight hearings; and**
- ☑ **Continue to conduct official visits to Mexican border towns, CBP facilities, and Border Patrol stations on the southern border, and immigration courts including tent facilities to monitor the massive human rights violations caused by MPP.**