

Recommendations to End “Remain in Mexico” and Bring People Seeking Protection Safely into the United States

On January 20, 2021, the Biden Administration announced the “[suspension of new enrollments](#)” in the so-called Migrant Protection Protocols (MPP) also known as “Remain in Mexico.” Under the policy, the Trump Administration forcibly returned thousands of people seeking U.S. humanitarian protection to dangerous regions of Mexico to await U.S. immigration court hearings. Many were assaulted, kidnapped, raped, and tortured in Mexico. Human Rights First has tracked at least [1,314](#) public reports of violent attacks against people subjected to MPP. Violence against individuals returned to Mexico – under MPP and other Trump Administration policies to block and expel asylum seekers and children at the border – continues to escalate, as detailed in a December 2020 Human Rights First [report](#).

While the suspension of new enrollments in MPP is a critical first step, thousands of individuals with [pending MPP cases](#) remain in danger; including approximately 7,000 Cubans, 4,000 Hondurans, 2,000 Guatemalans, 1,500 Salvadorans, 1,500 Venezuelans, and 1,000 Nicaraguans; among others. Nearly [70 percent](#) of people in MPP with pending cases have now been waiting in Mexico for one year or more. As of late January 2021, the Department of Homeland Security (DHS) [continues](#) to refuse to remove individuals and families from MPP who have been raped or subjected to other violent attacks in Mexico.

To fully and finally end the horrors inflicted by MPP and to restart the reception of people seeking safety at the southern border, DHS and the Department of Justice (DOJ) should:

- ☑ **End MPP officially** by rescinding the January 25, 2019 [memorandum](#) by then DHS Secretary Nielsen that established the forced returns policy.
- ☑ **Communicate plans quickly and clearly** as to the process for individuals in MPP to continue the asylum process in safety from within the United States. DHS should coordinate with nonprofit, humanitarian and community-based organizations that work directly with asylum seekers, including shelters and medical and legal service providers, to effectively reach those impacted by MPP. Information must also be communicated widely and publicly via social media, radio, television, and local newspapers to reach the many families and adults in MPP who are not housed in migrant shelters and do not have attorneys. Information should be communicated in the languages spoken by individuals forcibly returned to Mexico, including Spanish, Portuguese, and indigenous languages.
- ☑ **Issue parole to swiftly process people out of MPP** so they can shelter with family and friends while their asylum claims are pending.¹ A [study](#) by UCSD researchers found that 92 percent of people in MPP have family or friends in the United States with whom they can shelter. These cases can be swiftly transited through ports of entry given that they have previously been processed. An organized transfer of most MPP cases – estimated to be fewer than [20,000](#) people border-wide – can be conducted within several weeks and should be completed without delays. DHS should also establish an orderly process for asylum seekers facing urgent risks to have their cases transferred to safety in the United States prior to their scheduled date.

¹ MPP and other immigration court cases could subsequently be scheduled for Asylum Office interviews, via immigration court backlog reduction measures to terminate categories of removal cases for more efficient initial adjudication before U.S. Citizenship and Immigration Services. This would vastly reduce adjudication time, reduce family separation, and minimize the number of cases requiring immigration court removal hearings.

- As Customs and Border Protection (CBP) has already recorded biometric and other information for people in MPP, parole and other processing paperwork can easily be prepared in advance to minimize processing times at ports of entry. Individuals processed out of MPP should not be held in CBP custody for lengthy periods: government records [show](#) that CBP can process new asylum seekers at ports of entry in a matter of 2 to 4 hours, so processing for those in MPP should be completed even more rapidly.
- DHS should also provide parole for individuals who entered the U.S. after being placed in MPP and those who were returned to Mexico after their MPP cases were terminated. Because of the grave dangers and terrible conditions facing people forcibly returned to Mexico, some have fled across the border into the United States after being placed in MPP. Others have been returned to Mexico with their cases terminated (around 10,000 cases) due to errors in DHS paperwork, leaving them without any means to continue their requests for asylum.
- In addition, DHS should parole any other asylum seekers [turned back](#) or expelled to Mexico, including those who have been forced to wait months or years on “metering” [lists](#) due to Customs and Border Protection (CBP)’s illegal practice of reducing the number of asylum seekers processed at ports of entry and asylum seekers expelled since March 2020 without access to the U.S. asylum system as a result of the Trump Administration’s attempt to use the COVID-19 pandemic as a pretext to [eliminate](#) refugee protections at the border.
- ☑ **Employ public health measures [repeatedly recommended](#) by epidemiologists and other public health experts** to ensure the safe and swift processing of asylum seekers at the border during the COVID-19 pandemic. Steps include social distancing, use of masks, maximizing use of outdoor space, ventilation and areas where public health measures can be employed, and safeguards in transportation to shelters or other reception locations. Any procedures the Biden Administration adopts for people entering the United States should not be applied in a discriminatory manner based on immigration status, which public health experts have explained is not relevant to science-based public health policies to address COVID-19.
- ☑ **Use case management, not immigration jails.** Detention is unnecessary. [Case management services](#) operated by non-governmental organizations, which have proven effective in ensuring appearance at check-ins and hearings, can be used to support asylum-seeking families and adults when needed. Immigration detention is costly, harmful to [health](#), and not appropriate for asylum seekers, as the U.N. High Commissioner for Refugees has repeatedly [explained](#). It subjects immigrants and asylum seekers to inhumane conditions and widespread [human rights abuses](#). During the COVID-19 pandemic, DHS negligence has resulted in widespread [infections](#) in immigration jails and numerous deaths.
- ☑ **Ensure that the one-year-filing deadline for asylum applications is waived for all individuals in MPP** through directions to DHS immigration court attorneys, DOJ immigration court judges, and U.S. Citizenship and Immigration Services (USCIS) asylum officers. Application of this deadline to MPP asylum seekers would be both absurd and illegal; they have faced numerous hurdles to filing their applications including the closure of MPP immigration courts since March 2020 and unprecedented barriers to finding U.S. attorneys to help them prepare and submit their asylum applications.
- ☑ **Provide redress for individuals harmed by MPP** who were not provided a fair opportunity to present their claims for U.S. humanitarian protections. [Ninety-seven percent](#) of individuals with completed MPP cases did not have an attorney. Without an attorney, very few asylum seekers can successfully present their claims for protection. Only [523](#) people have received U.S. refugee and other humanitarian protections while in MPP – *less than one percent* of the total number of people forced to remain in Mexico under the policy. The policy has also resulted in large numbers of *in absentia* removal orders, including of individuals who missed court

because they were kidnapped at the time of their hearings and others who gave up due to pervasive violence and terrible living conditions in Mexico. The number of people who may subsequently seek to renew applications for asylum is unclear but certainly less than the approximately [32,500](#) individuals who have received removal orders under MPP, since the government did not screen individuals placed in MPP and many were not asylum seekers.

- Individuals denied asylum or other protection under flawed MPP processes (whether denied relief after fundamentally unfair hearings or ordered removed *in absentia*) should be able to request new asylum adjudications. Like other MPP asylum cases, these individuals should be paroled into the United States and DHS should consent to motions to reopen/reconsider their cases (and DOJ should vacate all *in absentia* MPP removal orders) so that they may apply for humanitarian protection.
 - Given the grave dangers and desperate conditions that have forced some asylum seekers in MPP to abandon requests for U.S. humanitarian protections, the administration should instruct DHS attorneys, DOJ immigration judges, and USCIS asylum officers that an asylum seeker's return to his or her home country after being subjected to MPP should not on its own be considered evidence that the asylum seeker lacks a well-founded fear of persecution or torture.
 - To the extent the Biden administration provides potential resettlement routes to refugees previously in MPP (for instance, those returned to home countries), such an option should not be used to deny or prevent that person's right to seek US asylum via a reopened or new U.S. asylum or removal case.
- Adopt accountability measures** for human rights abuses and violations of U.S. law and treaty obligations to refugees related to MPP by removing or disciplining (as permitted by law) DHS officials responsible for the creation of MPP, by requesting an internal review of the creation and implementation of MPP by the DHS Office of Inspector General, and by cooperating with Congressional and other governmental and independent investigations of the policy.