



**One Hundred Seventeenth Congress
Committee on Homeland Security
U.S. House of Representatives
Washington, DC 20515**

September 24, 2021

The Honorable Alejandro Mayorkas
Secretary
Department of Homeland Security
301 7th Street, SW
Washington, DC 20528

RECEIVED

By ESEC at 11:45 am, Sep 27, 2021

Dear Secretary Mayorkas:

I write regarding the Department of Homeland Security's treatment of Haitian migrants. The Biden Administration has promised the American people a humane approach to our borders. The handling of the asylum seekers in Del Rio does not live up to that commitment. The Department of Homeland Security must do better.

Doing better starts with immediately halting the repatriation flights to Haiti, as country conditions remain dire. Moreover, U.S. deportation flights to the island risk worsening conditions. In fact, just this week, Ambassador Daniel Foote, the U.S. Special Envoy for Haiti who resigned in protest explained that "[t]he people of Haiti [] simply cannot support the forced infusion of thousands of returned migrants lacking food, shelter, and money without additional human tragedy." He went on to say that "more refugees will fuel further desperation and crime. Surging migration to our borders will only grow as we add to Haiti's unacceptable misery." We must act in line with our values and uphold our legal obligation to provide Haitians, and other migrants, an opportunity to apply for asylum.

The horrifying treatment of Haitian migrants by some in the U.S. Border Patrol (USBP) also demands decisive, unequivocal action. While it is good to know that those involved in reprehensible behavior were removed from the field and that a full investigation is underway, more must be done. It is incumbent on you to prioritize updating use of force policies within the Department and significantly improving training for the USBP workforce. It is unacceptable that the basic training program for the U.S. Border Patrol Academy is not accredited. According to Federal Law Enforcement Training Center leadership, accreditation "assigns rigor to [] training processes" and "results in the best product." The men and women of USBP should receive the highest caliber training before we put them on the frontlines to protect our border and interact with migrants and other vulnerable populations. As such, you should immediately direct USBP to seek accreditation of its training academy.

Additionally, the Department must ensure accountability for the unacceptable and horrifying conduct by certain Border Patrol agents witnessed earlier this week. As I said, I appreciate that the Department has launched an investigation into their actions and promised results within days.

That is a good first step but let me be clear, there must be timely and appropriate disciplinary action for any violations.

After four years of the Trump Administration, where migrants had their families torn apart and were vilified, Americans look to you and the President to deliver on the promise of more humane treatment of migrants. I look forward to hearing from you in the very near term on how my recommendations for action are received. The Department must be clear that all individuals are to be treated with human dignity and respect, and that actions to the contrary will not be tolerated.

I appreciate your urgent attention to these requests.

Sincerely,

A handwritten signature in blue ink that reads "Bennie Thompson". The signature is fluid and cursive, with the first name "Bennie" and the last name "Thompson" clearly legible.

Chairman
House Committee on Homeland Security

ONE HUNDRED SEVENTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

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September 28, 2021

The Honorable Alejandro Mayorkas
Secretary
U.S. Department of Homeland Security
301 7th Street SW
Washington, DC 20528

RECEIVED

By ESEC at 2:21 pm, Sep 28, 2021

Dear Secretary Mayorkas:

The Biden border crisis continues to worsen as illegal aliens stream across the southwest border as a result of President Biden's and your radical immigration policies. As the brave men and women of U.S. Border Patrol work tirelessly to respond to the Administration's manufactured border crisis, we have learned that the Department of Homeland Security has threatened to fire Border Patrol officials who refuse to comply with President Biden's vaccine mandate. Your failure to support these federal law-enforcement officials will only make the Biden border crisis worse and make our country less secure.

The Biden Administration has been derelict in its duty to secure the southwest border. The U.S. Border Patrol has encountered 1,263,295 illegal aliens along the southwest border since January of this year—the highest amount in twenty years.¹ Recently, the Biden Administration allowed more than 14,000 illegal aliens to congregate under a bridge in Del Rio, Texas in just a few days.² Although news reports state the Administration was caught off-guard by this situation,³ House Republicans have been warning of a situation like this for months.⁴ The Biden Administration has stubbornly refused to address the crisis, allowing more and more illegal aliens to pour into our country and creating an unsustainable, humanitarian crisis.

While our border is facing this serious crisis, we have learned that you are threatening to terminate a significant portion of Customs and Border Protection (CBP) workforce. On

¹ Southwest Land Border Encounters, U.S. Customs and Border Protection, <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

² Adam Shaw & Bill Melugin, *DHS to ramp up deportation flights to Haiti as officials scramble to contain Del Rio migrant surge*, Fox News (Sept. 19, 2021), <https://www.foxnews.com/politics/dhs-deportation-flights-haiti-officials-scramble-contain-del-rio-migrant>.

³ *Id.*

⁴ Letter from Jim Jordan, Ranking Member, H. Comm. on the Judiciary, and Tom McClintock, Ranking Member, S. Comm. on Immigration and Citizenship, H. Comm. on the Judiciary, to Alejandro Mayorkas, Sec'y, Dep't of Homeland Security, (Jul. 1, 2021), <https://republicans-judiciary.house.gov/wp-content/uploads/2021/07/2021-07-01-JDJ-TM-to-Mayorkas-re-testifying.pdf>.

The Honorable Alejandro Mayorkas

September 28, 2021

Page 2

September 9, 2021, President Biden issued Executive Order 14043 requiring federal employees to fully vaccinate against COVID-19 or face termination of their employment.⁵ It has come to our attention that the men and women of CBP have been given official notice that they must be fully vaccinated by November 2021 or face termination.

For years and through multiple administrations, it has been difficult to recruit and retain men and women to serve in U.S. Border Patrol. The locations of the job are typically remote and the job is often dangerous and hard. Their job is made even harder when senior officials, including Vice President Kamala Harris, spread false accusations of cruelty—as has occurred in recent days to mounted officers in Del Rio—while ignoring reports of attacks against Border Patrol personnel.⁶ Citing the misinformation about cruelty, President Biden even vowed the Border Patrol officers “will pay.”⁷ This Administration is now openly targeting the heroic men and women of U.S. Border Patrol.

President Biden’s vaccine mandate, as applied to CBP, risks reducing the already-depleted Border Patrol workforce in the middle of the unfolding border crisis. It is simply unbelievable that the Biden Administration will allow COVID-positive illegal aliens to surge across the border but will terminate dedicated law-enforcement officers who do not comply with President Biden’s mandate. We hope that for the safety of our country that you see the error in this decision, choose to support the heroes of CBP who put their lives on the line every day, and find reasonable accommodations for CBP officers who do not choose to comply with this mandate for personal or medical reasons.

Thank you for your prompt attention to this matter.

Sincerely,



Jim Jordan
Ranking Member



Tom McClintock
Ranking Member
Subcommittee on Immigration and
Citizenship

cc: The Honorable Jerrold Nadler, Chairman, House Committee on the Judiciary
The Honorable Zoe Lofgren, Chair, Subcommittee on Immigration and Citizenship

⁵ Exec. Order No. 14043 (2021).

⁶ Adam Shaw & Peter Hasson, *Harris ‘deeply troubled’ by images of Border Patrol agents on horseback blocking migrants, agents respond*, Fox News (Sept. 22, 2021), <https://www.foxnews.com/politics/harris-images-border-patrol-agents-horseback-blocking-haitian-migrants>.

⁷ Brooke Singman & Adam Shaw, *Biden warns mounted Border Patrol agents charging migrants in Del Rio sector: ‘Those people will pay’*, Fox News (Sept. 24, 2021).

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CONGRESS OF THE UNITED STATES
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SUBCOMMITTEE ON HOMELAND SECURITY

HOUSE COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON HEALTH

September 28, 2021

The Honorable Alejandro N. Mayorkas
Secretary
Department of Homeland Security
3801 Nebraska Avenue, N.W.
Washington, D.C. 20016

RECEIVED
By ESEC at 2:22 pm, Sep 28, 2021

Dear Secretary Mayorkas,

Like many Americans, my constituents and I were deeply disturbed by recent photographs of Border Patrol agents corralling Black migrants on horseback in Del Rio, Texas.¹ I am writing to request an urgent briefing to provide detailed background on how this inexcusable incident occurred and on the actions you are taking to ensure that all migrants who interact with the Department of Homeland Security (DHS) in the future are treated with dignity.

I applaud your commitment as Secretary to a much-needed new direction for DHS, and I certainly appreciate the extraordinarily challenging circumstances currently facing all Department employees. However, this incident is just the latest of too many in the Department's history in which career DHS employees have failed to protect the vulnerable individuals in their care.² As a Member of the House Appropriations Subcommittee on Homeland Security, I am extremely concerned that this pattern of disrespect toward migrants may be indicative of department-wide failures in policy, training, and personnel management.

I am glad to know that you and I agree on the importance of a swift and thorough investigation into the incident in Del Rio. You stated on September 22, 2021, that the investigation will be

¹ Martha Pskowski, "Haitian migrants face tough choices in Del Rio amid crackdown at Texas-Mexico border," *El Paso Times*, September 19, 2021, <https://www.elpasotimes.com/story/news/immigration/2021/09/19/haitian-migrants-tough-choices-crackdown-del-rio-texas-border/8411152002/>.

² E.g. Camilo Montoya-Galvez, "Border Patrol failed to conduct welfare checks on migrant boy who died in 2019, probe finds," *CBS News*, September 17, 2021, <https://www.cbsnews.com/news/border-patrol-failed-to-conduct-welfare-checks-on-migrant-boy-who-died-in-2019-probe-finds/>; Rebecca Beitsch, "ICE watchdog slams agency for conditions at Arizona detention facility," *The Hill*, April 1, 2021, <https://thehill.com/policy/national-security/546014-ice-watchdog-slams-agency-for-health-threatening-conditions-at-az>; A.C. Thompson, "Inside the secret Border Patrol Facebook group where agents joke about migrant deaths and post sexist memes," *ProPublica*, July 1, 2019, <https://www.propublica.org/article/secret-border-patrol-facebook-group-agents-joke-about-migrant-deaths-post-sexist-memes>; Juan Montes, Santiago Pérez, and Robbie Whelan, "U.S. Border Patrol uses tear gas to disperse migrant caravan," *The Wall Street Journal*, November 26, 2018, <https://www.wsj.com/articles/u-s-border-patrol-uses-tear-gas-to-disperse-migrant-caravan-1543244902>.

completed in “days and not weeks,”³ and Adam Hunter, Deputy Assistant Secretary of Border and Immigration in the Office of Strategy, Policy, and Plans, confirmed in a September 23, 2021 briefing for Congressional staff that the investigation was expected to conclude “next week.” Therefore, I am writing to request a briefing on these issues from you on Monday, October 4, 2021. Since the investigation will be completed by then, I will expect the briefing to detail the findings thereof and to include answers to the following questions:

1. Based on the results of the investigation, what actions are you taking to ensure that this type of conduct never happens again?
2. What are the functions of horse patrols, and how are they communicated to agents who participate in horse patrols?
3. What instructions did the agents involved in this incident receive about their duties on that patrol?
4. What training do Border Patrol agents receive regarding safe and appropriate interactions with migrants, both while mounted on horseback and in general?
5. What recruitment methods are used to ensure that people whose values do not align with humane treatment of migrants are not hired to serve at DHS?
6. With the understanding that the convergence of a large number of Haitian migrants at Del Rio was due to a range of factors, including some outside the Department’s control, what could DHS have done differently to prevent this situation from becoming as dangerous as it did, and what steps are you taking to prevent a recurrence?
7. Have DHS’s efforts to deter migrants from entering the United States between ports of entry been successful? If not, what non-deterrence strategies will you use going forward to achieve the administration’s stated goal of a fair, orderly, and humane immigration system?
8. What steps are you taking to ensure that migrants are realistically able to exercise their legal right to seek asylum?

Please contact (b)(6) in my office at (b)(6) to schedule the [briefing](#). Thank you for your attention to this matter. I look forward to our continued partnership as we work together to safeguard the American people, our homeland, and our values.

Sincerely,



Lauren Underwood

³ Ellen M. Gilmer, “Border Patrol Haitian migrant investigation to conclude in days,” *Bloomberg Government*, September 22, 2021, <https://about.bgov.com/news/border-patrol-haitian-migrant-investigation-to-conclude-in-days/>.

cc: The Honorable Lucille Roybal-Allard
Chairwoman, Subcommittee on Homeland Security
Committee on Appropriations

Congress of the United States
Washington, DC 20515

September 23, 2021

Steve Dickson, Administrator
Federal Aviation Administration
800 Independence Avenue, SW
2164 Rayburn House Office Building
Washington, DC 20515

RECEIVED
By ESEC at 8:59 am, Sep 24, 2021

Dear Administrator Dickson:

On September 16, 2021, the American People were exposed to the human atrocity under the Del Rio Bridge in Texas, where thousands of illegal aliens are waiting for processing by US authorities.

Also that day, at 2218 UTC, your agency issued a Notice to Airmen (NOTAM) FDC 1/9857, which prevented the operation of commercial Unmanned Aerial Systems (UAS) in the area around the Del Rio Bridge without a specific waiver from the FAA. This includes the operation of commercial drones run by press entities like Fox News, who were exposing the conditions at the Del Rio Bridge. Your agency later commented:

“The Border Patrol requested the temporary flight restriction due to drones interfering with law enforcement flights on the border. As with any temporary restriction, media is able to call the FAA to make requests to operate in the area.”

Your actions on September 16, 2021, prompt the following questions as we execute our constitutional duties to oversee the Executive Branch and protect freedom of the press:

1. What time on September 16, 2021 did CBP request the temporary flight restriction? How long did FAA review the request before issuing the NOTAM?
2. What is the name and title of the CBP official who submitted the request?
3. Did CBP identify the specific flights and the locations at which they encountered said interference?
 - a. If so, did the flight interference in question occur in Del Rio, Texas?
 - b. If not, how was the area subject to the temporary flight restriction determined, and what evidence was provided to support the claim of interference?
 - c. If not, is it standard operating procedure for the FAA to grant Border Patrol requests for temporary flight requests without any specific violation or incident, or identifying the flight experiencing the interference?
4. Did CBP identify a specific UAS operator interfering with its operations? If so, why was a blanket restriction applied rather than a specific sanction for that operator?

5. Did CBP's request ask for the full two-week temporary flight restriction provided by the FAA?
 - a. If so, did they provide justification for shutting down the airspace for two weeks?
 - b. If not, how was this determination made and by whom?
6. Did the FAA or CBP communicate with any other government agency, including the White House, about this NOTAM or the events surrounding it? If so, who and at what time?
7. Since February, how many times has the FAA granted CBP's requests for temporary flight restrictions?
 - a. What were the justifications for those approvals?
 - b. Did they identify specific flights, UAS operators, and locations where the interference occurred?
 - c. How long were these TFRs in place?
8. It is our understanding that Fox News has been granted a waiver to fly its drone within the TFR area. Did the FAA communicate with any other government agency, including the White House, in its determination of this waiver?
9. Has the FAA received any other requests from the media to operate in this area and what is the status of the FAA's response?

In addition to answering these questions, please provide all supporting information, materials, and communications related to CBP's request for the TFR, the drafting, approval, and issuance of NOTAM FDC 1/9857, related requests for press waivers, and any communications with the White House regarding these events or media coverage surrounding them.

In mutual service of the rights of the American People to a free press, we request your responses no later than September 30, 2021. Thank you for your attention and prompt action.

Very Respectfully,



Scott Perry
Member of Congress



David Schweikert
Member of Congress



Debbie Lesko
Member of Congress



Clay Higgins
Member of Congress



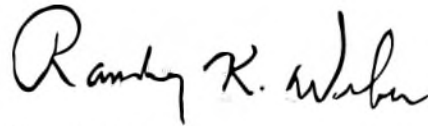
Mo Brooks
Member of Congress



Dan Bishop
Member of Congress



Andy Harris, M.D.
Member of Congress



Randy Weber
Member of Congress



Ralph Norman
Member of Congress



Bill Posey
Member of Congress



Doug LaMalfa
Member of Congress



Brian Mast
Member of Congress



Thomas Massie
Member of Congress

CC:

President Joseph Biden

Ron Klain, White House Chief of Staff

Secretary Alejandro Mayorkas, Department of Homeland Security

Secretary Pete Buttigieg, Department of Transportation

Acting Commissioner Troy Miller, Customs and Border Protection



September 28, 2021

Alejandro Mayorkas
Secretary of Homeland Security

Deanne Criswell
FEMA Administrator
Department of Homeland Security
3801 Nebraska Ave. NW
Washington, DC 20016

RECEIVED
By ESEC at 11:46 am, Oct 04, 2021

**Re: Operation Lone Star and Texas Governor Greg Abbott's Request for Federal
Emergency Funding**

Dear Secretary Mayorkas and Administrator Criswell,

Texas Governor Greg Abbott is actively seeking FEMA emergency resources in a disingenuous effort to secure federal funding for his ambitions for a xenophobic and unlawful system of state immigration enforcement in Texas. We urge you to reject this request. We would welcome the opportunity to meet with stakeholders in the administration to further discuss the greatly detrimental effects of Governor Abbott's state immigration policy and options for federal response.

Governor Abbott is fanning the flames of anti-immigrant hate in the state of Texas. He has created a separate system of state and local immigration enforcement that is explicitly hostile to the Biden administration's immigration policy. The administration should refrain from any action that could lead to federal funds flowing to such a system—including acceding to Governor Abbott's request for a declaration of emergency.

This system, sometimes called "Operation Lone Star," includes both a state-funded border wall and an immigration enforcement scheme that Governor Abbott characterizes as "not the Biden administration catch-and-release policy" but "the arrest-and-jail policy." More than 900 migrants—including many asylum seekers—have been arrested on state criminal trespass charges and detained in converted state prisons, with the explicit state goal of punishing them contrary to federal policy and deterring other migrants from coming to the country. On September 17, Governor Abbott signed into Texas law an additional \$1.88 billion in funding for this separate state system.

Governor Abbott is now seeking to take advantage of the events in Del Rio to gain even more funding. There is the very strong potential for any such money to be funneled toward the Governor's cruel, unnecessary, and unlawful state immigration enforcement scheme that has already raised serious civil rights concerns. We are concerned that the federal government's current actions may be perceived as condoning or even actively cooperating in Governor Abbott's Operation Lone Star.

I. Governor Abbott's Opposition to Federal Immigration Policy and May 2021 State Disaster Declaration Based on Federal Immigration Policy

At a press conference on September 21 in Del Rio, Governor Abbott claimed that the Biden administration "is not enforcing the law in this country" and is "promoting and allowing open border policies."¹ This rhetoric is typical: Governor Abbott has made plain his complete opposition to the Biden administration's border policy and his belief that the state of Texas should engage in unilateral immigration enforcement. He has stated, for example, "I and other governors are working to help do the President's job, America's job. We are trying to step up and secure the border."²

As Governor Abbott noted in his request for a federal declaration of emergency, in May 2021 he declared a state of disaster in 34 counties along the Texas-Mexico border.³ In fact, Governor Abbott's May 2021 declaration of a state of disaster was based on "federal government policies" and federal "inaction" that he claimed have led to "a dramatic increase in the number of individuals unlawfully crossing the international border" and an "unabated influx of individuals."⁴ The disaster declaration, which remains in effect, asserts, "[U]nder the Biden Administration . . . the federal government has shown unwillingness, ambivalence, or inability to enforce federal immigration laws [M]y calls for the federal government to do its job and secure the border have gone unanswered."⁵ The disaster declaration describes Operation Lone Star as intended to "deter[] illegal border crossings."⁶

¹ Governor Abbott's September 21 press conference is available at <https://www.youtube.com/watch?v=9EDvFIWE7qY&t=3s>.

² Interview with Texas Gov. Greg Abbott, Fox News, *available at* https://twitter.com/GregAbbott_TX/status/1416137109602250764.

³ Governor Abbott has amended the state disaster declaration so that it now encompasses 43 counties that have agreed to cooperate in the state's border efforts. Major border counties—including El Paso County and the three counties that comprise the Rio Grande Valley, Cameron, Hidalgo, and Starr—are now excluded. *See* Press Release, Gov. Greg Abbott, Governor Abbott Renews Border Crisis Disaster Declaration in 43 Counties, Aug. 30, 2021, <https://gov.texas.gov/news/post/governor-abbott-renews-border-crisis-disaster-declaration-in-43-counties>.

⁴ Gov. Greg Abbott, Proclamation by the Governor of the State of Texas, May 31, 2021, at 1-2, https://gov.texas.gov/uploads/files/press/DISASTER_border_security_IMAGE_05-31-2021.pdf.

⁵ *Id.* at 1.

⁶ *Id.*

II. Governor Abbott's State Immigration Enforcement System

Pursuant to the state disaster declaration and Operation Lone Star, as Governor Abbott stated at the press conference in Del Rio, the state of Texas is undertaking an “unprecedented” program: “we are arresting and jailing anybody who comes across the border illegally and who trespasses on private property or public land. . . . It’s not the Biden administration catch-and-release policy. It’s the arrest-and-jail policy.”⁷

Under the migrant arrest program, state troopers and state National Guard target for arrest and arrest, on state misdemeanor criminal trespass charges, migrants who are adult men traveling not as a family unit and who have recently crossed into the United States.⁸ Individuals arrested under the policy have described being directed toward private property by law enforcement.⁹ State law enforcement officers separate groups of migrants for different treatment: single adult men are arrested, while families and single women are turned over to Border Patrol.¹⁰

Once arrested, migrants are taken into a separate criminal system exclusively for migrants. Instead of being booked into the county jail, they are booked into a separate processing center explicitly for the migrant arrest program. Following an initial appearance before a magistrate, migrants are taken to one of two state prisons that have been converted to jails to hold migrants. Counties then prosecute the migrants for state criminal trespass, with an enhancement from a Class B to a Class A misdemeanor for criminal trespass in a disaster area—due to the state disaster declaration based on migration.¹¹

One of the first three people arrested under this program was an 18-year-old Venezuelan asylum seeker, “Antonio,” who was separated from his 64-year-old father. The family fled political oppression in Venezuela, where government officials assaulted Antonio and threatened

⁷ Video of the press conference is available at <https://www.youtube.com/watch?v=9EDvFIWE7qY&t=3s>.

⁸ E.g., Jay Root (@byjayroot), Twitter (Aug. 17, 2021), <https://twitter.com/byjayroot/status/1427702315591602177> (email from DPS officer containing this policy, obtained through a public records request).

⁹ Jolie McCullough, *An 18-Year-Old Venezuelan Was Among the First Set Free From Texas’ New Jail for Migrants. No One Knew What to Do with Him.*, Texas Tribune, Aug. 18, 2021, <https://www.texastribune.org/2021/08/18/texas-immigration-border-jail/>; Jolie McCullough, *After a Texas Prosecutor Dismissed Dozens of Migrant Trespassing Cases, Some Men Were Dropped at a Border Bus Station*, Texas Tribune, Sept. 14, 2021, <https://www.texastribune.org/2021/09/14/texas-border-migrant-arrests-trespassing/>.

¹⁰ McCullough, *An 18-Year-Old Venezuelan Was Among the First Set Free From Texas’ New Jail for Migrants*, *supra* n. 9.

¹¹ See, e.g., Jolie McCullough, *Thanks to Local Politics and a Railroad, Rural Kinney County Accounts for Most of Texas’ Migrant Arrests*, Texas Tribune, Sept. 2, 2021, <https://www.texastribune.org/2021/09/02/texas-immigration-arrests-jail-kinney-county/>; Jolie McCullough, *Migrants Arrested by Texas in Border Crackdown Are Being Imprisoned for Weeks Without Legal Help or Formal Charges*, Texas Tribune, Sept. 27, 2021, <https://www.texastribune.org/2021/09/27/texas-border-migrants-jail/>.

his father with torture. Antonio and his father crossed into the United States in Del Rio in a group of roughly 12 people. Antonio repeatedly attempted to request asylum from the arresting officers—but instead, they separated him from his father and booked him into custody along with two others in the group for state criminal trespass. His father was instead turned over to Border Patrol; his effort to seek asylum was treated as a federal immigration matter rather than a state criminal matter in support of the state’s immigration policy, and he was accordingly processed and released by Border Patrol for further immigration proceedings. By contrast, Antonio spent 24 days at the Briscoe Unit, a state prison converted to hold arrested migrants, before his charges were dropped at the discretion of the Val Verde County prosecutor. As Antonio told a reporter after his release, “I’m happy that I’m not in Venezuela or Briscoe.”¹²

Antonio’s experience demonstrates the cruelty and arbitrariness of the state’s system. Reporting also indicates serious civil rights violations in the criminal process. Migrants have been jailed on state criminal trespass charges for weeks without an attorney, notwithstanding a state statutory requirement of appointment of counsel within three days. The Kinney County prosecutor only started to file criminal charges in late August, explaining, “There’s a stack of files I have to go through.”¹³ As of last week, charges had been filed against only 50 to 75 of the nearly 730 migrants arrested in Kinney County since July and currently detained.¹⁴ In design and in execution, the immigration enforcement scheme pushed by Governor Abbott is cruel and threatens both access to asylum and basic civil rights.

III. Escalating Anti-Immigrant Rhetoric in Texas

As state and local officials have implemented the migrant arrest policy, racist and anti-immigrant rhetoric in the state of Texas has reached fever pitch. This includes such rhetoric from state and local officials—which is pouring fuel on the flames of anti-immigrant hate in the state.

For example, Texas Lieutenant Governor Dan Patrick recently termed migration to the state an “invasion” and claimed that President Biden and the Democratic Party have begun a “silent revolution” to obtain Democratic voters through immigration. In rhetoric that parallels that used by the white supremacist who in 2019 killed 23 people in a mass shooting at Walmart in El Paso, Texas, Lieutenant Governor Patrick claimed that “in 18 years” there will be “millions and millions and millions of new voters” who will vote Democratic as a result of immigrants arriving in the country and that “[t]his is trying to take over our country without firing a shot.” He urged “every red state” to invoke Article IV, Section 4 of the Constitution because of the

¹² McCullough, *An 18-Year-Old Venezuelan Was Among the First Set Free From Texas’ New Jail for Migrants*, *supra* n. 9.

¹³ Jolie McCullough, *Thanks to Local Politics and a Railroad, Rural Kinney County Accounts for Most of Texas’ Migrant Arrests*, Texas Tribune, Sept. 2, 2021, <https://www.texastribune.org/2021/09/02/texas-immigration-arrests-jail-kinney-county/>.

¹⁴ McCullough, *Migrants Arrested by Texas in Border Crackdown Are Being Imprisoned for Weeks*, *supra* n. 11.

purported “invasion.”¹⁵ Similarly, Governor Abbott warned Texans in June that migrants are coming “in from countries you haven’t even heard of before. It comes [sic] from 160 different countries across the entire globe. Senegal, Bangladesh, Ubezikstan [sic].”¹⁶

This set of circumstances—with both massive law enforcement deployments and escalating xenophobic rhetoric—has created a highly volatile environment with the clear potential for violence against migrants. For example, the Val Verde County Sheriff testified before the Texas House Committee on Appropriations that people in his jurisdiction are asking him, regarding migrants on their property, “When can I shoot?”¹⁷

IV. State and Local Use of Disaster Declarations and ARPA Funds to Support Governor Abbott’s Immigration Enforcement System

Against this backdrop, Governor Abbott’s request for federal disaster assistance creates serious concerns that a federal emergency declaration could lead to funding flowing to Texas’s state immigration enforcement system. Governor Abbott’s request asks for both a declaration of federal emergency to obtain federal assistance and statewide grant assistance under the Hazard Mitigation Grant Program. This request notably does not follow the procedures outlined in 44 C.F.R. § 206.436 for applications for Hazard Mitigation Grant Program funding. Nor is there remotely any basis for concluding that any challenges generated by migrants awaiting federal processing on federal property under the international bridge in Del Rio justify this sort of state funding.

In fact, state and local disaster declarations related to migration in Texas have repeatedly been used to prop up the state immigration enforcement system. Emergency federal funds intended for COVID-19, from the American Rescue Plan, have been unilaterally funneled by a local government toward Texas’s immigration enforcement system. Galveston County has authorized the transfer of up to \$6.6 million, 10% of the funds allocated to the county through the American Rescue Plan, to the construction of a state border wall on the Texas-Mexico

¹⁵ James Barragán, *Dan Patrick Warns Democrats Are Allowing In Immigrants for “Silent Revolution,” Mirroring Language of Far-Right Extremists*, Texas Tribune, Sept. 17, 2021, <https://www.texastribune.org/2021/09/17/texas-dan-patrick-immigrants-democrats-haitians/>.

¹⁶ Texas Border Security Summit, <https://www.youtube.com/watch?v=INe-AZKN-uM>; see Press Release, Gov. Greg Abbott, Governor Abbott Hosts Border Security Summit, Announces Comprehensive Border Security Plan To Crack Down On Unlawful Border Crossings, June 10, 2021, <https://gov.texas.gov/news/post/governor-abbott-hosts-border-security-summit-announces-comprehensive-border-security-plan-to-crack-down-on-unlawful-border-crossings>.

¹⁷ Texas House Appropriations Committee, Hearing on HB 9, Relating to Making Supplemental Appropriations Relating to Border Security and Giving Direction Regarding Those Appropriations, Aug. 24, 2021, https://tlchouse.granicus.com/MediaPlayer.php?view_id=46&clip_id=22334.

border.¹⁸ The County has also authorized the use of American Rescue Plan funds for “border security” and has accordingly sent Galveston County Sheriff’s Office deputies to Val Verde County to work at the processing center for migrants.¹⁹ Additionally, pursuant to the state disaster declaration, Governor Abbott unilaterally transferred \$250 million from TDCJ to the Office of the Governor’s Disaster Funds as “a down payment to begin” wall construction on the Texas-Mexico border.²⁰

There is reason to think that such allocation of federal funding could happen here too. Governor Abbott’s request catalogues more than \$84 million in costs expended by the state on militarization of the border and the state’s migrant arrest scheme from May to September 2021. For example, Governor Abbott includes more than \$4.3 million expended by the Texas Department of Criminal Justice (“TDCJ”). TDCJ has converted two state prisons to pretrial detention centers for migrants arrested under state policy—expending money on, for example, installing the air conditioning required in jails but not prisons and retraining TDCJ prison guards to meet the state standards for jailers.²¹ These expenses are plainly not a response to the number of migrants who congregated in the past two weeks on federal property under the Del Rio International Bridge. Rather, they are part of Governor Abbott’s effort to engage in unilateral state immigration enforcement pursuant to his own immigration policy.

¹⁸ Alejandro Serrano, *Galveston County Judge Mark Henry Issues Disaster Declaration in Response to Border Situation*, Houston Chronicle, June 30, 2021, <https://www.houstonchronicle.com/news/houston-texas/houston/article/Galveston-County-Judge-Mark-Henry-issues-disaster-16282889.php>.

¹⁹ John Wayne Ferguson, *Sheriff’s Deputies Sent to Assist in Border Jail Facility*, Galveston Daily News, July 21, 2021, https://www.galvnews.com/news/article_5f58cdf2-95be-5b6a-91de-77e30bd0dcf7.html.

²⁰ Letter from Greg Abbott, Governor of Texas, to Bryan Collier, Executive Director of the Texas Department of Criminal Justice (June 16, 2021), <https://gov.texas.gov/uploads/files/press/O-CollierBryan202106162544.pdf>.

²¹ Valerie Gonzalez, *Edinburg Prison Now Second in Texas to House Arrested Immigrants*, The Monitor, Sept. 16, 2021, <https://myrgv.com/local-news/immigration/2021/09/16/edinburg-prison-now-second-in-texas-to-house-arrested-immigrants/>; Jolie McCullough, *Almost 150 Guards are Staffing an Empty Texas Prison as State Officials Work on Governor Abbott’s Plan to Use It for Immigrants*, Texas Tribune, July 8, 2021, <https://www.texastribune.org/2021/07/08/texas-immigration-prison-empty/>.

We have grave concerns about Texas's immigration enforcement system and the potential for federal emergency funding to flow to that unlawful and cruel system. We would welcome the opportunity to meet with you and discuss options that the administration can take to respond to Texas's unilateral immigration enforcement system and anti-immigrant rhetoric. We have previously spoken with attorneys in the Department of Justice's Civil Rights Division about systemic issues related to the migrant arrest policy. We look forward to continued collaboration with stakeholders across the administration, including in the Department of Homeland Security and Department of Justice, and request a meeting with appropriate stakeholders. Thank you for your time and attention to this matter.

Best regards,

Omar Jadwat
American Civil Liberties Union
125 Broad Street, 18th Floor
New York, NY 10004

(b)(6)

Andre Segura
Kathryn Huddleston
American Civil Liberties Union of Texas
5225 Katy Fwy, Ste 350
Houston, TX 77288

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CC:

Dr. Susan Rice, Director, White House Domestic Policy Council
Esther Olavarria, Director for Immigration, White House Domestic Policy Council
Dr. Elizabeth Sherwood-Randall, Homeland Security Advisor and Deputy National Security
Director, National Security Council
Juan Gonzalez, Senior Director for the Western Hemisphere, National Security Council
Katie Tobin, Senior Director for Transborder Issues, National Security Council
Department of Justice

United States Senate

WASHINGTON, DC 20510

RECEIVED

By ESEC at 12:44 pm, Oct 06, 2021

October 6, 2021

Hon. Alejandro Mayorkas
Secretary of Homeland Security
Department of Homeland Security
2707 Martin Luther King Jr. Ave. SE
Washington, DC 20528-0525

Dear Secretary Mayorkas:

We are writing to inquire about DHS's response to the recent surge of migrants into Del Rio, Texas. While we applaud the Administration's original stated intent to expel the majority of migrants under the CDC's Title 42 order or to expeditiously remove them, we are concerned that DHS did not actually carry out this plan, deployed resources in a manner that weakened border security, and undermined the deterrent effect of any future statements that the Biden Administration will enforce our immigration laws at the border.

The recent influx of migrants into Del Rio is exactly the kind of situation the CDC's Title 42 order is meant to address. The *New York Times* described the conditions under the Del Rio International Bridge as "squalid,"¹ and there is a significant risk of COVID-19 transmission in a migrant population of this size and concentration. You have described 42 U.S.C. 265 as "a public health authority to protect the American public, to protect the communities along the border, and to protect the migrants themselves."² We were thus pleased that the Administration secured a stay pending appeal of U.S. District Court Judge Emmet Sullivan's recent preliminary injunction on the use of the CDC's Title 42 order with respect to family units.³ It is vital that DHS preserve this important authority as we continue to battle the COVID-19 pandemic. However, the extent to which migrants in Del Rio were expelled under Title 42 remains unclear. On Friday September 24, when you announced that the area under the Del Rio International Bridge had been cleared, you stated that only 2,000 migrants had been placed on expulsion flights to Haiti.⁴ Reports indicate that single adults—which formed only a minority of the population under the

¹ James Dobbins, Eileen Sullivan & Edgar Sandoval, *Thousands of Migrants Huddle in Squalid Conditions Under Texas Bridge*, NEW YORK TIMES (Sept. 20, 2021, 7:30 a.m.), <https://www.nytimes.com/2021/09/16/us/texas-migrants-del-rio.html>.

² *Secretary Mayorkas Delivers Remarks in Del Rio, TX*, DEPARTMENT OF HOMELAND SECURITY (Sept. 20, 2021), <https://www.dhs.gov/news/2021/09/20/secretary-mayorkas-delivers-remarks-del-rio-tx>.

³ *Huisha-Huisha v. Mayorkas*, Case No. 21-5200 (D.C. Cir. Sept. 30, 2021), ECF No. 1916334.

⁴ *Press Briefing by Press Secretary Jen Psaki and Secretary of Homeland Security Alejandro Mayorkas*, THE WHITE HOUSE (Sept. 24, 2021), <https://www.whitehouse.gov/briefing-room/press-briefings/2021/09/24/press-briefing-by-press-secretary-jen-psaki-and-secretary-of-homeland-security-alejandro-mayorkas-september-24-2021/>.

Del Rio International Bridge—were prioritized, and that many migrant families were released into the interior.⁵

According to the strategy you released on September 18, 2021, those migrants “who cannot be expelled under Title 42 and do not have a legal basis to remain will be placed in expedited removal proceedings.”⁶ Expedited removal is a very effective tool, as DHS demonstrated in June 2005 when it was used to respond to a massive influx of Brazilian nationals in the Rio Grande Valley (RGV) Sector. Following implementation in 2005 in RGV, the number of apprehensions per day dropped precipitously, and it created a strong deterrent effect. Significantly, however, then-U.S. Border Patrol Chief David Aguilar noted that “aliens processed in expedited removal are required to be detained by law.”⁷ Media reports suggest that DHS has not followed through on its stated strategy of using expedited removal to address the surge of migrants into Del Rio. According to these reports, senior Executive Branch officials have stated that Haitian migrants have been released into the United States and freed on a “very, very large scale” in recent days, and that many have been released with a Notice to Report, or with parole and a requirement to enroll in Alternatives to Detention.⁸ Releasing large numbers of migrants into the interior with the request that they later report to ICE to commence their removal proceedings will only further incentivize illegal migration.⁹ And failing to follow through on a promise to expel or expeditiously remove migrants will only further convince them and the smuggling organizations that exploit them that the Biden Administration is not serious about enforcing our immigration laws at the southwest border.

DHS has openly admitted that the rapid influx of Haitian migrants into the interior was orchestrated by smuggling organizations, which only makes some aspects of the agency’s response more puzzling. On September 20, 2021, U.S. Border Patrol Chief Raul Ortiz stated that “smugglers are significant drivers of the misinformation that gets people to undertake these dangerous journeys.”¹⁰ And Administration officials have communicated to congressional staff that smuggling organizations strategically bused migrants into Ciudad Acuña in order to

⁵ Elliot Spagat, Maria Verza, Juan A. Lozano, & Sara Blake Morgan, *Many migrants staying in US even as expulsion flights rise*, AP News (Sept. 23, 2021), <https://apnews.com/article/immigration-united-states-texas-el-paso-del-rio-3a8146cbcb47b9df7a31a19594df3ec6>.

⁶ *DHS Outlines Strategy to Address Increase in Migrants in Del Rio*, DEPARTMENT OF HOMELAND SECURITY (Sept. 18, 2021), <https://www.dhs.gov/news/2021/09/18/dhs-outlines-strategy-address-increase-migrants-del-rio>.

⁷ *Solving the OTM Undocumented Alien Problem: Expedited Removal for Apprehensions Along the U.S. Border: Hearing Before the Subcomm. on Economic Security, Infrastructure Protection, & Cybersecurity of the H. Comm. on Homeland Security*, 109th Cong. 11 (2005) (written statement of David Aguilar, Chief, U.S. Border Patrol), available at <https://www.govinfo.gov/content/pkg/CHRG-109hhr31962/pdf/CHRG-109hhr31962.pdf>.

⁸ Elliot Spagat, Maria Verza & Juan A. Lozano, *Many migrants staying in US even as expulsion flights risk*, WASHINGTON POST (Sept. 22, 2021, 6:03 p.m.), https://www.washingtonpost.com/national/officials-many-haitian-migrants-are-being-released-in-us/2021/09/22/32943770-1b5b-11ec-bea8-308ea134594f_story.html.

⁹ We further note that the Department’s new proposed credible fear screening rule would dramatically expand the use of parole to release aliens from custody during the expedited removal process, and that the Department is also considering whether such aliens should be given employment authorization documents. Such changes would only further undermine the deterrent effect of expedited removal. See *Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers*, 86 Fed. Reg. 46906, 46913-14 (Aug. 20, 2021).

¹⁰ *Secretary Mayorkas Delivers Remarks in Del Rio, TX*, DEPARTMENT OF HOMELAND SECURITY (Sept. 20, 2021), <https://www.dhs.gov/news/2021/09/20/secretary-mayorkas-delivers-remarks-del-rio-tx>.

concentrate migrants at a single location and overwhelm the Border Patrol. Despite knowing this, however, DHS shut down Border Patrol checkpoints in the Del Rio Sector and reassigned those agents to process migrants under the Del Rio International Bridge.¹¹ DHS also reassigned agents from neighboring sectors in order to handle processing. This approach seems to play directly into the smuggling organizations' hands, reducing operational control in the area and making it easier to move narcotics and other contraband into the interior.

Finally, the Administration's response to the ongoing border crisis only makes it more likely that we will continue to experience surges like the one in Del Rio. In August, despite the summer heat, encounters along the southwest border stood above 200,000 for the second month in a row. Until DHS consistently enforces our immigration laws to swiftly remove migrants with weak or nonexistent asylum claims, smuggling organizations will continue to prey on these individuals and convince them to undertake the treacherous journey to our southwest border.

In order to better understand DHS's response to the recent influx of migrants in Del Rio, we ask that you respond to the following questions by October 19, 2021:

1. Exactly how many migrants encountered between September 1 and September 24, 2021 at the Del Rio International Bridge were expelled pursuant to the CDC's Title 42 order? Of those migrants, how many were expelled between September 1 and September 24, and how many were expelled after that time? Does DHS anticipate expelling additional migrants encountered at the Del Rio International Bridge using Title 42? Please break down the totals by single adults, family units, and unaccompanied minors.
2. Exactly how many migrants encountered between September 1 and September 24, 2021 at the Del Rio International Bridge were processed under one of the exceptions to Title 42? Of those who were processed under an exception to Title 42, how many migrants placed claims under the Convention Against Torture, how many were processed under the capacity exception to Title 42, and how many were processed under the humanitarian/medical exception to Title 42? Please break down the totals for each exception by single adults, family units, and unaccompanied minors.
3. How many migrants encountered between September 1 and September 24, 2021 at the Del Rio International Bridge were placed into expedited removal proceedings? Of these, how many claimed credible fear or another form of protection? Were any of these migrants subsequently released within the United States, and if so, at what stage in their proceedings were they released? How many migrants placed into expedited removal proceedings have been removed, and how many are currently being detained? Please break down the totals by single adults and family units.

¹¹ Cody King, *Checkpoints in Laredo left unmanned after Border Patrol agents redirected to Del Rio, report says*, KSAT (Sept. 18, 2021, 3:37 p.m.), <https://www.ksat.com/news/local/2021/09/18/checkpoints-in-laredo-left-unmanned-after-border-patrol-agents-redirected-to-del-rio-report-says/>.

4. How many migrants encountered between September 1 and September 24, 2021 at the Del Rio International Bridge were processed through the Electronic Nationality Verification Pilot?
5. How many migrants encountered between September 1 and September 24, 2021 at the Del Rio International Bridge whose removal proceedings have commenced have been placed onto the dedicated docket for families who arrive between ports of entry at the Southwest Border?
6. How many migrants encountered between September 1 and September 24, 2021 at the Del Rio International Bridge were apprehended and transferred to the custody of the Department of Health and Human Services as unaccompanied minors?
7. How many migrants encountered between September 1 and September 24, 2021 at the Del Rio International Bridge were issued a Notice to Report and released (as opposed to the Notice to Report Plus process described below)? Of these, how many have reported to U.S. Immigration and Customs Enforcement in order to commence removal proceedings? Please break down the totals by single adults and family units.
8. How many migrants encountered between September 1 and September 24, 2021 at the Del Rio International Bridge were processed through the so-called Notice to Report Plus process, where they are released with parole, enrolled in Alternatives to Detention and asked to report to an ICE field office in order to commence removal proceedings? Of these, how many have reported to ICE? Please break down the totals by single adults and family units.
9. How many migrants encountered between September 1 and September 24, 2021 at the Del Rio International Bridge were issued a Notice to Appear? Please break down the totals by single adults and family units.
10. How many Border Patrol agents were transferred to process migrants or otherwise respond to the situation at the Del Rio International Bridge, and what locations were they transferred from? What was the average length of time such agents were away from their primary duty stations?
11. Why did DHS decide to shut down checkpoints in the Del Rio Sector? Were any actions taken to maintain operational control in areas from which Border Patrol agents were transferred?
12. Of the migrants encountered between September 1 and September 24, 2021 at the Del Rio International Bridge, how many were Haitian nationals who resided in another country immediately prior to migrating to the United States? If these migrants make asylum claims, does DHS intend to assert evidence of an offer of firm resettlement in their immigration court proceedings?

13. Of the migrants encountered between September 1 and September 24, 2021 at the Del Rio International Bridge, how many were transported to other sectors for processing? Please break down the totals by sector, and within that, by the authorities under which they were processed (i.e., Title 8, Title 42).

Thank you for your prompt attention to this matter, and we look forward to your response.

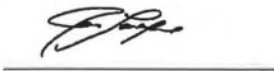
Sincerely,



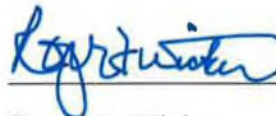
John Cornyn
United States Senator



Mitch McConnell
United States Senator



James Lankford
United States Senator



Roger F. Wicker
United States Senator



Kevin Cramer
United States Senator



M. Michael Rounds
United States Senator



Susan M. Collins
United States Senator



Marsha Blackburn
United States Senator



Chuck Grassley
United States Senator



Rick Scott
United States Senator



Roger Marshall, M.D.
United States Senator



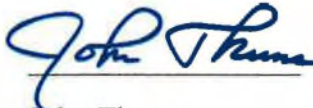
Cindy Hyde-Smith
United States Senator



Thom Tillis
United States Senator



Joni K. Ernst
United States Senator



John Thune
United States Senator



Jerry Moran
United States Senator



Steve Daines
United States Senator



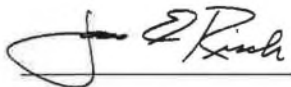
Tom Cotton
United States Senator



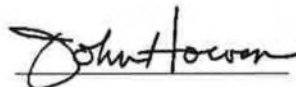
Mike Crapo
United States Senator



Todd Young
United States Senator



James E. Risch
United States Senator



John Hoeven
United States Senator



Lindsey O. Graham
United States Senator



Tommy Tuberville
United States Senator



Bill Hagerty
United States Senator



John Boozman
United States Senator



Shelley Moore Capito
United States Senator



Tim Scott
United States Senator



John N. Kennedy
United States Senator



Mike Braun
United States Senator



Josh Hawley
United States Senator



Deb Fischer
United States Senator



James M. Inhofe
United States Senator



Michael S. Lee
United States Senator



Ben Sasse
United States Senator



Ted Cruz
United States Senator



John Barrasso, M.D.
United States Senator



Rob Portman
United States Senator



Homeland Security

May 17, 2022

The Honorable John Cornyn
United States Senate
Washington, DC 20510

Dear Senator Cornyn:

Thank you for your October 6, 2021, letter to the Department of Homeland Security regarding the influx of migrants to the Del Rio International Bridge below the Port of Entry in Del Rio, Texas. Secretary Mayorkas asked that I respond on his behalf, and I apologize for the delay in responding.

Answers to your specific questions are provided in the enclosures to assist in understanding the current state of the border and its impact on U.S. Customs and Border Protection's workforce. Thank you for your continued interest and willingness to contribute to border security.

The cosigners of your letter will each receive an identical response. Should you wish to discuss this matter further, please do not hesitate to contact my office at (b)(6)

Sincerely,

A handwritten signature in black ink that reads "Alice Lugo". The signature is written in a cursive, flowing style.

Alice Lugo
Assistant Secretary for Legislative Affairs

Enclosures



One Hundred Seventeenth Congress
Committee on Homeland Security
U.S. House of Representatives
Washington, DC 20515

October 4, 2021

President Joseph R. Biden Jr.
The White House
1600 Pennsylvania Avenue
Washington, DC 20500

RECEIVED

By ESEC at 10:26 am, Oct 06, 2021

Dear President Biden,

The dire situation along the southwest border is a crisis that has spun out of control. As you know, U.S. Customs and Border Protection (CBP) encountered 208,887 migrants along the southern border in August—a 317% increase compared to August 2020.¹ August was also the 6th straight month with more than 170,000 encounters.² Just this week, Secretary Mayorkas discussed with senior government officials whether the Department of Homeland Security (DHS) was prepared for a potential of 350,000 to 400,000 migrants crossing the border in October if Title-42 restrictions are lifted.³ Yet, your Administration still refuses to call it what it is: a national security and humanitarian crisis.

We are also concerned by reports that in just the last three weeks, two senior career officials have come forward stating that your Administration is ignoring recommendations to mitigate the border crisis. Former Chief of the U.S. Border Patrol Rodney Scott wrote in a letter to Senate and House leadership that civil service staff within CBP, Immigration and Customs Enforcement (ICE), and DHS have provided multiple options to your Administration on border security but that “every recommendation has been summarily rejected.”⁴ Moreover, former Special Envoy for Haiti Daniel Foote wrote, “My recommendations have been ignored and dismissed,” regarding the Biden Administration’s policy approach to repatriating Haitian nationals back to Haiti from the U.S. Border.⁵

Recently, Secretary Mayorkas testified before both the Senate Homeland Security and Governmental Affairs Committee and the House Committee on Homeland Security. Throughout his testimony, he consistently stated that he believes America’s borders are closed and “the

¹ CBP Releases August 2021 Operational Update, accessed at <https://www.cbp.gov/newsroom/national-media-release/cbp-releases-august-2021-operational-update>

² Southwest Land Border Encounters, accessed at <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>

³ U.S. officials think massive surge at southern border possible if Covid restriction is lifted Thursday, accessed at <https://www.nbcnews.com/politics/immigration/u-s-officials-think-massive-surge-southern-border-possible-if-n1280378>

⁴ Former Border Patrol chief warns agency losing ability to know ‘who and what is entering,’ accessed at <https://www.foxnews.com/politics/former-border-patrol-chief-warns-agency-losing-ability-to-know-who-and-what-is-entering>

⁵ Read: Resignation letter from U.S. special envoy for Haiti, Daniel Foote, accessed at <https://www.washingtonpost.com/context/read-resignation-letter-from-u-s-special-envoy-for-haiti-daniel-foote/3136ae0e-96e5-448e-9d12-0e0cabfb3c0b/>

border is secure.”⁶ But, the facts don’t lie. The border is neither closed nor is it secure. How can one say the border is closed when over the past eight months, CBP has surpassed numerous records for the number of migrants illegally crossing the border? Why is your Administration trying to deceive the American people that the border is secure?

Because of the public health emergency, the Centers for Disease Control and Prevention (CDC) implemented the Title-42 order to protect Americans during the ongoing pandemic. In October 2020, over 90% of total encounters by Border Patrol agents were processed under Title-42 and expelled.⁷ However, the latest data from CBP shows that over 50% of migrants are now eligible for an exemption to Title-42 and are not expelled.⁸ While there is still a public health emergency in the United States, why is DHS not following CDC guidelines and recommendations? And how can DHS say the agency is expelling “a substantial share of families” when that number is below 19%?⁹

Additionally, on September 18th, there were nearly 15,000 migrants who had flooded across the border to Del Rio, Texas, waiting to be processed by CBP. One day after Fox News released drone footage of thousands of migrants waiting to be processed at the Del Rio International Bridge, your Administration’s Federal Aviation Administration (FAA) placed a two-week ban on drones in the area. Fox News has confirmed the previous use of such drones along the southern border for months without issue.¹⁰ This brings into question the Administration’s intentions and timing around efforts to restrict the usage of drones.

Despite these restrictions, Americans have seen heartbreaking images in the media portraying the shocking breakdown in border security and management under your Administration. CBP did their best to rush water, food, and medical supplies to these individuals, but there were simply too many migrants. The system is completely overwhelmed.

CBP is on track to encounter more migrants this fiscal year than any year on record.¹¹ Both CBP and the U.S. Coast Guard have seen an overall upward trend in the past eight months, and it does not appear there will be a significant decrease anytime soon. At the same time, over 600,000 illegal border crossers have been released into the interior of the United States under catch-and-release policies since your Administration took office in January.¹² Secretary Mayorkas has admitted behind closed doors that this crisis is unsustainable.¹³ Why does your Administration refuse to publicly acknowledge the crisis we have at the southwest border?

⁶ Worldwide Threats to the Homeland: 20 Years After 9/11, accessed at <https://homeland.house.gov/activities/hearings/worldwide-threats-to-the-homeland-20-years-after-9/11>; Threats to the Homeland: Evaluating the Landscape 20 Years After 9/11, accessed at <https://www.hsgac.senate.gov/hearings/threats-to-the-homeland-evaluating-the-landscape-20-years-after-9/11>

⁷ Southwest Land Border Encounters, accessed at <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>

⁸ *Id.*

⁹ Southwest Land Border Encounters, accessed at <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>

¹⁰ Fox News cleared to fly after Biden FAA temporarily bans drones over bridge packed with illegal immigrants, accessed at <https://www.foxnews.com/politics/bidens-faa-temporarily-bans-drones-over-bridge-packed-with-illegal-immigrants>

¹¹ United States Border Patrol, accessed at https://www.cbp.gov/sites/default/files/assets/documents/2020-Jan/U.S.%20Border%20Patrol%20Monthly%20Apprehensions%20-%28FY%202000%20-%20FY%202019%29_1.pdf

¹² Brandon Judd: Rewarding migrants for illegally crossing our borders means they will keep coming, accessed at <https://www.foxnews.com/opinion/del-rio-migrants-illegally-crossing-borders-brandon-judd>

¹³ Mayorkas says border crisis ‘unsustainable’ and ‘we’re going to lose’ in leaked audio, accessed at <https://www.foxnews.com/politics/mayorkas-leaked-audio-border>

Not only have there been over 1.5 million illegal crossings along the southwest border so far this fiscal year, but the numbers are even more disturbing when examining further details. With one month remaining, 9,728 individuals with criminal convictions have been arrested in FY2021 attempting to illegally cross the border, compared with just 2,438 in FY2020.¹⁴ Recently-departed Border Patrol Chief Rodney Scott has publicly said that the United States Border Patrol is seeing known or suspected terrorists cross the borders “at a level we have never seen before.”¹⁵ Why is your Administration refusing to be transparent with the American public about the number of known or suspected terrorists that have crossed the border this year?

Who else is crossing our border while frontline Border Patrol agents are stretched beyond their capacity? This fiscal year, CBP has encountered over 480,000 individuals from countries other than Mexico and the Northern Triangle—more than double the number encountered in FY2020.¹⁶ How many Special Interest Aliens who potentially pose a national security risk to the United States have illegally entered the United States?

In August, a federal judge ruled that your Administration must restart processing individuals under the Remain in Mexico policy. DHS has stated that it will “comply with the order in good faith,” but there has been little information provided to the Committee on the progress of restarting the program.¹⁷ We are extremely disappointed to learn that your Administration intends to terminate the Migrant Protection Protocols (MPP) in the coming weeks.

Yet, another concerning trend is the ballooning number of got-a-ways who are seen by U.S. authorities, but get away without being encountered due to the lack of CBP personnel and resources. This fiscal year, there have been over 308,000 known got-a-ways and that doesn’t take into account how many more have successfully crossed the border without detection.¹⁸ How can your Administration consider the border secure when there have been over 308,000 documented cases of got-a-ways?

In addition, the record volume of drugs that CBP has been seizing is gravely concerning. Components of CBP—the Office of Field Operations, the U.S. Border Patrol, and Air and Marine Operations—have seized more fentanyl, cocaine, methamphetamine, and marijuana this fiscal year than in FY2020.¹⁹ During this fiscal year, CBP has seized over twice as much fentanyl than in FY2020 and nearly four times as much as in FY2019.²⁰ The 10,469 pounds of fentanyl seized this year is enough to kill 2.37 billion people or the entire American population seven times over. How many more drugs are Drug Trafficking Organizations and Transnational Criminal Organizations successfully getting across American land, air, and sea borders undetected?

¹⁴ Criminal Noncitizen Statistics Fiscal Year 2021, accessed at <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/criminal-noncitizen-statistics>

¹⁵ Suspected terrorists crossing border 'at a level we have never seen before,' outgoing Border Patrol chief says, accessed at <https://www.washingtonexaminer.com/news/border-patrol-chief-suspected-terrorists-coming-across-southern-border>

¹⁶ Nationwide Encounters, accessed at <https://www.cbp.gov/newsroom/stats/nationwide-encounters>

¹⁷ DHS Statement on Supreme Court Decision on MPP, accessed at <https://www.dhs.gov/news/2021/08/24/dhs-statement-supreme-court-decision-mpp>

¹⁸ Former Border Patrol chief warns agency losing ability to know 'who and what is entering,' accessed at <https://www.foxnews.com/politics/former-border-patrol-chief-warns-agency-losing-ability-to-know-who-and-what-is-entering>

¹⁹ Air and Marine Operations Statistics 2021, accessed at <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/air-and-marine-operations-statistics-fiscal-year-2021>; Drug Seizure Statistics, accessed at <https://www.cbp.gov/newsroom/stats/drug-seizure-statistics>

²⁰*Id.*

Mr. President, it is time to admit that the Trump Administration's border policies such as deploying the border wall and MPP worked. It is time to admit that there is a crisis at the southern border and that the men and women of the United States Border Patrol are overwhelmed. It is time for your Administration to take appropriate steps to prevent a recurrence of what we witnessed in Del Rio, Texas. We demand transparency from your Administration on behalf of the American people.

The minority Members of the Committee on Homeland Security want to work together with your Administration on these critical homeland security issues; however, in order to productively work together, your Administration needs to be more open and more forthcoming with the Committee.

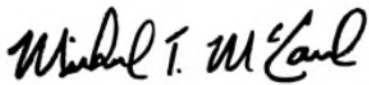
Sincerely,



JOHN KATKO
Ranking Member



MICHAEL GUEST
Vice Ranking Member



MICHAEL T. MCCAUL
Member of Congress



CLAY HIGGINS
Member of Congress



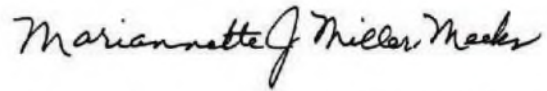
DAN BISHOP
Member of Congress



JEFF VAN DREW
Member of Congress



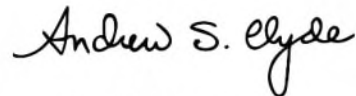
RALPH NORMAN
Member of Congress



MARIANNETTE MILLER-MEEKS, M.D.
Member of Congress



DIANA HARSHBARGER
Member of Congress



ANDREW S. CLYDE
Member of Congress



CARLOS A. GIMENEZ
Member of Congress



JAKE LATURNER
Member of Congress



PETER MEIJER
Member of Congress



KAT CAMMACK
Member of Congress



AUGUST PFLUGER
Member of Congress



ANDREW R. GARBARINO
Member of Congress

cc:

The Honorable Alejandro Mayorkas
Secretary, U.S. Department of Homeland Security

Congress of the United States
Washington, DC 20515

October 8, 2021

President Joseph R. Biden, Jr.
The White House
1600 Pennsylvania Ave., NW
Washington, DC 20500

RECEIVED
By ESEC at 9:34 am, Oct 13, 2021

Dear President Biden:

The recent surge of illegal aliens entering the United States in Del Rio, Texas, demands that you finally give the border crisis that you created the attention it deserves. The American people are fed up with false reassurances that the border is closed.

There is one main driver for the current surge of illegal immigration: your policies have left the border open. Your weak border policies and your obsession with undoing President Trump's successful border security policies, such as the Migrant Protection Protocols (MPP), created the humanitarian crisis.

In August, U.S. District Judge for the Northern District of Texas Matthew Kacsmaryk ordered you to "enforce and implement MPP *in good faith* until such time as it has been lawfully rescinded in compliance with the APA **and** until such time as the federal government has sufficient detention capacity to detain all aliens subject to mandatory detention under Section 1255 without releasing any aliens *because of* lack of detention resources."¹ Your administration has yet to comply with the order to restart MPP or taken the steps necessary to expand detention capacity. In fact, instead of restarting MPP, the Department of Homeland Security (DHS) has announced that it is still working to terminate MPP. The obsession with terminating MPP is evidence that your Administration has no desire to secure our border and stop illegal immigration.

The surge of aliens into Del Rio and the accompanying lawlessness that developed because of the surge is directly linked to your refusal to comply with Judge Kacsmaryk's order. If DHS was implementing MPP as ordered, the aliens entering the United States in Texas would be returned to Mexico instead of being released into the interior of the United States.

To comply with the court's order, you must restart MPP and you must begin expanding detention capacity so that all aliens subject to mandatory detention by the Immigration and Nationality Act who are not placed in MPP are detained as required by the law. Further delay in restarting MPP is harmful to the safety and sovereignty of our nation.

Until you begin implementing policies to discourage illegal immigration, aliens will continue to surge across our border. Restarting MPP, as required by Judge Kacsmaryk's order, will send a strong message to aliens seeking to enter the United States illegally that illegal immigration will not be tolerated.

Please provide the following information by October 22, 2021.

1. Has DHS begun conversations with the Government of Mexico about MPP?

¹ *Texas et al. v. Biden*, 2:21-CV-067-Z, 2021, (N.D. Tex. Aug. 13, 2021) https://ago.mo.gov/docs/default-source/press-releases/mpp.pdf?sfvrsn=f2722fb5_2.

2. If so, what is the status of the conversations?
3. When will DHS begin enrolling aliens in MPP?
4. How many illegal aliens who entered the United States in or around Del Rio, Texas, since September 1, 2021:
 - a. Expressed an intent to apply for asylum or a fear of persecution?
 - b. Were referred for a credible fear screening?
 - c. Received a positive credible fear determination?
 - d. Received a negative credible fear determination?
 - e. Had previously been granted an immigration status or other form of relief in a third country?
 - f. Have been deported?
 - g. Are being detained by DHS while their asylum claim is pending?
 - h. Have been granted parole?
 - i. Were issued a Notice to Appear?
 - j. Were issued a Notice to Report?
5. How many aliens encountered by U.S. Customs and Border Protection since January 20, 2021:
 - a. Expressed an intent to apply for asylum or a fear of persecution?
 - b. Were referred for a credible fear screening?
 - c. Received a positive credible fear determination?
 - d. Received a negative credible fear determination?
 - e. Had previously been granted an immigration status or other form of relief in a third country?
 - f. Have been deported?
 - g. Are being detained by DHS while their asylum claim is pending?
 - h. Have been granted parole?
 - i. Were issued a Notice to Appear?
 - j. Were issued a Notice to Report?
 - k. Have reported to an Immigrations and Customs Enforcement (ICE) office as required by the Notice to Report?

We look forward to your responses.

Sincerely,



Andy Biggs
Member of Congress



Michael Cloud
Member of Congress



Bill Posey
Member of Congress



Lauren Boebert
Member of Congress

Bill Johnson
Member of Congress

Vicky Hartzler
Member of Congress

Scott Fitzgerald
Member of Congress

Bob Gibbs
Member of Congress

W. Gregory Steube
Member of Congress

Andy Harris, M.D.
Member of Congress

Glenn Grothman
Member of Congress

Brian Mast
Member of Congress

Tom McClintock
Member of Congress

Jody Hice
Member of Congress

Matthew Rosendale, Sr.
Member of Congress

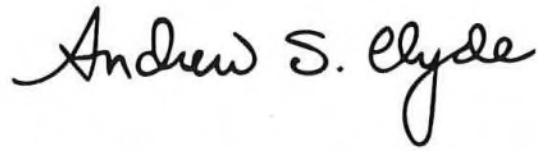
Markwayne Mullin
Member of Congress

Louie Gohmert
Member of Congress

Ted Budd
Member of Congress



Matt Gaetz
Member of Congress



Andrew S. Clyde
Member of Congress



Mo Brooks
Member of Congress



Brian Babin, D.D.S.
Member of Congress



Marjorie Taylor Greene
Member of Congress

Robert Aderholt
Member of Congress



Dan Bishop
Member of Congress



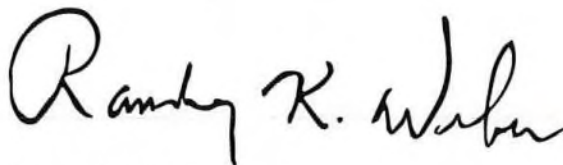
Bob Good
Member of Congress



Chip Roy
Member of Congress



Scott DesJarlais, M.D.
Member of Congress



Randy K. Weber
Member of Congress



Debbie Lesko
Member of Congress

Mary E Miller

Mary E. Miller
Member of Congress

John H Rutherford

John H. Rutherford
Member of Congress

Russ Fulcher

Russ Fulcher
Member of Congress

Yvette Herrell

Yvette Herrell
Member of Congress

United States Senate

September 17, 2021

The Honorable Alejandro Mayorkas
Secretary of Homeland Security
U.S. Department of Homeland Security
245 Murray Lane, S.W.
Washington D.C. 20528

RECEIVED

By ESEC at 12:57 pm, Sep 20, 2021

Secretary Mayorkas,

Those who do not learn from their mistakes are doomed to repeat them. The open-borders policies that President Biden set forth immediately after his inauguration—ending the Migrant Protection Protocols, halting the construction of a wall, and reinstating catch and release—caused an ongoing crisis at our Southern border that the Department of Homeland Security (“DHS”) has refused to address or even acknowledge. Now this administration’s most recent open-borders policies have predictably caused a second humanitarian crisis on our border in Del Rio, Texas.

Earlier this month, this administration made a political decision to halt deportation flights to Haiti. At the time, the influx of illegal aliens to the Del Rio International Bridge at the Port of Entry in Del Rio, Texas, was typically between 700 to 1,100 per day. Since the decision to halt flights, however, people have surged to Del Rio. Yesterday alone there were 10,500 individuals waiting to be processed under that bridge, and nearly 85 percent of them are Haitian. My staff has heard reports from law enforcement that the number may grow to as many as 20,000 migrants by this weekend or early next week. Due to the shockingly high number of migrants—far beyond capacity for quick processing—the migrants are waiting outdoors in inhumane, squalid conditions.

Border Patrol is overwhelmed. Governor Greg Abbott of Texas indicated that when U.S. Customs & Border Protection (“CBP”) requested help from the federal government to close ports of entry and secure the border, the Biden-Harris administration refused to help.¹ Instead, CBP has closed interior checkpoints in order to reallocate adequate manpower to Del Rio. The State of Texas has been forced to deploy the Texas National Guard and direct the Texas Department of Public Safety to assist with efforts at ports of entry.

This is unacceptable and inhumane. You and this administration should act immediately to stop this crisis by making clear that those who illegally come to this country will be deported as the law requires. There is no time to waste. Accordingly, I ask that you provide the following information immediately, and at the latest by Wednesday, September 22, 2021:

¹ Press Release, Office of the Texas Governor, *Governor Abbott Issues Statement on Biden Administration Refusal to Close Ports of Entry* (Sept. 16, 2021), <https://gov.texas.gov/news/post/governor-abbott-statement-on-biden-administration-refusal-to-close-ports-of-entry>.

1. How many Title 42 flights or other repatriation flights to Haiti has DHS conducted since September 1, 2021. Please list all flights, the dates of departure, and the number of individuals on-board.
2. Did DHS conduct a repatriation flight on September 16, 2021?
3. Has DHS cancelled any repatriation flights from September 16, 2021 to the date on which you respond to this letter? If so, please explain the basis for the cancellation.
4. There are currently ten Title 42 repatriation flights scheduled for next week. Will you commit that these Title 42 flights will occur?
5. Will you commit to swiftly repatriating every individual arriving in Del Rio during this crisis who is eligible for repatriation for Title 42?

Sincerely,



Ted Cruz
Member, Senate Judiciary Committee



**Homeland
Security**

February 23, 2022

The Honorable Ted Cruz
United States Senate
Washington, DC 20510

Dear Senator Cruz:

Thank you for your September 17, 2021, letter to the Department of Homeland Security (DHS) regarding the recent influx of migrants at the Del Rio, Texas, Port of Entry. Secretary Mayorkas asked that I respond on his behalf.

As the number of individuals arriving in Del Rio increased rapidly, DHS worked to mobilize a whole-of-government response to ensure the safety and well-being of the migrants, the surrounding community, and our workforce. Significant resources were devoted to improving the conditions migrants experienced under and around the Del Rio International Bridge while they waited to be processed by U.S. Customs and Border Protection.

DHS also worked with federal partners to quickly transport migrants away from the bridge area to other DHS facilities for further processing and additional care. In compliance with the Centers for Disease Control and Prevention's Title 42 Order extended on August 2, 2021, eligible individuals encountered in Del Rio were expelled to their country of origin or nationality in accordance with DHS procedures.

Additional information in response to your specific questions may be found in the enclosure. Thank you again for your letter. Should you wish to discuss this matter further, please do not hesitate to contact us at (b)(6)

Sincerely,

A handwritten signature in black ink that reads "Alice Lugo". The signature is written in a cursive, flowing style.

Alice Lugo
Assistant Secretary for Legislative Affairs

Enclosure

**The Department of Homeland Security's Response to
Senator Ted Cruz's September 17, 2021 Letter**

1. How many Title 42 flights or other repatriation flights to Haiti has DHS conducted since September 1, 2021. Please list all flights, the dates of departure, and the number of individuals on-board?

Between September 1, 2021 and December 31, 2021, U.S. Immigration and Customs Enforcement (ICE) conducted 86 flights to Haiti. Please see the list below:

- 9/15/2021–86 subjects
- 9/19/2021–126 subjects
- 9/19/2021–99 subjects
- 9/20/2021–105 subjects
- 9/21/2021–132 subjects
- 9/21/2021–134 subjects
- 9/21/2021–127 subjects
- 9/22/2021–83 subjects
- 9/22/2021–115 subjects
- 9/23/2021–83 subjects
- 9/23/2021–117 subjects
- 9/23/2021–103 subjects
- 9/23/2021–126 subjects
- 9/24/2021–110 subjects
- 9/24/2021–28 subjects
- 9/25/2021–114 subjects
- 9/25/2021–117 subjects
- 9/25/2021–110 subjects
- 9/25/2021–69 subjects
- 9/26/2021–111 subjects
- 9/26/2021–116 subjects
- 9/26/2021–69 subjects
- 9/27/2021–76 subjects
- 9/27/2021–75 subjects
- 9/27/2021–88 subjects
- 9/27/2021–111 subjects
- 9/28/2021–108 subjects
- 9/28/2021–109 subjects
- 9/28/2021–121 subjects
- 9/29/2021–103 subjects
- 9/29/2021–66 subjects
- 9/29/2021–80 subjects
- 9/29/2021–119 subjects
- 9/30/2021–110 subjects
- 9/30/2021–90 subjects
- 9/30/2021–120 subjects
- 9/30/2021–117 subjects
- 10/1/2021–110 subjects
- 10/1/2021–109 subjects
- 10/1/2021–123 subjects
- 10/2/2021–117 subjects
- 10/2/2021–102 subjects
- 10/2/2021–110 subjects
- 10/2/2021–110 subjects
- 10/3/2021–104 subjects
- 10/4/2021–88 subjects
- 10/5/2021–57 subjects
- 10/6/2021–115 subjects
- 10/7/2021–56 subjects
- 10/7/2021–103 subjects
- 10/9/2021–111 subjects
- 10/12/2021–109 subjects
- 10/14/2021–111 subjects
- 10/15/2021–74 subjects
- 10/19/2021–52 subjects
- 10/19/2021–100 subjects
- 10/22/2021–116 subjects
- 10/28/2021–53 subjects
- 11/3/2021–131 subjects
- 11/5/2021–130 subjects
- 11/9/2021–49 subjects
- 11/12/2021–35 subjects
- 11/16/2021–83 subjects
- 11/19/2021–106 subjects
- 11/26/2021–129 subjects
- 11/30/2021–117 subjects
- 11/30/2021–130 subjects
- 12/3/2021–123 subjects

- 12/7/2021–128 subjects
- 12/7/2021–122 subjects
- 12/10/2021–118 subjects
- 12/13/2021–120 subjects
- 12/14/2021–113 subjects
- 12/15/2021–118 subjects
- 12/16/2021–109 subjects
- 12/17/2021–106 subjects
- 12/20/2021–106 subjects
- 12/20/2021–100 subjects
- 12/21/2021–126 subjects
- 12/22/2021–78 subjects
- 12/23/2021–108 subjects
- 12/23/2021–117 subjects
- 12/27/2021–104 subjects
- 12/29/2021–120 subjects
- 12/30/2021–118 subjects
- 12/30/2021–106 subjects

ICE’s transportation contractor, MVM, Inc. (MVM), has also conducted 31 flights to Haiti between September 1, 2021 and December 31, 2021:

- 9/19/2021–102 family members
- 9/20/2021–128 family members
- 9/21/2021–130 family members
- 9/22/2021–120 family members
- 9/23/2021–119 family members
- 9/24/2021–117 family members
- 9/24/2021–120 family members
- 9/25/2021–119 family members
- 9/26/2021–118 family members
- 9/26/2021–87 family members
- 9/27/2021–120 family members
- 9/27/2021–112 family members
- 9/28/2021–120 family members
- 9/28/2021–118 family members
- 9/28/2021–120 family members
- 9/29/2021–126 family members
- 9/29/2021–120 family members
- 9/29/2021–112 family members
- 9/30/2021–120 family members
- 9/30/2021–111 family members
- 9/30/2021–105 family members
- 12/13/2021–111 family members
- 12/14/2021–120 family members
- 12/15/2021–115 family members
- 12/16/2021–96 family members
- 12/17/2021–111 family members
- 12/20/2021–99 family members
- 12/21/2021–88 family members
- 12/22/2021–105 family members
- 12/23/2021–113 family members
- 12/27/2021–100 family members

2. Did DHS conduct a repatriation flight on September 16, 2021?

The Department of Homeland Security (DHS) did not conduct a flight to Haiti on September 16, 2021.

3. Has DHS cancelled any repatriation flights from September 16, 2021, to the date on which you respond to this letter? If so, please explain the basis for the cancellation?

The following flights to Haiti were cancelled since September 16, 2021:

- 9/16/2021–Cancelled due to insufficient numbers of subjects on the manifest to justify the expenditure of a flight.
- 9/20/2021–Cancelled due to crew duty times, which were exceeded due to non-compliant subjects on board.
- 9/22/2021–Cancelled due to mechanical issues.

- 9/23/2021–Cancelled due to delays at the flight line, which caused the arrival time in Haiti to be too late in the day.
- 9/23/2021–Cancelled due to lack of available flight crew personnel.
- 9/25/2021–Cancelled due to mechanical issues (MVM).
- 9/27/2021–Cancelled due to mechanical issues (MVM).
- 10/26/2021–Cancelled/rescheduled for a future date at the request of the U.S. Embassy in Port-au-Prince.
- 11/4/2021–Cancelled due to a needed review of the manifest for individuals with stays of removal and the updated manifest was removed the following day.
- 11/23/2021–Cancelled/rescheduled for a future date at the request of the U.S. Embassy in Port au Prince.
- 12/21/2021–Cancelled due to lack of available flight crew personnel.

4. There are currently ten Title 42 repatriation flights scheduled for next week. Will you commit that these Title 42 flights will occur?

DHS makes every effort to complete all scheduled Title 42 and removal flights. In the wake of the arrival of individuals in Del Rio, DHS increased the number of Title 42 flights to Haiti to address the increased number of Haitian encounters.

Haiti Removal and Expulsions between September 15, 2021–December 31, 2021

Months	Flights Completed	Title 42 Expulsions	Title 8 Removals
September	58	6,208	9
October	21	1,784	246
November	9	451	459
December	29	2,899	299
Total	147	14,623	1,030

5. Will you commit to swiftly repatriating every individual arriving in Del Rio during this crisis who is eligible for repatriation for Title 42?

DHS applies Title 42 as directed by the Centers for Disease Control and Prevention when appropriate. DHS likewise considers all available processing pathways on a case-by-case basis and applies Title 42 or Title 8 processing, based on a variety of factors to include time in custody and detention capacity. In the case of Del Rio Sector and current numbers of migrants being encountered at the Southwest Border, DHS used all available processing pathways, including managing detention by transferring migrants to other sectors with greater capacity or less impacted by the surge of migrants for processing and coordinating with governmental and non-governmental stakeholders.



September 18, 2021

Hon. Alejandro Mayorkas
Secretary
Department of Homeland Security
MS 0525
2707 Martin Luther King Jr. Ave. SE
Washington, DC 20528-0525

RECEIVED

By ESEC at 12:40 pm, Sep 20, 2021

Dear Secretary Mayorkas:

We write today to express our alarm at your decision to close the ports of entry at Del Rio, Texas as part of the Department of Homeland Security's response to the surge in Haitian migrants in that community.

The Border Trade Alliance acknowledges the tremendous strain DHS resources are under as the department confronts a spike in asylum seekers at the United States-Mexico border. But closing international bridges is an extreme measure that we believe should be immediately reversed.

Just-in-time manufacturing operations require predictable access to the ports of entry along the U.S.-Mexico border to meet customer needs and to maintain consistent supply chains. The decision to reroute commercial traffic away from Del Rio is an expensive disruption in U.S.-Mexico trade flows.

Furthermore, border citizens like those who live in Del Rio are members of a unique binational culture and economy best thought of as one city, two countries, where members of the same family or workplace might reside on either side of the border. While most pedestrian and private vehicle traffic at the U.S.-Mexico border has been banned due to DHS attempts to mitigate the spread of Covid-19, essential border crossings, such as for employees traveling to and from work, may continue. The decision by DHS to close the Del Rio ports of entry means essential workers must travel an hour out of their way to enter the U.S., another blow to a local economy already reeling from DHS travel policies.

We urge you to reopen these closed ports of entry as soon as possible. Your decision to surge additional Border Patrol agents to the Del Rio sector should result in sufficient personnel to address the migrant surge and make the ports of entry closure unnecessary.

On behalf of our members in the public and private sectors, we would welcome the opportunity to discuss this urgent matter with you or your staff at your earliest convenience.

Sincerely,

Sergio Contreras
Chair

Britton Mullen
President



September 18, 2021

RECEIVED

By ESEC at 10:54 am, Sep 22, 2021

Hon. Alejandro Mayorkas
Secretary
Department of Homeland Security
MS 0525
2707 Martin Luther King Jr. Ave. SE
Washington, DC 20528-0525

Dear Secretary Mayorkas:

We write today to express our alarm at your decision to close the ports of entry at Del Rio, Texas as part of the Department of Homeland Security's response to the surge in Haitian migrants in that community.

The Border Trade Alliance acknowledges the tremendous strain DHS resources are under as the department confronts a spike in asylum seekers at the United States-Mexico border. But closing international bridges is an extreme measure that we believe should be immediately reversed.

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We urge you to reopen these closed ports of entry as soon as possible. Your decision to surge additional Border Patrol agents to the Del Rio sector should result in sufficient personnel to address the migrant surge and make the ports of entry closure unnecessary.

On behalf of our members in the public and private sectors, we would welcome the opportunity to discuss this urgent matter with you or your staff at your earliest convenience.

Sincerely,

Sergio Contreras
Chair

Britton Mullen
President



**OFFICE OF THE
ATTORNEY
GENERAL
STATE OF ILLINOIS**

**OFFICE OF THE
ATTORNEY GENERAL
DISTRICT OF
COLUMBIA**

**OFFICE OF THE
ATTORNEY
GENERAL
STATE OF NEVADA**

**OFFICE OF THE
ATTORNEY
GENERAL
STATE OF NEW
YORK**

**OFFICE OF THE
ATTORNEY
GENERAL
U.S. VIRGIN
ISLANDS**

September 23, 2021

Via E-mail and U.S. Mail

President Joseph Biden
The White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

The Honorable Alejandro Mayorkas
Secretary of Homeland Security
Washington, DC 20528

Re: Haitian Refugees

RECEIVED

By ESEC at 2:38 pm, Sep 24, 2021

Dear President Biden and Secretary Mayorkas:

We, the Attorneys General of Illinois, the District of Columbia, Nevada, New York, the U.S. Virgin Islands, California, Connecticut, Iowa, Maine, Massachusetts, Michigan, Minnesota, New Mexico, Oregon, Rhode Island, Vermont, Virginia, and Washington write to you concerning the urgent circumstances facing thousands of Haitian migrants currently seeking the humanitarian aid of the United States at our borders. Like many Americans, we were grateful to learn that your administration will investigate the tactics of U.S. immigration officials on horseback who were recently filmed and photographed charging at—and apparently attempting to whip—Haitian migrants as they sought to bring food to their families massed under a bridge in Del Rio, Texas.¹ We trust that this investigation will result in the cessation of these inhumane tactics, which do not reflect the values of our nation and our respective states. Likewise, we commend the

¹ See Alexandra Petri, *Homeland Security Investigates Border Patrol's Treatment of Haitian Immigrants*, N.Y. TIMES (Sept. 20, 2021), <https://www.nytimes.com/2021/09/20/us/politics/haitians-border.html>.

administration for its recent decision to greatly increase the number of refugees who will be allowed into the United States in the coming fiscal year.²

While we are confident that your administration will address the alarming practices recently used to apprehend Haitian migrants at the border, we remain deeply concerned by the administration's continuation of a summary deportation policy (ostensibly supported by 42 U.S.C. § 265 and related rules) that is sending many Haitians back to a country facing one of the worst series of crises in its history. Haiti is experiencing unprecedented political upheaval from this summer's presidential assassination and is struggling yet again to rebuild after a destabilizing earthquake. These unexpected events have prompted a new influx of Haitian nationals seeking refuge in our country. We understand that the administration must constantly reconsider and formulate responses to a challenging crisis that is unfolding day by day. However, individuals seeking asylum or other humanitarian assistance in our country deserve our respect and compassion, and they should not be treated differently from other migrants based on their country of origin. Haitians deserve the same due process as all others attempting to immigrate or flee to the United States. The circumstances of every Haitian seeking refuge here should be assessed on a case-by-case basis. This individualized evaluation should factor in both the time a person has been away from Haiti and the circumstances he or she would likely face if compelled to return to a nation in the midst of dire humanitarian and governance crises.

We support and encourage the Administration to use the several tools available to address the critical conditions for the Haitians who have sought refuge under the bridge in Del Rio. In immigration matters, the Supreme Court has repeatedly affirmed "the deference traditionally accorded the President in this sphere."³ For example, the President may set a number of refugees to be admitted to the United States separate from the annual cap after determining that "an unforeseen emergency refugee situation exists," and that admission of those refugees "is justified by grave humanitarian concerns."⁴ The administration also could invoke country-specific measures to allow these migrants to legally remain in the United States while conditions in their country of origin are too hazardous for them to safely return.⁵ On an individual level, the Attorney General may parole a migrant into the United States if he "determines that compelling reasons in the public interest with respect to that particular alien require that the alien be paroled into the United States."⁶

We also respectfully urge your administration to reconsider relying on 42 U.S.C. § 265 and related rules to justify expelling Haitian nationals to Haiti. As one federal court recently held, citing Title 42 to expel foreign nationals already in the United States on public health grounds defies the language of the statute and overrides clear humanitarian protections for refugees in the law.⁷

² See Mica Rosenberg & Lisa Lambert, *Biden Administration Seeks to Lift U.S. Refugee Cap to 125,000*, REUTERS (Sept. 20, 2021), <https://reut.rs/3EHHWmG>.

³ *Trump v. Hawaii*, 138 S. Ct. 2392, 2409 (2018).

⁴ 8 U.S.C. § 1157(b).

⁵ See, e.g., 86 FR 41863, *Designation of Haiti for Temporary Protected Status* (Aug. 3, 2021); 86 FR 9531, *Reinstatement of Deferred Enforced Departure and Continuation of Employment Authorization and Automatic Extension of Existing Employment Authorization Documents for Eligible Liberians* (Feb. 16, 2021).

⁶ 8 U.S.C. § 1182(d)(5)(B).

⁷ See *Huisha-Huisha v. Mayorkas*, Civ. Action No. 21-100, 2021 WL 4206668 (D.D.C. Sept. 16, 2021).

As Attorneys General, we understand the need to respond to an evolving crisis while following the law. We urge the administration to exercise its discretion—discretion that the law expressly provides—to demonstrate compassion and fairness in the treatment of those Haitians seeking refuge in our country.

Respectfully,



KWAME RAOUL
Illinois Attorney General



KARL A. RACINE
District of Columbia Attorney General



AARON D. FORD
Nevada Attorney General



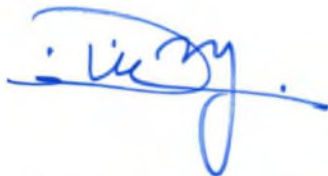
LETITIA A. JAMES
New York Attorney General



DENISE N. GEORGE
U.S. Virgin Islands Attorney General



ROB BONTA
California Attorney General



WILLIAM TONG
Connecticut Attorney General



TOM MILLER
Iowa Attorney General



AARON M. FREY
Maine Attorney General



MAURA HEALEY
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DANA NESSEL
Michigan Attorney General



KEITH ELLISON
Minnesota Attorney General



HECTOR BALDERAS
New Mexico Attorney General



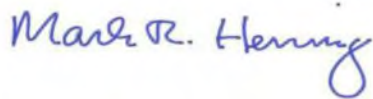
ELLEN F. ROSENBLUM
Oregon Attorney General



PETER NERONHA
Rhode Island Attorney General



THOMAS J. DONOVAN, JR.
Vermont Attorney General



MARK R. HERRING
Virginia Attorney General



BOB FERGUSON
Washington Attorney General

Secretary

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

December 3, 2021

The Honorable Bennie G. Thompson
Chairman
Committee on Homeland Security
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Thompson:

Thank you for your September 22, 2021 letter to the Department of Homeland Security and the Department of State regarding the removal of certain Haitian nationals to Haiti. I apologize for the delay in responding.

DHS shares your concern about the situation in Haiti, and we continue to monitor conditions closely in coordination with our counterparts at the Department of State. As noted in your letter, Haiti was designated in May 2021 for Temporary Protected Status (TPS) due to the conditions in-country. Under this designation, individuals must demonstrate that they have continuously resided in the United States since July 29, 2021. Individuals who attempt to travel to the United States after July 29, 2021 are not eligible for TPS and may be subject to expulsion or removal.

The arrival of thousands of Haitian nationals at the U.S. border with Mexico placed the migrants at risk during a global pandemic, strained resources, and created challenges for the U.S. immigration system. The Biden-Harris Administration is committed to improving and streamlining the U.S. immigration system by restoring trust, respecting human dignity, and promoting equality. This includes guaranteeing the rights of all individuals, including Haitian nationals, are protected in accordance with U.S. laws and regulations while simultaneously protecting the national security and public safety of the United States and ensuring a fair and lawful immigration process. While noncitizens are provided the opportunity to pursue relief or protection from removal for which they are statutorily eligible, this does not guarantee every person seeking to remain in the United States will be able to do so. In accordance with U.S. immigration law, if a noncitizen has a final order of removal, including those issued by a Department of Justice Executive Office for Immigration Review immigration judge, U.S. Immigration and Customs Enforcement can remove the noncitizen from the United States. ICE strives to ensure that all removals are conducted in a lawful, safe, and humane manner and consistent with the guidelines effective November 29, 2021.

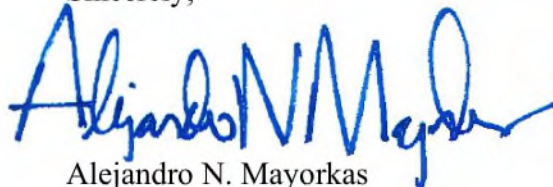
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On October 4, 2021, the CDC updated an order under Title 42 under which noncitizens crossing the border without documentation may be expeditiously returned to their country of last transit—Canada or Mexico—or, when such a return is not possible, to their country of origin. Currently, it remains DHS policy that Haitian single adults and families who cross the border without authorization are subject to expulsion to Haiti under the CDC's Title 42 authority. Due to the ongoing COVID-19 pandemic, specifically the Delta and recently discovered Omicron variants, DHS must continue to use precautions, and exercise the Title 42 authority to expel most single adults, and, to the extent possible, families encountered at the Southwest Border.

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Thank you again for your letter; enclosed are responses to the specific questions in your letter. Chairman Meeks, who cosigned your letter, will receive a separate, identical response. Should you wish to discuss this matter further, please do not hesitate to contact me, or have a member of your staff contact the Office of Legislative Affairs at (b)(6)

Sincerely,

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Alejandro N. Mayorkas
Secretary

Enclosure

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- 9/3/2021: 52
- 9/4/2021: 1
- 9/6/2021: 2
- 9/7/2021: 15
- 9/8/2021: 38
- 9/9/2021: 28
- 9/10/2021: 38
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Secretary

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

December 3, 2021

The Honorable Gregory W. Meeks
Chairman
Committee on Foreign Affairs
U.S. House of Representatives
Washington, DC 20515

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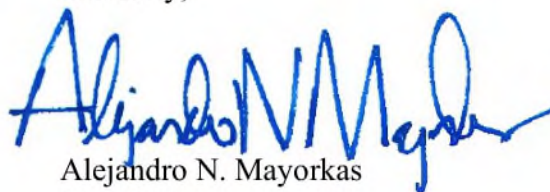
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Congress of the United States
Washington, DC 20515

RECEIVED

By ESEC at 12:24 pm, Sep 22, 2021

September 22, 2021

The Honorable Alejandro Mayorkas
Secretary
Department of Homeland Security
301 7th Street, SW
Washington, DC 20528

The Honorable Anthony Blinken
Secretary
U.S. Department of State
2201 C Street NW
Washington, D.C., 20520

Dear Secretary Mayorkas and Secretary Blinken:

We write to express serious concern regarding the ongoing repatriation of Haitian migrants and urge a humanitarian moratorium on these repatriations. We also write to request the documented assessments that informed the Administration's determination that Haiti is equipped to welcome and resettle deportees, and detailed information regarding the coordination efforts between the Department of Homeland Security and the Department of State to undergo this mission.

As you are aware, thousands of Haitians and other migrants have arrived in Del Rio, Texas over the past week and are now seeking shelter in squalid conditions under a bridge. Despite the Administration's rapid deployment of personnel and resources in response to this crisis, much of the strategy to address the care of these vulnerable individuals is deeply concerning.

Specifically, we urge the Administration to halt repatriations to Haiti until the country recovers from these devastating crises. We are troubled by the plan to repatriate thousands of people to Haiti, despite the instability, violence, and devastation that continue to plague the country. Compounding our concern, it appears that repatriation flights to Haiti include Haitian nationals who have been residing outside of Haiti for many years and may no longer have significant ties in the country.

As you are aware, Haitian nationals in the United States received Temporary Protected Status (TPS) in May 2021 "due to extraordinary and temporary conditions in Haiti that prevent nationals from returning safely, specifically, a political crisis and human rights abuses; serious security concerns; and the COVID-19 pandemic's exacerbation of a dire economic situation and lack of access to food, water, and healthcare."¹ Since this designation, Haiti has experienced a 7.2 magnitude earthquake and the assassination of President Jovenel Moïse, both of which have further destabilized the country.

Given these concerns, we request the following information by October 1, 2021:

- 1) Information on the State Department process for determining the Haitian government's ability to accept returnees, including all documentation outlining the conditions in Haiti that were used to make this determination.

¹ Department of Homeland Security, *Secretary Mayorkas Designates Haiti for Temporary Protected Status for 18 Months*, May 22, 2021).

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Thank you for your prompt attention to this important matter.

Sincerely,



Bennie G. Thompson
Chairman
House Committee on Homeland Security



Gregory W. Meeks
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House Committee on Foreign Affairs

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The last known country of residence is not a mandatory field for processing, so this information is not captured by CBP.

5. A detailed breakdown of non-Haitian individuals repatriated from the Del Rio Sector since August 15, 2021. Please include demographics, country of origin, and country, and date of repatriation.

There was a total of 728 non-Haitian individuals removed under Title 8 authority by the ICE San Antonio Area of Responsibility (which oversees the Del Rio sector) from August 15, 2021 to September 24, 2021. Separately, there was a total of 21 non-Haitian unaccompanied children (UC) released from the custody of the Department of Health and Human Services Office of Refugee Resettlement for removal by ERO between August 15, 2021 and September 24, 2021. Please note, all 21 UC removals during this period were of Honduran nationality. ICE Enforcement and Removal Operations does not track removals by sector.

Below is the breakout by country of citizenship for the above population:

- Bolivia: 1
- Brazil: 8
- Colombia: 8
- Democratic Republic of the Congo: 1
- Dominican Republic: 8
- Ecuador: 48
- El Salvador: 76
- Guatemala: 68
- Honduras: 149
- Ireland: 1
- Ivory Coast: 1
- Mexico: 289
- Morocco: 1
- Nicaragua: 57
- Peru: 3
- Romania: 2
- Spain: 1
- Venezuela: 6

Below is the breakout by Date of Removal for the above population:

- 8/15/2021: 10
- 8/16/2021: 4
- 8/17/2021: 14
- 8/18/2021: 17
- 8/19/2021: 6
- 8/20/2021: 54
- 8/21/2021: 6
- 8/22/2021: 1
- 8/23/2021: 8
- 8/24/2021: 4
- 8/25/2021: 36
- 8/26/2021: 70
- 8/27/2021: 49
- 8/28/2021: 3
- 8/29/2021: 3
- 8/30/2021: 5
- 8/31/2021: 7
- 9/1/2021: 29
- 9/2/2021: 12
- 9/3/2021: 52
- 9/4/2021: 1
- 9/6/2021: 2
- 9/7/2021: 15
- 9/8/2021: 38
- 9/9/2021: 28
- 9/10/2021: 38
- 9/11/2021: 3
- 9/12/2021: 3
- 9/13/2021: 11
- 9/14/2021: 17
- 9/15/2021: 9
- 9/16/2021: 16
- 9/17/2021: 40
- 9/18/2021: 8
- 9/20/2021: 2
- 9/21/2021: 7
- 9/22/2021: 34
- 9/23/2021: 25
- 9/24/2021: 41

Below is the breakout by gender for the above population:

- Female: 107
- Male: 621

6. Information on plans for repatriation of migrants encountered in Del Rio going forward, broken out by nationality and recipient country and documentation of the terms of the agreements made to receive and support individuals and families.

The Del Rio irregular migrant surge has subsided to a pre-surge operations status as of September 30, 2021.

7. Information regarding the United States' efforts to support Haitians repatriated to Haiti including any assistance, aid, or healthcare including Covid-19 vaccinations, and/or counseling delivered.

DHS defers to the Department of State regarding any additional support.

8. Information regarding how the Department of Homeland Security is selecting families and individuals in the Del Rio Sector to be processed in accordance with the CDC's Title 42 public health order.

DHS is assisting in implementing the Centers for Disease Control and Prevention's (CDC) *Order Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists*. Individuals covered by the CDC Order may be excepted from Title 42 on a case-by-case basis based on a totality of the circumstances, including considerations of significant law enforcement, officer and public safety, humanitarian, and public health interests. The individuals excepted from the CDC Order were processed under Title 8, which may include assessing individuals' asylum claims.

9. Information regarding how the Administration is processing individuals who attempt to claim asylum in the Del Rio Sector.

Noncitizens processed for expulsions pursuant to Title 42 may express a fear of return at any point. In implementing the CDC Order, DHS will refer a noncitizen to U.S. Citizenship and Immigration Services for a screening under the Convention Against Torture if the noncitizen expresses a fear of torture.

An asylum officer will assess whether it is more likely than not that the noncitizen would be tortured in the country to which they would be sent. If the noncitizen meets the threshold screening standard, DHS will except the noncitizen from the CDC Order, and the case will proceed under Title 8. Noncitizens excepted from the CDC Order, or noncitizens who are not covered by the CDC Order, are processed under the appropriate Title 8 removal pathway. Noncitizens processed under Title 8 for expedited removal who express an intention to apply for asylum or claim a fear of persecution or torture are referred to USCIS for a credible fear screening with an asylum officer.

National U.S. Jewish Organizations Urge an End to Title 42



October 14, 2021

Hon. Joseph R. Biden
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Hon. Alejandro N. Mayorkas
U.S. Department of Homeland Security
301 7th Street, SW
Washington, DC 20528

RECEIVED
By ESEC at 1:07 pm, Oct 14, 2021

Dear President Biden and Secretary Mayorkas:

We the following 16 undersigned American Jewish organizations write to urge you to end the use of the 1944 *Public Health Services Act* (Title 42) to rapidly expel asylum seekers at our southern border.

We applaud your administration's efforts to unwind unjust asylum policies and programs, including taking steps to end disastrous programs such as the Migrant Protection Protocols and the Asylum Cooperative Agreements, as well as vacating decisions that made it almost impossible for survivors of gang and domestic violence to find safety here. However, we are deeply disappointed that there is no end in sight to ending the use of Title 42.

We are troubled that the Department of Justice continues to defend the policy in court, even appealing a judicial opinion that Title 42 is illegal as applied to families.¹ In addition, the recent expulsion of thousands of Haitians who crossed the U.S./Mexico border at Del Rio, Texas raised significant protection concerns. The denial of the right to seek asylum should never be used as a policy to deter people from exercising their legal right to seek asylum. These expulsions were an affront to this principle and likely put thousands of people in great danger.

Not only is Title 42 in violation of U.S. law and our international obligations, but the impact of Title 42 expulsions has been devastating for thousands of families. Since March 2020 when U.S. Customs and Border Protection (CBP) officers began to rapidly turn away arrivals at the southern border, the majority of asylum seekers have been denied the opportunity to state a fear of returning to their home countries. These expulsions have taken place while there is little evidence that supports that denying asylum seekers their legal right to seek protection helps to curb the spread of COVID-19.

¹ See *Huisha-Huisha v. Mayorkas*.

The Title 42 policy endangers the lives of those expelled. There are thousands of documented cases of asylum seekers who were sent to Mexico being kidnapped, raped, or otherwise violently assaulted.² Title 42 is also unintentionally encouraging family separation: while CBP does not apply Title 42 to unaccompanied minors, some desperate families feel they have no choice but to send their children alone into the United States to find safety.

The Torah tells us that each human life is sacred and that every human being is entitled to dignity. We are commanded to not return a refugee to harm's way, to take care of the most vulnerable, and to welcome the stranger. We urge the administration to end the use of Title 42 for everyone as quickly as possible and in doing so take one more important step in restoring humanity to the U.S. asylum system.

Sincerely,

Signed:

Anti-Defamation League

Ameinu

American Jewish Committee

Bend the Arc: Jewish Action

HIAS

J Street

Jewish Council for Public Affairs

Jewish Women International

Jewish World Watch

Keshet

National Council of Jewish Women

Network of Jewish Human Service Agencies

Rabbinical Assembly

Reconstructionist Rabbinical Association

Truah: The Rabbinic Call for Human Rights

Union for Reform Judaism

² <https://www.humanrightsfirst.org/press-release/new-report-finds-biden-administration-s-embrace-title-42-expulsions-leading-human>

Appendix in Support of Letter on Second Termination Memorandum

1. Centers for Disease Control, *COVID-19 in Mexico*,
<https://wwwnc.cdc.gov/travel/notices/covid-3/coronavirus-mexico>2
2. Secretary of Foreign Affairs, Mexico’s COVID-19 Monitoring System,
<https://embamex.sre.gob.mx/eua/index.php/en/2016-04-09-20-40-51/tourism/1760-mexico-s-covid-19-monitoring-system>6
3. Executive Office for Immigration Review, EOIR Operational Status,
<https://www.justice.gov/eoir-operational-status>8
4. Executive Office for Immigration Review, “Notice of Public Health Procedures,” July 2021,
<https://www.justice.gov/file/1398881/download>.9
5. Department of Justice, Re: Innovation Law Lab v. McAleenan, No. 19-15716 (9th Cir.) (oral argument held on October 1, 2019, James R. Browning Courthouse, Courtroom 1, San Francisco, California), Rule 28(j) Letter10
6. Mica Rosenberg, Kristina Cooke, Reade Levinson, “Hasty Rollout of Trump immigration policy has ‘broken’ border courts,” *Reuters*, September 10, 201913
7. “Seeking Asylum: Part 2,” U.S. Immigration Policy Center, UC San Diego, October 29, 2019.....20
8. Senator Jeff Merkley, “Shattered Refuge: A U.S. Senate Investigation into the Trump Administration’s Gutting of Asylum,” November 201935
9. Mary Beth Sheridan, “Cubans were once privileged migrants to the United States. Now they’re stuck at the border, like everyone else,” *Washington Post*, November 5, 2019 ...115
10. American Immigration Council, American Immigration Lawyers Association, and Catholic Legal Immigration Network, Inc., “Re: Substantial Evidence Demonstrating Catastrophic Harms That Will Befall Migrants in Mexico with Continued Implementation and Further Expansion of Migrant Protection Protocols,” February 6, 2019120
11. Amici Curiae Brief of Nonprofit Organizations, Law School Clinics, and Immigration Judges in Support of Defendants-Appellants and Reversal, *Biden v. Texas*, No. 21-10806 (5th Cir. filed Sept. 27, 2021)150
12. Amici Curiae Brief of Tahirih Justice Center, The American Immigration Council, The American Immigration Lawyers Association, HIAS, The Fred T. Korematsu Center for Law and Equality, and Human Rights First in Support of Respondents, *Matter of ___* (BIA 2019)214

COVID-19 in Mexico

Level 3: High Level of COVID-19 in Mexico

Key Information for Travelers to Mexico

- **Make sure you are fully vaccinated before traveling to Mexico.**
- Unvaccinated travelers should avoid nonessential travel to Mexico.
- Because of the current situation in Mexico, all travelers may be at risk for getting and spreading COVID-19 variants.
- See [recommendations for fully vaccinated travelers](#).
- See [recommendations for unvaccinated travelers](#).
- Travelers should follow recommendations or requirements in Mexico, including wearing a mask and staying 6 feet apart from others.
- [Quick guide](#) for travelers.

COVID-19 Levels

-  Level 4: Very High
-  **Level 3: High**
-  Level 2: Moderate
-  Level 1: Low
-  Level unknown

[Learn more about COVID-19 levels.](#)

[See all COVID-19 travel notices.](#)

Travel Recommendations for Fully Vaccinated Travelers

If you are **fully vaccinated** with an FDA-authorized vaccine or a vaccine authorized by emergency use by the World Health Organization:

- You do NOT have to get tested before leaving the United States, unless your destination requires it.
- You do NOT have to self-quarantine after you arrive in the United States.

Before travel:

- Make sure you understand and follow all airline and destination requirements related to travel, testing, masking, or quarantine, which may differ from U.S. requirements. If you do not follow your destination's requirements, you may be denied entry and may be required to return to the United States.

During travel:

- [Wearing a mask over your nose and mouth is required](#) on planes, buses, trains, and other forms of public transportation traveling into, within, or out of the United States and while indoors at U.S. transportation hubs such as airports and stations. Travelers are not required to wear a mask in outdoor areas of a conveyance (like on open deck areas of a ferry or the uncovered top deck of a bus).
- Travelers should follow recommendations or requirements in Mexico, including mask wearing and social distancing.

Before you travel to the United States by air

All air passengers coming to the United States, **including U.S. citizens and fully vaccinated people, are required** to have a negative COVID-19 test result no more than 3 days before travel or documentation of recovery from COVID-19 in the past 3 months before they board a flight to the United States.

After Travel

- You should get tested with a [viral test](#) 3-5 days after travel
- Self-monitor for COVID-19 symptoms; isolate and get tested if you develop symptoms.
- Follow all [state and local](#) recommendations or requirements.

Do NOT travel if were [exposed to COVID-19](#), [you are sick](#), [you test positive for COVID-19](#), or you are waiting for results of a COVID-19 test. Learn when it is [safe for you to travel](#). Don't travel with someone who is sick.

Travel Recommendations for Unvaccinated Travelers

If you are **not** [fully vaccinated](#) and must travel, take the following steps:

Before travel:

- Get tested with a viral test 1-3 days before your trip.

During travel:

- [Wearing a mask over your nose and mouth is required](#) on planes, buses, trains, and other forms of public transportation traveling into, within, or out of the United States and while indoors at U.S. transportation hubs such as airports and stations. Travelers are not required to wear a mask in outdoor areas of a conveyance (like on open deck areas of a ferry or the uncovered top deck of a bus). CDC recommends that travelers who are not [fully vaccinated](#) continue to wear a mask and maintain physical distance when traveling.
- Avoid crowds and [stay at least 6 feet/2 meters](#) (about 2 arm lengths) from anyone who did not travel with you. It's important to do this everywhere—both indoors and outdoors.
- [Wash your hands](#) often or use hand sanitizer (with at least 60% alcohol).

Before you travel to the United States by air

All air passengers coming to the United States, **including U.S. citizens and fully vaccinated people**, [are required](#) to have a negative COVID-19 test result no more than 3 days before travel or documentation of recovery from COVID-19 in the past 3 months before they board a flight to the United States.

After you travel:

- [Get tested](#) with a [viral test](#) 3-5 days after travel **AND** stay home and self-quarantine for a full 7 days after travel.
 - Even if you test negative, stay home and self-quarantine for the full 7 days.
 - If your test is positive, [isolate](#) yourself to protect others from getting infected.
 - If you don't get tested, stay home and self-quarantine for 10 days after travel.
- Avoid being around people who are at [increased risk for severe illness](#) for 14 days, whether you get tested or not.
- Self-monitor for COVID-19 symptoms; isolate and get tested if you develop symptoms.
- Follow all [state and local](#) recommendations or requirements.

Do NOT travel if were [exposed to COVID-19](#), [you are sick](#), [you test positive for COVID-19](#), or you are waiting for results of a COVID-19 test. Learn when it is [safe for you to travel](#). Don't travel with someone who is sick.

[alternative text for web accessible infographic](#)

CORONAVIRUS DISEASE 2019 (COVID-19)

International Travel

RECOMMENDATIONS AND REQUIREMENTS

Not Vaccinated

Fully Vaccinated

Get tested 1-3 days before traveling out of the US



Mandatory test required before flying to US



Get tested 3-5 days after travel



Self-quarantine after travel for 7 days with a negative test or 10 days without test



Self-monitor for symptoms



Wear a mask and take other precautions during travel



[cdc.gov/coronavirus](https://www.cdc.gov/coronavirus)

CS323515-A 04/02/2021

Information for people who recently recovered from COVID-19

If you recovered from a documented COVID-19 infection within the last 3 months, follow all requirements and recommendations for fully vaccinated travelers except you do NOT need to get a test 3-5 days after travel unless you are symptomatic. People can continue to test positive for up to 3 months after diagnosis and not be infectious to others.

More Considerations

If traveling by air, check if your airline requires any health information, test results, or other documents. Check with your destination's Office of Foreign Affairs or Ministry of Health or the [US Department of State, Bureau of Consular Affairs, Country Information page](#) for details about entry requirements and restrictions for arriving travelers. Follow any entry requirements or restrictions at your destination which might include testing, quarantine, and providing contact information. If you do not follow your destination's requirements, you may be denied entry and required to return to the United States. If you test positive on arrival, you might be required to isolate. You might be prevented from returning to the United States as scheduled.

If you get sick, you might need medical care. Plan ahead and learn more about [Getting Health Care During Travel](#). You might not be permitted to return to the United States until you [can end isolation](#). If you are exposed to someone with COVID-19 during travel, you might be quarantined and not be permitted to return to the United States until your quarantine is lifted.

Clinician Information

Clinicians should obtain a detailed travel history for patients with [symptoms of COVID-19 infection](#). If you suspect that a traveler has COVID-19, see [Information for Healthcare Professionals about Coronavirus \(COVID-19\)](#) for information on evaluating, reporting, clinical care guidance, and infection control.

More Information

- [Know When Not to Travel to Avoid Spreading COVID-19](#)
- [How CDC Determines the Level of a Destination's COVID-19 Travel Health Notice](#)
- [International Travel During COVID-19](#)
- [Coronavirus Disease 2019](#)
- [Information for Healthcare Professionals](#)
- [WHO, Coronavirus](#)

- [US Department of State: Smart Traveler Enrollment Program \(STEP\)](#)
-

Page last reviewed: June 07, 2021

Content source: [National Center for Emerging and Zoonotic Infectious Diseases \(NCEZID\)](#)
[Division of Global Migration and Quarantine \(DGMQ\)](#)



Semáforo Epidemiológico



*Actualizado: 12-10-2021
Fuente: [DGE](#)

Información General

Semáforo Epidemiológico

Comparativo

Mapas Generales

Descargas

Nota Metodológica

Mapa del Semáforo Epidemiológico

(Seleccione una unidad ↓ para ver más información)



Leaflet | © OpenStreetMap © CartoDB

Semáforo Epidemiológico

Seleccione en el mapa un estado para ver su información.

Fuente: coronavirus.gob.mx/semaforo



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Enlaces

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- Publicaciones Oficiales
- Marco Jurídico
- Plataforma Nacional de Transparencia

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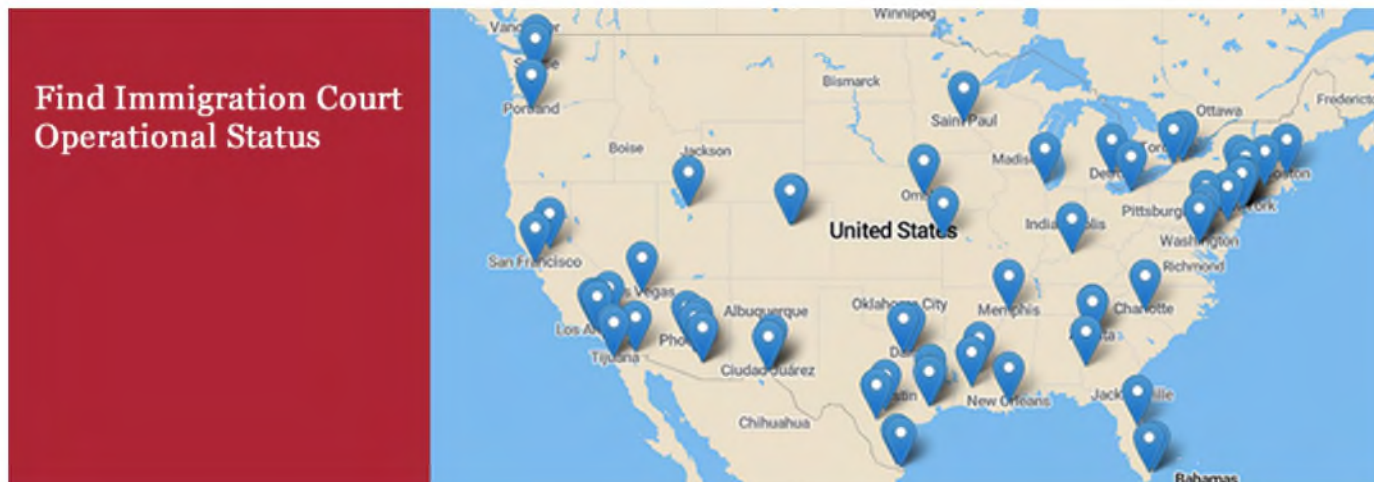
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- Aviso de privacidad simplificado
- Términos y condiciones
- Política de seguridad
- Mapa del sitio

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EOIR'S AUTOMATED CASE INFORMATION APPLICATION AND HOTLINE

Case status and hearing date information may not be updated for those cases postponed due to operational changes during the coronavirus pandemic. Following the issuance of a new hearing notice, such information will be updated. As always, court documents such as notices are your official source of information.

PUBLIC HEALTH INFORMATION

Consistent with public health officials' guidance, EOIR has implemented practices to help to protect all people working in and visiting EOIR spaces throughout the country. Please see the agency's [Public Health Notice](#) for more information ([Translations](#)) and [FAQs](#) for more information.

NON-DETAINED HEARINGS

On July 6, EOIR [resumed non-detained hearings](#) at the following immigration courts: Dallas, El Paso, Ft. Snelling, Harlingen, Houston, Houston – S. Gessner Road, Houston – Greenspoint Park Drive, Kansas City, Memphis, New York – Broadway, New York – Federal Plaza, New York – Varick, Portland, San Antonio, and San Juan. Noncitizens with scheduled hearings from July 6 through July 30 (or representatives who have entered an appearance with the court for a case on those days) who have not received a notice of reset hearing by June 22 should expect scheduled hearings to proceed as scheduled. As always, official court notices will be your best source of information. As of July 6, 2021, all immigration courts are holding limited hearings, applying relevant Federal best practices related to communicable disease. Click on the above map for the latest operational status of courts nationwide. For case-specific information, please have the relevant alien registration number and call [\(b\)\(6\)](#) or visit the [Automated Case Information portal](#).

MIGRANT PROTECTION PROTOCOLS (MPP) HEARINGS

[DHS Announces Process to Address Individuals in Mexico with Active MPP Cases](#)

Notice of Public Health Procedures



<p>Face coverings may be required in immigration court spaces, including the courtroom.</p>	<p>Be prepared – have a mask available.</p> <p>As necessary and when appropriate, individuals with medical conditions that prevent them from wearing a face covering should alert the judge to their situation.</p>
<p>Social distancing practices are in place. Maintaining a distance of six feet from those with whom you do not live is required.</p>	<p>To maintain distancing while best facilitating hearings, you may be asked to move or leave a particular area.</p> <p>Please follow instructions from staff or on signs that direct you to a specific area or seat. If instructed to sit in a particular location, do not switch seats until you are informed by court staff that it is permissible.</p>
<p>Waiting times to enter the building, an elevator, and EOIR space may be significantly longer than usual or expected.</p>	<p>Keeping such possible wait times in mind—make arrangements to arrive to the courtroom on time.</p>
<p>Limited attendance practices are in place.</p>	<p>Please do not bring people with you into EOIR space unless they are required to be present for your hearing.</p> <p>State, local, building, and immigration court attendance policies may apply.</p>

For specific information about your case, visit the Automated Case Information Portal or call (b)(6) and enter the registration number associated with your case.

For information about immigration court proceedings and resources to assist you with your case, please visit the Immigration Court Online Resource (ICOR).

APPENDIX I



U.S. Department of Justice
Civil Division
P.O. Box 868, Ben Franklin Station
Washington, D.C. 20044

Oct. 30, 2019

Molly C. Dwyer
Clerk, U.S. Court of Appeals
for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103

Re: *Innovation Law Lab v. McAleenan*, No. 19-15716
(9th Cir.) (oral argument held on October 1,
2019, James R. Browning Courthouse, Court-
room 1, San Francisco, California), Rule 28(j)
Letter

Dear Ms. Dwyer:

Defendants inform the Court that, on October 28, 2019, the Department of Homeland Security (DHS) issued an “Assessment of the Migrant Protection Protocols (MPP),” available at https://www.dhs.gov/sites/default/files/publications/assessment_of_the_migrant_protection_protocols_mpp.pdf. The Assessment evaluates MPP based on DHS’s nine months of implementation experience.

The Assessment explains, first, that “MPP has been an indispensable tool in addressing” the immigration and border crisis. Assessment 2; *see* Assessment 2-3.

Among other things, “DHS has observed a connection between MPP implementation and decreasing enforcement actions at the border—including a rapid and substantial decline in apprehensions in those areas where the most amenable aliens have been processed and returned to Mexico” under MPP. *Id.* DHS reports that it “has returned more than 55,000 aliens to Mexico under MPP.” *Id.*

Second, the Assessment summarizes continuing efforts to protect migrants subject to MPP. Assessment 4-5. Mexico “has publicly committed to protecting migrants,” the United States is working with international organizations aiding “migrants in cities near Mexico’s northern border,” and the United States is continuing its “engagement” with Mexico on MPP as “part of a larger framework of regional collaboration.” *Id.*

Third, the Assessment explains DHS’s judgment that its fear-assessment protocol is effective and consistent with non-refoulement obligations. Assessment 5, 7-10. “Fear screenings are a well-established part of MPP,” U.S. Citizenship and Immigration Services (USCIS) has conducted thousands of those screenings, and “the vast majority of those third-country aliens who express fear of return to Mexico are not found to be more likely than not to be tortured or persecuted on account of a protected ground there.” Assessment 5. USCIS also explains its predictive judgment, “informed by USCIS’s experience conducting credible fear screenings,” that “if DHS were to change its fear-assessment protocol to affirmatively ask an alien amenable to MPP whether he or she fears return to Mexico, the number of fraudulent or meritless fear claims will significantly increase.” Assessment 7. Based on its experience, “DHS does not

believe amending the process to affirmatively ask whether an alien has a fear of return to Mexico is necessary in order to properly identify aliens with legitimate fear claims in Mexico.” Assessment 9.

Sincerely,

By: /s/ EREZ REUVENI
EREZ REUVENI
Assistant Director
United States Department of Justice
P.O. Box 868, Ben Franklin Station
Washington, DC 20044
Phone: (b)(6)
(b)(6)



2020 CANDIDATE SLIDESHOWS

SEPTEMBER 10, 2019 / 6:04 AM / UPDATED 2 YEARS AGO

Hasty rollout of Trump immigration policy has 'broken' border courts

By Mica Rosenberg, Kristina Cooke, Reade Levinson



(Reuters) - On the day she was set to see a U.S. immigration judge in San Diego last month, Katia took every precaution.

Live: Is your car running on empty? Ask our reporters why a tenth of petrol stations in ...

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Protocol (MPP) to wait for their court hearing for asylum seekers, in Ciudad Juarez, Mexico, July 18, 2019.

REUTERS/Jose Luis Gonzalez/File Photo

After waiting two months in Mexico to press her case for U.S. asylum, the 20-year-old student from Nicaragua arrived at the border near Tijuana three hours before the critical hearing was scheduled to start at 7:30 a.m.

But border agents didn't even escort her into the U.S. port of entry until after 9 a.m., she said, and then she was left stranded there with a group of more than a dozen other migrants who also missed their hearings.

"We kept asking what was going on, but they wouldn't tell us anything," said Katia, who asked to be identified by her first name only for fear of jeopardizing her immigration case.

Bashir Ghazialam, a lawyer paid for by Katia's aunt in the United States, convinced the judge to reschedule her case because of the transportation snafu. Later, staff at the lawyer's office learned that at least two families in the group were ordered deported for not showing up to court.

Since it started in January, the rollout of one of the most dramatic changes to U.S. immigration policy under the Trump administration has been marked by unpredictability and created chaos in immigration courts, according to dozens of interviews with judges and attorneys, former federal officials and migrants.

The program - known as the "Migrant Protection Protocols" (MPP) - has forced tens of thousands of people to wait in Mexico for U.S. court dates, swamping the dockets and leading to delays and confusion as judges and staff struggle to handle the influx of cases.

In June, a U.S. immigration official told a group of congressional staffers that the program had "broken the courts," according to two participants and contemporaneous notes taken by one of them. The official said that the court in El Paso at that point was close to running out of space for paper files, according to the attendees, who requested anonymity because the meeting was confidential.

Live: Is your car running on empty? Ask our reporters why a tenth of petrol stations in ...

Theresa Cardinal Brown, a former Department of Homeland Security official under presidents Barack Obama and George W. Bush, said the problems are “symptomatic of a system that’s not coordinating well.”

“It’s a volume problem, it’s a planning problem, it’s a systems problem and it’s an operational problem on the ground,” said Brown, now a director at the Bipartisan Policy Center think tank. “They’re figuring everything out on the fly.”

U.S. Customs and Border Protection (CBP) estimated that 42,000 migrants had been sent to wait in Mexico through early September. That agency and the Executive Office for Immigration Review (EOIR), which runs the nation’s immigration courts, referred questions about the program’s implementation to the Department of Homeland Security (DHS), which did not respond to requests for comment.

HUGE SURGE, FEW COURTS

The disarray is the result of a surge in migrants, most of them Central Americans, at the U.S. southern border, combined with the need for intricate legal and logistical arrangements for MPP proceedings in a limited number of courts - only in San Diego and El Paso, initially. Rather than being released into the United States to coordinate their own transportation and legal appearances, migrants in MPP must come and go across the border strictly under U.S. custody.

Some migrants have turned up in court only to find that their cases are not in the system or that the information on them is wrong, several attorneys told Reuters. Others, like Katia, have received conflicting instructions.

According to court documents seen by Reuters, Katia’s notice to appear stated that her hearing was at 7:30 a.m., while another paper she received said she should arrive at the border at 9 a.m., well after her hearing was set to start. She decided to show up at the border before dawn,

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hours later. Ultimately she was never bussed to the San Diego court and was told her case was

closed - a fate she was able to avoid only after frantically summoning her lawyer, Ghazialam, to the border.

Most migrants in MPP - including the two families who were deported from her group at the port of entry - do not have lawyers.

In open court, judges have raised concerns that migrants in Mexico - often with no permanent address - cannot be properly notified of their hearings. On many documents, the address listed is simply the city and state in Mexico to which the migrant has been returned.

Slideshow (2 images)

Lawyers say they fear for the safety of their clients in high-crime border cities.

P
C Live: Is your car running on empty? Ask our reporters why a tenth of petrol stations in ...

court, according to court documents filed by their lawyer, Bridget Cambria, who said she was able to get their case reopened.

Adding to uncertainty surrounding the program, the legality of MPP is being challenged by migrant advocates. An appellate court ruled in May that the policy could continue during the legal battle, but if it is found ultimately to be unlawful, the fate of the thousands of migrants waiting in Mexico is unclear. A hearing on the merits of the case is set for next month. (Read [story here](#))

‘UNREALISTIC’ NUMBERS

When the MPP program was announced on December 20, then-Homeland Security Secretary Kirstjen Nielsen said one of its “anticipated benefits” would be cutting backlogs in immigration courts.

In the announcement, the agency said sending migrants to wait in Mexico would dissuade “fraudsters” from seeking asylum since they would no longer be released into the United States “where they often disappear” before their hearing dates.

But the immediate impact has been to further strain the immigration courts.

A Reuters analysis of immigration court data through Aug. 1 found judges hearing MPP cases in El Paso and San Diego were scheduled for an average of 32 cases per day between January and July this year. One judge was booked for 174 cases in one day.

“These numbers are unrealistic, and they are not sustainable on a long-term basis,” said Ashley Tabaddor, head of the national immigration judge’s union.

To reduce the backlog, DHS estimates the government would need to reassign more than 100 immigration judges from around the country to hear MPP cases via video conferencing systems, according to the attendees of the June meeting with congressional staff

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Kathryn Mattingly, a spokeswoman for EOIR, said that the rescheduling was necessary to deal with the substantial volume of recent cases.

All told, the courts are now struggling with more than 930,000 pending cases of all types, according to EOIR.

As of August 1, 39% of the backlog in the San Diego court and 44% of the backlog in the El Paso court was due to MPP case loads, Reuters analysis of immigration court data showed.

Despite concerns over the system's capacity, the government is doubling down on the program.

In a July 26 notification to Congress, DHS said it would shift \$155 million from disaster relief to expand facilities for MPP hearings, and would need \$4.8 million more for transportation costs. DHS said that without the funding "MPP court docket backlogs will continue to grow."

Tent courts are set to open this month in Laredo and Brownsville, Texas, and so far more than 4,600 cases have been scheduled there to be heard by 20 judges, according to court data.

In Laredo, 20 to 27 tent courtrooms will provide video conferencing equipment so judges not based at the border can hear cases remotely, said city spokesman Rafael Benavides.

Brownsville's mayor Trey Mendez said last month that about 60 such courtrooms were likely to be opened, though he had few details. City manager Noel Bernal told Reuters that communication with the federal government about the plans has been "less than ideal."

'DESPERATE PEOPLE'

At her next hearing in San Diego in mid-September, Katia hopes to tell a judge how her participation in student demonstrations made her a target of government supporters.

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apartment with broken plumbing outside Tijuana.

The whole group is seeking asylum because of their support for the protests, according to Katia, her mother Simona, her lawyers, as well as court documents.

Recently, family members said they witnessed a shootout on their corner and Katia's brother is now waking up with night terrors.

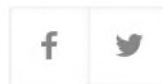
“They are playing games with the needs of desperate people,” said Simona, 46, who like Katia requested the family's last names be withheld to avoid harming their case. “It's soul crushing.”

(The story adds dropped word in paragraph 13, updates signoff)

Reporting by Mica Rosenberg in New York, Kristina Cooke in San Francisco and Reade Levinson in London; Additional reporting by Jose Gallego Espina in San Diego, Lizbeth Diaz in Tijuana and Julia Love in Ciudad Juarez; Editing by Julie Marquis and Marla Dickerson

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Seeking Asylum: Part 2

October 29, 2019

Tom K. Wong, PhD
w/assistance from Vanessa Ceceña

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Introduction

From July 2019 to October 2019, the U.S. Immigration Policy Center (USIPC) at UC San Diego partnered with migrant shelters in Tijuana, Mexico and in Mexicali, Mexico to survey asylum seekers who have been returned to Mexico under the Migrant Protection Protocols (MPP), also known as the “Remain in Mexico” policy. A total of 607 asylum seekers^a were interviewed, which makes this the most comprehensive analysis to date of the impact of the Remain in Mexico policy. No person was interviewed unless we could verify their MPP status. Verification of the MPP status of our respondents was done by examining their Department of Homeland Security (DHS) paperwork, focusing on their Notice to Appear (NTA) forms.^b

USIPC Immigrant Rights & Justice Fellow, Vanessa Ceceña, established partnerships with migrant shelters on the Mexico side of the U.S.-Mexico border. We are especially grateful to the staff and volunteers at our migrant shelter partners, including Border Kindness (Mexicali, Mexico), American Friends Service Committee (Tijuana, Mexico and Mexicali, Mexico), and Espacio Migrante (Tijuana, Mexico). We are also indebted to all of the organizations and institutions who opened their doors for our partners to interview asylum seekers who have been returned to Mexico under MPP.

The U.S. Immigration Policy Center at UC San Diego conducts and supports rigorous social science research to advance understanding of the foundations and consequences of U.S. immigration policy. Immigration has played an integral role in American history and is sure to feature prominently in America’s future. But what should the immigration policies of our nation of immigrants be? The USIPC brings together leading academics, policy analysts, immigrant-rights leaders, and policymakers across all levels of government to conceptualize, debate, and design a new U.S. immigration policy agenda that meets the demands of the 21st century. More about the USIPC can be found at usipc.ucsd.edu

^a A respondent was only interviewed if their MPP status could be verified after examining their Department of Homeland Security (DHS) paperwork.

^b We note here that our examination of NTA forms confirms previous reporting that erroneous addresses such as “*domicilio conocido*” (known address) and Facebook Messenger are being listed by immigration officials. This means that migrants returned to Mexico under MPP are not likely to receive adequate notice of their immigration court dates or other information pertaining to their cases.

Main Findings

Fear of Returning to Mexico

- Nearly 9 out of every 10 of our respondents (89.5%) who were asked by U.S. immigration officials about fear of being returned to Mexico responded by expressing fear of being returned to Mexico
- Of these individuals, 40.4% were given a secondary interview by an asylum officer and 59.6% were not. In other words, U.S. immigration officials further investigated the fears of approximately 4 out of every 10 who expressed fear about being returned to Mexico. However, **approximately 6 out of every 10 were placed into the Remain in Mexico policy without any further investigation into the fears that they expressed about being returned to Mexico**
- Of those who were asked by U.S. immigration officials about fear of being returned to Mexico, responded by expressing fear of being returned to Mexico, and were then given a secondary interview by an asylum officer, **63.9% reported that their persecutor(s) can find and have access to them in Mexico but were returned to Mexico anyway**
- Of those who were not asked by U.S. immigration officials about fear of being returned to Mexico, but nevertheless expressed a fear of being returned to Mexico, just 3.9% were given a secondary interview by an asylum officer to further investigate these fears and 96.1% were not
- Asylum seekers who attempted to enter the U.S. along the California portion of the U.S.-Mexico border were 14.7% less likely to be asked by U.S. immigration officials about fear of being returned to Mexico when compared to asylum seekers who attempted to enter the U.S. along the Arizona portion of the U.S.-Mexico border
- Just 17.1% of our respondents reported that they were given information by U.S. immigration officials about how to access legal services while in Mexico
- Just 19.7% of our respondents reported that they were given information by U.S. immigration officials about how to access social services, such as housing and food, while in Mexico

Experiences in Mexico: Violence

- Approximately 1 out of every 4 of our respondents (23.1%) have been threatened with physical violence while in Mexico as they await their immigration court dates
- Just over 1 out of every 5 of our respondents (21.9%) who are seeking asylum with children under the age of 18 have been threatened with physical violence while in Mexico
- Our respondents who are currently in Tijuana, Mexico are 14.8% more likely to have been threatened with physical violence while in Mexico when compared to our respondents who are currently in Mexicali, Mexico

Main Findings Cont.

Experiences in Mexico: Violence cont.

- Altogether, 56.5% of our respondents who have been threatened with physical violence reported that these threats turned into actual experiences of physical violence, including being beaten, robbed, and extorted
- The length of time spent waiting in Mexico is statistically significantly related to being threatened with physical violence. At 10 days spent waiting in Mexico, the predicted probability of being threatened with physical violence is already 18.7%. At 88.6 days spent waiting in Mexico, which is the average length of time in between being processed by U.S. immigration officials (i.e., being returned to Mexico) and the immigration court dates of our respondents, the predicted probability of being threatened with physical violence jumps to 32.0%. In other words, **approximately 1 out of every 3 of our respondents will likely be threatened with physical violence while in Mexico before they make it to their immigration court dates**

Experiences in Mexico: Homelessness and Discrimination

- Just over 1 out of every 3 of our respondents (34.5%) have experienced homelessness while in Mexico as they await their immigration court dates
- Approximately 1 out of every 3 of our respondents (31.9%) who are seeking asylum with children under the age of 18 have experienced homelessness while in Mexico
- Our respondents who are currently in Tijuana, Mexico are 10.0% more likely to have experienced homelessness while in Mexico when compared to our respondents who are currently in Mexicali, Mexico
- The length of time spent waiting in Mexico is statistically significantly related to experiencing homelessness. At 10 days spent waiting in Mexico, the predicted probability of experiencing homelessness is already 31.3%. At 88.6 days, which to reiterate is the average length of time in between being processed by U.S. immigration officials (i.e., being returned to Mexico) and the immigration court dates of our respondents, the predicted probability of experiencing homelessness jumps to 43.3%. In other words, **over 4 out of every 10 of our respondents will likely experience homelessness while in Mexico before they make it to their immigration court dates**
- Approximately 1 out of every 3 of our respondents (33.4%) reported being discriminated against while in Mexico as they await their immigration court dates. Trends in reporting being discriminated against largely mirror trends in experiencing homelessness

Main Findings Cont.

(In)Ability to Work

- According to the “U.S.-Mexico Joint Declaration,” the Mexican government indicated that it would provide asylum seekers returned to Mexico under MPP with “jobs, healthcare and education.” Despite this, 29.3% of our respondents reported being told by Mexican officials that they are unable to work while in Mexico

Conditions in Immigration Detention

- 85.7% of our respondents reported issues related to food, including not being fed, not being given enough to eat, or being fed spoiled food
- 85.2% reported issues related to water, including not being given water, not being given enough to drink, or having to drink dirty or foul-tasting water
- 85.1% reported issues related to sleep, including not being able to sleep, not getting enough sleep, having to sleep on the floor, or having to sleep with the lights on
- Only 20.3% reported being able to shower, get clean, or brush their teeth
- Less than half (41.9%) reported having access to a clean and sanitary toilet
- Nearly 9 out of every 10 (89.5%) reported that the detention facilities they were held in were overcrowded
- 85.2% reported that it was too cold in “la hielera” (the “icebox”)

Treatment in Immigration Detention

- Just over half of our respondents (51.1%) reported experiencing verbal abuse in immigration detention
- 6.7% reported experiencing physical abuse in immigration detention
- Asylum seekers who attempted to enter the U.S. along the California portion of the U.S.-Mexico border were 4.7% more likely to report experiencing physical abuse in immigration detention when compared to asylum seekers who attempted to enter the U.S. along the Arizona portion of the U.S.-Mexico border
- Approximately 1 out of every 4 (25.1%) reported having their property taken away from them and not returned after they were released from immigration detention. Money being taken was most commonly reported by our respondents
- Just over 1 out of every 3 (36.7%) who had medical issues reported that their medical issues were adequately addressed. However, this means that nearly 2 out of every 3 (63.3%) who had medical issues reported that their medical issues were not adequately addressed

Remain in Mexico Background

On December 20, 2018, the Department of Homeland Security (DHS) announced the Migrant Protection Protocols (MPP), also referred to as the “Remain in Mexico” policy. Under MPP, asylum seekers from Spanish-speaking countries, including entire families, who attempt to enter the U.S. along the southern border are returned to Mexico for the duration of their immigration proceedings. In early 2019, DHS began implementing MPP at the San Ysidro port of entry near San Diego, California. By mid year, MPP was expanded across the entire southern border. At the time of this writing, approximately 50,000 asylum seekers have been returned to Mexico under MPP. Despite legal challenges and rapidly changing asylum policies, MPP remains in effect.

The Remain in Mexico policy has begged important questions about whether the administration has the legal authority to return asylum seekers to Mexico for the duration of their immigration proceedings and whether, once they are returned to Mexico, there are sufficient safeguards in place to ensure that their lives and freedom are not threatened. On these questions, a federal judge concluded, “the answer to both questions is no.” The results below make clear that many of the asylum seekers who have been returned to Mexico under MPP face serious risks. Perhaps more importantly, many of the asylum seekers we interviewed were returned to Mexico despite telling U.S. immigration officials that their persecutor(s) can find and have access to them in Mexico.

For a more detailed discussion of MPP, see the companion policy brief to this report, [Walls to Protection: The Grim Realities of Trump’s “Remain in Mexico” Policy](#).

Fear of Returning to Mexico

As Kshatriya and Kang write, if an asylum seeker expresses an affirmative fear of being returned to Mexico, “These individuals will be referred to a U.S. Citizenship and Immigration Services (USCIS) asylum officer for a fear screening.” If an asylum seeker is found to have a reasonable fear of persecution,³ the asylum seeker is supposed to be exempted from being placed into MPP (i.e., should not be returned to Mexico).

To empirically unpack the process described above, we examined the extent to which U.S. immigration officials asked our respondents if they feared being returned to Mexico. We also asked our respondents whether they expressed any fears of being returned to Mexico to U.S. immigration officials. If yes, we then asked our respondents if they were given a secondary interview by another immigration officer (in such scenarios, Border Patrol agents are supposed to refer individuals to USCIS asylum officers). We also asked our respondents whether their persecutor(s) can find and have access to them in Mexico.

³ Kshatriya and Kang add that under MPP, asylum seekers must meet a heightened standard of fear by “demonstrating a reasonable fear of persecution, defined as ‘more likely than not’ the individual will be persecuted or tortured if returned to Mexico. Thus, an asylum seeker must express an even greater fear of harm in Mexico than in their home country to stay in the U.S. to pursue their asylum claim.” Moreover, DHS may or may not allow an attorney to be present when an individual is screened for fear of persecution in Mexico.

The data show that 63.2% of our respondents were asked by U.S. immigration officials about fear of being returned to Mexico. Nearly 9 out of every 10 of our respondents (89.5%) who were asked by U.S. immigration officials about fear of being returned to Mexico responded by expressing fear of being returned to Mexico. However, only 40.4% were given a secondary interview by an asylum officer while 59.6% were not given a secondary interview. In other words, U.S. immigration officials further investigated the fears that approximately 4 out of every 10 of our respondents expressed about being returned to Mexico. However, this means that approximately 6 out of every 10 of our respondents were placed into the Remain in Mexico policy without any further investigation into the fears that they expressed about being returned to Mexico. This suggests that an important safeguard to protect against refoulement is not being rigorously implemented under MPP.

What is perhaps even more concerning is the fact that nearly 2 out of every 3 of our respondents (63.9%) who expressed fear of being returned to Mexico and were given a secondary interview by an asylum officer reported that their persecutor(s) can find and have access to them in Mexico, but were returned to Mexico anyway. Among those who expressed fear of being returned to Mexico, but did not report being given a secondary interview, a similar percentage, 65.9%, reported that their persecutor(s) can find and have access to them in Mexico.

Moreover, of those who were not asked by U.S. immigration officials about fear of being returned to Mexico, but expressed a fear of being returned to Mexico, just 3.9% were given a secondary interview by an asylum officer and 96.1% were not.

The data also show significant variation in whether our respondents were asked by U.S. immigration officials about fear of being returned to Mexico based on where they attempted to enter the U.S. As the data show, 55.1% of our respondents who attempted to enter the U.S. along the California portion of the U.S.-Mexico border were asked by U.S. immigration officials about fear of being returned to Mexico. In contrast, 69.8% of our respondents who attempted to enter the U.S. along the Arizona portion of the U.S.-Mexico border were asked by U.S. immigration officials about fear of being returned to Mexico. In other words, asylum seekers who attempted to enter the U.S. along the California portion of the U.S.-Mexico border were 14.7% less likely to be asked by immigration officials about fear of being returned to Mexico when compared to asylum seekers who attempted to enter the U.S. along the Arizona portion of the U.S.-Mexico border. This difference is statistically significant ($p < .001$).⁴

We also asked our respondents about the information they were given by U.S. immigration officials. Just 17.1% of our respondents reported that they were given information by U.S. immigration officials about how to access legal services while in Mexico. The data further show that asylum seekers who attempted to enter the U.S. along the California portion of the U.S.-Mexico border were 9.2% more likely to be given information by U.S. immigration officials about how to access legal services while in Mexico when compared to asylum seekers who attempted to enter the U.S. along

⁴ The data further show variation in whether respondents who were asked about and expressed fear of being returned to Mexico reported being given a secondary interview based on where they attempted to enter the U.S. Asylum seekers who attempted to enter the U.S. along the California portion of the U.S.-Mexico border were 11.5% less likely to report being given a secondary interview when compared to asylum seekers who attempted to enter the U.S. along the Arizona portion of the U.S.-Mexico border. However, this difference only borders on statistical significance ($p = .081$).

the Arizona portion of the U.S.-Mexico border.⁵ This difference is statistically significant ($p = .006$). However, most of our respondents who reported “yes” were actually given an Executive Office for Immigration Review (EOIR) list of legal service providers in San Diego, California. This list does not provide information about legal service providers located in Mexico. Last, just 19.7% of our respondents reported that they were given information by U.S. immigration officials about how to access social services, such as housing and food, while in Mexico. There is no significant variation in whether respondents were given information by U.S. immigration officials about how to access social services while in Mexico based on where they attempted to enter the U.S.

Experiences in Mexico: Violence

Journalistic accounts of the experiences of asylum seekers who have been returned to Mexico under MPP have revealed dire humanitarian conditions. Our data suggest that these accounts are not isolated events, but amount to systematic trends. Before proceeding to the data, it is important to note that the findings below likely underestimate the dangers faced by asylum seekers who have been returned to Mexico under MPP. Security conditions in Tijuana, Mexico and in Mexicali, Mexico, where our interviews were conducted, are currently less dangerous than in other parts of the U.S.-Mexico border (e.g., compared to cities like Nuevo Laredo, Mexico and Matamoros, Mexico where the threat of kidnapping, murder, and other violent crime is more acute).

Approximately 1 out of every 4 of our respondents (23.1%) have been threatened with physical violence while in Mexico as they await their immigration court dates. Just over 1 out of every 5 of our respondents (21.9%) who are seeking asylum with children under the age of 18 have been threatened with physical violence while in Mexico as they await their immigration court dates. Moreover, our respondents who are currently in Tijuana, Mexico are 14.8% more likely to have been threatened with physical violence while in Mexico when compared to our respondents who are currently in Mexicali, Mexico.⁶ This difference is statistically significant ($p = .001$). Altogether, 56.5% of our respondents who have been threatened with physical violence reported that these threats turned into actual experiences of physical violence, including being beaten, robbed, and extorted.

The data further show that length of time spent waiting in Mexico is statistically significantly related to being threatened with physical violence. At 10 days spent waiting in Mexico, the predicted probability of being threatened with physical violence is already 18.7%. At 88.6 days spent waiting in Mexico, which is the average length of time in between being processed by U.S. immigration officials (i.e., being returned to Mexico) and the immigration court dates of our respondents, the predicted probability of being threatened with physical violence jumps to 32.0%. In other words, approximately 1 out of every 3 of our respondents will likely be threatened with physical violence before they make it to their immigration court dates. For those who have to wait 6 months before their immigration court dates, over half (51.3%) will likely be threatened with physical violence.

⁵ 12.9% along the Arizona portion of the U.S.-Mexico border compared to 22.2% along the California portion of the U.S.-Mexico border.

⁶ 20.4% for those currently in Mexicali, Mexico compared to 35.2% for those currently in Tijuana, Mexico. I note here that there is insufficient data to conclude whether threats of physical violence are more likely to turn into actual experiences of physical violence in Tijuana, Mexico compared to Mexicali, Mexico. 67.5% of those who were threatened with physical violence in Tijuana, Mexico experienced physical violence. The commensurate percentage for Mexicali, Mexico is 52.1%. However, this difference of 15.4% is not statistically significant ($p = .110$), due mostly to small sample size.

Experiences in Mexico: Homelessness

Just over 1 out of every 3 of our respondents (34.5%) have experienced homelessness while in Mexico as they await their immigration court dates. Moreover, approximately 1 out of every 3 of our respondents (31.9%) who are seeking asylum with children under the age of 18 have experienced homelessness while in Mexico. Our respondents who are currently in Tijuana, Mexico are 10.0% more likely to have experienced homelessness while waiting in Mexico when compared to our respondents who are currently in Mexicali, Mexico.⁷ This difference is statistically significant ($p = .053$).

The data also show that length of time spent waiting in Mexico is statistically significantly related to experiencing homelessness. At 10 days spent waiting in Mexico, the predicted probability of experiencing homelessness is already 31.3%. At 88.6 days, which to reiterate is the average length of time in between being processed by U.S. immigration officials (i.e., being returned to Mexico) and the immigration court dates of our respondents, the predicted probability of experiencing homelessness jumps to 43.3%. In other words, over 4 out of every 10 of our respondents will likely experience homelessness while in Mexico before they make it to their immigration court dates. For those who have to wait 6 months before their immigration court dates, nearly 6 out of every 10 (57.6%) will likely have experienced homelessness.

Experiences in Mexico: Discrimination

Approximately 1 out of every 3 of our respondents (33.4%) reported being discriminated against while in Mexico as they await their immigration court dates. Trends in reporting being discriminated against largely mirror trends in experiencing homelessness.

Experiences in Mexico: (In)Ability to Work

The role of the Mexican government in the implementation of MPP has, at times, been unclear. The Mexican government initially described MPP as a “unilateral” measure taken by the U.S. government.⁸ However, in June 2019, the U.S. Department of State released a media note entitled, “U.S.-Mexico Joint Declaration,” which stated that the Mexican government would “authorize the entrance of [asylum seekers returned to Mexico under MPP] for humanitarian reasons” and would provide them with “jobs, healthcare and education.”⁹

Despite the U.S.-Mexico Joint Declaration, a full 29.3% of our respondents reported being told by Mexican officials that they are unable to work while in Mexico. Given the importance of being able to work in order to earn income and address basic needs, roughly half of our respondents were asked if they were told by Mexican officials that they are unable to work while in Mexico while the other half were asked if they were told by Mexican officials that they are in fact able to work while in

⁷ 32.7% for those currently in Mexicali, Mexico compared to 42.7% for those currently in Tijuana, Mexico.

⁸ “Mexico rebukes, but accepts, ‘unilateral’ U.S. move to return asylum seekers pending hearing,” *Washington Post*, January 25, 2019.

⁹ “U.S.-Mexico Joint Declaration,” U.S. Department of State, June 7, 2019.

Mexico. 57.9% of our respondents reported being told by Mexican officials that they are in fact able to work while in Mexico. Taken together, these two results suggest that approximately 3 out of every 10, but potentially up to 4 out of every 10, are not being accurately informed about their ability to work while in Mexico.

Experiences in Immigration Detention

In our August 2019 report, [Seeking Asylum: Part 1](#), we documented the substandard conditions and mistreatment that approximately 7,300 asylum-seeking families who were admitted into the U.S. experienced while being held in immigration detention. The data reported here shed important new light on conditions and treatment in immigration detention, this time from the perspective of asylum seekers who have been returned to Mexico under MPP.

Regarding conditions in U.S. immigration detention, 85.7% of our respondents reported issues related to food, including not being fed, not being given enough food, or being fed spoiled food. Similarly, 85.2% reported issues related to water, including not being given water, not being given enough water, or having to drink dirty or foul-tasting water. Moreover, 85.1% reported issues related to sleep, including not being able to sleep, not getting enough sleep, having to sleep on the floor, or having to sleep with the lights on. Only 20.3% reported being able to shower, get clean, or brush their teeth. Less than half (41.9%) reported having access to a clean and sanitary toilet. Nearly 9 out of every 10 of our respondents (89.5%) reported that the detention facilities they were held in were overcrowded. Last, 85.2% reported that it was too cold in “la hielera.”

Regarding treatment in U.S. immigration detention, just over half of our respondents (51.1%) reported experiencing verbal abuse while in immigration detention. Asylum seekers who attempted to enter the U.S. along the California portion of the U.S.-Mexico border were 8.0% more likely to report experiencing verbal abuse while in immigration detention when compared to asylum seekers who attempted to enter the U.S. along the Arizona portion of the U.S.-Mexico border.¹⁰ However, this difference only borders on statistical significance ($p = .079$).

6.7% of our respondents reported experiencing physical abuse while in immigration detention. Asylum seekers who attempted to enter the U.S. along the California portion of the U.S.-Mexico border were 4.7% more likely to report experiencing physical abuse while in immigration detention when compared to asylum seekers who attempted to enter the U.S. along the Arizona portion of the U.S.-Mexico border.¹¹ This difference is statistically significant ($p = .041$). I note here that there was also one allegation of sexual abuse.

Last, approximately 1 out of every 4 of our respondents (25.1%) reported having their property taken away from them and not returned after they were released from immigration detention. Money being taken was commonly reported by our respondents. There is no statistically significant difference based on where along the border the respondent attempted to enter the U.S.

¹⁰ 56.3% along the California portion of the U.S.-Mexico border compared to 48.3% along the Arizona portion of the U.S.-Mexico border.

¹¹ 9.8% along the California portion of the U.S.-Mexico border compared to 5.2% along the Arizona portion of the U.S.-Mexico border.

Regarding medical issues, just under 4 out of every 10 of our respondents (39.9%) reported that they had a medical issue that they brought to the attention of an immigration official. Just over 1 out of every 3 of our respondents (36.7%) reported that their medical issues were adequately addressed. This includes an infant with a fever being taken to a local hospital. However, this means that nearly 2 out of every 3 of our respondents (63.3%) reported that their medical issues were not adequately addressed. This includes a man with broken ribs.

Demographics

The average age of our respondents is 32.8 years and the median age is 31.0 years. 58.1% of our respondents are female and 41.9% are male. Nearly all of our respondents are from the Northern Triangle in Central America: 49.6% were born in Guatemala; 37.8% were born in Honduras; and 2.8% were born in El Salvador. The remaining 9.2% were born in Nicaragua (4.8%), Cuba (2.8%), Ecuador (1.5%), Venezuela (0.5%), and Colombia (0.2%).

Moreover:

- 92.3% are seeking asylum with family members
- 96.8% of those seeking asylum with family members are seeking asylum with children under the age of 18
- 91.9% have family or close friends who live in the U.S.
- 87.3% speak Spanish as their primary language and 12.7% speak an indigenous Central American language as their primary language
- 63.2% attempted to enter the U.S. along the Arizona portion of the U.S.-Mexico border
- 33.0% attempted to enter the U.S. along the California portion of the U.S.-Mexico border
- 3.8% attempted to enter the U.S. along the Texas portion of the U.S.-Mexico border
- 81.5% are currently in Mexicali, Mexico
- 19.5% are currently in Tijuana, Mexico
- The average length of time spent in Mexico after being processed by U.S. immigration officials is 32.6 days at the time of our interview and the median length of time spent in Mexico is 15.0 days. The minimum is 0 days and the maximum is 231 days
- The average length of time before their immigration court date after being processed by U.S. immigration officials is 88.6 days and the median length of time is 94.0 days. The minimum is 15 days and the maximum is 245 days



October 29, 2019



SHATTERED REFUGE

A U.S. Senate Investigation into the
Trump Administration's Gutting of Asylum



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EXECUTIVE SUMMARY

This report details the extensive efforts the Trump administration has undertaken since January 2017 to deter and prevent asylum seekers from legally claiming asylum within the United States. The report finds that many of these efforts have involved actions that are in violation of domestic and international law; have placed political pressure on asylum officers to deny refuge to worthy applicants; and have subjected people seeking asylum to dehumanizing, dangerous, and in some cases deadly conditions.

This report is divided into two parts:

PART I details and analyzes the publicly known efforts of the Trump administration to deter migrants and choke off access to the asylum system, including family separation, child detention, and egregious detention conditions.

PART II documents a systematic effort to undermine the functioning of the asylum system. This Part is the result of investigative work performed by this office, including new information reported by whistleblowers from within the immigration and asylum system. Part II includes previously unreported information about major changes to the asylum training process, and direct evidence of whistleblowers' concerns. It also includes alarming reports of how the Migrant Protection Protocols (MPP) policy, also known as the "Remain in Mexico" program, has been implemented on the ground, including higher-level supervisors directing asylum officers to return families that face violent threats in Mexico back into dangerous Mexican border towns.

PART I – KEEP THEM AWAY: TRUMP ADMINISTRATION EFFORTS TO BLOCK ACCESS TO ASYLUM

Part I contains background on U.S. and international asylum laws, and details many of the Trump administration's efforts to deter asylum seekers through policies that intentionally inflicted trauma on families arriving at the U.S.-Mexico border. Among those deterrence strategies, it details U.S. policies that endangered migrants' health and lives, ranging from inadequate medical care, to sending late-term pregnant women back into Mexico, to holding asylum seekers in highly overcrowded facilities.

KEY FINDINGS INCLUDE:

- **The Trump administration has massively expanded the detention of asylum seekers within the U.S.** Between FY2016 and FY2020, the administration has nearly doubled immigration-related detention, from 30,539 beds in 2016 to 54,000 beds in 2020.
- **The administration's "zero tolerance" policy—more commonly known as family separation—was intentionally formulated to deter asylum seekers.** In internal documents, administration officials theorized that reports of family members being arrested and separated from children would reach potential asylum seekers in Central America, deterring them from presenting themselves at the U.S.-Mexico border so that they could spare their families those circumstances.
- **The administration intentionally increased prosecutions and detentions without a plan for appropriate space to hold increased numbers of migrants in Customs and Border Protection (CBP) detention.** As a result, many facilities became dangerously overcrowded. As reported by the Department of Homeland Security's (DHS's) own Inspector General, some facilities were found to be more than 500% over capacity when inspected.
- **At least seven Central American children died in U.S. custody between September 2018 and May 2019, including three from the flu.** In the U.S. as a whole, the rate of pediatric death from the flu is only two per million, indicating that medical breakdowns within the detention system likely contributed to these deaths.

- **CBP officers sent late-term pregnant women back to Mexico under the MPP policy, despite the fact that individuals with known health issues are supposed to be exempted from the program.** In one case, doctors gave a woman who was already experiencing contractions medication to stop the contractions so that she could be sent back across the border to Mexico.
- **As of July 2019, more than 4,000 migrant children with no identified sponsor were being held in the Department of Health and Human Service's (HHS's) Office of Refugee Resettlement (ORR) child detention system.** Without a sponsor, these children could conceivably be held in detention for years on end while their asylum cases are adjudicated. The report finds that shortage of sponsors is likely directly linked to a new policy created by the Trump administration in 2018, which began sharing sponsors' and their family members' immigration status with immigration enforcement agencies.

PART II – THE ANSWER IS ALWAYS NO: GUTTING THE ASYLUM SYSTEM

Part II details the systemic efforts underway to effectively rewrite U.S. asylum laws, rules, and procedures without congressional approval or involvement. This section of the report was largely informed by whistleblowers within the administration, who enabled this office to unearth previously unreported information.

KEY FINDINGS INCLUDE:

- **Whistleblowers reported that former U.S. Citizenship and Immigration Services (USCIS) Asylum Division head John L. Lafferty was forced out of his job by Acting USCIS Director Ken Cuccinelli.** This forced reassignment resulted in the perception among rank-and-file officers that Lafferty was fired for applying asylum law as written rather than skewing it to meet the administration's political goals.
- **Under Trump administration leadership, USCIS has begun using CBP law enforcement officers to replace asylum officers in conducting credible fear interviews.** This is an apparent strategy to cut the number of asylum applicants who pass the credible fear screening by removing trained asylum officers from the equation as much as possible.
- **When asylum officers found that an applicant had a legitimate reason to fear staying in Mexico until their asylum court date, those decisions were reviewed by political supervisors.** Decisions to send migrants back to Mexico were not reviewed, while decisions that migrants should

remain in the U.S. for their safety were forwarded on to supervisors, and in some cases all the way up to headquarters. Whistleblowers reported that in nearly all cases where asylum officers found that asylum seekers should be allowed to await their hearing within the U.S. for safety reasons, they were overruled by their superiors, with one whistleblower reporting that it would take “Herculean efforts” to get final approval on any recommendation to allow an asylum seeker to wait in the U.S.

- **In April 2019, USCIS quietly changed their policies for credible fear screenings to make it much more difficult for asylum seekers to pass their initial screening at the border.** The new policy would require applicants to present a factual record demonstrating “a significant possibility of future persecution” at their initial screening interview, despite the fact that most asylum seekers are freshly arrived from difficult circumstances and would need time to gather evidence in support of their claim. This policy is currently being challenged in federal court, but has been allowed to go into effect in the interim; if allowed to stand, it will ultimately deny thousands of applicants the chance for a fair hearing in a full immigration court.
- **In mid-August 2019, USCIS ended standardized training for new asylum officers.** This training was previously mandatory for all asylum officers, to ensure consistency across the nation and to reduce the risk of bias and inconsistency among USCIS field offices. Without standardized trainings, new asylum officers are likely to be trained by politically-installed leaders and more vulnerable to pressure from supervisors to deny as many asylum claims as possible.
- **Trained asylum officers strenuously objected to being forced to implement the administration’s programs, such as MPP, that appear to be in clear violation of domestic and international asylum law.** One whistleblower, who refused to participate in MPP on both legal and moral grounds, wrote in a letter that “[i]mplementation of a program for which there is no legal authority violates my oath to office.” The asylum officer noted that the U.S. is bound by law not to discriminate against refugees on the basis of their race, religion, or nationality, and not to penalize refugees for how they enter the country to claim asylum. “However, the MPP both discriminates and penalizes,” the officer continued. “Implementation of the MPP is clearly designed to further this administration’s racist agenda of keeping Hispanic and Latino populations from entering the United States.”

CONCLUSIONS

The report concludes with recommendations of policy changes and areas for further investigation. Specifically, the report recommends further congressional investigation of the following six areas:

1. The White House's purge of DHS immigration leadership in 2019.
2. The White House's underlying ideological and political motivations for changes to the asylum system.
3. Attempts to rig the asylum system by replacing asylum officers with law enforcement agents.
4. Attempts to eliminate established grounds for asylum and illegally raise the credible fear standards.
5. The administration's creation of an enormous affirmative asylum backlog by transferring officers off of affirmative asylum cases.
6. Asylum officers objecting to or refusing to participate in the MPP program.

Based on its findings, the report also recommends the following key policy changes:

1. Establish a \$10,000 civil claim against the U.S. government for delaying or preventing asylum seekers from crossing the U.S. border.
2. Prohibit CBP officers from acting as USCIS officers.
3. Establish stringent hiring qualifications for immigration judges to ensure a competent and independent judicial process.
4. Right to counsel for all unaccompanied children (UACs).
5. Prioritize family-based and small group care for all unaccompanied children, unless a trained child welfare expert makes an affirmative, individualized determination that congregate care would be in the best interest of the child.
6. Require daily monitoring of all immigration detention facilities (including contracted facilities) by independent and specialized legal counsel and child welfare experts. Mandate weekly reports to Congress listing critical health and safety actions for Immigration and Customs Enforcement (ICE), CBP, and ORR to address within 7 days. Any facility failing to remedy a listed action within 3 weeks must be immediately shut down.
7. Ban for-profit detention centers.
8. Rescind the current information sharing Memorandum of Agreement (MOA) between DHS and ORR.

PART I

KEEP THEM AWAY: TRUMP ADMINISTRATION EFFORTS TO BLOCK ACCESS TO ASYLUM

This President came into office determined, both literally and figuratively, to “build that wall.” His administration aims to stop anyone, particularly non-white and low income individuals, from seeking a home or refuge in the U.S. While this has resulted in highly publicized efforts to build a literal wall at the U.S.-Mexico border and to deport undocumented individuals living within the U.S., it has also taken the form of a systemic and widespread attack on asylum laws.

Part I focuses on two separate but intertwined strategies the Trump administration undertook to try to dramatically shrink the number of asylum seekers and refugees in America:

- **FIRST**, to deter asylum seekers from making the journey to the U.S. by inflicting cruelty and chaos at the border, with the expectation that news reports about these horrific conditions would make their way back to Central America;
- **SECOND**, to try to ensure that the U.S. would no longer provide assistance to refugee populations—both by cutting off U.S. aid and by closing our doors to asylum seekers and refugees.

BACKGROUND: THE U.S. ASYLUM SYSTEM

LAW: Asylum is among the most consequential avenues of relief the United States offers to people being persecuted. When granted, it provides a permanent U.S. foothold to applicants who have successfully proven their past persecution or their well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.¹ Relatedly, and in addition to claims of asylum, under the Convention Against Torture, individuals

¹ Congressional Research Service (CRS), LSB10207, *Asylum and Related Protections for Aliens Who Fear Gang and Domestic Violence*, 2 (Oct. 25, 2018), <https://fas.org/sgp/crs/homesecc/LSB10207.pdf>.

cannot be removed from the U.S. if they can prove that it is more likely than not that they will be tortured in their home country.²

The asylum process is governed by U.S. law and the Congress's ratification of long-established international treaties.³ This body of law is intended to protect individuals claiming asylum from being sent back to their home countries where they risk further persecution or torture.

PROCESS: Any individual can apply for asylum.⁴ In broad strokes, applications are submitted: (i) affirmatively by individuals who lawfully entered the U.S.;⁵ (ii) defensively in removal proceedings in Immigration Court;⁶ or (iii) during expedited removal involving only immigration officers.⁷ Most arriving or apprehended at the southern border go through expedited removal.⁸

IMMIGRATION JUDGES AND ASYLUM OFFICERS: Federal immigration judges hear immigration cases. They are civilian executive branch employees within the Executive Office for Immigration Review (EOIR) of the Department of Justice (DOJ). They have the authority to grant asylum to applicants who show during court proceedings that they have a well-founded fear of persecution or torture. As of June 30, 2019, 430 immigration judges were on board to oversee more than 1.3 million active and backlogged cases.⁹

Asylum officers are civilian executive branch employees within the Asylum Division of USCIS (USCIS is part of DHS). They can grant asylum, but only in affirmative asylum cases. In defensive

² The Senate ratified the Convention Against Torture on April 18, 1988 (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85, 113; S. Treaty Doc. No. 100-20 (1988)).

³ The Refugee Act of 1980, Pub. L. No. 96-212 § 101(a), 94 Stat. 102, codified the United States' obligations under the United Nations Convention relating to the Status of Refugees of 1951, 189 U.N.T.S. 137 (1951), and the 1967 Refugee Protocol, 19 U.S.T. 6223, 606 U.N.T.S. 267 (1967). Additionally, Congress enacted the Foreign Affairs Report and Restructuring Act of 1998 (an act to consolidate international affairs agencies that in chapter three sets out specific policies on refugees and migration), Pub. L. No. 105-277, § 2242(a), 112 Stat. 2681-822. The Immigration and Naturalization Act (INA) of 1952 (as amended) sets out the specific legal processes for asylum. The INA is codified at 8 U.S.C. §§1101 et seq, and is current as cited as of Nov., 2019.

⁴ INA § 208(a) (8 U.S.C. § 1158(a) (current as of Nov. 2019)), see Appendix: Exhibit A.

⁵ 6 U.S.C. § 271 (current as of Nov. 2019), see Appendix Exhibit B; Code of Federal Regulations (C.F.R.) 8 C.F.R. § 208.2(a) (current as of Nov. 2019), see Appendix Exhibit C.

⁶ 8 U.S.C. § 1229a(d)(1) (current as of Nov. 2019), see Appendix Exhibit D; 8 CFR § 208.2(b) (current as of Nov. 2019), see Appendix Exhibit B.

⁷ 8 U.S.C. § 1225(b)(1)(A)(i), (iii), see Appendix Exhibit E

⁸ American Immigration Council, *A Primer on Expedited Removal* (July 22, 2019), <https://www.americanimmigrationcouncil.org/research/primer-expedited-removal>.

⁹ Exec. Office for Immigration Review (EOIR), *Immigration Judge Hiring* (July 2019), <https://www.justice.gov/eoir/page/file/1104846/download>; Syracuse University Transactional Records Access Clearinghouse (TRAC), *Immigration Court's Active Backlog Surpasses One Million* (Sept. 18, 2019), <https://trac.syr.edu/immigration/reports/574/> (1.3 million as of August 31, 2019).

cases, asylum officers conduct credible fear or “reasonable fear” screening interviews,¹⁰ usually when individuals are in expedited removal.¹¹

As of May 6, 2019, the Asylum Division had 763 asylum officer positions in its field offices. More than 200 were assigned to conduct credible fear interviews and another 200-plus positions were unfilled.¹² As of March 31, 2019, there were 327,984 affirmative asylum cases pending, with 7,805 additional cases filed, and 7,071 completed that same month.¹³ USCIS is aiming to hire new asylum officers to fill the 200 vacancies by the end of 2019.

CREDIBLE FEAR INTERVIEWS: Credible fear interviews are supposed to take place in non-adversarial settings and are intended to be an initial screening to determine whether an individual’s asylum claim is sufficiently credible to forward the case to immigration court for a full hearing.¹⁴ An individual who passes a credible fear interview is placed in immigration court proceedings.

¹⁰ 8 C.F.R. §§ 208.31, 1208.31, see Appendix Exhibit F.

¹¹ 8 U.S.C. § 1225(b)(1)(B)(i) (current as of Nov. 2019), see Appendix Exhibit E; Code of Federal Regulations (C.F.R.), 8 C.F.R. § 208.9(a) (current through Nov. 2019), see Appendix Exhibit G.

¹² U.S. Citizenship and Immigration Services (USCIS), *Questions and Answers*, Asylum Division Quarterly Meeting (May 20, 2019), https://www.uscis.gov/sites/default/files/USCIS/Outreach/Notes%20from%20Previous%20Engagements/PED_AsylumStakeholderMeetingQA_05202019.pdf.

¹³ U.S. Citizenship and Immigration Services (USCIS), *Asylum Office Workload* (Mar. 2019), https://www.uscis.gov/sites/default/files/USCIS/Outreach/Notes%20from%20Previous%20Engagements/PED_AffirmativeAsylumStatisticsMar2019.pdf.

¹⁴ 8 C.F.R. § 208.30(d), (f) (current as of Nov. 2019) (possible amendment to this section pending litigation: *Barr v. East Bay Sanctuary Covenant*, No. 19A230, 588 U.S. ____ (2019)), see Appendix Exhibit H.

TRUMP STRATEGY #1: "CRUELTY AS DETERRENCE"

The cornerstone of the "cruelty as deterrence" policies is the fervent belief that asylum seekers and migrants will stop coming to the U.S. once word gets out about the horrendous treatment they will receive at the border. This is no secret; as Trump tweeted in July, "[i]f Illegal Immigrants are unhappy with the conditions in the quickly built or refitted detentions centers, just tell them not to come. All problems solved!"¹⁵ Stephen Miller, the President's senior policy advisor, and his colleagues have been turning the President's tweets into reality.

But "cruelty as deterrence" was always destined to be a failed strategy. As two senior White House officials from the prior administration wrote:

"[t]he suggestion that subjecting migrants to appalling conditions might serve as a deterrent is not just cruel; it conveys a grave misunderstanding of the forces that drive people to undertake this dangerous journey and of what it will take to manage the number of people arriving at the border."¹⁶

Migrants coming from the Northern Triangle countries of Honduras, El Salvador, and Guatemala are fleeing existential threats in their homelands: gang violence; endemic extortion and corruption; extreme poverty and malnutrition; and gender-based violence that is treated with impunity. When migrants believe that their very lives depend on fleeing, they will endure virtually any conditions in order to pursue a chance at finding safety in a country that operates under the rule of law.

In investigating the "cruelty as deterrence" strategy, this office found that not only were these policies ineffective in deterring migration; they frequently put asylum seekers' human rights, health, and safety at risk.

In at least seven cases, they contributed to the deaths of refugee children.

¹⁵ Donald Trump (@realDonaldTrump), Twitter (July 3, 2019, 4:22 PM ET), <https://twitter.com/realDonaldTrump/status/1146514575048790019>.

¹⁶ New York Times, Dennis McDonough and Celia Muñoz, *Opinion, Cruelty Won't Stop the Crisis at the Border* (July 11, 2019), <https://www.nytimes.com/2019/07/11/opinion/immigration-trump-border.html>; see also Donald Kerwin, *From IIRIRA to Trump: Connecting the Dots to the Current U.S. Immigration Policy Crisis*, 6 *Journal on Migration and Human Security* 192, 202 (2018), <https://doi.org/10.1177/2331502418786718>, ("As constituted, the current system does not fully honor the rule of law, too often serves as an instrument of exclusion and marginalization, and has become a symbol to the world of U.S. cruelty and injustice.")

FINDING #1

The Trump administration embraced mismanagement and operational chaos as a strategy to produce horrific conditions for asylum seekers at the border.

The Trump administration has gone far beyond policy pronouncements; personnel practices are having profoundly damaging effects throughout the asylum and immigration system.

Current and former officials have said that DHS is buffeted by “irrational” demands and “silly ideas” emanating from the White House and political leadership, that the department “has been gutted at all levels” and that “this is their way of managing.”¹⁷

Mismanagement, either intentional or resulting from incompetence and negligence, produces the same result: intolerably cruel conditions imposed on vulnerable children, families, and adults.

FINDING #2:

The Trump administration massively expanded the detention of asylum seekers within the U.S.

The attack on the immigration system began within days of Trump’s inauguration. Executive Order (EO) 13767, issued on January 25, 2017,¹⁸ directed DHS to “immediately construct, operate, [and] control ... facilities to detain aliens at or near the land border with Mexico.” It further directed DHS to detain all “aliens apprehended for violations of immigration law” and to issue new, stricter policies requiring detention of vastly greater numbers of apprehended children, families, and adults.

¹⁷ New York Times Magazine, Jason Zengerle, *How America Got to ‘Zero Tolerance’ on Immigration: The Inside Story* (July 16, 2019), <https://www.nytimes.com/2019/07/16/magazine/immigration-department-of-homeland-security.html>.

¹⁸ Exec. Order No. 13767, *Border Security and Immigration Enforcement Improvement*, 82 Fed. Reg. 8793 (Jan. 25, 2017), <https://www.federalregister.gov/documents/2017/01/30/2017-02095/border-security-and-immigration-enforcement-improvements>; see also Exec. Order No. 13768, *Enhancing Public Safety in the Interior of the U.S.*, 82 Fed. Reg. 8799 (Jan. 25, 2017), <https://www.federalregister.gov/documents/2017/01/30/2017-02102/enhancing-public-safety-in-the-interior-of-the-united-states-states>.

The result was a significant expansion of immigrant detentions. One measure can be seen in the ICE annual budget request. For the Fiscal Year (FY) ending September 31, 2016, DHS expected to detain 30,539; for FY2020, the number targeted is 54,000.¹⁹

FINDING #3:

The administration's "zero tolerance" policy—more commonly known as family separation—was intentionally formulated to deter asylum seekers.

In April 2018, then-Attorney General Jeff Sessions announced the "zero tolerance policy," requiring federal prosecutors to file criminal charges against everyone 18 or older apprehended by CBP while crossing the border.²⁰ The policy was challenged as unlawful and on June 28, 2018 a federal district court enjoined further implementation.²¹

But, before the injunction took effect, thousands of children had been separated from their families – in some cases literally ripped from their parents' arms. Parents were placed in DOJ custody and their children were handed over to ORR, a separate government agency. At least 2,737 children were in ORR custody as of June 28, 2018, and separations continued even after the court ordered an end to them.²²

"Zero tolerance" was intentionally formulated as part of the Trump theory of deterrence. An important piece of evidence is an internal planning document called *Policy Options to Respond to Border Surge of Illegal Immigration*, circulated among DHS and DOJ officials in December 2017, months before the Sessions announcement. In January 2019, a whistleblower provided a draft to Congress.²³ As a short-term measure that could be implemented within 30 days, the document recommended increased criminal prosecutions of parents apprehended with their children while

¹⁹ Immigration & Customs Enforcement (ICE), *Congressional Justification*, Fiscal Year 2020,

https://www.dhs.gov/sites/default/files/publications/19_0318_MGMT_CBJ-Immigration-Customs-Enforcement_0.pdf.

²⁰ Dep't of Justice (DOJ), Press Release, *Attorney General Announces Zero-Tolerance Policy for Criminal Illegal Entry* (April 6, 2018), <https://www.justice.gov/opa/pr/attorney-general-announces-zero-tolerance-policy-criminal-illegal-entry>.

²¹ *Ms. L v. CBP*, 310 F. Supp. 3d 1133 (S.D. Cal. 2018).

²² U.S. Dep't of Health & Human Services (HHS) Office of Inspector General (OIG, HHS-OIG), OEI-BL-18-00511, *Separated Children Placed in Office of Refugee Resettlement Care* (Jan. 17, 2019), <https://oig.hhs.gov/oei/reports/oei-BL-18-00511.pdf>; CNN, Catherine E. Shoichet, 'Zero Tolerance' a Year Later: How the U.S. Family Separations Crisis Erupted (Apr. 5, 2019, updated Apr. 8, 2019), <https://www.cnn.com/interactive/2019/04/us/immigrant-family-separations-timeline/>.

²³ NBC News, Julia Ainsley, *Trump Admin Weighed Targeting Migrant Families, Speeding up Deportation of Children* (Jan. 17, 2019, updated Jan. 17, 2019 8:40 PM ET), <https://www.nbcnews.com/politics/immigration/trump-admin-weighed-targeting-migrant-families-speeding-deportation-children-n958811>;

crossing the border and noted that “the increase in prosecutions would be reported by the media and it would have a substantial deterrent effect.”²⁴

FINDING #4:

The administration intentionally increased prosecutions and detentions without a plan for appropriate space to hold increased numbers of migrants in CBP detention.

The natural consequences of policies that mandate detention and 100% criminal prosecutions are overcrowded detention facilities and Border Patrol Stations, where detainees are warehoused in horrific conditions.

The experience of detainees in one facility – the Del Norte Processing Center in El Paso (PDT) – is eye-opening. In March 2019, news media published photographs showing hundreds of families and children caged inside a hastily-erected PDT holding pen under the Paso Del Norte International Bridge, which spans the Rio Grande.²⁵

²⁴ The document is available at <https://www.documentcloud.org/documents/5688664-Merkleydocs2.html>.

²⁵ El Paso Times, Mark Lambie, *Migrants Being Housed Under the Paso Del Norte International Bridge in El Paso* (Mar. 27, 2019), <https://www.elpasotimes.com/picture-gallery/news/2019/03/27/migrants-being-housed-under-paso-del-norte-international-bridge-el-paso/3290370002/>; BuzzFeed News, Adolfo Flores, “It’s Hell There”: *This Is What It’s Like For Immigrants Being Held In A Pen Underneath An El Paso Bridge* (Mar. 30, 2019), <https://www.buzzfeednews.com/article/adolfoflores/border-bridge-migrants-detained-camp-el-paso-texas>.



PHOTO: Hundreds of children and families are held in standing-room-only conditions in a holding pen under the Paso Del Norte International Bridge. (Mark Lambie/El Paso Times)

Five weeks later, the DHS Office of Inspector General (DHS OIG) carried out a surprise inspection at the same facility.²⁶ The inspectors, too, found shocking conditions, only now detainees were warehoused indoors. PDT was **500% over capacity**. While the facility was supposed to house no more than 125 people, a sampling of records over two days revealed, respectively, 750 and 900 individuals detained.

²⁶ DHS-OIG Management Alert, OIG-19-46, *DHS Needs to Address Dangerous Overcrowding Among Single Adults at El Paso Del Norte Processing Center* (May 30, 2019), <https://www.oig.dhs.gov/sites/default/files/assets/2019-05/OIG-19-46-May19.pdf>.

In their report, the inspectors published photos. A cell with a maximum capacity of 12 people held 76 women.



PHOTO: 76 women are crowded into a cell meant to hold a maximum of 12 detainees. (Courtesy of DHS OIG)

Hundreds of people were held in an outdoor parking lot.



PHOTO: Families being held in an outdoor parking lot at a detention facility in El Paso. (Courtesy of DHS OIG)

Staff on the scene told DHS OIG that “single adults had been held in standing-room-only conditions for days or weeks”²⁷ – far longer than what the law or DHS’s own policies allow. That reasonably led the inspectors to write that “overcrowding and prolonged detention represent an immediate risk of health and safety not just of the detainees, but also DHS agents and officers.”²⁸

The DHS response to the inspection report was that the problem would be solved in 18 months, by November 30, 2020.²⁹ The DHS OIG replied that this was an unacceptable timeframe; the office answered by writing that the overcrowding remained “unresolved and open,” and would so remain “until DHS offers an immediate corrective action plan to address the dangerous overcrowding.”³⁰

DHS did not take immediate action. Three days after the inspection report was issued, photos were published showing hundreds still warehoused at PDT, but in a different outdoor location. Detainees were living under makeshift Mylar covers.³¹



PHOTO: Migrants who had been moved to a new makeshift shelter in PDT detention. (Dr. Neal Rosendorf/Twitter)

²⁷ Id.

²⁸ Id.

²⁹ Id.

³⁰ Id.

³¹ Texas Monthly, Robert Moore, *In El Paso, Border Patrol Is Detaining Migrants in ‘a Human Dog Pound’* (June 11, 2012), <https://www.texasmonthly.com/news/border-patrol-outdoor-detention-migrants-el-paso/>.

The photographer was able to get close enough to talk to the detainees for 15 minutes before being ordered to leave.³² According to the photographer's contemporaneous notes, they said they had been out in the open for a month, had not bathed once, had not changed clothes since crossing the border, and were hungry. DHS claimed this was a "rare instance" where there was a "breakdown in communications."³³

FINDING #5:

Dysfunction within the system resulted in neglectful and dangerous conditions for detainees in CBP custody, including young children left without supervision, inadequate food and water, and flu outbreaks within overcrowded facilities. Further evidence revealing dysfunctionality throughout the system can be seen in horrific conditions at facilities lacking necessary resources and properly trained staff.

Take the scene discovered at the Clint Border Patrol Station near El Paso, which garnered significant attention during the summer of 2019. Lawyers permitted to inspect the facility in mid-June – at which time it housed hundreds of detained children – discovered appalling conditions: 250 infants, children, and teens were detained; children were taking care of other children; and there was inadequate food, water and sanitation.³⁴ An experienced lawyer said, "In my 22 years of doing visits with children in detention, I have never heard of this level of inhumanity."³⁵

The attorneys provided additional horrifying details.

No Staff Care for Tender Age Children Under Five. According to the *Associated Press*, three detained girls said they were trying to take care of a "two-year-old boy, who had wet his pants [with] no diaper and was wearing a mucus-smear shirt when the legal team encountered him.

"A Border Patrol agent came in our room with a two-year-old boy and asked us, 'Who wants to take care of this little boy?' Another girl said she would take care of him, but she

³² Id.

³³ Id.

³⁴ Associated Press (AP), Cedar Attanasio, Garance Burke & Martha Mendoza, *Attorneys: Texas Border Facility Is Neglecting Migrant Kids* (June 21, 2019), <https://apnews.com/46da2dbe04f54adbb875cfbc06bbc615>.

³⁵ Id.

lost interest after a few hours and so I started taking care of him yesterday,' one of the girls said."³⁶

Inadequate Care. Children told lawyers about a lack of nutritious food and unsanitary conditions. The children were frequently fed instant noodles, and there were no fruits or vegetables available. Children conveyed that they'd gone weeks without bathing or a clean change of clothes.³⁷

Significant Health Risks. As of mid-June 2019, 15 detained children had the flu and ten more were quarantined.³⁸

FINDING #6:

At least seven Central American children died in U.S. custody between September 2018 and May 2019, including three from the flu. Further evidence of dysfunction can be seen in likely medical mistreatments throughout the system.

Between September 2018 and May 2019, seven Central American children died in government custody or shortly after release due to infections.³⁹ Jakelin Caal Maquin, 7, died of a bacterial infection known as sepsis; Juan de León Gutiérrez, 16, died of a skull infection; Mariee Juárez, 19 months, died of a viral lung infection contracted in CBP custody; and Darlyn Cristabel Cordova-Valle, 10, died of heart failure after 7 months in ORR custody. Three had the flu: Felipe Gómez Alonzo, 8;⁴⁰ Wilmer Josué Ramírez Vásquez, 30 months; and Carlos Gregorio Hernandez Vasquez, 16 (discussed further in the accompanying cutout).⁴¹

³⁶ Id.

³⁷ Id.

³⁸ Id.

³⁹ NBC News, Nicole Acevedo, *Why are Migrant Children Dying in U.S. Custody?* (May 29, 2019), [nbcnews.com/news/latino/why-are-migrant-children-dying-u-s-custody-n1010316](https://www.nbcnews.com/news/latino/why-are-migrant-children-dying-u-s-custody-n1010316).

⁴⁰ Washington Post, Maria Sacchetti, *Official: Guatemalan Boy Who Died in U.S. Custody Tested Positive for Influenza B, Final Cause of Death Remains Under Investigation* (Dec. 27, 2018), https://www.washingtonpost.com/local/immigration/father-whose-son-died-in-custody-knew-bringing-him-would-ease-entry-into-us/2018/12/27/4c210bfc-0a1d-11e9-85b6-41c0fe0c5b8f_story.html.

⁴¹ Washington Post, Maria Sacchetti & Robert Moore, *Toddler Apprehended at the U.S.-Mexico Border Dies After Weeks in Hospital* (May 15, 2019), https://www.washingtonpost.com/immigration/toddler-apprehended-at-the-us-mexico-border-dies-after-weeks-in-hospital/2019/05/15/f69f8522-7755-11e9-bd25-c989555e7766_story.html?utm_term=.9f84e7a5b578.

AN AVOIDABLE DEATH

Carlos Gregorio Hernandez Vasquez, 16, died alone in a cell at the CBP Border Patrol station in Weslaco, Texas on May 20, 2019. Cause of death: the flu.

Carlos was from Guatemala. After crossing the Rio Grande, he was apprehended near Hidalgo, Texas on May 13, 2019. He was taken to the CBP Rio Grande Valley Central Processing Center (RGVCPC) in McAllen, Texas. The RGVCPC is a large warehouse, with wire fences segregating detainees.



PHOTO: Carlos Gregorio Hernandez Vasquez (CBS)

On May 19, he reported he did not feel well. A nurse in the facility examined him and diagnosed him with influenza. He was given anti-flu medicine. But by then, flu contagion was bad and growing worse – so much so that by May 22, at least 32 flu cases had been discovered and further intake of detainees to RGVCPC was halted.⁴²

Meanwhile, it was decided that Carlos needed to be isolated from other detainees. He was transferred to the Weslaco Station, where he was held in his own cell. Carlos was given something to eat 20 minutes after midnight on May 20; his lifeless body was discovered the next morning at 6:00 am. The autopsy report concluded that Carlos died from Influenza A 2009 H1N1 respiratory infection, complicated by bacterial coinfections.

Pediatric deaths from the flu are exceedingly rare in the U.S. According to U.S. Centers for Disease Control and Prevention (CDC) data, for the 2018–19 flu season, the nationwide average rate of pediatric death was in the range of approximately two per million.⁴³ In other words, three flu deaths would be expected in a population of 1.5 million. In that period of time, the average number of

⁴² CBS News, Angel Canales & Graham Kates, *He Survived the 1,000-Mile Journey to the U.S. He Died Days Later in Custody* (July 21, 2019), <https://www.cbsnews.com/news/migrant-boy-dies-in-u-s-custody-he-survived-the-1000-mile-journey-to-the-u-s-he-died-days-later-in-custody/>.

⁴³ Center for Disease Control & Prevention (CDC), FluView, Influenza-Associated Pediatric Deaths by HHS Region: 2018–19 Season, <https://gis.cdc.gov/GRASP/Fluview/PedFluDeath.html> (last visited Oct. 9, 2019).

children held in ORR custody varied between 11,151 and 14,226,⁴⁴ while CBP detained around 2,000 children.⁴⁵

FINDING #7:

In at least one case, DHS separated a child from her aunt and made no attempt to reunify her with her family, despite being told that she had a parent within the U.S.

According to the *Associated Press*, one migrant father said “authorities separated his daughter from her aunt when they entered the country.”⁴⁶ The girl would be a second grader in a U.S. school. He had no idea where she was until... one of the [attorneys] visiting Clint found his phone number written in permanent marker on a bracelet she was wearing. It said ‘U.S. parent.’ ‘She’s suffering very much because she’s never been alone. She doesn’t know these other children,’ said her father.”⁴⁷

FINDING #8:

CBP officers sent late-term pregnant women back to Mexico under the MPP policy, despite the fact that individuals with known health issues are supposed to be exempted from the program.

Whistleblowers identified six migrant women in CBP custody who were in late-term pregnancies, including one that was nine months pregnant. On May 23, 2019, CBP sent them back to Mexico. Some of the women were separated from their families; the family members were permitted to remain in the U.S.⁴⁸

More shocking is the case of an eight-and-a-half-months pregnant El Salvadoran woman apprehended by CBP and in custody in Brownsville, Texas. She began experiencing early

⁴⁴ U.S. Department of Health and Human Services, *Latest UAC Data FY2019* (content last reviewed on October 11, 2019), <https://www.hhs.gov/programs/social-services/unaccompanied-alien-children/latest-uac-data-fy2019/index.html>.

⁴⁵ Vox, Dara Lind, *The Horrifying Conditions Facing Kids in Border Detention, Explained* (June 25, 2019), <https://www.vox.com/policy-and-politics/2019/6/25/18715725/children-border-detention-kids-cages-immigration>.

⁴⁶ AP News, Cedar Attanasio, Garance Burke & Martha Mendoza, *Attorneys: Texas Border Facility is Neglecting Migrant Kids* (June 21, 2019), <https://apnews.com/46da2dbe04f54adbb875cfbc06bbc615>.

⁴⁷ Id.

⁴⁸ Confidential conversation with CBP source, August 5, 2019. See Appendix Exhibit I.

contractions and was taken to Valley Regional Medical Center, a local hospital. There, doctors gave her medicine to stop the contractions. CBP then almost immediately sent her back across the Rio Grande. According to a September 6, 2019 *Associated Press* news story, the woman's lawyer said she was waiting "with her 3-year-old daughter in a makeshift tent camp in Matamoros, Mexico, next to the international bridge, due to give birth any day..."⁴⁹

The American Civil Liberties Union (ACLU) followed up on this case – and 17 additional instances where CBP returned pregnant women to Mexico. In the case of the mother whose contractions were stopped, ACLU attorneys met with her; they learned she had given birth in Matamoros on September 6.⁵⁰ She was twice in CBP custody prior to that. CBP first returned her to Mexico on August 25. She then returned to the Brownsville CBP border crossing seeking medical treatment as she had had preeclampsia in a prior pregnancy.⁵¹ CBP held her in custody for two days and then returned her to Mexico. She returned to the border crossing again and CBP denied her entry altogether.

On the evening of September 5, she went into labor in a tent at a makeshift migrant encampment at the foot of the Gateway International Bridge in Matamoros. Women present assisted during her labor until Mexican officials finally took her to a hospital the next morning to deliver her baby.⁵²

Halting premature labor in a hospital setting and then releasing a pregnant woman with a known risk for preeclampsia so that she can give birth in a tent in a makeshift encampment next to a bridge on the Mexican side of the border clearly put the lives of both the mother and baby at risk. CBP's failure to provide appropriate medical treatment in this case is egregious, especially considering the specific conditions under which medicine halting preterm labor is supposed to be administered.

Terbutaline is a common medication used to halt preterm labor. It is used when doctors need to delay birth for several hours or days. However, its use must be closely monitored, in medical

⁴⁹ AP News, Nomaan Merchant & Verónica G. Cárdenas, *U.S. Tells Migrant Woman 8 Months Pregnant to Wait in Mexico* (Sept. 6, 2019), <https://apnews.com/965719d5bf5a4d5790820f719ae2a3da>.

⁵⁰ Letter from the ACLU to DHS-OIG Office of Civil Rights and Office of Professional Responsibility, *Re: Pregnant women returned to Mexico under the "Migration Protection Protocols" (MPP)* (Sept. 26, 2019), https://www.aclutx.org/sites/default/files/aclu_oig_complaint_preg_mpp.pdf.

⁵¹ Preeclampsia is a potentially high-risk condition for mother and child. If a mother is close to her due date the health care provider will probably want to deliver the baby as soon as possible. See American Pregnancy Association, *Preeclampsia: Symptoms, Risks, Treatment, and Prevention*, <https://americanpregnancy.org/pregnancy-complications/preeclampsia> (last visited Oct. 9, 2019).

⁵² Letter from the ACLU to DHS-OIG Office of Civil Rights and Office of Professional Responsibility, *Re: Pregnant women returned to Mexico under the "Migration Protection Protocols" (MPP)* (Sept. 26, 2019), https://www.aclutx.org/sites/default/files/aclu_oig_complaint_preg_mpp.pdf.

settings. The U.S. Food and Drug Administration specifically warns that it should only be used “in urgent and individual obstetrical situations in a hospital setting.”⁵³ The Terbutaline webpage on the MedlinePlus website maintained by the U.S. National Library of Medicine contains an “Important Warning” message in a separate box. It states that Terbutaline is not approved by the FDA to stop or prevent premature labor and “should only be given to women who are in a hospital.”⁵⁴

FINDING #9:

The Trump administration has institutionalized the mass detention of children through the ORR detention system, and has intentionally created a backlog of sponsors that threatens to keep some children locked up for years. As of July 2019, more than 4,000 migrant children with no identified sponsor were being held in ORR’s child detention system.

Another form of Trump administration cruelty for the sake of deterrence has been its willingness to house thousands of unaccompanied migrant children in institutional settings overseen by ORR for many months – or years.

ORR’s Responsibility for Unaccompanied Children. Unaccompanied migrant children apprehended by DHS are transferred to and become the responsibility of ORR. By law and regulation, ORR is supposed to promptly place these children in least-restrictive settings.⁵⁵

⁵³ U.S. Food and Drug Admin. (FDA), *FDA Drug Safety Communication: New Warnings Against Use of Terbutaline to Treat Preterm Labor* (Feb. 17, 2011), <https://www.fda.gov/drugs/drug-safety-and-availability/fda-drug-safety-communication-new-warnings-against-use-terbutaline-treat-preterm-labor>.

⁵⁴ U.S. National Library of Medicine, Medline Plus, *Terbutaline Injection*, <https://medlineplus.gov/druginfo/meds/a611026.html> (last visited Oct. 9, 2019).

⁵⁵ In 1997, the *Flores v. Reno* Settlement Agreement established standards for the treatment of minors while in Federal custody policy. *Flores v. Reno*, No. CV 85-4544-DMG (C.D. Cal. Jan. 28, 1997). In 2015, DHS issued National Standards on Transport, Escort, Detention, and Search (the TEDS Standards) incorporating the terms of the *Flores* Agreement. In September 2018, DHS and HHS proposed regulations intended to terminate the *Flores* Agreement. 83 Fed. Reg. 45,486 (Sept. 7, 2018). Implementation of the regulations were enjoined by a September 27, 2019 Order of the *Flores* court. In the accompanying Memorandum Opinion the court wrote:

Defendants cannot simply ignore the dictates of the consent decree merely because they no longer agree with its approach as a matter of policy Relief may also come from a change in law through Congressional action. Having failed to obtain such relief, Defendants cannot simply impose their will by promulgating regulations that abrogate the consent decree's most basic tenets.”



PHOTO: Detained children are lined up in the Casa Padre detention facility in Brownsville, Texas. (Courtesy of HHS Administration for Children and Families)

That should mean that ORR works to find a sponsor (e.g. an immediate family member, a relative, or a close family friend) to serve as caregiver in a residential home environment while the child's immigration status is adjudicated.

Children without sponsors remain in ORR custody, usually in groups in locked-down facilities like Casa Padre in Brownsville.⁵⁶

Casa Padre – a huge, locked-down, ORR-supervised facility for children in Brownsville, Texas – was originally a Walmart. Last year, it was the largest child detention facility in the nation, housing nearly 1,500 boys from ages 10 to 17.⁵⁷ Senator Merkley attempted to make an unannounced inspection visit in June 2018 and was turned away. In the ensuing uproar,

⁵⁶ NBC News, Jacob Soboroff, *Surge in Children Separated at Border Floods Facility for Undocumented Immigrants* (June 14, 2018), <https://www.nbcnews.com/news/us-news/surge-children-separated-border-floods-facility-undocumented-immigrants-n883001>.

⁵⁷ *Id.*

the facility was opened for a media tour. Reporters were told to smile at the hundreds of kids in line for a meal because “they feel like animals in a cage being looked at.”⁵⁸

ORR Expects to Hold Thousands in Custody for Years. ORR has held, now holds, and is projected to hold unaccompanied migrant children without sponsors in custody for unimaginably long periods of time. According to a July 2019 congressional report, of 1,063 children separated from their families by the Trump administration’s “zero tolerance” policy between April and late-June 2018, 597 were in ORR custody for more than 61 days – including 30 children held for *more than one year*.⁵⁹ Seven hundred additional children had been separated between late-June 2018 and May 2019; at least 153 were still in ORR custody when limited data was produced to congressional investigators in March 2019.⁶⁰

ORR expects the situation to worsen. In August 2019, 8,700 unaccompanied children were in ORR custody.⁶¹ According to the head of ORR, “conceivably someone could come into our care at 15 years old and not have an identifiable sponsor in the United States and *remain with us for a few years* [emphasis added].”⁶² ORR classifies more than 4,000 of these children as having no identifiable sponsor willing to care for them.⁶³ There is no dispute that warehousing children for years in institutions puts them a high risk of significant, life-long adverse consequences.

Why the Shortage of Child Sponsors? The reason for the absence of identifiable sponsors is seemingly due to actions by the Trump administration that have deterred potential

⁵⁸ Id.

⁵⁹ House Oversight and Reform Committee Report, *Child Separations by the Trump administration* at 18 (July 2019), <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-07-2019.%20Immigrant%20Child%20Separations-%20Staff%20Report.pdf>. According to the report, the Trump administration had asserted that between April and June 2018, the “zero tolerance” policy separated 2,648 children from their families (the total is in fact higher). 1,063 children represent only 40% of this figure. See id. at 7.

⁶⁰ Id. at 13 (citing American Immigration Council, *Family Separation FOIA Response from HHS Key Documents: Instances of Family Separation* (April 2019), https://www.americanimmigrationcouncil.org/sites/default/files/foia_documents/family_separation_foia_request_hhs_production_instances_of_family_separation.pdf).

⁶¹ Office of Refugee Resettlement (ORR), *Fact Sheet Unaccompanied Alien Children (UAC) Program* (Aug. 6, 2019), <https://www.hhs.gov/sites/default/files/Unaccompanied-Alien-Children-Program-Fact-Sheet.pdf>.

⁶² CBS News, Graham Kates, Angel Canales & Manuel Bojorquez, *Thousands of Unaccompanied Migrant Children Could Be Detained Indefinitely* (July 23, 2019), <https://www.cbsnews.com/news/thousands-of-unaccompanied-migrant-children-could-be-detained-indefinitely>.

⁶³ Category 1 children have immediate family sponsors; Category 2 children have close relatives as sponsors; Category 3 children have potential sponsors who identify as distant family or close family friends. Category 4 children have no sponsors. Office of Refugee Resettlement (ORR), *Children Entering the U.S. Unaccompanied: Section 2* (Jan. 30, 2015), <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-2>.

sponsors from stepping forward. Trump administration policy now requires ORR to share personal information from sponsors with ICE and CBP. On April 13, 2018, HHS and DHS entered into an MOA to share sponsor information.⁶⁴ Under the MOA, and contrary to prior practice, background information that sponsors supply to HHS to qualify for sponsorship is to be sent to DHS – which can use the information to apprehend and deport sponsors who may be subject to deportation orders.

DHS and HHS officials entered into the MOA in furtherance of the Trump deterrence strategy. The December 2017 *Policy Options to Respond to Border Surge of Illegal Immigration* document provided by a whistleblower states that the MOA “would result in a deterrent impact” on sponsors, thus “requiring HHS to keep the UACs (unaccompanied migrant children) in custody longer.”⁶⁵

Chilling Effect Caused by Information Sharing. Congressional action, specifically the *Consolidated Appropriations Act of 2019*, has barred DHS from using information shared by HHS to apprehend, detain, or remove sponsors.⁶⁶ However, the MOA is still having its intended effect: deterring potential sponsors from stepping forward to apply out of fear that they will be apprehended by DHS. In a survey conducted at the end of 2018, 75% of service providers who work with unaccompanied children said that fewer potential sponsors have come forward out of fear that their information would be sent to CBP or ICE for immigration enforcement purposes.⁶⁷

⁶⁴ A copy of the Memorandum of Agreement (MOA) is publicly available at <https://www.texasmonthly.com/wp-content/uploads/2018/06/Read-the-Memo-of-Agreement.pdf>.

⁶⁵ NBC News, Julia Ainsley, *Trump Admin Weighed Targeting Migrant Families, Speeding up Deportation of Children* (Jan. 17, 2019), <https://www.nbcnews.com/politics/immigration/trump-admin-weighed-targeting-migrant-families-speeding-deportation-children-n958811>;

⁶⁶ H.J.Res.31, Consolidated Appropriations Act 2019 § 224 (Feb. 25, 2019), <https://www.congress.gov/116/plaws/publ6/PLAW-116publ6.pdf>.

⁶⁷ Women's Refugee Commission, National Immigrant Justice Center & American University College of Law Clinical Program, *Children as Bait: Impacts of the ORR-DHS Information-Sharing Agreement* (Mar. 26, 2019), <https://wrc.ms/bait>.

FINDING #10:

Unaccompanied children face extreme obstacles in adjudicating their immigration cases, including being forced to represent themselves in court.

Children that enter the immigration system face a particular set of challenges when they are unaccompanied, and those difficulties are compounded when children don't have access to immigration attorneys.

Children face logistical hurdles in successful navigation of our immigration court systems, including language barriers and transportation difficulties in showing up to immigration courts that can often be hours away from where they are staying. Emotional hurdles include being in an unfamiliar country, with absent or partial support networks from immediate family members, and fear of authority figures.

The absurdity of expecting a child to weather these challenges alone is apparent, including to the judges tasked with adjudicating children's cases. In an AP interview, Judge John W. Richardson noted his discomfort with the prospect, stating, "I'm embarrassed to ask it, because I don't know who you would explain it to, unless you think that a one-year-old could learn immigration law," when speaking about his legal obligation to ask the defendant—in this case, a one-year-old baby—if they understand the proceedings.⁶⁸

Sixty-eight percent of unaccompanied children do not have legal counsel.⁶⁹ The benefits that counsel provide to children are undisputable when comparing outcomes of deportation hearings. According to Syracuse University's TRAC Immigration database, when children have no counsel, more than 80% are deported. When they do have legal advocates, the percentage of deported children drops to just 12%.⁷⁰

While legal obstacles children face in the immigration system are not unique to the Trump administration, they were exacerbated by its "zero tolerance" family separation policy that falsely assigned an "unaccompanied" status for children that had arrived in the United States with family members.

⁶⁸ AP News, Astrid Galvan, *Kids as Young as 1 in U.S. Court, Awaiting Reunion with Family* (July 8, 2018),

<https://apnews.com/4cb60fc06ca34160bf7445fdc1f47eed/Kids-as-young-as-1-in-US-court,-awaiting-reunion-with-family>.

⁶⁹ Syracuse University Transactional Records Access Clearinghouse (TRAC) Immigration Report, *Representation for Unaccompanied Children in Immigration Court* (Nov. 2014), <https://trac.syr.edu/immigration/reports/371/>.

⁷⁰ The Atlantic, Misyrlena Egkolfopoulo, *The Thousands of Children that Go to Immigration Court Alone* (Aug. 21, 2018), <https://www.theatlantic.com/politics/archive/2018/08/children-immigration-court/567490/>.

The consequences for unrepresented children can be dire and life-altering, including instances of children who were adopted out to U.S. families without their parents' consent or even knowledge after being separated.⁷¹ Additionally, these children may be deported back to unsafe conditions. In FY2018, 92% of unaccompanied children were from Honduras, Guatemala, or El Salvador,⁷² which consistently rate as among the hardest-hit countries struggling to contend with gang violence, drug trafficking, corruption, and disproportionately high homicide rates. The State Department estimates that there are 140,000 at-risk youth across the region.⁷³

To further complicate the challenges children face in the hands of our immigration system, in May of 2019, the Trump administration attempted to redefine the term "UAC" to rescind due process and care protections that accompany that status, and pass the burden of proof to a child for establishing their identity, age, and the fact that they are unaccompanied.⁷⁴ Expecting children to have adequate documentation, hand-carried in long, grueling journeys from their countries of origin to the U.S.-Mexico border, unfairly miscategorizes children instead of providing a good-faith efforts to address the best interests of children arriving in the United States without a parent.

These policies, unveiled and implemented by the Trump administration, serve the ultimate purpose of denying asylum and legal protections to children—leaving them adrift to navigate a complex system without the support of families, parents, or legal advocates.

⁷¹ AP News, Garance Burke & Martha Mendoza, *Deported Parents May Lose Kids to Adoption* (Oct. 9, 2018),

<https://apnews.com/97b06cede0c149c492bf25a48cb6c26f>.

⁷² Office of Refugee Resettlement, *General Statistics* (Sept. 30, 2019), <https://www.acf.hhs.gov/orr/about/ucs/factsand-data>.

⁷³ Department of State, *Progress Report for the United States Strategy for Central America's Plan for Monitoring and Evaluation* (May, 2019), p.2, available at: <https://www.state.gov/wp-content/uploads/2019/05/FY-2019-Central-America-Strategy-Progress-Report.pdf>.

⁷⁴ U.S. Customs and Immigration Services (USCIS) Memorandum, *Updated Procedures for Asylum Applications Filed by Unaccompanied Alien Children* (May 31, 2019), https://www.uscis.gov/sites/default/files/USCIS/Refugee_Asylum_and_Int%27Ops/Asylum/Memo_-_Updated_Procedures_for_I-589s_Filed_by_UACs_5-31-2019.pdf.

TRUMP STRATEGY #2: BLOCKING ACCESS TO AMERICA

While trying to inflict enough trauma on the men, women, and children seeking asylum to prevent others from coming, the Trump administration has also aggressively moved to ensure that the U.S. would no longer provide assistance to refugee populations.

This has taken multiple forms. In some cases, it has meant cutting off U.S. aid that would help potential refugees to make a better life in their home countries rather than needing to flee to the U.S. In other cases, it has meant closing our doors to asylum seekers and refugees, by physically or administratively blocking people from actually reaching American soil to make a claim.

This section examines cuts to refugee admissions and the withdrawal of U.S. aid to the Northern Triangle. It also investigates three separate programs the Trump administration has created to frustrate and deter asylum applicants at the southern border: metering, MPP, and third country asylum. The legality of all three is now being challenged in the federal courts. However, court injunctions temporarily staying implementation are, in most cases, unavailable, and these programs largely continue to operate.

FINDING #1:

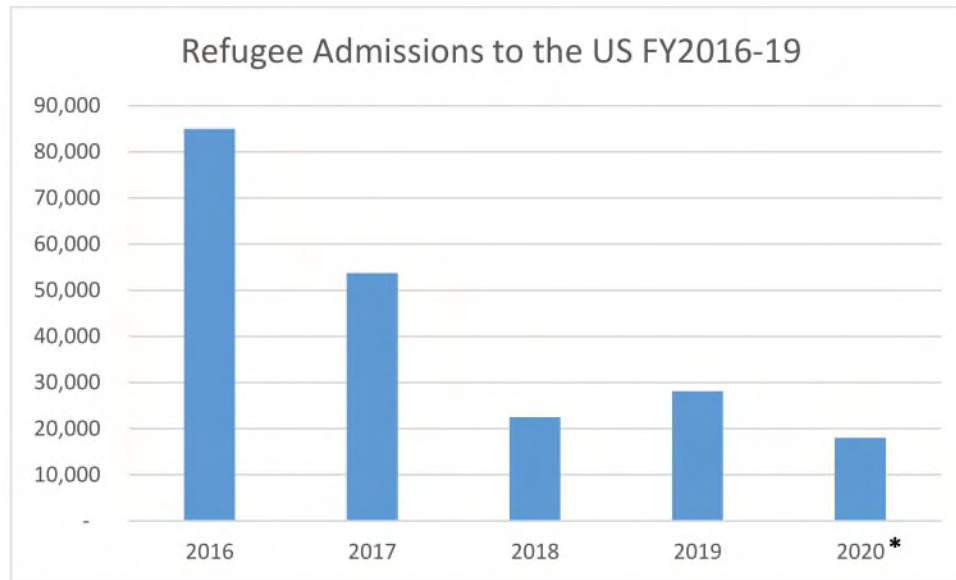
The Trump administration has drastically cut the number of refugees allowed into the United States, slashing refugee admittances by tens of thousands per year.

On January 27, 2017, President Trump issued Executive Order (EO) 13769 – the first of a series of recurring travel bans barring entry into the U.S. of residents of select majority-Muslim countries.⁷⁵ The EO also lowered the number of refugees that could be admitted into the country annually from 110,000 to 50,000 – which immediately affected refugee admissions.

The cap on refugees continues to be lowered. For FY2016 ending September 30, 2016, the U.S. admitted approximately 85,000 refugees. This number went down to 53,700 in FY2017, 22,500 in FY2018, and to 28,100 in the first eleven months of FY2019. The Trump administration wants to

⁷⁵ Exec. Order No. 13769, 82 Fed. Reg. 8977 (Jan. 27, 2017), <https://www.federalregister.gov/documents/2017/02/01/2017-02281/protecting-the-nation-from-foreign-terrorist-entry-into-the-united-states>, *revoked by* Exec. Order No. 13780, 82 Fed. Reg. 13,209 (Mar. 6, 2017), <https://www.federalregister.gov/documents/2017/03/09/2017-04837/protecting-the-nation-from-foreign-terrorist-entry-into-the-united-states>.

continue to cut admissions, proposing lowering the cap to 18,000 in FY2020.⁷⁶ *POLITICO* reported that a USCIS official “closely aligned with White House immigration adviser Stephen Miller” suggested setting the cap all the way down to zero.⁷⁷



* proposed

FINDING #2:

President Trump has gutted aid programs to Northern Triangle countries to blackmail them into stopping refugees from fleeing to the U.S.

Families from the Northern Triangle countries of Honduras, Guatemala, and El Salvador make up the vast majority of migrants apprehended by CBP at the southern border. For the eleven months of FY2019 through August 31, 2019, CBP apprehended almost 420,000 individuals who were

⁷⁶ American Immigration Lawyers Association (AILA), Doc. No. 19092701, *President Trump Proposes a Refugee Ceiling of 18,000 for FY2020*, (Sept. 26, 2019), <https://www.aila.org/infonet/trump-proposes-refugee-ceiling-of-18000-fy2020>.

⁷⁷ Politico, Ted Hesson, *Trump Officials Pressing to Slash Refugee Admissions to Zero Next Year* (July 17, 2019), <https://www.politico.com/story/2019/07/18/trump-officials-refugee-zero-1603503>.

members of family units.⁷⁸ That is more than one percent of the total 2019 population for the three countries combined.⁷⁹

There are many reasons for the exodus. According to the Congressional Research Service (CRS), “[t]he Northern Triangle includes some of the poorest nations in the Western Hemisphere. Land ownership and economic power historically have been concentrated in the hands of a small group of elites, leaving behind a legacy of extreme inequality.”⁸⁰ Crop destruction resulting from repeated droughts over the past five years and unemployment hovering at 60% in Guatemala and Honduras have exacerbated economic desperation and malnutrition. Additionally, the dominance of criminal organizations, government corruption, and gender-based violence are significant factors driving women and families to flee.⁸¹ According to the UN High Commissioner for Refugees, “women [in this region] face a startling degree of violence that has a devastating impact on their daily lives. With no protection at home, women flee to protect themselves and their children from murder, extortion, and rape. They present a clear need for international protection.”⁸²

The Trump administration policy supposedly seeks to deter further migration. That has taken the form of cutting off foreign aid until the migration stops – \$450 million was frozen in 2019.⁸³ The administration restored \$143 million of the aid⁸⁴ after Northern Triangle countries acquiesced to Trump’s pressure campaign to sign “safe third country” agreements, but approximately \$300 million remains frozen.

⁷⁸ U.S. Customs & Border Patrol, U.S. Border Patrol Southwest Border Apprehensions by Sector Fiscal Year 2019, (last modified Oct. 29, 2019), <https://www.cbp.gov/newsroom/stats/sw-border-migration/usbp-sw-border-apprehensions>. CBP defines Family Unit as representing “the number of individuals (either a child under 18 years old, parent, or legal guardian) apprehended with a family member by the U.S. Border Patrol.” Apprehensions through August 31, 2019 totaled 419,831 as follows: El Salvador (54,915), Guatemala (182,467) and Honduras (182,449).

⁷⁹ World Population Review, *Total Population by Country 2019*, <http://worldpopulationreview.com/countries/>. The total for the three is 33,781,142, 1.24%.

⁸⁰ Congressional Research Service (CRS), IF11151, *Central American Migration: Root Causes and U.S. Policy 1* (June 13, 2019), <https://fas.org/sgp/crs/row/IF11151.pdf>.

⁸¹ Id.

⁸² The United Nations Refugee Agency, *First-Hand Accounts of Refugees Fleeing El Salvador, Guatemala, Honduras, and Mexico*, (Oct. 2015) <https://www.unhcr.org/56fc31864.pdf>.

⁸³ Politico, Ted Hesson, *Democrats Fume as Trump Cuts Central American Aid* (Mar. 31, 2019), <https://www.politico.com/story/2019/03/31/trump-central-america-democrats-1308680>.

⁸⁴ Washington Post, Nick Miroff, *President Trump says he will unfreeze security aid to Central American countries* (Oct. 16, 2019), available at https://www.washingtonpost.com/immigration/president-trump-says-he-will-unfreeze-security-aid-to-central-american-countries/2019/10/16/69438a94-ef7c-11e9-b648-76bcf86eb67e_story.html

HARMING THE 6,000 POOREST FAMILIES IN GUATEMALA

Perversely, the foreign aid cut-off will encourage migration. Among other cuts, the freeze shut down projects funded by the U.S. Agency for International Development Food for Peace Program, which has invested nearly \$60 million to fight hunger in Guatemala since 2017.⁸⁵ One project was intended to help its 6,000 poorest families. These families were receiving \$60 per month and were encouraged to use the money to purchase healthy food – fresh fruit, cereal, dairy products and other grocery staples – to supplement their diets, which rarely varied beyond black beans and corn tortillas.⁸⁶ Ending this program will increase malnutrition and hunger, exacerbating one of the root causes driving migration.

FINDING #3:

The Trump administration has denied thousands of asylum seekers access to the border to assert asylum as part of its metering policy. Some asylum seekers have died as a direct result of this policy, drowning in the Rio Grande attempting to seek access to the border between official ports of entry.

In 2019, the Trump administration ramped up its policy of metering on the southern border. At ports of entry, such as Tijuana, CBP officers stand on the U.S.-Mexico international border line. They only allow asylum seekers to cross into the U.S. to apply when they say space is available, and on virtually all days CBP claims only limited space is available. In the meantime, the asylum seekers are told to put their names on waitlists, are handed line numbers, and must wait in Mexico for their numbers to be called.

Thousands Now Waiting to Apply. The waitlists now number in the thousands and wait times span months. As of August 2019, more than 26,000 asylum seekers were on waitlists in 12 Mexican border cities – a 40% increase in two months. Ten thousand were on the Tijuana waitlist as of August 16; CBP processed between zero and 69 applicants each day and the estimated wait time was six to nine months.⁸⁷

⁸⁵ NPR, Tim McDonnell, *Trump Froze Aid to Guatemala. Now Programs Are Shutting Down* (Sept. 17, 2019, 9:48 AM ET), <https://www.npr.org/sections/goatsandsoda/2019/09/17/761266169/trump-froze-aid-to-guatemala-now-programs-are-shutting-down>.

⁸⁶ Id.

⁸⁷ University of Texas at Austin Robert Strauss Center for International Security and Law & University of California San Diego School of Global Policy & Strategy Center for U.S.-Mexican Studies, *Metering Update: August 2019*, https://www.strausscenter.org/images/MSI/MeteringUpdate_190808.pdf.

Long wait times, coupled with the absence of shelter space and the high crime rate in Mexico, push asylum seekers to enter the U.S. between ports of entry.⁸⁸ With greater official restrictions, many have resorted to more desperate measures and risk dire consequences.

METERING AND THE RIO GRANDE DROWNINGS



PHOTO: The bodies of Oscar Ramirez and his 23-month-old daughter Valeria on the banks of the Rio Grande. (Julia Le Duc/AP)

On the morning of Monday June 24, 2019, the bodies of a man and a toddler were discovered floating face down in the Rio Grande near the Brownsville-Matamoros port of entry.⁸⁹ The victims were Oscar Ramirez and his daughter, 23-month-old Valeria. Their deaths are directly linked to metering.

The previous day, Mr. Ramirez, a citizen of El Salvador fleeing violence in his home country, had attempted to claim asylum for himself, his wife, and his

daughter at the international bridge crossing the river. He was told the CBP office was closed and that he could add his family's names to a waitlist of people seeking to apply for asylum, which already contained hundreds of names. In the meantime, they would have to wait for months in Matamoros, Mexico until it was their turn. Matamoros is now among the most dangerous cities in Mexico; the State Department advises not to travel to the region due to crime and kidnapping. Faced with waiting months or years in a dangerous foreign city, the Ramirezes decided to gamble by attempting to ford the Rio Grande. Ultimately, they lost their lives.

⁸⁸ DHS-OIG, *Special Review – Initial Observations Regarding Family Separation Issues under the Zero Tolerance Policy*, No. OIG-18-84 (Sept. 27, 2018), <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-84-Sep18.pdf>.

⁸⁹ AP, Peter Orsi & Amy Guthrie, *A Grim Border Drowning Underlines Peril Facing Many Migrants* (June 26, 2019), <https://www.apnews.com/2f8422c820104d6eaad9b73d939063a9>.

FINDING #4:

Not only has the administration's MPP program put thousands at risk as they await their asylum hearings in dangerous Mexican border towns, but new standards designed by the administration make it virtually impossible for any asylum-seeker—regardless of the actual danger they face—to be granted permission to leave Mexico and await a hearing in the U.S.

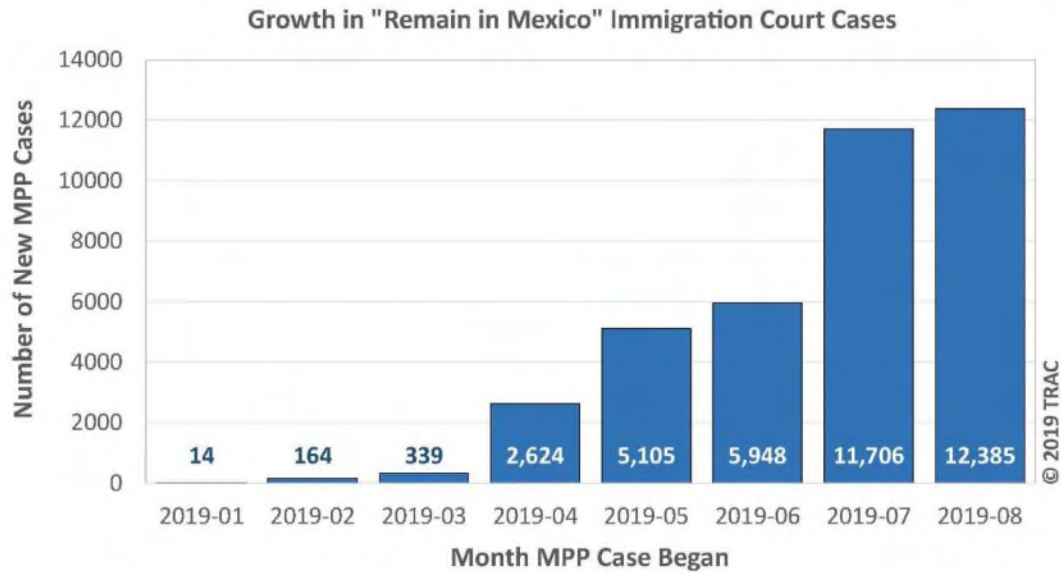
After having waited for months in Mexico for a credible fear hearing, and passing the credible fear standard, a refugee faces a second obstacle: the MPP program.

This program sends non-Mexican refugees back to Mexico to await their asylum hearings, stranding them in hostile border towns, often without funds or friends to provide support and protection.

Rapid Expansion. MPP began as a small pilot project in January 2019. Since its inception, MPP has grown dramatically – from 14 cases in Immigration Court in January to more than 12,000 cases through August. The reason for the change is largely due to a federal appeals court's sharp curtailment in May 2019 of a preliminary injunction that had stayed implementation nationwide.⁹⁰ As of mid-August, 32,000 had been put into MPP; coupled with the 26,000 on metering waitlists, 58,000 asylum applicants were waiting in Mexico for their cases to be heard.⁹¹

⁹⁰ *Innovation Law Lab v. McAleenan*, No. 19-15716 (9th Cir. filed May 7, 2019). The appeals court heard oral argument on October 1, 2019.

⁹¹ New York Times, Jason Kao & Denise Lu, *How Trump's Policies Are Leaving Thousands of Asylum Seekers Waiting in Mexico* (Aug. 18, 2019), <https://www.nytimes.com/interactive/2019/08/18/us/mexico-immigration-asylum.html>.



Source: Transactional Records Access Clearinghouse

Applicants may be excluded from MPP (and therefore not wait in Mexico) provided that: (i) they *affirmatively* state that they have “a fear of persecution or torture in Mexico, or a fear of return to Mexico;” and (ii) an asylum officer determines, after an interview, “whether it is more likely than not” that the applicants will face persecution or torture if returned to Mexico.⁹²

To Remain in the U.S. a Higher Hurdle. The “more likely than not” standard is far more stringent than the low threshold standard asylum officers were traditionally instructed to use when conducting credible fear interviews (until April 2019, discussed in more detail below).

DHS recognizes a number of other categorical exclusions from MPP, including unaccompanied children, citizens and nationals of Mexico, and people with “[k]nown physical/mental health issues.”⁹³ However, in practice, it is apparent that the exclusions are ignored or, when not ignored, narrowly applied.

CBP’s use of MPP to return seven women in late-term pregnancies to Mexico (discussed above in the “Cruelty as Deterrence” section, pg. 22) is an obvious example. Women in late-term pregnancy plainly have a known health issue. Why they were put into MPP is inexplicable and warrants further investigation.

⁹² U.S. Customs & Border Patrol (CBP), *MPP Guiding Principles* (Jan. 28, 2019) <https://www.cbp.gov/sites/default/files/assets/documents/2019-Jan/MPP%20Guiding%20Principles%201-28-19.pdf>.

⁹³ *Id.*

Pernicious Results. Because different standards apply when assessing claims of fear of persecution in an applicant's home country (low threshold of evidence needed) versus in Mexico (high threshold), applicants often pass credible fear interviews but fail when asserting fear of persecution if they must wait in Mexico.

The Mexican states adjacent to the U.S. southern border are dangerous places, especially so for Central Americans who travel through or remain in Mexico and are vulnerable to being extorted, kidnapped, raped and murdered.⁹⁴ The MPP screening process is failing and this failure is well-documented. As of October 1, Human Rights First had identified *more than 350 publicly reported cases of rape, kidnapping, sexual exploitation, assault, and other violent crimes* against asylum seekers returned to Mexico under MPP.⁹⁵

FAMILY KIDNAPPED IN MEXICO FAILS MPP SCREENING, SENT BACK TO MEXICO

Three Central American children and their parent applied for asylum at the El Paso port of entry. An asylum officer interviewed the parent, who said they feared waiting in Mexico because they had been kidnapped, held for ransom for days, and escaped. The family failed the MPP screen and was returned to wait in Mexico. According to Human Rights First, the parent appeared to be in shock, was not given an opportunity to rest and recuperate from the ordeal, and had not had an attorney present during the interview.⁹⁶

⁹⁴ U.S. Department of State Travel Maps, <https://travelmaps.state.gov/TSGMap> (last accessed Oct. 15, 2019).

⁹⁵ Human Rights First Fact Sheet, *Orders from Above: Massive Human Rights Abuses Under Trump Administration Return to Mexico Policy* (Oct. 2019), <https://www.humanrightsfirst.org/resource/orders-above-massive-human-rights-abuses-under-trump-administration-return-mexico-policy>.

⁹⁶ Human Rights First Fact Sheet, *Delivered to Danger: Illegal Remain in Mexico Policy Imperils Asylum Seekers' Lives and Denies Due Process* (Aug. 2019), <https://www.humanrightsfirst.org/resource/delivered-danger-illegal-remain-mexico-policy-imperils-asylum-seekers-lives-and-denies-due>.

FINDING #5:

The Supreme Court's September 2019 decision to allow the "safe third country" program to go into effect will likely have a devastating effect on asylum seekers arriving at the U.S.-Mexico border.

The third program, described in an interim final rule issued in July by DOJ and DHS⁹⁷, is known as the "safe third country" rule. This program is likely to be the most devastating for asylum applicants. It permits Central Americans (or applicants from countries other than Mexico) at the southern border to apply for asylum only if they were first denied asylum in a "safe third country," which now includes Guatemala, Honduras, and El Salvador. These three nations recently signed safe third country agreements with the United States, following an extensive pressure campaign from the Trump administration, including the withdrawal of hundreds of millions of dollars in aid to the Northern Triangle countries.

Historically, safe third countries agreements were meant to apply in countries that were safe for people seeking asylum—countries with high human rights standards and low rates of violence. By any objective evaluation, Guatemala, Honduras, and El Salvador clearly fail to meet this standard. In 2017, El Salvador had the highest murder rate in the world, with 62 murders per 100,000 people.⁹⁸ While the homicide rate in El Salvador continues trending down, it is still the highest rate anywhere in Latin America.⁹⁹ Honduras also ranked in the top five for murders.¹⁰⁰ The U.S. State Department has issued travel advisories for each of the three countries warning that serious violent crime is common, and that local police often are incapable of responding effectively to such criminal incidents.¹⁰¹

⁹⁷ Asylum Eligibility and Procedural Modifications, 84 Fed. Reg. 33829 (interim final rule proposed July 16, 2019), <https://www.federalregister.gov/documents/2019/07/16/2019-15246/asylum-eligibility-and-procedural-modifications>.

⁹⁸ United Nations Office on Drugs and Crime, *International Homicide Statistics* (homicide statistics through 2017), https://data.worldbank.org/indicator/VC.IHR.PSRC.P5?most_recent_value_desc=true.

⁹⁹ U.S. State Department, *El Salvador 2019 Crime & Safety Report* (Apr. 25, 2019) <https://www.osac.gov/Country/ElSalvador/Content/Detail/Report/d1222be6-4e5d-461f-912c-15f4aec90b02>.

¹⁰⁰ International Homicide Statistics, U.N. Office on Drugs and Crime.

¹⁰¹ U.S. State Department, *Travel Advisories (Guatemala)* (last updated Feb. 28, 2019), <https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-Information-Pages/Guatemala.html>; U.S. State Dep't, *Travel Advisories (Honduras)* (last updated June 24, 2019), <https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-Information-Pages/Honduras.html>; U.S. State Dep't, *Travel Advisories (El Salvador)* (last updated Oct. 1, 2019), <https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-Information-Pages/ElSalvador.html>.

While a federal district court issued a temporary stay of this policy within days of its issuance, the Supreme Court dissolved this stay on September 11, 2019, allowing the rule to go into effect.¹⁰²

Supreme Court Dissent. Justice Sotomayor dissented from the ruling. She would have affirmed the findings of the district court that the rule was likely unlawful on three separate grounds. First, that it was probably and improperly inconsistent with the ruling; second, because the government had not promulgated the rule in accordance with the requirements of the federal *Administrative Procedure Act*; and, finally, because the justification offered for issuing the rule was “so poorly reasoned that the government’s action was likely arbitrary and capricious.”¹⁰³

As matters stand, the rule’s legality continues to be contested in the federal courts – a process that, at best, will take months to resolve. And while the rule makes its way through the courts, following the Supreme Court’s lifting of the stay, countless asylum seekers will be turned away until there is a final ruling.

¹⁰² *Barr v. East Bay Sanctuary Covenant*, No. 19A230, 588 U.S. ____ (2019).

¹⁰³ *Id.*

SUMMARY: KEY FINDINGS OF PART I

- **The Trump administration has massively expanded the detention of asylum seekers within the U.S.** Between FY2016 and FY2020, the administration has nearly doubled immigration-related detention, from 30,539 beds in 2016 to 54,000 beds in 2020.
- **The administration's "zero tolerance" policy—more commonly known as family separation—was intentionally formulated to deter asylum seekers.** In internal documents, administration officials theorized that reports of family members being arrested and separated from children would reach potential asylum seekers in Central America, deterring them from presenting themselves at the U.S.-Mexico border so that they could spare their families those circumstances.
- **The administration intentionally increased prosecutions and detentions without a plan for appropriate space to hold increased numbers of migrants in CBP detention.** As a result, many facilities became dangerously overcrowded. As reported by DHS's own Inspector General, some facilities were found to be more than 500% over capacity when inspected.
- **At least seven Central American children died in U.S. custody between September 2018 and May 2019, including three from the flu.** In the U.S. as a whole, the rate of pediatric death from the flu is only two per million, indicating that medical breakdowns within the detention system likely contributed to these deaths.
- **CBP officers sent late-term pregnant women back to Mexico under the MPP policy, despite the fact that individuals with known health issues are supposed to be exempted from the program.** In one case, doctors gave a woman who was already experiencing contractions medication to stop the contractions so that she could be sent back across the border to Mexico.
- **As of July 2019, more than 4,000 migrant children with no identified sponsor were being held in ORR's child detention system.** Without a sponsor, these children could conceivably be held in detention for years on end while their asylum cases are adjudicated. The report finds that shortage of sponsors is likely directly linked to a new policy created by the Trump administration in 2018, which began sharing sponsors' and their family members' immigration status with immigration enforcement agencies.

PART II

THE ANSWER IS ALWAYS NO: GUTTING THE ASYLUM SYSTEM

Unable to deter or prevent children, families, men and women from seeking refuge at America's doorstep, the Trump administration is using many more tools to keep the door shut. This part of the report documents the systematic effort underway to effectively rewrite U.S. asylum laws, rules, and procedures without congressional approval or involvement.

The drive to subvert the U.S. asylum system starts in the White House. Miller and his political appointees have repeatedly displayed contempt for the USCIS Asylum Division, its employees (civil servants who have dedicated careers to the agency's missions), and its practices and policies.

Miller reportedly believes asylum officers to be bleeding hearts who are too quick to believe the claims of people seeking asylum and who are extending asylum protections indiscriminately.¹⁰⁴ Miller and his political colleagues within the administration have taken extreme steps to force a culture change within USCIS and the Asylum Division, with the ultimate goal of changing how U.S. asylum laws are implemented.

Thanks largely to reports from whistleblowers, this office has obtained new information from within the asylum system about the changes underway. This information sheds new light on recent and notable personnel actions, management decisions, and policy changes that, collectively, are quietly transforming the U.S. asylum system behind the scenes.

¹⁰⁴ New York Times, *Shoot Migrants' Legs, Build Alligator Moat: Behind Trump's Ideas for Border* (Oct. 1, 2019), <https://www.nytimes.com/2019/10/01/us/politics/trump-border-wars.html> (quoting Hirshfeld Davis & Shear, *Border Wars: Inside Trump's Assault on Immigration*, at 394 (published Oct. 8, 2019)).

FINDING #1:

Whistleblowers reported that former USCIS Asylum Division head John L. Lafferty was forced out of his job by Acting USCIS Director Ken Cuccinelli.

The reassignment of John L. Lafferty, an experienced career manager, delivered a harsh message to USCIS staff. His forced reassignment is clearly part Miller's DHS purge.

A Respected Civil Servant. Mr. Lafferty's term as Asylum Division head spanned two different administrations. On September 4, 2019, USCIS sent out a broadcast email notifying the staff that Mr. Lafferty had been reassigned.¹⁰⁵ The email – sent out under the name of Lafferty's immediate supervisor, one of his former mentees – praised him as “truly one of the most talented civil servants I have ever had the privilege to work for...”¹⁰⁶

At an August 2018 Town Hall meeting, Mr. Lafferty paid tribute to the late Senator John McCain's unwavering support of our immigration system.¹⁰⁷ He reiterated those words in his final minutes as Asylum Division Chief in a September 9 broadcast email to all staff supplied by a whistleblower:

For my Asylum Division colleagues, these days our public service is not rendered in anonymity, but in the public spotlight. For your duty, your commitment is to the American public that you serve, the Constitution that you took an oath to defend, and to the law. And to faithfully applying these laws to the facts as they are presented to us, irrespective of outcome. The late Senator McCain said just a few months before his death that we show our very patriotism as Americans when we carry out these duties in a manner that shows “[r]espect for the God-given dignity of every human being, no matter their race, ethnicity or other circumstances of their birth.” Asylum colleagues, I am confident in your patriotism.¹⁰⁸

The “Reassignment.” Whistleblowers have reported that Mr. Lafferty was told he was being reassigned just days before it was announced. It took the form of a “rubber-stamped”

¹⁰⁵ Washington Post, Nick Miroff, *Chief of U.S. Asylum Officer Reassigned as White House Pushes for Tighter Immigration Controls* (Sept. 4, 2019), https://www.washingtonpost.com/immigration/chief-of-us-asylum-office-reassigned-as-white-house-pushes-for-tighter-immigration-controls/2019/09/04/0ac3705e-cf4e-11e9-8c1c-7c8ee785b855_story.html.

¹⁰⁶ Higgins, Jennifer. “Message from the RAIO Associate Director: Personnel Update.” Email to RAIO – All staff. September 4, 2019. See Appendix Exhibit G.

¹⁰⁷ Lafferty, John. “Thank you.” Email to RAIO – Asylum Field Office Staff, HQ, and Leadership. September 9, 2019. See Appendix Exhibit H & J.

¹⁰⁸ *Id.*

letter from Acting Director Cuccinelli.¹⁰⁹ Mr. Lafferty reluctantly accepted the transfer – albeit by informing management that he considered it “involuntary.”¹¹⁰

The Consequences. It is not apparent whether there are specific actions that cost Mr. Lafferty his job, but whistleblowers report that his firing is perceived as the result of acting as a committed, civil servant who played it by the book.¹¹¹ In other words, he was too neutral. His reassignment was intended to send a message, and that message was received. Rank-and-file officers drew their own obvious conclusion: that Lafferty was fired for applying asylum law as written rather than skewing it to meet the administration’s political goals.

FINDING #2:

Under Trump administration leadership, USCIS has begun using CBP law enforcement officers to replace asylum officers in conducting credible fear interviews.

In May 2019, USCIS began to train CBP law enforcement officers to serve as asylum officers, apparently due to Miller’s dissatisfaction with asylum officers’ handling of credible fear interviews – they were passing far too many asylum applicants.¹¹²

Slashing Credible Fear Interview Pass Rates. Consistent with his contempt for asylum officers, Miller sees them passing “97%+” credible fear interviewees. He has told DHS the pass rate will fall once CBP officers start conducting interviews.¹¹³ Miller reportedly expected the agents, who typically have no experience working with or aiding refugees fleeing from persecution, would be tougher on migrants.¹¹⁴

Miller also wants to go further – by eliminating asylum officers entirely from the process. For example, an internal DHS email states that Miller, at a then-upcoming meeting, “might

¹⁰⁹ Confidential conversation with DHS CRCL source, Sept. 6, 2019.

¹¹⁰ Confidential conversation with USCIS source, Nov. 8, 2019.

¹¹¹ Id.

¹¹² NBC News, Julia Ainsley, *Stephen Miller Wants Border Patrol, Not Asylum Officers, to Determine Migrant Asylum Claims* (July 29, 2019), <https://www.nbcnews.com/politics/immigration/stephen-miller-wants-use-border-agents-screen-migrants-cut-number-n1035831>.

¹¹³ Id.

¹¹⁴ Id.

press for an answer on when the [asylum] officers will no longer be looking over the shoulders of [CBP] agents.”¹¹⁵

To date, 60 CBP agents have received what is considered by DHS to be sufficient training to conduct asylum interviews. They have started interviewing. On November 7, *Buzzfeed News* revealed the initial data on CBP agents' passage rates. The data shows a dramatic difference between USCIS asylum officers and CBP agents. While trained USCIS asylum officers typically pass 80% or more of individuals seeking asylum through the credible fear phase, CBP agents passed less than half – just 47%.¹¹⁶ USCIS is actively seeking to hire asylum officers with backgrounds in law enforcement and the military. A recent USAJobs announcement for asylum officers prominently states, “[L]aw enforcement professionals are encouraged to apply.”¹¹⁷ Whistleblowers report that earlier job announcements did not emphasize that.¹¹⁸

Criticism. Academic commentators have reacted with alarm. For example:

If CBP Officers effectively become asylum officers, then enforcement-minded officers will occupy the roles of police, judge, and jury. ... Complete and proper referrals from arresting officers to an asylum officer are one of the very few ways that asylum seekers can have their information fairly heard and evaluated outside of the closed expedited removal process. Moving enforcement officers into the role of asylum officers, especially officers who resent immigrants having legal rights, exacerbates this closed circuit of police-judge-removal.¹¹⁹

The Consequences. For asylum cases, these staffing changes produce fewer credible fear passes – from the newly hired who don't know (or don't want to know) better, and from an existing workforce that now knows what is expected.

¹¹⁵ Id.

¹¹⁶ BuzzFeed News, Hamed Aleaziz, *Under Trump's New Project, Border Patrol Agents Have Approved Fewer Than Half of Asylum Screenings*, (Nov. 7, 2019), https://www.buzzfeednews.com/article/hamedaleaziz/border-patrol-asylum-screenings:bftwnews&utm_term=4ldqpgc#4ldqpgc.

¹¹⁷ USAJobs Announcement for Asylum Officers, <https://www.usajobs.gov/GetJob/ViewDetails/549959700>.

¹¹⁸ Confidential conversation with USCIS source, Nov. 8, 2019.

¹¹⁹ Center for Migration Studies, Josiah Heyman, Jeremy Slack, & Daniel E. Martínez, *Why Border Patrol Agents and CBP Officers Should Not Serve as Asylum Officers* (June 21, 2019), <https://cmsny.org/publications/heyman-slack-martinez-062119/>.

FINDING #3:

When asylum officers found that an applicant had a legitimate reason to fear staying in Mexico until their asylum court date, those decisions were reviewed by political supervisors.

Standard Asylum Division protocol requires a supervisory asylum officer to review the initial assessment made by the interviewing asylum officer before making a final assessment. But new orders are now in place. Positive final assessments – removing asylum applicants from MPP based on successful showings of fear of remaining in Mexico – are now forwarded up the USCIS supervisory chain where they are being overruled. In the words of one asylum officer union member, “[i]f you want to go positive [on an interview], you will face Herculean efforts to get it through... If your supervisor says yes, headquarters will probably say no.”¹²⁰ Moreover, decisions to send the asylum seeker back to Mexico reportedly don’t appear to get reviewed at all, only the rare positives.¹²¹

STANDARD PROTOCOLS OVERRULED

Whistleblowers report on an MPP case where an asylum officer and the officer’s supervisor (a supervisory asylum officer with years of experience) concluded – after following standard protocols – that an asylum applicant should be taken out of MPP.¹²² They agreed the applicant had made the necessary showing of fear of persecution in Mexico and thus should not be returned.

Soon afterwards, the supervisory asylum officer spoke by telephone to the deputy director of that field office (who was two ranks higher than the Officer) and two USCIS headquarters staffers. They wanted to know why the asylum applicant had been taken out of MPP. As requested, the officer provided the supporting analysis.

The deputy director then reversed the decision and told the supervisory asylum officer to run any more decisions taking applicants out of MPP past a higher-ranking supervisor. According to the whistleblowers, never before had a deputy director and headquarters staff intervened to override line officer decisions.

¹²⁰ Vox, Dara Lind, *Civil Servants Say They’re Being Used as Pawns in a Dangerous Asylum Program* (May 2, 2019), <https://www.vox.com/2019/5/2/18522386/asylum-trump-mpp-remain-mexico-lawsuit>.

¹²¹ Id.; see also Los Angeles Times, Molly O’Toole, *Trump Administration Appears to Violate Law in Forcing Asylum Seekers Back to Mexico, Officials Warn* (Aug. 28, 2019), <https://www.latimes.com/politics/story/2019-08-28/trump-administration-pushes-thousands-to-mexico-to-await-asylum-cases> (even when Officers decide that the asylum seekers meet the higher standard and would be in grave danger in Mexico, Homeland Security officials are overruling them and returning them anyway).

¹²² Confidential Conversation with USCIS sources, September 3, 2019.

The Consequences. Putting all favorable asylum screening decisions in the hands of headquarters ensures that, at best, only a trickle of applicants pass. That is what the Trump administration wants.

FINDING #4:

Refugees who had been kidnapped, beaten, and raped were turned away due to the administration's new restrictions on gang violence and domestic violence as grounds for asylum.

In addition to personnel and programmatic changes, the Trump administration has been acting without Congress to narrow asylum policies. The best example is the wholesale elimination of domestic abuse and gang violence as grounds for granting asylum. In June 2018, former Attorney General Sessions handed down a wide-ranging decision reversing long-standing precedent in Immigration Court:

An applicant seeking to establish persecution based on violent conduct of a private actor must show more than the government's difficulty controlling private behavior. The applicant must show that the government condoned the private actions or demonstrated an inability to protect the victims.¹²³

Since that decision, asylum officers have repeatedly described cases of men and women who said they had been kidnapped in Mexico, then were beaten and raped. Once their families sent money, the kidnappers released them. Yet when the victims fled for the border, the asylum officers had to turn them back. Fear of gang and domestic violence is no longer enough.¹²⁴

¹²³ *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018), <https://www.justice.gov/eoir/page/file/1070866/download>.

¹²⁴ Los Angeles Times, Molly O'Toole, *Trump administration Appears to Violate Law in Forcing Asylum Seekers Back to Mexico, Officials Warn* (Aug. 28, 2019), <https://www.latimes.com/politics/story/2019-08-28/trump-administration-pushes-thousands-to-mexico-to-await-asylum-cases>.

ASYLUM OFFICER BELIEVES APPLICANT MIGHT BE MURDERED IN MEXICO, STILL SENDS APPLICANT BACK

A Central American asylum seeker was interviewed by an asylum officer. He told of threats from Mexican drug cartels during his journey to the southern border. The officer believed the man's life was in danger: "This was a guy truly afraid he was going to be murdered, and frankly, he might be," the officer said. That was no longer a good enough ground under the new standard ("applicant seeking to establish persecution based on violent conduct of private actor must show ... the government condoned the private actions or demonstrated an inability to protect the victims.").¹²⁵

The Consequences. People fleeing the Northern Triangle countries, officials in those countries, and foreign aid workers all describe unchecked gang violence as a key driver of migration.¹²⁶ In many places, there is no effective police force to protect individuals subjected to extortion, threats, or sex trafficking by gangs. People will die and be raped and tortured as a result of blocking asylum claims on these grounds.

FINDING #5:

In April 2019, USCIS quietly changed their policies for credible fear screenings to make it much more difficult for asylum seekers to pass their initial screening at the border.

Asylum officers are asked to determine whether an applicant has established "that there is a 'significant possibility' that he or she could establish in a full hearing before an immigration judge that he or she has been persecuted or has a well-founded fear of persecution or harm on account of his or her race, religion, nationality, membership in a particular social group, or political opinion if returned to his or her country."¹²⁷

¹²⁵ Vox, Dara Lind, *Civil Servants Say They're Being Used as Pawns in a Dangerous Asylum Program* (May 2, 2019), <https://www.vox.com/2019/5/2/18522386/asylum-trump-mpp-remain-mexico-lawsuit>.

¹²⁶ Council on Foreign Relations, Amelia Cheatham, *Central America's Turbulent Northern Triangle* (Oct. 1, 2019), <https://www.cfr.org/backgrounder/central-americas-turbulent-northern-triangle>.

¹²⁷ U.S. Customs & Immigration Services (USCIS), *Credible Fear FAQ, How Is an Individual Found to Have a Credible Fear of Persecution?* (last reviewed Sept. 26, 2008), <https://www.uscis.gov/faq-page/credible-fear-faq#t12831n40132>.

The Traditional “Low-Threshold” Standard. Historically and by design, the Asylum Officer Basic Training Lesson Plan instructed asylum officers “to apply ‘a low-threshold test designed to screen all persons who could qualify for asylum into the hearing process.’”¹²⁸ This is consistent with U.S. Supreme Court precedent noting that an asylum applicant’s showing of a “well-founded fear” of persecution is not precluded, even where the applicant shows he or she “only has a 10% chance” of being persecuted.¹²⁹ Indeed, as the lesson plan that took effect on February 27, 2017 points out:

When interim regulations were issued to implement the credible fear process, the DOJ described the credible fear “significant possibility” standard as one that sets “a low threshold of proof of potential entitlement to asylum; many aliens who have passed the credible fear standard will not ultimately be granted asylum.”¹³⁰

Now, a Higher Standard. In April 2019, USCIS issued a new lesson plan striking this language and raising the threshold for the credible fear standard to one that is nearly impossible for many seeking asylum to meet.¹³¹ The new policy requires applicants to present a factual record demonstrating a “significant possibility of future persecution” at the initial screening interview, rather than at the full hearing in Immigration Court where the applicant would be afforded the time and opportunity to gather needed evidence in support of the claim.

The plan is now being challenged in federal court on the grounds that USCIS, on its own initiative, is illegally raising the standard set by Congress and found in the controlling law; however, it is already being implemented while the legal challenge works its way through the courts.¹³²

¹²⁸ *Zhang v. Holder*, 585 F.3d 715, 724 n.3 (2d Cir. 2009), quoting 2001 Asylum officer Basic Training Plan, Part V (Credible Fear); Immigration and Naturalization Service, Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10320 (Mar. 6, 1997).

¹²⁹ *INS v. Cardoza-Fonseca*, 480 U.S. 421, 440 (1987).

¹³⁰ U.S. Citizenship & Immigration Services (USCIS), *2017 Asylum Officer Basic Training Plan, Part V.B (Credible Fear Standard of Proof: Significant Possibility)* (quoting 62 Fed. Reg. 10,312, 10,320 (Mar. 6, 1997)), <https://www.aila.org/infonet/raio-and-asylum-division-officer-training-course>.

¹³¹ U.S. Citizenship & Immigration Services (USCIS), *2019 Asylum Officer Lesson Plan* (review date Apr. 30, 2019) <https://fingfx.thomsonreuters.com/gfx/mkt/11/10239/10146/2019%20training%20document%20for%20asylum%20screenings.pdf>; see also American Immigration Lawyers Association (AILA) *Updated Credible Fear Lesson Plans Comparison Chart* (May 30, 2019), <https://www.aila.org/infonet/updated-credible-fear-lesson-plans-comparison>.

¹³² *Kiakombua v. McAleeneen*, No. 1:19-CV-1872-KBJ (D.D.C.) (Amended Complaint filed June 28, 2019, ECF # 6), <https://dockets.justia.com/docket/district-of-columbia/dcdce/1:2019cv01872/208674>; see also Washington Post, Greg Sargent, *Trump Keeps Slashing Asylum-Seeking. Now Asylum Workers Are Fighting Back* (Sept. 20, 2019),

The Consequences. This higher standard will prevent thousands from having the opportunity to adequately present their claims. If left standing by the courts, it could turn a process intended to be non-adversarial into one that begins with a presumption of denial.

FINDING #6:

In mid-August 2019, USCIS ended standardized training for new asylum officers.

USCIS explains on its website that the “Asylum Division’s Training Section provides training on a national level as well as on a local level in the field offices.”¹³³ It goes on to say:

All asylum officers are required to attend and complete the Asylum Officer Basic Training Course (AOBTC), which is a national training course that is specific to asylum adjudications... The training course includes topics such as international refugee law and the U.S. Asylum Program’s role in world-wide refugee protection; U.S. asylum law and its interpretation by the Board of Immigration Appeals and federal appellate courts; interviewing techniques; researching country of origin information; and decision-making/writing.

About Boot Camp. The Basic Training Course runs for five-and-a-half weeks and is held at the Federal Law Enforcement Training Center (FLETC) in Columbia, South Carolina.¹³⁴ The training is mandatory. Like other basic training courses for organizations, it is intended to ensure consistency across the nation and to reduce the risk of bias and inconsistency among the USCIS field offices.

That ended in mid-August 2019. Former Asylum Division Chief Lafferty then told asylum officer trainees “they were the last FLETC class.”¹³⁵ The ostensible reason is because the Asylum Division plans to hire 200 by year-end and “FLETC can’t train that many in a year”¹³⁶.

<https://www.washingtonpost.com/opinions/2019/09/20/trump-keeps-slashing-asylum-seeking-now-asylum-workers-are-fighting-back/>.

¹³³ U.S. Citizenship & Immigration Serv. (USCIS), *Asylum Division Training Programs* (last updated Dec. 19, 2016),

<https://www.uscis.gov/humanitarian/refugees-asylum/asylum/asylum-division-training-programs>.

¹³⁴ U.S. Department of Homeland Security (DHS) Federal Law Enforcement Training Centers, *U.S. Citizenship & Immigration Services – Academy Training Center* (last visited Oct. 15), <https://www.fletc.gov/us-citizenship-and-immigration-services---academytraining-center>.

¹³⁵ Confidential Conversation with USCIS sources, September 3, 2019. See Appendix Exhibit K.

¹³⁶ *Id.*

The Consequences. New hires will only receive on-the-job training in the USCIS field offices. A whistleblower reports: “So, the training is becoming spitballing whatever might work.” FLETC provides “baseline training” and a “national standard” for all asylum officers; “[g]etting trained at your hiring office creates an echo chamber.”¹³⁷

It also means the newly-hired asylum officers are likely to be trained by local politically-installed leaders to be far harsher in making credible fear asylum assessments. With only on-the-job training and no experience, they will be further subject to intense pressure from supervisors to deny all asylum claims.

FINDING #7:

By “surging” personnel to the southern border to exclusively address asylum seekers arriving at the U.S.–Mexico border, the Trump administration has left thousands of people seeking asylum in other parts of the country stranded in an indefinite limbo.

The Trump administration’s war on immigration and asylum cuts across the entire system. Earlier in 2019, Miller ordered USCIS to “surge all nonessential staff” to the southern border to conduct credible fear interviews. That would mean fewer officers available to process green card requests and naturalization applications.¹³⁸ It has stalled the processing of asylum applications for hundreds of thousands of others who are living in the U.S. legally.

Current Backlog: More than 338,000 Cases.¹³⁹ Individuals who enter the U.S. through lawful means may apply for affirmative asylum. Asylum officers process those cases. They are responsible for interviewing applicants and granting asylum.

At the end of FY2018, the backlog of open cases remaining to be processed was 319,302; six months later (as of March 31, 2019) it was 327,984.¹⁴⁰

¹³⁷ Id.

¹³⁸ Hirshfeld Davis and Shear, *Border Wars: Inside Trump's Assault on Immigration* (published Oct. 8, 2019), as quoted in Politico Playbook (Oct. 7, 2019), <https://www.politico.com/newsletters/playbook/2019/10/07/inside-this-seasons-hottest-books-485937>.

¹³⁹ PBS, Gretchen Frazee, *U.S. Claims Reducing Refugee Numbers Helps with the Asylum Backlog. Will it?* (October 2, 2019), <https://www.pbs.org/newshour/politics/u-s-claims-reducing-refugee-numbers-helps-with-the-asylum-backlog-will-it>.

¹⁴⁰ Dep’t of Homeland Security, *Citizenship and Immigration Services Ombudsman Annual Report 2019* at 58 (July 12, 2019), https://www.dhs.gov/sites/default/files/publications/dhs_2019_ombudsman_annualreport_verified.pdf; U.S. Citizenship & Immigration Services, *Asylum Office Workload March 2019* (Mar. 2019), https://www.uscis.gov/sites/default/files/USCIS/Outreach/Notes%20from%20Previous%20Engagements/PED_AffirmativeAsylumStatisticsMar2019.pdf.

Pulling Asylum Officers Off of Affirmative Cases. Miller's "surge" has redirected staff resources towards asylum cases in which the applicant is already in removal proceedings, pulling staff off of all other asylum cases. For example, on August 15, 2019, USCIS management announced that the Newark and Boston field offices would be processing far fewer cases of those already in the U.S. legally.¹⁴¹ Asylum officers in both offices had been reassigned. That meant that the backlog in the two offices (40,739 cases at March 31, 2019) would continue to grow.¹⁴²

The Consequences. The reassignment of asylum officers is harming countless asylum applicants who are in the U.S. legally but living with massive uncertainty hanging over their lives. The hundreds of thousands of open cases in backlog remain open with no end in sight. In the meantime, applicants will remain in an indeterminate legal limbo, continuing to cause adverse emotional and psychological effects for applicants, their families and friends. Moreover, their asylum applications will weaken as supporting evidence grows stale, making it more difficult for these applicants to successfully win asylum in the U.S. when their cases are finally processed.

FINDING #8:

Trained asylum officers strenuously objected to being forced to implement the administration's programs, such as MPP, that appear to be in clear violation of domestic and international asylum law.

In the face of this, asylum officers – to their credit – have bravely voiced their objections to Trump administration policies. For instance, in June 2019, their union filed an amicus brief in support of the lawsuit challenging MPP.¹⁴³ Like others, they argue MPP violates the law and puts vulnerable asylum seekers in harm's way.

¹⁴¹ Rauffer, Susan, USCIS Email "Dear U.S. Citizenship and Immigration Services Newark Asylum Office and Boston Asylum Sub-Office Stakeholder," (August 15, 2019), See Appendix Exhibit L.

¹⁴² *USCIS Asylum Office Workload March 2019* (Mar. 2019). For March 2019, the Newark and Boston offices reduced their combined affirmative case backlog by 567; 802 applications were received, 1,369 completed.

¹⁴³ *Innovation Law Lab v. McAleenan*, No. 19-15716 (9th Cir.) The appeals court heard oral argument on October 1, 2019.

Some asylum officers have gone even further and refuse to conduct MPP screening interviews. “Every day, it gets a little bit worse,” according to one who refused to participate.¹⁴⁴

A Paper Trail. In an August 12, 2019 email, which this office obtained through a whistleblower, a USCIS asylum officer detailed numerous concerns with implementation of the MPP program that the Trump administration announced in January 2019.¹⁴⁵ The email, directed to USCIS management, noted a multitude of moral and legal objections to the process, and explicitly states “the MPP is illegal.”

The asylum officer confirms the fact that DHS has no statutory authority to implement the MPP, noting “implementation of a program for which there is no legal authority violates my oath to office.”

Further, the whistleblower explains that DHS not only ignored statutory authority, the agency bypassed regulatory procedures by implementing a regulatory change without adequate Notice of Public Rulemaking to allow the mandatory period for public comment and input. Effectively, the Trump administration is trying to make an illegal end-run around Congress and the American people.

The letter continues to explain that DHS is *not* providing adequate legal notice to migrants that seek asylum. These notices provide details about where and when credible fear interviews are to take place, and a person’s legal rights and responsibilities.

Insufficient legal notice has serious consequences for migrants seeking asylum. Without a system for notifying applicants of changes to their hearing dates or locations, or for an applicant to provide a change of address to courts and Border Patrol (a necessity for migrants living in often temporary housing or shelters near the Mexican border), if a migrant misses a court date, an immigration judge is required to order the migrant removed in absentia. This bars the migrant from returning to the United States for between 5 and 10 years. Implicit in this explanation is the de facto denial of due process to migrants by means of insufficient notice, and then further barring a targeted population from re-entering the United States years into the future.

¹⁴⁴ Los Angeles Times, Molly O’Toole, *Trump Administration Appears to Violate Law in Forcing Asylum Seekers Back to Mexico, Officials Warn* (Aug. 28, 2019), <https://www.latimes.com/politics/story/2019-08-28/trump-administration-pushes-thousands-to-mexico-to-await-asylum-cases>.

¹⁴⁵ Confidential Whistleblower Source, Email from Asylum Officer to USCIS Management (August 15, 2019). See Appendix Exhibit M.

The whistleblower also emphasizes the moral and international implications of MPP, specifically that it contradicts the principle of non-refoulement mandated by international agreements to protect human rights. Non-refoulement prohibits states from removing individuals from their jurisdiction when there are substantial grounds for believing a person would be at risk of harm. By amending asylum interview procedures to enact MPP without first establishing implementing regulations, there is no standard that ensures the United States is complying with international asylum agreements. The letter notes that the “description of the MPP read at the beginning of the interview does not even explain what a ‘protected ground’ is or what the applicant is required to prove.”

The whistleblower also notes that MPP likely forces asylum officers to engage in illegal discrimination. The US. is bound by law not to discriminate against refugees on the basis of their race, religion, or nationality, and not to penalize refugees for how they enter the country to claim asylum. “However, the MPP both discriminates and penalizes,” the letter notes. “Implementation of the MPP is clearly designed to further this administration’s racist agenda of keeping Hispanic and Latino populations from entering the United States.”

The totality of the letter conveys the reality of MPP as an opaque and oppressive asylum process that operates outside of established regulations and statutes. It seems no mistake that the system was designed by the Trump administration in a way that fails to inform defendants of their rights and legal responsibilities, and that fails to deliver required notices or take into consideration the operational realities of migrants who are living in temporary conditions without access to legal services or their own files and paperwork. The result is a Kafkaesque system designed to ensure that refugees from a particular region and ethnic background effectively have no hope of finding safety by presenting themselves for asylum at the U.S.-Mexico border.

SUMMARY: KEY FINDINGS OF PART II

- **Whistleblowers reported that former U.S. Citizenship and Immigration Services (USCIS) Asylum Division head John L. Lafferty was forcibly reassigned by Acting USCIS Director Ken Cuccinelli.** This forced reassignment resulted in the perception among rank-and-file officers that Lafferty was fired for applying asylum law as written rather than skewing it to meet the administration's political goals.
- **Under Trump administration leadership, USCIS has begun using CBP law enforcement officers to replace asylum officers in conducting credible fear interviews.** This is an apparent strategy to cut the number of asylum applicants who pass the credible fear screening by removing trained asylum officers from the equation as much as possible.
- **When asylum officers found that an applicant had a legitimate reason to fear staying in Mexico until their asylum court date, those decisions were reviewed by political supervisors.** Decisions to send migrants back to Mexico were not reviewed, while decisions that migrants should remain in the U.S. for their safety were forwarded on to supervisors, and in some cases all the way up to headquarters. Whistleblowers reported that in nearly all cases where they found that asylum seekers should be allowed to await their hearing within the U.S. for safety reasons, they were overruled by their superiors, with one whistleblower reporting that it would take "Herculean efforts" to get final approval on any recommendation to allow an asylum seeker to wait in the U.S.
- **In April 2019, USCIS quietly changed their policies for credible fear screenings to make it much more difficult for asylum seekers to pass their initial screening at the border.** The new policy would require applicants to present a factual record demonstrating "a significant possibility of future persecution" at their initial screening interview, despite the fact that most asylum seekers are freshly arrived from difficult circumstances and would need time to gather evidence in support of their claim. This policy is currently being challenged in federal court, but has been allowed to go into effect in the interim; if allowed to stand, it will ultimately deny thousands of applicants the chance for a fair hearing in a full immigration court.
- **In mid-August 2019, USCIS ended standardized training for new asylum officers.** This training was previously mandatory for all asylum officers, to ensure consistency across the nation and to reduce the risk of bias and inconsistency among USCIS field offices. Without standardized trainings, new asylum officers are likely to be trained by politically-installed leaders and more vulnerable to pressure from supervisors to deny as many asylum claims as possible.

- **Trained asylum officers strenuously objected to being forced to implement the administration's programs, such as MPP, that appear to be in clear violation of domestic and international asylum law.** One whistleblower, who refused to participate in MPP on both legal and moral grounds, wrote in a letter: "Implementation of a program for which there is no legal authority violates my oath to office." The asylum officer noted that the U.S. is bound by law not to discriminate against refugees on the basis of their race, religion, or nationality, and not to penalize refugees for how they enter the country to claim asylum. "However, the MPP both discriminates and penalizes," the officer continued. "Implementation of the MPP is clearly designed to further this administration's racist agenda of keeping Hispanic and Latino populations from entering the United States."

CONCLUSION + RECOMMENDATIONS

This report highlights how the Trump administration is systematically attacking our asylum system from within: violating domestic and international laws, and undermining one of our nation's most cherished ideals – that our country will act as a refuge for the oppressed and persecuted around the world. It can and should be used as an issue outline for future action.

RECOMMENDATIONS FOR CONGRESSIONAL INVESTIGATION

First, this report provides a roadmap to topics where the Congress should use its investigative power to expose the truth. Here are six areas that merit further congressional investigation, particularly by committees with subpoena power.

1. **The White House's Purge of DHS Immigration Leadership in 2019:** Congress should investigate the summary firings, "reassignments," and replacements of career leaders with political loyalists.
2. **The White House's Treatment of the Asylum System with Contempt:** Congress should investigate whether there are further internal documents that shed light on the administration's attitude towards the legal system of asylum and key players' motivations for pursuing the policy changes that are detailed in this report.
3. **Destroying Asylum by Replacing Asylum Officers with Law Enforcement Agents:** Congress should investigate how far these plans have progressed, and whether there are further plans to systemically replace trained asylum officers with CBP officers, or with other individuals who will approach the process from a law enforcement perspective rather than an asylum law perspective.

4. **Saying “No” to Everyone:** Congress should investigate the administration’s attempts to eliminate established grounds for asylum, illegally raise the credible fear standards, and allow headquarters officials to intervene to overrule established protocols.
5. **Ending Affirmative Asylum:** More than 325,000 cases are now in backlog, yet the White House has slowed or stopped USCIS from processing affirmative cases. Congress should investigate whether the administration has any plans to address this backlog, and what the medium-to-long term consequences will be if the status quo remains and this backlog continues to grow.
6. **Asylum Officers Objecting to or Refusing to Participate in the MPP Program:** Congress should conduct further investigation into rank-and-file asylum officers who have objected to the MPP program, and whether the view that this program is illegal is shared widely among asylum officers.

RECOMMENDATIONS FOR POLICY CHANGES

This report also makes clear that there is ample room for changes to laws and policies that could help mitigate or stop the damage from politically driven decisions designed to undermine the asylum system. Here are eight recommendations for policy changes to address the findings of this report.

1. **Establish a \$10,000 civil claim against the U.S. government for delaying or preventing asylum seekers from crossing the U.S. border.** The Trump Administration has been instructing CBP to violate American law—as clearly stated in the Immigration and Naturalization Act: If an immigrant “indicates either an intention to apply for asylum... or a fear of persecution, the [immigration] officer shall refer the alien for an interview by an asylum officer.” Unfortunately, this provision of law has no teeth because no penalty exists to compel compliance.

Equipping the U.S. code with meaningful penalties provides leverage to mandate compliance with existing laws that are currently being ignored without consequence. Physically turning away people seeking asylum at ports of entry, sending families to be warehoused in other countries, and outsourcing quasi-governmental lists that meter entry for asylees are all documented violations of law, established precedent, and international agreements that continue to this day without deterrence or consequences. (*pgs. 33-34*)

2. **Prohibit CBP Officers from acting as USCIS officers.** Unprecedented efforts redirecting CBP officers from their law enforcement duties to hear asylum cases is an inappropriate jurisdictional overstep, and undermines the integrity of the asylum process currently conducted by specialized and trained USCIS asylum officers. This proposal would provide sufficient oversight of this process, given that CBP officers receive limited training to conduct asylum interviews and lack sufficient study of the conditions of a person's country of origin to effectively assess an asylum claim. (pgs. 43-46)

3. **Establish stringent hiring qualifications for immigration judges to ensure a competent and independent judicial process.** The independence of immigration courts is paramount to an effective asylum system. Currently, immigration courts are under the jurisdiction of the DOJ - an executive branch agency - rather than the judicial branch of the government. This structure gives the DOJ the authority to hire partisan or underqualified immigration judges. Independence is a necessity to due process, and unfortunately, this has been subsumed in the gargantuan efforts to reduce the asylum case backlog and instead of focusing on the task at hand, immigration law judges are forced to fight the Trump administration efforts to decertify their unions and weaken their judicial independence. (pgs. 8-11)

4. **Right to counsel for all unaccompanied children.** No group is more vulnerable in the asylum process than unaccompanied children, many of whom do not speak English, and certainly are in no position to understand the complexities of our asylum process and immigration courts. They must have an advocate that does. Thousands of children are currently left to navigate immigration courts without representation, leaving them susceptible to family separation, exploitation, and to be forced to return to unsafe conditions. (pgs. 28-29)

5. **Prioritize family-based and small group care for all unaccompanied children, unless a trained child welfare expert makes an affirmative, individualized determination that congregate care would be in the best interest of the child.** Children do not belong grouped together in cages. Shifting the care standard for children from using large warehouse-style detention facilities to smaller, tailored care settings, and including a particular emphasis on quickly placing children with family members or in non-family sponsor homes, minimizes the impact of what is already a traumatic and confusing process for children in an unfamiliar country. Additionally, requiring child welfare staff to be part of the decision making process will help provide oversight of children's wellbeing, in contrast to insufficiently trained guards at detention facilities. (pgs. 12-14; 18-21)

6. **Require daily monitoring of all immigration detention facilities (including contracted facilities) by independent and specialized legal counsel and child welfare experts.** Under current law, dangerous and unsanitary conditions in detention facilities have become all too common, and in some cases, have contributed to the deaths of detained refugees. The law should mandate weekly reports to Congress listing critical health and safety actions for ICE, CBP, and ORR to address within seven days. Any facility failing to remedy a listed action within three weeks must be immediately shut down.

Mandating compliance with basic protections for detainees is an unfortunate necessity, given that for-profit facilities have demonstrated repeated violations of safety, sanitation, and overcrowding standards. Raising the bar for standards of care will help prevent the unnecessary deaths that we have seen thus far and reduce the traumatic effect of jailing people that seek asylum legally. (pgs. 14-19)

7. **Ban for-profit detention centers.** For-profit prisons have no incentive to move children, adults or families out of their facilities expeditiously. For children, for-profit detention centers play a central role in the Trump administration's concerted efforts to keep them locked up for long periods of time in order to send a message of deterrence, a clear violation of the *Flores* settlement.
8. **Rescind the current information sharing MOA between DHS and ORR.** The current information sharing agreement between the agency responsible for children's welfare, ORR, and the agency in charge of detention and deportation, ICE, effectively deters family and close friends from stepping forward to sponsor a child waiting in detention. In order to move children out of detention as quickly as possible to an appropriate living situation reflecting their developmental and emotional needs, the MOA must be rescinded.

APPENDIX

APPENDIX EXHIBIT A: Eligibility for Asylum

INA § 208(a) (8 U.S.C. § 1158(a))

(a) Authority to apply for asylum

(1) In general

Any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien's status, may apply for asylum in accordance with this section or, where applicable, section 1225(b) of this title.

(2) Exceptions

(A) Safe third country

Paragraph (1) shall not apply to an alien if the Attorney General determines that the alien may be removed, pursuant to a bilateral or multilateral agreement, to a country (other than the country of the alien's nationality or, in the case of an alien having no nationality, the country of the alien's last habitual residence) in which the alien's life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien would have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection, unless the Attorney General finds that it is in the public interest for the alien to receive asylum in the United States.

(B) Time limit

Subject to subparagraph (D), paragraph (1) shall not apply to an alien unless the alien demonstrates by clear and convincing evidence that the application has been filed within 1 year after the date of the alien's arrival in the United States.

(C) Previous asylum applications

Subject to subparagraph (D), paragraph (1) shall not apply to an alien if the alien has previously applied for asylum and had such application denied.

(D) Changed circumstances

An application for asylum of an alien may be considered, notwithstanding subparagraphs (B) and (C), if the alien demonstrates to the satisfaction of the Attorney General either the existence of changed circumstances which materially affect the applicant's eligibility for asylum or extraordinary circumstances relating to the delay in filing an application within the period specified in subparagraph (B).

(E) Applicability

Subparagraphs (A) and (B) shall not apply to an unaccompanied alien child (as defined in section 279(g) of title 6).

(3) Limitation on judicial review

No court shall have jurisdiction to review any determination of the Attorney General under paragraph (2).

APPENDIX EXHIBIT B: Establishment of USCIS

6 U.S.C. § 271

(a) Establishment of Bureau

(1) In general

There shall be in the Department a bureau to be known as the “Bureau of Citizenship and Immigration Services”.

APPENDIX EXHIBIT C: Jurisdiction

8 C.F.R. § 208.2(a), (b)

(a) Refugee, Asylum, and International Operations (RAIO). Except as provided in paragraph (b) or (c) of this section, RAIO shall have initial jurisdiction over an asylum application filed by an alien physically present in the United States or seeking admission at a port-of-entry. RAIO shall also have initial jurisdiction over credible fear determinations under § 208.30 and reasonable fear determinations under § 208.31.

(b) Jurisdiction of Immigration Court in general. Immigration judges shall have exclusive jurisdiction over asylum applications filed by an alien who has been served a Form I-221, Order to Show Cause; Form I-122, Notice to Applicant for Admission Detained for a Hearing before an Immigration Judge; or Form I-862, Notice to Appear, after the charging document has been filed with the Immigration Court. Immigration judges shall also have jurisdiction over any asylum applications filed prior to April 1, 1997, by alien crewmembers who have remained in the United States longer than authorized, by applicants for admission under the Visa Waiver Pilot Program, and by aliens who have been admitted to the United States under the Visa Waiver Pilot Program. Immigration judges shall also have the authority to review reasonable fear determinations referred to the Immigration Court under § 208.31, and credible fear determinations referred to the Immigration Court under § 208.30.

APPENDIX EXHIBIT D: Removal Proceedings

8 U.S.C. § 1229a(d)(1)

(a) Proceeding

(1) In general

An immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of an alien.

(2) Charges

An alien placed in proceedings under this section may be charged with any applicable ground of inadmissibility under section 1182(a) of this title or any applicable ground of deportability under section 1227(a) of this title.

(3) Exclusive procedures

Unless otherwise specified in this chapter, a proceeding under this section shall be the sole and exclusive procedure for determining whether an alien may be admitted to the United States or, if the alien has been so admitted, removed from the United States. Nothing in this section shall affect proceedings conducted pursuant to section 1228 of this title.

(b) Conduct of proceeding

(1) Authority of immigration judge

The immigration judge shall administer oaths, receive evidence, and interrogate, examine, and cross-examine the alien and any witnesses. The immigration judge may issue subpoenas for the attendance of witnesses and presentation of evidence. The immigration judge shall have authority (under regulations prescribed by the Attorney General) to sanction by civil money penalty any action (or inaction) in contempt of the judge's proper exercise of authority under this chapter.

(2) Form of proceeding

(A) In general The proceeding may take place—

(i) in person,

(ii) where agreed to by the parties, in the absence of the alien,

(iii) through video conference, or

(iv) subject to subparagraph (B), through telephone conference.

(B) Consent required in certain cases, an evidentiary hearing on the merits may only be conducted through a telephone conference with the consent of the alien involved after the alien has been advised of the right to proceed in person or through video conference.

(3) Presence of alien, if it is impracticable by reason of an alien's mental incompetency for the alien to be present at the proceeding, the Attorney General shall prescribe safeguards to protect the rights and privileges of the alien.

(4) Alien's rights in proceeding In proceedings under this section, under regulations of the Attorney General—

(A) the alien shall have the privilege of being represented, at no expense to the Government, by counsel of the alien's choosing who is authorized to practice in such proceedings,

APPENDIX EXHIBIT D: Removal Proceedings

(B)the alien shall have a reasonable opportunity to examine the evidence against the alien, to present evidence on the alien's own behalf, and to cross-examine witnesses presented by the Government but these rights shall not entitle the alien to examine such national security information as the Government may proffer in opposition to the alien's admission to the United States or to an application by the alien for discretionary relief under this chapter, and

(C)a complete record shall be kept of all testimony and evidence produced at the proceeding.

APPENDIX EXHIBIT E: Removal Proceedings

8 U.S.C. § 1225(b)(1)(A)(i), (iii)

(b) Inspection of applicants for admission

(1) Inspection of aliens arriving in the United States and certain other aliens who have not been admitted or paroled

(A) Screening

(i) In general

If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States or is described in clause (iii) is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title, the officer shall order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under section 1158 of this title or a fear of persecution.

(iii) Application to certain other aliens

(I) In general

The Attorney General may apply clauses (i) and (ii) of this subparagraph to any or all aliens described in subclause (II) as designated by the Attorney General. Such designation shall be in the sole and unreviewable discretion of the Attorney General and may be modified at any time.

(II) Aliens described

An alien described in this clause is an alien who is not described in subparagraph (F), who has not been admitted or paroled into the United States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph.

**APPENDIX EXHIBIT F: Credible Fear of Persecution & Reasonable Fear of Persecution or Torture
Determinations**

Subpart B—Credible Fear of Persecution 208.30

Credible fear determinations involving stowaways and applicants for admission who are found inadmissible pursuant to section 212(a)(6)(C) or 212(a)(7) of the Act or whose entry is limited or suspended under section 212(f) or 215(a)(1) of the Act.

208.31 Reasonable fear of persecution or torture determinations involving aliens ordered removed under section 238(b) of the Act and aliens whose removal is reinstated under section 241(a)(5) of the Act.

§ 1208.31 Reasonable fear of persecution or torture determinations involving aliens ordered removed under section 238(b) of the Act and aliens whose removal is reinstated under section 241(a)(5) of the Act.

(a) Jurisdiction. This section shall apply to any alien ordered removed under section 238(b) of the Act or whose deportation, exclusion, or removal order is reinstated under section 241(a)(5) of the Act who, in the course of the administrative removal or reinstatement process, expresses a fear of returning to the country of removal. The Service has exclusive jurisdiction to make reasonable fear determinations, and EOIR has exclusive jurisdiction to review such determinations.

(c) Interview and procedure. The asylum officer shall conduct the interview in a non-adversarial manner, separate and apart from the general public. At the time of the interview, the asylum officer shall determine that the alien has an understanding of the reasonable fear determination process. The alien may be represented by counsel or an accredited representative at the interview, at no expense to the Government, and may present evidence, if available, relevant to the possibility of persecution or torture.

The alien shall be determined to have a reasonable fear of persecution or torture if the alien establishes a reasonable possibility that he or she would be persecuted on account of his or her race, religion, nationality, membership in a particular social group or political opinion, or a reasonable possibility that he or she would be tortured in the country of removal. For purposes of the screening determination, the bars to eligibility for withholding of removal under section 241(b)(3)(B) of the Act shall not be considered.

APPENDIX EXHIBIT G: Asylum Interview Procedure

8 C.F.R. § 208.9

§ 208.9 Procedure for interview before an asylum officer.

(a) The Service shall adjudicate the claim of each asylum applicant whose application is complete within the meaning of § 208.3(c)(3) and is within the jurisdiction of the Service.

(b) The asylum officer shall conduct the interview in a nonadversarial manner and, except at the request of the applicant, separate and apart from the general public. The purpose of the interview shall be to elicit all relevant and useful information bearing on the applicant's eligibility for asylum. At the time of the interview, the applicant must provide complete information regarding his or her identity, including name, date and place of birth, and nationality, and may be required to register this identity. The applicant may have counsel or a representative present, may present witnesses, and may submit affidavits of witnesses and other evidence.

(c) The asylum officer shall have authority to administer oaths, verify the identity of the applicant (including through the use of electronic means), verify the identity of any interpreter, present and receive evidence, and question the applicant and any witnesses.

(d) Upon completion of the interview, the applicant or the applicant's representative shall have an opportunity to make a statement or comment on the evidence presented. The asylum officer may, in his or her discretion, limit the length of such statement or comment and may require its submission in writing. Upon completion of the interview, the applicant shall be informed that he or she must appear in person to receive and to acknowledge receipt of the decision of the asylum officer and any other accompanying material at a time and place designated by the asylum officer, except as otherwise provided by the asylum officer. An applicant's failure to appear to receive and acknowledge receipt of the decision shall be treated as delay caused by the applicant for purposes of § 208.7(a)(3) and shall extend the period within which the applicant may not apply for employment authorization by the number of days until the applicant does appear to receive and acknowledge receipt of the decision or until the applicant appears before an immigration judge in response to the issuance of a charging document under § 208.14(c).

(e) The asylum officer shall consider evidence submitted by the applicant together with his or her asylum application, as well as any evidence submitted by the applicant before or at the interview. As a matter of discretion, the asylum officer may grant the applicant a brief extension of time following an interview during which the applicant may submit additional evidence. Any such extension shall extend by an equivalent time the periods specified by § 208.7 for the filing and adjudication of any employment authorization application.

(f) The asylum application, all supporting information provided by the applicant, any comments submitted by the Department of State or by the Service, and any other information specific to the applicant's case and considered by the asylum officer shall comprise the record.

(g) An applicant unable to proceed with the interview in English must provide, at no expense to the Service, a competent interpreter fluent in both English and the applicant's native language or any other language in which the applicant is fluent. The interpreter must be at least 18 years of age. Neither the applicant's attorney or representative of record, a witness testifying on the applicant's behalf, nor a representative or employee of the applicant's country of nationality, or if stateless, country of last habitual residence, may serve as the applicant's interpreter. Failure without good cause to comply with this paragraph may be considered a failure to appear for the interview for purposes of § 208.10.

APPENDIX EXHIBIT H: Credible Fear Determinations

8 C.F.R. § 208.30(d) (f)

(d) Interview. The asylum officer, as defined in section 235(b)(1)(E) of the Act, will conduct the interview in a nonadversarial manner, separate and apart from the general public. The purpose of the interview shall be to elicit all relevant and useful information bearing on whether the applicant has a credible fear of persecution or torture, and shall conduct the interview as follows:

(f) Procedures for a positive credible fear finding. If an alien, other than an alien stowaway, is found to have a credible fear of persecution or torture, the asylum officer will so inform the alien and issue a Form I-862, Notice to Appear, for full consideration of the asylum and withholding of removal claim in proceedings under section 240 of the Act. If an alien stowaway is found to have a credible fear of persecution or torture, the asylum officer will so inform the alien and issue a Form I-863, Notice of Referral to Immigration Judge, for full consideration of the asylum claim, or the withholding of removal claim, in proceedings under § 208.2(c). Parole of the alien may be considered only in accordance with section 212(d)(5) of the Act and § 212.5 of this chapter.



Fri 5/24/2019 5:10 AM

RE: MPP Referral Cases at PDN - El Paso Port of Entry May 23, 2019

To
Cc

[Redacted]

A number	Applicant name	# in FAMU	Interviewing Officer	Officer Phone number	Scheduled Start Time	Facility	Comments
A203	[Redacted]	1	[Redacted]	[Redacted]	7AM local (9AM EST)	ELP POE (PDN)	pregnant
A203	[Redacted]	3	[Redacted]	[Redacted]		ELP POE (PDN)	
A203	[Redacted]	1	[Redacted]	[Redacted]		ELP POE (PDN)	
A20	[Redacted]	1	[Redacted]	[Redacted]	7AM local (9AM EST)	ELP POE (PDN)	pregnant
A20	[Redacted]	1	[Redacted]	[Redacted]		ELP POE (PDN)	pregnant
A20	[Redacted]	1	[Redacted]	[Redacted]		ELP POE (PDN)	

Fri 5/24/2019 11:48 AM

Johnna Karamiryan on behalf of CAP 1111

RE: MPP Referral Cases at PDN - El Paso Port of Entry May 23, 2019

[Redacted]

A203	[Redacted]	1	[Redacted]	[Redacted]	7AM local (9AM EST)	ELP POE (PDN)	has attorney/ pregnant 9 months
A203	[Redacted]	1	[Redacted]	[Redacted]		ELP POE (PDN)	
A203	[Redacted]	1	[Redacted]	[Redacted]		ELP POE (PDN)	
A20	[Redacted]	1	[Redacted]	[Redacted]	7AM local (9AM EST)	ELP POE (PDN)	pregnant
A20	[Redacted]	1	[Redacted]	[Redacted]		ELP POE (PDN)	pregnant
A20	[Redacted]	1	[Redacted]	[Redacted]		ELP POE (PDN)	

[Redacted]

Department of Homeland Security



Wed 9/4/2019 3:14 PM

Higgins, Jennifer B

Message from the RAIO Associate Director: Personnel Update

To **RAIO - ALL1**

Cc ■ Neufeld, Donald W; ■ Errich, Matthew D; ■ Davidson, Andrew J

RAIO Colleagues,

I am writing to let you know about some leadership changes that will affect RAIO, SCOPS, and FDNS.

John Lafferty, Chief of the Asylum Division, has been appointed to

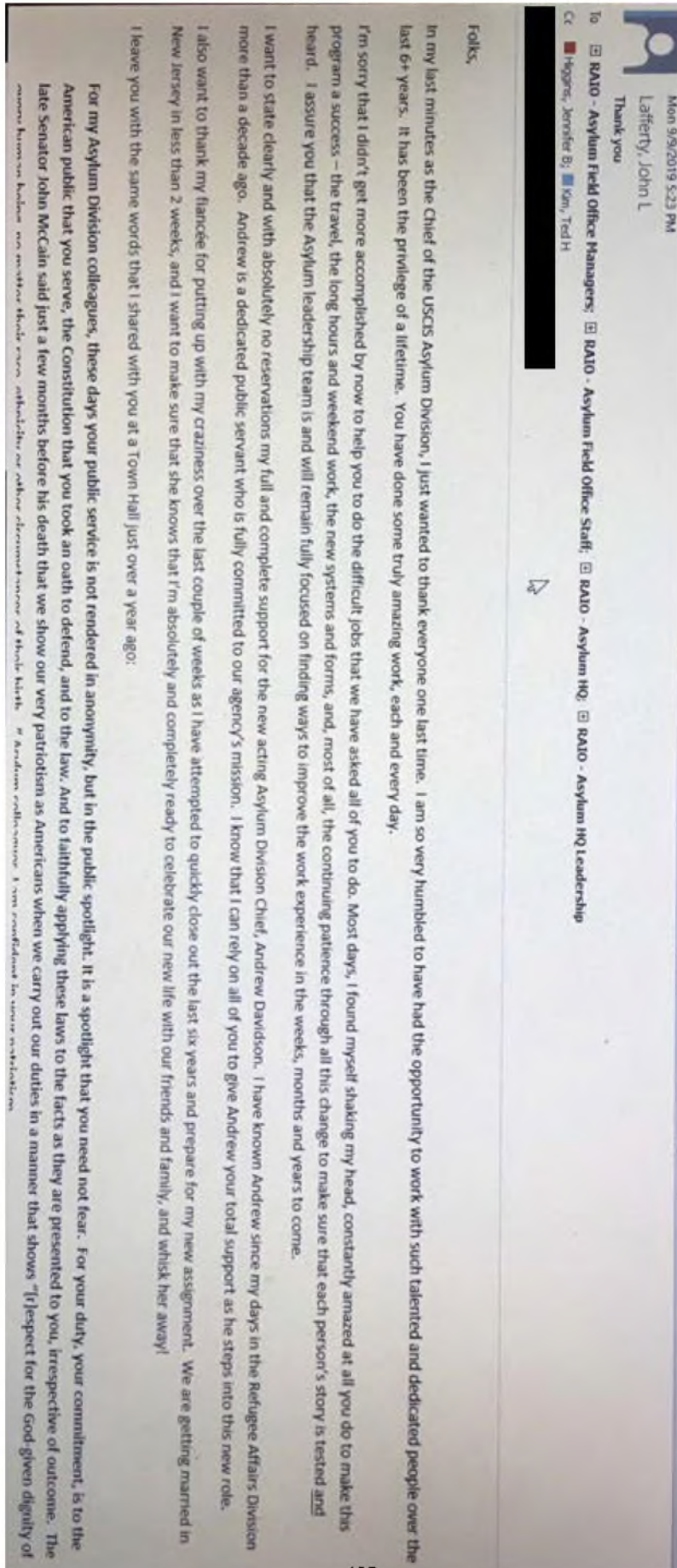
be the new Deputy Director of the Potomac Service Center (PSC). He will begin in his new position on September 10th. John has served with distinction as the Chief of the Asylum Division for the past six years and has led the Division through some of its most challenging times and a period of unprecedented growth and change. Under John's steadfast leadership and unparalleled expertise, the Asylum Division modernized its case management system, established a new vetting center, opened three sub-offices, doubled the size of its workforce, and managed historic, exponential surges of cases at the southwest border. Above all, John's leadership was characterized by a selfless, unwavering, and passionate commitment to those he served—the applicants, his staff, and the American public. John has made numerous contributions not just in the Asylum Division, but in his various leadership roles in the International Operations and Refugee Affairs Divisions. We thank John for his decades of extraordinary service in RAIO and his legacy of professionalism. John is truly one of the most talented civil servants I have ever had the privilege to work for and with. I am sorry to see John leave RAIO and will miss his leadership, exacting legal knowledge, and humor, but I know his legacy will remain. I also know that his talents will be put to good use at the PSC, where under its Director he will lead some 700 USCIS staff and more than 200 contractors in providing USCIS applicant services including I-90 and student EAD processing for the whole country as well as the entirety of other services that SCOPS offers.

Andrew Davidson, currently the Deputy Associate Director for the Fraud Detection and National Security Directorate (FDNS), will serve as the Acting Chief of the Asylum Division. Andrew previously served in several leadership roles throughout USCIS and the former INS, including serving as Deputy Associate Director of the Immigration Records and Identity Services Directorate, Kendall Field Office Director, and special assistant to the USCIS Deputy Director. Andrew is an alumnus of RAIO, and he and I had the opportunity to work very closely together in his role as the Security Vetting and Program Integrity Branch Chief in the Refugee Affairs Division. I am confident that Andrew's leadership and expertise will be a tremendous asset to the Asylum Division and to RAIO, particularly as we complete our hiring surge to fill existing vacancies, continue efforts to enhance program integrity, and implement new technologies and efficiencies. Please join me in welcoming Andrew back to the RAIO family.

With these changes, both John and Andrew will bring their many strengths, talents, and unique perspectives to different parts of USCIS. I look forward to our continued collaboration and working with John and Andrew as they take on their new roles.

Sincerely,
Jennifer B. Higgins

APPENDIX EXHIBIT K: Email from John Lafferty, "Thank you" (September 9, 2019)



Rather than spending my few minutes up here listing the Asylum Division's many accomplishments this year, and they are certainly many, along with the many challenges that are still ahead of us, I would instead like to take this moment to acknowledge the passing of an extraordinary public servant, Senator John McCain, and thank him for his commitment to public service and to those like you who also serve.

In our line of work, we are confronted on a daily basis with the full range of the human condition – the weak and the powerless, straining to hold on to their dignity, while fellow human beings use power to sow fear and violence because of some real or imagined difference in culture, creed, color, or conscience. There are certainly few among us who are more acutely aware of the suffering that one human being is capable of inflicting upon another than Senator McCain was. His knowledge of torture was personal, earned in the most brutal of fashions.

This man, given all that he had gone through, fully understood what makes America special and worth protecting. Senator McCain's unwavering support for the men and women of our armed services perfectly coexisted with his understanding that America's history of immigration and providing protection to those in need is also part of what makes this country strong. In a speech at a La Raza national conference in 1996, the Senator expounded on this belief in this way: "After independence and union, perhaps the most important accomplishment of America's founding generation was the preparation of the country to become, in Thomas Paine's words, 'an asylum for mankind,' an unprecedented land of immigrants. The epic migration that followed has no parallel in history and its impact on our national development is impossible to overestimate.

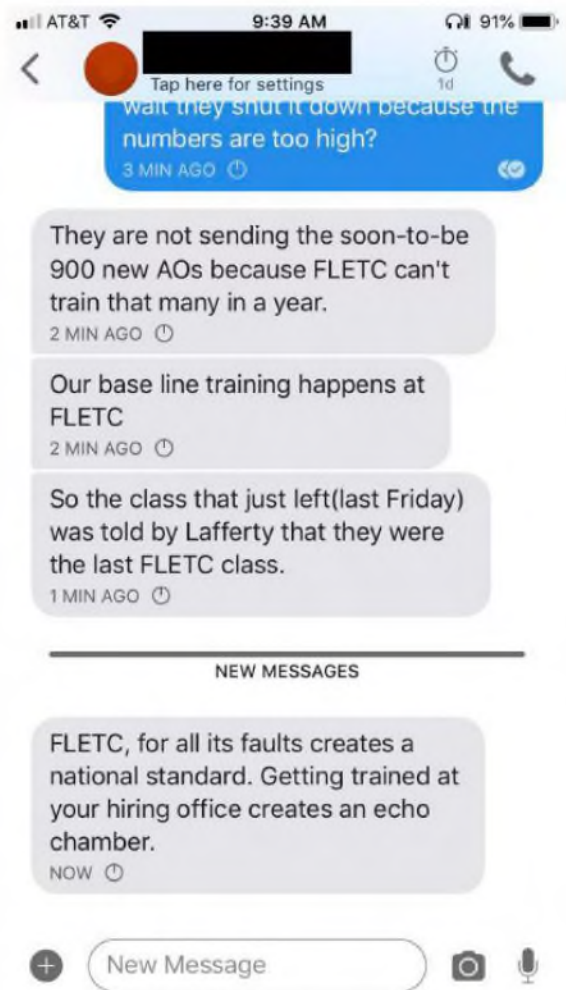
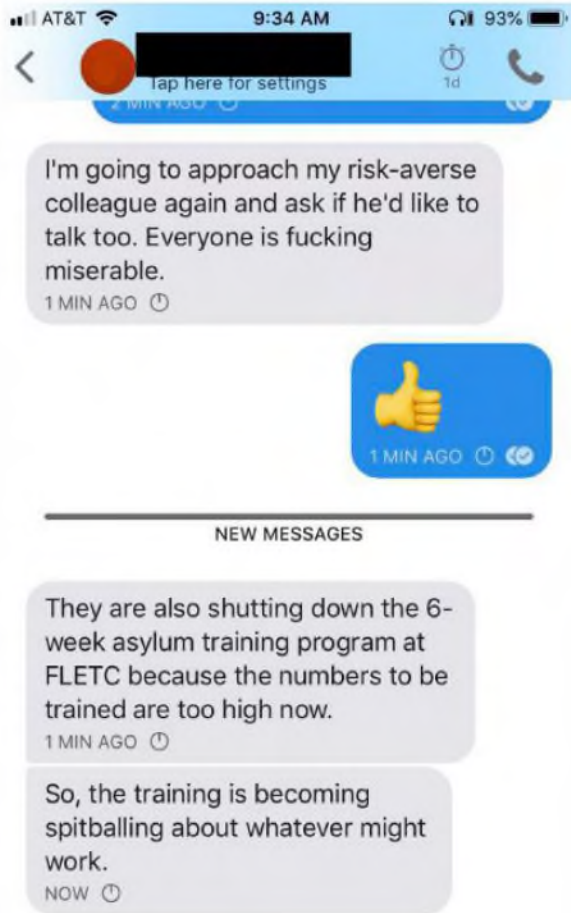
Our religion, politics, science, arts, industry and agriculture are the work of a multitude of cultures all united by their attraction to the universal appeal of our national ideals — by the desire to live free and prosperous lives. The fortunes of this heritage are measured in the success of our democratic experiment, and in our unrivaled growth and prosperity.”

For my Asylum Division colleagues, these days our public service is not rendered in anonymity, but in the glare of the public spotlight. Senator McCain’s “asylum for mankind” is under scrutiny, but it is a scrutiny that we need not fear. For our duty, our commitment is to the American public that we serve and to the law. And to faithfully applying ^{these} those laws to the facts as they are presented to us, irrespective of outcome. Senator McCain himself said ^{just a few months ago} that we show our very patriotism when we carry out these duties in a manner that shows “[r]espect for the God-given dignity of every human being, no matter their race, ethnicity or other circumstances of their birth....” Asylum colleagues, I am confident in your patriotism.

In the Prologue to his 2002 memoir, Worth the Fighting For, Senator McCain, described public service as “an honorable profession, practiced more by the selfless than the self-serving.” As Senator McCain is laid to rest this week after 60+ years of extraordinary service to a country he loved so deeply, I want to thank him and his family for his inspiring example of selfless service. Senator McCain, may you rest in well-deserved peace.

^{Asylum} ^{colleagues} ~~And~~ my hope for each of you is that you find the same pride that Senator McCain found in public service; in your service to this noble mission, protecting this nation as we protect those who have suffered or are threatened with harm. I want to thank all of you for your continuing selfless service, as well as the patriotism you exhibit each and every day. With you, there is no challenge that we cannot meet. I am proud and honored to serve alongside you. Thank you.

APPENDIX EXHIBIT M: Confidential Whistleblower Text Messages Regarding USCIS Training



USCIS Email sent August 15, 2019

Dear U.S. Citizenship and Immigration Services Newark Asylum Office and Boston Asylum Sub-Office Stakeholder,

This message is to notify you that, in response to shifting priorities and the continued influx of cases at the Southwest Border, both the Newark Asylum Office and the Sub Office in Boston will be diverting a greater number of staff to the APSO caseload.

Effective Monday, August 19th, both offices will assign a majority of interviewing officers to the Credible Fear/Reasonable Fear workload. Officers will continue to travel to the Southwest border, and an increased number of officers will be assigned to interview Credible Fear and Reasonable Fear cases either in-person or telephonically from the home offices.

This will necessarily have an impact on our Affirmative caseload. We intend to continue to interview a small number of cases in the Newark (Lyndhurst) office. In Boston, staff will continue to complete the process of interviewed cases, but no new interviews will be scheduled for the time being. In both offices, the caseload will be monitored and we will resume a more robust interview schedule as soon as possible. To the extent that cases are scheduled for an interview at all, the scheduling will continue to follow existing priorities. We will continue to maintain and schedule cases from our 'expedite' list and our 'short-notice' list, although, of course, the opportunities to do so will diminish.

We are disappointed not to be able to continue to cut into our backlog or to adjudicate affirmative cases. We appreciate your understanding.

Sincerely,

Susan
Raufer
Director,
Newark Asylum Office

Meghann Boyle,
Sub-Office
Director
Boston Asylum Sub-Office

Email from Asylum Officer to USCIS Management After August 8, 2019 Meeting with Management Over Refusal to Participate in MPP

After careful consideration and moral contemplation, I have decided that I cannot conduct Migrant Protection Protocol interviews or otherwise participate in the MPP program. Following the various meetings with Supervisory Asylum Officers last Thursday, August 8, 2019, and possible continued disciplinary action, I am memorializing my objections in writing.

As an Asylum Officer, I have sworn to defend the constitution and faithfully discharge the duties of my office, including the fair administration of our immigration laws. The MPP is illegal. The program exists without statutory authority under the INA, violates normal rulemaking procedures under the APA, and violates international law. The program's execution impairs the fair implementation of our laws and runs directly counter to the values of RAIO. I respectfully decline any further participation in the program.

First, there is no statutory authority for the MPP, and the program violates US immigration law. I recognize that as an Asylum Officer I am not in a position of authority to declare the MPP illegal for RAIO. However, as an attorney trained in immigration and administrative law and well versed in statutory analysis, I have concluded that DHS does not have the authority to implement the MPP. I further note that, even when staying the injunction, no judge has made a final ruling that the MPP is legal. Implementation of a program for which there is no legal authority violates my oath to office.

The legal question at issue is whether the two provisions governing inspection for applications for admissions-expedited removal under INA§ 235(b)(1) and "other aliens" un INA§ 235(b)(2)-are mutually exclusive or if CBP can proceed under section (b)(2) even when an applicant falls within the requirements of expedited removal.¹ The administration has claimed legal authority to implement the MPP pursuant to INA§ 235(b)(2)(C), which allows for the return to a contiguous territory of an alien who is subject to admission and inspection procedures under (b)(2). However, section 235(b)(2)(B) provides explicit exceptions to individuals subject to section 235(b)(2) and specifically states that (b)(2) does not apply to aliens subject to inspection under (b)(1). Similarly, section (b)(1) provides an explicit exception for individuals who would otherwise be subject to expedited removal, and references this exception multiple times while describing expedited removal proceedings. INA§ 235(b)(1)(F); see also, INA§ 235(b)(1)(A)(i), (ii). The exclusion language under each provision makes clear that Congress considered and specifically determined who would be excepted from inspection under each provision. Individuals subject to inspection under (b)(1) are not subject to provisions of (b)(2). The separation of the two processes for admission, 235(b)(1) and (b)(2), has been recognized by both the Supreme Court and the Attorney General. *Jennings v. Rodriguez*, 138 S. Ct. 830,837 (2018); *Matter of M-S-*, 27 I&N Dec. 509, 510 (BIA April 16, 2019).

¹ Individuals are subject to expedited removal only if they are removable under INA §§ 212(a)(6)(C) or 212(a)(7).

Furthermore, despite the poor use of language in Judge O'Scannlain's opinion, whether an applicant for admission is subject to inspection under (b)(1) and (b)(2) is not discretionary. The statutory language of whether an applicant is inspected pursuant to expedited removal is clearly prescriptive. If an immigration officer determines that an individual is removable under INA §§ 212(a)(6)(C) or 212(a)(7) "the officer shall order the alien removed" pursuant to expedited removal proceedings. INA §§ 235(b)(1)(A)(i) (emphasis added). The mandatory nature of expedited removal has not been disputed since its inception and conforms with the congressional intent of deterring undocumented migrations. Additionally, once an applicant expresses an intent to apply for asylum or a fear of persecution "the officer shall refer the alien for an interview by an asylum officer" for credible fear screenings. INA §§ 235(b)(1)(A)(ii) (emphasis added). In other words, individuals who apply for admission in the United States who are removable under INA §§ 212(a)(6)(C) or 212(a)(7) must be placed in expedited removal and must be given a credible fear interview if they request asylum or claim a fear of persecution. The MPP violates the INA because it improperly employs processes under section (b)(2) to remove individuals who must be inspected and processed under expedited removal and credible fear.

Second, even if statutory authority exists, the Asylum Office has not had proper jurisdiction to conduct the interviews. For any asylum office to have jurisdiction to conduct an MPP interview, the applicant must have already been placed in removal proceedings under INA § 240 proceedings. Section 235(b)(2) provides that if an immigration official determines that (1) an applicant for admission "is not clearly and beyond a doubt entitled to be admitted, [(2)] the alien shall be detained for a proceeding under section 240; . . . [and (3)] the Attorney General may return the alien to that [contiguous] territory pending a proceeding under section 240. INA § 235(b)(2) (emphasis added). However, 240 proceedings are not initiated until an NTA is properly served on the applicant and the immigration court. Without a properly served NTA-that is, having been read the allegations, charges, and warnings on the back of the NTA, and subsequently signed by the applicant and served on the court-the Asylum Office does not have jurisdiction to conduct the interviews. A statement in the text of the 1-213 does confer jurisdiction. To my knowledge, no applicant interviewed by our office has received an NTA prior to the interview.

Third, the MPP violates our country's obligation under the 1967 Protocol. By ratifying the Protocol, the United States, among other things, agreed to not discriminate against refugees on the basis of their race, religion, or nationality, and to not penalize refugees for their undocumented entry into the country. However, the MPP both discriminates and penalizes. Implementation of the MPP is clearly designed to further this administration's racist agenda of keeping Hispanic and Latino populations from entering the United States. This is evident in the arbitrary nature of the order, in that it only applies to the southern border. It is also clear from the half-hazard implementation that appears to target populations from specific Central American countries even though a much broader range of international migrants cross the southern border. It is also demonstrated by the exempting from MPP interviews certain populations from those countries who have a high likelihood of receiving a positive finding.

Furthermore, the implementation is calculated to prevent individuals from receiving any type of protection or immigration benefits in the future. As such, it is a punitive measure intended to punish individuals who attempt to request protection in the United States. There is no clearly established policy and system for notifying applicants of changes to hearing dates and times, or for the applicants to provide change of addresses to the courts and Border Patrol. Without a highly functional notice system, the administration has ensured that a high number of applicants will miss their court dates. In such cases, immigration judges are required to order the applicant removed in absentia, thereby barring them from entering the United States for 5 to 10 years, subjecting them to reinstated orders of removal if the applicant again seeks protection in the United States, and thereby preventing them from applying for asylum.

Fifth, even if the Asylum Office did have statutory authority and proper jurisdictions for these interviews, participation in the MPP as it currently functions would still violate our oath to office. As Asylum Officers, we have sworn to "well and faithfully discharge the duties of the office." SF 61. Those duties include "proper administration of our immigration laws." See, USCIS/RAIO Mission and Core Values, available on the ECN. However, current USCIS policy governing MPP implementation is preventing us from complying with our sworn duty to properly administer the laws governing asylum. Individuals subject to MPP are almost certainly members of a particular social group consisting of "non-Mexican migrants traveling through Mexico " or some alternatively phrased variant. Such a group shares an immutable past experience, is particular, and the evidence suggests is socially distinct in Mexico. However, CIS policy regarding which social groups are considered cognizable, and the constraint on individual analysis, prohibits officers from analyzing whether such a group is cognizable and if an MPP applicant would be persecuted in Mexico for their membership in such a group. These arbitrarily imposed restrictions on factual and legal analysis prevent us, as officers from faithfully discharging the duties of our office.

Sixth, while purporting to comply with international law, in fact the MPP practically ensures violation of our international obligation of non-refoulement. Assuming that the statute does delegate DHS authority to conduct MPP-type interviews, we have no implementing regulations. The current system is ad hoc and has not been subject to notice and comment making or any type of review. The regulatory process is critical to ensure that proceedings such as the MPP does not commit the numerous legal violations already noted. The current process places on the applicants the highest burden of proof in civil proceedings in the lowest quality hearing available. This is a legal standard not previously implemented by the Asylum Office and reserved for an Immigration Judge in a full hearing.² However, we are conducting the interviews telephonically, often with poor telephone connections, while at the same time denying applicants any time to rest, gather evidence, present witnesses, and, most egregious of all, denying them access to legal representation. The description of the MPP read at the beginning of the interview does not even

² Additionally, anecdotal evidence reported by officers relating their experience with the MPP indicates that the level of proof found necessary by supervisors to sign a positive finding is in fact much higher than a preponderance of the evidence.

explain what a "protected ground" is or what the applicant is required to prove. The ad hoc implementation, lack of regulations, denial of basic rights in all other immigration proceedings, and high legal standard all but ensure that an applicant is unable to meet his or her burden. Participating in such a clearly biased system further violates our oath of office.

Finally, even if all the above were remedied, the process is still morally objectionable and contrary to the RAIO mission of protection. The Asylum Office would still be complicit in returning individuals to an unsafe and unreasonable situation. One where we would likely find internal relocation unavailable were it the applicant's home country, and in fact regularly do make that determination for Mexican applicants. RAIO research recently reported the high levels of violence and crime specifically targeting migrant communities in Mexico, returned from the MPP. See RAIO Research Unit, News Summary Bulletin July 2019. Additionally, it is unreasonable to make individuals, often without financial resources and caring for small children, to wait an indefinite period of time without employment. The unreasonableness of such a requirement is why the law mandates the application clock and issuance of employment documents if the US government cannot process a request for protection in a timely manner. Assurances by the Mexican government that persons returned to Mexico under the MPP would receive work permits and protection were a key reason that the injunction was stayed. *Innovation Law Lab v. McAleenan*, No. 19-15716, 924, F. 3d 503 (9th Cir. 2019). However, the Mexican government has not fulfilled its promise of providing work permits and protection. See RAIO Research Unit, News Summary Bulletin July 2019. While other immigration processes may result in returning someone to a place where they face true risk of harm because they do not qualify for protection or an immigration benefit, such instances occur only after the applicant has received substantially more due process. Even then, those individuals are returned to their countries of nationality, not an arbitrary third country to which they likely have no ties. The MPP is substantively and morally distinct from other aspects of our work.

For the foregoing reasons I have respectfully declined to participate in the MPP.

Cubans were once privileged migrants to the United States. Now they're stuck at the border, like everyone else.

By Mary Beth Sheridan

November 5, 2019



CIUDAD JUÁREZ, Mexico — His father-in-law reached Miami on a raft. His brother-in-law hopped a plane to Ecuador and headed north over land.

Now it was Alejandro Vega Tamayo's turn. But when the 27-year-old Cuban reached the U.S. border this summer, he got an unpleasant surprise. Under the Trump administration's Migrant Protection Protocols, asylum seekers were being told to wait in Mexico for their appointments with U.S. officials. Five months later, he's still stranded.

"We left home thinking it would be quick," Vega Tamayo said as he restocked the refrigerator at the Caribbean Queen, the Cuban restaurant in Juárez where he's working. In the past, he said, "you'd spend two hours detained, they'd do the paperwork and let you go."

As the Trump administration clamps down on immigration, perhaps no group has suffered such a dramatic reversal as Cubans.

For decades, they were A-list immigrants. The U.S. government, citing repression by the island's communist government, welcomed them as residents. Even after the Cold War ended, arriving Cubans were treated as political refugees.

That protection ended at the beginning of 2017, part of the Obama administration's Cuban thaw. And the Trump administration has made it tougher for people seeking asylum from any country. Its goal is mainly to discourage the Central American families who have flooded the U.S. border, overwhelming authorities who made nearly 1 million apprehensions over the past year. But Cubans have gotten caught up in the crackdown.

“We used to have privileges. Now they don’t exist,” said Junior González, 31, as he rolled ground-meat croquettes at Little Habana, another restaurant that’s opened to serve the growing Cuban community here.

The new restrictions have coincided with a surge in Cubans fleeing their homeland. More than 21,000 Cubans were detained at the U.S. border in the year ending Sept. 30 — more than triple the number for fiscal 2018.

The result has been a backlog of Cubans in border cities. The numbers have swelled to around 4,500 in Juárez, which probably makes them the city’s largest foreign migrant group, said Alejandro Valenzuela, a Chihuahua state official who handles migration issues in the city.

The Cubans stand out for their education, their spotless Nike sneakers and Under Armour T-shirts — and their fear. Thieves, kidnappers and corrupt cops prey on them, believing many get cash from well-off relatives in the United States.

“We’re really afraid,” said Vega Tamayo. “We just work and go home. It’s house and work, every day.”

In Cuba, Vega Tamayo worked in a small metal-rod factory in the eastern province of Granma. “A million things” upset him, he said. The police harassment. The withering economy. The stultifying political system.

And then, in January, something remarkable happened: Nicaragua adopted new rules that made it easier to get visas at its Havana consulate.

“That was the moment for the Cubans,” Vega Tamayo said.

Within a few months, he and his wife had sold everything — even their bed — traveled to Nicaragua and begun their journey through Central America.

Many Cubans headed for Juárez, since another major border crossing, Tijuana, was saturated with Central Americans who’d arrived in caravans last year.

Juan Fierro, an evangelical pastor, has run a migrant shelter in Juárez for years. Normally it hosted up to 60 people. Then came the Cubans.

“We went to 110, then to 150, then to 180, then to 220 and hit 260. We didn’t have a single space for another mattress,” he recalled. He resorted to bedding down migrants in his pickup truck.

“It was a huge phenomenon,” he said. “It was pure Cubans.”

And then in June, everything changed.

Facing a threat of punishing U.S. tariffs, Mexico began detaining thousands of migrants arriving in the country. It deported 768 Cubans in the first eight months of this year, compared with 179 all of last year.

Meanwhile, the U.S. government expanded its Migrant Protection Protocols, or MPP. The program had forced Central American asylum seekers to wait in Mexico while their claims were processed. Suddenly, Cubans were included, too.

U.S. authorities have also escalated deportations of Cubans, sending home more than 1,000 in the past fiscal year — a sixfold increase since 2017.

The Trump administration has also tried to block asylum for most migrants who travel through other nations to reach the United States. Officials say those migrants should seek protection in the first country they reach outside their own.

Some Cubans, worried about being rejected by the United States, are now trying to stay in Mexico.

“It’s this really dramatic change,” said Geoff Thale, a senior official at the Washington Office on Latin America. “The number of Cuban asylum seekers in Mexico is way up, the number of Cuban deportees sent back by Mexico is way up, and attacks and kidnappings of Cubans by cartels are up.”

This is not what the Cubans were expecting.

Outraged at their plight, they have staged several mass escapes from Mexican immigration facilities, including one in April by more than 1,000 detainees. In recent weeks, the number of Cuban arrivals in Juárez has plunged.

“We survive and wait,” said José Alberto, 29, who was a physiotherapist in Cuba but is now the cook at the Caribbean Queen. “We are all in suspense.” He spoke on the condition that his last name not be used while his asylum case is pending.

Ironically, other Trump policies could drive more Cubans to try to migrate. His administration has increased sanctions and travel restrictions on the island, exacerbating its economic crisis.

Meanwhile, the channels for legal migration from Cuba have narrowed. The U.S. government has largely halted a program that granted 20,000 family-reunification visas to Cubans each year, after shuttering its consular section in Havana in 2017 because of a mysterious illness that affected diplomats.

Cubans aren’t fleeing the kind of gang violence that has left thousands dead in Central America. But some say they suffered political persecution back home. Others talk about a sense of hopelessness living under an authoritarian communist system.

Carlos Daniel Nodal, a 21-year-old barber, said his family “didn’t live badly” in Cuba thanks to cash sent by relatives in Miami. But even with a master’s degree, he said, his father earned \$80 a month.

“There’s no future for young Cubans,” he said.

Unlike the Central Americans, the Cubans have largely been welcomed in Mexico. Many have enough money to rent apartments or hotel rooms and to eat out. At least five Cuban restaurants have opened recently in Juárez, and enterprising Cubans have set up street carts hawking a national favorite, corn fritters.

“They’re well-dressed, they fill the hotels, they buy food,” said Iván Ramos, 38, a street vendor. “It helps the economy.”

But the Cubans’ access to dollars also makes them a target. In August, state police burst into a Juárez hotel and robbed Cuban asylum seekers of \$2,000 in cash and valuables, according to authorities.

Coming from a country with little crime, the Cubans have been stunned by the violence in Juárez, where more than 1,000 people have been killed this year.

Despite everything, the Cubans still have one advantage: Under a 1966 law, they can apply for residence in the United States after being there for a year. But they must arrive legally.

So for now, they hunker down along the Mexican border, waiting and hoping.

“We can’t do anything,” said Alberto. “Donald Trump has the last word.”





February 6, 2019

The Honorable Kirstjen M. Nielsen
Secretary, Department of Homeland Security
3801 Nebraska Ave. NW
Washington, D.C. 20016

Submitted via email: (b)(6)

RE: Substantial Evidence Demonstrating Catastrophic Harms That Will Befall Migrants in Mexico with Continued Implementation and Further Expansion of Migrant Protection Protocols

Dear Secretary Nielsen:

The Department of Homeland Security (DHS) recently announced implementation of the “Migrant Protection Protocols” (MPP), a deeply troubling policy that prevents asylum seekers from entering the United States by forcing them to remain in Mexico pending their request for protection.¹ The Dilley Pro Bono Project (DPBP) submits this letter to express its grave concern over the impact the MPP will have on the due process rights and well-being of migrants.² The DPBP is well-positioned to understand this impact. Since Spring 2015, the DPBP has provided legal services to tens of thousands of asylum-seeking mothers and their children detained in the South Texas Family Residential Center (STFRC) in Dilley, Texas—many of whom recently crossed the U.S. border from Mexico seeking humanitarian relief.

¹ January 28, 2019 Policy Memorandum, Guidance for Implementing Section 235(b)(2)(C) of the Immigration and Nationality Act and the Migrant Protection Protocols, PM-602-0169.

² The Dilley Pro Bono Project (formerly the CARA Pro Bono Project) is an initiative of the American Immigration Lawyers Association (AILA), the American Immigration Council, Catholic Legal Immigration Network, Inc. (CLINIC), and other partners.

The MPP represents a unilateral decision by the U.S. government that threatens to jeopardize meaningful access to asylum and other humanitarian protections under our immigration laws. For example, applicants forced to remain in Mexico for months or longer will find it especially difficult—if not impossible—to have access to counsel familiar with U.S. immigration and asylum laws, to file necessary paperwork in a timely manner, and to secure evidence to demonstrate their claims for asylum or other relief.

Equally important, and of great concern to the DPBP, the MPP will exacerbate a humanitarian crisis on our southern border in a way that is entirely avoidable. DPBP details below the great risks that asylum seekers subject to the MPP will face.

Quite simply, Mexican border towns are not safe places for asylum seekers—much less vulnerable unaccompanied children and families—to wait for a U.S. immigration court hearing. U.S. law has adopted the international legal principle of *non-refoulement*, which requires that governments do not return individuals to a country where their life or freedom would be threatened.³ Importantly, this mandate refers to *any* country where an individual's life or freedom may be at risk, not just a person's country of origin. For this reason, current conditions in Mexico are extremely relevant to any analysis of the appropriateness and legality of implementing the MPP.

The MPP could potentially affect thousands of people, including many vulnerable individuals and children. Enclosed, you will find the first-hand testimonies of ten families whose sworn declarations attest to the violence and harm—including rape, beatings, kidnappings, and ransom—they faced on the Mexican side of our southern border. The DPBP also presents the results of 500 surveys completed by recent border arrivals conducted since January 16. Alarming, we found that:

- 90.3% of respondents said that they did not feel safe in Mexico.
- 46% of respondents reported that they or their child experienced at least one type of harm while in Mexico.
- 38.1% of respondents stated that Mexican police mistreated them.

Increasing Levels of Violence and Instability in the Mexico Border Region

The violence and instability that migrants face on the Mexican side of the U.S.-Mexico border is well-documented. Some regions of the U.S.-Mexico border are considered by the State

³ UNHCR, States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol, <https://www.unhcr.org/protection/basic/3b73b0d63/states-parties-1951-convention-its-1967-protocol.html>

Department to be among the most dangerous locations in the world. For example, the border state of Tamaulipas, through which tens of thousands of asylum seekers travel each year on their way to the United States, has been designated a Level 4 “Do Not Travel” risk by the State Department.⁴ As of January 2019, only 12 countries in the world are designated at Level 4, including Afghanistan, North Korea, Syria, and Yemen.⁵

The State Department has also documented numerous risks to Central American migrants in Mexico. In the 2017 Country Report on Human Rights Practices for Mexico, the State Department listed “violence against migrants by government officers and organized criminal groups” as one of the “most significant human rights issues” in Mexico.⁶ The report also lists major threats to migrants from kidnappings and homicides. These threats come not just from Mexican criminal organizations and corrupt government officials, but also from the very organizations that many Central American migrants are fleeing. As the State Department observed, “Central American gang presence spread farther into the country [in 2017] and threatened migrants who had fled the same gangs in their home countries.”⁷

Tijuana—the Mexican city where the MPP has first been implemented—was the site of 2,518 murders last year, a record high and nearly seven times the total in 2012.⁸ Last year, the State Department’s Overseas Security Advisory Council observed that “Tijuana is an important and lucrative location for Transnational Criminal Organizations, narco-traffickers, and human smuggling organizations,” and that in 2017, the state of Baja California saw an overall 84% increase in murders.⁹ Not surprisingly, many asylum seekers have already suffered significant violence while being forced to wait in Tijuana; in December 2018, two Honduran children were murdered while forced to wait—due to the unlawful practice of metering—their turn to request asylum at the San Ysidro Port of Entry.¹⁰

⁴ U.S. Dep’t of State, Bureau of Consular Affairs, *Mexico Travel Advisory*, TRAVEL.STATE.GOV, November 15, 2018, <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/mexico-travel-advisory.html>.

⁵ U.S. Dep’t of State, *Travel Advisories*, TRAVEL.STATE.GOV (last accessed Feb. 5, 2019), <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories.html/>.

⁶ U.S. Dep’t of State, *Country Reports on Human Rights Practices for 2017: Mexico* (2018), available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2017&dldid=277345>.

⁷ *Id.*

⁸ Kate Linthicum, *Meth and murder: a new kind of drug war has made Tijuana one of the deadliest cities on Earth*, L.A. Times (January 30, 2019), available at: <https://www.latimes.com/world/mexico-americas/la-fg-mexico-tijuana-drug-violence-20190130-htmistory.html>.

⁹ U.S. Dep’t of State, Bureau of Diplomatic Security, *Mexico 2018 Crime and Safety Report: Tijuana, United States*, OSAC.GOV, <https://www.osac.gov/pages/ContentReportDetails.aspx?cid=23376> (last accessed Feb. 4, 2019).

¹⁰ Wendy Fry, *Two migrant caravan teens killed in Tijuana*, The San Diego Union-Tribune (Dec. 18, 2018), available at <https://www.sandiegouniontribune.com/news/border-baja-california/sd-me-migrant-children-killed-12182018-story.html>. See generally *Al Otro Lado, Inc. v. Nielsen*, No. 3:17-cv-02366-BAS-KSC (S.D. Cal. File July 12, 2017) (class action litigation challenging the turning away of asylum seekers at ports of entry along the U.S.-Mexico border).

Evidence of Harm To Asylum Seekers In Mexico

The DPBP has documented the great risks faced by female asylum seekers traveling through Mexico to the United States. Five hundred female asylum seekers detained with their minor children at the STFRC responded in writing in Spanish to a survey disseminated by the DPBP. All detained families doing a legal services intake with the DPBP between January 16 and January 29, 2019, were presented with the opportunity to complete the survey, but were advised that survey participation was optional. Participants were instructed to limit their answers to what they had experienced and witnessed while traveling through Mexico on their way to the United States. Of the respondents, 54.6% were Honduran, 27.4% Guatemalan, 15.5% Salvadoran, and 2.5% from other Latin American countries. Furthermore, 93.3% of respondents were native Spanish speakers, while the remainder were native speakers of Mayan languages with Spanish as their second language.

Overall, the asylum seekers reported overwhelmingly that Mexico was a dangerous place for them and their children: 90.3% of respondents said that they did not feel safe in Mexico, and 46% reported that they or their child experienced at least one type of harm while in Mexico, with some reporting multiple types of harm.

- Robbery or attempted robbery (32.8%)
- Threats (17.2%)
- Physical Harm (12.6%)
- Kidnapping or attempted kidnapping (5.1%)
- Sexual assault (2%)

Many respondents also reported fearing for their safety in Mexico because they had witnessed incidents of harm that happened to others: 48% of respondents reported that they witnessed at least one type of harm to another person while in Mexico.

- Robbery or attempted robbery (29.4%)
- Threats (20.4%)
- Physical Harm (17.2%)
- Kidnapping or attempted kidnapping (7.2%)
- Sexual assault (6.3%)

Furthermore, asylum seekers reported that not only did the Mexican government fail to protect them from these dangers, but government officials were often the perpetrators of crimes against

migrants: 38.1% of respondents stated that a Mexican official mistreated them in at least one way.

- Demanded bribes (28.2%)
- Verbal intimidation (18%)
- Made them feel uncomfortable (15.5%)
- Threatened them (9.5%)
- Harmed them physically or sexually (1.5%)

First-Hand Accounts of Violence Faced by Asylum Seekers in Mexico

Additionally, ten mothers detained at the STFRC who took part in the survey also provided detailed sworn statements regarding the harm they experienced in Mexico. They provided first-hand accounts of the grave violence encountered by vulnerable asylum seekers, which could befall thousands of migrants if MPP implementation continues and is expanded. These statements are representative of the hundreds of examples reported in the above survey. Pseudonyms are used in the following case summaries for the safety of the participants. Complete pseudonymized statements are also included in the attached Appendix.

Rape and Threats to Her Child – *Concepción* fled through Mexico from Honduras. While traveling through Mexico, a cartel member grabbed her while she lay in bed with her 5-year-old son and raped her. She recounts: “He threatened me, saying he would kidnap me to sell me in prostitution and would take my child to sell his organs if I did not have sex with him. He said that he had connections in the Gulf Cartel [and] that white women like me sold the best, and that children’s organs also sold very well.” She does not trust that Mexican police would protect her from this type of harm because they required bribes of her and other migrants, and strip searched those who did not pay.

Kidnapped and Sold by Police and Held for Ransom – *Aracely* and *Fatima* fled Mexico separately with their 4-year-old daughter and 6-year-old son, respectively. They were both kidnapped by Mexican police a few days apart and sold to a cartel who held them for ransom. *Aracely* reported: “A man told us that they were from a cartel and that everything would be fine if our families paid the ransom. They took everything we had and they made us call our families and have them send \$7,000 dollars [for each of us]. I heard the men saying that . . . the police who guard the river, had sold us to them.” *Fatima* stated: “We saw some people there who had been beat up. I saw a man whose whole face and arm were bruised and swollen, and he was vomiting blood My son has been

shaking and can't sleep because of what happened to us. He frequently tells me that he is still afraid."

Sexual Assault and Police Extortion – While fleeing from Honduras through Mexico, *Viviana* was sexually assaulted on three occasions while sleeping with her 10-year-old son next to her. She stated: "I didn't have anywhere else to go to be safe, and I didn't feel that I could ask for help from the Mexican police because every time we took a bus, they demanded money. If a woman didn't have money, they would tell her that they were going to deport her and take her child."

Sexual Assault – *Maybelin* and her 2-year-old daughter were persecuted in her native Guatemala due to her membership in an indigenous group. On her way to safety in the United States, she was repeatedly sexually assaulted at a house in Mexico where she was staying. She recalls: "I felt that I could not leave that unsafe situation, because I had nowhere to go in Mexico, and I had heard that the Mexican police did not protect migrants and might even deport me back to danger in Guatemala." She therefore had to continue staying there until she could enter the United States.

Sexual Harassment and Threats of Sexual Violence – *Ximena* is a Mexican woman fleeing sexual assault and threats with her 10-year-old daughter and 12-year-old son. Despite presenting herself at two ports of entry and telling U.S. immigration officials that she was afraid to stay in her home country of Mexico, the U.S. officials forced her and her children to wait 20 days to enter the United States. They had nowhere to sleep and had very limited access to food but had to leave a migrant shelter after three nights due to sexual harassment there and fear of sexual violence to Ximena or her children. Ximena says: "I was afraid . . . knowing that the gang has ties to the larger Sinaloa cartel with connections throughout the country. I felt that we were in danger for every moment we were still in our country."

Extortion and Death Threats by Mexican Police – *Luisa* escaped gang threats in El Salvador with her 15-year-old daughter. While traveling through Mexico, they were forced to pay the Mexican police three times. The final time, they didn't have the amount of money the police demanded. She states: "They grabbed my daughter, who was crying, and took her off the bus. Then they order[ed] me to get off the bus in the middle of nowhere. The uniformed men said to give them 7,000 pesos for each of us or we would both die there. The men said that if we didn't pay, he would tell the driver to leave and we would be kidnapped and killed."

Extortion and Threats to Children by Mexican Police/Witnessed Sexual Assault – *Carolina* fled Guatemala with her 9-year-old son, her sister, and her nephew. She was extorted and threatened twice by armed Mexican federal police. During one of these incidents, the police entered a house in which she was staying. She reports: “The officers were wearing black uniforms, bullet-proof vests, with their faces covered except for their eyes They said that if we did not pay, they would take our children from us and tie and lock them up.” *Carolina* and her son then witnessed the sexual assault of another woman who did not have enough money to pay.

Witnessed Extortion/Threats/Apprehension by Mexican Police – *Belkis* fled domestic violence in Guatemala with her 11-year-old son. She was terrified her husband was following them and could find them in Mexico, and felt she would only be safe from him once she arrived to the U.S. One day, the Mexican state police approached them in a group of about 40 migrants, and randomly selected 26 people to go with them on a bus. They said that they would extort those migrants’ families and beat them, including the children, if the families did not cooperate. *Belkis* says: “The people were crying, and begging God for help. The officials ordered them onto the bus. I do not know what happened to those people.”

Attempted Kidnapping – *Valery* escaped domestic violence in Honduras to seek asylum in the United States with her 10-year-old son. On her way through Mexico, they narrowly escaped attempted kidnapping by two unknown men, who tried to force a group of migrants they were a part of into a car. She states: “I felt unsafe the entire time I was traveling [in Mexico]. I knew that the threat of kidnapping was real because I had seen it happen before. Once, . . . a car pulled up next to a young woman . . . [a man] forced a woman into a car while she screamed I do not know what happened to her.”

Conclusion

The inaccurately-named “Migrant Protection Protocols” will do nothing to actually protect migrants; instead, they force asylum seekers at our southern border to wait in unquestionably precarious and dangerous circumstances like those experienced and recounted herein. We urge you to terminate the MPP immediately and ensure that asylum seekers are provided meaningful access to safe, timely, and fair adjudication of their requests for protection. U.S.-based hearings should be complemented by increased access to the U.S. Refugee Program from within the region, particularly for vulnerable populations and children.

If you have any questions or require any additional information, please contact Katie Shepherd, National Advocacy Counsel at the American Immigration Council at (b)(6) or Leidy Perez-Davis, Policy Counsel at the American Immigration Lawyers Association (AILA) at (b)(6)

Sincerely,

THE AMERICAN IMMIGRATION COUNCIL

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION

CATHOLIC LEGAL IMMIGRATION NETWORK, INC.

APPENDIX - Pseudonymized Declarations

1. Declaration of *Concepción*
2. Declaration of *Aracely*
3. Declaration of *Fatima*
4. Declaration of *Viviana*
5. Declaration of *Maybelin*
6. Declaration of *Ximena*
7. Declaration of *Luisa*
8. Declaration of *Carolina*
9. Declaration of *Belkis*
10. Declaration of *Valery*

Declaration of Concepcion

I swear under penalty of perjury of the laws of the United States of America that the following is true and correct.

1. My name is **Concepcion**. I was born on [REDACTED] in Honduras. I am currently detained in the South Texas Family Residential Center with my 5-year-old son.
2. We fled Honduras to seek asylum in the United States. While we were traveling through Ocosingo, Chiapas, Mexico, two men allowed us and sleep in their house with three other women and four other children. I was afraid but had nowhere else to go to avoid sleeping in the street with my young son.
3. One of the men, was called El Colocho, and was about 23 years old. While I was lying down with my son next to me, he grabbed me and said I would have sex with him whether or not I wanted to. I told him no, but he threatened me, saying he would kidnap me to sell me in prostitution and would take my child to sell his organs if I did not have sex with him. He said that he had connections in the Gulf Cartel white women like me sold the best, and that children's organs also sold very well. Then he raped me.
4. Later, when we were traveling on a bus close to the border, we stopped at a checkpoint on the road. Mexican police got on the bus and forced those who didn't have Mexican documents to get off the bus and go into an office and pay 200 pesos. I paid but those who refused had to take off all their clothes and the police took whatever money they found. Because of these two incidents, I am afraid to be in Mexico and do not trust the police for protection.

I, [REDACTED], swear under the penalties of perjury that the attached declaration is true and correct to the best of my abilities. This declaration was read back to me word for word in Spanish, a language in which I am fluent.

[REDACTED]
Signature

2/1/19
Date

I, Katherine Murdz, certify that I am proficient in both Spanish and English. I read the declaration above in its entirety to [REDACTED] in Spanish.

Katherine Murdz
Signature

2/1/19
Date

Declaration of Aracely

I swear under penalty of perjury of the laws of the United States of America that the following is true and correct.

1. My name is **Aracely**. I was born on [REDACTED] in Honduras. I am currently detained in the South Texas Family Residential Center with my 4-year-old daughter.
2. My daughter and I fled Honduras to seek asylum in the United States. We arrived in Reynosa, Mexico. On or around January 24, 2019 around 1:30 PM, we were waiting in a house with other migrants near the river. Four Mexican police officers in black uniforms broke the door down. They stayed for two hours, making phone calls. They told us they were going to take us to a better place where we would eat well and then we could cross the river.
3. The police told us to leave the house in a line with our heads down. It was night and we couldn't see. I believed the worst, that they were going to kill us. A bus arrived and took us about two hours and a half away to a mountain. The police stayed behind and there were other men on the bus.
4. We passed through a wall and were put in small houses. We saw many terrible things. There were some young men had been beat up very badly. We were only not beat like that because we obeyed everything we were told to do.
5. A man told us that they were from a cartel and that everything would be fine if our families paid the ransom. They took everything we had and they made us call our families and have them send \$7,000 dollars each for. I heard the men saying that the "Negros Politanos", the police who guard the river, had sold us to them.
6. We waited various hours until my relative was able to pay the \$14,000 ransom for my daughter and me. I was afraid they would hurt my daughter. We were taken to another place to sleep and then were allowed to cross the river the next day.

I, [REDACTED], swear under the penalties of perjury that the attached declaration is true and correct to the best of my abilities. This declaration was provided in Spanish, a language in which I am fluent, and was read back to me in Spanish.

[REDACTED]

Signature

2/4/19

Date

CERTIFICATION OF TRANSLATION

I, Katherine Murdza, certify that I am proficient in the English and Spanish languages and that the foregoing was read to

[REDACTED]

KAR Murdza

Signature

2/4/19

Date

Declaration of Fátima

I swear under penalty of perjury of the laws of the United States of America that the following is true and correct.

1. My name is Fatima . I was born on [REDACTED] in Honduras. I am currently detained in the South Texas Family Residential Center with my 6-year-old son.
2. I fled Honduras and traveled through Mexico to find safety in the United States and arrived at the border in Reynosa, Mexico. On or around January 21 or 22, 2019, my son and I went to a building near the river to wait to cross to the United States. There were about 25 other migrants there.
3. About 10 police officers with black uniforms arrived and broke down the door. Their faces were covered except for their eyes. All of the migrants were crying. The police told us we were going to help us. After about half an hour, a bus arrived. They yelled at us to hurry up and get on. The bus took us to a hill. The bus ride felt like less than an hour but I'm not sure because I was so afraid.
4. We arrived around 3 p.m. The men there said they were from a cartel. They said if our ransom wasn't paid we would be killed, while gesturing as if they were cutting off their heads. We saw some people there who had been beat up. I saw a man whose whole face and arm were bruised and swollen, and he was vomiting blood.
5. They forced us to crouch behind a wall all night and would not let us stand up. One of the men said that the Polinegros had sold us to their cartel. The men from the cartel said they were going to kill us. They said they were going to search us for phone numbers. I tore up all the phone numbers I had except one, because I was afraid my mother would have a heart attack if they called her. I gave them one phone number and I do not know if they called that person.
6. The next day around 1 p.m. they released the whole group. My son has been shaking and can't sleep because of what happened to us. He frequently tells me that he is still afraid.

I, [REDACTED], swear under the penalties of perjury that the attached declaration is true and correct to the best of my abilities. This declaration was read back to me word for word in Spanish, a language in which I am fluent.

[REDACTED]

Signature

2/4/19

Date

I, Katherine Murdza, certify that I am proficient in both Spanish and English. I read the declaration above in its entirety to [REDACTED] in Spanish.

KRM Murdza

Signature

2/4/19

Date

Declaration of Viviana

I swear under penalty of perjury of the laws of the United States of America that the following is true and correct.

1. My name is **Viviana** . I was born on [REDACTED] in Honduras. I am currently detained in the South Texas Family Residential Center with my 10-year-old son.
2. My son and I fled Honduras and traveled through Mexico to get to the United States. In Puebla, Mexico, we slept for four nights on the floor with three other migrant women. Three times when I was sleeping with my son next to me, a Mexican man who was supposed to be guarding us entered the room and touched me sexually. I woke up but was so afraid that I pretended to be asleep. Two other women told me that this happened to them there too. We finally started sleeping all together hugging each other to try to protect each other.
3. I didn't have anywhere else to go to be safe, and I didn't feel that I could ask for help from the Mexican police because every time we took a bus, they demanded money. If a woman didn't have money, they would tell her that they were going to deport her and take her child.

I, [REDACTED], swear under the penalties of perjury that the attached declaration is true and correct to the best of my abilities. This declaration was read back to me word for word in Spanish, a language in which I am fluent.

[REDACTED]
Signature

2/4/19
Date

I, Katherine Murdza, certify that I am proficient in both Spanish and English. I read the declaration above in its entirety to [REDACTED] in Spanish.

KER Murdza
Signature

2/4/19
Date

Declaration of **Maybelin**

I swear under penalty of perjury of the laws of the United States of America that the following is true and correct.

1. My name is **Maybelin**. I was born on [REDACTED] in Guatemala. I am currently detained in the South Texas Family Residential Center with my 2-year-old daughter.
2. My daughter and I fled death threats from the gang in Guatemala and traveled through Mexico to seek asylum in the U.S. I did not feel safe in Mexico. I reached the border town of Reynosa, but did not know how to cross the border and was waiting to find people who could help me. I was out of money and did not have anywhere to sleep with my daughter.
3. I talked to some people in the market who said I could go clean their house. I lived there for a week. The husband, wife, and son all yelled at each other and hit each other, which terrified my daughter. They frequently insulted my daughter, calling her hunger-stricken and homeless.
4. While staying in that house, a man would touch my thighs and butt while I was sleeping. He would also come into the bathroom while I was showering and pull aside the shower curtain to watch me. I felt that I could not leave that unsafe situation, because I had nowhere to go in Mexico, and I had heard that the Mexican police did not protect migrants and might even deport me back to danger in Guatemala.

I, [REDACTED] swear under the penalties of perjury that the attached declaration is true and correct to the best of my abilities. This declaration was read back to me word for word in Spanish, a language in which I am fluent.

[REDACTED]

Signature

1/23/19
Date

I, Katherine Murdza, certify that I am proficient in both Spanish and English. I read the declaration above in its entirety to [REDACTED] in Spanish.

KRM Murdza
Signature

1/23/19
Date

Declaration of Ximena

I swear under penalty of perjury of the laws of the United States of America that the following is true and correct.

1. My name is **Ximena**. I was born on [REDACTED] in Mexico. I am currently detained in the South Texas Family Residential Center with my 10-year-old daughter and 12-year-old son.
2. My children and I fled sexual assault and threats of further harm from a gang in Guerrero, Mexico to seek asylum in the United States. I was afraid while traveling through Mexico, knowing that the gang has ties to the larger Sinaloa cartel with connections throughout the country. I felt that we were in danger for every moment we were still in our country.
3. When we arrived in Piedras Negras, Mexico on approximately December 30, 2018, we presented ourselves at the port of entry into Eagle Pass, Texas to seek asylum. One male and one female U.S. immigration official told us that we could not pass until it was our turn and that we had to find a man called *Licenciado* Mauro Ornelas to add our names on the list. They could not provide any contact information for Mauro. No one was allowed to take even one step over the line from Mexico into the United States.
4. We asked all around town for Mauro for several days. Everyone seemed to know him, and we could find him on Facebook, but no one would give us a phone number. One day, I was waiting at the port of entry and the officials allowed a couple to enter. Mauro arrived very angry with a family that he said was supposed to be next on the list. He told the officials that there were rules and that they had an agreement, and that they had to follow the list. The family that arrived with Mauro was not allowed to enter that day.
5. This incident finally gave us the opportunity to talk to Mauro. I do not know if he was affiliated with a particular organization or agency but he seemed to speak Spanish like a Mexican. I told him our names, our birth dates, our place of origin, and photos of us. Mauro told me that I would be number 126 on the list. He brought me to a shelter, where I was told I could stay for 3 days. I could renew my time with Mauro's confirmation that I was still waiting for it to be my turn on the list.
6. Two families were sleeping on the bridge despite the very cold weather, because they hoped it would let them enter the U.S. more quickly, but it did not change their position on the list. I went to the shelter because I didn't want my children to be unsafe sleeping in the street like many other migrants were doing, but I quickly became uncomfortable there. There was a man who made sexual comments to me. I was worried about what this man would do to me or my children, as I had already experienced sexual violence at home. My son had to sleep in a different room for adolescent boys so I could not watch him carefully. Because of this situation, I left the shelter after three days to try to find a safer place for my family.

7. I asked all over town for shelter, and finally found a church that would take us in. My sister who is receiving us in the United States had already budgeted costs for our travel, and did not have extra money to send us for the time we were waiting in Piedras Negras. It was difficult for us to afford food.
8. People asked me if I wanted to cross the river with them instead of entering the bridge, but I was very afraid for my children. I talked to a woman who had tried to cross the river because of the long wait at the port of entry, but the man helping her abandoned her and her children in the middle of the river. She almost drowned, but barely made it back to the Mexican side of the river.
9. I took a bus for about an hour and twenty minutes to another port of entry in Ciudad Acuña. There I was allowed to walk across the whole bridge and arrive onto the American side where the U.S. immigration officials have their offices. They also said I had to put my name on a list. There, the list was managed by Grupo Beta agents, who had an office right near the bridge. People waiting there told me they had been waiting for up to two months. I put my name on that list as number 90.
10. Finally, after twenty days waiting, Mauro told me my number was going to be called at the first bridge I went to. My children and I were able to enter the port of entry. During each of those twenty days, I was afraid that my persecutors could find me at the border. Mauro knew that I was a Mexican fleeing Mexico, and neither he nor the immigration officials ever asked me if I was afraid to wait in Mexico.

I, [REDACTED], swear under the penalties of perjury that the attached declaration is true and correct to the best of my abilities. This declaration was read back to me word for word in Spanish, a language in which I am fluent.

[REDACTED]
Signature

1/23/19
Date

I, Katherine Murdza, certify that I am proficient in both Spanish and English. I read the declaration above in its entirety to [REDACTED] in Spanish.

KRM Murdza
Signature

1/23/19
Date

Declaration of Luisa

I swear under penalty of perjury of the laws of the United States of America that the following is true and correct.

1. My name is **Luisa**. I was born on [REDACTED] in El Salvador. I am currently detained in the South Texas Family Residential Center with my 15-year-old daughter.
2. My daughter and I fled death threats from the gang in El Salvador. We traveled through Mexico as we thought seeking asylum in the United States was our only opportunity for safety. We traveled in fear because three times, officials came onto our bus demanding money. Each time, people on the bus would whisper “the officials are coming”. The men would demand that we give them money or they would take us off the bus. The first two times the men were wearing orange shirts and beige pants.
3. The third and worst time was on the last leg of the trip on the way from Monterrey to Reynosa, when three armed uniformed men came onto the bus. The uniforms were green and looked like army uniforms. They came straight for my daughter and asked her where she was going. My daughter told them where we were going. They asked for her documents, but she did not have them. They grabbed my daughter, who was crying, and took her off the bus. Then they order me to get off the bus in the middle of nowhere.
4. The uniformed men said to give them 7,000 pesos for each of us or we would both die there. The men said that if we didn’t pay, he would tell the driver to leave and we would be kidnapped and killed. The previous two times we had had enough money to pay the officials but this time we did not. My daughter gave them \$40, but they said that was very little and they didn’t want it. I added 400 pesos and \$20. Fortunately, the bus had not left and the men allowed us to get back on. They wanted me to get on first but I insisted my daughter go first so they couldn’t kidnap her. I believe that if we had not had that money we would have died. I felt that I would not be safe until I reached the United States.

I, _____, swear under the penalties of perjury that the attached declaration is true and correct to the best of my abilities. This declaration was read back to me word for word in Spanish, a language in which I am fluent.

Signature

Date

1/23/19

I, Katherine Mudza, certify that I am proficient in both Spanish and English. I read the declaration above in its entirety to _____ in Spanish.

Signature

KEM Mudza


Date

1/23/19

Declaration of Carolina

I swear under penalty of perjury of the laws of the United States of America that the following is true and correct.

1. My name is **Carolina**. I was born on [REDACTED] in Guatemala. I am currently detained in the South Texas Family Residential Center with my 9-year-old son.
2. My sister, nephew, son, and I fled in Guatemala to seek asylum in the United States. On the way through Mexico, we stayed in a shelter for one night in Monterey. Two federal police officers arrived at the house. The man in charge of the house allowed them to come in. They came up to the second floor to where the four of us were with another young woman.
3. The officers were wearing black uniforms, bullet-proof vests, with their faces covered except for their eyes. They had guns and handcuffs on their hips. They counted us and said we had to pay 200 dollars per person. I asked him why. He said "For the right to be here, *mija*". He said that if we did not pay, they would take our children from us and tie and lock them up.
4. My sister and I each paid the 400 dollars. The other young woman said she did not have any money. The men patted her down including touching her private parts.
5. The next day, we all left Monterey together on a bus to Reynosa. Two more federal police officers dressed and armed in the same way as the others came onto the bus. They asked for our documents but we did not have them.
6. The officers took us outside, leaving the children on the bus. They told us we had to each pay 200 pesos to pass, which we did. The other woman only had 100. They yelled at her and said that it wasn't enough, but eventually allowed us to leave.


I, , swear under the penalties of perjury that the attached declaration is true and correct to the best of my abilities. This declaration was read back to me word for word in Spanish, a language in which I am fluent.



Signature

1/28/19

Date

I, Katherine Murdza, certify that I am proficient in both Spanish and English. I read the declaration above in its entirety to  in Spanish.

Katherine Murdza

Signature

1/28/19

Date

Declaration of **Belkis**

I swear under penalty of perjury of the laws of the United States of America that the following is true and correct.

1. My name is **Belkis**. I was born on [REDACTED] in Guatemala. I am currently detained in the South Texas Family Residential Center with my 11-year-old son.
2. My son and I fled domestic violence and traveled through Mexico to seek asylum in the United States. I felt unsafe the whole time I was in Mexico. I was afraid my husband would be able to track me down, because another migrant from my town might recognize me and pass on that information through others. Since my husband has a previous deportation from the U.S., I felt that it would be much more difficult for him to come find me and hurt me once I crossed the border.
3. I also felt in constant danger from gangs and even the police while in Mexico. One day, in Reynosa, Mexico my son and I were waiting for the bus with a group of about 40 migrants to go to the border. A microbus pulled up and four officials in black uniforms with guns got off. They said that they were the State Police and were going to take 26 of us with them.
4. We were in the front of the group so I was terrified they would take me, but they chose other people. They said that they were going to ask their families for money, and if they did not send it they would beat them, including the children. The people were crying, and begging God for help. The officials ordered them onto the bus. I do not know what happened to those people.

I. [REDACTED] swear under the penalties of perjury that the attached declaration is true and correct to the best of my abilities. This declaration was read back to me word for word in Spanish, a language in which I am fluent.

[REDACTED]

Signature

1/23/19

Date

I. Katherine Murdza certify that I am proficient in both Spanish and English. I read the declaration above in its entirety to [REDACTED] in Spanish.

Katherine Murdza
Signature

1/23/19

Date