



November 18, 2019

Rep. Kathleen Rice
Chair

Rep. Clay Higgins
Ranking Member

House Homeland Security Committee
Subcommittee on Border Security, Facilitation, and Operations

RE: Amnesty International Statement for Hearing on “Examining the Human Rights and Legal Implications of DHS’s ‘Remain in Mexico’ Policy”

On behalf of Amnesty International USA and our members and supporters in the United States, we hereby submit this statement for the record. Amnesty International is an international human rights organization with national and regional offices in more than 70 countries, including in the United States. A top priority of our organization is the human right to seek asylum at the Mexico/U.S. border.

Amnesty International is alarmed by the human rights violations inherent in the misleadingly named “Migrant Protection Protocols” (MPP), informally known as “Remain in Mexico.” Since January, nearly 60,000 people have been forcibly returned to Mexico under the program.¹ The program has made a mockery of the right to seek asylum as enshrined in domestic and international law, forcibly returned tens of thousands of individuals to potential grave danger, and operated with a dangerous lack of transparency.

In this statement, we wish to share some of our gravest and most immediate concerns about the policy. We thank the Subcommittee for holding this important hearing and hope it is the first of several oversight efforts by Congress of this dangerous and unlawful program.

MPP Violates the Right to Seek Asylum

The concept of territorial asylum – the ability of people seeking refuge at U.S. borders to request protection here – is a bedrock principle of international and domestic law. Under the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, the latter of which the United States has signed and incorporated into domestic law through the 1980 Refugee Act,² governments must not forcibly return individuals to a place where they would fear persecution – not just their countries of origin, but any other place where a person would face risk of serious

¹ Molly O’Toole, “Asylum Officers Revolt Against Trump Policies They Say Are Immoral and Illegal,” L.A. TIMES, Nov. 15, 2019, <https://www.latimes.com/politics/story/2019-11-15/asylum-officers-revolt-against-trump-policies-they-say-are-immoral-illegal>.

² See text of 1980 Refugee Act, available at <https://www.govinfo.gov/content/pkg/STATUTE-94/pdf/STATUTE-94-Pg102.pdf>.

harm.³ To ensure this obligation is met, the U.S. government has codified in domestic law the right to seek asylum both at and between ports of entry along the U.S. border.⁴

Historically, people seeking asylum at the border were given the opportunity to articulate a “credible fear” of return to their home countries; if they established such a fear, they were placed into removal proceedings and allowed to apply for asylum and related protections from within the United States, based on their fear of return to their countries of origin.⁵

MPP has upended this process by instead forcibly returning people, including asylum-seekers, to dangerous and precarious situations in Mexico for the duration of their asylum proceedings, which can last several months, if not years. Only after these individuals win relief are they allowed to enter United States – and even after they win relief, the government frequently sends them back to Mexico, reportedly by falsifying court documents.⁶

MPP appears designed to discourage individuals from seeking asylum by making it as difficult as possible to do so.⁷ Not only are asylum-seekers exposed to grave harm as they await their proceedings in Mexico (as described in greater detail below), but they are also effectively cut off from legal services essential to securing relief.

In one study, asylum-seekers who appeared with attorneys were found to be *five times as likely* to obtain relief as those who represented themselves.⁸ Yet, because MPP maroons asylum-seekers far from legal service providers, only between 1-2% of returnees are represented by counsel.⁹ Because of restrictions on who may access new, secretive tent courts built at ports of entry, people subject to MPP are not able to access basic legal orientations and thus lack even minimal information about their proceedings. These hurdles make asylum all but impossible to access.

MPP Returns People Seeking Safety to Harm’s Way

By returning vulnerable individuals to some of the most dangerous places along the Mexico/U.S. border, MPP has directly resulted in grievous harms – including kidnappings, sexual assaults, extortion attempts, and other violent attacks – against people seeking protection. As of October 1, 343 individuals subjected to MPP had reportedly faced violent attacks or threats in Mexico, including on their way to their court dates in the United States.¹⁰ Service providers working with

³ Amnesty International, “Halt the ‘Remain in Mexico’ Plan,” April 15, 2019, <https://www.amnesty.org/en/documents/amr51/0172/2019/en/>.

⁴ 8 U.S.C. § 1158.

⁵ 8 U.S.C. § 1182.

⁶ Gustavo Solis, “U.S. border agents wrote fake court dates on paperwork to send migrants back to Mexico,” Nov. 7, 2019, L.A. TIMES, <https://www.latimes.com/world-nation/story/2019-11-07/u-s-border-agents-wrote-fake-court-dates-on-paperwork-to-send-migrants-back-to-mexico>.

⁷ Jason Kao and Denise Lu, “How Trump’s Asylum Policies Are Leaving Thousands of Asylum Seekers Waiting in Mexico,” N.Y. TIMES, Aug. 18, 2019, <https://www.nytimes.com/interactive/2019/08/18/us/mexico-immigration-asylum.html>.

⁸ Asylum Representation Rates Have Fallen Among Rising Denial Rates,” TRAC Immigration, available at <https://trac.syr.edu/immigration/reports/491/> (last accessed Nov. 18, 2019).

⁹ See “Details on MPP (Remain in Mexico) Deportation Proceedings,” available at <https://trac.syr.edu/phptools/immigration/mpp/> (last accessed Nov. 18, 2019).

¹⁰ Human Rights First, “Orders From Above: Massive Human Rights Abuses Under Trump Administration’s Return to Mexico Policy,” Oct. 1, 2019, available at <https://www.humanrightsfirst.org/resource/orders-above-massive-human-rights-abuses-under-trump-administration-return-mexico-policy>.

MPP returnees have reported that anywhere from “half”¹¹ to “over 70%”¹² of individuals they’ve worked with have described facing serious harm in Mexico. These include:

- A female asylum-seeker from Honduras: “[The federal police] asked me what nationality I was, I told them I was from Honduras then they say: ‘Come with me.’ They grab my head, bend me over, and take me out of the house and put me in a black car. They covered my eyes with gray tape.” She was kidnapped by the police for ransom and raped multiple times. She stated that although her eyes were covered with tape, she managed to see because her tears soaked through the glue.¹³
- A male asylum-seeker from El Salvador traveling with his baby daughter: “I was kidnapped in Mexico while waiting to come to court. We were headed to court over here. But we got stopped. They pulled us down. Mexican patrol cars were there, I thought they would help us. But they kidnapped us for three days. They let me go because of my family, because I didn’t have any money, but I don’t know what happened to the other men.”¹⁴

These stories of harm are so commonplace that one attorney who works with returnees in Matamoros commented to Amnesty International that “for people returned under the program, it’s not a question of if they’ll get kidnapped – it’s a question of when.”¹⁵ The Mexican state of Tamaulipas, which abuts south Texas, carries a “Level 4 – Do Not Travel” warning from the U.S. Department of State because of risks of kidnapping and other violent crime by cartels.¹⁶ The forcible return of tens of thousands vulnerable migrants and asylum-seekers to this area has constituted a veritable stimulus package for cartels operating in this region, which routinely kidnap returnees and extort their families for ransom, in some cases preventing them from being able to appear in court.¹⁷ Yet, despite these documented harms, immigration judges have publicly stated that they are pressured to issue in absentia removal orders in every instance in which an MPP returnee does not appear.

Even those returnees who have faced grave harm are typically unable to escape from MPP once they are placed in the program. Though the Department of Homeland Security (DHS) has instituted a fear-of-return-to-Mexico screening as part of MPP, called a “non-refoulement interview,” in practice, these screenings are a sham. First, they are available only to those individuals who affirmatively manifest a fear of harm in Mexico, violating a threshold principle of non-refoulement that *all* individuals must be screened for fear of harm in a given place before being forcibly sent there. Furthermore, the threshold is exceedingly high – higher than the showing required to win asylum on the merits.¹⁸ Asylum officers have spoken openly about how they are pressured to issue negative determinations, even when they believe returnees will be

¹¹ Mireya Villareal, “An Inside Look at Trump’s ‘Remain in Mexico’ Policy,” CBS NEWS, Oct. 8, 2019, <https://www.cbsnews.com/news/remain-in-mexico-donald-trump-immigration-policy-nuevo-laredo-mexico-streets-danger-migrants-2019-10-08/>

¹² Conversation with legal services provider in Laredo, Texas (Sept. 16, 2019).

¹³ “Secuestraron Federales a Migrante Hondureña [Honduran Migrant Kidnapped by Federal Police],” El Diario, June 18, 2019, <https://www.eldiariodechihuahua.mx/estado/secuestraron-federales-a-migrante-hondurena-20190618-1528964.html>.

¹⁴ Remote observation of court proceedings in San Antonio, Texas (from the Laredo, Texas port of entry) (Sept. 17, 2019).

¹⁵ Conversation with legal services provider in Brownsville, Texas (Oct. 23, 2019).

¹⁶ “Mexico Travel Advisory,” U.S. Dep’t of State, <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/mexico-travel-advisory.html> (last accessed Nov. 18, 2019).

¹⁷ Emily Green, “Trump’s Asylum Policies Sent Him Back to Mexico. He was Kidnapped Five Hours Later,” VICE NEWS, Sept. 16, 2019, https://www.vice.com/en_us/article/pa7kkg/trumps-asylum-policies-sent-him-back-to-mexico-he-was-kidnapped-five-hours-later-by-a-cartel.

¹⁸ Dep’t of Homeland Security, “Migrant Protection Protocols,” Jan. 24, 2019, <https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols>.

subject to grave harm in Mexico.¹⁹ Returnees have described how these interviews are cursory, in some cases lasting no more than 10 minutes.²⁰ Even those few returnees who have lawyers are generally unable to bring those attorneys to these interviews.²¹ Returning asylum-seekers to any country without an adequate screening process is a flagrant violation of the U.S. obligation against *refoulement*.

Furthermore, returnees subject to MPP routinely face homelessness due to the lack of available shelter space and difficulty accessing work, which further exposes them to risks of violent crime. Returnees have reported having their identity documentation confiscated by Customs and Border Protection (CBP) agents prior to return²² and are not provided any identity documentation demonstrating their lawful status in Mexico, potentially exposing them to potential detention and deportation there. Without access to work or steady shelter, many are relegated to living in precarious conditions, often in squalor, in border shelters packed to the brim²³ and in open-air tent camps.²⁴

Finally, even individuals whose vulnerabilities should exempt them from MPP are nevertheless placed in the program – including individuals with disabilities,²⁵ pregnant and nursing women,²⁶ and Indigenous language speakers.²⁷ LGBTI+ identifying individuals are also placed in the program, despite the well-documented risks of harm they face in Mexico.²⁸

MPP Operates with a Chilling Lack of Transparency

A new and alarming expansion of MPP occurred in September, when the U.S. government opened secretive tent courts at the ports of entry in Laredo and Brownsville, Texas, where

¹⁹ Molly O'Toole, "Asylum Officers Revolt Against Trump Policies They Say Are Immoral and Illegal," L.A. TIMES, Nov. 15, 2019, <https://www.latimes.com/politics/story/2019-11-15/asylum-officers-revolt-against-trump-policies-they-say-are-immoral-illegal>.

²⁰ Conversation with legal services provider in Harlingen, Texas (Sept. 20, 2019).

²¹ ACLU of San Diego & Imperial Counties, "Class-Action Lawsuit Demands Access to Legal Representation for Detained Migrants Who Have Expressed a Fear of Being Returned to Mexico," Nov. 5, 2019, <https://www.aclusandiego.org/aclu-asylum-seekers-subject-to-trumps-remain-in-mexico-policy-must-be-given-access-to-counsel/>. On Nov. 14, 2019, a district court issued a temporary restraining order requiring a Guatemalan family the ability to consult with counsel in preparation for and during their non-refoulement interview. A hearing on whether that holding will be expanded to all MPP returnees will take place in December. See ACLU of San Diego & Imperial Counties, "Family Subjected to MPP Will Not Be Returned to Mexico to Pursue Their Asylum Claim," Nov. 14, 2019, <https://www.aclusandiego.org/family-subjected-to-mpp-will-not-be-returned-to-mexico-to-pursue-their-asylum-claim/>.

²² Julia Love & Kristina Cooke, "Asylum seekers say U.S. officials returned them to Mexico but kept their IDs," REUTERS, 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>.

²³ Rebecca Plevin, "Mexicali Residents Protest Shelter for Asylum-Seekers Returned to Mexico Under U.S. Policy," USA Today, Oct. 15, 2019, <https://www.usatoday.com/story/news/world/2019/10/15/mexicali-protest-shelter-asylum-seekers-us-policy/3983901002/>.

²⁴ Nomaan Merchant, "Tents, Stench, Smoke: Health Risks Are Gripping Migrant Camp," ASSOCIATED PRESS, Nov. 14, 2019, <https://apnews.com/337b139ed4fa4d208b93d491364e04da>.

²⁵ Human Rights Watch, "Mexico: Risks at Border for Those with Disabilities," Oct. 2019, <https://www.hrw.org/news/2019/10/29/mexico-risks-border-those-disabilities>.

²⁶ Rochelle Garza, "Trump's War on Asylum-Seekers is Endangering Pregnant Women," Oct. 3, 2019, <https://www.aclu.org/blog/immigrants-rights/trumps-war-asylum-seekers-endangering-pregnant-women>

²⁷ Gustavo Solis, "Trump Administration Appears to Violate Law, Pushes Thousands to Mexico to Await Asylum Cases," L.A. TIMES, Aug. 28, 2019, <https://www.latimes.com/politics/story/2019-08-28/trump-administration-pushes-thousands-to-mexico-to-await-asylum-cases>.

²⁸ "Julian Castro Helps LGBTQ Migrants Subject to Trump's Remain in Mexico Policy," Oct. 7, 2019, L.A. TIMES, <https://www.latimes.com/politics/story/2019-10-07/julian-castro-helps-lgbtq-migrants-trump-remain-in-mexico-plan-cross-border>; Amnesty International, "No Safe Place," Nov. 2017, <https://www.amnestyusa.org/wp-content/uploads/2017/11/No-Safe-Place-Briefing-ENG-1.pdf>.

proceedings take place entirely via videoconference. DHS announced in August it would raid \$155 million of disaster relief funding to build these courts.²⁹

The tent courts are due process blackholes in DHS's complete control: not a single public observer has been permitted to access the tent courts to view proceedings taking place there, even though immigration courts are generally required to be open to the public.³⁰ Amnesty International has consistently requested access to the courts, including multiple times in person in Laredo and Brownsville in September and October. In September, an Amnesty International delegation was told variously that the tent courts were a "zero access area, by order of the President of the United States," that attendees would need to be "vetted" by CBP in order to access the courts, and that the organization would be able to access the facilities for a tour "in upcoming weeks." In October, Amnesty's formal request for access went unanswered for weeks, until the organization was eventually told that observation of proceedings would not be allowed, but that at some future date, rights groups would be offered a tour. Two months since the courts have opened, and despite repeated requests, neither Amnesty International nor other rights groups have been granted access to the courts.

This lack of transparency is chilling, especially considering that individuals appearing at the tent courts are being sent to some of the most dangerous areas along the Mexico/U.S. border and are likely to be in particular need of immediate assistance. The closed-off nature of these courts also means that asylum-seekers are cut off from any kind of legal orientation or assistance, as only attorneys who have entered appearances in individual cases are permitted in the tent courts.

The tent courts exacerbate and compound existing problems with MPP: returnees appearing in tent courts face even more barriers to the full and fair hearings to which they're entitled under law, particularly given that judges are appearing via videoconference, sometimes from hundreds of miles away. They are designed to keep asylum-seekers away from vital legal help and MPP proceedings out of the public eye. Unless Congress moves to act, these secretive courts could represent the future of asylum adjudication in the United States.

Recommendations

Given the serious human rights violations occurring as a result of MPP's continued operation, Amnesty International respectfully requests that Congress:

- **Defund MPP in the FY2020 appropriations cycle.** Congress must halt MPP in its tracks by ensuring that no federal funds are used to implement this unlawful program. Amnesty International urges Congress to retain Section 534 of H.R. 3931, the DHS Appropriations Act of 2020, which defunds unlawful asylum programs, including MPP. Congress must also demand a full accounting of the \$155 million of disaster relief funding it unlawfully reprogrammed towards the building of tent courts along ports of entry and must ensure that no more such courts are built.
- **Urge DHS and DOJ to allow public access to secretive tent courts.** While MPP continues to operate, Congress must ensure that the administration abide by its own obligations to ensure that immigration proceedings are generally kept open to the public. DHS must be

²⁹ Amnesty International USA, "Trump Administration Uses Disaster Relief Funding to Fund a Disaster of Its Own Making," Aug. 27, 2019, <https://www.amnestyusa.org/press-releases/trump-administration-uses-disaster-relief-to-fund-a-disaster-of-its-own-making/>.

³⁰ 8 C.F.R. § 1003.27.

held to account for its deliberate failure to allow members of the public, including legal observers, to access tent courts and observe proceedings taking place there.

- **Undertake congressional delegations to areas where MPP is actively in operation.**

Amnesty International urges Members of Congress to witness firsthand the human rights violations taking place as a result of MPP, including proceedings taking place in the secretive tent courts in south Texas and living conditions in the tent camp in Matamoros and border shelters along the Mexico/U.S. border.

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Sincerely,

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