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August 26, 2019

VIA ELECTRONIC AND CERTIFIED MAIL

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Joseph Cuffari, Inspector General
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CC:

Kevin K. McAleenan, Acting Secretary
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Mark A. Morgan, Acting Commissioner
U.S. Customs and Border Protection
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Re: Rape, Kidnapping, Assault and Other Attacks on Asylum Seekers and Migrants Returned to Mexico Under the “Migrant Protection Protocols”; Returns of Other Vulnerable Individuals

Dear Ms. Quinn and Mr. Cuffari:

Human Rights First submits this complaint regarding the illegal mass expulsion of asylum seekers and migrants by the U.S. Customs and Border Protection (“CBP”) to Mexico where they have been targeted in violent attacks and the return of vulnerable individuals in violation of the U.S. Department of Homeland Security’s (“DHS”) own policies. As of August 18, 2019, DHS has expelled more than 35,000 individuals to Mexico under the Remain in Mexico policy, referred to by the administration as the “Migrant Protection Protocols” (“MPP”). These returns violate fundamental guarantees under U.S. law and treaty obligations to prevent the *refoulement* (return) of individuals to persecution or torture.

To date, there are at least 141 publicly reported cases of rape, kidnapping, sexual exploitation, violent assault, and targeting by persecutors, of individuals returned to Mexico.¹ These attacks include: a Honduran asylum seeker from the Garifuna minority group who was kidnapped by Mexican police and sexually assaulted, two Cuban asylum seekers kidnapped together and repeatedly raped, a Honduran asylum seeker held in sexual slavery for months after being returned to Mexico under MPP, among many others. In addition, vulnerable individuals, including children with serious medical conditions, pregnant women, LGBTQ persons, people with physical disabilities, and those with limited mental capacity, have also been returned to Mexico by CBP despite published DHS policies and public assurances allegedly restricting the return of such individuals. These attacks and improper returns are likely just the tip of the iceberg, as the vast majority of the more than 35,000 returned individuals have not spoken to human rights researchers or journalists.

In designing and implementing MPP, DHS has evaded the expedited removal and credible fear laws that Congress established to screen individuals seeking protection at or after crossing a United States border. Instead, it has created – bypassing the formal rule-making process – a sham screening mechanism that eliminates basic procedural safeguards, effectively blocks access to legal counsel, and sets an extraordinarily elevated standard for an individual to prove that she is at risk of harm if returned to Mexico, among other harmful and illegal policies and practices.

DHS and CBP officials are aware of the life-threatening dangers facing migrants and asylum seekers in Mexico, and the U.S. government’s own reports have documented that “[v]iolent crime, such as murder, armed robbery, carjacking, kidnapping, extortion, and sexual assault, is common” in Mexican border states and warns U.S. citizens and U.S. government employees not travel in these regions.² Yet, despite the extensive evidence of potential harms, and the violation of U.S. law and treaty obligations, DHS and CBP officials proceeded to create and continue to implement MPP, a policy of mass returns to danger in Mexico. The grievous harms suffered by asylum seekers and migrants returned by DHS and targeted in Mexico because of their nationality, race, gender, and sexuality, among other characteristics protected under U.S. asylum law, is the predictable result of this illegal policy. Research by Human Rights First, among many other human rights monitors as well as press accounts, confirms that returning individuals to Mexico places them at high risk for violent attack, exploitation and other grave harms in Mexico and cannot be carried out in a manner that complies with U.S. law and international legal obligations.

Human Rights First urges the DHS Office for Civil Rights and Civil Liberties (“CRCL”) and the DHS Office of Inspector General (“OIG”) to open prompt, formal investigations of MPP,³

¹ See attached spreadsheet of publicly reported cases of violent attacks on individuals returned to Mexico under the “Migrant Protection Protocols,” as compiled by Human Rights First.

² U.S. Department of State, “Mexico Travel Advisory,” available at <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/mexico-travel-advisory.html> (accessed August 26, 2019).

³ Human Rights First joins in the grave concerns voiced to CRCL and OIG by the Women’s Refugee Commission regarding the separation of families and their return by CBP to risk in Mexico under MPP. See Women’s Refugee Commission, “Re: Separation of families via the ‘Migrant Protection Protocols,’” August 16, 2019, available at <https://www.womensrefugeecommission.org/rights/resources/1824-separation-of-families-via-the-migrant-protection-protocols>.

including, as detailed below, the 25 case examples of individuals returned to serious harm and danger in Mexico and the 12 case examples of vulnerable individuals expelled to Mexico in violation of DHS's MPP policy, which are included in this complaint. These inquiries should examine not only the impact on individual asylum seekers, but also the knowledge of DHS officials about the dangers that asylum seekers and migrants would face in Mexico, the veracity of both public and in court statements made by DHS officials about the treatment asylum seekers would receive in Mexico and their access to legal counsel, and whether DHS officials followed or refused to follow legal advice concerning whether the MPP scheme complies with U.S. law and treaty legal obligations.

In support of this complaint, Human Rights First has submitted copies of its recent reports on MPP – “A Sordid Scheme: The Trump Administration’s Illegal Return of Asylum Seekers to Mexico” and “Delivered to Danger: Illegal Remain in Mexico Policy Imperils Asylum Seekers’ Lives and Denies Due Process” – and will be providing individual identifying information, declarations, and other evidence to CRCL and OIG for investigation.

Human Rights First has repeatedly raised its concerns with the grave danger the Remain in Mexico policy poses for returned asylum seekers and migrants.⁴ We continue to call on DHS to immediately rescind the program.

The “Remain in Mexico” Policy Delivers Asylum Seekers to Grave Dangers in Mexico in Violation of U.S. Law and Treaty Obligations

In an attempt to evade the safeguards Congress created for expedited removals, MPP ignores the credible fear process. The design and implementation of the MPP fear of Mexico screenings DHS has instituted make clear that they are not intended to protect asylum seekers and migrants at risk in Mexico but to speed their return there despite these risks. As the union representing the U.S. Citizenship and Immigration Services (“USCIS”) asylum officers, who conduct these screenings, wrote: “MPP fails to provide even the basic procedural protections available to asylum applicants subject to [expedited removal].”⁵ The MPP screening process is rigged against asylum seekers and migrants at risk of harm in Mexico at every stage:

- **Asylum seekers placed in MPP are frequently not asked if they fear return to Mexico**, as CBP officers are not mandated under MPP to make this inquiry.⁶ This practice diverges from the requirement that CBP officers read arriving asylum seekers

⁴ See Human Rights First, “A Sordid Scheme: The Trump Administration’s Illegal Return of Asylum Seekers to Mexico” (March 2019) available at https://www.humanrightsfirst.org/sites/default/files/A_Sordid_Scheme.pdf; “Courts and Congress Mislead About Trump Administration Policy Forcing Asylum Seekers to ‘Remain in Mexico’” (May 2019) <https://www.humanrightsfirst.org/sites/default/files/Remain-in-Mexico-Decision.pdf>; “Delivered to Danger: Illegal Remain in Mexico Policy Imperils Asylum Seekers’ Lives and Denies Due Process” (August 2019) available at <https://www.humanrightsfirst.org/sites/default/files/Delivered-to-Danger-August-2019%20.pdf>.

⁵ *Innovation Law Lab v. McAleenan*, No. 19-15716, Brief of Amicus Curiae Local 1924 (9th Cir. June 26, 2019) available at <https://www.aclu.org/legal-document/innovation-law-lab-v-mcaleenan-amicus-brief-labor-union-local-1924>.

⁶ U.S. Customs and Border Protection (CBP), “MPP Guiding Principles,” January 28, 2019, available at <https://www.cbp.gov/sites/default/files/assets/documents/2019-Jan/MPP%20Guiding%20Principles%201-28-19.pdf>.

information necessary for them to understand that they can raise any fear of return with the officer and specifically question them about their fear of return before deporting them through expedited removal procedures.⁷ Even when individuals in MPP affirmatively express a fear, CBP officers often fail to refer them for interview, as demonstrated by the examples below. DHS officials have reportedly “instructed [CBP officers] not to ask”⁸ asylum seekers whether they fear return to Mexico, a violation of U.S. treaty obligations and international law standards.⁹

- **DHS has imposed an impermissibly high burden on asylum seekers to establish that they fear return to Mexico.** Asylum seekers must prove that it is “more likely than not” that they would face persecution or torture in Mexico. This standard is equivalent to that required to receive withholding of removal protection in immigration court,¹⁰ *i.e.* a standard higher than for asylum and far higher than the standard to establish a reasonable or credible fear of persecution, the criteria Congress set out to halt an asylum seeker’s expedited removal and allow an asylum case to proceed in regular immigration court proceedings.¹¹ MPP also plainly violates the international standard for returning asylum seekers through accelerated procedures. The U.N. Refugee Agency (UNHCR) has said that only asylum seekers with “clearly abusive” or “manifestly unfounded” claims may be subject to fast track removals consistent with the Refugee Convention.¹² An asylum officer speaking to Vox reportedly stated that the standard for fear of Mexico screenings is “all but impossible to meet.”¹³
- **DHS denies asylum seekers basic due process protections**—for instance, failing to guarantee or provide access to attorneys before or during screening interviews,¹⁴ refusing to accept or consider evidence, failing to give asylum seekers time to rest prior to the

⁷ 8 C.F.R. § 235.3.

⁸ Dara Lind, “Civil Servants Say They’re Being Used as Pawns in a Dangerous Asylum Program,” May 2, 2019, available at <https://www.vox.com/2019/5/2/18522386/asylum-trump-mpp-remain-mexico-lawsuit>.

⁹ See *Innovation Law Lab v. McAleenan*, No. 19-15716, Brief of Amicus Curiae UNHCR (9th Cir. June 26, 2019) available at <https://www.aclu.org/legal-document/innovation-law-lab-v-mcaleenan-amicus-brief-un-high-commissioner-refugees>.

¹⁰ See U.S. Citizenship and Immigration Services (USCIS), “Guidance for Implementing Section 235(b)(2)(C) of the Immigration and Nationality Act and the Migrant Protection Protocols,” PM-602-0169, January 28, 2019, available at <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2019/2019-01-28-Guidance-for-Implementing-Section-35-b-2-C-INA.pdf>.

¹¹ See 142 Cong. Rec. 11469, 11491 (1996) (noting the credible fear standard adopted by Congress is “intended to be a low screening standard for admission into the usual full asylum process”).

¹² UNHCR, “UNHCR’s Position on Manifestly Unfounded Applications for Asylum,” December 1, 1992, available at <https://www.refworld.org/docid/3ae6b31d83.html>; see Executive Committee of the High Commissioner’s Programme, “The Problem of Manifestly Unfounded or Abusive Applications for Refugee Status or Asylum No. 30 (XXXIV),” (Oct. 1983) available at <https://www.unhcr.org/en-us/excom/exconc/3ae68c6118/problem-manifestly-unfounded-abusive-applications-refugee-status-asylum.html>.

¹³ Lind, *supra* note 8.

¹⁴ Compare with 8 U.S.C. § 1225(b)(1)(B)(iv); 8 C.F.R. § 208.30(d)(4) (guaranteeing asylum seekers the right to consult with an individual, including a lawyer, of their choosing prior to a credible fear interview and to have that person attend the interview).

interview,¹⁵ and denying an opportunity to appeal negative decisions to an immigration judge.¹⁶ An attorney in San Diego reported to Human Rights First that one client reported being kept in handcuffs during the fear screening—a practice that severely interferes with the ability of traumatized asylum seekers to disclose information about their fear of return.

- **Attorneys for represented asylum seekers have repeatedly been excluded from fear interviews.** An attorney from the Immigrant Defenders Law Center reported that her organization requested fear interviews for three clients but were permitted to monitor only one interview, which an immigration judge had ordered DHS to allow. An attorney from Las Americas Immigrant Advocacy Center who accompanied four clients to the El Paso port of entry in early July to request fear interviews was not permitted to participate in any of the screenings. Although attorneys representing individuals during MPP fear screenings were initially contacted by telephone during interviews, Human Rights First understands that asylum officers conducting fear of Mexico screenings have recently been instructed that individuals in these screenings are not entitled to counsel and that asylum officers are not to contact attorneys telephonically during MPP interviews.¹⁷
- **DHS officials are reportedly overruling decisions of asylum officers, and DHS is returning asylum seekers to danger in Mexico even when these officers determine asylum seekers face a great risk of harm** if returned and thereby meet the high screening standard.¹⁸ USCIS declined to provide information regarding the number of screenings conducted by asylum officers and the passage rate, citing ongoing litigation challenging MPP¹⁹; however, data from the Syracuse University Transactional Records Access Clearinghouse shows that as of late June only one percent of individuals in MPP (146 out of 13,990) were removed (including those who passed a fear screening).²⁰
- **UNHCR has made clear that fear screening procedures, like those employed by DHS in MPP, “lack key safeguards required by international law”** as “applicants are not asked whether they fear harm in the receiving country and must express that affirmatively; applicants do not have access to counsel in the screening procedure; a decision is not appealable by the applicant; and applicants cannot meaningfully prepare

¹⁵ See USCIS, “Questions & Answers: Credible Fear Screening,” available at <https://www.uscis.gov/humanitarian/refugees-asylum/asylum/questions-answers-credible-fear-screening> (providing for minimum 48-hour rest period before credible fear interviews).

¹⁶ Compare with 8 U.S.C. § 1225(b)(1)(B)(iii)(III) (providing right of review before an immigration judge for negative credible fear determinations).

¹⁷ See USCIS, “Guidance for Implementing Section 235(b)(2)(C) of the Immigration and Nationality Act and the Migrant Protection Protocols,” *supra* note 10 (justifying restrictions on access to counsel “during the assessments given the limited capacity and resources at ports-of-entry and Border Patrol stations as well as the need for the orderly and efficient processing of individuals”).

¹⁸ Lind, *supra* note 8.

¹⁹ USCIS, “USCIS Asylum Division Quarterly Meeting,” May 20, 2019, available at https://www.uscis.gov/sites/default/files/USCIS/Outreach/Notes%20from%20Previous%20Engagements/PED_AsymStakeholderMeetingQA_05202019.pdf.

²⁰ Syracuse University Transactional Records Access Clearinghouse, “Details on Deportation Proceedings in Immigration Court,” available at <https://trac.syr.edu/phptools/immigration/nta/> (accessed on August 22, 2019).

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.”²¹

Under DHS’s MPP screening process, CBP officers have returned individuals to Mexico who had been subjected to rape, kidnapping, assault and other violence in Mexico as well as asylum seekers who had been pursued to Mexico by their persecutors. Asylum seekers returned by CBP without screening by a USCIS asylum officers (despite having expressed fears of harm in Mexico) have subsequently been the victims of kidnapping, rape, assault and other violence.

Asylum Seekers Routinely Targeted for Attack in Mexico

CBP has returned asylum seekers who were previously targeted in Mexico, including those victimized while waiting in Mexico because of DHS’s illegal practice of turning away asylum seekers at ports of entry:

- In late April 2019, armed men kidnapped three Cuban asylum seekers—Lilia*, Yasmin* and Yasmin’s common-law husband—while they were waiting for a taxi near Ciudad Juárez. Imprisoned for a week, Lilia and Yasmin were repeatedly raped by multiple men. A Mexican man who appeared to lead the group told them “that he knew [they] were Cubans and that [they] were migrants.” Eventually ransomed, the three spent weeks in hiding until June when they were finally able to request asylum at the El Paso port of entry, where they had placed their names on the asylum wait “list” three weeks prior to the kidnapping. However, CBP returned Lilia and Yasmin to Ciudad Juárez under MPP without a chance to explain their fear of returning there. Once in Mexico, Yasmin reflected, “we feel totally destroyed.” She added, “I’m afraid of the men who kidnapped and raped us ... we almost never go out. We don’t call taxis, because we’re afraid that they might be involved with criminal groups. We’re still in hiding. Everyone here can tell that we’re Cuban because of the way that we dress, the way that our faces and bodies look, and the way that we talk. I’m afraid that what happened to me before will happen to me again.”

DHS’s MPP frequently delivers asylum seekers into the hands of corrupt Mexican law enforcement officials and organized criminal groups, who target them on account of their gender, race and nationality. Individuals returned to Mexico by CBP are frequently kidnapped outside of Mexican migration buildings, indicating a clear nexus to their status as migrants. A few examples of this violence include:

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- A Honduran woman who DHS returned to Ciudad Juárez was reportedly kidnapped in June by a group of men in federal police uniforms and repeatedly sexually assaulted. According to her attorney, Linda Rivas of Las Americas Immigrant Advocacy Center in

²¹ *Innovation Law Lab v. McAleenan*, No. 19-15716, Brief of Amicus Curiae UNHCR (9th Cir. June 26, 2019) available at <https://www.aclu.org/legal-document/innovation-law-lab-v-mcaleenan-amicus-brief-un-high-commissioner-refugees>.

El Paso, the woman is part of the Afro-Caribbean Garifuna minority and was vulnerable to targeting in Mexico because of her race, gender and nationality.

- When CBP officials returned Gisela*, a 28-year-old-asylum seeker from Honduras, to Ciudad Juárez from the El Paso port of entry, a trafficker kidnapped her as she left a Mexican migration office. She was raped and forced into sexual slavery for three months and escaped only when one of her captors offered to assist her to leave in exchange for sex. Now hiding at a Juárez church shelter, she is not safe. The parish priest told her that an unknown man recently came to the church looking for her.
- Immediately after Kimberlyne and her 5-year-old daughter, asylum seekers from El Salvador, were returned to Mexico by DHS following an initial hearing in the El Paso immigration court, they and another woman returned under MPP were kidnapped outside of an Instituto Nacional de Migración (National Migration Institute–INM) office in Ciudad Juárez. Kimberlyne’s family was forced to pay a ransom to secure their release. When Kimberlyne attempted to make a police report, officers refused telling her that “nothing had happened” and that it “was just a scare.” Terrified of being kidnapped again, Kimberlyne and her daughter found temporary accommodation with a local woman, “but she says I’ll have to leave soon,” Kimberlyne reported.
- Irma*, a Salvadoran asylum seeker, was kidnapped in late June with her three children, ages 3, 10, and 14, after being returned to Ciudad Juárez by CBP. Irma and two other women who had just been returned to Mexico under MPP flagged down a passing minibus to ask for help because they had nowhere to stay. The three women and three children were instead kidnapped and held hostage for days with little to eat. Irma’s 14-year-old son said one of the men shouted “that he was tired of so many migrants. He said [to us], ‘why did you stay in this country?’” In early July, Irma’s family in the United States was forced to make a \$2800 ransom payment after the kidnappers sent threatening messages to Irma’s sister.
- In early June, R.G.A.M. and his 17-year-old daughter, asylum seekers from Guatemala, were kidnapped in Ciudad Juárez “immediately upon leaving the custody of immigration officials on the Mexican side of the border.” They were held for a month while the kidnappers demanded ransom from family members and forced them to work. After escaping the kidnappers, R.G.A.M. and his daughter again requested asylum after turning themselves in to CBP officers after re-crossing the border. DHS sent them to the Berks County family detention center, according to documents filed by their attorneys.
- After DHS returned Sarai* and her 18 year-old-daughter, Maya*, asylum seekers from Honduras, to Mexico under MPP they were coerced to work by the owner of a migrant hotel in Ciudad Juárez where they had been staying. When the owner tried to rape Maya, Sarai and her daughter fled the hotel but were penniless. They spent three nights sleeping on the streets without eating before they were able to beg for enough money to reach an NGO on the Mexican side of the El Paso port of entry in early July to ask for help.

- In her first hours after DHS returned her to Ciudad Juárez under MPP, Blanca*, an LGBTQ asylum seeker from Guatemala, was walking with other asylum seekers when a group of men followed and robbed them. She sought safety at the main migrant shelter in the city, but it was at capacity, so she ended up in a rented room with other asylum seekers at a hotel catering to migrants. Later, Blanca and other asylum seekers were again attacked, and some were beaten by a group of men. “After what happened, I hardly ever go out,” she said. “I’m really scared of the situation here.”
- Danilo*, a Cuban asylum seeker returned to Nuevo Laredo in July, witnessed multiple individuals kidnapped just outside or from within Mexican immigration offices. According to Danilo, four Venezuelan women and a girl were kidnapped by men who stopped the taxi an INM official had arranged to take them from the INM office in Nuevo Laredo to a shelter. Danilo also reported that while waiting at the same INM office a man who rushed in late at night while being pursued by a group of men who beat and kidnapped him.

CBP’s Failure to Screen or Refer Individuals for MPP Fear Interview

CBP’s screening process results in routine failures by immigration officers to refer individuals who face clear threats in Mexico for screening:

- CBP officers ignored the attempts of Lilia and Yasmin, Cuban asylum seekers, to express their fear of return to Mexico where they had been kidnapped and raped after placing their names on CBP’s asylum metering wait “list” at the El Paso port of entry. “We thought that when we entered the United States, we’d finally be safe,” Yasmin told Human Rights First. When the pair were placed in MPP, Yasmin tried to explain her fear of Mexico, but a CBP officer said that whatever had happened in Mexico “did not matter.” Yasmin recalled that CBP officers “said we had no rights.” One officer said, “It’s better to give Cubans \$20 and send them back to Cuba.” Lilia and Yasmin were returned to Ciudad Juárez without a fear screening, while Yasmin’s partner was detained and processed through the expedited removal process.
- The Honduran asylum seeker who was reportedly kidnapped and sexually assaulted after DHS returned her to Ciudad Juárez under MPP was not referred for a fear screening before return even though she affirmatively expressed a fear of return. According to her attorney, the woman informed CBP officers when they placed her in MPP that, as a black woman from the Afro-Caribbean Garifuna minority, she was afraid to be sent to Mexico. She explained to the officers that she “had a target on her back” because of her race, but they ignored her fears and failed to refer her case for screening.
- Fredi*, a 20-year-old Salvadoran asylum seeker, and his five-year-old daughter were returned to Mexico after CBP officers refused to refer them for a fear screening and did not allow Fredi to explain that gang members had followed him from El Salvador and were threatening him in Mexico. Fredi tried to describe his fear of remaining in Mexico, but a CBP officer ignored him and instead accused Fredi and his daughter of being a “fake family” even though Fredi’s name appears on his daughter’s birth certificate. Fredi

was only able to request a fear screening, which he passed, during his first immigration court hearing in mid-July after months of living in fear in Ciudad Juárez.

- CBP reportedly returned Franklin*²² to Ciudad Juárez despite his fear that assassins had followed him there after he testified against cartel bosses in his Central American home country. Returned by CBP to Mexico under MPP, Franklin narrowly escaped an attempt on his life when two men spotted him on a bus shouting, “Get him! Kill him!” The bus driver sped away, saving his life. Franklin was only able to obtain a fear screening interview when a Catholic bishop accompanied him and a small number of other asylum seekers to request protection at the El Paso port of entry in July. Franklin passed that interview and was released to pursue his asylum claim.
- Even though Danilo explained to a CBP officer that he had escaped from armed men attempting to kidnap him, he was returned to Mexico through MPP without a fear screening. In late May, Danilo placed his name on the wait “list” in Reynosa to seek asylum at the U.S. port of entry. While searching for a shelter, two armed men hunted Danilo and another asylum seeker throughout Reynosa trying to kidnap them. A Good Samaritan hid the two in a car trunk and spirited them to another part of town, but the kidnapers found them. Danilo managed to escape and hid in a shelter for 40 days. Danilo had previously been abducted by Mexican police officers who demanded a \$1,500 payment from his family to release him. In early July, as CBP severely reduced the number of people permitted to ask for asylum at the port of entry, Danilo crossed the border in desperation to request protection. CBP did not refer Danilo for a fear screening despite his attempts to express his fear: “I explained what had happened in Mexico, but [the CBP officer] insisted that I had to return to Mexico.”
- CBP returned Yerson*, an asylum seeker from Cuba, to Mexico where he had been robbed three times in the five days before he crossed the border to seek asylum. As Yerson arrived in Reynosa in early July, a group of armed men stopped the vehicle he and other asylum seekers were traveling in and robbed them. Days later Yerson was robbed in the street by two men who threatened to kidnap him. Yerson tried to seek asylum by crossing the bridge that links Reynosa to Hidalgo, Texas but was turned back by U.S. officials. After learning that the “list” to seek asylum in Reynosa would require him to remain there in danger for months, Yerson decided to cross the border to seek asylum. But at the Rio Grande a group of more than a dozen tattooed men robbed him before he could cross the river and turn himself in to the Border Patrol. Yerson was returned to Mexico without a fear screening: “I told [the CBP officer processing him for MPP] that I had been robbed three time in Reynosa, but he didn’t pay attention to me. . . . He only told me that I was going to be brought to the bridge in Nuevo Laredo.”
- Edwin*, a Cuban asylum seeker, was returned by CBP under MPP to Mexico, where he had been extorted by corrupt police officers and robbed at gun point. After being forced

²² Debbie Nathan, “Trump’s ‘Remain in Mexico’ Policy Exposes Migrants to Rape, and Murder in Dangerous Border Cities,” *The Intercept*, July 14, 2019, available at <https://theintercept.com/2019/07/14/trump-remain-in-mexico-policy/>.

to pay police officers in Reynosa \$300 because they threatened to deport him, Edwin tried to request asylum at the U.S. port of entry in Hidalgo, Texas, but learned that he would have to place his name on a months-long “list.” While waiting in Reynosa two men, one armed with a pistol, robbed Edwin including a backpack that contained important evidence for his asylum case. Afraid to remain in Reynosa, Edwin crossed the river to seek asylum. CBP officers processing Edwin for MPP did not explain his legal rights, including the need to affirmatively request a fear screening. Returned by CBP to Nuevo Laredo, Edwin left for Monterrey in search of safer accommodation, but there two men pursued Edwin in the street late at night as he left a job washing dishes.

While a miniscule percentage of asylum seekers pass DHS’s fear of Mexico screenings, most have been returned after MPP screening interviews even when they have been previously targeted for kidnapping and assault or face other threats of harm:

- Sarai and her daughter Maya did not pass their MPP fear screening and were returned to Ciudad Juárez, even though the man who subjected them to labor exploitation and attempted to sexually assault Maya remains in the city and is holding their identity and other important documents. Maya was forced to go ahead with her interview while her mother was hospitalized after they sought protection at the port of entry. Further, USCIS did not permit Sarai and Maya’s lawyer to participate in the interview.
- Irma and her three children, who were kidnapped and held for ransom for days, were returned again to Ciudad Juárez by DHS after an MPP fear screening. Irma, who appeared to be in shock when Human Rights First met her a few days after she escaped from the kidnappers, was interviewed and returned to Mexico by CBP with her children within 48 hours of entering the El Paso port of entry to request the MPP screening interview—she was not given an opportunity to rest and recuperate or to have her lawyer present during the screening.
- Karla*, a Honduran asylum-seeker, was returned to Mexicali despite presenting evidence that she and her three-year-old son were receiving threats in Mexico. According to Karla, CBP officers refused to accept a printout of the threatening messages, and she was unable to present this crucial evidence to the asylum officer who interviewed her by telephone. Karla does not know what to do to protect herself and her son: “No parent wants something to happen to their child.”
- Javier*, a 48-year-old Salvadoran asylum seeker, failed his fear screening and was returned to Mexico by CBP under MPP even though he had twice been assaulted in Mexico and had a copy of a police report he had made about the incident. Javier also feared remaining in Ciudad Juárez because the day prior to Human Rights First’s visit to the church-run shelter where he was staying, a man was shot dead outside on the street in broad daylight.

Return of Vulnerable Individuals in Violation of DHS Policy

DHS returns unaccompanied and sick children as well as vulnerable adults to Mexico under MPP in violation of internal policy. Under that policy, vulnerable individuals including unaccompanied children and those with “known physical/mental health issues,”²³ are not to be returned to Mexico. Yet CBP has repeatedly returned individuals with serious medical conditions that were known or would have been obvious to CBP officers. Human Rights First interviewed and received reports from lawyers and advocates of many vulnerable individuals returned to Mexico, including:

- a 16-year-old girl from Honduras who CBP returned to Tijuana with her one-year-old infant daughter despite knowing the girl’s age and that she was not accompanied by a parent; Jewish Family Services spoke with the returned girl and confirmed that her U.S. immigration documents contain her correct birthdate;
- a 27-year-old asylum seeker in Tijuana with severe back injuries sustained during beatings by members of a Nicaraguan paramilitary force; she required a wheelchair while detained in CBP custody and suffered a series of panic attacks, which required treatment by a CBP doctor;
- Ariel,²⁴ a 19-year-old Honduran asylum seeker, suffered an epileptic seizure while being returned to Tijuana because he did not have access to his medication while in CBP custody, despite a doctor’s letter explaining his condition and provided to CBP by Ariel’s Human Rights First attorney;
- an asylum seeker who was seven-months pregnant returned to the extreme heat in Mexicali;
- an eight-year-old Guatemalan boy in Ciudad Juárez with a prosthetic eye²⁵ who requires continuing medical care and monitoring to ensure that the cancer that took his eye does not reoccur;
- a six-year-old girl from Honduras in Tijuana with “advanced Cerebral Palsy and significant developmental delays,” according to an independent medical assessment viewed by Human Rights First;
- a man with the cognitive capacity of a four-year-old²⁶ who was repeatedly dumped in Ciudad Juárez despite multiple requests from his lawyer to CBP to review the

²³ CBP, “MPP Guiding Principles,” *supra* note 6.

²⁴ Human Rights First, “Human Rights First Clients Ordered to Remain in Mexico Following Immigration Court Hearings,” March 22, 2019, *available at* <https://www.humanrightsfirst.org/press-release/human-rights-first-clients-ordered-remain-mexico-following-immigration-court-hearings>

²⁵ National Public Radio, “‘Vulnerable’ Migrants Should Be Exempt From ‘Remain In Mexico,’ But Many Are Not,” July 17, 2019, *available at* <https://www.npr.org/2019/07/17/742271139/vulnerable-migrants-should-be-exempt-from-remain-in-mexico-but-many-are-not>.

appropriateness of his placement in MPP and verbal assurances from a CBP official that he would be removed from MPP;

- an asylum-seeking woman CBP returned to Ciudad Juarez who is deaf and non-verbal²⁷;
- an eight-year-old Honduran girl with a heart condition suffering fainting spells and vomiting in the extreme heat in Mexicali; and,
- a 16-year-old autistic boy with limited ability to speak and who is sensitive to touch returned to Tijuana.

According to one media report,²⁸ CBP claims that it does not return LGBTQ asylum seekers to Mexico under MPP because Mexican migration officials will not receive them. Because CBP officers are not required to screen for sexual orientation or gender identity (nor ask any questions about fear of return to Mexico), it is unclear how CBP would avoid the return of LGBTQ persons to Mexico. Human Right First encountered numerous LGBTQ persons returned under MPP, including:

- CBP officers failed to refer Eugenia*, a lesbian asylum seeker from Honduras who was subjected to severe persecution in her home country and has visible scars as a result, for a fear screening before returning her to Mexico. An officer told her on return to Ciudad Juárez that she was “on her own.”
- CBP separated Joana*, an 18-year-old lesbian asylum seeker from Honduras, from her father while in CBP custody and returned her to Mexico without a fear screening. Joana’s father was expelled to Ciudad Juárez. When Joana was returned days later, her father had left the city as he was sick from his time in CBP custody and unable to find shelter. Joana too found herself with nowhere to stay in Ciudad Juárez and without her father to help protect her.

Conclusion

These examples of rape, kidnapping, assault, and other violent attacks confirm the disturbing but predictable result of DHS’s practice of returning asylum seekers and migrants to Mexico – despite the well-known dangers that people returned would face there. Indeed, the U.S. Department of State had warned of these dangers prior to the implementation of MPP. The screening procedures designed by DHS for MPP, which evade the expedited removal and credible fear screening law created by Congress, plainly fail to prevent the *refoulement* of

²⁶ Adam Gabbat, “‘Like a child’: The Disabled Migrant Stranded and Alone in Mexico,” *The Guardian*, July 28, 2019, available at https://www.theguardian.com/us-news/2019/jul/27/mexico-disabled-migrant-stranded-trump?CMP=Share_iOSApp_Other.

²⁷ Bob Moore, Twitter post, July 28, 2019, available at <https://twitter.com/BobMooreNews/status/1155594758128984064>.

²⁸ Anna Giaritelli, “LGBT asylum-seekers exempt from ‘Remain in Mexico’ policy and can stay in US,” *The Washington Examiner*, July 16, 2019, available at <https://www.washingtonexaminer.com/news/lgbt-asylum-seekers-exempt-from-remain-in-mexico-policy-and-can-stay-in-us>.

individuals to persecution and torture in Mexico, a violation of U.S. law and treaty obligations. CBP officers also regularly fail to abide by DHS's own policy standards on the return of certain vulnerable individuals who are allegedly exempt from the program.

Human Rights First urges CRCL and OIG to investigate the human rights abuses associated with the Remain in Mexico policy, including specifically the individual case examples provided in this complaint. Should you have any questions or require additional information for your investigation, please contact senior refugee protection researcher Kennji Kizuka at kizukak@humanrightsfirst.org.

Respectfully,

Human Rights First

Enclosures:

Spreadsheet of publicly reported cases of violent attacks on individuals returned to Mexico under the "Migrant Protection Protocols," as compiled by Human Rights First

"A Sordid Scheme: The Trump Administration's Illegal Return of Asylum Seekers to Mexico"

"Delivered to Danger: Illegal Remain in Mexico Policy Imperils Asylum Seekers' Lives and Denies Due Process"