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February 21, 2020

Chad Wolf  
Acting Secretary  
U.S. Department of Homeland Security

Mark A. Morgan  
Acting Commissioner  
Customs and Border Protection  
U.S. Department of Homeland Security

William Barr  
Attorney General  
U.S. Department of Justice

James McHenry  
Director  
Executive Office for Immigration Review  
U.S. Department of Justice

Dear Acting Secretary Wolf, Acting Commissioner Morgan, Attorney General Barr, and Director McHenry:

We write in follow-up to the tour of the Laredo port court facility offered to our organizations on January 24, 2020.

We are grateful to your agencies for arranging the tour and briefing, which were valuable opportunities to clarify questions and concerns about the implementation of the “Migrant Protection Protocols” (MPP) program. We are writing to express our concern that this program is still operating with a serious lack of transparency and to date has sent tens of thousands of individuals seeking safety into harm’s way in Mexico.

Under MPP, asylum seekers are returned to dangerous regions in Mexico, where many have been kidnapped, raped, tortured, and assaulted.<sup>1</sup> For example, men, women, and children placed into MPP at the Laredo port of entry are returned to Nuevo Laredo, an area so highly dangerous that it has received a Level Four threat assessment by the U.S. Department of State,<sup>2</sup> as well as recent warnings due to

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<sup>1</sup> Human Rights First, “Human Rights Fiasco: The Trump Administration’s Dangerous Asylum Returns Continue,” Dec. 2019, <https://www.humanrightsfirst.org/sites/default/files/HumanRightsFiascoDec19.pdf>.

<sup>2</sup> U.S. Dep’t of State, “Mexico Travel Advisory,” Dec. 17, 2019, <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/mexico-travel-advisory.html>.

additional levels of acute violence.<sup>3</sup> Asylum seekers traveling to and from the Laredo ports of entry for their hearings are routinely targeted for kidnappings and other attacks.<sup>4</sup> We urge that MPP be ended immediately.

We are additionally concerned that the Department of Homeland Security (DHS) is even failing to follow the already inadequate limitations it has placed on MPP, further increasing the risk of harm to asylum seekers. During our visit, officials representing the various agencies involved in MPP's operation—including Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), the Executive Office for Immigration Review (EOIR), the Federal Protective Service (FPS), and U.S. Citizenship and Immigration Services (USCIS)—made statements regarding MPP principles and the scope of MPP. Some of these statements are consistent with DHS's Guiding Principles<sup>5</sup> for the implementation of MPP. But other statements made during the tour are not consistent with the Guiding Principles and have not been confirmed in writing. As outlined below, MPP practices on the ground frequently contradict, and are not in compliance with, these statements and the Guiding Principles. The disconnect between policy and practice indicates that DHS is consistently violating its own Guiding Principles in its operation of MPP and thereby exacerbating the harm to asylum seekers. While we continue to urge the termination of MPP, the undersigned organizations respectfully request (1) written confirmation of the policies verbally asserted by officials representing the various agencies, outlined below; (2) written responses to the outstanding questions on the implementation of MPP, indicated below; and (3) a response to the overwhelming evidence presented below of routine violation of the Guiding Principles, including a plan for ensuring future compliance with them.

- **People with disabilities and serious medical needs are being returned to Mexico under MPP, contrary to what officials stated.**

During our tour, agency officials were asked what accommodations are made for individuals who are deaf, blind, or otherwise disabled. The CBP Port Director responded that these people “wouldn't be put in MPP,” and other officials concurred, stating that people with disabilities are not “amenable” to MPP. The Guiding Principles state that individuals with “known physical/mental issues” are not amenable to MPP.<sup>6</sup> Individuals with disabilities and serious medical needs are at risk of severe harm both because they may be targeted for kidnappings and attacks and because they cannot access proper medical care in Mexico.

Contrary to the Guiding Principles and the assertions made on the tour, there have been a multitude of reports of individuals with disabilities being placed in MPP.<sup>7</sup> A nine-year-old girl with a disability was placed into MPP in violation of the Guiding Principles and was subsequently kidnapped with her mother and repeatedly raped.<sup>8</sup> On February 5, 2020, less than two weeks after our tour, a 52-year-old asylum-seeker from Cuba who is nearly blind and suffering from the life-threatening condition toxoplasmosis and frequent epileptic seizures was returned to Matamoros before finally being paroled in after media coverage of her story. Her attorney tried to present her to CBP at the Gateway International Bridge five times to advocate for her removal from MPP based on her disability and serious medical needs. Even after

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<sup>3</sup> U.S. Consulate General Nuevo Laredo, “Security Alert,” Nov. 16, 2019, <https://mx.usembassy.gov/security-alert-u-s-consulate-general-nuevo-laredo-november-16-2019-2/>.

<sup>4</sup> Human Rights First, “Human Rights Fiasco: The Trump Administration's Dangerous Asylum Returns Continue,” Dec. 2019, <https://www.humanrightsfirst.org/sites/default/files/HumanRightsFiascoDec19.pdf>.

<sup>5</sup> See Customs and Border Protection, “MPP Guiding Principles,” Jan. 29, 2019, <https://www.cbp.gov/sites/default/files/assets/documents/2019-Jan/MPP%20Guiding%20Principles%201-28-19.pdf>.

<sup>6</sup> Ibid.

<sup>7</sup> “CBP Allows Deaf Migrant to Await Asylum Process on U.S. Soil,” FOX 5 San Diego, Oct. 25, 2019, <https://fox5sandiego.com/news/border-report/cbp-allows-deaf-migrant-to-wait-out-asylum-process-on-us-soil/>.

<sup>8</sup> American Immigration Council, “Statement of the American Immigration Council,” Nov. 21 2019, [https://www.americanimmigrationcouncil.org/sites/default/files/general\\_litigation/statement\\_for\\_the\\_house\\_migrant\\_protection\\_protocols\\_11\\_21\\_19.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/statement_for_the_house_migrant_protection_protocols_11_21_19.pdf).

the attorney cited statements made by CBP to our groups during the tour about how individuals with disabilities and serious medical needs are not able to be returned under MPP, the asylum-seeker was returned to Mexico before CBP finally relented on the fifth attempt.<sup>9</sup>

Examples still abound of individuals, including children with disabilities, who have been placed in MPP in error, with CBP officials unwilling to correct this mistake once it is raised by advocates. On February 14<sup>th</sup>, 2020, CBP officials refused to remove four children with autism and other developmental disabilities from the program and returned them to Matamoros. One of the children, who is 7 years old, has lissencephaly, a condition that has left her with an expected lifespan of 10 years. Another one of the children is only two years old, and among other severe medical conditions, has Down syndrome and microcephaly, which significantly affect her overall health and life expectancy. The other two children are 7 and 10 years old respectively, both have severe autism, and one of them has a seizure disorder. To date, CBP officials in Brownsville have refused to remove these four children and their families from the program.

- **MPP is being applied to indigenous-language speakers and non-Spanish speakers, contrary to what officials stated.**

When asked about interpretation services for non-Spanish speakers, including indigenous-language speakers, officials denied that indigenous-language speakers were returned under MPP. Multiple officials told us that MPP is intended for Spanish-language speakers only and that other populations are not “amenable” to MPP, a policy that is clearly stated in the Guiding Principles.<sup>10</sup> Indigenous-language speakers are particularly vulnerable to attack and abuse in Mexico because they are easily identified as targets for kidnapping and attacks and face additional barriers in accessing medical care and other services if they do not speak Spanish fluently. Due to their vulnerabilities, they face significant risk of harm when they are erroneously placed into MPP.

The USCIS representative told us that the fear screenings which asylum officers conduct are always conducted in Spanish and said “[he] hadn’t run into” indigenous language interpretation “as an issue.” The CBP Port Director told us that returnees “would not be placed in MPP if they didn’t speak Spanish. If you don’t speak Spanish, you won’t be enrolled.” The ICE Assistant Field Office Director concurred.

These verbal assertions and the Guiding Principles are contradicted by practice. The undersigned organizations have observed multiple MPP hearings in which some respondents were indigenous-language speakers who clearly did not speak Spanish. In one hearing in April 2019, Amnesty International observed a young woman visibly weeping throughout the proceedings. After significantly more than an hour, the court phoned a K’iche interpreter to communicate with her, at which point it became clear she was crying because she had no idea what was happening during the proceedings and was terrified. More recently, on January 15, 2020, a colleague reported observing an attorney unsuccessfully fight to get a Mam speaker out of MPP during the client’s appearance in the Brownsville tent court.

We are concerned that agency officials not only seem entirely unaware that indigenous-language speakers are being returned under MPP but that, per USCIS’s representations during our tour, no fear screenings are taking place in indigenous languages. Conducting fear screenings without indigenous-language

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<sup>9</sup> This case was reported in the *Brownsville Herald* on Feb. 5, 2020. See “Blind Cuban Asylum-Seeker Gets No Help from CBP,” *Brownsville Herald*, Feb. 5, 2020, [https://www.brownsvilleherald.com/blind-cuban-asylum-seeker-gets-no-help-from-cbp/article\\_4028cfc0-476a-11ea-abbc-abc6abb6d27a.html?fbclid=IwAR2aQAxhNmH1uLIFUp2B5i7Qx4JmNolZWROKk8bymr\\_Pv9WENKcqrxd8cg/](https://www.brownsvilleherald.com/blind-cuban-asylum-seeker-gets-no-help-from-cbp/article_4028cfc0-476a-11ea-abbc-abc6abb6d27a.html?fbclid=IwAR2aQAxhNmH1uLIFUp2B5i7Qx4JmNolZWROKk8bymr_Pv9WENKcqrxd8cg/).

<sup>10</sup> See Customs and Border Protection, “MPP Guiding Principles,” Jan. 29, 2019, <https://www.cbp.gov/sites/default/files/assets/documents/2019-Jan/MPP%20Guiding%20Principles%201-28-19.pdf>.

interpreters undermines the accuracy of these interviews and increases the likelihood that asylum seekers who have faced severe harm in Mexico will not be able to convey to the asylum officer, in a language they speak fluently, the risk that they face in returning. Guatemalans are the second-largest group of individuals returned under MPP.<sup>11</sup> Given that an estimated 45%-60% of the Guatemalan population identifies as indigenous,<sup>12</sup> we estimate that a large number of those individuals are non-Spanish speaking, and the failure to provide indigenous-language interpreters puts these asylum seekers at even greater risk.

Furthermore, the very day agency officials conveyed to us that MPP is intended only for Spanish-speaking nationals, DHS expanded the program to include Brazilian nationals.<sup>13</sup> Even when specifically asked about reports that Brazilians would soon be included in MPP, agency officials denied having any knowledge of this expansion and reiterated that MPP is applied only to Spanish speakers.

- **LGBTI individuals are being returned under MPP, contrary to what officials stated.**

When asked whether trans individuals are returned under MPP, we were told by the Border Patrol agent present that “they should not be MPP. [T]hey are not amenable to MPP.” These individuals face heightened danger in Mexico due to high levels of violence against LGBTI individuals.<sup>14</sup> A November 2017 Amnesty international report stated that two thirds of LGBTI migrants from El Salvador, Guatemala, and Honduras who applied for refugee status reported having been victims of sexual violence in Mexico.<sup>15</sup>

Despite the claims of Border Patrol agents on the tour and the clear risk to LGBTI individuals in Mexico, just two days prior Amnesty International spoke with a transgender woman from Guatemala who had been placed in MPP and was appearing in the Brownsville tent court. Human Rights First has received numerous reports of LGBTI individuals being placed in MPP,<sup>16</sup> including a transgender woman who had been kidnapped at gunpoint and raped, asylum seekers who are gay and HIV+, and a Venezuelan LGBTI man who was attacked in Juarez. We are also aware of other transgender and LGBTI individuals who have been subjected to MPP.<sup>17</sup> Most recently, one attorney who is a member of the American Immigration Lawyers Association (AILA) reported to us that just last week, two gay men were returned to Nuevo Laredo under MPP.

- **Extremely limited public access to tent court proceedings, contrary to assertions officials made on the tour and federal regulations governing immigration court proceedings.**

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<sup>11</sup> As of Dec. 31, 2019, over 15,000 Guatemalans had been returned under MPP. See TRAC Immigration, “Details on MPP (Remain in Mexico) Deportation Proceedings,” <https://trac.syr.edu/phptools/immigration/mpp/> (last accessed Feb. 9, 2020).

<sup>12</sup> See International Work Group for Indigenous Affairs, “Guatemala,” <https://www.iwgia.org/en/guatemala> (last accessed Feb. 9, 2020).

<sup>13</sup> “DHS Expands MPP to Brazilian Nationals,” Jan. 29, 2020, <https://www.dhs.gov/news/2020/01/29/dhs-expands-mpp-brazilian-nationals>. According to reports, DHS notified the Brazilian government of this expansion on January 24, the same day NGOs received a tour of the Laredo facility. See <https://twitter.com/Haleaziz/status/1222630292424314882>.

<sup>14</sup> United States Dep’t of State, “Mexico 2018 Human Rights Report,” March 2019, <https://www.state.gov/wp-content/uploads/2019/03/MEXICO-2018.pdf>.

<sup>15</sup> Ibid.

<sup>16</sup> Human Rights First, “A Year of Horrors: The Trump Administration’s Illegal Returns of Asylum Seekers to Danger in Mexico,” Jan. 2020, <https://www.humanrightsfirst.org/sites/default/files/MPP-aYearofHorrors-UPDATED.pdf>; Human Rights First, “Orders from Above: Massive Human Rights Abuses Under Trump Administration Return to Mexico Policy,” Oct. 2019, <https://www.humanrightsfirst.org/sites/default/files/hrfordersfromabove.pdf>.

<sup>17</sup> Wendy Fry & Molly Hennessey-Fiske, “Vulnerable LGBTQ Asylum-Seekers Left to Wait in Mexico,” San Diego Union-Tribune, Nov. 3, 2019, <https://www.sandiegouniontribune.com/news/border-baja-california/story/2019-11-03/trump-administration-leaving-vulnerable-lgbt-migrants-to-wait-in-mexico>.

Department of Justice (DOJ) regulations require that immigration court hearings be open to the public except for instances where narrow exceptions apply.<sup>18</sup> Public access to immigration hearings is crucial to protect the due process rights of asylum seekers and ensure that hearings are not conducted in secrecy. Officials present during the tour made several representations regarding public access to proceedings in the tent court which have not borne out in practice. They also confirmed that rules governing the tent courts are identical to DOJ regulations on public access to immigration hearings, a claim that is directly contradicted by the undersigned organizations' experiences in the Laredo and Brownsville courts.

First, officials claimed that all master calendar hearings conducted in the tent courts are open to the public. However, as we noted during the tour, DHS officials are limiting access to master calendar courtrooms without reasonable justification. For example, Amnesty International observers in Brownsville court were told that they could only observe from a single courtroom, even though multiple courtrooms were in session. In Laredo, the undersigned organizations were told on January 23<sup>rd</sup> that because of the size of our group, we would have to observe in a single master calendar hearing room and were not allowed to observe other master calendar hearing rooms. We were denied the ability to choose which hearing to observe or to divide into separate hearing rooms. Earlier that week, an observer from Human Rights First had requested access to see a particular judge's master calendar hearings, but she was told that another observer was going to be in that courtroom and that two observers could not sit in the same courtroom. This statement directly contradicts the statement made on January 23<sup>rd</sup> that observers could not split up and attend different courtrooms and demonstrates the arbitrary and haphazard ways in which DHS is limiting public access to the Laredo court.

Second, officials stated that observers can access merits hearings given consent of the attorney or client, permission from the judge, and available space in the small, modified shipping containers used for the merits hearings. Human Rights First requested access to merits hearings throughout the week of January 20<sup>th</sup> and was told by private security contractors that it was DHS official policy not to permit access to merits hearings. On January 23<sup>rd</sup>, AILA and the American Immigration Council requested permission to observe a merits hearing after receiving the attorney's consent, but were denied observer access, even though space was available. On the tour, the ICE official stated that these denials had all been a "misunderstanding." Immediately after the tour, AILA was granted permission to observe a merits hearing at Laredo. Yet just a week after officials stated to us that merits hearings would be open to observers, a journalist who attempted to observe a merits hearing in the Brownsville tent court after obtaining requisite prior consent was arbitrarily denied access to the proceeding.

These stark contradictions between policy and practice are deeply concerning, as they suggest the agencies implementing MPP are failing to comply with basic rules and even the most minimal safeguards regarding the exemption of vulnerable individuals from MPP and public transparency.

- **Non-refoulement interviews are routinely rushed, giving asylum seekers no meaningful opportunity to explain their fear, contrary to the assertions made by USCIS officials.**

Officials present on the tour made representations to the undersigned organizations that all non-refoulement interviews are conducted telephonically by an asylum officer. The representative from the asylum office stated that asylum officers are instructed to allow as much time as needed for the individual to describe their fear of being returned to Mexico. But AILA member immigration attorneys have reported that the non-refoulement interviews are routinely rushed and do not provide a meaningful avenue for asylum seekers to describe their circumstances and the reasons they fear being returned to Mexico. Additionally, Human Rights First has received reports that some interviews last only five minutes, consist

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<sup>18</sup> 8 CFR § 1003.27.

exclusively of yes-or-no questions, or focus on issues not relevant to fear in Mexico.<sup>19</sup> Asylum officers have also interrogated children as young as nine about harm in Mexico, resulting in the child crying and becoming confused.<sup>20</sup> Just a day before the tour, an attorney reported to the undersigned organizations that he had two Venezuelan clients who were kidnapped and had burn marks on their bodies, and they were nonetheless sent back to Mexico that very day after their non-refoulement interview.

During the tour, we inquired as to how an attorney or asylum seeker could submit evidence of scars, burn marks, or ransom payments from attacks in Mexico, given that the interview was conducted telephonically. We were told: “We haven’t encountered that” and “There’s no mechanism in place.”

The undersigned organizations ask for clarification on the procedure for submitting critical evidence of harm in Mexico for a non-refoulement interview. Though we urge an end to MPP, we ask that while this flawed process continues, non-refoulement interviews be conducted in person by actual asylum officers. We also urge that asylum seekers be provided a meaningful opportunity to consult with counsel before these interviews, and to have attorneys join them in person during the interview, or at the very least telephonically.

- **Counsel for respondents are not allowed to bring computers or cell phones into the tent courts, even though government lawyers have access to these same devices during hearings.**

When the undersigned organizations asked officials on the tour why defense attorneys could not bring in electronics such as cellphones or laptops for hearings, the officials stated that it was FPS and DHS policy “to protect the facilities.” The undersigned organizations noted that this was not the rule for other immigration courts, and that defense attorneys were at a disadvantage because they were not allowed to have their phones or computers during hearings to check their calendar or to cross check legal precedent during merits hearings, while government attorneys had access to both their phones and their computers.

The undersigned organizations respectfully request that the agencies consider establishing a process by which attorneys could obtain permission to use electronics within the tent court facilities. Consistency among immigration courts is essential to ensure that respondents receive the same due process regardless of where their case is scheduled.

## **Outstanding Concerns**

In addition to raising these concerns, we wish to highlight several outstanding questions raised during our tour, to which officials on the tour committed to providing responses. We respectfully request written responses to the following outstanding questions:

- Will DHS work with FPS to ensure that attorneys representing respondents will be permitted to bring in laptops, phones, or other electronic equipment?
- To the extent that anyone whose dominant language is not Spanish is required to remain in the program, can DHS commit to providing them interpretation in their native language?
- How can public observers access docket information when observing proceedings from Brownsville and Laredo tent courts?
- How can individuals appearing for non-refoulement interviews submit physical evidence, given that these interviews take place entirely telephonically?

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<sup>19</sup> Human Rights First, “Human Rights Fiasco: The Trump Administration’s Dangerous Asylum Returns Continue,” Dec. 2019, <https://www.humanrightsfirst.org/sites/default/files/HumanRightsFiascoDec19.pdf>.

<sup>20</sup> Ibid.

- Do asylum officers conducting asylum interviews have completion goals for non-refoulement interviews?
- Will time limits be imposed on respondents at non-refoulement interviews?
- Can DHS commit to allowing attorneys to have meaningful access to their clients both before and after hearings, even when they are in the custody of CBP?
- How can public observers access merits proceedings involving unrepresented respondents, given that prior consent will be difficult to obtain in practice?

This letter does not specifically address the following concerns; however, it is of great importance that DHS address the following ongoing issues related to the implementation of MPP:

- What provisions are DHS and DOJ making for legal orientation programs, including live, in-person know-your-rights presentations, for respondents appearing in the tent courts?
- Can DHS commit to allow enough time for respondents to get dressed and put their shoelaces on properly before being released to Mexico at both the Laredo and Brownsville tent courts?
- Can DHS commit to providing a point of contact within DHS, or an advance request method, such as a designated email address, for observers who have been denied access to hearings at either the Brownsville or Laredo tent court to elevate their request or to receive an explanation for their denial of access?
- Can DHS commit to make efforts to track people who have been reported kidnapped who fail to attend their hearings?

Thank you for your time and attention to this matter. We would welcome the opportunity for a meeting with representatives from your agencies in Washington, D.C., to discuss these issues further. For additional information, please contact Charanya Krishnaswami, Americas Advocacy Director, Amnesty International USA, at [CKrishna@aiusa.org](mailto:CKrishna@aiusa.org); or, Leidy Perez-Davis, Policy Counsel, American Immigration Lawyers Association, at [LPerez-davis@aila.org](mailto:LPerez-davis@aila.org); or, Katy Murdza, Advocacy Manager, American Immigration Council, at [KMurdza@immcouncil.org](mailto:KMurdza@immcouncil.org); or Eleanor Acer, Senior Director of Refugee Protection, Human Right First, at [AcerE@humanrightsfirst.org](mailto:AcerE@humanrightsfirst.org); or Erin Thorn Vela, Staff Attorney, Texas Civil Rights Project, at [Erin@texascivilrightsproject.org](mailto:Erin@texascivilrightsproject.org).

Sincerely,

Amnesty International USA

American Immigration Lawyers Association

American Immigration Council

Human Rights First

Lawyers for Good Government

Texas Civil Rights Project